



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.6319 of 2020

and

W.M.P. (MD)Nos.5551, 5553 and 5884 of 2020

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M/s.K.S.Wind and Renewables India Private Limited,
Represented by its Manager, Mr.Kumar,
Visalakshi Street, Aiswarya Garden,
Goparasanallur, Poonamallee,
Chennai-600056.

... Petitioner

Vs..

1.The Collector,
Office of the Collectorate,
Karur District, Tamil Nadu.

2.The Ministry of Power,
Rep. by its Secretary,
Government of India,
Shram Shakti Bhawan Rafi Marg,
New Delhi-1.

3.The Chief Manager,
Power Grid Corporation India Limited,
400/230 KV Sub station,
K.Paramathi Post, Karur District.

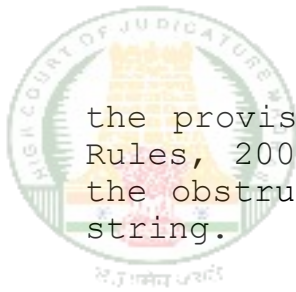
4.M/s.Spring Energy Private Limited,
201, Level 2, Pentagon P-2, Magarapatta City,
Hadapsar, Pune-411013.

5.M/s.Spring Renewable Energy Private Limited,
201, Level 2, Pentagon P-2, Magarapatta City,
Hadapsar, Pune-411 013.

6.M/s.Nordex India Private Limited,
Rep. by its Director,
C1-001, Tower C "The Milenia" 1&2,
Murphy Road, Ulsoor, Bangalore-560008,
Karnataka, India.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in Na.Ka.H3/12327/2019, dated 02.04.2020 and quash the same as illegal, arbitrary and as against



the provisions of the Electricity Act, 2003 and Works of Licensees Rules, 2006, Telegraph Act, 1885 and grant permission to enter into the obstructing land owner's land to install the towers and lay the string.

For Petitioner : Mr.V.Subramanian
for Ms.Kanimozhi Mathi

For R1 : Mrs.S.Srimathy
Special Government Pleader

For R2 : Mr.Jeyasingh
Mr.S.Suresh for

For R3 : M/s.Aiyar & Dolia
Standing Counsel

O R D E R

Heard the learned counsel on either side.

2.The Solar Energy Corporation of India Limited is a Government of India Enterprise. It is engaged in promoting renewable energy. It invited bids for setting up 300 megawatt wind power project at Mulanoor, Dharapuram, Thirupur. M/s.Spring Energy Private Limited participated in the bidding and became the successful bidder. A letter of award dated 01.06.2018 was issued in its favour with the condition that the execution of project is to be done by the project Company floated in this regard, namely, M/s.Spring Renewable Energy Private Limited. A time line has been imposed in the letter of award for the execution of the project.

3.M/s.Spring Renewable Energy Private Limited entered into contract with M/s.Nordex India Private Limited. The said Nordex India Private Limited, in turn, entered into sub-contract with the writ petitioner for the construction and installation of towers and drawing of lines on the project route. For carrying out the said work, the writ petitioner entered into Right of Way agreements with the various land owners. It appears that the petitioner had completed installation of most of the transmission towers and only a very few are remaining to be installed. The petitioner is unable to complete the work on account of resistance from a handful of the land owners. Therefore, the petitioner submitted an application dated 12.03.2020 to the District Collector, Karur seeking permission and protection to execute the work. However, the District Collector, Karur, by the impugned order dated 02.04.2020 rejected the petitioner's request. Questioning the same, this Writ Petition came to be filed.

4.The learned counsel appearing for the writ petitioner reiterated the contentions set out in the affidavit filed in support of the writ petition. Per contra, the learned Special Government



Pleader appearing for the first respondent submitted that the order impugned in the writ petition cannot be faulted because the petitioner was not conferred with the powers of the Telegraph Authority under Section 164 of the Electricity Act, 2003.

5.I sustain this objection. But I cannot stop with that. While an order passed by a public authority has to be tested based on the reasons set out therein and cannot be improved upon later, a court of law is duty bound to take note of the subsequent developments. It is from this duty that the power to mould the relief springs.

6.In the case on hand, the Central Electricity Authority, Ministry of Power, Government of India has issued a notification bearing F.No.CEA-PS-12-14(21)/1/2018-PSPA-II Division under Section 164 of the Electricity Act, 2003, conferring all the powers of the telegraph authority to M/s.Spring Renewable Energy Private Limited for implementing the project. Therefore, even while sustaining the order impugned in the writ petition, I grant leave to the stakeholders to move the first respondent and I mandate the first respondent to positively exercise his powers under Section 16 of the Indian Telegraph Act, 1885.

