

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 5538 of 2021

**Biswajit Saha & Ors.
Vs.
Union of India & Others.**

For the Petitioners: Mr. Kishore Dutta, Adv.
Mr. Amit Pan, Adv.
Mr. Aryak Dutt, Adv.
Mr. Dipankar Das, Adv.,

For the Power Grid Corporation: Mr. Bikash Ranjan Bhattacharjee, Adv.
Mr. Piyush Chaturvedi, Adv.
Mr. Uttam Kr. Mandal, Adv.,

For the State: Mr. Ansar Mondal, Adv.
Mrs. Tapati Samanta, Adv.,

Hearing concluded on: 23.12.2021

Date: 05.01.2022

SUVRA GHOSH, J. :-

1. The prayers of the writ petitioners are as follows:-

“(a) A writ in the nature of mandamus do issue directing the Respondent authorities and more particularly the Respondent No.3 not to take any action towards installation of the high tension electric transmission line or the supporting poles on the land of the petitioners without following the due process of law;

(b) A writ in the nature of prohibition do issue prohibiting the Respondent authorities from encroaching the land of the Petitioners without following the due process of law;"

2. The petitioners are aggrieved by the decision making process adopted by the third respondent in installing a pole for transmission of high voltage electricity by encroaching upon the petitioners' land. Learned counsel for the petitioners submits that no notice of such installation was served upon the petitioners in terms of the provisions of the Electricity Act, 2003 and in any event, if such high tension electricity pole is to be installed on the land of the petitioners, notice ought to have been given for acquisition of the said land and payment of adequate compensation as per the market value of the land to the petitioners. On inquiry, the petitioners were informed that no notice was given by the third respondent to any person whose land was likely to be affected by such installation and upon insistence of the first petitioner, the third respondent handed over a sketch map indicating its plan of action and laying of high tension line on the petitioners' land.
3. Referring to section 10(d) of the Indian Telegraph Act, 1885, learned counsel for the petitioners' submits that in installing such high tension electric transmission line, the authority should do as little damage as possible and pay full compensation to all persons interested for such damage sustained by them. It is further submitted that the high tension electric line shall run through the middle of the land covering a substantial area and the land cannot be utilised for any other purpose.

The petitioners intend to set up a factory in the said land after conversion of the land and such application for conversion is pending before the concerned authority. The petitioners have taken the court to paragraph 6 (d), (e), & (i) of the affidavit-in-opposition used by the third respondent which demonstrates that in exercise of powers under section 164 of the Electricity Act, 2003, the Central Government, vide notification no. 610 dated 16-02-2018 published in the Gazette of India, has conferred the powers of "Telegraph Authority" upon PMJTL/Power Grid and as a part of 400 KV Jeerat (New)-Subhashgram Transmission Line, the third respondent is required to install transmission towers, amongst others, over the land of the petitioners to enable symmetric stringing of transmission line. Also, this respondent handed over a road sketch map indicating the route map and alignment of the transmission line over the petitioners' land as well as the adjoining lands.

4. Learned counsel for the petitioners' points out that admittedly no individual notice was served upon the petitioners and the third respondent claims to have made newspaper publication informing installation of the high tension line. But neither a copy of such publication is annexed to the affidavit, nor is the date of publication declared. The maps annexed to the affidavit are vague and unintelligible and the assessment of compensation demonstrated in page 55 (annexure R/4 to the affidavit-in-opposition) is without any basis. The petitioners' proposal for an alternative route to shift the tower location was turned down by the respondent vide order dated 27th September, 2021 without giving an opportunity of hearing to the petitioners.

5. The value of the land is more than Rs. 5,00,00,000/- (Rupees Five Crores) whereas compensation has been calculated at Rs. 1,88,000/- , the factors taken into consideration for such determination not being disclosed. Pointing to the error in the decision making process, the petitioners have prayed for a direction upon the third respondent not to take any action towards installation of high tension line and restraining it from encroaching upon the petitioners' land without following due process of law.
6. Learned counsel has placed reliance on the authority in Kerala State Electricity Board v/s. Livisha And Others reported in (2007) 6 Supreme Court Cases 792 in support of his contention.
7. Vehemently opposing the prayer of the writ petitioners, answering respondent no. 3 submits that for the purpose of transmission of towers for stringing of transmission lines, the authority need not acquire the land in question and is only vested with the power to use the land for public purpose in terms of section 10(b) of the Indian Telegraph Act, 1885. This respondent is obliged to pay full compensation for the damage sustained by the owners of the land used for such purpose and the petitioners are at liberty to approach the appropriate forum under section 16(3) of the Act of 1885 in case of any dispute concerning sufficiency of the compensation to be paid under section 10(d) of the Act. The petitioners are not entitled to any individual notice under the Act and under no circumstance can the work be halted.

