

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 5459/2021

(MANISH SURESHKUMAR JAISWAL & ANOTHER **VERSUS** SUB-DIVISIONAL OFFICER,
RALEGAON, DISTRICT YAVATMAL & OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Dr. Anjan De with Shri Apurv De, counsel for the petitioners.
Shri Neeraj R. Patil, Assistant Government Pleader for the R-1, 3 and 4.
Shri Subodh P. Dharmadhikari, Senior Advocate with Shri D.M. Kale, counsel
for the R-2.

CORAM : A. S. CHANDURKAR AND SMT. M.S. JAWALKAR, JJ.

DATE : APRIL 13, 2022.

Heard.

2. The challenge raised in this writ petition is to the action of the respondents in seeking to lay high tension line on the land of the petitioners by erection of towers for that purpose. Being aggrieved by the steps taken in that regard pursuant to the order dated 13.09.2021 provisionally determining the market value of Survey No.489 which belongs to the petitioners by treating it as an agricultural land as well as the subsequent communication dated 16.11.2021 modifying the market value as determined earlier, these communications/orders are also under challenge.

3. It is the case of the petitioners that they are the owners of Survey no.489 which was purchased by them as an agricultural land. The same admeasures 2 Hectare 91 R. The said land was converted for non-agricultural residential purpose on 02.08.2013. With the approval of the layout plan about 95 plots in the area admeasuring 17800 square meters came to be approved. The necessary entry as regards conversion of the land was also taken in the 7/12 extract. The petitioners received a notice dated 25.03.2021 from the Naib Tahsildar in which it was stated that the Power Grid Corporation of India Limited had proposed to lay a high tension line across the land owned by the petitioners. Since some obstruction was

being caused by the petitioners they were required to attend the hearing before the Tahsildar on 06.04.2021. A similar notice to that effect was again issued on 23.04.2021. Thereafter the Authorities inspected the land in question and proceeded to determine the market value of that land by treating it to be an agricultural land. The Sub-Divisional Officer on 13.09.2021 determined the market value of that land to be Rs.33,07,513/-. By another order dated 16.11.2021 the aforesaid market value was modified by reducing the same. Being aggrieved by the action of the respondents and especially the Power Grid Corporation of India Limited of seeking to lay high tension line across the field of the petitioners as well as the determination of market value of that land by the Sub-Divisional Officer, the present writ petition has been filed.

4. Dr. Anjan De, learned counsel for the petitioners submitted that the entire exercise undertaken by the respondents while seeking to lay high tension line and erection of towers for that purpose was contrary to the provisions of Section 16 of the Indian Telegraph Act, 1885 (for short, 'the said Act'). Referring to the notices dated 25.03.2021 and 22.04.2021 issued by the Naib Tahsildar, it was submitted that the same were not in accordance with the provisions of Section 16(1) of the said Act. These notices were with regard to the alleged obstruction said to be caused by the petitioners and not with regard to the purpose for which such notice under Section 16(1) of the said Act was required to be issued. There was no hearing granted to the petitioners in the context of Section 16(1) of the said Act. Inviting attention to the judgment of the Division Bench in *Vivek Brajendra Singh Versus State of Maharashtra & Others* [2012(3) All MR 130], it was submitted that the District Magistrate was required to apply his mind to the relevant aspects after the grant of hearing. The learned counsel pointed out that Survey No.489 had been converted for non-agricultural use on 02.08.2013 itself but while determining the market value of that land on 13.09.2021 and 16.11.2021, the Sub-Divisional Officer proceeded on the premise that the land was an agricultural land. It

