

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7544 of 2020

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Lorik Bhagat, Male, aged about 55 years, S/o Sri Bahir Bhagat, R/o Ward no.- 02, Vill + P.O.- BHATAHAN, P.S.- Sugauli, East Champaran (Motihari), Bihar- 845456.

... .. Petitioner/s

Versus

1. The Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna through its Chairman-cum-Managing Director.
2. The North Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna through its Chairman-cum-Managing Director.
3. The District Magistrate, East Champaran (Motihari).
4. The Electrical Executive Engineer, Electric Supply Division, East Champaran (Motihari).
5. The Assistant Electrical Engineer, Electric Supply Division, Raxaul (East Champaran).
6. The Assistant Engineer, Electric Supply Division, Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Shiv Pratap, Advocate
For the Electricity Board:		Mr.Vinay Kirti Singh, Advocate
		Mr.Ritesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

4 04-02-2021 Heard learned counsel for the petitioner, learned counsel for the Electricity Board and learned counsel for the State.

The petitioner has prayed for the following reliefs :

“(i) For issuance of an order/ direction/ appropriate writ whereby restraining the respondents from Installing/erecting 220 KV Electric Pole and High-Tension wire on or above Land/ House of the petitioner.



(ii) For directing the respondents to consider the objection of the petitioner against this proposal of erecting/ installing High-tension Electric Pole over petitioner's plot bearing Khata No.237 and Khesra No.1610 situated in Sugauli (PS), East Champaran.

(iii) For directing the respondents to make a fresh survey with regard to this project of installing 220 KV Electric Pole and High Tension wire in this village as there are other more appropriate locations are available in this village.

(iv) For a direction upon the respondents for immediately staying/ stopping the on going work with regard to above stated project on the land/ house of the petitioner.

(v) Any other order/ orders for which the petitioner is entitled to in the facts and circumstances of the present case.”

In the present writ petition, limited grievance has been raised by the petitioner that Bihar State Transmission Company has erected the electric transmission tower over the house/ Raiyati land of the petitioner details are as follows : Khata No.128, Khesra No.276, Mouza Paraspatti, Thana No.352, Circle- Dumra, District East Champaran.

Learned counsel for the petitioner submits that the



petitioner is having on which a small house is there where the petitioner lives with his family and on some portion, he do farming in order to earn his livelihood. Learned counsel for the petitioner further submits that the petitioner has filed application/objection before the Sub-divisional Public Grievance Redressal Officer, Sub-division Raxaul, District – East Champaran on 29.06.2019. Vide order dated 19.10.2019, the Public Grievance Redressal Officer, Raxaul, District- East Champaran has disposed of the petitioner's application after noticing the concern Assistant Electrical Engineer, Raxaul whereby vide letter no.225 dated 02.09.2019, he has submitted that the issue with regard to installation of 220 KV Electric Pole and High Tension wire on petitioner's land belongs to Assistant Executive Engineer, Gopalganj. Thereafter, based on telephonic communication, it was submitted by the Assistant Executive Engineer, Gopalganj that the survey with regard to installation of 220 KV Electric Pole and High Tension wire is not yet completed and nothing is final. And, hence, the petitioner's application was disposed of. He further submits that despite the submission of the Assistant Executive Engineer, Gopalganj that nothing is final with regard to survey for erecting/ installing the 220 KV Electric Pole without any notice or intimation the



concern authorities have started the construction/ installation work in full fledged manner which is evident from the pictures of the on going construction work on this plot (Annexure-2 series).

Learned counsel for the respondent nos.4 to 6 has filed a counter affidavit and submits that no foundation for any Tower has been laid in the land of the petitioner. As per the survey, some portion of the land of the petitioner lies behind the conductors, therefore, there is no possibility/ scope of erection of any Tower on the land of the petitioner. It is further stated and submitted that the respondent authorities tried several time to give notice to the petitioner but neither the petitioner nor his family members received any notice regarding the same. This fact has not disputed by the petitioner. He has no filed any rejoinder to the counter affidavit. Learned counsel for the respondent nos.4 to 6 further submits that during the survey, no house was found constructed in the corridor of the under construction 220 KV Raxaul (New), Gopalganj Transmission line. Out of the three numbers of route survey conducted by the department prior to start of the work, the present route was found to be the best possible route since in this route minimum area of land occurs. The present route is passing totally outside



the village Bhatahan. Learned counsel for the respondents further submits that the petitioner started obstructing in the work. He started construction activity just within the corridor between LOC. No.26/2 and 26/3. To stop the construction activity, the respondent authorities met the Sub-Divisional Officer, Motihari and gave him a written request vide letter no.27 dated 27.02.2020 and letter no.70 dated 17.06.2020. Further the Circle Officer, Sugauli along with the police personnel of Sugauli police station tried to explicate the petitioner several times but he refused every time. Learned counsel for the respondents further submits that the District Magistrate, East Champaran vide his letter no.108 dated 08.10.2020 has also submitted his report to the M.D., BSPTCL. From a perusal thereof, it would transpire that no tower has been installed/ erected on the land of the petitioner (Annexure-C of the counter affidavit). Learned counsel for the respondents further submits that in similar matter bearing C.W.J.C. No.758 of 2017, a Bench of this Hon'ble Court vide its order dated 24.03.2017 was pleased to dismiss the writ petition after considering the provisions contained in Indian Electricity Act, 2003 and Indian Telegraph Act (Annexure-D of the counter affidavit).



Learned counsel for the respondents further submits that this issue is no longer in res integra. Earlier there was a provision under Indian Telegraph Act which empowers the authority to erect the tower having been adopted in the Electricity Act, has been installing tower by the Bihar State Power Generating Company over the Raiyati land. Sections 68 and 69 of the Electricity Act, 2003 also empowers the Generating Company to establish the electric tower and electric poles. This issue has been gone into by the Hon'ble Supreme Court in the case of Power Grid Corporation of India Limited vs. Century Textiles and Industries Limited and others in Civil Appeal No.10951 of 2016, arising out of SLP © No.34382 of 2010 where only rider has been given in terms of the new Act that Company must take permission from the appropriate Government.

In the present case, the State Government is appropriate authority to grant permission, and in whole of writ petition, no statement has been that the tower has installed without permission of the State Government. Mere vague statement has been made in the writ petition that tower has erected without following proper procedure which is as follows :



“14. That such and action of trespass over the Raiyati Land of the petitioner by the respondents without any consent or without following the procedure prescribed under the Electricity Act is patently illegal.”

The aforesaid statement is vague, having not taken specific ground. Mere vague statement having not followed the Electricity Act cannot basis to record adverse finding against the Company where there is conflict of two interest private interest as well as public interest. Public interest will prevail over private interest on the principle of Maxim “Salus Populi est Suprema lex” mean Regard for “Public Welfare is the highest law”.

In such view of the matter, this Court does not find any merit in this writ petition. It is, accordingly, dismissed. However, this order will not cause prejudice with respect to the claim of compensation.

Accordingly, this application stands disposed of.

(Anjani Kumar Sharan, J)

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