

In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Writ Petition No. 8409 of 2020 (O&M)

Lalit Mehta

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

AND

2. Civil Writ Petition No. 11028 of 2020 (O&M)

Baldev Singh and Another

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

Date of Decision: 01.12.2020

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Akshay Bhan, Senior Advocate
with Mr. Keshav Partap Singh, Advocate
for the petitioner (In CWP-8409-2020)

Mr. Rakesh Nagpal, Advocate
for the petitioners (In CWP-11028-2020).

Mr. Baldev Raj Mahajan, Advocate General, Haryana
with Mr. Hitesh Pandit, Additional Advocate General,
Haryana, for respondents No.1 to 6 (In CWP-8409-2020
and CWP-11028-2020).

Mr. Sanjiv Gupta, Advocate
for respondents No. 7 and 8 (In CWP-8409-2020).

Anil Kshetarpal, J.

By this judgment, Civil Writ Petition No. 8409 of 2020 and
Civil Writ Petition No. 11028 of 2020, shall stand decided.

In both the writ petitions, the challenge is to an attempt made
by Haryana Vidyut Prasaran Nigam Limited (hereinafter referred to as “the

Nigam”), to lay a overhead transmission line and install transmission towers to support the transmission line through the agricultural land of the writ petitioners. The learned counsel, appearing for the parties, are *ad idem* that both these writ petitions can be disposed of by a common judgment. For facility of reference, the facts are being taken from Civil Writ Petition No. 8409 of 2020.

This is yet another attempt, by the petitioners, to zealously guard their agricultural land, against any kind of intrusion. At the outset, it must be noticed that the learned counsel, appearing for the parties, have not addressed this Court with respect to violation of any Act, Rule or Regulation, although specifically inquired. Hence, this Court proceeds to decide these writ petitions, on the basis of facts pleaded.

In the year 2014, the Nigam issued a public notice in the newspapers informing that it proposes to construct/lay stringing of second circuit of 132 KV Hukmawali-Bhattu Sotter line. A 132 KV Electricity Sub Station, Ding, is located near the habitation of village Patli Dabar. The objections were invited, however, none of the petitioners submitted objections. The petitioners are owners of the agricultural land in the area. It has come on record that one transmission tower is to be set up in the land of the petitioner in Civil Writ Petition No. 8409 of 2020.

From the facts available on record, it becomes apparent that the dispute, in the present case is with respect to alignment of transmission line from transmission tower 35 to Sub Station Ding. At one stage, there was proposal to take the transmission line through tentative route (hereinafter

with the writ petition. The alignment of Ist transmission line was the shortest route, however, perilously located near the inhabited area of village Patli Dabar and a existing secondary school. To understand the location/route/alignment of the Ist transmission line, it is to be noted that the inhabited area of the village, which is known as *abadi*, is located at a short distance from National Highway No. 10, which connects Hisar and Sirsa. On the national highway, Guru Teg Bahadur Senior Secondary School exist. Along the boundary of the school, there is a road which connects the national highway to the inhabited area of the village. The Ist transmission line was planned to be taken through the corridor in between the school and the inhabited area of the village. In other words, one side of Ist transmission line, there would have been a school whereas on other side, there would have been inhabited area of the village. Subsequently, it has been changed and now it is finalized to be taken through an area, which is far away from the inhabited area (hereinafter referred to as 2nd transmission line). No doubt, the new approved route/2nd transmission line is lengthier when compared with the Ist transmission line, by 80 meters. The parties have been litigating for quite some time on the question as to what should be the proper alignment/route of the transmission line. On the one side, the Ist transmission line, as originally proposed, travels through an area which is dangerously close to the inhabited area of the village and the school, whereas, on the other side, 2nd transmission line, which has been approved, is going through the agricultural land owned by the petitioners. An attempt has also been made, by the learned counsel for the petitioners, to criticize the aforesaid 2nd transmission line, on the ground that a playground is also

coming under it.