was submitted that about 95 plots had been duly sanctioned in the layout and as a result of the high tension line passing through the land a substantial area would be considered as 'no construction zone'. To indicate non-consideration of relevant aspects, attention was invited to the communication dated 02.08.2021 issued by the Sub-Registrar, Registration and Stamps Department by which valuation of the said land had been indicated which was much more than that was mentioned in the communications dated 13.09.2021 and 16.11.2021. It was further submitted that on 29.10.2021, the Deputy Collector had returned the proposal that was submitted by the Sub-Divisional Officer in the matter of determination of the market value. Thus, without due application of mind the market value determined earlier was modified on 16.11.2021. It was urged that the Committee that was constituted and which passed revised order dated 16.11.2021 was not properly constituted nor were the petitioners given any hearing in that regard. Inviting attention to various valuation reports obtained by the petitioners it was submitted that if a proper notice in that regard would have been given to the petitioners all such material available with them could have been placed before the respondents. In support of his submissions, the learned counsel by placing reliance on the judgment in the case of *Mohinder Singh Gill Versus Chief Election Commissioner, New Delhi* [(1978) 1 SCC 405] submitted that the validity of the impugned action ought to be determined from the contents of the orders impugned and not on the basis of additional material sought to be produced on record. Reference was also made to the decisions in *East Coast Railway & Another Versus Mahadev Appa Rao & Others* [(2010) 7 SCC 678] and *Hindustan Petroleum Corporation Ltd. Versus Darius Shapur Chenai* [(2005) 7 SCC 627]. It was also submitted that the onus of proof was on the Power Grid Corporation of India Limited that it had taken all the steps to ensure that no damage was caused to the land or environment while erecting the high tension line. It was thus submitted that the prayers made in the writ petition ought to be granted in view of the aforesaid.

5. Shri Subodh Dharmadhikari, learned Senior Advocate for the respondent no.2-Power Grid Corporation of India Limited opposed aforesaid submissions. Inviting attention at the outset to the prayers made in the writ petition, it was submitted that the grievance of the petitioners as regards the incorrect manner of determining the market value could be questioned in proceedings under Section 16(3) of the said Act. The impugned orders dated 13.09.2021 and 16.11.2021 merely sought to determine the market value of the land through which the high tension line was to pass and the towers were to be erected. There was a distinction between the provisions of Sections 10 and 16 of the said Act. Under Section 10 of the said Act, the Telegraph Authority was empowered to place and maintain a telegraph line upon any immovable property. The Telegraph Authority was required to ensure that minimum damage as possible would be caused while undertaking such exercise and at the same time that Authority was required to compensate all persons interested for any damage sustained in that process. Under Section 16(1) of the said Act, the District Magistrate was empowered to permit the Telegraph Authority to exercise powers under Section 10(d) of the said Act. It is only when there was a dispute as regards sufficiency of the compensation to be paid under Section 10(d) of the said Act that the dispute would be determined by the District Judge by having a resort to the provisions of Section 16(4) of the said Act. It was submitted that the notice issued to the petitioners was only for not obstructing the exercise undertaken under Section 10(d) of the said Act and not with regard to determination of the market value of that land. The learned Senior Advocate invited attention to the decisions in *Power Grid Corporation of India Limited Versus Century Textiles and Industries Limited & Others* [(2017) 5 SCC 143] and *Jarnail Singh Versus Maharashtra State Electricity Transmission Co. Ltd., Nagpur* [AIR 2015 Bombay 283] in that regard. It had been held that under Section 10 of the said Act, there was no question of any notice or hearing that was required to be given before exercising the power to establish or maintain a telegraph line. Under Section 16 of the said Act what was required to be seen is

whether the objection taken or suggestion given as regards laying or maintaining a telegraph line was justified or not. If the petitioners were not satisfied with the quantum of compensation they were free to invoke the remedy provided under Section 16(3) of the said Act. Attention was then invited to the reasons for laying down the high tension line across various fields including the land of the petitioners. In that context a communication dated 30.05.2018 as well as an agreement between the Central Railway Nagpur and Power Grid Corporation of India Limited dated 27.05.2018 was referred to. It was thus submitted that since the notices dated 25.03.2021 and 22.04.2021 were only with regard to removal of obstruction and not with regard to the location of the towers or determination of the market value, no fault could be found in the same. As regards the allegation that there was absence of delegation by the District Magistrate in favour of the Naib Tahsildar for issuing those notices it was submitted that there was no pleading on record in that context. Similarly, there was no material placed on record to show that environmental clearance was required by the Power Grid Corporation of India Limited. It was thus submitted that there was no merit in the challenge as raised and hence the writ petition was liable to be dismissed.

