



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 04.03.2020

ORDER PRONOUNCED: 06.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD) No.3080 of 2017

and

W.M.P. (MD) Nos.2453 and 2454 of 2017 and 3965 of 2020

K.Balakrishnan

... Petitioner

Vs.

1.The District Collector,
Kanyakumari, at Nagercoil.

2.The Superintending Engineer,
Tamilnadu Electricity Board,
Nagercoil,
Kanyakumari.

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

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

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order of the 1st respondent passed in proceedings No.D.Dis.E2/48930/2016 dated 12.02.2017 and quash the same and remove the high tension wire line crossed petitioner's house at Dr.No. 19/146B, it is situated in R.S.No.358/A1A, Methukummal Village, Suriacode Post, Kanyakumari District.



For Petitioner : Mr.D.Anbarasu
For R1 : Mr.C.Marichellaiah Prabhu
Additional Government Pleader
For R2 to R4 : Mrs.Rajeswari for
M/S.SMS.Johnny Basha, Standing Counsel

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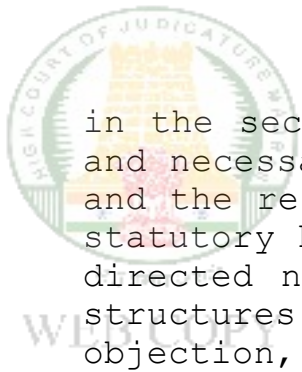
ORDER

This Writ Petition is filed in the nature of Certiorarified Mandamus calling for the records relating to the order of the 1st respondent, the District Collector, Kanyakumari at Nagercoil, passed in proceedings No.D.Dis.E2/48930/2016 dated 12.02.2017 and set aside the same and removing the high tension wire line, which crosses the petitioner's house at D.No. 19/146B in R.S.No.358/A1A, Methukummal Village, Suriacode Post, Kanyakumari District.

2.In the affidavit filed in support of this petition, the writ petitioner, K.Balakrishnan, had stated that his grandfather had purchased the property at S.No.358/A1A (Old S.No.4814) in 1950 and had constructed a building. It is claimed that the petitioner and his family members are in possession and he also got possessory right to an extent of 20½ cents in S.No.358/A1A in Methukummal Village, Sooriacode Post, Kanyakumari District. He had demolished the old house and had constructed a new house. He claimed that he is paying the house tax, water tax and other statutory dues.

3.It is stated that the respondents had proposed to draw High Tension Electric Line to Sooriacode Sub Station from Munchirai. Now, they were proposed to instal the High Tension Electric Wire over the petitioner's house. The third respondent, The Assistant Executive Engineer, Kanyakumari District, had issued a communication dated 18.03.2014 stating that the high tension electric line is to cross over the house of the petitioner. The petitioner claimed that the respondents had decided to instal the high tension electric tower at Nadaikavi Electricity Board, but due to administrative reasons, the high tension electric tower was altered to Sooriacode, Kanyakumari District, based on the proceedings dated 16.09.2016. It was claimed that no paper publication was issued with respect to the same. The petitioner gave objections on 26.09.2016. The petitioner claims that the respondents have an alternative way of drawing the high tension electric line.

4.The petitioner had originally filed a writ petition and in that writ petition this Court had directed the respondents to examine the representation given by the petitioner. However, the impugned order was passed on 12.02.2017 by the first respondent, the District Collector/District Magistrate, Kanyakumari District at Nagercoil. In the writ petition wherein, it is ordered that the tin shade structure



in the second floor of the petitioner's house is to be demolished and necessary compensation is to be given by the Electricity Board and the respondents should alter the heights of two towers to give statutory height clearance of 4.5 meters. The petitioner was also directed not to put up any floor, additional floors or temporary structures. It was claimed that if the petitioner caused any objection, he would be considered as

having committed an offence under Section 188 of IPC. Questioning that order, the present writ petition has been filed.

5. An order of interim injunction had been granted by this Court on 24.03.2017 and it is in force till this date. The respondents have also filed W.M.P.(MD) No.3965 of 2020 to vacate the interim stay granted by this Court. The respondents have also filed a counter affidavit.

