

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2020

CORAM :

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.17986 of 2017 and

W.M.P.No.19548 of 2017

1. Thiruvengadam

2. Manavalan

3. Sanjeevi

... Petitioners

v.

1. The Chairman,
Tamil Nadu Electricity Generations &
Distribution Corporation,
Chennai.

2. The Superintending Engineer,
Transmission Line Construction,
Tamil Nadu Electricity Generations &
Distribution Corporation,
Villupuram.

3. The Junior Engineer,
Transmission Line Construction,
Tamil Nadu Electricity Generations &
Distribution Corporation,
Villupuram.

4. The Superintending Engineer,
Transmission Line Construction,
Tamil Nadu Electricity Generations &
Distribution Corporation,
Cuddalore.

5. Power Grid Corporation of India Ltd.,
New No.2, Old No.16,
1st Lane, North Usman Road,
T. Nagar, Chennai - 17.

[R5 Impleaded as per order dated 08.08.2017 in
WMP No.22029/2017 in W.P.No17986/2017]

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuing a Writ of Mandamus, forbearing the respondents from putting up any overhead lines over and across S.Nos. 31/1C2, Hec. 0.61.0 31/1A1, Hec.0.48.0, 31/1A3, Hec.0.11.0 in B.Adivarahanatham Village, Bhuvanagiri Taluk, Cuddalore District.

For Petitioners: Mr. R. Gururaj
For Respondents: Mr. Vijaya Mehanath
Standing Counsel - for R1 to R4

Mr. Jayesh B Dolia
for M/s. Aiyar & Dolia - for R5

O R D E R

The petitioners have filed the above Writ Petition to issue a Writ of Mandamus, forbearing the respondents from putting up any overhead lines over and across S.Nos. 31/1C2, Hec. 0.61.0 31/1A1, Hec.0.48.0, 31/1A3, Hec.0.11.0 in B.Adivarahanatham Village, Bhuvanagiri Taluk, Cuddalore District.

2. It is the case of the petitioners that the above mentioned agricultural land belong to the 1st petitioner and his sons, who are the petitioners 2 and 3 and that on 07.07.2018, the respondents in order to lay High Tension overhead lines, marked the route OVER the petitioners' land, hence, they sent an objection to the respondents on 08.07.2017. According to the petitioners, no notice was served on them till the date of filing of the Writ Petition. Hence, the petitions have filed the above Writ Petition, forbearing the respondents from putting up any overhead lines over their lands.

3. Mr. Jayesh B Dolia, learned counsel appearing for the 5th respondent submitted that no power is erected in the land belonging to the petitioners, but, only a portion of the land comes under transmission line corridor connecting Towers at Location Nos.18/8 and 18/9 erected on some third party's land. Further, the learned counsel submitted that the entire transmission line works have been completed in all respects and the transmission line was commissioned on 01.10.2018 itself. On these lines, the 5th respondent has also filed a counter. In these circumstances, the learned counsel submitted that the relief sought for in the Writ Petition has become infructuous.

4. It is pertinent to note that this Court has not even ordered notice to the respondents and the Writ Petition was being adjourned periodically at the instance of the learned counsel for the petitioners. Though the learned counsel for the 5th respondent has specifically stated that the transmission line was commissioned as early as on 01.10.2018 itself, the petitioners have not sought for any amendment of the prayer in the Writ Petition. That apart, in the counter affidavit, the 5th respondent has also stated that the transmission line was commissioned after getting approval from the Ministry of Power, Central Electricity Authority, Government of India under Ref.No.52/11(PGC11)/2015-SP&PA/1007-

08, dated 27.04.2015 and the total length of the power transmission line is 94.738 Kms with 317 towers and the total cost of the project is Rs.59.00 crores. Therefore, it is clear that the transmission line was commissioned only after getting prior approval from the Government of India.

5. Mr. R. Gururaj, learned counsel appearing for the petitioners submitted that since the transmission line was commissioned subsequent to the filing of the Writ Petition, this Court can mould the relief and direct the respondents to remove the transmission line. The learned counsel further submitted that since High Tension overhead lines have been laid above the petitioners' land, they are not in a position to cultivate their lands as they were doing earlier. However, learned counsel appearing for the 5th respondent submitted that the overhead transmission lines have been laid at a height of 57 meters from the ground level.

