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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2021

CORAM :

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.A.No.1178 of 2021

- 1.Ponnusamy
- 2.Balasubramaniyam
- 3.Manimekalai
- 4.Varadharajan
- 5.Krishnasamy Gounder
- 6.Venkidusamy
- 7.Shanmugasundaram
- 8.Rukmani
- 9.Subramaniyam
- 10.Saraswathy
- 11.Vijayaraj

..Appellants/Petitioners

Vs

- 1.The Union of India
Rep. by its Secretary to Government,
Ministry of Power,
Shram Shakti Bhawan,
Rafi Marg, New Delhi.
- 2.Central Electricity Authority,
Ministry of Power,
Government of India,
Rep. by its Chairman,
Sewa Bhawan, R.K.Puram,
New Delhi - 110 066.
- 3.The State of Tamil Nadu
Rep. by its Principal Secretary to Government,
Energy Department,
Fort St.George, Chennai - 09.
- 4.Power Grid Corporation of India Ltd.,
Rep. by its Managing Director,
B-9, Qutab Institutional Area,
Katwaria Sarai,
New Delhi - 110 016.



5.The District Collector,
Office of the District Collector,
Tiruppur District, Tiruppur.

6.The Chief Manager,
Power Grid Corporation of India Ltd.,
Coimbatore Main Road,
K.Paramathy (Post),
Karur District - 639 111.

7.The Revenue Divisional Officer,
Tiruppur,
Tiruppur District.

8.The Deputy Superintendent of Police,
Palladam Range,
Tiruppur District.

9.The Tahsildar,
Palladam Taluk,
Tiruppur District.

10.K.Sivasubramaniyan

11.Balasubramanian

12.Sivagami

13.N.Palanichamy

14.Thirumalaisamy

15.Radha Jeyalakshmi

..Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent
against the order dated 10.03.2021 in W.P.No.19113 of 2020.

Prayer in W.P.No.19113 of 2020:

Issue a Writ of Certiorarified Mandamus or any other
appropriate, writ, order or Direction to call for the Records of
the Impugned Orders in

Na.K.No.10324/2020/E5 (dated 28/10/2020) Pertaining to
the 1st petitioner)

Na.Ka.No.10324/2020/E5 (dated 28/10/2020) Pertaining to
the 2nd petitioner

Na.Ka.No.10324/2020/E5 (dated 28/10/2020) Pertaining to
the 3rd petitioner



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Na.Ka.No.10324/2020/E5 (dated 28/10/2020) Pertaining to
the 4th petitioner
Na.Ka.No.10324/2020/E5 (dated 28/10/2020) Pertaining to
the 5th petitioner
Na.Ka.No.10324/2020/E5 (dated 28/10/2020) Pertaining to
the 6th petitioner
Na.Ka.No.10324/2020/E5 (dated 28/10/2020) Pertaining to
the 6th petitioner
Na.Ka.No.10324/2020/E5 (dated 28/10/2020) Pertaining to
the 7th petitioner
Na.Ka.No.10324/2020/E5 (dated 28/10/2020) Pertaining to
the 8th petitioner
Na.Ka.No.10324/2020/E5 (dated 28/10/2020) Pertaining to
the 9th petitioner
Na.Ka.No.10324/2020/E5 (dated 28/10/2020) Pertaining to
the 10th petitioner &
Na.Ka.No.10324/2020/E5 (dated 28/10/2020) Pertaining to
the 11th petitioner

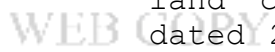
of the 5th Respondent and quash the same and consequently directing the Respondents to implement the Transmission Project namely "Pugalur HVDC Station - Edayarpalayam 400 KV (Quad) D/C Line" in the Route chosen by the 4th & 6th Respondents in the year 2017 i.e. in the Shortest Route in a Straight Line passing through the Lands in S.F.Nos: 204, 203, 202, 201, 210, 211, 212, 225, 226, 229, 238, 242, 254, 255, 258, 273, 274, 288, 289, 290, 305, 304, 303, 328, 844, 842, 833 & 834 in the Village of Vavipalayam, Palladam Taluk, Tiruppur District by considering the consent yielded the Owners of the said Lands, and pass any such further or other orders as this Hon'ble Court.

