

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED DATE :03.02.2021

PRONOUNCED DATE :31.03.2021

CORAM

THE HONOURABLE THIRU JUSTICE B.PUGALENDHI

W.P.Nos.17334 and 15896 of 2020
and

W.M.P.Nos.21457 and 19758 of 2020

W.P.No.17334/2020

1. P.Chinnasamy
2. C.PonanthalPetitioners

Vs.

1. The District Collector,
Collectorate,
Palladam Road,
Tiruppur 641 664,Tiruppur District.
2. The Chairman,
Tamil Nadu Electrical
Transmission Corporation,
144, Anna Salai,Chennai 600 002.
3. The Superintending Engineer,
General Construction Circle,
Electrical Wire Line Construction,
Tamilnadu Electrical
Transmission Corporation,
Tatabad, Coimbatore 641 012.
4. The Executive Engineer,
Electrical Wire Line Construction,
General Construction Circle,
Tamilnadu Electrical
Transmission Corporation,
Perundurai, Erode District.
5. M/s.Suzlon Global Services Ltd.,
rep. by its Managing Director,
104, 1st Floor, Delta Wing,
Raheja Towers,
177, Anna Salai, Chennai 600 002.Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Na.Ka.No.6450/2020/E5 dated 8.10.2020 passed by the first respondent, quash the same and consequently forbear the respondents from interfering with the petitioners' right to property measuring 6 acres in New S.F.No.772/1 (Old S.No.750-B) and 2.13 acres in New S.F.No.773 (Old S.No.750-A), Suriyanallur Village, Dharapuram Taluk, Thiruppur District.

For Petitioner : Mr.N.Manokaran

For R1 : Mr.S.N.Parthasarathi,
Government Advocate

For RR2 to 4 : Mr.Abdul Saleem, Standing Counsel
For R5 : Mr.Ajmal Khan, Senior Counsel for
M/s.Ajmal Associates.

W.P.No.15896 of 2020

1. Jayanthi
2. S.Bhuvaneswari
3. S.Parimala Devi
4. Shanthi
5. T.Govindaraj
6. S.Venkidusamy
7. T.Kangeya Gounder
8. T.Palanisamy
9. A.Balasubramaniam
10. Subramaniam
11. Ganesamoorthy

...Petitioners

vs

1. The State of Tamil Nadu,
rep. by its Principal Secretary
to the Government,
Energy Department,
Fort St. George,
Chennai 600 009.
2. The Joint Managing Director,
Tamil Nadu Generation & Distribution
Corporation (TANGEDCO),
10th Floor, NPKRR Maligai,
144 Anna Salai, Chennai 600 002.

3. The District Collector,
Office of the District Collector,
Tiruppur District, Tiruppur.
4. The Chief Engineer/NCES,
Tamil Nadu Generation & Distribution
Corporation (TANGEDCO),
2nd Floor, Eastern Wing,
NPKRR Maligai, 144 Anna Salai,
Chennai 600 002.
5. The Superintendent Engineer,
General Construction Circle,
TANTRANSCO,
Dr.Subbarayan Road,
Tatabad, Coimbatore-12.
6. The Executive Engineer,
General Construction Circle,
TANTRANSCO, Ellamedu, Ingur,
Perundurai Taluk,
Erode District.
7. The Superintendent of Police,
Tiruppur District Police,
Tiruppur.
8. The Deputy Superintendent of Police,
Dharpapuram Range, Tiruppur District
9. M/s.Sulzon Energy Ltd.,
rep. by its General Manager,
104, 1st Floor, Delta Wing,
Raheja Towers,
177 Anna Salai,
Chennai 600 002.

Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the impugned orders in Na.Ka.No.6450/2020/E5 dated 8.10.2020 (in respect of all the petitioners) of the 3rd respondent and quash the same as illegal, unlawful and unconstitutional.

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

For RR1, 3, 7 & 8 : Mr.S.N.Parthasarathi,
Government Advocate

For RR2, 4, 5, 6 : Mr.Abdul Saleem, Sending Counsel

For R9 : Mr.Ajmal Khan, Senior Counsel for
M/s.Ajmal Associates.

COMMON ORDER

(This matter is taken up through Video Conferencing)

The petitioners are agriculturists having their lands at Suriyanallur Village and Kolumanguli Village, Dharapuram, Tiruppur District and have filed these writ petitions as against the orders of the District Collector, Tiruppur dated 8.10.2020 in and by which the District Collector has given enter upon permission to the power generating company called M/s.Suzlon Energy Limited to erect High Tension Towers in the petitioners' lands on certain conditions with the powers conferred upon him under Section 16(1) of the Indian Telegraph Act.

