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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 24.03.2022

PRONOUNCED ON 21.04.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

WP Nos.31785 and 31793 of 2019

andWMP Nos.32017, 32030 and 32032 of 2019

1.N.Mohanraj
2.A.S.Paramasivam
3.C.N.Ponnusamy
4.C.K.Pongiappan
5.K.Palanisamy
6.C.M.Ganesan

...Petitioners in WP 31785/2019

1.R.Mohanraj
2.T.Shanmugavadivelan
3.C.Periyasamy

...Petitioners in WP 31793/2019

Vs

1.Power Grid Corporation of India Ltd.,
Represented by its General Manager,
No.3/3/27-B, Bharathi Nagar,
Salem Main Road, (Near Bus Stand),
Sankari - 637 301,
Salem District.

2.The Deputy General Manager,
Power Grid Corporation of India Ltd.,
400/230 KV Substation,
Coimbatore Main Road,
K.Paramathy Post,
Karur - 639 111.

3.The District Collector,
Namakkal District,
Namakkal.

... Respondents in both WPs

Prayer in WP No.31785 of 2019 is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records



pertaining to the impugned order dated 16.08.2019 passed by the third respondent in Na.Ka.4710/2019/H2 and quash the same and consequently directing the third respondent to determine the compensation for the land @ 85% of land value for Tower Base Area (between four legs) and 15% towards diminution of land value in the width of Right of Way (RoW) corridor due to laying of transmission line over the petitioner's agricultural land situated in M.Kunnathur Village, ParamathiVelur Taluk, for erecting high tension towers and high tension lines for the project of supply of energy through 765 KV Double Circuit Tutucorin-Salem New (Dharmapuri) line, in view of the Circular of Government of India dated 15.10.2015, issued in No.3/7/2015-Trans, and consequently directing the first respondent to pay the compensation as determined by the third respondent for the abovesaid petitioners agricultural land in view of the Circular of Government of India dated 15.10.2015, by considering the representation of the petitioners dated 11.02.2019.

Prayer in WP No.31793 of 2019 is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the impugned order dated 16.08.2019 passed by the third respondent in Na.Ka.4710/2019/H2 and quash the same and consequently directing the third respondent to determine the compensation for the land @ 85% of land value for Tower Base Area (between four legs) and 15% towards diminution of land value in the width of Right of Way (RoW) corridor due to laying of transmission line over the petitioner's agricultural land situated in Selur Village, ParamathiVelur Taluk, for erecting high tension towers and high tension lines for the project of supply of energy through 765 KV Double Circuit Tutucorin-Salem New (Dharmapuri) line, in view of the Circular of Government of India dated 15.10.2015, issued in No.3/7/2015-Trans, and consequently directing the first respondent to pay the compensation as determined by the third respondent for the abovesaid petitioners agricultural land in view of the Circular of Government of India dated 15.10.2015, by considering the representation of the petitioners dated 11.02.2019.

For Petitioners in both WPs : Mr.B.Kumar, Senior Counsel
for Mr.S.Senthil.

For Respondents-1&2 in both WPs: Mr.V.Kalyanaraman for
M/s.Aiyar and Doila.

For Respondent-3 in both WPs : Mr.TNC.Kaushik,
Additional Government Pleader.



C O M M O N O R D E R

Nine petitioners are before me, six in WP No.31785 of 2019 and the remaining three in WP No.31793 of 2019, assailing an order passed on 16.08.2019 by the District Collector, Namakkal rejecting their request for compensation for the Right to use that was acquired by the Power Grid Corporation of India ('Power Grid'/'R-1'), in a portion of their agricultural lands representing the Tower Base Area with compensation for the land at 85% of land value for Tower Base Area (between four legs) and 15% towards diminution of land value in the width of Right of Way (RoW) Corridor.