8. Learned counsel for the respondent has placed reliance on the judgment in the Power Grid Corporation of India Limited v/s. Century Textiles and Industries Limited And Others reported in (2017) 5 Supreme Court Cases 143 and a judgment of a coordinate bench of this court passed on December 14, 2021 in W.P.A. 996 of 2021.
9. In distinguishing the judgment in Power Grid Corporation of India Limited (supra), learned counsel for the petitioners has submitted that in the case under consideration in the said judgment, notice was issued upon the petitioners who gave a reply to the said notice. Also, 408 towers out of 410 towers were already erected and the work had started long ago. The project was on the verge of completion when the writ petition was decided.
10. Learned counsel for the petitioners refers to page 4 of the judgment in W.P.A. 996 of 2021 and submits that the provision of section 10 of the Act of 1885 has not been complied with by the respondent.
11. I have considered the submissions made on behalf of the parties, material on record as well as the law on the point.
12. The notification no. 610 dated February 16, 2018 has conferred powers of Telegraph Authority upon the power grid under section 164 of the Electricity Act, 2003 and the third respondent has acted within the periphery of such powers. Though Rule 3 (1)(a) of the 2006 Rules states that a licensee may carry out works for supply of electric lines through, over or under any land with prior consent of the owner or occupier of such land, the said rule ceases to apply in the case of power grid by virtue of exception clause contained in Rule 3(4) of the Rules which states that “

Nothing contained in this rule shall effect the powers conferred upon any licensee under section 164 of the Act.” The respondent being governed by section 164 of the Electricity Act, 2003, the 2006 Rules are not applicable to it. [The Power Grid Corporation of India Limited (supra)]. Section 10(b) of the Indian Telegraph Act, 1885 envisages that the authority shall not acquire any right other than that of user in the property across which the telegraph line or post is installed. Therefore the question of acquisition of the property does not arise.

13. Learned counsel for the petitioners has challenged the decision making process of the authority (third respondent) in so much as the authority has not complied with the provisions of section 10(d) of the Act of 1885. Section 10(d) of the Act requires the authority to do as little damage as possible and pay full compensation to all persons interested for any damage sustained by them by reason of installation of the towers in the property. There is no requirement for service of notice upon the land owners/occupiers or obtaining their prior consent under section 10 of the Act of 1885. It is submitted by the authority that installation of tower over lands covering certain villages including that of the petitioners was notified by way of publication in several newspapers. But neither the date of publication is disclosed, nor are the relevant newspapers annexed to the affidavit-in-opposition used by the respondent. Be that as it may, as the statute itself does not require service of individual notice upon the land owners/occupiers prior to commencement of the installation work, the respondent was under no obligation to serve such notice upon the petitioners.

14. The petitioners have primarily challenged the authority of the respondent to install high tension electric transmission poles through the land of the petitioners without due process of law and without their consent. It appears that the power grid has been entrusted with the job to bring power from Jharkhand to West Bengal for strengthening the eastern region and is required to install transmission towers over various lands including that of the petitioners to enable symmetric stringing of transmission line. The project is therefore of immense national importance and shall benefit the public at large across states. The petitioners apprehend that such installation shall cause extensive damage to their land and the land cannot be utilised for any other purpose. In substance, the petitioners are aggrieved by the proposal of installation work on their land by the authority. The apprehension of the petitioners does not have a strong foundation. The third respondent has handed up a sketch map to the petitioners demonstrating the transmission line which according to the petitioners, is unintelligible. The respondent authority has pointed out that all relevant factors were kept in mind while executing the work and annexure R/4 to the affidavit-in-opposition demonstrates that the damage shall be assessed after completion of every stage of work, for payment of compensation to the owners/occupiers.
15. A proposal made by the petitioners for shifting the tower location to an alternative route was considered and turned down by the authority on 27th September, 2021 on the ground that upon re-survey, it was found that there was no alternative route feasible by shifting the location. The foundation and erection work of both subsiding and preceding towers was

complete and it was not technically feasible to shift the route of the transmission line at that stage. The ratio of the judgment relied upon by the respondent authority is squarely applicable in the fact situation of the case in hand. The judgment in the Power Grid Corporation of India Limited (supra) deals with prior consent of the land owners, relocation of construction of towers as well as assessment of compensation. In dealing with these issues, the observation of the Hon'ble Supreme Court is in favour of the contention of the third respondent in the present writ petition. In the said case also, the project was on the verge of completion as in the present case where the other towers except the tower crossing the petitioners' lands have been completed.

16. In the case in hand, the respondent authority has assessed the compensation to be paid to the petitioners in compliance with section 10(d) of the 1885 Act, and there is nothing on record to suggest any illegality/irregularity in the decision making process of the respondent. The petitioners' application for shifting the tower location to an alternative route has been rejected by the authority by a reasoned order and no violation of the notification dated February 16, 2018 or provision of section 10 of the Act of 1885 is found within the four corners of the record.
17. The second limb of argument of the petitioners is that the compensation assessed by the authority is not in conformity with the present market value of the land. The market value of the land is more than Rs. 5,00,00,000/- (Five Crores) whereas compensation was calculated at Rs.

1,88,000/- and the factors taken into consideration for such determination have not been disclosed.

18. In this context, section 16(3) of the 1885 Act is relevant.

19. Section 16(3) of the Act is set out:-

“(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.”

20. In view of the same, the petitioners are at liberty to approach the District Judge within whose jurisdiction the property is situate, for determination of adequate compensation payable to them.

21. In the authority in Kerala State Electricity Board (supra) relied upon by the petitioners, the Hon’ble Supreme Court dealt with a matter with regard to compensation payable on the basis of the yield from the trees which were cut and removed for installation of telegraph and electrical lines over the property. The issue was dealt with by the Hon’ble Supreme Court after compensation was determined by the Board and also by the District Judge and appeal preferred against the said decisions before the High Court was dismissed. Therefore the said judgment is not applicable in the facts and circumstances of the present case.

22. Upon consideration of the submissions made on behalf of the parties and material on record, this court is of the view that the remedy of the petitioners lies before the appropriate forum under section 16(3) of the 1885 Act. The writ petition, being devoid of merit, is liable to be dismissed.
23. W.P.A. 5538 of 2021 is dismissed.
24. There shall be however no order as to costs.
25. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)