

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

WP.NO.17504/2019 & WMP.NO.16983/2019

J.Jayakrishnan

... Petitioner

Vs

1. The Government of Tamil Nadu  
rep.by its Principal Secretary,  
Energy [A1] Department  
Secretariat, Chennai 600 009.
2. TANTRANSCO [Tamil Nadu Transmission  
Corporation], represented by its Chairman  
10<sup>th</sup> Floor, NPKRR Maligai  
No.144, Anna Salai  
Chennai 600 002.
3. TANTRANSCO  
rep.by its Chief Engineer  
Chennai South Region  
A-11, Guindy Industrial Estate  
SIDCO Industrial Estate  
Guindy, Chennai 600 032.
4. The District Collector  
Kancheepuram District, Kancheepuram.
5. The Revenue Divisional Officer  
Chengalpet Revenue Division,  
Chengalpet, Kancheepuram District.
6. The Government of India  
rep.by its Secretary,  
Ministry of Powers  
Shram Shakti Bhawan  
Rafi Marg, New Delhi 110 001.

... Respondents

Prayer:

Writ Petition filed Article 226 of the Constitution of India  
praying for issuance of a writ of mandamus directing the  
respondents 1 to 4 to assess petitioner property for the payment

of compensation towards damages caused to the petitioner by erection of the towers and transmission line in their property based on the circular issued by the 6<sup>th</sup> respondent guidelines herein dated 15.10.2015 consequently direct the 4<sup>th</sup> respondent herein to apply the said guidelines to the petitioner's case with regard to the determination and payment of compensation for the damages caused to him on account of fixed high transmission lines over his lands.

|                 |   |                                           |
|-----------------|---|-------------------------------------------|
| For Petitioner  | : | Lieutenant Colonel Ganesan.S              |
| For RR 1, 4 & 5 | : | Mrs.V.Yamunadevi<br>Special Govt. Pleader |
| For RR2 & 3     | : | Mr.S.Madhusudanan                         |
| For R6          | : | Mr.K.S.Jeyaganeshan                       |

#### ORDER

- (1) The petitioner seeks a mandamus directing the respondents to pay compensation towards damages caused to the petitioner's property by erection of towers and drawal of high tension transmission line over the property of the petitioner.
- (2) It is the case of the petitioner that the 2<sup>nd</sup> respondent, namely, the Tamil Nadu Transmission Corporation [TANTRANSCO] which is now vested with the responsibility of creating transmission lines across the State, while it was the part of the Tamil Nadu Electricity Board during the years 2005-2007, erected towers for transmission of high tension energy across the lands of the petitioner. The towers were erected some time between 2005-2007 and the lines were also drawn. The petitioner had developed his property into a residential colony subsequently during the years 2014-2015. In that process, the petitioner attempted to lay a road beneath the transmission lines. The Director of Town and Country Planning, the approving authority for the layout of the petitioner, objected to such laying of road beneath the transmission lines and refused approval. Therefore, the petitioner was forced to lay roads on either side of the transmission lines after leaving a right of way corridor as required under the Electricity Laws. This prompted the petitioner to make a representation to the respondents, namely, the Government of Tamil Nadu represented by its Principal Secretary, Energy, the TANTRANSCO and other authorities seeking

compensation under Section 68[1] of the Electricity Act read with Section 10 of the Telegraph Act. Contending that the said representation was not considered, the petitioner has come up before this Court.