6. The learned counsel appearing for the petitioners further submitted that prior to the laying of the transmission line the respondents have not issued any notice to the petitioners. In support of his contentions, the learned counsel for the petitioners, relied upon the following Judgments:-

(i) 1975(1) SCC 770 [Pasupuleti Venkateswarlu v. The Motor and General Traders], wherein the Hon'ble Supreme Court held as follows:-

"... 6. The High Court, in this case, in the concluding stages slightly self-contradicted itself and observed: "the civil revision petition cannot be entertained" and proceeded further to state: "it will not be desirable that I should exercise my discretion in directing an amendment of the petition". In conclusion, the Court did interfere in revision by setting aside the order of remittal to the Rent Controller and dismissing the eviction petition, leaving the near decade-old litigation to be reopened in a fresh unending chapter of forensic fight. The learned Judge gave little comfort to the litigant who had come with a proved case of bona fide requirement to start his own business by his obscure observation:

"If so advised the petitioner may seek to obtain such relief as may be open to him by filing a fresh petition under the appropriate provision of the Act, in view of the subsequent event of his having come into possession of a portion of the building."

We think it unfair to drive parties to a new litigation of unknown duration but direct, in the special circumstances of the case (which are peculiar) that: (a) the revision before the High Court shall stand dismissed; (b) the Rent Controller will take note of the subsequent development disabling the landlord from seeking eviction on which there is already an adverse finding by the High Court; (c) the landlord be allowed to amend his petition if he has a case for eviction on any other legally permissible ground; and (d) the parties be given fair and full opportunity to file additional pleadings and lead evidence thereon. But we make it clear that the subsequent event that the petitioner had come by a non-residential accommodation of his own in the same town having been found by the High Court, cannot be canvassed over again. That finding of legal disability cannot be reopened. We keep open for enquiry only grounds, if any, which may reasonably be permitted by amendment if they are of any relevance or use for eviction."

(ii) AIR 1951 Supreme Court 177 [Firm Srinivas Ram Kumar v. Mahabir Prasad and others] , wherein the Hon'ble Supreme court held as follows:-

" ... 9. As regards the other point, however, we are of the opinion that the decision of the trial court was right and that the High Court took an undoubtedly rigid and technical view in reversing this part of the decree of the Subordinate Judge. It is true that it was no part of the plaintiff's case as made in the plaint that the sum of Rs 30,000 was advanced by way of loan to the defendants second party. But it was certainly open to the plaintiff to make an alternative case to that effect and make a prayer in the alternative for a decree for money even if the allegations of the money being paid in pursuance of a contract of sale could not be established by evidence. The fact that such a prayer would have been inconsistent with the other prayer is not really material. A plaintiff may rely upon different rights alternatively and there is nothing in the Civil Procedure Code to prevent a party from making two or more inconsistent sets of allegations and claiming relief thereunder in the alternative. The question, however, arises whether, in the absence of any such alternative case in the plaint it is open to the court to give him relief on that basis.

The rule undoubtedly is that the court cannot grant relief to the plaintiff on a case for which there was no foundation in the pleadings and which the other side was not called upon or had an opportunity to meet. But when the alternative case, which the plaintiff could have made, was not only admitted by the defendant in his written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes. A demand of the plaintiff based on the defendant's own plea cannot possibly be regarded with surprise by the latter and no question of adducing evidence on these facts would arise when they were expressly admitted by the defendant in his pleadings. In such circumstances, when no injustice can possibly result to the defendant, it may not be proper to drive the plaintiff to a separate suit. As an illustration of this principle, reference may be made to the pronouncement of the Judicial Committee in *Babu Raja Mohan Manucha v. Babu Manzoor* [(70) IA 1] . This appeal arose out of a suit commenced by the plaintiff appellant to enforce a mortgage security. The plea of the defendant was that the mortgage was void. This plea was given effect to by both the lower courts as well as by the Privy Council. But the Privy Council held that it was open in such circumstances to the plaintiff to repudiate the transaction altogether and claim a relief outside it in the form of restitution under Section 65 of the Indian Contract Act. Although no such alternative claim was made in the plaint, the Privy Council allowed it to be advanced and gave a decree on the ground that the respondent could not be prejudiced by such a claim at all and the matter ought not to be left to a separate suit. It may be noted that this relief was allowed to the appellant even though the appeal was heard ex parte in the absence of the respondent."