2. M/s.Suzlon Global Services Ltd., (hereinafter referred to as SUZLON) the power generating Company is in the process of laying 26 High Tension Towers to carry the power generated by them by way of Windmills from Nezhali 110/33 Sub Station located at Nezhali Village of Kangayam Taluk, Tiruppur District to the Rasipalayam 400 KV Substation and during such process, they faced some difficulty in entering into the lands earmarked for such erection of Towers. The land owners/farmers of the area in question, having certain apprehensions that if the Towers are permitted to be erected, the access to their land would be restricted, the land value would decrease, they may not be in a position to get any financial assistance with the bankers against their property and it would be rendered unusable, made certain objections to the District Collector for the laying of the towers through their agricultural lands.

3. Due to the objections raised by the petitioners, M/s.Suzlon Global Services Limited had also filed a petitions before the District Collector, for necessary order to enter upon on 5.8.2020 and 28.8.2020. Based on such petitions, the District Collector issued a notice to the respective petitioners for enquiry scheduled on 11.9.2020, 18.9.2020 and 1.10.2020. Despite issuance of such notices, some of the petitioners/land owners did not participate in the enquiry and some of the petitioners/land owners participated in the enquiry and expressed their grievance and the consequences they apprehended that the access to their land would be restricted, the land value would decrease, they may not be in a position to get any financial assistance with the bankers against their property and it would be rendered unusable.

4. The District Collector, after considering the grievance expressed some of the land owners, has passed the impugned orders granting permission to the power generating company SUZLON to erect the Towers in view of the larger public interest involved in the matter viz., adequate power requirement of future and such impugned orders are under challenge in these writ petitions.

5. Mr.N.Manokaran, learned counsel appearing for the petitioners in W.P.No.17334 of 2020 and V.Raghavachari, learned counsel for the petitioners in W.P.No.15896 of 2020, in support of their writ petitions, made their submissions that already during the period from 1989 to 1999, a 400 KV line to connect Rasipalayam and Anaikadavu was laid in some of the lands of the same locality without getting any order 'enter upon permission' and also without paying any compensation to the land owners concerned and now once again the present project is initiated without even properly serving any notice to some of the petitioners/land owners concerned. It is further submitted by the learned counsels that the 'enter upon permission' was obtained by SUZLON under the provisions of Indian Telegraph Act by misleading as if they are the Authorities under the Indian Telegraph Act when they have no such authority and if at all, they ought to have proceeded only under Section 10 of the Electricity Act, 2003. The learned counsels for the petitioners have also sought to canvass the grievances of the petitioners that the access to their land would be restricted, the land value would decrease, they may not be in a position to get any financial assistance with the bankers against their property and it would be rendered unusable. In addition to the above submissions, the learned counsels for the petitioners assailed the impugned order on the ground of audi alteram partem rule.

6. The impugned orders refer to the objection made by the petitioners for erection of towers and therefore, SUZLON has approached the District Collector as per the provisions of the Telegraph Act. The District Collector, in all fairness, ought to have conducted an enquiry with all the petitioners, but without providing an opportunity has simply followed the Report of the officials as summons were served on the petitioners and proceeded with the enquiry even in the absence of some of the petitioners.

7. According to the learned counsel for the petitioners, the petitioners never received any summons or notice and they have not refused the same and those notices alleged to have been served through the officials did not have the names of the petitioners and the attempted service on a non-existing person is not a service. All along these petitioners are making their representations to the Competent Authority viz., the District

Collector on various dates. When the petitioners are agitating the issue from several months, the stand of the District Collector that they have refused to participate in the enquiry is unbelievable and a created effort to defeat the interest of the petitioners. When these petitioners have approached the Competent Authority time and again the District Collector hurriedly passed the impugned orders based on the representation of SUZLON. As per Section 68 and Section 164 of the Indian Electricity Act combined with Section 10 and 16 of the Indian Telegraph Act, the District Collector, the Competent Authority ought to have given a fair opportunity to all the petitioners/land owners and conducted an enquiry with an open mind and should have ensured whether SUZLON has to be permitted to erect the Towers based on the representation of the petitioners.

8. In support of their submissions, the learned counsels for the petitioners has relied on the following judgments;

(i) K.S.Natarajan & others Vs. Government of India & others, reported in 2018(8) MLJ 321 dated 17.09.2018.

(ii) Mr.Periyasamy & others Vs. The District Collector & others in W.P.No.5444 of 2019 dated 26.02.2019.

(iii) P.Balamani & another Vs. The District Magistrate & others reported in 2008 (2) CTC 555 dated 14.03.2008

(iv) K.Pechimuthu & others Vs. Power Grid Corporation & others reported in 2018 SCC OnLine Mad 3418.

9. The relevant portions of the judgments cited by the learned counsel for the petitioner are as follows:-

(i) K.S.Natarajan & others Vs. Government of India & others, reported in 2018(8) MLJ 321 dated 17.09.2018.