- (3) A Counter affidavit has been filed on behalf of respondents 2 and 3 wherein it is claimed that the petitioner is not the owner of the land over which the towers have been erected. It is also claimed that the lands in question over which the lines have been drawn, have been gifted by the petitioner through his Power Agent, M/s.Casa Grande Private Limited while developing the land into residential plots. It is also contended that the erection of the towers was completed way back in the year 2007 and as per the prevailing law at that time, the petitioner would only be entitled to damages to the crops in the land. Only in the year 2015, the Central Government came out with a scheme for payment of compensation for the land over which such towers are erected. The said scheme was followed by the State of Tamil Nadu in the year 2017 when the State introduced its own scheme vide G.O.Ms.NO.63 date 22.11.2017. According to the respondents, both these guidelines issued by the Union of India on 15.10.2015 and G.O.Ms.No.63 dated 22.11.2017 are only prospective in nature and they will not enable the petitioner to claim compensation for the towers erected in the year 2007.
- (4) Lt.Col.Ganesan, learned counsel appearing for the petitioner would vehemently contend that the action of the respondents in erecting towers over the property of the petitioner is in violation of his proprietary interest over the property and the prohibition imposed on him from constructing over the property also violates his rights to the property. Arguing further, the learned counsel would submit that Section 63 of the Electricity Act read with Section 10 of the Telegraph Act enables him to seek compensation for the damage caused. Strong reliance is placed by the learned counsel on the judgment of this Court in WP.No.36566/2007 dated 28.01.2008 where the Hon'ble Mr. Justice P.JYOTHIMANI [as he then was] has considered the very same scheme.
- (5) Contending contra, Mr.S.Madhusudanan, learned counsel appearing for respondents 2 and 3 would contend that the petitioner would be entitled to only claim damages to the crops as per the law as it stood in the year 2007 when the work was completed. Even according to the petitioner, the land ceased to be agricultural land and it was not cultivated from the year 2003. Therefore, the petitioner

would not be entitled to any compensation for the action of the respondents in erecting towers. In fact, there is only one tower which has been erected over the land of the petitioner. It is because of the fact that the petitioner had let out the lands into plots, he had to lay corridor beneath the high tension line which prompted the petitioner to now claim a compensation. It is not on record that the petitioner had objected to the erection of the towers at any point of time. Learned counsel would further pointed out that the entire area has been developed into residential colony and two roads have been laid on the either side of the corridor and the petitioner cannot use this land for any purpose. Therefore, the question of payment of damages would not arise.

- (6) Mr.A.S.Jeyaganeshan, learned counsel appearing for the Union of India/6<sup>th</sup> respondent would submit that only upon realising the difficulties of people in whose lands such towers are erected, the Union of India had come out with the scheme for payment of compensation in the year 2015 and that is being followed by almost all the States now. According to him, either under the provisions of the Electricity Act or under the provisions of the Telegraph Act, the owner of the land beneath which the tower is erected prior to 2015 is not entitled to compensation for the value of the land. He would at best be entitled to the damages caused to the crops.
- (7) Mrs.V.Yamuna Devi, learned Special Government Pleader appearing for respondents 1, 4 and 5 would substantially adopt the submissions of the learned counsel for the respondents 2 and 3.
- (8) I have considered the rival submissions.
- (9) Section 10 of the Telegraph Act, 1885, reads as follows:-
  - '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 the 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.

- (10) Section 68 of the Electricity Act invests the power that the licensee to draw overhead lines. Section 68[6] provides for payment of compensation for any crop that is damaged or any tree that is removed in the process of drawing of electrical lines. Apart from the above, there is no provision for payment of compensation for the land value as such in either of the two enactments. It is only to remove the said difficulty, the Central Government had come up with the scheme in the year 2015. According to the learned counsel for the petitioner, the petitioner would be entitled to compensation for the diminution in the value of his land. He would draw my attention to the judgment of the Full Bench of the Kerala High Court which has been extensively referred to by this Court in the order in WP.No.36566/2007 wherein there are certain observations to the effect that the owner of the land would be entitled to compensation for diminishing value also. However, after exhaustive analysis of the provisions, ultimately the Full Bench has observed as follows:-

'22. In this case it is the claimant who knows best as to how his land could be cultivated with other crops which would not violate the restrictions regarding open space to be left from the electric lines, towers and posts. It is quite plausible that every landowner would be using the land beneath the electrical lines [be they of high tension or low tension] to raise cultivation or for some other purpose except of course for growing tall trees

or constructing high structures. Thus, regard being had to the common course of natural events, the Court can draw a presumption that agricultural operation in a reasonably profitable manner can be carried on in the affected land except growing tall trees. Hence, the burden is on the claimant to rebut the said presumption.