2. The acquisition was for the purpose of laying of erection of High Tension Towers and High Tension Lines for the Project of supply of energy through 765 KV Double Circuit Tutucorin-Salem New (Dharmapuri) line (in short 'Project') and drawing of transmission lines over their agricultural lands situate at M.Kunnathur Village, ParamathiVelur Taluk (WP No.31785 of 2019) and Selur Village, ParamathiVelur Taluk (WP No.31793 of 2019) respectively.

3. Their claim rests on a Circular issued by the Government of India (GoI) on 15.10.2015 which has been accepted in spirit by the State of Tamil Nadu. The petitioners filed their representations separately before the Authority as early as on 11.02.2019 seeking identical relief. However, they do not pray for disposal of their representation simpliciter seeing as the respondents have expressed their mind in regard to the claim of the petitioners and in light of this, there is no point in relegating the petitioners to the tender mercies of the Authorities.

4. R-1 had, in October 2016, installed High Tension Towers and Lines in the lands of the petitioners for the supply of energy for the Project. Compensation has been paid by them towards the loss of standing crops and trees and no compensation in regard to agricultural lands. This is the bone of contention of the petitioners before me though they would also incidentally state that the computation of compensation for aforesaid crops and lands has not been determined properly.

5. The petitioners made detailed submissions on the difficulties and hurdles caused to them by virtue of the erection of High Tension towers and lines and relying upon the provisions of the Telegraph Act, 1885, particularly Sections 10 and 16 thereof and the provisions of the Electricity Act, 2003, particularly Section 164.



6. The stand of the respondents is to the effect that the petitioners are not entitled to any compensation at all and it is this stand that is tested in this writ petition. In recognition of the position that the erection of High Tension Towers and Lines on agricultural lands by acquiring right of way upon the lands, causes prejudice to the land owners, the Government of India (GoI) had issued Circular bearing No.3/7/2015-Transdated 15.10.2015.

7. The 2015 guidelines are extracted below:

No.3/7/2015-Trans
Government of India
Ministry of Power
Shram Shakti Bhawan
Rafi Marg, New Delhi - 110001

Dated, 15th October,
2015

.....

During the Power Ministers Conference held on April 9-10, 2015 at Guwahati with States/UTs, it has, inter alia, been decided to constitute a Committee under the chairmanship of Special Secretary, Ministry of Power to analyse the issues related to Right of Way for laying of transmission lines in the country and to suggest a uniform methodology for payment of compensation on this count. Subsequently, this Ministry had constituted a Committee with representatives from various State Governments and others. The Committee held several meetings to obtain the views of State Governments on the issue and submitted its Report along with the recommendations (copy of the Report is at Annex-1).

2. The Recommendations made by the Committee are hereby formulated in the form of following guidelines for determining the compensation towards "damages" as stipulated in section 67 and 68 of the Electricity Act, 2003 read with Section 10 and 16 of Indian Telegraph Act, 1885 which will be in addition to the compensation towards normal crop and tree damages. This amount will be payable only for transmission lines supported by a tower base of 66 KV and above, and not for sub-transmission and distribution lines below 66 KV:-

(i) Compensation @ 85% of land value as determined by District Magistrate or any other authority based on Circle rate/ Guideline value/ Stamp Act rates for tower base area (between four legs) impacted severely due to installation of tower/pylon structure;



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(ii) Compensation towards diminution of land value in the width of Right of Way (RoW) Corridor due to laying of transmission line and imposing certain restriction would be decided by the States as per categorization/type of land in different places of States, subject to a maximum of 15% of land value as determined based on Circle ratel Guideline value Stamp Act rates;

(iii) In areas where land owner/owners have been offered/accepted alternate mode of compensation by concerned corporation/Municipality under Transfer Development Rights (TDR) policy of State, the licensee/Utility shall deposit compensation amount as per (i) & (ii) above with the concerned Corporation/Municipality/Local Body or the State Government.

(iv) For this purpose, the width of RoW corridor shall not be more than that prescribed in the table at Annex-2 and shall not be less than the width directly below the conductors.

