

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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IN VIRTUAL COURT

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1. CR No. 2215 of 2021 (O&M)

Date of Decision : 13.12.2021

Chief Engineer, Haryana Vidyut Prasaran Nigam Limited and others

..... Petitioners

v.

Dayal Sarup and another

..... Respondents

2. CR No. 2217 of 2021 (O&M)

Chief Engineer, Haryana Vidyut Prasaran Nigam Limited and others

..... Petitioners

Versus

Rajiv Gupta and another

..... Respondents

3. CR No. 2201 of 2021 (O&M)

Chief Engineer, Haryana Vidyut Prasaran Nigam Limited and others

..... Petitioners

Versus

Shashi Mittal and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Puneet Jindal, Senior Advocate with
Mr. Gautam Goyal, Advocate, for the petitioner(s)

Mr. Akshay Bhan, Senior Advocate with
Mr. Akshit Aggarwal, Advocate,
Mr. Amulay Aggarwal, Advocate and
Mr. Rohit Nagpal, Advocate, for the respondents
(CR No. 2215 of 2021)

Mr. A.K. Chopra, Senior Advocate with
Mr. Brahmjot Singh Nahar, Advocate, for the respondents
(in CR No. 2201 and 2217 of 2021)

RAJBIR SEHRAWAT, J.

This order shall dispose of the aforementioned three petitions as the common questions of law and facts are involved therein. The facts are being taken from CR No. 2215 of 2021.

The parties herein are referred to as 'the plaintiffs' and 'the defendants', as they are referred to in the original suit.

This petition has been filed under Article 227 of the Constitution of India praying for setting aside the order dated 15.9.2021 (Annexure P-9), passed by the Additional District Judge, Yamuna Nagar at Jagadhri, in appeal against order passed by the Trial Court on an application under Order 39 Rule 1 and 2 CPC filed by the plaintiff in the suit for permanent injunction for restraining the defendants from passing high power electrical wires, by erecting the structure of electrical poles in the land of the plaintiffs, situated at Mouza Dhaurang, Tehsil Radaur, District Yamuna Nagar.

Brief facts, as involved in the case are that the Haryana Vidyut Prasaran Nigam Limited is a Public Utility; engaged in construction of power stations and transmissions of electricity. Towards fulfillment of those functions, the defendants are required to lay the transmission lines to ensure supplies of electricity through various parts of the State. To facilitate the defendants in its job in laying down the lines, the Governor of Haryana has conferred upon it the powers of Telegraph Authority; to be exercised under the Indian Telegraph Act, 1885; by issuing a notification under Section 164 of the Electricity Act, 2003 (in short 'the Electricity Act'). For ensuring transmission of electricity in the district of Yamuna Nagar, the defendants had prepared a plan for laying a high tension electricity line. A notification to that effect was issued in the newspaper. Thereafter, the defendants started the work of laying

the line. When they reached over the land of the plaintiffs for erecting a poll, they were resisted by the plaintiffs. Aggrieved against the action of the defendants in laying the transmission line over their land, the plaintiffs filed civil suit claiming that they are the co-sharer in the land described in the plaint. The defendants, along with official and workers, had visited the spot and they had put the marks in the suit property for erecting the poles. On enquiry, the plaintiff came to know that the defendants were planning to erect structure of poles to lay the electricity line in the land of the plaintiffs. The plaintiffs pleaded that there is an orchard in that particular area of land and there was also a Gurudwara. Previously, attempt was made to lay the line through the land of the neighbors of the plaintiffs. However, thereafter, the alignment has been changed to bring the same over the land of the plaintiffs; without any notice and without issuance of any notification regarding the change of the route of line. The plaintiffs had even suggested the shortest route to the defendants, however, the defendants were adamant to pass the high tension line through the land of the plaintiffs. Accordingly, it was prayed by the plaintiffs that a permanent injunction be issued against the defendants; because laying the line through their land would diminish the value of their land, as well as, it will cause problem for the people who visit gurudwara.

On receipt of the notice, the defendants had filed written statements claiming that a notification dated 15.1.2018 was issued informing the general public that the defendants proposed to undertake the construction of transmission line and sub-stations in Haryana, including the LILO of both circuits of 22 KV D/C D C R T P P - Salempur Line 0.4 sq. inch.. The said notification was published in daily newspapers 'The Tribune' and 'Dainik

Bhaskar' on 18.1.2018. The plaintiffs did not file objections within time fixed in the notification. Even the work had substantially proceeded further. 34 towers have already been erected out of 73. The alignment of the transmission line was finalised keeping in view the safety of the residential area of the village, buildings, hospitals, schools, orchards, as well as, the line which had earlier been erected in the said area. The proposed plan has been prepared by keeping all the technical aspects of the transmission line and its economy and also to prepare the shortest route; as such. Hence, it was prayed that the suit be dismissed.