7.I could have disposed of all these writ petitions with the aforesaid liberty and direction without further ado. But then, this case is inextricably linked to a batch of writ petitions that were filed by the various land owners. When the petitioner proposed to lay electric poles and towers and draw transmission lines, the said land owners resisted and obstructed. They contended that the writ petitioner cannot enter their lands unless he was expressly permitted to do so by the District Magistrate, Karur under Section 16 of the Indian Telegraph Act, 1885. I upheld the said stand and allowed their writ petitions. Therefore, I deem it necessary to reiterate the legal position. This exercise has become necessary as the petitioner's counsel contended that the District Magistrate is obliged to permit the petitioner to proceed with the works because of the issuance of the notification under Section 164 of the Electricity Act, 2003. He also quibbled on the expression "resisted or obstructed" occurring in Section 16(1) of the Indian Telegraph Act, 1885.

8.It would be useful to extract the relevant provisions of both the statutes before I refer to the relevant precedents. Section 164 of the Electricity Act, 2003 is as under :

"Section 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 co-ordination 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, 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."

Section 10 and 16 of the Indian Telegraph Act, 1885 are as under :

"10.Power for telegraph authority to place and maintain telegraph lines and posts.- The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immovable property:
Provided that

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the Central Government, or to be so established or maintained;

(b)the Central Government shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post; and

(c)except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

(d)in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause(c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.'"

"Section 16.Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.-



(1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code (45 of 1860).

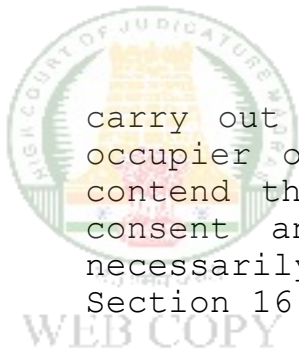
(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same."

9. Some confusion has arisen in the minds of the land owners, primarily, because of the provisions of the Works of Licensees Rules, 2006. The Central Government had made those Rules in exercise of the powers conferred by Clause 2(e) of Section 176 r/w Section 67(2) of the Electricity Act, 2003. Rule 3(1)(a) of the Works of the Licensees Rules, 2006 states that the licensee may



carry out the works with the prior consent of the land owners or occupier of any building or land. The land owners in this case contend that the licensee in this case should obtain their prior consent and if that is not forthcoming, the licensee has to necessarily secure permission from the District Magistrate under Section 16 of the Indian Telegraph Act, 1885.

10. What the land owners forget to note is that Rule 3(4) of the Works of the Licensees Rules, 2006 itself states that nothing contained in Rule 3(4) shall affect the powers conferred upon any licensee under Section 164 of the Electricity Act. The constitutional validity of Section 164 of the Electricity Act 2003 and Section 10 of the Indian Telegraph Act, 1885 was upheld in **Shri Vivek Brajendra Singh vs. State Government, 2012 SCC OnLine Bom 450**. The essence of the said judgment authored by Mr. Justice S.A. Bobde (as his Lordship then was) has been culled out in **Jarnail Singh vs. Maharashtra State Electricity Transmission Co. Ltd (AIR 2015 Bom 283)**. The judgments of the Madras High Court have also been on the same lines. In R. Santhana Raj and another vs. The Chief Engineer, Non Conventional Energy source, Anna Salai, Chennai WP(MD) No. 8844 of 2011 dated 08.11.2011, His Lordship Mr. Justice V. Ramasubramanian concluded as follows

"58. Therefore, in the light of the foregoing discussion, the following conclusions emerge:

(i) The provision of Section 12(2) of the Electricity Act, 1910, requiring the licensee to obtain consent of the owner or occupier of the land on which it is proposed to carry out certain works, stands repealed, in terms of Section 185(1) and 185(2)(b) of the Electricity Act, 2003, with the issue of the Works of Licensees Rules, 2006, in exercise of the power conferred by Section 67(2) of the 2003 Act.

(ii) Primarily, Rule 3(1)(a) the Works of Licensees Rules, 2006 requires the licensee to obtain the prior consent of the owner or occupier of any building or land on which it is proposed to carry out certain works.