"15. Needless to mention that any statute, which provides for the action being taken against the citizens of this country is to be taken only by following the principles of natural justice to say the least. Even in the absence of any particular provision, the fundamental principles of natural justice are to be read in every statutory scheme. Otherwise, any consideration by the official concerned and the grievance of the citizens would render the decision making process meaningless and nugatory. What is to be expected from the second respondent is to consider the objections raised by the petitioners independently, without being guided by the deliberation, which took place outside the realm of consideration. That would alone be

in fulfilment of the statutory responsibility cast on the Authority concerned. This is become more imperative, when the land owners are being deprived of the full land value and would suffer curtailment of rights in substantial measure while dealing with their own lands, once erection of high voltage transmission wires takes place. In such view of the matter, the least that could be done in the matter by the second respondent is to give an opportunity of personal hearing to the petitioners before passing any orders. In this case, the second respondent appears to have not considered the objections of the petitioners in all earnestness, however, chosen to dispose of the objections with little application of mind."

(ii) Mr. Periyasamy & others Vs. The District Collector & others in W.P.No.5444 of 2019 dated 26.02.2019.

"7. Perusal of the notice dated 14.01.2019 would show that the petitioners were called upon to appear on 21.01.2019 with their reply to the common counter filed by the 2nd respondent. Further, perusal of the track consignment issued by the Postal Department clearly indicate that the said notice dated 14.01.2019 was served on petitioners only on 22.01.2019. Therefore, it is evident that the said notice, stipulating the date of hearing as 21.01.2019, was served on the petitioner only on the next day i.e., 22.01.2019. Therefore, the petitioners are justified in contending that the impugned orders were passed without hearing them and in violation of principles of natural justice. At the same time, this Court is not expressing any view on the rival contentions made by the parties in respect of the merits of the matter, as it is for the 1st respondent to consider and decide. Since, this Court is satisfied that the impugned orders are passed in violation of principles of natural justice as discussed supra, this Writ Petition is allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the 1st respondent for issuing fresh notice to the petitioners by indicating the date of hearing. After receipt of such notice, the petitioners should appear on the said date without fail and cooperate

with the enquiry so as to enable the 1st respondent to pass fresh orders on merits and in accordance with law. The 1st respondent shall issue such notice within a period of two weeks from the date of receipt of a copy of this order by indicating the date of hearing. On conducting such enquiry, the first respondent shall pass fresh orders within a period of four weeks thereafter. It is open to the petitioners to seek for such of those documents which are relevant for considering the objections raised by the petitioners in the enquiry before the first respondent. No costs. Consequently, connected miscellaneous petition is closed."

(iii) P. Balamani & another Vs. The District Magistrate & others reported in 2008 (2) CTC 555 dated 14.03.2008

"25. A careful analysis of the impugned proceedings passed by the District Magistrate/District Collector, pursuant to the orders of this Court, would go to show that they are non-speaking orders, as the District Magistrate has not at all gone into the objections in detail to consider the same independently, by applying his mind. Reasoning is the heartbeat of every conclusion and without the same, the conclusion becomes lifeless. The rationale behind it is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made. Therefore, I am not inclined to go into the other aspects of the matter, which the learned counsel on either side have advanced their arguments. I am only inclined to interfere with the impugned orders, as they are non-speaking ones. As such, the impugned orders cannot be sustained and are set aside, remitting the matters back to the District Collector for consideration."

(iv) K. Pechimuthu & others Vs. Power Grid Corporation & others reported in 2018 SCC OnLine Mad 3418.

"10. Irrespective of the rival submissions, this Court is of the view that since the objections raised by the petitioners by way of representations dated 31.01.2018 to the respondents are stated to be pending, it would be appropriate to direct the same to be disposed of, in accordance with law, before the

proposed action is taken by the respondents.

11. Accordingly, the respondents are directed to consider the <http://www.judis.nic.in> petitioners' representations dated 31.01.2018 and pass appropriate orders on merits and in accordance with, after affording an opportunity of personal hearing to all the parties, within a period of six weeks from the date of receipt of a copy of this order."

10. Per contra, Mr.Ajmal Khan, learned Senior Counsel appearing for SUZLON submitted that this is a project of erecting 26 High Tension Towers to carry the power generated by them by way of Windmills from Nezhali 110/33 Sub Station located at Nezhali Village of Kangayam Taluk, Tiruppur District to the Rasipalayam 400 KV Substation so as to carry the uninterrupted power supply to rural areas. He would further submit that out 26 towers, they do not have any difficulty with erection of 15 towers and compensation for the land owners concerned is also paid and it is only due to the objections in erection of these 11 towers in question, the total project is stalled now and in fact, with regard to these 11 towers also, it is not exactly erection of towers, but, only the case of carrying the overhead power line. With regard to the objections raised by the petitioners that it is by misleading the competent authority, SUZLON has obtained the 'enter upon permission', the learned Senior Counsel Mr.Ajmal Khan would submit that TANGEDCO, by its proceedings dated 21.7.2015, had authorized SUZLON to execute the works and the TANGEDCO being the authority notified under Section 164 of the Electricity Act, 2003 by the Government of Tamil Nadu, SUZLON need not necessarily be a licensee to obtain the 'enter upon permission' under the provisions of the Indian Telegraph Act.