(iii) . 1970 (3)(3) SCC 851 [*The Patna Electric Supply co. Ltd., v. The Patna Municipal corporation and others*], wherein the Hon'ble Supreme court held as follows:-

" .. 5. Under Notification No. 64/Elec., dated 11th August, 1966, the State Government conferred upon the petitioner powers for placing of electric supply-lines, appliances and apparatus for the transmission and

distribution of the energy by it within the area of its supply which the telegraph authority possesses under Sections 10 to 18 and 19-A of the Indian Telegraph Act with respect to placing of telegraph lines and posts. Section 51 merely empowers the State Government to confer on the licensee certain powers which can be exercised by a telegraph authority under the Indian Telegraph Act. It does not by reference incorporate into the Indian Electricity Act all the provisions of the Indian Telegraph Act.

(iv) 98 LW 25 (SC) [M/S. Variety Emporium vs V. R. M. Mohd. Ibrahim Naina]

" 11 . Apart from this, it is quite disparaging to describe a tenant's attempt to resist eviction by lawful means as a "hue and cry". And, it is inequitable in the extreme that any court of law, and least of all a Rent Act tribunal which has to deal with a human problem of great magnitude, should regard it as a matter of no moment that an order of eviction will throw the tenant on the street. A judge does not have to wear a shoe in order to know where it pinches. Therefore, he does not have to face the prospect of being driven to the street in order to realise what it means. His training, legal equipment and experience of life are his tools education and social awareness. We do not suggest that a decree of eviction can never be passed against a tenant but, whether the provisions of a law specifically require it or not, the court has to have regard for all the aspects of the matter before it and the foreseeable consequences of the order which it proposes to pass. Finally, it is impossible to subscribe to the view of the appellate Court that the very fact that the respondent had filed the eviction petitions immediately after he purchased the property, proves that the purpose of purchasing the property was to set up a business there, "whether wholesale or retail. ..."

(v) 1987 TNLJ 63 [Moosadan alias Marappa Naicken v. Sellammal and another], wherein this court held as follows:-

" ... The question which arises in the present case is what is the decree which the lower appellate court ought to have passed in this case. The lower appellate court has found that the plaintiff is the owner of Survey No.13/2 and granted a declaration of her title. The lower appellate Court has also found that the plaintiff was in possession of the

properties till the first defendant had taken forcible possession from her. I have already held that the plaintiff was not in possession on the date of suit is erroneous. The resultant position is that the plaintiff was in possession on the date of suit, but she has been dispossessed subsequently. As seen from the evidence of P.W.6, the first defendant was in possession for about two years prior to his deposition. In the circumstances, in my view, the relief that is to be granted to the plaintiff is not merely one of declaration of her title but also one of possession. The plaintiff is entitled to be restored to the position which was prevailing on the date of suit. As I have held that she was in possession on the date of suit, she was entitled to an injunction as on that date. But she has lost her possession during the pendency of the suit and necessarily the relief that has to be granted to her has to be moulded in such a fashion that she will have an enforceable decree. If a decree for injunction is passed as on this date, that will not enable her to get back her possession which she had on the date of suit. Consequently, a decree for possession has to be passed in her favour even though she has not amended the prayer in the plaint after being dispossessed by the first defendant. It has been laid down in 1972 Mysore Law Journal 200 that "where during the pendency of a suit for permanent injunction against the defendant, the plaintiff is dispossessed from the property in dispute, the Court is competent to grant the relief of possession even without amendment of the plaint." The Court has got such a power by virtue of Order VII Rule 7 code of Civil Procedure which read thus: (Omitted).

7. Though the learned counsel for the petitioners has filed other citations, he has not relied upon those Judgments, therefore, I am not referring to the said Judgments.