(iii) If the owner or occupier refuses to give consent and raises objections, the licensee may obtain permission in writing from the District Magistrate or the Commissioner of Police, in terms of the first proviso under Rule 3(1).

(iv) But in cases where powers are conferred upon the licensee under Section 164 of the Electricity Act, 2003, the provisions of Rule 3(1) to (3) of the Works of Licensees Rules, 2006 will not apply. In other words, where the appropriate Government had conferred



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upon the licensee, the powers of a Telegraph Authority under the Telegraph Act, 1885, the licensee need not take recourse to the procedure prescribed by Rules 3(1) to (3) of the Works of Licensees Rules, 2006. But the licensee shall take recourse to the provisions of the Telegraph Act, 1885.

(v) Since Section 164 of the 2003 Act, corresponds to Section 51 of the 1910 Act, the power conferred by the Government upon a licensee, in terms of Section 51 of the 1910 Act, is saved by Section 185 (2)(a) of the 2003 Act. Therefore, the power conferred upon the Tamil Nadu Electricity Board by the Government of Tamil Nadu under Section 51 of the 1910 Act, could continue to be exercised by the Board, as though those powers were conferred under Section 164 of the 2003 Act.

(vi) Section 10 of the Telegraph Act, 1885, does not contemplate "consent" or "permission" of the owner or occupier of a property, for the purpose of placing and maintaining a supply line, under, over, along or across and posts in or upon any immovable property. The only case where Section 10 contemplates permission is in respect of a property vested in or under the control or management of any local authority.

(vii) Though Section 10 of the Telegraph Act, 1885, does not make it incumbent upon the licensee to obtain permission of the owner or occupier, it does not also reduce his ownership or right of possession into something farcical. The right of the owner or occupier to resist or obstruct any act undertaken under Section 10, is recognized indirectly in Section 16(1), which requires the licensee to obtain an order of the District Magistrate, in such circumstances. A careful reading of Section 16(1) would show two things viz., (a) that the District Magistrate exercises his power under this Section, in his discretion and (b) that what the District Magistrate does under Section 16(1) is akin to the removal of obstruction as ordered by an Executing Court in terms of Order XXI, Rules 97 and 98 of the Code. Any resistance on the part of the owner or occupier after an order is passed by the District Magistrate becomes a punishable offence under Section 188 of the Indian Penal Code, by virtue of Section 16 (2) of the Telegraph Act, 1885.

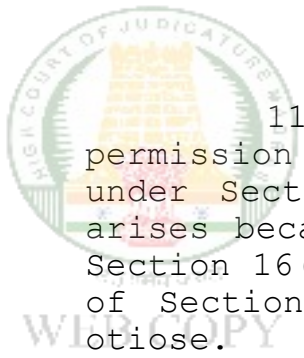
(viii) The words "resisted or obstructed" appearing in Section 16(1) of the Telegraph Act, 1885 have to be



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given their ordinary meaning. They have to be understood as defensive acts as pointed out by the Apex Court in Santosh Kumar (cited supra). Actual physical acts of omission and commission at site or on the spot, is not necessary to constitute resistance or obstruction, as held by the Supreme Court in C.C.E. vs. Paradip Port Trust. The method of resistance/obstruction adopted by people, vary from person to person depending upon their status, level of education, mental orientation and social upbringing. Therefore, any kind of objection or protest by the land owner would tantamount to obstruction/ resistance. Such an interpretation is necessary in view of the fact that the Telegraph Act is a colonial Act of pre-Constitutional days, which came to be adapted after the Constitution and which has come to be borrowed by the Electricity Act, 2003 to interfere and infringe upon the rights of owners of private property to their unhindered enjoyment. The Supreme Court pointed out in Dev Sharan vs. State of U.P. 2011 (4) SCC 769 that even the Land Acquisition Act, 1894, is "a pre-constitutional legislation of colonial vintage and is a drastic law, expropriatory in nature". Therefore, any interpretation to such enactments should conform to the Constitutional goals and rights. Despite the fact that the right to property is no more a fundamental right after the 44th Amendment to the Constitution, it is nevertheless a constitutional right under Article 300-A. In several decisions, the Supreme Court has held that to hold property is not only a Constitutional right but also a human right. {see Lachhman Dass vs. Jagat Ram 2007 10 SCC 448, Vimlaben Ajitbhai Patel vs. Vatslaben Ashokbhai Patel : 2008 (4) SCC 649, N. Padmamma vs. S. Ramakrishna Reddy : 2008 (15) SCC 517, Chandigarh Housing Board vs. Major General Devinder Singh 2007 (9) SCC 67. Therefore, a dignified protest, even in the form of a formal letter, notice or telegram, would amount to obstruction within the meaning of Section 16(1) of the Telegraph Act, 1885. Once such a protest is lodged, the licensee should seek an order from the District Magistrate."