3. Necessary action may kindly be taken accordingly. These guidelines may not only facilitate an early resolution of RoW issues and also facilitate completion of the vital transmission lines through active support of State/UT administration.

4. All the States/UTs etc. are requested to take suitable decision regarding adoption of the guidelines considering that acquisition of land is a State subject.

8. The Circular directed payment of compensation to the land owners @ 85% of land value representing the Tower Base Area, i.e., the area between the four legs of the Towers. In addition, 15% was provided towards diminution of land value in the width of Right of Way (Row) Corridor, over and above the compensation that was permissible in terms of Section 10(d) of the Indian Telegraph Act, 1885 (in short 'ITA').

9. The State of Tamil Nadu on 22.11.2017 had issued a Government Order in G.O.Ms.No.63, Energy (A1) Department, adopting the GOI guidelines for payment of compensation including the same computational mechanism though with the caveat that such compensation would be payable only in regard to acquisitions made pursuant to the date of Government Order, which is 22.11.2017. The petitioners have been seeking compensation for the acquisition of the RoW in their respective lands and owing to there being no action by the respondents upon their representations, approached this Court in WP No.8520 of 2019. The said writ petition came to be disposed on 27.03.2019



directing the respondents to consider their representation in light of the aforesaid Notifications/Government Orders.

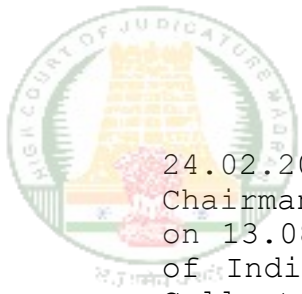
10. While this is so, the State has issued a Notification in G.O.Ms.No.86, Energy (A1) Department, dated 30.10.2019 increasing the payment of compensation from 85% to 100% in regard to Tower Base Area and from 15% to 20% with regard to RoW Area. Notably, there is no embargo that is placed in the Government Order dated 22.11.2017, in regard to its effective date/date of application. While the 2017 Government Order is referred to, what stands amended therein are only the percentages of compensation payable, without a reiteration of the prospective application of the Order itself.

11. While the petitioners would argue that the State, in Government Order dated 30.10.2019, has taken an expansive view of the matter both for enhancement of the compensation as well as making it applicable to all transactions of acquisition for the purpose of erection of HT Towers and Lines, R-1 would canvass the interpretation that the modification qua the 2017 Government Order is solely as regards the percentages of compensation, and all other aspects thereof would continue untouched.

12. The petitioners' representation came to be rejected on 21.03.2019 based on the mandate contained under Government Order dated 22.11.2017 that now, according to the petitioner, stands nullified by G.O.Ms.No.86, dated 30.10.2019. To support their claim, the petitioners would rely upon several orders passed by this Court. The first decision is that of a learned Single Judge of this Court in WP Nos.26858 and 26859 of 2016 that considered the pleas of more than 100 persons similarly placed to the present petitioners who had sought compensation for erection of Towers and Transmission Lines in their agricultural lands.

13. This decision came to be rendered on 16.08.2016 subsequent to the Central Notification but prior to its adoption by the State in 2017. The learned Single Judge, noted the undertaking by the second respondent i.e., TANTRANSOCO, to the effect that it would abide by the 2015 Guidelines. A direction was thus issued to the respondents that included the District Collector, Revenue Divisional Officer, Principal Secretary to Government and TANTRANSOCO to determine the compensation payable to the petitioners based on Circular dated 15.10.2015, within a period of one week and be paid over within a period of 10 days thereafter.

