

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.NO.12848 OF 2020

AND

WMP.NO.15867 OF 2020

G.Venkatesh

... Petitioner

Vs.

1. The Chairman and Managing Director,
Power Grid Corporation of India Ltd., (PGCIL),
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi - 110 016.
2. The Chief General Manager, (TN Projects)
Power Grid Corporation of India Ltd., (PGCIL),
No.2, First Lane, Bharathi Nagar,
North Usman Road, T.Nagar,
Chennai-600 017.
3. The Senior Deputy General Manager,
Karur 400 KV SS Project in-charge,
Power Grid Corporation of India Ltd., (PGCIL),
Coimbatore Main Road, K.Paramathy Post, Karur.
4. The District Collector,
Kallakurichi District,
Kallakurichi - 606 202.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus, directing the respondents 1 to 3 herein to consider the petitioner's representation dated 12.06.2020, wherein this petitioner had requested the respondents 1 to 3 herein not to take any overhead Transmission Lines of the Project, namely, Pugalur HVDC Station - Thiruvallam 400 KV (Quad) D/C Line (Part-II) associated with HVDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern Region (Pugalur, Tamil Nadu) North Trichur (Kerala) and not to erect any polls in the petitioner's property on the other hand requested to consider any other alternative way to take the Transmission Lines so that the Transmission Lines will not pass over the petitioner's Property.

For Petitioner : Mr.S.Vedhiyappan
Mr.R.Thiyagarajan, Senior Advocate
For Respondents: Mr.R.Thiyarajan,
Senior Advocate,
for M/s.Aiyar and Dolia - R1 to R3
Mr.E.Balamurugan - R4
Special Government Pleader

O R D E R

This Writ Petition has been filed for the issuance of a Writ of Mandamus directing the respondents 1 to 3 to consider the representation made by the petitioner on 12.06.2020, wherein the petitioner had requested the respondents not to take any overhead transmission lines over his property.

2. The case of the petitioner is that he purchased the subject property in the year 2015 and he wanted to put up a structure and run a rice-mill in the same. The petitioner also applied for planning permission before the Director of Town and Country Planing and even in the said application, the building category has been described as 'non high-rise building' upto 9 Mtrs. The grievance of the petitioner is that the respondents 1 to 3 are in the process of drawing overhead lines over his property, and as a result of the same, he will not be able to utilize the property for any purpose and ultimately, the petitioner will be put to irreparable loss and hardship. According to the petitioner, there is an alternate way to take the transmission lines without causing damage to his property. The petitioner made a representation to respondents 1 to 3 in this regard and since the same was not considered, the present writ petition has been filed before this Court.

3. The respondents 1 to 3 have filed a counter affidavit in this writ petition. The relevant portions in the counter affidavit are extracted hereunder:

'12. I submit that no tower is erected in the land belonging to the Petitioner and the Transmission line connecting Location No.T151/5 to T152/0 passes over the land belonging to the Petitioner. I submit that the erection of tower in Location No.T151/5 was completed on 01.03.2020 and the erection of tower in Location No.T152/0 was completed on 17.03.2020. The erection of towers in the above said locations were completed well before the on line complaint made by the Petitioner on 26.03.2020. I submit that the Petitioner was well aware as to the passing over of the transmission line over his land. The works which were carried on in Location Nos.T 151 / 5 and T152/0

were well within the knowledge of the Petitioner. I further state that the works in the stretch connecting T151/0 to T 152/0 (7 locations) comprising a length 2.068 kms were completed during the months of January and February 2020 barring stringing.

13. I submit that the length of the transmission line between T151/5 and T152/0 is 388 meters. Out of the same, 150 meters of length of the transmission line is proposed to pass over the Petitioner's land. I respectfully submit that for completion of stringing works in the stretch of 2.068 kms, all arrangements have been made, including laying of pilot wire with the aid of which the conductor will be laid connecting T151/0 and T152/0. I submit that the pilot wire which is lying on the ground will pose as a grave threat to the general public, if the work is not completed immediately. The Petitioner had all along been watching the works which were carried on in entire section connecting Location Nos.T151/0 to T152/0. I submit that by the time, the Petitioner sent the representation dated 18.05.2020 to this Respondents, the erection of towers in the entire section were already completed. The Petitioner cannot seek for alternative route after substantial work is completed. This Hon'ble Court has held that the Power Grid Corporation of India possesses the technical expertise for laying the transmission line. The District Collector can only fix the compensation for loss of crops/trees or damage to land or building. It cannot suggest alternate route.

