

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED DATE : 03.02.2021
PRONOUNCED DATE : 10.03.2021

CORAM

THE HONOURABLE THIRU JUSTICE B.PUGALENDHI

W.P.No.19113 of 2020
and
W.M.P.Nos.23689 and 23693 of 2020

- 
- 1.Ponnusamy
2.Balasubramaniam
3.Manimekalai
4.Varadharajan
5.Krishnasamy Gounder
6.Venkidusamy
7.Shanmugasundaram
8.Rukmani
9.Subramaniam
10.Saraswathy
11.Vijayaraj ..Petitioners
- सत्यमेव जयते

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 the Government,
Energy Department,
Fort St.George, Chennai - 600 009.

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
(R.10 & R.11 impleaded vide
Court order dated 22.01.2021)

12.Sivagami

13.N.Palanichamy

14.Thirumalaisamy

15.K.Radha Jeyalakshmi
(R.12 to R.15 impleaded vide
Court order dated 22.01.2021)

..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 of the impugned order in Na.Ka.No.10324/2020/E5 dated 28.10.2020 (in respect of all the petitioners) 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 by the Owners of the said Lands.

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

For Respondents : Mr.K.Srinivasa Murthy,
SPCCG, for R.1 & R.2
Mr.P.H.Aravind Pandian, AAG,
assisted by
E.Balamurugan, Spl.G.P.
(for RR 3, 5, 7, 8 & 9)
Mr.A.R.L.Sundaresan,
Sr.Counsel
Mr.R.Thiyagarajan, Sr.Counsel
for M/s.Iyer & Dolia for R.4 &
R.6
Mr.Issac Mohanlal, SC
for Mr.P.Nethaji, R.10 to
R.15.

ORDER

(This matter is taken up through Video Conferencing)

The petitioners are agriculturists having their lands at Palanigoundapalayam Village and have filed this writ petition as against the orders of the 5th respondent District Collector dated 28.10.2020 in and by which the 5th respondent has given enter upon permission to respondents 4 & 6 permitting them to erect High Tension Towers in the petitioner's lands on certain conditions with the powers conferred upon him under Section 60(1) of the Indian Telegraph Act.

2. The Power Grid Corporation is in the process of laying High Tension Transmission line from Raigarh to Pugalur at a cost of Rs.21,735/- Crore. This project is executed in order to transfer the power energy from various generation plants from the State of Chattisgarh to various other States namely Maharashtra, Telangana, Andhra Pradesh and Tamil Nadu. In this process, they are laying High Tension Towers in the State of Tamil Nadu under Scheme II connecting 5 double circuit 400 KV HVAC lines connecting Pugalur, Arasur, Udumalpet, Tiruvallam, (Power Grid) and Edayarpalayam (TANTRANSCO) sub stations. The circuit line under Scheme II is the subject matter of this writ petition which covers 52 KM routed through Coimbatore to Tiruppur. The land owners/farmers near Edayarpalayam are having certain apprehensions that their 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 5th respondent District Collector for the laying of these towers through their agricultural land.

3. Due to the objections raised by the petitioners, the Power Grid Corporation had also filed a petition before the District Collector, 5th respondent for necessary order to enter upon on 21.09.2020. Based on this petition, the 5th respondent issued a notice to the petitioners for an enquiry scheduled on 20.10.2020 and 23.10.2020. The petitioners/land owners did not participate in the enquiry and by treating the same as they wilfully remained absent, the District Collector proceeded with the enquiry and granted the order of enter upon to the respondent power grid Corporation to lay the towers in the petitioner's land

which is under challenge in this writ petition.

4. Mr.V.Raghavachari, learned counsel for the petitioners, in support of this writ petition, made his submissions that the Power Grid Corporation has fixed a route in the year 2017 through Survey Numbers 201, 203 of Palanigoundapalayam Village, S.Nos.288 of Kosavampalayam Village and S.Nos.803 and 937 of Vavipalayam Village. The routes were fixed by affixing marks in the said land and a Resolution was also passed by the Grama Sabha on 01.05.2018 by referring those route for fixation of the year 2017. However in order to avoid the route through the lands of some powerful persons and to avoid an existing Windmill, they changed their alignment plan through the petitioners' land. The land owners in the original plan of the year 2017 are not having any serious objections for laying the Towers and for taking the lines through their lands. However, in order to satisfy some powerful people, they have changed their plan and changed the route. Mr.V.Raghavachari, learned counsel for the petitioners also referred a plan and submitted that it is the original plan with the route proposed in the year 2017 and also referred some of the photographs with the markings in S.Nos.201, 203 etc. as referred to above.

