



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.07.2020

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.A. (MD) No.491 of 2020

and

C.M.P. (MD) No.3518 of 2020

(Through Video Conferencing)

K.Balakrishnan

... Appellant / Petitioner

-Vs-

1.The District Collector
Kanyakumari at Nagercoil.

2.The Superintending Engineer
Tamil Nadu Electricity Board, Nagercoil
Kanyakumari District.

3.The Assistant Executive Engineer
High Tension Electricity Line
(Construction of Tower)
Tamil Nadu Electricity Board
Parvathipuram, Nagercoil
Kanyakumari District.

4.The Assistant Executive Engineer
Distribution and Maintenance
Tamil Nadu Electricity Board
Sooriacode Post, Kanyakumari District.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order passed in W.P.(MD)No.3080 of 2017, dated 06.03.2020.

Prayer in WP(MD). 3080/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of the 1st respondent passed in his proceedings D.Dis.E2/48930/2016 dated 12.02.2017 and quash the same and remove the high tension wire line crossed petitioners house Dr.No. 19/146B



it is situated in re-survey No. 358/A1A, Methukummal Village, suriacode post, Kanyakumari District.

For Appellant : Mr.G.Prabhu Rajadurai
for Mr.R.Maheswaran

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For Respondents: Mrs.Srimathy,
Special Govt. Pleader for R1
Mrs.M.Rajeshwari for
M/s.S.M.S.Johnny Basha for R2 to R4

JUDGMENT

[Judgment of the Court was made by **M. SATHYANARAYANAN, J.,**]

The appellant is the writ petitioner and according to him, his grandfather had purchased a landed property in Survey No.358/A1A (Old Survey No.4814), at Methukummal Village, Sooraiacode Post, in the year 1950 and put up a superstructure in the same year and also started to living along with his family members. The appellant/writ petitioner claims to have got into possession in respect of the said property, admeasuring to an extent of 20½ in Survey No.358/A1A and thereafter, demolished the old house and put up a new superstructure with three floor buildings and the said building is also subject to statutory levies. The appellant/writ petitioner is aggrieved by the act of respondents 2 to 4 in taking the High Tension power line right across his house and according to the petitioner, the taking of the said power line across the house would not only endanger to the safety of his house but also it's inmates.

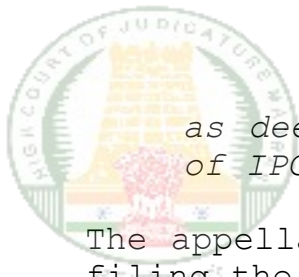
2. The first respondent, vide proceedings dated 12.02.2017 in D.Dis.E2/48930/2016, had taken into consideration the approval of the scheme for subspace electrical path to the new 110 KV EB Sub-Station at Nadaikavu and also gone through the materials and passed the following order:

'i. Tinshade structure to be demolished and necessary structural damage compensation to be given by TNEB by carrying out valuation by PWD (Buildings).

ii. TNEB should alter the heights of two towers by sufficient height in order to give statutory height clearance of 4.5 mt. or any other additional suspension tower whichever is feasible.

iii. Land owner Thiru Balakrishnan is strictly advised not to increase any additional floors or temporary structure above existing building.

iv. The objection petitioner Thiru.Balakrishnan should not cause any obstruction for the erection of high tension tower / power lines and if he still persists with the objections or cause obstruction he shall be considered



as deemed to have committed the offence under Section 188 of IPC and action will be taken accordingly.'

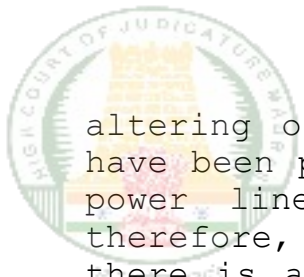
The appellant/writ petitioner made a challenge to the said order by filing the writ petition and it was entertained.

3. The respondents 2 to 4 had filed the counter affidavits and took a stand that the appellant/writ petitioner was very well aware of the route of the tower line during the year 2008, which was also published in the dailies in 2008 and even in his own averments, in the earlier round of litigation in W.P.(MD)No.20141 of 2014, he has averred about the construction in September 2013 and completion of the same in the year 2014 and took a stand that knowing pretty well about the route line, the appellant/writ petitioner has deliberately put up a construction and since due procedures have been followed in terms of the Electricity Act, 2003 and also Indian Telegraph Act, 1885, the Statutory Authority viz., the first respondent after going through the materials and proper application of mind, has passed the impugned order and prays for dismissal of the writ petition.

4. The learned Judge has taken into consideration the rival submissions as well as the materials placed and found that the appellant/writ petitioner had put up a metal sheeted roof above the first floor, after obtaining planning permission in the year 2013 and completed the construction in December 2013 and even prior to that, the establishment of Sub-Station was approved as early as on 13.12.2007 by the order of the Chief Engineer, vide proceedings dated 13.12.2007 and the notification was published on 23.07.2008 in TNGG as well as in the local dailies and therefore, he cannot make a complaint.