11. The learned Senior Counsel appearing for SUZLON has relied upon the following judgments in respect of his contention:-

(i) W.A.No.464 of 2008 dated 10.04.2008 in R.Kannan Vs. Power Grid Corporation (India) Limited.

(ii) C.Ram Prakash and another -Vs- Power Grid Corporation of India Ltd., reported in 2011 (4) MLJ 924 in W.A.(MD).No.602 of 2011 dated 23.08.2011.

(iii) Sri Vignesh Yarns Pvt. Ltd., rep. by its Managing Director, Sri. T.Sivakumar, Tiruppur -Vs- S.Subramaniam, S/o. Sennimalai Gounder and others reported in (2013) 1 MLJ 56 in

W.A.Nos.1049 etc., of 2012 dated 16.11.2012.

(iv) Power Grid Corporation of India Limited -Vs- Century Textiles and Industries Limited and others reported in (2017) 5 SCC 143 in C.A.No.10951 of 2016 dated 14.12.2016.

(v) R.Raja and 3 others -Vs- The District Collector, Dharmapuri District, Dharmapuri and another dated 11.04.2019 in W.A.No.79 of 2019.

(vi) Vai Palanisamy and 10 others -Vs- Union of India, rep. by its Secretary, Ministry of New and Renewable Energy and 10 others dated 26.06.2019 in W.P.No. 15077 of 2019.

(vii) S.Selvaraj -Vs- The District Collector, Erode District and others etc dated 16.07.2019 in W.A.No.2032 of 2019.

(viii) R.Raja & others Vs. District Collector & others in SLP (C) No.11596 of 2019 dated 22.07.2019.

(ix) Vai Palanisamy Vs. Union of India & others in W.A.No.2167 of 2019 dated 29.07.2019.

(x) M.Duraisamy Vs. The District Collector & another in WP (MD) No.17167 of 2019 dated 27.08.2019.

(xi) Mr.P.Duraisamy Maharajha Rice Mills (P) Ltd., Vs The District Collector cum District Magistrate in W.A.No.3913 of 2019 dated 25.11.2019.

12. The relevant portions of the judgments cited by the learned Senior Counsel appearing for SUZLON are as follows:-

(i) W.A.No.464 of 2008 dated 10.04.2008 in R.Kannan Vs. Power Grid Corporation (India) Limited.

"9. On behalf of the Corporation, the original plans were produced before us and on examination of the materials placed on record, we are satisfied that the route selected by the Corporation is the best possible route and in any event, in our opinion, it is not permissible to the District Magistrate to accept such opinion of the technical expert

and to suggest another route for the purpose of laying down the transmission lines. It is required to be noted that the route selected by the Corporation is the shortest route cutting through the Reserve Forest area, which is also in consonance with the directions of the Supreme Court and in fact, the Corporation has also approached the Supreme Court and is awaiting orders for cutting the required number of trees in the Gudalur Forest Area, where three towers would be erected. Moreover, under Section 16(1) of the Indian Telegraph Act, the only question which the District Magistrate is empowered to decide is whether to permit the authority to exercise the power under Section 10 of the Act and the jurisdiction cannot be expanded to empower the District Magistrate to suggest alternative route for the purpose of laying down the transmission lines on the basis of the so-called report, when it is on record that the Corporation has chosen the most techno-economically feasible route."

(ii) C.Ram Prakash and another -Vs- Power Grid Corporation of India Ltd., reported in 2011 (4) MLJ 924 in W.A.(MD).No.602 of 2011 dated 23.08.2011.

"11. Definition of the word 'Post':
Section 3 of the Indian Telegraph Act, 1885 defines the word 'post' in the following manner:

"3. (5) "post" means a post, pole, standard, stay, strut or other above ground contrivance for carrying, suspending or supporting a telegraph line;" There is absolutely no substance in the arguments of the learned counsel for the appellants that the word 'post' does not include a 'tower', since the definition is rather exhaustive. While defining the word 'post', it has been specifically stated that it would also include other above ground contrivance for carrying, suspending or supporting a telegraph line.

12. It is one of the principles of interpretation of a provision that the general words which follow specific words will have to be read by applying the principle of ejusdem generis. The Act was introduced in the year

1885. Therefore, there would not have been any possibility to include the word 'tower' at that time since it is a subsequent scientific innovation. Considering the object and reasoning and the wider amplitude provided under the clause, by applying the principle of ejusdem generis, we have no doubt in our mind, the word tower would also form part of the definition of the word 'post'."