For Appellants : Mr.V.Raghavachari
for Mr.M.Guruprasad

For Respondents : Mr.AR.L.Sundaresan,
Senior Counsel
for M/s.Aiyar and Dolia for R6

Mr.R.Thyagarajan,
Senior Counsel
for M/s.Aiyar and Dolia for R4

Mr.Issac Mohanlal,
Senior Counsel
for Mr.P.Nethaji
for R10 to R15



(Delivered by M.M.SUNDRESH, J.)

2. We may note that on the very same Scheme, though for a different area dealing with the similar issues argued by the same counsel, the Division Bench of this Court in W.A.No.79 of 2019 by judgment dated 11.04.2019 dismissed the appeal filed by the land owners and the Special Leave Petition filed against the same was also dismissed.

"2. Facts in brief:

(ii) The second respondent is a Government of India Enterprise and The Central Transmission Utility working under the aegis of the Ministry of Power. We are concerned in this appeal with the role of the second respondent in the project undertaken by it, as can be seen from the following paragraphs of the affidavit filed by it:

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and National Power Grids, to facilitate transfer of power within and across the regions and is a Deemed Transmission Licensee in the capacity of "Central Transmission Utility" as envisaged under Sections 38 & 40 of The Electricity Act, 2003 as notified, vide Notification dated 27th November, 2003, published vide Gazette of India No.1084 dated 4th December 2003.

4. I submit that the Corporation is empowered under the provisions of the Electricity Act, 2003 (hereinafter referred to as the Electricity Act) and the Indian Telegraph Act, 1885 (hereinafter referred to as the Telegraph Act) to place and maintain power transmission Towers and to draw transmission lines under, over, along or across, and posts in or upon, any immovable property. Further, the aforesaid statutes, provide for the manner of removal of resistance/obstructions coming in the way of exercise of the powers conferred. The relevant provisions of the aforesaid enactments are discussed hereunder:

a. As per Section 14 of 'The Electricity Act, 2003', 'Central Transmission Utility' shall be deemed to be a 'Transmission Licensee' under the Act.

b. As per Sec.164 of 'The Electricity Act, 2003' the Appropriate Government may by order in writing for the placing of electric lines or electrical plant for the transmission of electricity confer upon the 'Licensee' any of the powers which the Telegraph Authority possesses under the Indian Telegraph Act, 1885.

c. The Government of India in exercise of powers conferred under Sec.164 of "The Electricity Act 2003" had passed an Order dated 24.12.2003, vide Gazette of India No.1148 authorizing this Respondent to exercise all powers vested in the Telegraph Authority under part III of the Indian Telegraph Act, 1885, in respect of Electrical Lines and Electrical plants established or maintained, or to be so established or maintained for Transmission of Electricity or for the purpose of Telephonic or Telegraphic



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communication, necessary for the proper co-ordination of the works.

d. This Respondent submits that Part III of the Indian Telegraph Act, 1885, relates to power to place Telegraph Lines and Posts. Under Section 10 thereof, the telegraph authority may, from time to time, place and maintain telegraph lines under, over, along or across, and posts in or upon, any immovable property, provided that (a)..... (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 Telegraphic Line or Post, and (c) , (d) in the exercise of the powers conferred by Section 10, the telegraphic authority shall do as little damage as possible, and when it has exercised those powers in respect of any property other than that of the local authority, it shall pay compensation, to all persons interested, for any damage sustained by them by reasons of exercise of those powers. Section 11 empowers the telegraphic authority at any time, for the purpose of examining, repairing, altering or removing any telegraph line or post, to enter on the property under, over, along, across, in or upon which the line or post has been placed."