Along with the complaints, the plaintiffs had filed an application under Order 39 Rule 1 and 2 CPC. The trial Court rejected the said application and declined any injunction to the plaintiffs. Aggrieved against the said order, the plaintiffs filed appeal before the lower Appellate Court. That appeal has been allowed by the Appellate Court. Hence, the present petition has been filed challenging the order of the Appellate Court, whereby, while reversing order of trial Court; an injunction has been granted in favour of the plaintiffs.

Arguing the case, the counsel for the petitioner/defendants has submitted that the suit filed by the plaintiffs itself is not maintainable; because as per the amended Sections 20A and 41 (ha) of the Specific Relief Act, 1963 the Court has been prohibited from granting any such injunction which obstructs the process of any infrastructure project. The laying of the transmission line is undisputedly an infrastructure project. Hence, the Court should not have granted any injunction in favour of the plaintiffs. The counsel has further submitted that while granting injunction to the plaintiffs, the Court below has heavily relied upon the factum that the petitioner/defendants had

issued a notification inviting objections from the affected persons and that notification was vague and did not provide specific details of the land to be utilized, so as to ensure sufficient opportunity to the affected persons to raise objections. However, this approach of the Appellate Court is totally unsustainable. The petitioners had been authorised by the appropriate government under the Electricity Act to exercise unconditional powers conferred upon the Telegraph Authority under the Telegraph Act. Under the Telegraph Act, the authority has an absolute power to lay the line through the land considered appropriate by it. The affected persons does not even have any right to be heard. On the contrary, if the owner of the property attempts to resist the effort of the authority; then the District Magistrate of the area can even force the owner to permit carrying out the works in his land-property and, further, any violation of the order passed by the District Magistrate would make such owner liable to be punished under Section 188 IPC. The counsel has further submitted that the only right which the owner of the property has got under such situation; and as per the provisions of the Telegraph Act; is qua compensation. Under the Telegraph Act, although the authority entering upon the private property is required to ensure minimum damage to the property while carrying out the necessary infrastructure project, and to pay the compensation for any damage caused during that process. However, if the owner does not feel satisfied with the compensation, he can approach the Court for enhancement of compensation. Beyond that, the owner does not have any kind of right qua resistance to the laying of the electricity line. It is for the authority to plan the route of the line keeping in view the appropriate factors. The land owner is not even entitled to suggest any alternate route as such.

Hence, the Court below has gone totally wrong in granting the injunction to the plaintiffs; by wrongly reversing the order passed by the trial Court. Hence, the same deserves to be set aside. The counsel for the petitioner has relied upon the judgment of the Supreme Court rendered in the case of '**The Power Grid Corporation of India Limited v. Century Textiles and Industries Limited, 2017 AIR (SC) 1141**', the judgment passed by a Single Bench of this Court in **CR No. 4024 of 2018**, titled as **Gurmukh Singh v. Punjab State Power Corporation Limited and others**, decided on 24.1.2019, as well as, upon the decision of a Division Bench of this Court rendered in **CWP No. 25966 of 2017**, titled as **Harbans Singh and others v. Punjab State Transmission Corporation Limited and another**, decided on 6.12.2017.

On the other hand, the counsel for the plaintiffs has submitted that the action of the defendants is totally arbitrary. The notification issued by the defendants did not specify as to which land was to be utilised by it for laying the electricity line. The notification was totally vague. Therefore, the plaintiffs had no reason to believe that the line was passing through their land till the officer of the defendants came present on the land of the plaintiffs. Once the defendants had issued the notification, it was under obligation to give the complete details in the notification itself; so as to provide an effective opportunity for filing objections by the plaintiffs. The counsel has further submitted that Rule 3 of the Works of Licensee Rules, 2006, framed under the Electricity Act provides that a licensee may carry out the works and lay the lines through any land with prior consent of the owner or occupier of the building. Under the said rule if the owner or occupier of the building raises any objection, then licensee is required to obtain permission in writing from the