5. The Grama Sabha of the Panchayat passed a resolution on 01.05.2018 to take the 'Bee lines' in their Village through underground instead of overhead lines and in its resolution also they have referred the S.Nos.201, 203 of Palanigoundapalayam Village and S.Nos.288 of Kosavampalayam Village and S.Nos.803 and 937 of Vavipalayam Village. The respondent/Corporation has also admitted in their counter affidavit about a route which has been finalized in the year 2017 and the respondent land owners, on the proposed original plan, have also expressed their consent for laying all these towers. He also requested for appointment of an Advocate Commissioner to ascertain the truth. In addition to the above submissions, the learned counsel for the petitioners assailed the impugned order on the ground of audi alteram partem rule.

6. The impugned order refers to the objection made by the petitioners for erection of towers and therefore, the Power Grid Corporation has also 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 the petitioners, but without providing an opportunity has simply followed the Report of the Tahsildar as summons served on the petitioners and proceeded with the enquiry and as these petitioners failed to appear for the enquiry.

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 Village Administrative Officer 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 as on 29.10.2019, 11.11.2019, 02.03.2020, 13.06.2020 and on 08.09.2020. 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 from the month of October, 2019, the 5th respondent District Collector hurriedly passed the impugned orders on 28.10.2020 based on the representation of the Power Grid Corporation dated 21.09.2020. As per Section 68 and Section 164 of the Indian Electricity Act combined with Section 10 and 16 of the Indian Telegraph Act, the 5th respondent/District Collector, the Competent Authority ought to have given a fair opportunity to the petitioners and conducted an enquiry with an open mind and should have ensured whether the Power Grid Corporation has proceeded with their approved route or not based on the representation of the petitioners.

8. The learned counsel further referred to the Report submitted by the Power Grid Corporation to its Bankers and submits that the Power Grid Corporation has taken a stand as if public consultation was made in implementing the aforesaid project without even affording the basic opportunity of hearing the petitioners.

9. In support of his submission, the learned counsel 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.

10. 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."

11. Per contra, Mr.A.R.L.Sundaresan and Mr.R.Thiyagarajan, learned Senior Counsels appearing for the Power Grid Corporation submitted that this is a project which is covering 1,765.04 KMs directly connecting HVDC Terminal having capacity of 6000 MW. It is also pointed out that under this Scheme the energy from various generation plants from the State of Chattisgarh are taken to various States and the State of Tamil Nadu is a major beneficiary under this Scheme. They would further submit that out of 1,765.04 KMs, 345 KM passes through the State of Tamil Nadu. Under scheme II, AC (Alternative Current) System there are 5 double circuit 400 KV HVAC lines connecting Pugalur, Arasur, Udumalpet, Tiruvallam, (Power Grid) and Edayarpalayam (TANTRANSCO) sub stations. The lands which are subject matter of this writ petition lies in Pugalur HVDC Station to Edayarpalayam 400 kV double circuit lines under Scheme II with a line length of 52 KMs routed through Coimbatore and Tiruppur with 149 towers and out of which foundations for 133 towers have already been completed and erection of Towers has also been completed. Stringing works to an extent of 23 KMs has also been completed. In Tiruppur District, out of 91 locations, they have completed 77 foundations and 71 erection of towers has been completed. According to them, 80% of the works have already been completed.

12. The learned Senior counsels have also refused the allegation that for satisfying some powerful people, the original route which was approved in the year 2017 has been deviated. By referring the counter affidavit filed by respondents 4 & 6, the learned Senior Counsels pointed out that the manner in which the route has been preferred is only the most techno-economically feasible route avoiding places of inhabitation, worship etc., causing least damage, after complying with the statutory clearances and also obtaining various parameters such as a) Minimal impact on the environment; b) Avoiding inhabitant area to the extent possible; c) Least impact on the crop and plantation; d) Crossing the EHT line at an angle as close to 90 degree e) Crossing the National Highways at an angle as close to 90 degrees etc., f) Avoiding places of worship etc.; g) Avoiding Natural water bodies and Parks, etc.; h) Most economical route.

13. The learned Senior Counsel would further submit that the respondent Corporation executes its projects following the procedure as below described:

(i) A straight line called "BEE LINE" is drawn from point to point (i.e.) sending end substation to receiving end substation.

(ii) POWER GRID Engineers go along the 'BEE LINE' as nearly as possible, avoiding settlements, Railway line, Road crossing, River, Forest etc. (i.e., a walk over survey is conducted).

(iii) Propose three alternate routes to find out which is the most economically and technically feasible route. (During this process, approximate Angle points are also fixed using Global Positioning System (GPS)).