14. The 2017 Government Order has, in fact, come to be issued only pursuant to this order. In such a case, what remains to be seen is as to whether the additional condition that has been placed in the 2017 order as regards the prospectivity of the Circular, is acceptable. The aforesaid issue came to be considered in several cases, WP No.32820 of 2017 (order dated



24.02.2020 in the case of V.Ranganathan and V.Vembuli vs. The Chairman, TANGEDCO and others) and WP No.13445 of 2010 (decided on 13.08.2019 in the case of N.Baskar vs. Power Grid Corporation of India Ltd and others) and Sivakumar and others vs. District Collector and another reported in 2020 SCC Online Mad 2681 among several others, wherein this Court held in favour of those petitioners, in effect, setting aside the condition imposed under the 2017 State Government Order.

15. Notwithstanding the aforesaid precedents, learned counsel for R-1 and 2, would strenuously object to the grant of any compensation at all. His arguments are to the effect that G.O.Ms.No.86, dated 30.10.2019, is only a guideline and does not impose any mandate or condition upon R-1. As regards the undertaking recorded in WP Nos.26858 and 26859 of 2016, dated 16.08.2016, he points out that such undertaking had been extended only by TANTRANSOCO and not by the Power Grid Corporation of India Limited and the latter is thus not bound by the same.

16. He also draws attention to the 2019 Government Order pointing out that it is only as regards the percentages of compensation that the 2019 Government Order differs with the 2017 Government Order and all other requirements remained constant. Thus, according to him, the question of compensation would arise only in respect of projects initiated/commenced after date of the 2017 G O, though at the enhanced rates set out in the 2019 GO. The project in question admittedly having been commenced prior to that, the petitioners are not entitled to any compensation whatsoever.

17. In this regard, he would rely upon a judgment of the Hon'ble Supreme Court of India in the case of Power Grid Corporation of India Limited vs Century Textiles and Industries Limited and others ((2017) 5 SCC 143) disposing appeals filed by both Power Grid and Century Textiles challenging an order of the Division bench of the Chhattisgarh High Court.

18. The Company had approached the High Court, seeking compensation in regard to the area acquired for erection of Towers. Power Grid contested the maintainability of the writ petition stating that it is a Central Transmission Utility and that a writ petition was not maintainable as against it. The learned Single Judge had dismissed the writ petition accepting the argument on maintainability in light of the relevant provisions of the Telegraph Act, 1885, Electricity Act, 2003 and connected Rules.

19. In Writ Appeal filed by the Company, the Division Bench concluded that the writ petition was maintainable. On the merits, it was held that Power Grid was so entitled to erect the Towers, but as regards the compensation sought, the District



Collector was directed to quantify the proper compensation that would be payable.

20. Both parties were aggrieved and hence Special Leave Petitions came to be filed before the Hon'ble Supreme Court. After noticing the provisions of Section 10 of the Telegraph Act, 1885, especially sub-clauses (b) and (d) thereof, the Apex Court concluded that what the Central Government acquired was only right of use in the property in terms of Section 10(b). It is thus obliged under Section 10(d) to cause as little damage as possible and pay full compensation to all persons interested for any damage sustained by them is the exercise of such powers. The action of the Power Grid Corporation shifting the transmission lines and laying the same as per proposal was found to be proper and not arbitrary.

21. Coming to the question of compensation, the Court noted that no claim had been made in that regard before the High Court. In any event, Section 17(c) of the Telegraph Act, 1885 specifically laid an embargo upon the District Collector from considering the aspect of compensation as such authority is vested only with the concerned District Judge. In light of this, the appeal of Power Grid was allowed and a direction issued by the High Court to the District Collector to compute the compensation was set aside.

22. At paragraph-28 of the judgment, the Hon'ble Bench opines that the appropriate cause of action would be for the aggrieved petitioners to file a suit before the District Judge concerned if it felt that it was entitled to any compensation. The Bench further opines that it would also be apt to notice that the Central Government had recently (at that point in time) framed guidelines on 15.10.2015 that provided for the mode and manner of assessment of compensation and thus these guidelines were also available to the petitioners for redressal.

