

D/L. 37.
November 25, 2022.
MNS.

WPA No. 24351 of 2022

Swapan Kumar Saha and others
Vs.
The State of West Bengal and others

Mr. Partha Sarathi Bhattacharyya,
Mr. Partha Chakraborty,
Mr. Raju Bhattacharyya,
Ms. A. Ghosh,
Ms. Jayashree Saha

... for the petitioners.

Mr. Ashim Kumar Ganguly,
Mr. Bellal Shaikh

...for the State.

Mr. Sumit Kumar Panja,
Mr. Sumit Roy

...for the WBSETCL.

The police report filed in Court today be
kept on record.

The learned Senior Advocate appearing
for the petitioners contends that the petitioners
have been attempting to construct a textile
industry on the concerned plot of land. However,
the West Bengal State Electricity Transmission
Company Limited (WBSETCL) has encroached
upon the said land and is installing a tower and
other installations, thereby deprecating the value
of the land. It is submitted that the entire property

has been rendered unfit to be used by the petitioner for the purpose originally intended and, as such, the WBSETCL ought to give adequate compensation to the petitioner in the least.

Learned counsel appearing for the WBSETCL submits that the installation of tower over the property-in-question has commenced as per Section 10 of the Indian Telegraph Act, 1885 (1885 Act), coupled with Section 16 thereof, for which the compensation payable is to be considered only after the work is over.

Upon hearing learned counsel for the parties, it is evident that a very interesting question has been raised by the learned Senior Advocate for the petitioners. It is argued that this is one of the exceptional cases where a statute provides virtually for acquisition of land, for all practical purposes, in the name of acquiring right of user, without taking into account the adequate prior compensation to be paid before doing so in the garb of exercise of powers under the 1885 Act.

The learned Senior Advocate for the petitioner has highlighted Section 16 of the 1885 Act, which has been made applicable to power distribution and transmission licensees by virtue

of Section 164 of the Electricity Act, 2003 (2003 Act), as in the present case, and argues that if the exercise of the powers mentioned in Section 10 of the 1885 Act 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.

It is provided in clause (d), Section 10 of the 1885 Act that in the exercise of the powers conferred by the said 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.

Learned counsel for the WBSETCL is justified in arguing that, construing the provisions of Section 16 in conjunction with the language used in Section 10(d) of the 1885 Act, the occasion to pay damages arises only upon the work being completed and the damages being actually assessed.

Hence, in terms of the provisions of the 1885 Act, read with the 2003 Act, the claim for

damages made by the petitioners is premature since the project of installation of towers of the WBSETCL is still incomplete, although apparently on the verge of completion.

However, the Act specifically provides for a right of compensation for damages caused by the Telegraph Authorities (here the WBSETCL) upon the work being completed.

Hence, WPA No. 24351 of 2022 is disposed of by granting liberty to the petitioners to approach the WBSETCL for adequate compensation for the perceived damage, which has taken place in the petitioners' plot of land due to the WBSETCL project, immediately after the work is completed. The WBSETCL shall explore the scope and quantum of the damages payable to the petitioners, upon such work is done, in accordance with law and upon giving opportunity of hearing to the petitioners.

Needless to say, the WBSETCL shall, immediately upon completion of the work on the petitioners' plot(s) of land, intimate the petitioners in writing as to completion of such work, to enable the petitioners to apply for adequate compensation for damages occasioned by such work.

It is made clear, however, that the rights of the petitioners to avail the remedy provided in Section 16 of the 1885 Act, in the event there is absence of consensus on the quantum of compensation payable, shall not be prejudiced in any manner by any of the observations made herein.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)