

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 2087 of 2019

Rameshwar Prasad Rathiya S/o Uday Ram Aged About 58 Years R/o Village Katangdih, Block Gharghoda, District Raigarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Energy Mantralaya Mahanadi Bhawan (Atal Nagar) District Raipur
2. The Collector Raigarh District Raigarh Chhattisgarh.
3. Chhattisgarh State Power Transmission Company Ltd. Through Managing Director Danganiya Raipur Chhattisgarh.
4. The Executive Engineer (O And M) Dn-I Chhattisgarh State Power Transmission Company Ltd. Raigarh District Raigarh Chhattisgarh.
5. Deputy General Manager Power Grid Corporation Of India Ltd. Bharti Nagar, Bilaspur Chhattisgarh.
6. Goa Tamnar Transmission Project Limited (GTTPL) Tehsil Gharghoda, District Raigarh Chhattisgarh.

---- Respondents

For Petitioner : Ms. Sharmila Singhai, Sr. Advocate with Ms. Taniya Mandal, Advocate.

For State : Shri Ashish Tiwari, G.A.

For respondents No. 3 & 4 : Shri Jitendra Pali, Advocate.

For respondents No.5 & 6 : Shri Prasoon Agrawal, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

14/09/2021

1. Challenge in this petition is to the laying down of a transmission line over the land of the petitioner bearing khasra No.274/1 admeasuring 0.4870 hectare situated at main street of village Baihamuda, Tahsil Gharghoda, District Raigarh. It is contended on behalf of the petitioner by referring to the document of transmission line that in order to cause favour to certain people the alignment of the transmission line was changed for no reason as a result of it the entire land of the petitioner would be rendered use

less. Learned counsel vehemently attacked the act of the respondents No.5 and 6 and would submit that the petitioner has purchased the land for construction of a house and the sale consideration was of Rs.12,56,000/- and by putting the line over the land of the petitioner the high tension line, it can not be used for construction of house or would be inhabitable and entire land of the petitioner is turned to be of zero value. Learned counsel would submit that in all fairness the petitioner should be compensated for the loss caused to him. The reference is also made to para 26 of **(2017) 5 SCC 143** in between **Power Grid Corporation of India Limited Vs. Century Textiles and Industries Limited and Others.**

2. Learned counsel for the respondents No.5 and 6 would submit that the request of the petitioner to change the alignment, the representation has already been decided by the Collector by Annexure R-1 on 18/03/2021 wherein it was found that the alignment of the proposed line is not possible and amount of Rs.1,41,764/- as compensation has already been deposited. He further submits that if the petitioner is aggrieved by the quantum of compensation, in such case as per section 16 sub section 3 of the Indian Telegraph Act, 1885 the reference is to be made to the District Judge for adjudication.
3. Perused the documents. Perusal of the documents would show that as per the notification made on 28th November, 2018 power under Section 164 of the Electricity Act, 2003 is conferred on the respondent No.6 which empowers the power akin to the Indian Telegraph Act, 1885 with respect to placing of telegraph lines and posts for the purpose of a telegraph established or maintained, by the Government or to be so established or

maintained for laying of electricity line under the transmission scheme is been allowed.

4. Section 164 of the Electricity Act, 2003 reads as under:-

“164. Exercise of powers of Telegraph Authority in certain cases.-The Appropriate Government may, be 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.”

5. Reading of the Section 164 of the Electricity Act, 2003 alongwith the notification therefore would show that the power under the Telegraph Act has been conferred upon the respondent No.6. The part III of the Indian Telegraph Act, 1885 Section 10 confers the telegraph authority to place the telegraph line and post and sub section-d of section 10 postulates that in exercise of power conferred to put on the line the authority shall do as little damage as possible when the power are exercised and shall pay full compensation to all persons interested for any damage caused by them by reason of exercise of such power.

6. The petitioner has placed the sale deed Annexure P-1 which shows that a property bearing khasra No.274/1 admeasuring 0.4870 hectare was purchased for a sale consideration of Rs.12,56,000/- on 20/04/2016. The alignment of the transmission line Annexure P-3 which is placed on

record would show that the diversion of the line was made which as appears now has been affecting the right of the petitioner. In response to it the representation was filed by the petitioner, the Collector by its order dated 18/03/2021 Annexure R-1 has observed that diversion of land was affected on 27/08/2019 whereas the survey for laying the line was made on 27/07/2019 and certain technical facts also been depicted in the order and ultimately it is held that the re-alignment of the line cannot be changed.

7. The scheme of the Indian Telegraph Act, 1885 Section 10 purports that minimum damage to be done while laying down the transmission line and 'full compensation' would be paid. The petitioner if claims that the land was proposed for construction of the house and by laying down of the high tension line it would be rendered completely useless for the petitioner for use cannot be outrightly shelved. Simply because of the fact that the diversion was carried out after a month of the survey it will not jeopardise the right of the petitioner to claim compensation as the right would be protected under Article 300-A of the Constitution of India.
8. It appears that the petitioner is not happy with quantum of compensation and when it is claimed that with laying down of line he would be deprived to construct house over the said land necessarily hold the sway in his favour. It is also of paramount importance that the citizen would be free to use and hold the property according to his choice is protected by Article 300 A of Constitution of India. The petitioner filed the application for diversion of land which was accepted by State and enhanced revenue was paid. Therefore if the petitioner claims that his will to raise a superstructure/house is arrested by laying down high tension line over

plot of petitioner, the same has to be given weightage. If the entire land is rendered useless for construction then this issue is also required to be answered. Section 16 sub section-3 of the Indian Telegraph Act, 1885 purports that if any dispute arise concerning the sufficiency of the compensation to be paid under Section 10, sub clause (d), in case of dispute the application may be preferred before the District Judge within whose jurisdiction the property is situated and the compensation would be determined by him. Prima facie reading the sale consideration which is shown in the sale deed and the quantum of compensation which is deposited by the respondent No.6, sale consideration of Rs.12,56,000/- and compensation amount of Rs.1,41,764/- do not match with each other. Whether the entire land would be rendered useless it is a matter of investigation and evidence. Therefore, the petitioner shall be at liberty to move an application to the District Judge of the concerned District within a period of four weeks and adduce all the evidence in his support. The respondent shall also be given the opportunity of evidence. If such application is filed, the same would be adjudicated as per mandate of Section 16(3) of the Indian Telegraph Act, 1885 within a period of six months.

9. With such observation, the petition stands disposed of.

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**Sd/-
(Goutam Bhaduri)
Judge**