6. In the counter affidavit filed by the 3rd respondent on behalf of the respondents 2 and 4, it has been stated that at the time of survey in the year 2007, there was no house in the land and that the respondents had commenced execution of the project in the year 2013. The petitioner had got approval of building plan only in the year 2013. It was stated that the petitioner was informed on 18.03.2014 itself not to construct any building in the sanctioned 110 KV tower line route. However, violating the instructions, the petitioner had started to construct the building.

7. The petitioner had earlier filed W.P.(MD) No.20141 of 2014 and in that writ petition, it had been stated by the petitioner that he had commenced construction only in September 2013 and had completed the same in February 2014. It had been stated that the first floor had an open terrace and a tin shade structure was put up over the open terrace only to prevent the Electricity Board from drawing the sanctioned 110 KV line. It had been stated that the petitioner had suppressed the averments made in W.P.(MD) No.20141 of 2014 filed by him before this Court. It had been stated that the Electricity Board had purchased the land in Sooriacode in Methukummal Village in R.S.No.389/1A to an extent of 3.14 acres. It was stated that both Nadaikavoo and Sooriacode are in the same revenue village only. It was stated that the name of the sub station is Nadaikavoo sub station. The respondents specifically denied the averments made in the affidavit filed in support of the writ petition. It had been stated that the entire line had been drawn over patta lands of various owners. It had been stated that in exercise of powers under Section 13 of Telegraph Act, 1885, the District Collector, Kanyakumari District, had passed appropriate orders to execute the tower construction work through the land comprised in R.S.No.358/1A in Methukummal



Village in Vilavancode Taluk. It had been stated that the District Collector/District Magistrate, Kanyakumari District at Nagercoil is the competent authority to decide the issue in accordance with the provisions of Electricity Act, 2003 and after hearing both side, the final orders had been passed under Section 13 of Telegraph Act, 1885. It was stated that the order is a lawfully binding order. It was again claimed that the petitioner had violated the building rules by putting up a tin shade to close the open terrace on the first floor. It was stated that the said tin shade was not approved in the plan. The respondents therefore have stated that the writ petition should be dismissed.

8. Heard arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents.

9. The writ petitioner, K. Balakrishnan, who is residing at D.No.19, 146B, Mevarathuvilai Veedu, Sooriacode, Kanyakumari District, in his affidavit had stated that he had constructed a building after demolishing the existing house in S.No.358/A1A in Methukummal Village, Sooriacode Post, Kanyakumari District. The petitioner in his affidavit had not given the dates on which he had commenced and completed the said construction. He had also not given any details regarding the planning permission granted for the purpose of construction of the house. However, he has filed a few photographs of the house.

10. A perusal of the photographs show that the house of the petitioner is ground floor and first floor and an open terrace over the first floor. However, the petitioner appears to have put up fabricated rods and put up a tin shade open to all sides over upon the terrace in the first floor. It is a temporary structure. It is not an RCC roof. It is clear that this is an addition to the house. In this connection, the contention of the respondents that the petitioner had suppressed even the details of the writ petition earlier filed by him, has to be considered.

11. In the counter affidavit, it is seen that the writ petitioner had earlier filed W.P.(MD) No.20141 of 2014. In the counter affidavit, it had been stated that in the affidavit filed in support of W.P.(MD) No.20141 of 2014, the petitioner had stated that he had started the construction work in September 2013 and had completed the same in February 2014. That writ petition had been filed seeking to electricity connection for the house. That writ petition was filed in the year 2014. These facts have been suppressed in the present writ petition. These facts are material facts, since in the counter affidavit, it had been stated that the land was surveyed in the year 2007 and that the respondents have commenced execution of the project in the year 2013 and that the petitioner was informed by the respondents vide

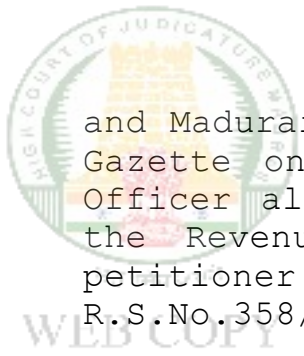


க.எண்.உ.பொ/வி.நி/சூ.கோ./கோ.கட்டு/அ.எண் 483/14 dated 18.03.2014, not to construct any building in the sanctioned 110 KV tower line route, sanctioned during the year 2007 and published in the newspaper during 2008. It had been very specifically stated in the counter affidavit that the petitioner had commenced construction of his house violating the instructions and with the sole object to obstruct the tower line work. The respondents have also stated in the counter affidavit that the proposed scheme was named as "Establishment of Nadaikavoo 110 KV Substation Tapping of 110 KV supply from Kuzhithurai-Munahirai 110 KV line" in Methukummal Village.