Learned senior counsel, appearing for the petitioner in Civil Writ Petition No. 8409 of 2020, has submitted that the alignment of the Ist transmission line has been changed due to malafide reasons. He stressed on the point that there is a report by a Committee, constituted under the Chairmanship of the Chief Engineer of the Nigam, which concludes that the length of Ist transmission line is short and therefore, by demolishing the newly constructed wall, the transmission line can be taken through the aforesaid area. He, further, submitted that the Executive Engineer, named in the writ petition, has been instrumental in getting the alignment/route of the transmission line changed at the behest of some unknown influential person. He, further, submitted that the 2nd transmission line covers more distance and thus results in wastage of public money. He, further, submitted that at the time when the tentative proposal was made, no construction existed in its path and construction made subsequently after the proposal to lay the transmission line should be demolished.

On the other hand, learned counsel, appearing for the petitioners appearing in Civil Writ Petition No. 11028 of 2020, has submitted that one of the Executive Engineer's (named in the writ petitioner) father, owns property in the village and since his property was coming under the Ist transmission line, therefore, the route has been changed. He, further, submitted that the new route proposed, would result in transmission line going over a playground and therefore, it was not appropriate for the authorities to approve the same.

contended that there are three different reports of three committees constituted. He drew the attention of the Court to the final report submitted received vide communication dated 26.02.2020, headed by a Superintending Engineer (Planning), of the Nigam. He submitted that as per the report, there was a lot of resistance from the villagers qua alignment of the Ist transmission line, which was planned to be taken from the corridor very close to the inhabited area and the school and it was found that the area, abutting the national highway near village Patli Dabar, has now become a hub of commercial activities as marriage palace, service station, some hotel/dhabas, a school and residential colonies have come up. It has been reported that the area is now densely inhabited and therefore, keeping in view the safety concerns, it would not be advisable to take the transmission line, in proximity of human habitation. He, further, contented that the petitioners have failed to prove any malafide and Ist transmission line was only a proposal which was never finalized. He, further, submitted that the petitioners would be entitled to compensation for usage of land, as provided in the Telegraph Act, 1885.

On careful analysis of the arguments, of learned counsel for the parties and perusal of the pleadings, this Court, now, attempts to resolve the dispute.

At this stage, it would be relevant to note that the dispute, which this Court is called upon to resolve, lies in exclusive domain of the experts on the subject and this Court does not have the wherewithal to go into the technical aspects, thereof. However, once, the writ petitions have

decide.

There are three reports of 3 different Committees, constituted by the Nigam, from time to time. The first report is attached with the forwarding letter dated 07.09.2018. The Committee consists of the Superintending Engineer and two Executive Engineers of the Nigam. This Committee was constituted on the complaint of the writ petitioner in Civil Writ Petition No. 8409 of 2020. The Committee concludes that the electricity transmission line should not be taken through the alignment of Ist transmission line, i.e. close to the inhabited area. It also notices that the approved route, of the 2nd transmission line, is as per prevailing instructions of the Nigam. There is also an observation that Ist transmission line was based on a foot survey, which is tentative in nature. Then, there is second report of yet another Committee, consisting of the Chief Engineer and two Superintending Engineers. The 2nd report concludes that commercial structures like petrol pump, hotel and covered areas, as reported by the Executive Engineer, does not exist and an existing temporary wall, which has been constructed, can be demolished. Right of way is available on Ist transmission line based on foot survey carried out at the time of issuance of notice inviting tender and the aforesaid route is shorter by 0.8 kms approximately. This report was approved by the whole time Directors of the Nigam on 13.05.2019 (Annexure P-12). Thereafter, a writ petition was filed in the Court by the owners of the land which was coming under the proposed Ist transmission line. During the pendency of the aforesaid writ petition, the concerned Minister of the department constituted another Committee, consisting of a Superintending Engineer (Planning), an Executive Engineer

and Additional Deputy Commissioner, Sirsa. They visited the site and submitted a report sent through a forwarding letter dated 26.02.2020. As per the last report, the Committee observed that in the area abutting national highway near abadi of village Patli Dabar, a lot of commercial activity has started and a marriage palace, a service station, some hotels/restaurants, a school and a residential colony with constructed residential houses, have come up. It has been, therefore, concluded that the area is, now, inhabited and required to be avoided for taking transmission line. It was also noticed that there was a lot of resistance from the residents of the village and taking into consideration, the safety concerns, hence, it would not be advisable to take the transmission line, in close proximity of the village habitation. Now, this report has been approved and the transmission towers are being installed. This has resulted in filing of these two writ petitions.