5. The learned Judge has also placed reliance upon the judgment of the Hon'ble Supreme Court of India reported in **(2017) 5 SCC 143 [Power Grid Corporation of India Limited Vs. Century Textiles and Industries Limited and others]** and also Section 164 of Electricity Act, 2003 and Section 10 of Telegraph Act, 1885 as well as a unreported judgment in W.A.Nos.2032, 2044 etc. batch [**S.Selvaraj Vs. The District Collector, Erode District, Erode and others**] and found that the impugned proceedings of the first respondent warrants no interference and accordingly, dismissed the writ petition and imposed a cost of Rs.10,000/- (Rupees Ten Thousand only) on the ground that the writ petitioner had obstructed the drawing of the line for the past three years by putting up a temporary tinshade over the first floor. The appellant/petitioner challenging the order, dismissing the writ petition, had filed this writ appeal.

6. Mr.G.Prabhu Rajadurai, learned counsel appearing for the appellant/writ petitioner would submit that the ownership of the land as well as the superstructure in question are not in dispute and if the respondents 2 to 3 were little bit considerate in

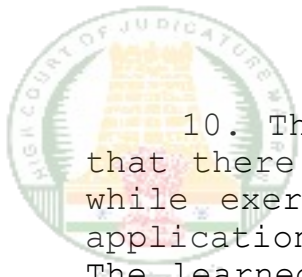


altering or deviating the line of path, the petitioner would not have been put to any prejudice and would further point out that the power line is running right across the residential house and therefore, he cannot put up any additional construction also and there is always an apprehension in the mind of the inmates of the house as to the danger being posed by the said power line and therefore, this Court may take into consideration the relevant facts and circumstances and on a sympathetic view of the plea made by the appellant/writ petitioner, may also pass appropriate orders. It is also brought to the knowledge of this Court that the temporary tinshade put up on the superstructure has also been removed.

7. This Court heard the submission of Mrs.S.Srimathy, learned Special Government Pleader appearing for the first respondent and Mrs.M.Rajeshwari, for M/s.S.M.S.Johnny Basha, learned Standing Counsel appearing for respondents 2 to 4 and it is the submission of the learned Standing Counsel appearing for respondents 2 to 4 that the first respondent has exercised its power in accordance with the relevant statute and in the absence of any allegations as to the arbitrariness or malafide exercise of power, the order passed by the Statutory Authority by way of judicial review is impermissible and she would further submit that by taking into consideration the conduct of the appellant/writ petitioner, while dismissing the writ petition, cost was also imposed and prays for dismissal of the writ petition.

8. This Court has carefully considered the rival submissions and also perused the materials placed before it.

9. There is no absolute bar or prohibition for taking a power line across the land and even if it is taken across the house, the safety of the house between the power line and superstructure in the form of high tension power line, is to be maintained. In the event of any objection, the first respondent, being a Statutory Authority, may be called upon to take a call and a perusal of the impugned proceedings, which was the subject matter of the challenge in the writ petition, would disclose that the first respondent has duly applied his mind to the factual aspects placed and in exercise of the statutory power, has rightly granted permission for the construction of new high tension electric towers. The learned Judge, while dismissing the writ petition, in the facts and circumstances and on legal aspects, had also found that the petitioner in order to obstruct the taking of the power line over his land, had also put up a superstructure and taking into consideration the relevant statutory provisions and the settled position, has rightly found that the first respondent has exercised his jurisdiction fairly, properly and strictly in accordance with the statutory provisions and throning upon the conduct of the appellant/writ petitioner, has imposed a cost of Rs.10,000/- (Rupees Ten Thousand only).



10. This Court, on going through the materials, is of the view that there is no error apparent on the part of the first respondent while exercising its statutory function and after due and proper application of mind, has rightly passed the impugned proceedings. The learned Judge, in the impugned order also had taken note of the statutory provisions, vis-a-vis the right of the petitioner and rightly reached the conclusion to dismiss the writ petition on the ground of lack of merits.

11. However, taking into consideration the fact that, the petitioner was advised as to the alleged imminent danger posed on account of the drawing of power line, he had shown over indulgence in his acts and that the learned counsel appearing for the appellant/petitioner would also pray that the cost imposed by the learned Single Judge may be set aside. On the said submission, learned counsel appearing for the respondents 2 to 4 would submit that she will leave it to the discretion of this Court.

12. In the result, the writ appeal is dismissed confirming the order dated 06.03.2020, except the imposition of cost of Rs.10,000/- (Rupees Ten Thousand only) upon the appellant/writ petitioner and the said portion of the order alone is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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

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+1 CC to M/s. Special Government Pleader (SR-13377[F] dated
30/07/2020)

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vsm
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