6.I submit that this Respondent has been entrusted with the task of construction/execution of scheme/s-

- (i) Raigarh - Pugalur 6000 MW HVDC System
- (ii) AC System strengthening at Pugalur end
- (iii) Pugalur - Trichur 2000 MW VSC Based HVDC System, under prior approval of Ministry of Power, Central Electricity Authority-Government of India under Ref No.52/11(PGCIL)/2015-PSP&PA-II/251-252 dated 29.09.2015.

The subject matter of this Writ Petition pertains to Raigarh-Pugalur 6000 MW HVDC system with a 800 kV HVDC Transmission Line without any tapping in between connecting Raigarh in the State of Chattisgarh and Pugalur in the State of Tamil Nadu to facilitate evacuation and transfer of power various Generation plants located in the State of Chattisgarh state which passes through Chattisgarh, Maharashtra,



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Telangana, Andhra Pradesh & Tamil Nadu. The total length of the transmission line is 1843 Kms out of which 345 Kms passes through the State of Tamil Nadu. This project is one of the biggest power transmission project in India and the State of Tamil Nadu is the major beneficiary.

7. I state that the total cost of the project is about Rs.24,000 crores. The cost of the Transmission Project connecting Raigarh and Pugalur is estimated at Rs.19,000 crores including the Sub-stations at Raigarh and Pugalur. Under Scheme I of the project ± 800 kv Bipole HDVC link connects Raigarh (Chattisgarh) HDVC Station and Pugalur (Tamil Nadu) HDVC Station. The line length is 1,843 Kms directly connecting both the HDVC Terminal having capacity of 6000 MW. Under Scheme II, AC system strengthening, there are 5 double circuit 400 kV HVAC lines connecting Pugalur, Arasur, Udumalpet, Tiruvallam, (POWERGRID) and Edayarpalayam (TANTRANSCO) Sub-stations. Under the Scheme, major beneficiary is the State of Tamil Nadu.

8. Under Scheme I, viz., the line connecting Raigarh and Pugalur the length of the transmission line is about 345 kms in the State of Tamil Nadu consisting of 966 towers. The schedule for project completion is May 2019. As on date, foundation works for erection of 620 Towers have been completed for the entire project area. Erection of towers numbering 483 has been completed. Stringing work of about 45KMs has also been completed and the balance works are in full swing. I state that as far Dharmapuri District is concerned, 184 towers are proposed covering 69 kms. Out of 184 towers, foundation works in 170 locations have been completed. Erection of towers numbering 152 have been completed and the stringing of 8.44 km out of 69 km completed and the works are in progress. I state that in Dharmapuri District, out of 500 land owners (approx), 261 have received crop compensation to the tune of Rs.5.51 crores and tree compensation to an extent of Rs.7.91 crores."



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3. While implementing the erection of towers, the following procedure is adopted:

"Procedure for erection of towers

1. The entire distance of 1845 kms from Raigarh to Pugalur is divided into packages viz., 10 packages.
2. Each package is for about 180 kms.
3. For Tamil Nadu, 345 kms is divided into 2 packages viz., Package 9 and 10.
4. A straight line is drawn between Raigarh and Pugalur.
5. Regarding Tamil Nadu, the starting point is Chittoor. A straight line called "BEE LINE" is drawn from Chittoor to Pugalur.
6. The Engineers go along the BEE LINE as nearly as possible avoiding settlements, Railway line, Road crossing, River, Forest.
7. They conduct a walk over survey.
8. They propose three alternate routes to find out which is the most economically and technically feasible route.
9. Then the Angle points are also fixed.
10. Thereafter, a detailed survey is made.
11. The above exercises are shown in the Map.
12. The next stage is whatever is there in the Map is transferred to the ground viz., marked in the ground.
13. The angle points are fixed on ground by using Global Positioning System (GPS) instruments.
14. The ground level is then checked. Geographical details are collected and line peg mark fixed.
15. A profile is made on the above details.
16. Then for every 20 meters, ground level measurement is taken.
17. Normally, the space between two towers is 400 meters. The span will depend on the ground level, road, railway track, river and settlements and technical aspects.
18. Then the tower schedule is prepared.
19. On due approval of the above, check survey is done.
20. Exact tower point is fixed with the help of survey instrument.
21. It is only at that stage, we know that exact survey number over which the tower is to be located.