The said decision and other subsequent decisions by the Hon'ble Division Bench have been neatly summed up in **S.A.Hakim Vs. The District Collector (2016 (3) CTC 285)**. There is yet another decision of the Hon'ble Division Bench made in **W.A. (MD)No.2032 of 2019 etc.. batch, dated 16.07.2020** on the same lines. Therefore, it would be futile to contend in the instant case that the prior consent of the land owners has to be obtained.



11.The question is whether the first respondent can deny permission to the licensee even after the issuance of notification under Section 164 of the Electricity Act, 2003. Such an issue arises because of the use of the expression "in his discretion" in Section 16(1) of the Indian Telegraph Act, 1885. No interpretation of Section 16 (1) can render the expression "in his discretion" otiose.

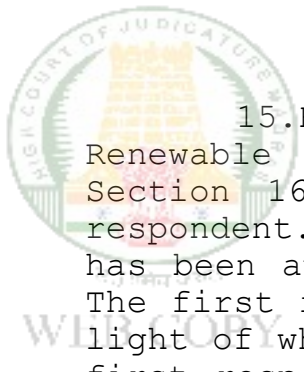
12.By virtue of Section 164 of the Electricity Act r/w Section 10 of the Indian Telegraph Act, 1885, the licensee is conferred with certain powers of the telegraph authority. But, this power is hedged with some limitations. The licensee must exercise the power in a manner that he would cause as little as damage as possible. He shall also pay full compensation to all persons interested for any damage sustained by them. The District Magistrate is obliged to ensure that these twin duties are fulfilled. If the licensee is not ready to comply with the same, then the District Magistrate will exercise his discretion to decline permission. Any power has to be exercised in a reasonable manner. The licensee must bear the following words of Kahlil Gibran :

"since you must kill to eat, and rob the newly born of its mother's milk to quench your thirst, let it then be an act of worship..."

Merely because the licensee has been clothed with the statutory powers, he cannot barge in or bulldoze his way through or make an unannounced-entry. The land owner or the occupier must be given a reasonable time.

13.One important aspect has to be noted. The person who has been granted the powers of the telegraph authority under Section 164 of the Electricity Act is only M/s.Spring Renewable Energy Private Limited. The writ petitioner is only a sub-contractor. Therefore, the application before the first respondent has to be necessarily made only by M/s.Spring Renewable Energy Private Limited. The petitioner is only acting on behalf of the licensee. The licensee can sub contract the works but he cannot delegate or sub delegate the statutory powers. The petitioner has no independent authority. He is only acting for and on behalf of his principal.

14.Now the question is whether the District Collector/District Magistrate can sit over the application or deny permission. When such applications involving implementation of infrastructural projects are filed, the District Magistrate is obliged to expedite the matter. When there is delay, there is consequential cost escalation. In the case on hand, the project involves installation of 127 towers. It appears that 119 towers have already been installed and on account of resistance from the land owners, the remaining eight towers could not be installed. As a result, the entire project has come to a standstill. This ultimately affects the national economy.



15.Having clarified the legal position, I permit M/s.Sprung Renewable Energy Private Limited to submit an application under Section 16 of the Indian Telegraph Act, 1885 before the first respondent. The fifth respondent shall mention that the petitioner has been awarded the sub-contract to carry out the licensed works. The first respondent shall grant permission to the applicant in the light of what has been mentioned above without any delay. Upon the first respondent so permitting, the petitioner as a sub contractor of M/s.Sprung Renewable Energy Private Limited/the fifth respondent, can enter the lands in question to complete the remaining works.

16.The Writ Petition is disposed of with the aforesaid direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

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Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy,shall be the responsibility of the advocate/litigant concerned.

To:

- 1.The Collector,
Office of the Collectorate,
Karur District, Tamil Nadu.
- 2.The Ministry of Power,
Rep. by its Secretary,
Government of India,
Shram Shakti Bhawan Rafi Marg,
New Delhi-1.

+1 CC to M/s.GP (SR-14007[F] dated 13/08/2020)

W.P. (MD)No.6319 of 2020

07.08.2020

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