6. Shri Neeraj Patil, learned Assistant Government Pleader for the respondent nos.1, 3 and 4 opposed the submissions made on behalf of the petitioners. In addition to what was urged on behalf of the Power Grid Corporation of India Limited, it was submitted that the entire action as taken was in accordance with the provisions of the said Act and the fact that the land was converted into layouts was also kept in mind. This was evident from the order dated 16.11.2021 wherein reference to this effect was made.

7. We have heard the learned counsel for the parties at length and we have perused the documents placed on record. We have given due consideration to their respective submissions. Before considering the submissions as urged by the petitioners, it would be necessary to keep in

mind the distinction between the provisions of Section 10 and Section 16 of the said Act. The validity of Section 10 of the said Act was challenged in *Vivek Brajendra Singh* (supra) on the ground that the same did not provide for any hearing to the land owner of any immovable property over or along which an electric line is to be placed. Considering the challenge, it was held that the provisions of Section 10 did not contemplate grant of any hearing prior to undertaking the exercise of laying down the electricity line. This position has been reiterated by the Division Bench in its subsequent decision in *Jarnail Singh* (supra). The right of hearing was only restricted in the context of any obstruction being caused by a land holder since the State acquires a right of user in the land of a citizen which involves incurring of civil consequences. It was held that the power of the District Magistrate under Section 16 or 17 of the said Act was only an extension of power of the Telegraph Authority under Section 10 of the said Act.

8. It is thus clear that prior to determining the area through which the high tension line would pass or a tower would be erected there is no right of hearing conferred on a land owner. The provisions of Section 10 of the said Act do not provide for the same. The right of hearing has been read into Section 16(1) of the said Act in the matter of resistance or obstruction by a land owner when power under Section 10(d) is carried out. In the aforesaid context when the notices dated 25.03.2021 and 22.04.2021 are perused, it becomes clear that the same are only in the context of obstruction being caused by the petitioners in the matter of laying down the high tension line and erecting the towers. Since there are no averments in the writ petition on the aspect of delegation of power by the District Magistrate in favour of the Naib Tahsildar, it is not necessary to examine that contention.

9. The principal grievance of the petitioners appears to be the consideration of their land to be agricultural while proceeding to determine the market value. The learned counsel for the petitioners was at pains to indicate that the land had been converted for non-agricultural use on

02.08.2013 and despite that it was being referred to as an agricultural land. About 95 plots had been sanctioned there. It is on that premise that it was urged that there had to be application of mind by the District Magistrate in that regard. It is however found that these aspects relate to sufficiency of compensation and therefore if any dispute in that regard arises, the same can be resolved by having resort to Section 16(3) of the said Act. That stage however is yet to arrive since it would be for the petitioners to raise such dispute in accordance with those provisions. There is no scope to examine in this context the grievance of the petitioners regarding passing of the high tension line and erection of the towers in their land. That matter is covered by Section 10 of the said Act. We therefore do not find any reason to interfere with such exercise.

10. The ratio of the decisions relied upon by the learned counsel for the petitioners cannot be disputed. The said ratio however cannot be made applicable to the case in hand. It is also to be borne in mind that the private interest of the petitioners would have to give way to larger public interest since the work of laying the high tension line and erection of towers was required to be undertaken due to shifting of the proposed Wardha – Yavatmal – Nanded railway line. The right of the petitioners to be suitably compensated has not been taken away.

11. For all these reasons, we do not find any merit in the writ petition which is accordingly dismissed with no order as to costs.

At this stage the learned counsel for the petitioners seeks continuation of the interim relief that was granted on 22.12.2021. This prayer is opposed by the learned counsel for the respondent no.2.

Considering the larger public interest involved, the prayer as made is rejected.

(SMT. M.S. JAWALKAR, J.)

(A. S. CHANDURKAR, J.)

APTE

Signed By: Digitally signed
by ROHIT DATTATRAYA
APTE
Signing Date: 13.04.2022 17:17