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22. After fixing the tower location, the details as to the ownership and the person who is the owner of the land are obtained from the revenue authorities."

4. Thus, the second respondent does not know the exact survey numbers, extent of land and the identity of the persons on whose lands, transmission towers were to be erected. Once suit lands are identified, approval is accorded for erecting the transmission towers.

5. It appears that the transmission tower lines were proposed to pass through the lands of the appellants. They raised their objections and further writ petitions were filed and directions were issued to the first respondent to consider them. The second respondent also approached the first respondent seeking to invoke Section 16 of the Act. Summons were issued to the appellants for their appearance. While declining to appear, the appellants sought for numerous documents running to 14 numbers. Incidentally, they made requests to make measurements in their presence along with an expert of their own. As the requests made were not acceded to, they declined to appear before the first respondent. Having no other option and taking note of the fact that the second respondent has also sought for removal of obstruction, the impugned orders had been passed, inter alia, holding that the project is an absolute necessity in public interest and the short term crops can be raised at the places in which the lines were drawn, adequate compensation would be paid there is no possibility of considering the alternative route and the project nearing completion. Accordingly, the orders were passed in favour of the second respondent granting permission under Section 16 (1) of the Act."

4. Now, about eighty percent of the work has been completed except 11 towers being the subject matter of the impugned order.

5. As the appellants raised objections, the contesting respondents approached the fifth respondent for appropriate orders invoking Section 16(1) of the Indian Telegraph Act read with Section 14 of the Electricity Act.



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6. Mr.V.Raghavachari, the learned counsel appearing for the appellants made the following submissions:

(i) There is a change of alignment from the one proposed in the year 2017 to in the year 2019 pursuant to which the towers are sought to be laid.

(ii) The learned Single Judge is not correct in holding that the appellants are not entitled to be heard.

(iii) The opinion given by the learned Attorney General (as he then was) has not been taken into consideration with respect to the laying of towers. and

(iv) The principle of natural justice has not been followed in letter and spirit.

7. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for one of the respondents submitted that the learned Single Judge satisfied himself with respect to the violations of the principle of natural justice. Even in the subsequent communications given by the appellants, as could be seen from the documents filed on their behalf, they have acknowledged the factum of the notices having been served on them but refused. Some of them have received the notices and given their objections. There is no malice in law which is involved. There was no straight line in the year 2017 as claimed by the appellants and, therefore, the only approved route alignment has been made in the year 2019 and the same is given effect to. Therefore, the appeal deserves to be rejected.

8. The learned Single Judge considered all the objections raised. On the very same issue of the subsequent alignment, the learned Single Judge rightly held that it is factually incorrect. Even in the Division Bench judgment referred supra, it has been held that there is no malice in law. The fact remains that majority of the project, which is in public interest has already been done. The total cost of transmission is about Rs.21,735 crores. The project runs through different States such as Karnataka, Telangana, Andhra Pradesh and Tamil Nadu. Therefore, the finding rendered by the learned Single Judge does not warrant interference with respect to the allegations of the change in alignment.