(iv) The above exercises are shown in Topographical Maps issued by Survey of India.

(v) The next stage is whatever is there in the Map is transferred to the ground viz., marked in the ground.

(vi) The angle points are fixed on ground by using Global Positioning System (GPS) instruments.

(vii) A detailed survey is conducted. For every 20 meters, ground level measurement is taken & Geographical details are collected and line peg mark fixed.

(viii) A profile is made on the above details. 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.

(ix) Then the tower schedule is prepared.

(x) On due approval of the above, check survey is done.

(xi) Exact tower point is fixed with the help of survey instrument.

[It is only at that stage, we know the exact survey number over which the tower is to be located]

(xii) After fixing the tower location, the details as to the ownership/details of owners of affected lands are obtained from the Revenue Authorities.

14. The learned Senior counsels appearing on behalf of respondents 4 & 6 have relied upon the following judgments in respect of their 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.

15. The relevant portions of the judgments cited by the learned Senior Counsels appearing for Respondent 4 and 6 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 layign 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 subsection 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.Raghavacahri, 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)

....
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 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.

.....

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 injuncted 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. "

In addition to the above, the learned Senior Counsels appearing for Respondents 4 and 6 have 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."

16. The learned Senior Counsels have made it clear that there was only one approved route alignment drawn by the 5th respondent and there was no other separate alignment of the year 2017. With regard to markings in S.Nos.803, 937 of Vavipalayam Village and other places projected, the learned Senior Counsels have replied that these markings were made in the Village Road to obtain Geo co-ordinates using survey instruments through Satellites and they are only the reference points to carry out the survey works and those marks are not indicating any route alignment.

17. The fifth respondent/District Collector has filed a separate counter affidavit wherein he has made it clear that notice for the enquiry was served personally on the petitioners, however, they had refused to receive the same and remained absent for the enquiry as per the report of the Tahsildar, Palladam and therefore, he had to proceed with the enquiry and in the enquiry, he found from the explanation about the project by the officials of the Power Grid Corporation that the demand raised by the petitioners to alter the route alignment is not feasible and the route alignment has been approved on the basis of techno economic consideration only.

18. Mr.Issac Mohanlal, learned Senior Counsel appearing for the impleading petitioners / land owners has made a submission that the original route is only through their lands and they are not having any objections for laying of towers through their lands.

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

20. The Respondent Power Grid Corporation, a Government of India Enterprise under the Ministry of Power incorporated as a Government Company has been entrusted with the task of construction of 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 in order

to facilitate evacuation and transfer of power from various Generation plants located in the State of Chhattisgarh, Maharashtra, Telengana, Andhra Pradesh and Tamil Nadu. The total cost of the project is about Rs.21,735 crores. This Project is executed at three stages as under:-

- I) Raigarh-Pugalur 6000 MW High Voltage Direct Current (HVDC) System;
- II) Associated 400 kV High Voltage Alternating Current (HVAC) System strengthening at Pugalur end and
- III) Pugalur-Trissur 2000 MW VSC based High Voltage Direct Current (HVDC) System.

21. The total live length of this Project is 1765.04 kms and out of this 345 kms passes through the State of Tamilnadu in Scheme II. The dispute involved in this writ petition is with the live length of about 52 Kms. routed through Coimbatore and Tiruppur. In this route, out of 149 required towers, the foundation work for 133 towers have already been completed and erection of 1200 towers is also completed and the construction works of an extent of 23 kms is also completed. In Tirupur District, out of 91 required towers, foundation works for upto 77 towers have already been completed. According to the learned Senior Counsels appearing for the Power Grid Corporation, 80% of the works in the disputed area have already been completed. The dispute is with regard to locations for 11 towers and the towers with regard to preceding locations and the succeeding locations have also been completed.

22. The major grounds raised by the writ petitioners is that there was an alignment originally prepared in the year 2017 and in order to satisfy some influential persons, the alignments have been changed and therefore, the petitioners are having objections for the erection of towers and on the other hand, the land owners in respect of the original alignment are not having any objections for erection of towers in their lands. Despite the same, the Power Grid Corporation is proceeding with the construction in the second alignment and their representations to the competent authority were not at all considered and the impugned order is passed without a fair opportunity to the petitioners.

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

i) Whether there was any original alignment in the year 2017 and whether the Power Grid corporation is changing their alignment in order to suit the convenience of any powerful individuals?

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

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

24. Issue No.1:- Whether there was any original alignment in the year 2017 and whether the Power Grid corporation is changing their alignment in order to suit the convenience of any powerful individuals?