8. The learned counsel appearing for the 5th respondent, in support of his contentions, relied upon the following Judgments:-

(i) 2017 (5) SCC 143 [Power Grid Corpn. of India Ltd. v. Century Textiles & Industries Ltd.] wherein the Hon'ble Supreme Court held as follows:-

"... 19. Another submission made was that permission of the writ petitioner was not obtained which was needed as per Rule 3 of the 2006 Rules. Rule 3(a) reads as under:

"3.Licensee to carry out works.-(1) A licensee may-

(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;"

20. In the instant case, the aforesaid Rule is not applicable in view of Section 164 of the Electricity Act, 2003, which reads as under:

"164.Exercise of powers of telegraph authority in certain cases.-The appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper coordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained."

21. It is not in dispute that in exercise of powers under the aforesaid provision, the appropriate Government has conferred the powers of telegraph authority vide Notification dated 24-12-2003 exercisable under the Telegraph Act, 1885 upon the Power Grid. It may also be mentioned that a Central transmission utility (CTU) is a deemed licensee under the second proviso to Section 14 of the Electricity Act, 2003. Power Grid is a Central transmission utility and is, therefore, a deemed licensee under the Electricity Act, 2003. This coupled with the fact that Power Grid is treated as authority under the Telegraph Act, 1885, it acquires all such powers which are vested in a telegraph authority under the provisions of the

Telegraph Act, 1885 including power to eliminate any obstruction in the laying down of power transmission lines. As per the provisions of the Telegraph Act, 1885, unobstructed access to lay down telegraph and/or electricity transmission lines is an imperative in the larger public interest. Electrification of villages all over the country and availability of telegraph lines are the most essential requirements for growth and development of any country, economy and the well-being/progress of the citizens. The legislature has not permitted any kind of impediment/obstruction in achieving this objective and through the scheme of the Telegraph Act, 1885 empowering the licensee to lay telegraph lines, applied the same, as it is, for laying down the electricity transmission lines.

...

28. These are sufficient reasons to allow Civil Appeal No. 10951 of 2016 preferred by the Power Grid by setting aside those directions. Ordered accordingly. We make it clear that if the writ petitioner feels that it is entitled to any compensation, the appropriate course of action is to file a suit before the District Judge concerned for this purpose. It would also be apt to point out at this stage that the Central Government has framed guidelines dated 15-10-2015 in this behalf which inter alia provide that the issue of compensation may be resolved having regard to the mode and manner of assessment of compensation as per the said guidelines. Therefore, it would always be open to the writ petitioner to avail the remedy as per the said guidelines. ..."

(ii) An unreported Judgment of the Division Bench of this court, dated 16.07.2019 made in Writ Appeal in W.A. Nos. 2032 of 2019, etc. batch [S. Selvaraj v. The District Collector, Erode District and others] wherein the Division Bench of this court held as follows:-

10. In exercise of the said enabling power, the State of Tamil Nadu had passed the following Government Order:-

"Energy (C.3) Department

G.O.(Ms.)No. 16

dated

23.02.2012

From the Chairman, Tamil Nadu Transmission letter No. CH/TR/DIR/ TP/SE/ TR-1/EW/A.1/F.G/D. 145/2011, dated 29.04.2011.

ORDER:

In the letter read above the Chairman, Tamil Nadu Transmission Corporation Limited has requested that a Notification may be caused to be issued by the Government empowering the Tamil Nadu Transmission Corporation Limited has requested that a Notification may be caused to be issued by the Government empowering the Tamil Nadu Transmission Corporation Limited and Tamil Nadu Generation and Distribution Corporation Limited to exercise such powers for placing of electric supply lines that a telegraph authority possess under the provisions of Indian Telegraph Act, 1885 under Section 164 of Electricity Act, 2003.

2. The Government after careful examination have decided to issue a notification in this regard. Accordingly, the following Notification will be published in the next issue of the Tamil Nadu Government Gazette:-

NOTIFICATION:

In exercise of the powers conferred under Section 164 of the Electricity Act 2003 (Central Act 36 of 2003), the Governor of Tamil Nadu for the placing of electric lines for the transmission of electricity, hereby confers upon the Tamil Nadu Transmission Corporation Limited and Tamil Nadu Generation and Distribution Corporation Limited, the powers which the telegraph authority possesses under the provisions of the Indian Telegraph Act, 1885 (Central Act 13 of 1885).

[BY ORDER OF THE GOVERNOR]

RAMESH KUMAR KHANNA

Principal Secretary to Government"

...