23. Much has made by the learned counsel for R-1 and R-2 in regard to the use of the phrase 'any compensation' by the Hon'ble Bench. According to him, the use of the aforesaid phrase by the Apex Court would militate against the claim of the petitioners for any compensation at all. Compensation cannot be sought as a matter of right but only and specifically, if there were a provision to enable it, he argues.

24. Both the 2015 Central Government guidelines as well as the 2017 and 2019 Government Orders issued by the State are in the nature of mere guidelines which would and could not lead to a conclusion of liability over and above any liability that the respondents might consensually choose to assume. Even as regards the 2015 Central guidelines, the Hon'ble Supreme Court only expresses, that too, in general terms that the Company may seek benefit of the same if it was so entitled. Thus, and according



to him, this judgment would favour the stand of Power Grid and stand in the way of acceptance of the petitioner's claim.

25. Having heard respective learned counsel, my decision is as follows. The scheme of compensation under the Telegraph Act, 1885 read with the Electricity Act, 2003 is triggered by an application made by the land owner seeking compensation before the District Collector. The District Collector has to apply the relevant and applicable Government Orders and determine the compensation. This is a summary proceeding and does not, at this stage require the recording of evidence to determine such determination.

26. In the present cases, the petitioners have been denied even this benefit as according to the respondents, the project was prior to 2017 and this disentitles them to any compensation whatsoever. In my view, this submission is entirely unacceptable. The respondents have utilised an asset of the petitioners for a public purpose. While the factum of such deployment/acquisition may not be questioned, and they do not, as a matter of fact, question the same, they are undoubtedly entitled to fair compensation in that regard.

27. The condition imposed under the 2017 Government Order does not, in my view, survive in light of the subsequent Government Order passed in 2019 providing for the payment of enhanced compensation irrespective of the date of commencement of the project.

28. In the cases referred to at paragraph 13 supra, this Court has accepted the entitlement to compensation of those petitioners whose lands had been exploited by the respondents for setting up of HT Towers and Electricity Lines, irrespective of whether the projects were prior to or after the date of the 2017 Notification. After all, the very fact that the State has adopted the guidelines of the Centre for award of compensation would establish, and rightly so, that such compensation is warranted and justified.

29. The prejudice caused to the land owners in this regard cannot be denied. To state that the benefit under the 2017 GO would be available only prospectively and in regard to the new projects is thus, in my considered view, unacceptable, particularly in light of the slew of orders in favour of landowners that have been accepted by Power Grid. Not having challenged those orders, a different stand cannot be taken by them in this case. The condition imposed under the 2017 Government Order has clearly been given a go-by even by the State in the subsequent 2019 Order and seeing as it is the latter that holds the field at the moment, it must enure to the benefit of the petitioners in their claim.

30. Reliance of Power Grid Corporation upon the judgement of the Apex Court is misplaced. That judgement was rendered on



14.12.2016 and the Hon'ble Bench had no occasion to interpret either the 2017 or 2019 Government Orders. The 2015 Central Notification had just been issued on 15.10.2015 and it is for this reason that they state, at paragraphs 27 and 28, that the benefit of those guidelines could be availed by the landowner, as applicable. The relevant paragraphs of the judgement are extracted below:

27. At this stage, we deal with the direction of the Division Bench regarding compensation payable to the writ petitioner, or for that matter to the 9 State Government. In the first instance, no such claim was laid by the writ petitioner in the writ petition or by the State Government before the High Court. Furthermore, the High Court could not have given this task to the District Collector, which is contrary to the provisions of Section 16(c) of the Telegraph Act, 1885 which are extended to laying down of electricity lines. As per this provision, such an authority vests with the District Judge.

28. These are sufficient reasons to allow Civil Appeal No. 10951 of 2016 preferred by the Power Grid by setting aside those directions. Ordered accordingly. We make it clear that if the writ petitioner feels that it is entitled to any compensation, the appropriate course of action is to file a suit before the District Judge concerned for this purpose. It would also be apt to point out at this stage that the Central Government has framed guidelines dated 15-10-2015 in this behalf which inter alia provide that the issue of compensation may be resolved having regard to the mode and manner of assessment of compensation as per the said guidelines. Therefore, it would always be open to the writ petitioner to avail the remedy as per the said guidelines.