9. On the scope and applicability of Sections 10 and 16 of the Indian Telegraph Act, the Division Bench of this Court after taking note of the earlier decisions rendered, has held as follows:-

"9. We do not wish to reproduce various judgments on the interpretation of the provisions governing. They have been dealt with



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in extenso by this Court and the Apex Court in numerous cases. Suffice it to refer to the recent judgment of the Apex Court in Power Grid Corporation (India) Limited Vs. Century Textiles and Industries Limited and Others ((2017) 5 SCC 143), wherein it has been held as under:

"23. Section 10 of the Indian Telegraph Act, 1885 empowers the Telegraph Authority 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 Indian Telegraph Act, 1885 makes it abundantly clear that while acquiring the power to laydown telegraph lines, the Central Government does not acquire any right other than that of user in the property. Further, Section 10(d) of the Indian 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 person interested for any damage sustained by them by reason of the exercise of those powers."

Thus, Section 10 of the Act confers powers to the second respondent to place and maintain telegraphic lines and posts. We have no difficulty in holding that there is an adequate authorisation given to the second respondent by the Government of India in exercise of power under Section 164 of The Electricity Act, 2003 by the order dated 24.12.2003.

10. On the scope of Section 16 of the Act vis-a-vis Section 10, the Division Bench of this Court in (ii) C.Ram Prakash and Another Vs. Power Grid Corporation (India) Limited and Others (2011-4 L.W. 924) in which one of us (MMSJ) is a party and author has held as follows:

"22. Scope of Sections 10 and 16 of the Indian Telegraph Act, 1885: The power under Section 10 of the Indian Telegraph Act, 1885 is rather wide and extensive. While exercising the power, it is not necessary for the Respondent No. 1 to put the individuals,



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who owned the land on notice. Admittedly, the Respondent No. 1 has got power under Sections 10 and 16 of the Indian Telegraph Act, 1885. Such a power has been conferred upon the Respondent No. 1 in public interest. The exercise of the said power by erecting the towers with overhead lines would not amount to an acquisition. It is true that such an action would diminish the value of the property of an individual, but at the same time it cannot be termed as an acquisition. Since Section 16 of the Indian Telegraph Act, 1885 provides mechanism of compensation, the Appellants can have no grievance.

23. Section 16 of the Indian Telegraph Act provides for a mechanism by which the Respondent No. 1 can approach the second Respondent, if there is an obstruction or resistance. It is not necessary that in each and every case the Respondent No. 1 will have to approach the second Respondent whenever there is an objection. The word objection has got a different connotation than the words resistance or obstruction. A resistance or obstruction would mean preventing the statutory body from carrying out the public duty. Whereas an objection is merely a form of protest. Further, under Section 16 of the Indian Telegraph Act, the Respondent No. 2 has got no power to go into the merits of the case and find out as to whether the alignment proposed is correct or not and there is any possibility of realignment. The prescription of Section 16 of the Indian Telegraph Act is very specific to provide aid to the Respondent No. 1 to perform its statutory duty. Considering the scope of Section 10 of the Indian Telegraph Act vis-a-vis Section 16 of the Indian Telegraph Act, it has been held by the Division Bench of the Delhi High Court in *Scindia Potteries v. Purolator India Ltd.* MANU/DE/0189/1980 : AIR 1980 Delhi 157 as follows: 9... The exercise of power under Section 10 is not conditional on compliance with the provisions of Section 16(1) of the Act. The power given under Section 10 is absolute. It is only when there is a resistance or obstruction in the exercise of that power that the occasion to approach the



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District Magistrate arises. If there is no resistance or obstruction, there is no occasion for the telegraph authority to approach the District Magistrate. The alleged oral protest relied upon by the Appellant appears to us to be a made up story. Two telegraph poles were affixed on the Appellants' property in February, 1974. The telephone lines and connections were thereafter given from time to time. Till the landlord-tenant dispute arose between the Appellant and M/S. Purolator India Ltd., no objection was raised by the Appellant. No doubt in April, 1978 the Appellant gave notice to the telegraph authority under Sections 17 and 19A of the Act and may be that the telephone connections in May, 1978 can be treated as the ones objected to but then Sections 17 and 19A have a different purport. The resistance and obstruction envisaged by Section 16(1) of the Act is different. This will be clear on a reading of Sub-section (1) of Section 16 of the Act. It is for the purpose of Section 188 I.P.C. that an application is to be given under Section 16 (1) of the Act to the District Magistrate. Section 188, I.P.C. makes the disobedience of an order duly promulgated by the public servant an offence. Section 16 is really in aid of the discharge of statutory duty and exercise of statutory power postulated by Section 10. We are in respectful agreement with the ratio laid down therein."