(iii) Sri Vignesh Yarns Pvt. Ltd., rep. by its Managing Director, Sri. T.Sivakumar, Tiruppur -Vs- S.Subramaniam, S/o. Sennimalai Gounder and others reported in (2013) 1 MLJ 56 in W.A.Nos.1049 etc., of 2012 dated 16.11.2012.

"19. As we have observed earlier, as per the scheme of the Act, the District Collector was not empowered either under Section 16 or Section 17 of the Indian Telegraph Act to decide upon the route and his power was more in the nature of execution of a decision taken under Section 10 of the Act or under Section 67 or 68 of the Electricity Act, 2003. Therefore, when the experts namely the officials of the Board took a definite stand that the original route which was proposed was technically more feasible and it would be in the interest of the public, since the route was along the existing Panchayat road, we find there is absolutely no justification for the Collector to pass an order on 18.7.2011 to change the route which was not found to be technically feasible by the experts. Further, the entire work has been completed except for nine towers and at that stage it would be improper for the District Collector to alter the route, and adopt an alternate route which was found not technically feasible. It is stated that the expenses incurred so far is about Rs.150 crores for erecting lines, apart from Rs.3,000 crores which was spent for construction of the new Thermal Power Plant at Mettur and the power which has to be evacuate through its supply line is to provide uninterrupted power supply to both agriculture and industrial development. Therefore, by virtue of the delay, the power line could not be erected on time though the Power Plant was ready to generate about 600 MW power by the end of March, 2012."

(iv) Power Grid Corporation of India Limited -Vs- Century

Textiles and Industries Limited and others reported in (2017) 5 SCC 143 in C.A.No.10951 of 2016 dated 14.12.2016.

"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 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."

(emphasis supplied)

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 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."

(v) R.Raja and 3 others -Vs- The District Collector, Dharmapuri District, Dharmapuri and another dated 11.04.2019 in W.A.No.79 of 2019.

"7. Mr.V.Raghavachari, learned counsel appearing for the appellants vehemently contended that every thing is shrouded with mystery. There is a reasonable apprehension that the original plan was deviated for the reasons known. The documents sought for ought to have been furnished. A narrow restrictive interpretation cannot be given to Section 10 r/w 16 of the Act. This Court can certainly exercise its extraordinary jurisdiction and come to the aid of the appellants. In support of his submission, reliance has been made on

the following decisions:

- (i) R.Santhana Raj Vs. The Chief Engineer, Non-Conventional Energy Source (2012 (1) CTC 504)
- (ii) [The State of U.P. vs. Raj Narain and Others](#) ((1975) 4 SCC 428)
- (iii) P.Arimutharasu Vs. The Superintending Engineer (Wind Farm Project) TNEB & Others (Madurai Bench) (2015-1 L.W. 353)
- (iv) P.Balamani and Others Vs. The District Magistrate and District Collector and Ors. (2008(2) CTC 555)
- (v) Reliance Petrochemicals Ltd., Vs. Proprietors of Indian Express News Papers, Bombay Pvt. Ltd., and Others ((1988) 4 SCC 592)
- (vi) M.Nagaraj and Others Vs. Union of India and Others ((2006) 8 SCC 212)
- (vii) Natwar Singh Vs. Director of Enforcement and Another ((2010) 13 SCC 255)
- (viii) Indian Soaps and Toiletries Makers Association Vs. Ozair Husain and Others ((2013) 3 SCC 641)
- (ix) Chingleput Bottlers Vs. Majestic Bottling Company ((1984) 3 SCC 258)
- (x) N.Lakshmi Vs. The District Collector, Erode and Others (W.P.No.20360 of 2016 dated 19.04.2017)
- (xi) Indu Bhushan Dwivedi Vs. State of Jharkhand and Another ((2010) 11 SCC 278)

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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, 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 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 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. Now the substantial part of the project is over insofar as the appellants are concerned. We are not dealing with an acquisition per se. There is no material available to controvert the reasoning in the impugned orders. Admittedly, there is overwhelming public interest exists in favour of the second respondent. Every delay would cause serious financial implications among others. It might have a spiralling effect on the project as well. The appellants cannot ask the first respondent to direct the second respondent to furnish all the documents which they seek. There is no arbitrariness in the procedure adopted by the second respondent. Certainly, the appellants can seek for appropriate compensation for the diminishing value of their lands caused by the overhead lines and erection of towers. Thus, we do not find any merits in this appeal."

(vi) Vai Palanisamy and 10 others -Vs- Union of India, rep. by its Secretary, Ministry of New and Renewable Energy and 10 others dated 26.06.2019 in W.P.No. 15077 of 2019.

"17. It is a sorry state of affairs that despite clear pronouncements of this Court on various occasions on this project, time and again under one pretext or other, writ petitions are filed on mis-information being percolate among public

through sensational and irresponsible news. Those persons are bound to introspect themselves whether they are truly exposing the cause of public.