12.The Electricity Board had taken appropriate action for purchasing the land in Methukummal Village and its nearby areas. Suitable land was identified in the same Methukummal Village. The Electricity Board had purchased the land in R.S.No.389/1A to an extent of 3.14 acres at Sooriacode in Methukummal Village, Vilavancode Taluk, Kanyakumari District. This is an adjacent land to Nadaikavoo. The project was approved by the Superintending Engineer in SE/TR-1/EC/E1D/71/2010, dated 18.02.2010.

13.In the impugned order, the first respondent, the District Collector/District Magistrate, Kanyakumari District had very clearly stated that in accordance with Section 185 (2) (a) of the Electricity Act, 2003, the Tamilnadu Electricity Board is the transmission utility and licensee to exercise the powers of the Telegraph Authority under the provisions of Section 164 of the Electricity Act, 2003, which have already been conferred upon the Board under Section 51 of the Indian Electricity Act, 1910. The approved scheme for pathway for transmission line and establishment of the substation through Methukummal Village in Kanyakumari District was proposed by the Superintending Engineer, General Distribution Circle in order to improve the voltage to the places in and around Methukummal, Sooriacode etc.

14.It is seen that the petitioner had filed W.P.(MD) No.25043 of 2016 and a direction was given to the petitioner to give a representation to the District Collector, within a period of one week from the date of that order and the District Collector was directed to pass orders, after giving notice to the interested parties, if any, within a period of four weeks. It is seen that the petitioner had filed an application before the District Collector and also before the Superintending Engineer, General Distribution Circle. Notice was ordered to the petitioner and an opportunity of personal hearing was granted on 06.02.2017. The petitioner had also participated in the personal hearing. It is seen from the impugned order that the publication regarding the proposed pathway was published in "Dinamalar" in Nagercoil and Madurai editions on 30.05.2008 and in "Daily Thanthi" in Nellore

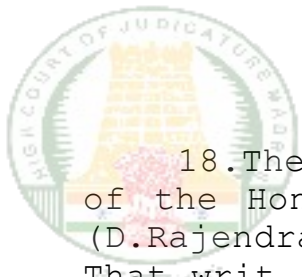


and Madurai editions on 30.05.2008 and in the Tamilnadu Government Gazette on 23.07.2008. It is seen that the Revenue Divisional Officer along with the officials of Tamilnadu Electricity Board, the Revenue Inspector, Village Administrative Officer and the petitioner had inspected the land of the petitioner in R.S.No.358/1A1.

15. In the report of the Revenue Divisional Officer, it had been stated that the petitioner had put up a metal sheeted roof above the first floor. He had obtained plan approval for the construction of a building in the year 2013 and had completed the same in December 2013. It is seen that the establishment of substation was approved on 13.12.2007 by the order of the Chief Engineer in proceedings No.B.P.(FB) No.235, dated 13.12.2007. Notification was published in TNGG No.29, on 23.07.2008 and in the local daily news papers.

16. The project for erection was approved by the Superintending Engineer on 18.05.2010. It is seen that the petitioner had constructed his house after the notification of the pathway of the electric line. There is no alteration of pathway and if it is done, many other inhabitations will be affected. Thereafter, under Section 13 of Telegraph Act, 1885, the first respondent has granted permission to execute the tower construction work through the land comprised in R.S.No.358/1A1 of Methukummal Village in Vilavancode Taluk. It must be pointed out that the petitioner had constructed his building after the approval of the plan, more specifically, he had put up the tin shade over the first floor and it is not a permanent construction. There are no side walls and there are no RCC roof or any other permanent roof over the terrace in the first floor. It is seen that only a tin shade sheet had been put up and it is obvious, it has been put up only to obstruct the drawing of the line. The first respondent had also stated that necessary compensation would be given by the Electricity Board towards demolition of tin shade construction and if any structural damages are caused.