11. Thus, in view of the same, nothing more is to be stated. In fact, we have also called the officer concerned and perused the records. We also permitted the learned counsel for the appellants to do so. The officer has also explained the procedure which we have recorded supra. We do not find any malice in law or fact. The second respondent is carrying out its statutory duty. Now the entire project is over insofar as the appellants are concerned. We may note that two of the writ petitioners also joined the other in filing the writ petitions after receiving compensation, which cannot be appreciated. Similarly, one of the appellants has also received the compensation amount. It is the appellants who



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approached the first respondent and for the reasons known, they did not appear for hearing. They have asked for numerous documents, which is for the purpose of dragging on the proceedings. Order under Section 16(1) of the Act was passed not only on the request of the appellants but also that of the second respondent. The role available to first respondent is rather limited. It is neither a supervisory nor an adjudicating authority over the second respondent. When the element of expertise is involved and the same is undertaken by the statutory body as per law, the power of judicial review will have to be entertained with extreme caution. We cannot interfere with the matter on some apprehension expressed by the appellants."

10. Thus, nothing more is required to be considered in this regard.

11. The appellants themselves tacitly acknowledged in the subsequent representations that they did refuse to receive the notices issued. We have already reiterated the view taken in the earlier round of litigation touching upon the very same project on the question of law involved as upheld by the Apex Court. Therefore, we do not wish to undertake to re-do the said exercise. The question of compensation is the issue, which has to be dealt with separately. The views expressed by the learned Attorney General (as he then was) do not deal with the provisions of the enactment and it is nobody's case that the appellants are not going to get adequate compensation. We find overwhelmingly the public interest involved in giving effect to the project which has already been delayed by the present proceedings. However, we record the submission made on behalf of the learned counsel appearing for the respondents that adequate compensation would be paid within a period of two weeks from the date of completion of work in tune with the impugned order passed.

12. The writ appeal stands dismissed accordingly. No costs. Consequently, connected C.M.P.Nos.7483 and 7484 of 2021 are closed.

Sd/-
Deputy Registrar (CS)

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Sub Assistant Registrar



To:

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1. The Secretary to Government,
Union of India
Ministry of Power,
Shram Shakti Bhawan,
Rafi Marg, New Delhi.
2. The Chairman,
Central Electricity Authority,
Ministry of Power,
Government of India,
Sewa Bhawan, R.K.Puram,
New Delhi - 110 066.
3. The Principal Secretary to Government,
State of Tamil Nadu
Energy Department,
Fort St. George, Chennai - 09.
4. The Managing Director,
Power Grid Corporation of India Ltd.,
B-9, Qutab Institutional Area,
Katwaria Sarai,
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5. The District Collector,
Office of the District Collector,
Tiruppur District, Tiruppur.
6. The Chief Manager,
Power Grid Corporation of India Ltd.,
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7. The Revenue Divisional Officer,
Tiruppur,
Tiruppur District.
8. The Deputy Superintendent of Police,
Palladam Range,
Tiruppur District.



9.The Tahsildar,
Palladam Taluk,
Tiruppur District.

+1cc to M/s.Guruprasad, Advocate (SR No.24403)

+1cc to M/s.Aiyar and Dolia, Advocates (SR No.23909)

W.A.No.1178 of 2021

AK (CO)
PR (12/08/2021)