18. After enjoying all comforts of electricity in their homes and business establishment, making fake protest for public consumption and mislead the public to stall the project, which by and large going to provide uninterpreted electricity supply, is only an attempt by some vested interest through the petitioners to keep the state in dark and perennial starvation for electricity. This Court cannot be privy to the said evil design."

(vii) S.Selvaraj -Vs- The District Collector, Erode District and others etc dated 16.07.2019 in W.A.No.2032 of 2019.

"8. The source and scope of the authority or power of the respondents to take up the work of the implementation of the scheme of laying of transmission line has to be considered. The permission granted by the State Government in pursuance of the power under Section 164 of the Electricity Act, 2003 constitutes the source of the authority, TANTRANSCO. It would be only appropriate to examine Section 164 of the Electricity Act, 2003. 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.”

.....

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 TANTRANSO 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.

.....

23. 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:-

"15. It is further submitted that there is violation of Sections 68 and 69 of the Electricity Act, 2003 as well as Rules 3 and 10 of the Works of Licensees Rules, 2006 (hereinafter referred to as "the 2006 Rules") in laying down the overhead lines and, therefore, the High Court erred in law in permitting the same.

16. In order to appreciate the contentions of the writ petitioner, it is necessary to have a glimpse of the provisions of the Electricity Act, 2003 as well as the Rules on which reliance has been placed by Mr Shrivastava.

17. Sections 68 and 69 of the Electricity Act, 2003 fall in Part VIII with the caption "Works". These two provisions directly deal with the overhead lines. As per Section 68, an overhead line can be installed or kept installed above ground "with prior approval of the appropriate Government". "Appropriate Government" is defined under Section 2(5) of the Electricity Act, 2003 and it is not in dispute that in the instant case, it would be the Central Government as it is the Central Government which is the appropriate Government in respect of a generating company wholly or partly owned by it and Power Grid is a company which is owned by the Central Government. The argument was that no such prior approval from the Central Government was obtained in terms of the aforesaid provision.

18. We find that this assertion is factually incorrect. The learned Single Judge specifically noted that the Power Grid had obtained prior approval of the Central Government under Section 68(1) of the Electricity Act, 2003. Though, an

attempt was made that this finding is incorrect, we do not agree with the said submission of the writ petitioner as the learned ASG pointed out to us the document containing such an approval.

19. Another submission made was that permission of the writ petitioner was not 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 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 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."

.....

32. In view of the above reasons and particularly in view of the fact that the challenge to the two projects are also found to be motivated with personal interest overriding larger public interest, we have no hesitation in holding that the Writ Appeals are devoid of merits and deserve to be dismissed. We direct the respondents to produce a copy of this order before all forums, Civil, Judicial or Quasi Judicial to ensure that the project or such other projects are not enjoined from further progress by order of any Court or any Judicial Authority."

(viii) R.Raja & others Vs. District Collector & others in SLP (C) No.11596 of 2019 dated 22.07.2019.

In the above, SLP, the order passed by a

Division Bench of this court stood confirmed as against the petitioners.

(ix) Vai Palanisamy Vs. Union of India & others in W.A.No.2167 of 2019 dated 29.07.2019.

"9. The issue in this regard has been discussed in detail by two Division Benches of this Court by the aforesaid quoted portions. The position of law is fairly well settled by the dismissal of the Special Leave Petition by the Honourable Supreme Court, wherein it is held that the projects of public importance like setting up of power transmission lines do not call for interference by the Courts of law in the first instance. As we have seen above, the filing of the writ petition itself was premature. The petitioners seems to have made no effort in eliciting the necessary information from the respondents. They rather came to the Court to initiate such enquiry by this Court, which could not have been encouraged. The right to receive compensation by the individuals, whose land is being used for setting up of such power transmission line or power, is not even in question. The compensation paid by the respondent Corporation in such case shall be paid in accordance with the provisions of law and there is no dispute on that. It seems the petitioners / appellants approached this Court on a foundationless apprehension against the public notice itself, without making the necessary enquiry from the respondent Corporation. If their land was to be used for setting up a transmission line in question, the compensation procedure and payment of compensation would have definitely ensued, but just putting the project of public importance into litigation seems to have been the aim of the writ petitioners / appellants. We have also quoted above the procedure to be adopted by the Power Grid Corporation, which was duly quoted by the learned Single Judge as well as the Coordinate Bench. Whenever the land in question is identified with the survey numbers, the respondent Corporation put to notice all the individuals concerned under the provisions of the Indian Telegraph Act, 1885, and the determination of compensation also takes place on the other hand. Such details of the land were not only produced before the learned

Single Judge, but was duly noted by the learned Single Judge in the order impugned before us.

....
11. It is indeed unfortunate that the pendency of this litigation and other similar litigations in such cases unnecessarily interferes with the execution of such projects of public importance, even though there are no stay orders passed in such cases. Indirect costs are incurred by the public authorities in the form of escalation of costs by delay in projects etc., and the public at large are deprived of the benefit of such projects of public importance. "

(x) M.Duraisamy Vs. The District Collector & another in WP (MD) No.17167 of 2019 dated 27.08.2019.