The contention of the learned counsel for the petitioner is that the original alignment was fixed by the Corporation in the year 2017 and the same has been approved but, for some reasons best known and probably in order to favour some individuals, the route has been deviated. In support of his contention, Mr.V.Raghavachari, learned counsel for the petitioners relied on certain markings made by the Power Grid Corporation in S.Nos.201, 203 of Palanigoundanpalayam and S.No.288 of Kosavampalayam Village and S.Nos.803 and 937 of Vavipalayam Village. In support of his contention, he has also relied on certain photographs taken in certain properties which are said to have been taken in the said Survey numbers. The learned counsel also relied on certain portions of the counter affidavit with regard to alignments prepared by the Corporation in the year 2017.

25. In response to this contention, the learned Senior Counsels appearing for the Power Grid Corporation made an elaborate argument as to how this alignment has been fixed by the Corporation. While fixing the transmission route line the Corporation is considering various parameters such as

a)Minimal impact on the environment;

b)Avoiding inhabitant area to the extent possible;

- c)Least impact on the crop and plantation;
- d)Crossing the EHT line at an angle as close to 90 degree
- e)Crossing the National Highways at an angle as close to 90 degrees etc.,
- f)Avoiding places of worship etc.;
- g)Avoiding Natural water bodies and Parks, etc.;
- h)Most economical route.

26. Apart from this, the Power Grid Corporation is also adopting the following procedures :-

(i) A straight line called "BEE LINE" is drawn from point to point (i.e.) sending end substation to receiving end substation.

(ii) POWER GRID Engineers go along the 'BEE LINE' as nearly as possible, avoiding settlements, Railway line, Road crossing, River, Forest etc. (i.e., a walk over survey is conducted).

(iii) Propose three alternate routes to find out which is the most economically and technically feasible route. (During this process, approximate Angle points are / also fixed using Global Positioning System (GPS)).

(iv) The above exercises are shown in Topographical Maps issued by Survey of India.

(v) The next stage is whatever is there in the Map is transferred to the ground viz., marked in the ground.

(vi) The angle points are fixed on ground by using Global Positioning System (GPS) instruments.

(vii) A detailed survey is conducted. For every 20 meters, ground level measurement is taken & Geographical details are collected and line peg mark fixed.

(viii) A profile is made on the above details. 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.

(ix) Then the tower schedule is prepared.

(x) On due approval of the above, check survey is done.

(xi) Exact tower point is fixed with the help of survey instrument.

[It is only at that stage, we know the exact survey number over which the tower is to be located]

(xii) After fixing the tower location, the details as to the ownership/details of owners

of affected lands are obtained from the Revenue Authorities.

27. After following the above said procedures, the most techno-economical route is chosen without causing damage for the places of inhabitation, Worship and available corridors to the maximum possible extent. The learned Senior Counsels have also produced the approved order for route alignment of 400 KV HVAC line connecting Pugalur Station to Tiruvallam Sub-Station dated 1.10.2017. Vide this order of approval, the route I is compared with two other routes viz., route II and III as alternative routes and route I is found to be techno-economical route. This route is passing through Windmills shown and 80% of this route which is around 7 kms runs through coconut grove and this process is completed by a walkover survey and the same was thoroughly verified by the Power Grid Corporation Team jointly with an Agency.

28. This route alignment, according to the Power Grid Corporation has been decided considering various features with the alternative routes proposed by the Agency i.e., route II and III and also considering the Windmill location, settlement along the State Highways and scattered settlement in villages, this route I being the shortest possible route along BEE LINE has been identified. The District Collector has no authority to change the alignment and give a new route for transmission of electricity especially when the experts of Electricity Board asserted that the original alignment proposed was the best alignment in the interest of public at large.

29. In this regard, the learned Senior Counsels have also relied on the decision of this court in the judgment reported in 2013 (1) MLJ 56 cited supra, has clearly pointed out that the District Collector is not vested with the power to suggest a different route either under Section 16 or 17 of the Indian Telegraph Act, 1885. The power of the District Collector is more in the nature of execution of the decision taken under Section 10 of the Indian Telegraph Act, 1885 and the District Collector has no authority to change the alignment and can suggest a new route. They would further submit that there was no straight line route approved in the year 2017 as claimed by

the petitioners and there is only one approved route alignment in the year 2019 and this route alignment projected by the petitioners is an imaginary route to avoid the overhead lines over their lands.