17. The learned counsel for the petitioner stated that in the original plan as published in newspapers, the line was not supposed to be drawn over the house of the petitioner. However, it is seen that the Tamilnadu Electricity Board had purchased the lands in R.S.No.389/1A to an extent of 3.14 acres at Sooriacode in Methukummal Village, Vilavancode Taluk, Kanyakumari District. The entire project of drawing of electric line is to increase the voltage of all the houses in the said area. The petitioner cannot obstruct for his whims and fancies a public object being executed by the authorities. The larger interest of all the households with right to get high voltage electricity has to be recognized by



18.The learned counsel for the petitioner relied on a judgment of the Hon'ble Division Bench of this Court in W.A.1294 of 2017 (D.Rajendran Vs. Tamilnadu Electricity Board) dated 30.07.2018. That writ appeal flows from and order of a learned Single Judge of this Court dated 29.11.2013 in W.P.(MD) No.16799 of 2013. The writ petition was dismissed. That order was challenged. It related to erecting an electric tower which was a permanent construction over the lands of the writ appellants therein. In this writ petition, that is not the case. Here, an electric line alone is being drawn over the house of the petitioner.

19.The petitioner had put up a tin shade over the first floor with specific intention to destruct the line. If the petitioner had not put up the tin shade, then there will be sufficient clearance in the height, over which, the wire would be drawn. The petitioner had invited the litigation. He deserves no sympathy. The judgment in the writ appeal is not applicable to the facts of this case. There is no permanent construction of an electric tower on the lands of the petitioner. The respondents are only drawing of 110 KV wire over the house of the petitioner. Suitable height clearance has been given but the petitioner had put up a tin shade to obstruct the line. It is not known whether the tin shade is approved and is part of the official building plan or not. Even otherwise, it is only a temporary tin shade and the respondents have stated that compensation will be granted.

20.In **(2017) 5 SCC 143 [Power Grid Corporation of India Limited Vs. Century Textiles and Industries Limited and others]**, it had been held as follows:-

"11.In view of the legal principles adjudicated in the cases cited supra, this Court is of an opinion that the public welfare projects must be allowed to be implemented in its spirit. However, the Competent Authorities are bound to follow the procedures contemplated in the statutes and settle the full compensation to the persons who all are affected on account of the implementation of such projects.

12.Electricity being an essential one for all the citizens of our great Nation, the National level projects for transmission of electricity is unavoidable and which all are necessary for the purpose of providing infrastructures and for developmental activities across the Country. Thus, stalling of the entire project of erecting High Tension Electricity Towers in the localities are not



desirable. However, the Authorities Competent must follow the procedure of assessing the less damage to the owners of the agricultural land. While preparing the project report, the experts are also to keep in mind that the project must be prepared by causing lesser damage to the agriculturists, who all are affected on account of such erection of High Tension Electricity Towers in their respective agricultural land.

13.This Court is of an opinion that the project of erecting High Tension Electricity Towers are carried out for the purpose of providing electricity to various villages and for the other developmental activities and for industrial developments. Thus, stalling the project will affect the developmental activities of our great Nation. Under these circumstances, the respondents are directed to settle full compensation in the event of no objection from the land owners and if there is an objections, then the Collector has to conduct an enquiry and pass orders. Once the permission is granted by the District Collector concerned, then the licensee is empowered to erect the High Tension Electricity Towers in accordance with the project.

14.In any event payment of the compensation to the affected person cannot be delayed as the same is mandatory under the provisions of the Electricity Act. Even in case of objections, and an order is passed by the District Collector, the admissible compensation shall be settled in favour of the land owners immediately and if any dispute arising on account of the payment of compensation, the aggrieved person is at liberty to approach the District Judge concerned for the purpose of ascertaining the just compensation in accordance with law.

15.With these observations, all these writ petitions stands dismissed. No Costs. Consequently, connected miscellaneous petitions are closed."