"In this case, the learned Single Judge of this court has decided the issue as against the petitioner therein by following the decision in R.Raja and others v. The District Collector, Dharmapuri and others in W.A.No.72 of 2019 dated 11.4.2019."

(xi) Mr.P.Duraisamy Maharajha Rice Mills (P) Ltd., Vs The District Collector cum District Magistrate in W.A.No.3913 of 2019 dated 25.11.2019.

"6. The power to enter upon any of the land and erect towers remains undisputed in view of the provisions of the Indian Telegraph Act, 1885. Nonetheless, there is no bar for a person, who contests his claim, otherwise invoking the common law remedy. But the Act being a Special Act, also provides for compensatory relief by moving an application to be considered by the District Judge concerned. We, therefore, find that the right to enjoy the property and not to be dispossessed otherwise than in accordance with law in view of Article 300-A of the Constitution of India, has been taken care of in the 1885 legislation itself. The said Code is a complete Code and the appellant has remedy to claim compensatory damages from the department in the event the appellant is aggrieved on account of crossing of High Tension Transmission Line over its lands causing any damage, which, in our opinion, can always be compensated in terms of money. We, therefore, do not intend to assess the alleged

loss or sufferance being complained of by the appellant in exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India. This, therefore, in our opinion, would not be the appropriate remedy. It is for the appellant to approach the appropriate forum for redressal of any grievance and if any such application is filed, the same shall be dealt with in accordance with law. "

12. In addition to the above, the learned Senior Counsel appearing for SUZLON has relied upon an unreported recent judgment of a Division Bench in W.A.Nos.1096 and 1098 of 2020 and 970 of 2020 dated 20.1.2021 wherein it has been held as under:-

Judgment 1096 and 1098 of 2020 dated 20.1.2021.

"12. We are concern with the larger public interest. Secondly, the law on the subject is quite settled and repeated on number of occasions by this Court. We do not want to reproduce the law laid down once again. The role of the District Collector, while exercising the power under Section 16 of the Act in an application filed under Section 10 of the Act, is very limited, which is to facilitate the completion of the project by removing the obstruction, if any. Unfortunately, the District Collector, Karur has misconstrued the provisions and the role required to be played by him. As a District Magistrate, he is not concerned with the project. He is neither the appellate authority nor an adjudicating one.

13. The project has been conceived by a Government of India undertaking, after conducting elaborate study through an expert body. Such a wisdom resulting in the project being conceived is not justifiable nor the same has been questioned before us. As stated, the scope and ambit of Section 164 of the Electricity Act and Sections 10 and 16 of the Act has been completely misconstrued. We may add that the learned single Judge has not been furnished with the appropriate judgments governing the field, which we are concern with. We do not wish to say anything more. Even on facts, the project is almost nearing completion. The project is to be completed by laying down towers connecting the overhead

lines. Certainly, there is a public interest involved. The private respondents are merely executing the work. Ultimately, the project has been conceived and to be executed by M/s.Solar Energy Corporation of India Ltd., which is a Government of India undertaking. We do not find any malice in law or fact. On the question of transparency, we are not inclined to consider, as the project is nearing completion.

14. Thus, looking from any perspective, we are constrained to hold that the District Collector, Karur is required to pass appropriate orders to facilitate the completion of the work."

13. This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

14. The power generating company viz., M/s.Suzlon Global Services Ltd., (in short SUZLON) is a TANGEDCO authorized Company in the process of laying 26 High Tension Towers to carry the power generated by them by way of Windmills from Nezhali 110/33 Sub Station located at Nezhali Village of Kangayam Taluk, Tiruppur District to the Rasipalayam 400 KV Substation which was initiated with an object of uninterrupted supply of electricity to rural areas and in that process, after completing the erection of 15 towers and when they intended to erect another 11 towers and carry the overhead lines through the lands of the petitioners, the same was objected to by the petitioners and hence the SUZLON had to approach the competent Authority viz., the District Collector, who, in turn, had passed the 'enter upon permission' which is the subject matter of these writ petitions.

15. The major grounds raised by the writ petitioners is that the order of 'enter upon permission' is passed without properly serving notice to some of the land owners and without considering the grievances expressed by some of the land owners who had participated in the enquiry conducted by the competent authority and such order has been obtained by SUZLON by misleading as if they are the authority under the Indian Telegraph Act.

16. On the above grounds raised by the writ petitioners, this court frames the following issues for deciding this case:-

i) Whether the petitioners/land owners are entitled for any notice before passing the impugned order under the Telegraph Act granting permission to enter upon?

ii) Whether there is any violation of principles of natural justice on the audi alteram partem?

17. Issue No.1:- Whether the petitioners/land owners are entitled for any notice before passing the impugned order under the Telegraph Act granting permission to enter upon?