13. Section 10 that grants authority only for the limited purpose of establishing or maintaining a telegraph. It does not provide any other right to the telegraph authority. It is only a user in respect of the property over, which a telegraph line passes. By exercising such power, the authority does not become owner of the property and all that it gets is right of user of the property. The Section does not

contemplate any notice or hearing before exercising such power to draw a telegraph line, although it envisages .in payment of compensation. However, it would not make exercise of power under Section 10, arbitrary or violative of the principles of Natural Justice as contemplated under Articles 14 and 21 of the Constitution. The right to property under Article 300A is a Constitutional right. It is not absolute and it can be taken away by authority of law.

14. But Section 10 of the Telegraph Act, 1885, does not take away any right to property. It only creates some restrictions on the enjoyment of right to property by creating a right of user in the telegraph authority. Proviso (a) to Section 10 restricts the power of the telegraph authority only to the draw a telegraph line. It does not grant the Authority provision to use the power for any other purpose. The object is to provide to the Government or to any other licensee to place telegraph lines and posts which are projects, eminently in public interest. Further, under Proviso (d) the Authority should cause as little damage as possible while undertaking the work. It also mandates that the Authority must pay compensation to the affected person for the damage caused by reason of exercise of the power. Thus, Section 10 prescribes a just and fair procedure for placing limitations on full enjoyment of property. It therefore, cannot be said to be arbitrary and violative of Articles 14 and 21 or 300-A of the Constitution of India, just because it does not contain any provision for issuance of notice or giving hearing to affected person before the work is undertaken.

21. Learned counsel for the appellants raised contentions relating to the Works of Licensees Rules 2006. We hold that this is misplaced since the said rules have been framed under Section 67(2) of the Electricity Act 2003. Section 67 of Electricity Act, 2003 relates to provision as to opening of streets, railways, etc. Under the said Rules, the Appropriate Government was authorised to frame rules with respect to the works specified under Section 67, namely,

"(a) to open and break up the soil and pavement of any street, railway or tramway;

(b) to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;

(c) to alter the position of any line or works or pipes, other than a main sewer pipe;

(d) to lay down and place electric lines, electrical plant and other works;

(e) to repair, alter or remove the same;

(f) to do all other acts necessary for transmission or supply of electricity." Clause (f) cannot be read independently and has to be read in conjunction with the works specified in Clauses (a) to (e).

9. In the Judgment reported in 2017 (5) SCC 143 (cited supra), the Hon'ble Supreme Court categorically held that prior consent is not required by licensee under 2003 Act such as appellant who is treated as Telegraph Authority under Telegraph Act, 1885. Further the Apex Court, held that Rule 3 of 2006 Rules for construction of transmission is not applicable in view of Section 164 of the Electricity Act, 2003. Further, the Apex court held that it cannot be disputed that in exercise of power under the aforesaid provisions the appropriate Government has conferred the powers of telegraph authority vide Notification dated 24.12.2003 exercisable under the Telegraph Act, 1885 upon the Power Grid Corporation is a Central transmission utility and is, therefore, a deemed licensee under the Electricity Act, 2003. This coupled with the fact that Power Grid Corporation is treated as authority under the Telegraph Act, 1885. It acquires all such powers which are vested in a Telegraph Authority under the provisions of the Telegraph Act 1885 including power to eliminate any obstruction in the laying down of power transmission lines. As per the provisions of the Telegraph Act, 1885, unobstructed access to lay down telegraph and/or electricity transmission lines is an imperative in the larger public interest. Electrification of villages all over the country and availability of telegraph lines are the most essential requirements for growth and development of any country, economy and the well-being/progress of the citizens. The legislature has not permitted any kind of impediment/obstruction in achieving this objective and though the scheme of the Telegraph Act, 1885, empowering the licensee to lay telegraph lines, applied the same, as it is, for laying down the electricity transmission lines.