District Magistrate or the Commissioner of Police or any other officer authorised by the State Government. Therefore, although the defendants were required to obtain the consent of the plaintiffs or a prior approval or order from the District Magistrate before attempting to lay the line on the land of the plaintiffs, however, the plaintiffs are even not insisting upon their consent, rather their only submission is that they should have been granted effective opportunity of making representation, which is denied by the notification issued by the defendants, because the notification did not mention any details as to the land of the plaintiffs that was to be utilised by the defendants. Carrying forward his arguments, the counsel for the respondents/plaintiffs has submitted that the notification issued by the defendants only mentioned the name of the villages and required the residents of the villages to find out whether their land is involved in the route or not; by visiting the specified offices. This approach adopted by the defendants is impracticable; besides being absurd. The notification suffers from vagueness to the extent of absurdity and denying the effective opportunity to the owners to make any meaningful representation within time. On coming to know of the alignment, the plaintiffs had suggested an alternate route qua which even recommendations was made by the officers of the defendants only; that the same was feasible. However, the said objection/suggestion raised by the plaintiffs had also been wrongly brushed aside; by branding the same as time-barred. The entire approach of the defendants is hegemonic and autocratic which cannot be sustained. The counsel for the plaintiffs has also submitted that the present proceedings before this Court are not by way of writ petition. The same are arising from a civil suit in which there are certain assertions made

by the plaintiffs. Some of those assertions have even been admitted by the defendants. Therefore, the issue whether the defendants had a right to lay the line over the land of the plaintiffs could be decided only after taking evidence by the trial Court. Declining the injunction and permitting the defendants to lay the line would tantamount to dismissing the suit itself at this initial stage and without evidence. Accordingly, it is submitted that the present petition be dismissed and the injunction granted in favour of the plaintiff be upheld.

This Court has heard the counsel for the parties and have perused the case file. Having heard the parties, this Court finds that the substantial issues involved in the present petitions are as to whether the petitioner, as a public authority, authorised to lay the electricity line, is under any duty to hear the land owner qua the possible objections regarding the alignments of the electricity line, and also as to whether the civil Court can grant injunction qua the laying of the transmission line as such.

Before proceeding further, it is appropriate to have reference to the provisions of law which have been argued as involved; by the parties, which are as under :-

Section 164 of the Electricity Act, 2003

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.”

Rule 3 of the Works of Licensees Rules, 2006.

Rule 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;

(b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support: Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government in this behalf, for carrying out the works: Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorised may by order in writing direct for any such works, support, stay or strut to be removed or altered.

(2) When making an order under sub-rule (1), the District Magistrate or the Commissioner of Police or the officer so authorised, as the case may be, shall fix, after considering the representations of the concerned persons, if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(3) Every order made by a District Magistrate or a Commissioner of Police or an authorised officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.

(4) Nothing contained in this rule shall effect the powers conferred upon any licensee under section 164 of the Act.

Sections 10 and 16 of the Indian Telegraph Act, 1885.

Section 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 establish 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;

(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.

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Section 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 (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.

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Sections 20A and 41 (ha) of the Specific Relief Act, 1963.

20A. Special provisions for contract relating to infrastructure project -

(1) No injunction shall be granted by a court in a suit under this Act involving contract relating to an infrastructure project specified in the Schedule, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project.

Explanation.—For the purposes of this section, section 20B and clause (ha) of section 41, the expression “infrastructure project” means the category of projects and infrastructure Sub-Sectors specified in the Schedule.

(2) The Central Government may, depending upon the requirement for development of infrastructure projects, and if it considers necessary or expedient to do so, by notification in the Official Gazette, amend the Schedule relating to any Category of projects or Infrastructure Sub-Sectors.

(3) Every notification issued under this Act by the Central Government shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the

session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

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Section 41 - Injunction when refused.— An injunction cannot be granted — [\(a\)](#) to (h) XXXXX XXXXX

(ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.”

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A perusal of the provisions reproduced above show it clearly that under the provisions of the Telegraph Act, the authorised officer is entitled to establish, lay or maintain the lines upon or over any immovable property. The only requirement in exercise of such powers under Section 10 of the Telegraph Act is that while exercising powers conferred upon such authority, minimum damage shall be caused to any property of a private person, and for any damage compensation shall be paid to him.

The wide scope of powers of the such authority is made manifest by provisions of Section 16 of the Telegraph Act which has not conceded any right to a private person even to resist any exercise of such power under Section 10 of the said Act. On the contrary, if a person attempts to resist exercise of such powers then the District Magistrate can order the said private person not to resist; and any violation of such order has been prescribed to lead to a punishment under Section 188 of IPC. It is a different matter, and could be a moot point, as to whether such a drastic provision, which was framed in pre-