On this issue, a Division Bench of this Court in S.Selvaraj -Vs- The District Collector, Erode District and others etc dated 16.07.2019 in W.A.No.2032 of 2019 wherein a similar issue was involved with a similar request on the same project but, in some other area, has elaborately dealt with and with regard to the requirement of a notice to the landlords has also been discussed 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 TANTRANSOCO 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 subverted 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."

18. In view of the above specific finding of this court in the above referred decision, this court holds that no notice is required to be issued by the respondent.

19. Issue No.2:- Whether there is any violation of principles of natural justice on the audi alteram partem?

A perusal of the impugned order and the materials available on record would disclose that the prior to passing of the impugned order on 8.10.2020, notice was served for the enquiry scheduled on different dates viz., 11.9.2020, 18.9.2020 and 1.10.2020 and to the land owners who appeared for enquiry on the scheduled dates, the relevant documents were supplied vide letter in Reference No.Na.Ka.No.6450/2020/E5 dated 15.9.2020 and they were given a chance to participate in the enquiry on 1.10.2020 and to express their grievances and despite such an opportunity, some of the land owners have not appeared for the enquiry and some of them have appeared and expressed their grievances and after considering such grievances and also the future necessity of electricity and uninterrupted power supply to the rural areas, the District Collector has proceeded to pass the order of 'enter upon permission'.

20. With regard to non service of notice upon some of the land owners, Mr.Elumalai, learned Additional Government Pleader, who assisted the court, on behalf of the State has produced the relevant documents on the attempt made by the District Collector in serving the notice to the petitioners and has proceeded after their refusal as discussed above. This contention with regard to the service of notice has not been denied by the petitioners in their common rejoinder filed by them and this court has also decided the issue that the petitioners are not entitled for a notice before passing the impugned order under Section 10 of the Telegraph Act.

21. A perusal of the grounds raised by the petitioners in W.P.No.17334 of 2020 reveals that the petitioners came through the notices served to the neighbouring land owner about the project, however, they have not initiated any step to

participate in the enquiry. When the petitioners were aware of the enquiry and has also perused the contents of the summons and they have abstained from participating in the enquiry, whatever their objections may be, they should have participated in the enquiry and submitted their views in the enquiry. After keeping away from the enquiry, the petitioners are not entitled to agitate by contending that there is violation of principles of natural justice. Therefore, the second issue is also decided in favour of the respondents that there is no violation of principles of natural justice.

22. Accordingly, the writ petitions are dismissed. The Respondents 7 and 8 in W.P.No.15896 of 2020 shall provide adequate police protection for erection of tower lines as and when a request is made for the same. The District Collector shall hold an enquiry with regard to payment of compensation to be paid to the petitioners for their lands and order a fair compensation within a period of two months from the date of receipt of a copy of this order. No costs. The connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

ssk/mrm.

To

1. The District Collector,
Collectorate,
Palladam Road,
Tiruppur 641 664.
Tiruppur District.
2. The Chairman,
Tamil Nadu Electrical
Transmission Corporation,
144, Anna Salai, Chennai 600 002.
3. The Superintending Engineer,
General Construction Circle,
Electrical Wire Line Construction,
Tamilnadu Electrical
Transmission Corporation,
Tatabad, Coimbatore 641 012.

4. The Executive Engineer,
Electrical Wire Line Construction,
General Construction Circle,
Tamilnadu Electrical
Transmission Corporation, Ellamadu, ingur
Perundurai, Erode District.
5. The Principal Secretary
to the Government,
State of Tamil Nadu,
Energy Department,
Fort St. George, Chennai 600 009.
6. The Joint Managing Director,
Tamil Nadu Generation & Distribution
Corporation (TANGEDCO),
10th Floor, NPKRR Maligai,
144 Anna Salai, Chennai 600 002.
7. The Chief Engineer/NCES,
Tamil Nadu Generation & Distribution
Corporation (TANGEDCO),
2nd Floor, Eastern Wing,
NPKRR Maligai, 144 Anna Salai,
Chennai 600 002.
8. The Superintendent of Police,
Tiruppur District Police, Tiruppur.
9. The Deputy Superintendent of Police,
Dharpapuram Range, Tiruppur District
10. M/s. Suzlon Global Services Ltd.,
rep. by its Managing Director,
104, 1st Floor, Delta Wing,
Raheja Towers, 177, Anna Salai, Chennai 600 002.

+1 cc to Mr. M. Guruprasad, Advocate Sr No. 21763
+1 cc to Government Pleader, Sr No. 21472
+1 cc to M/s. Abdul Saleem, Advocate Sr No. 21241
+1 cc To M/s. N. Manokaran, Advocate Sr No. 21076

P.D. Order delivered in
W.P. Nos. 17334 and 15896 of 2020

PMK (CO)
RG.21.04.2021 (38P/15C)