30. With regard to the photographs produced by the learned counsel for the petitioners with certain markings that it was the markings made in S.Nos.803, 937 of Vavipalayam Village and other places projected, the respondent Power Grid Corporation has pointed out in their counter that those markings are made in the Village route to obtain Geo Coordinates using survey instruments through Satellites and they are only the reference points to carry out the survey works and those marks are not indicating any route alignment. It is also pointed out that excepting the petitioners lands, the foundation works for erection of towers in the preceding section/locations and in the succeeding section/locations have already been completed. The learned Senior Counsels have also pointed out that after following the detailed procedures on the alignment, the tower schedule is prepared and these tower points are fixed with the help of Surveyor. They would further submit that only after fixing the tower location, the details of the ownership of the land could be collected from the Revenue Authorities and at the time of fixing the polls, the Authorities will not be having the exact survey numbers, the extent of the land and the identity of the owners. Therefore, the averment that this original alignment which has been prepared in the year 2017 and it has been altered for the convenience of some land owners is not correct.

31. Though the learned counsel or the petitioners has projected that there was an original line drawn and it has been altered, no substantial material has been placed to accept the contention. It is the case of the petitioners that in order to facilitate a Windmill Tower, the route has been diverted in a triangle manner to protect the existing tower. In fact, the Power Grid Corporation has taken three routes along the three possible routes along the BEE LINE (Straight Line) and also considered various aspects like Windmill towers, habitations, coconut grove, etc. Even in the approved plan, there are many Windmill turbines nearby the route and also in the original alignment projected by the petitioners, a turbine is very much available on the

line and there are so many habitations existing in the said alignment. Neither the District Collector nor this court is technically competent to decide which route is technically feasible. The finalisation of route of transmission line is based on technicalities and the transmission in towers runs to several hundreds of Kilometres and majority of the work appears to be completed and the towers on the preceding sections and succeeding sections have also been completed. in view of specific findings of the Division Bench, this court could not decide the issue in favour of the petitioners and rejects their contention.

32. Issue No.2:- 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 TANTRANSCO 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 subserved 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."

33. 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.

34. Issue No.3:- Whether there is any violation of principles of natural justice on the audi alteram partem?

The impugned order came to be passed on 28.10.2020 after issuing notice of enquiry on 15.10.2020 and it was communicated in letter No.Na.Ka.10324/2020 E5 and the landlords have refused to receive the notice and in this regard, the Tahsildar, Palladam also submitted a report to the District Collector in his letter No.Na.Ka.2706/2020/A2 dated 19.10.2020 and thereafter, the enquiry was conducted by the District Collector and the order to enter upon was issued. The fifth respondent District Collector has also filed a counter affidavit and the same has been incorporated in the counter affidavit filed by the fifth respondent.

35. Though the petitioners have taken out a plea that in order to protect some influential landlords, the route has been deviated, the petitioners having referred to the said survey numbers in whose land the proposed original alignment was made, on the other hand, has taken a stand that all the land owners in the original alignment have given their consent for erection of towers, through their unobjectionable land, however, the Power Grid Corporation is proceeding with the present alignment. Some of the land owners have also filed impleading petition in W.M.P.Nos.1301 and 1389 of 2021 in support of this contention of the petitioners and Mr.Issac Mohanlal, learned Senior Counsel appearing for them, by pointing out a Grama Sabha Resolution and the markings referred by the petitioners, reiterated the stand of the petitioners and has submitted that the impleading petitioners/land owners on the original alignment are not having any objection for erection of towers through their land. When the Power Grid Corporation has made out a case that this alignment has been made scientifically by conducting a detailed survey on various parameters and has also been approved by the competent authority, this court cannot consider the case of the petitioner as well as the impleading petitioners that there was a original alignment as projected by the petitioners and the Grama Sabha.

36. In this regard, 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 fifth respondent 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 on 19.10.2001 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.

37. A perusal of the records reveals that subsequent to that a representation was made by the petitioners on 24.11.2020 and in that representation, it is contended that the VAO has produced summons for enquiry and villagers have also read the contents of the summons and there were so many mistakes in the summons such as notice to different person, mentioning survey number as 203/17 instead of S.N.203/7 and instead of Ponnusamy, it is mentioned as Kumarasamy, etc. 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 third issue is also decided in favour of the respondents that there is no violation of principles of natural justice.

38. Accordingly, the writ petition is dismissed. However 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 not more than 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 III)

/TRUE COPY/

Sub-Assistant Registrar

To

- 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 the Government,
Energy Department,
Fort St.George, Chennai - 600 009.
- 4.The Managing Director,
Power Grid Corporation of India Ltd.,
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.

+1cc to M/s.AIYAR AND DOLIA, ADVOCATE, SR.NO. 15023
+1cc to M.GURUPRASAD, ADVOCATE, SR.NO. 15595

W.P.No.19113 of 2020
10.3.2021

mrm/ssk
AK-II
KK 16.04.2021



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