21.The source and scope of the authority or power of the respondents to take up the work of the implementation of the
<https://hse.servecourts.gov.in/hse/serve> of transmission line has to be considered.



22. Section 164 of the Electricity Act, 2003, 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 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 (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."

23. The powers of a Telegraph Authority for the purpose of establishing or maintaining a telegraph line are delineated in Part III of the Telegraph Act 1885. Sections 10 to 17 contained in Part-III deal with powers of the telegraph authority in respect of placing, establishing and maintaining of the telegraph lines and posts. Sections 10, 16 and 17 are reproduced 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.

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 45 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 this 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 subsection (3) or subsection (4) shall be final: Provided that nothing in this sub-section shall affect the

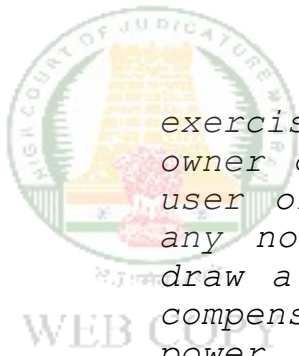


right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same.

17. Removal or alteration of telegraph line or post on property other than that of a local authority.-(1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line or post accordingly: Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum. (2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situated to order the removal or alteration. 46 (3) A District Magistrate receiving an application under sub-section (2) may, in his discretion reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to higher or lower level or for the alteration of its form; and the order so made shall be final."

24. In **W.A.Nos.2032, 2044, etc batch (S.Selvaraj Vs. The District Collector, Erode District, Erode and others)**, a Division Bench of this Court had examined the above provisions and held as follows:

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 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.

15. When the provision of Section 10 is read with Sections 16 and 17, it would become clear that under the scheme of Part-III of the Telegraphic Act, 1885 a balance has been struck between the necessity of public interest and the individual need by addressing the grievance of the aggrieved. Notice and hearing have to be read in these sections as they confer a discretion upon the District Magistrate to adjudicate on the justifiability of the objection or acceptability of the suggestion and no public authority can exercise a discretion arbitrarily. Any exercise of such discretion is likely to have ripple effects and civil consequences for the owner or occupier of the private land on the one hand and the escalation in cost and delay in execution on the other hand. Therefore, provision of fair opportunity of



hearing in exercise of such a discretion is in consonance with the mandate of Articles 14 and 21. We hold that Section 10 by virtue of Sections 16 and 17, on the whole provides for a fair procedure for a partial deprivation of right to property and simultaneous right to TANTRANSCO to enter upon the property only as an user to lay electric Towers.

16. We are conscious of the fact that finalization of route of transmission line is a highly technical and specialized subject. Also, the route of transmission line in this case runs into several hundreds of kilometers and it passes over different lands of different persons.

17. TANTRANSCO had acquired only right of user in the lands in question and that too in lieu of payment of full compensation for the damages caused. The Rule of Natural Justice is subserved by the procedure laid down in Part III, particularly in Sections 10, 16 and 17 of the Telegraph Act, 1885. Thus, we find that it is not necessary to give notice to the owners or occupants of private lands at the time of finalization of the route of the transmission line or even at the time of commencement of the project.

25. Section 68 of the Electricity Act relates to overhead lines and is as follows:-

"68. Overhead lines.- (1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).

(2) The provisions contained in sub-section (1) shall not apply-

(a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;

(b) in relation to so much of an electric line as is or will be within premisses in the occupation or control of the person responsible for its installation; or

(c) in such other cases, as may be prescribed.

(3) The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be

necessary.



(4) The Appropriate government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.

(5) Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of Electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.

(6) When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

Explanation.- For the purpose of this section, the expression "tree" shall be deemed to include any shrub, hedge, jungle growth or other plant."

26.As a matter of fact, discussion on these aspects had been made by the Hon'ble Supreme Court in (2017) 5 SCC 143 [Power Grid Corporation of India Limited Vs. Century Textiles and Industries Limited and Others]. In the said case, Century Textiles and Industries Limited had challenged laying of transmission lines by Power Grid Corporation of India Limited, a Government of India Undertaking, parallel to the existing lines over a cement manufacturing unit for which they had a registered lease deed executed with the State Government. In that case also, excavation work for erection of towers had started. The transmission lines were to pass through the property leased out. Rejecting the challenge over erection of towers and establishment of overhead lines, the Hon'ble Supreme Court examined the provisions and implications of Sections 68 & 69 of the Electricity Act 2003 and also Rules 3 and 10 of the Works of Licensees Rules 2006 and held as follows:-



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



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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.