14. I submit that this Respondent submitted a petition before the 4th Respondent on 25.09.2020 for removal of obstructions. I submit that scope of exercise of power by the 4th Respondent under Section 16(1) of the Indian Telegraph Act, 1885 is in the nature of execution. This Hon'ble Court has held that the District Collector cannot direct or suggest for alteration of route alignment which is the exclusive domain of this Respondent. I submit that in view of the facts and circumstances as narrated supra, the issue may be referred to the 4th Respondent for the purpose of determining of compensation for the diminution value of the land as per the Tamil Nadu GOs.

15. In Para 15 of the affidavit, the Petitioner has averred that the request made by his counsel for furnishing Map showing the transmission line with

poles/pillars marked has not been provided. The above said issue came up for consideration before this Hon'ble Court in W.P.No.30124 of 2018. In the said Writ Petition, the Petitioner sought for furnishing route map, GPS coordinates and other documents. By the order dated 07.12.2018, this Hon'ble Court held that the Petitioner therein is not entitled for the same. The Writ Appeal filed against the said order, viz., W.A.No.79 of 2019 was also dismissed on 12.04.2019. The Special Leave Petition filed against the order passed in W.A.No.79 of 2019 came to be dismissed by the Hon'ble Supreme Court of India by the order dated 22.07.2019.

16. I submit that the statutory clearance required for 400 kV transmission line is 8.89 meters in terms of Central Electricity Authority (Measures relating to Safety and Electricity Supply) Regulations, 2010. In the instant case, the clearance is 25 meters from the ground level. The Petitioner can put up construction for the purpose of running the rice mill complying with the Central Electricity Authority (Measures relating to Safety and Electricity Supply) Regulations, 2010. The land is a barren land even as of today. The allegation contained in Para 18 of the affidavit that he will not able to use the land for any purpose is wholly incorrect.

4. The learned counsel for the petitioner submitted that the overhead lines that is sought to be drawn over the property belonging to the petitioner, will virtually prevent the petitioner from putting up the rice-mill in the property. The learned counsel further submitted that there is an alternative way which can be utilized by the respondents 1 to 3 for drawing the overhead lines. The learned counsel submitted that if such an alternative way is adopted, no damage will be caused to the property belonging to the petitioner. Therefore, the respondents 1 to 3 can be directed to consider the representations made by the petitioner in this regard.

5. Mr.R.Thiyagarajan, learning Senior Counsel appearing on behalf of the respondents 1 to 3 submitted that no tower is erected in the land belonging to the petitioner and only a transmission line will be passing over the land belonging to the petitioner. The learned Senior counsel further submitted that nearly 150 mtrs. length transmission lines will pass over the petitioner's land. The learned Senior Counsel submitted that even these transmission lines will have a clearance of 25 mtrs. from the ground level. Therefore, the learned Senior counsel submitted that the petitioner can always utilize his property

for running the rice-mill and even according to the application submitted by the petitioner before the concerned authority seeking for planning permission, the petitioner has only sought for permission for a non high rise building upto 9 mtrs, whereas the clearance in the present case will be 25 mtrs. from the ground level. Even if No Objection Certificate is sought for from the respondents 1 to 3 to put up the building as per the application, the same will be given by the respondents 1 to 3 and therefore, there is absolutely no damage caused to the land belonging to the petitioner.

6. The learned Senior counsel further submitted that the alternate way that was suggested by the petitioner is unworkable and the decision with regard to drawing transmission lines is taken by experts in the field and it cannot be diverted in order to suit the needs of any individual land owner. The learned Senior counsel, in order to substantiate his submissions, relied upon the judgment of the Hon'ble Division Bench of this Court in the case of Sri Vignesh Yarns Private Ltd., Tirupur Vs. S.Subramaniam and others reported in 2013 (1) LW 170. The learned Senior counsel also relied upon the judgment of the Hon'ble Supreme Court in the case of Power Grid Corporation of India Limited Vs. Century Textiles reported in 2017 (5) SCC 143.