23.The upshot of the above discussion is that it is open to the owners of the land to claim compensation for diminution in land value when towers and poles are erected on and electric lines drawn over their lands subject to the conditions detailed in this judgment. The quantum of damages shall be fixed on the basis of the principles enunciated hereinabove. Whether claimants had taken reasonable steps to mitigate the damage or not is a question to be considered by the District Judge on the evidence in each case and subject to the presumption and onus indicated above.''

- (11) After referring to the said judgment, this Court had held as follows:-

'27.In the present case, it is crystal clear that the Board acted as the State Transmission Utility as per Section 2[67] of the Electricity Act, 2003 and by virtue of Notification issued by the State Government under Section 39[1] of the said Act, the Board is not engaged in the business or trading of electricity and therefore, it is certainly different from the Power Grid Corporation and in that view of the matter, the above said judgment is distinguishable from the facts of the present case. The powers of the Board as 'State Transmission Utility' is that of telegraph authority traceable under Section 10 of the Indian Telegraph Act, 1885, and therefore, in cases of dispute as to compensation regarding the properties, necessarily the procedure under Section 16 of the Indian Telegraph Act, 1885, has to be followed.

28.In any event, on the facts and circumstances of this case, the major point which is urged by the petitioner is that the property was sought to be acquired without following due process of law and by virtue of

various judgments, especially relating to the powers of the Board as 'State Transmission Utility', there is no necessity to give any notice for the purpose of erection of tower or for making 'transmission lines' and therefore, the petitioner is not entitled for the relief as claimed, except the right under Section 10[d] of the Indian Telegraph Act, 1885, which enables the petitioner to get compensation for any damages sustained by him while the Board exercising its powers as 'State Transmission Utility' and the compensation is determinable as per Section 16 of the Indian Telegraph Act, 1885.'

- (12) Therefore, what the petitioner would be entitled to is only the compensation for damages determinable under Section 16 of the Indian Telegraph Act, 1885. Admittedly, the petitioner's lands remained uncultivated and the petitioner has not claimed that there was a damage. All that the petitioner claims is a diminution in value. Even assuming that the petitioner would be entitled to claim for diminution value of the land, I do not think this claim of the petitioner which emanates only in the year 2019 can be entertained by this Court. Even according to the petitioner the project was completed and the lines were drawn in the year 2007. The very first representation of the petitioner seeking compensation was made on 21.01.2019, probably, based on the judgment of this Court in V.S.Guruswamy and Others Vs. State of Tamil Nadu rep.by The Secretary, Department of Energy, Fort St George, Chennai 600 009 and Others in WP.No.6703/2015 dated 31.07.2015. There is an unexplained delay of 12 years on the part of the petitioner in making a claim for compensation. The petitioner cannot seek to apply the law as it stands today for something which has been done even in the year 2007. As regards the claim of the petitioner for compensation for diminution in value, I am of the considered opinion that it is hit by laches and the same cannot be entertained at this distant point of time.
- (13) Hence, I do not find any merit in the writ petition and the writ petition fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

AP

Sub Assistant Registrar

To

1. The Principal Secretary,  
The Government of Tamil Nadu  
Energy [A1] Department  
Secretariat, Chennai 600 009.
2. The Chairman  
TANTRANSCO [Tamil Nadu Transmission  
Corporation],  
10<sup>th</sup> Floor, NPKRR Maligai  
No.144, Anna Salai  
Chennai 600 002.
3. The Chief Engineer  
TANTRANSCO  
Chennai South Region  
A-11, Guindy Industrial Estate  
SIDCO Industrial Estate  
Guindy, Chennai 600 032.
4. The District Collector  
Kancheepuram District, Kancheepuram.
5. The Revenue Divisional Officer  
Chengalpet Revenue Division,  
Chengalpet, Kancheepuram District.
6. The Secretary,  
Government of India  
Ministry of Powers  
Shram Shakti Bhawan  
Rafi Marg, New Delhi 110 001.

+1cc to Mr.Lieutenant Colonel Ganesan.S, Advocate, S.R.No.43852  
+1cc to Mr.K.S.Jeyaganeshan, Advocate, S.R.No.43800  
+1cc to Mr.S.Madhusudanan, Advocate, S.R.No.43151  
+1cc to the Government Pleader, S.R.No.44075

WP.No.17504/2019

(CO)  
PM/21/07/2022