The jurisdiction of the Court, in such matters, is limited. The Courts do not possess the required expertise in the specialized fields, therefore, the Courts have to depend upon the reports of the Experts. In this case, as noticed, there are three reports of the respective Committees. Two reports are supporting the alignment of 2nd transmission line which has now been approved and become the subject matter of challenge, in the writ petitions. The aforesaid alignment, although, takes a little longer route, but goes through the land which is located far away from *the inhabited area of the village*. Still further, there is no construction in between and a clear right of way is available. The Experts have suggested that the tentative alignment-1st transmission line, which was originally proposed, poses a danger to the residents of the area and the children studying in the school.

The first argument of learned senior counsel for the petitioner in Civil Writ Petition No. 8409 of 2020, is that the alignment has been changed, although, looks attractive on first blush, however, on deeper examination, found without substance. There is overwhelming material to establish that the alignment of Ist transmission line was only tentative. Still further, there is no plausible answer to the opinion of the Experts that if the transmission line is taken through the proposed route of Ist transmission line, it would pose danger to the lives of inhabitants of the village. There is also no dispute that a senior secondary school is located in close proximity to the area which falls under the right of way/corridor of the Ist transmission line. In these circumstances, even if it is assumed that there is change in the alignment, however, since it is for a larger public good, hence, this Court does not find it appropriate to interfere.

The next argument of learned senior counsel that the Ist alignment is short. The difference between the two routes/alignments is 800 meters. As noticed above, the route of 2nd transmission line, which has now been approved, takes the transmission line far away from the inhabited area of the village. It takes a semi-circular route, so as to avoid inhabited area. Merely because the 2nd route travels a little longer distance than the previous one, is not sufficient for the Court to set it aside, keeping in view the other facts noticed above.

The next argument of learned senior counsel that initially, there was no construction and subsequently some construction has come up, may be correct to some extent. However, it is not in dispute that the inhabited area of the village Patli Dabar and the school were already in existence.

There was corridor in between the school and the abadi, however, the Experts have found that it is dangerous to take the transmission line from this small window of the area. In these circumstances, merely because certain constructions have recently come up, would not be sufficient to ignore the other risks being posed to the residents of the village and students of the school.

Similarly, the argument, of learned counsel for the petitioners in Civil Writ Petition No. 11028 of 2020, to the effect that because Executive Engineer's father owns property, which falls in the tentative route of the Ist transmission line, therefore, the route has been changed, is without any substance because except the pleadings, there is no material available to conclude the same. In this writ petition, name of the Executive Engineer has been disclosed, but not impleaded as party-respondent. No doubt, a copy of Jamabandi(Annexure P-23), has been annexed, however, it has not been depicted, how that area falls in the alignment of the Ist transmission line. Still further, there are two reports of different Committees, opining against taking the transmission line through tentative route. The decision has been taken at the highest level. The Executive Engineer, named in writ, has not been impleaded as a party in both the writ petitions, therefore, this Court does not find it appropriate to return any finding without granting him an opportunity of hearing.

The last argument of learned counsel for the petitioners that there exists a playground on the 2nd route is disputed by the respondents.

While responding to the writ petition, official respondents have pleaded that

since the size of the land available was found short of the requirement, therefore, the proposal was dropped. In the replication, this fact has not been disputed.

Section 164 of the Electricity Act, 2003, enables the appropriate Government to authorize any public officer, licensee or any other person, engaged in the business, to place the electricity lines or the transmission towers. Under Section 10 of the Indian Telegraph Act, 1887, the authority has the power to place and maintain a telegraph line under, over, along or across and posts in and upon, any immovable property. Such power is known as eminent domain.

Still further, it has been pleaded by the respondents that more than 80% work has already been completed. It has been pointed out that except installation of the transmission towers in the land of the petitioners , the remaining towers have already been constructed/fabricated/erected. In these circumstances, additionally, this Court does not find it appropriate to interfere, at this stage.

Keeping in view the aforesaid discussions, the petitioners have failed to make out case for interference. Hence, both the writ petitions are dismissed.

The miscellaneous application(s) pending in both the writ petitions, if any, shall also stand disposed of.

**(Anil Kshetarpal)
Judge**

December 01, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No