Constitutional era, can even be sustained after coming into force the Constitution of India; which through its Article 14 has excluded any unbridled and un-guided power with any authority; being ante-thesis to the rule of law, however, the fact remains that the provision of the Act is not under challenge before this Court. Hence, this Court is bound to take the said provision as validly existing on the statute book and read the same in its letter and spirit. Hence, it is clear that under the provision of the Telegraph Act, a private owner of the land does not have even a right to be heard qua the aspect of alignment of electricity line. Although through some judgments, Courts have tried to impress upon the concerned authorities to issue some kind of notification and invite objections from affected persons, however, since it is not for the Court to add words, phrases or sentences to the statute, so as to introduce the requirement of publication of notification and inviting objections from the affected persons, therefore, any such attempt by the Court is bound to be observed more in violation than compliance. The authorised person, as a *persona designata*, is bound to act as per the provisions of the statute and would be, particularly, tempted to so act when the provisions give such unbridled powers to him. Therefore, any notification issued by the petitioner authority may turn out to be only a formality; without any legal consequences; as such, regarding the alignment of the line. Needless to say; that the appropriate government under Section 164 of the Electricity Act, which is the Governor of Haryana in this case, though could have imposed such conditions while conferring power upon the petitioner authority under the Telegraph Act, but has not actually imposed any such condition qua granting any hearing to any person before exercising powers under the Telegraph Act. The said power,

undisputedly, has been conferred un-affected by any conditions. Hence, it is only the provisions of the Telegraph Act which would govern the matter as such. So far as the rights of affected owner under the Telegraph Act is concerned, he can only question the quantum of compensation on account of damages caused by the authority and not the *per-se* right of the authority to cause such damage. Therefore, whether the notification issued by the petitioner was vague or clear and whether it mentioned any name of village or khasra number of land or not, is totally immaterial. Under the provisions of the Telegraph Act, as it exists today, the petitioner/defendants is not even under any obligation to issue any notification of any kind. Hence, the argument of the plaintiff/respondents in that regard is without any merit.

Although learned counsel for the respondents has relied upon Rule 3 of the Works of Licensee Rules, 2006, however, a perusal of the said rule also shows that the prior consent of the owner or occupier of the land or building is required for laying the line over his/its land. However, the sub rule (4) of the said Rule clearly prescribes that nothing contained in that rule shall affect the powers conferred upon any licensee under Section 164 of the Act. Therefore, the provision of Rule 3 of the Works of Licensee Rule, 2006, in the present case, stand superseded by the unconditional authorisation of the appropriate government in favour of the petitioner under Section 164 of the Electricity Act to exercise powers under the Telegraph Act. Accordingly, even this argument of the counsel for the respondents is without any force.

This Court finds the reliance on the arguments of the counsel for the petitioner upon judgment rendered in **Power Grid Corporation** (supra) to be well placed. The Hon'ble Supreme Court has held in **Power Grid**

Corporation (supra) that the Legislature has not made any impediment in the execution of the works in laying the electricity line and has observed as under-

“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 December 24, 2003 exercisable under India 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 India Telegraph Act, 1885, it acquires all such powers which are vested in a Telegraph Authority under the provisions of the Indian Telegraph Act, 1885 including power to eliminate any obstruction in the laying down of power transmission lines. As per the provisions of the Indian 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 Indian Telegraph Act, 1885 empowering the licensee to lay telegraph lines, applied the same, as it is, for laying down the electricity transmission lines. Powers of the Telegraph Authority conferred by Sections 10, 15 and 16 of the Indian Telegraph Act, 1885, stand vested in and are enjoyed by the Power Grid.”

The said judgment has been followed by a Single Bench of this Court in **Gurmukh Singh** (supra), as well as, by a Division Bench of this Court in the case of **CWP No. 25966 of 2017 Harbans Singh** (supra), wherein the plea against the vagueness of the notification issued by the Electricity Licensee has specifically been negated.

The plaintiffs are entitled to file any suit if they have any

actionable claim as required under the provisions of CPC. The Civil Court also has the jurisdiction to pass decrees granting injunctions under the provisions of Specific Relief Act, 1963. However, by way of amendment, the Legislature has considered it appropriate to exclude the grant of injunction in the matters involving the infrastructure projects. It is not even disputed that the laying of the electricity line is an infrastructure project. Therefore, whether the suit filed by the plaintiffs itself can succeed or not, may be an issue to be decided after full fledged trial, however, in view of ex-facie prohibition created by statute, interim injunctions could not have been passed in favour of the plaintiffs by the Court below. Since there cannot be any estoppel against the provisions of a statute, therefore, a statutory prohibition imposed upon the Court could not be lightly side-tracked on any ground, whatsoever.

In view of the above, the present petitions are allowed. The order passed by the lower Appellate Court is set aside. The order passed by the trial Court is restored.

(RAJBIR SEHRAWAT)
JUDGE

13.12.2021

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No