10. Following the ratio laid down by the Hon'ble Apex court in the Judgment reported in 2017 (5) SCC 143 (cited supra), the Division Bench of this Court in the unreported

Judgment dated 16.07.2019 made in Writ Appeal Nos. 2032 of 2019, etc. batch held that section 68 of the Electricity Act 2003, does not envisage either framing of rules or application of the rules framed with the power exercised under section 67 (2) of the Electricity Act, 2003 and references to the Works and Licensees Rules 2006, is totally misplaced. In the case of erection of overhead lines, Section 10 of the Telegraph Act, 1885, does not take away any right to property. It only creates some restrictions on the enjoyment of right to property by creating a right of user in the telegraph authority. Proviso (a) to Section 10 restricts the power of the telegraph authority only to the draw a telegraph line. The section does not contemplate any notice or hearing before exercising such power to draw a telegraph line, although it envisages .in payment of compensation.

11. The ratio laid down in the judgments relied upon by the learned counsel for the 5th respondent squarely applies to the facts and circumstances of the present case.

12. Though there is no dispute with regard to the ratio laid down in the Judgments relied upon by the learned counsel for the petitioners, the same are not applicable to the facts of the present case.

13. Though the Writ Petition has to be dismissed as infructuous for the reason that the 5th respondent had already laid the transmission line as early as on 01.10.2018 itself, since the learned counsel for the petitioner relied upon the above referred citations, I have considered the same and passed this order.

14. For the reason stated above, following the ratio laid down in the judgment reported in 2017 (5) SCC 143 (cited supra) and the unreported judgment reported in W.A. Nos. 2032 of 2019, etc. batch, the Writ Petition is liable to be dismissed. Accordingly, the same is dismissed. If the Writ Petitioner feels that he is entitled to any compensation, it is open to him to work out his remedy in accordance with law. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

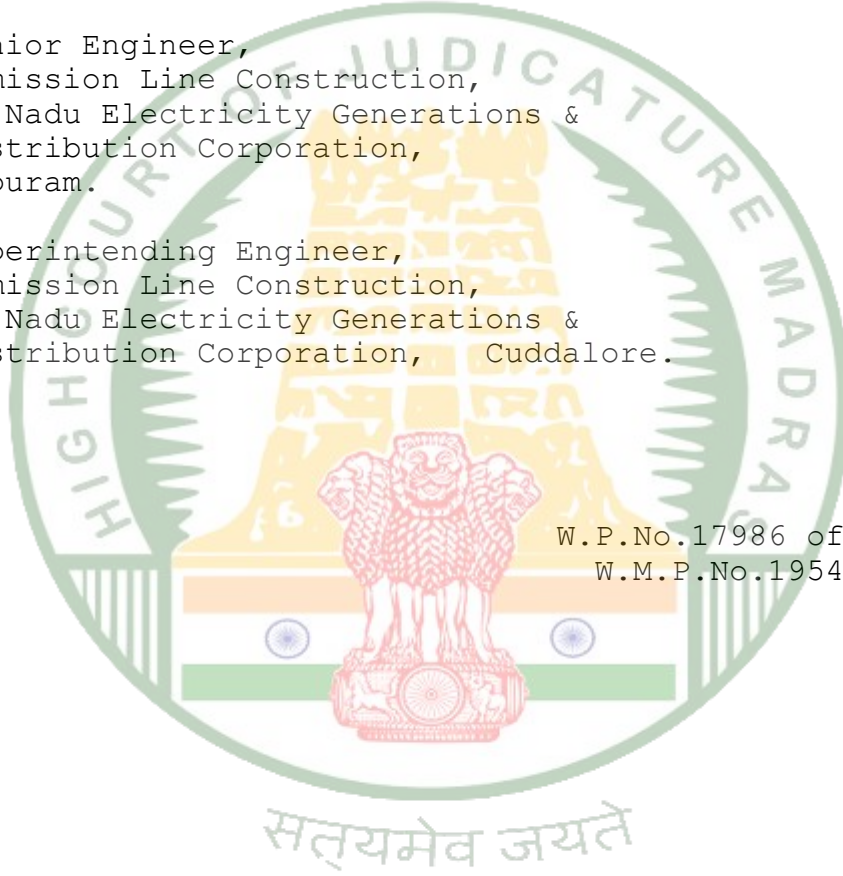
To

1. The Chairman,
Tamil Nadu Electricity Generations &
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Chennai.
2. The Superintending Engineer,
Transmission Line Construction,
Tamil Nadu Electricity Generations &
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4. The Superintending Engineer,
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Tamil Nadu Electricity Generations &
Distribution Corporation, Cuddalore.

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