7. This Court has carefully considered the submissions made on either side and materials available on record.

8. The grievance expressed by the petitioner as against drawing of the overhead transmission lines are

- a. The same will prevent the petitioner from enjoying his property; and
- b. There is an alternative way in which the transmission lines can be drawn without causing damage to the petitioner's property.

9. A careful reading of the counter affidavit filed by the respondents 1 to 3 shows that a transmission line connecting two locations passes over the land belonging to the petitioner. No tower is erected in the land belonging to the petitioner. The clearance from the ground level is 25 mtrs. and this transmission line will be running for a length of 150 mtrs. over the land belonging to the petitioner. It is also seen from the counter affidavit that most of the work has been completed and all the towers have been erected in the entire section. The respondents 1 to 3 will have to only complete stringing works, including laying of pilot wire with the aid of which, the conductor will be laid connecting two points and this connection between the two points is the overhead line that is drawn over the property belonging to the petitioner. It is therefore clear

that the work is at a very advanced stage.

10. The petitioner is seeking for an alternative way for the drawing of the overhead transmission lines. The request made by the petitioner cannot be granted by this Court, since the entire project is designed by the experts in the field and this Court cannot sit over their judgment, and direct the respondents 1 to 3 to consider an alternate way for the purpose of drawing the transmission lines. The Division Bench Judgment relied upon by the learned Senior Counsel for the M/s. Sri Vignesh Yarns Private Ltd., Tirupur referred supra, makes it very clear that this Court cannot change any alignment or directing the respondents to take an alternative way for drawing the overhead line, and it is best left in the hands of experts. Therefore, the request made by the petitioner to consider the alternate way for drawing the transmission lines cannot be sustained in law.

11. The only other issue that requires consideration is with regard to the plea taken by the petitioner that he will not be able to utilize the entire property, if the transmission lines are drawn over the property belonging to the petitioner. The clear stand taken by the petitioner is that he is going to put up a rice-mill in the property.

12. Even in the application submitted before the concerned authority, the building category is shown as a 'non high rise building' upto 9 mtrs. A specific stand has been taken in the counter to the effect that the overhead transmission lines will be drawn with a clearance of 25 mtrs. from the ground level. Therefore, the structure that is going to be put up by the petitioner, will not in any way be affected by the transmission lines that is drawn over the property belonging to the petitioner. The respondents 1 to 3 are even willing to give a NOC to the petitioner to put up the structure, in line with the application submitted before the Town and Country Planning Authority.

13. In view of the above, this Court does not find any material to satisfy itself that the petitioner will not be able to utilise his property if the transmission lines are drawn over the property belonging to the petitioner.

14. Even taking the extreme case, where the petitioner feels that damage will be caused to the property belonging to the petitioner, by virtue of overhead transmission lines drawn by the respondents 1 to 3, the petitioner will only be entitled for damages under Section 10(d) of the Indian Telegraph Act, 1885. That cannot be a ground to prevent the respondents 1 to 3 from going ahead with the project, and the right of user vested upon the respondents 1 to 3 is a statutory right and they are

entitled to draw the overhead transmission lines and complete the project. This finding is given without demur to the earlier finding given by this Court that factually, this Court does not find any ground to sustain the apprehension raised by the petitioner to the effect that he will be prevented from utilizing his property.

15. In the result, this Court does not find any ground to interfere with the work carried on by the respondents 1 to 3 and it is left open to the respondents to carry on with the work and complete the project. If at all the petitioner has any grievance with regard to any damage caused to his property, it is left open to him to seek for compensation in accordance with law.

16. This Writ Petition is disposed of accordingly. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman and Managing Director,
Power Grid Corporation of India Ltd., (PGCIL),
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi - 110 016.
2. The Chief General Manager, (TN Projects)
Power Grid Corporation of India Ltd., (PGCIL),
No.2, First Lane, Bharathi Nagar, North Usman Road,
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Power Grid Corporation of India Ltd., (PGCIL),
Coimbatore Main Road, K.Paramathy Post, Karur.
4. The District Collector,
Kallakurichi District, Kallakurichi - 606 202.

+1cc to M/s.Aiyar and Dolia, Advocate, S.R.No.32539

W.P.No.12848 of 2020
and WMP. No.15867 of 2020

SSI(CO)
CS/10/11/2020