22. Powers of the telegraph authority conferred by Sections 10, 15 and 16 of the Telegraph Act, 1885, stand vested in and are enjoyed by the Power Grid. These provisions are reproduced below:

"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.

15 Disputes between telegraph authority and local authority.-(1) If any dispute arises between the telegraph authority and a local authority in consequence of the local authority refusing the permission referred to in Section 10 clause (c), or prescribing any condition under Section 12, or in consequence of the telegraph authority omitting to comply with a requisition made under Section 13, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by such officer as the Central Government may appoint either generally or specially in this behalf.

(2) An appeal from the determination of the officer so appointed shall lie to the Central Government; and the order of the Central Government shall be final.

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, 1860 (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."

23. Section 10 of the Telegraph Act, 1885 empowers the telegraph authority to place and maintain a telegraph line under, over, along or across and posts in or upon any immovable property. The provision of Section 10(b) of the Telegraph Act, 1885 makes it abundantly clear that while acquiring the power to lay down telegraph lines, the Central Government does not acquire any right other than that of user in the property. Further, Section 10(d) of the



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Telegraph Act, 1885 obliges the telegraph authority to ensure that it causes as little damage as possible and that the telegraph authority shall also be obliged to pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

24. As Power Grid is given the powers of telegraph authority, Rule 3(1) of the 2006 Rules ceases to apply in the case of Power Grid by virtue of exception clause contained in sub-rule (4) of Rule 3 which reads as under:

"3. (4) Nothing contained in this rule shall effect the powers conferred upon any licensee under Section 164 of the Act."

25. We, thus, have no hesitation in rejecting the argument of the writ petitioner that the impugned action of the Power Grid was contrary to the provisions of the Electricity Act, 2003. "

27. In the instant case also, the petitioner had effectively, from the date of filing of the writ petition, obtained an interim order, effectively stalling the project for the past three years. The respondents have every right to draw the high tension electric wire over the land of the petitioner. The impugned order of the first respondent had been passed, after giving opportunity of personal hearing to the petitioner and after conducting inspection of the land of the petitioner. It has been very clearly stated that the petitioner had put up a temporary tin shade only to prevent the electricity line being drawn over his house. However, the first respondent had very clearly stated that by removal of the tin shade, if any structural damage is caused, then compensation will be paid by the Electricity Board to the petitioner. I find no infirmity in the said observation.

28. The Court has to look into the larger public interest. The entire area requires high voltage electricity supply. The petitioner cannot prevent that benefit being accrued to all the house holders in the area. The petitioner has not put up a pucca roof over the first floor. It is only a temporary tin shade. Therefore, he cannot claim as a matter of right that the line should not be drawn over his house. I find no merits in the writ petition.

29. Accordingly, the Writ Petition is dismissed. In view of the fact that the petitioner had obstructed the drawing of the line effectively for the past three years by putting up a



temporary tin shade over the first floor, I further direct the petitioner to pay a cost of Rs.10,000/- to The Dean, The Government Rajaji Medical Hospital, Madurai for treatment of poor patients on or before 20.03.2020. Consequently, connected W.M.P. (MD) Nos.2453 and 2454 of 2017 are closed and W.M.P. (MD) No.3965 of 2020 is allowed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

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To

1.The District Collector,
Kanyakumari, at Nagercoil.

2.The Superintending Engineer,
Tamilnadu Electricity Board,
Nagercoil,
Kanyakumari.

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

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

COPY TO

The Dean, The Government Rajaji Medical Hospital,
Madurai.

+1 CC to M/s.D.ANBARASU, Advocate (SR-10400[F]

+1 CC to M/s.S.M.S.JOHNNY BASHA, Advocate (SR-10401[F]

order made in

W.P. (MD) No.3080 of 2017

06.03.2020

DB (CO)

TR (12.03.2020) 21P 8C