31. The very fact that they have referred to the 2015 guidelines that are absolute and do not impose any restriction in terms of applicability, granting the benefit thereof to the petitioners, is a clear and categorical indication that it was never intended that the landowners be left high and dry, without any recompense at all. The use of the phrase 'any compensation' by the Bench must be appreciated in this context only. To conclude therefrom that the Supreme Court had indicated that the landowners were to be denied any compensation at all, would be, in my view, a distortion of their opinion.

32. The specific issue concerning the Apex Court related to the question as to whether Power Grid was required to relocate the area for construction of power since the area allocated by



them constituted mining area. The aspect of compensation is referred to at paragraph 9 of the judgment. The Division Bench, whose order was challenged, has not granted the relief as far as change of site of erection was concerned. However, and simultaneous therewith, it had taken the view that once the towers were erected in the mining lease area, it would result in a loss not just to the petitioner but to the Government as well, which will be deprived of royalty.

33. It is in this context that a direction was given to the District Collector to work out compensation payable to the petitioner. Inter alia it was observed that if the Collector came to the view that the State would also be entitled to compensation, then the matter would be referred to the State Government for constitution of a High Powered Committee to decide the quantum thereof. At paragraph 10, the Hon'ble Bench records that the Writ Petitioner had been aggrieved as it was of the view that Power Grid ought not to have been allowed to erect any tower over the mining area. This is the question that arose in its Civil Appeal.

34. As far as Power Grid was concerned, the direction of the High Court in referring to the matter to the District Collector for quantification of compensation was challenged, as according to it, no such direction could have been given and in any case the District Collector had no authority to decide upon the issue of compensation.

35. The observations of the Hon'ble Bench at paragraphs 27 and 28 of the judgment must be understood in the context of the above narration as noticed by the Hon'ble Supreme Court, and in the context of the developments at that point in time. What governs the field today is the 2019 Notification which, while stipulating the percentages of compensation at 100% and 20% in regard to land dues and right of way (RoW) makes a departure from 2017 Notification in regard to its applicability. In my considered view, the 2019 Notification is what is to be applied in matters concerning the right of use obtained by the respondents in similar projects. The petitioners are thus entitled to compensation as sought for by them and the arguments of R-1 and R-2 to the contrary, stand rejected.

36. As regards the determination of the claim per se, let them make a representation setting out the quantum of compensation they believe they are entitled to before R-3, who, in consonance with R-1, shall determine the compensation payable in light of the Circular of the Government Order dated 15.10.2015, Government Order in G.O.Ms.No.86, dated 30.10.2019 and the cases decided by this Court as aforesaid, including this Order, after hearing the petitioners and within a period of four weeks from the date of receipt of the representation. The



amounts so determined will be paid over expeditiously, and at any rate, within two weeks from date of such determination.

37. These writ petitions are allowed in the aforesaid terms. No costs. Connected miscellaneous petitions are closed.

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Sd/-
Deputy Registrar (CS)

//True copy//

Sub Assistant Registrar

Svn/sl

To

1.The General Manager,
Power Grid Corporation of India Ltd.,
No.3/3/27-B, Bharathi Nagar,
Salem Main Road, (Near Bus Stand),
Sankari - 637 301,
Salem District.

2.The Deputy General Manager,
Power Grid Corporation of India Ltd.,
400/230 KV Substation,
Coimbatore Main Road,
K.Paramathy Post,
Karur - 639 111.

3.The District Collector,
Namakkal District,
Namakkal.

+6ccs to Mr.S.Senthil, Advocate SR.No.27486,27487

+2ccs to M/s.Aiyar and Dolia, Advocate SR.No.27252

WPs.31785 and 31793 of 2019

NRJK (CO)
GMY (25/05/2022)