

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS

SAT 73 of 2018
CAN 2 of 2018

The Station Manager, Belda Customer Care Centre & Anr.
Vs.
Gayaprasad Ghorai & Ors.

Appearance:

For the Petitioner : **Ms. Mitali Bhattacharya, Adv.**

Judgment On : **14.09.2023**

Harish Tandon, J.:

The instant Second Appeal is filed by the defendant-appellant assailing the findings made by the Trial Court as well as the appellate Court on this score that both the Court below have misconstrued and misinterpreted the various provisions of the Indian Electricity Act and the Telegraph Act wherein the power is conferred upon the authority to fix a poll and the transformer while undertaking an electrification of the locality on

the consent of the owners/occupiers of the said property. It is an undisputed fact that the electrification programme was undertaken at Mouza Sangonua under the supervision of Assistant Engineer, Belda, Rural Electrification Camp Office, West Bengal State Electricity Development Corporation Ltd. Admittedly the electrification is completed and it is not in dispute that several polls as well as the transformers are affixed on the LR Plot no. 299.

The plaintiff-respondent filed a suit claiming an ownership in respect of 51 decimal Bastu land comprised in LR Plot no. 70 at Mouza Sangonua which they acquired by way of inheritance and their names are also recorded in the Record of Rights. Apart from the same there is a 24 decimal of agricultural land comprised in Plot no. 229 which is also acquired by the plaintiffs through their predecessor who purchased the same on the basis of the sale-deed dated 19.06.1978. It is averred that at Plot no. 229 the plaintiffs-respondent have constructed a Smriti Mandir where the defendant-appellants have illegally installed several electric posts and the transformer covering the said mandir without taking any permission or consent from them. It is further averred in the plaint on 12.08.2008 when the defendant/appellants undertook to construct poles and the transformer, the resistance was offered but they did not pay any heed to it and continued to make such construction thereat. On the basis of the aforesaid facts several reliefs were claimed in relation to the right, title and interest over the aforesaid plot of land, permanent injunction restraining the defendant-

respondant from creating any obstruction in peaceful enjoyment and possession of the suit property and also the mandatory injunction to remove such electric polls and transformer installed thereat.

The defendant-appellant took a defence that while undertaking a rural electrification programme the said mouza was to be electrified under the supervision of the defendant-appellants and since no complaint nor any resistance was offered, the polls and the transformers were installed at the said plot of land which is within the power of the authority. It is further sought to be contended that Section 51 of the Indian Electricity Act, 1910 which is retained in Section 164 of the Electricity Act, 2003 empowers the defendant-appellant to exercise any of the powers which the Telegraph Authority possesses in respect of placing of the lines and the posts and therefore in exercise of such power the polls and the transformer was affixed as the plaintiff-respondent never raised any objection and in fact, gave consent for the same.

The Trial Court decreed the suit not only declaring the right, title, interest and possession of the plaintiffs-respondent but also permanently restrained the defendant-appellant from interfering with the peaceful right, title and interest and possession of the plaintiff-respondent in respect of the suit property and further passed a decree in the mandatory form to remove the electric post and the transformer from the suit property.

Assailing the said judgment and decree of the Trial Court the defendant-appellant filed the appeal before the Additional District Judge, 7th Court, Paschim Midnapore being Title Appeal no. 19 of 2014 and raises an identical issue including the power conferred upon them under Section 164 of the Electricity Act, 2003 but the Appellate court repelled the aforesaid contention and maintained the decree of permanent injunction as well as the mandatory injunction. However, the Appellate Court set aside the portion of the decree passed by the Trial Court relating to the right, title and interest and possession of the plaintiff-respondent in respect of the suit premises. According to the Appellate Court there was no dispute in respect of a right, title and interest of the plaintiff-respondent so far as the suit properties are concerned and, therefore, the Trial Court has wrongly framed issue and proceeded to decide the same.

The defendant-appellant have assailed the said judgement and decree of the Appellate Court in the instant appeal on the score that the findings of both the Courts below relating to exercise of power under the Telegraph Act in view of Section 164 of the Electricity Act, 2003 is infirmed and therefore, it raises a substantial question of law. The judgment of the Appellate Court further reveals that an application under Order 41 Rule 27 of the Code of Civil Procedure was taken out for adducing an additional evidence wherein they intend to rely upon a photocopy of an agreement entered between the M/s. B. Ghosh Company & the Divisional Engineer which is also rejected by the Appellate Court.

The learned Advocate appearing for the respondent raises an issue that the electrification programme was undertaken under the Central Scheme to cater the needs of the rural people and such being a larger public policy, the Courts ought not to have decreed the suit. It is further contended that there was no resistance offered by the plaintiff-respondent at the time of installing the poles and the transformer at the suit plots and in view of Section 164 of the Electricity Act, 2003 the installation was done which cannot be said to be illegal or beyond the purview of the aforesaid provision.

Basically, the entire argument is advanced on the plea that the electrification programme is for the benefit of the larger people and therefore, the interference of the Court in this regard is unwarranted.

At the very outset, we must observe that the statutory authority cannot exercise the power unless conferred by the statute or the statutory rules framed in this regard and therefore, every action of the statutory authority has to be judged on the parameters of the relevant provisions conferring the power of the statutory authority to do certain acts. Section 164 of the Electricity Act, 2003 confers power upon the appropriate Government in relation to the placing of the electric lines or electrical plants for transmission of the electricity and by necessary reference the provisions relating to the Indian Telegraph Act, 1885 is incorporated therein. The aforesaid provision indicates that while placing the electric line or electric plants the power conferred upon the telegraph authority under the Telegraph Act more particularly, Section 10 thereof can be exercised by the

distribution licensees to which we did not find any ambiguity in this regard. The Section 164 of the Electricity Act, 2003 is quoted as under:

“Exercise of powers of Telegraph Authority in certain cases. – The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purpose of a telegraph established or maintained, by the Government or to be so established or maintained.”

On the meaningful reading of the aforesaid provision it appears that the appropriate Government may by order in writing conferred upon in public officer, licensee or any other person engaged in the business of the supplying electricity for placing of the electric lines or the electric plants for transmission of electricity akin to the powers conferred upon the telegraph authority under the Indian Telegraph Act, 1885. The expression “by order in

writing” has to be understood in a meaningful manner and eradicate the conferment of power impliedly or orally. The moment the aforesaid expression is used in the Section itself the conferment of power must be in consonance therewith and it cannot be presumed that the moment the electricity line or the electrical plant is installed over the property of another, such power is inhered and inbuilt into the authority. Any such interpretation shall be opposed to the legislative intent and would render the efficacy of the expression “by order in writing” otios and/or redundant. Once the statute has indicated the modalities and the manner in which power can be exercised by an authority, in absence thereof, the authority cannot assume such powers. Admittedly not a scrap of paper was produced during the deposition of the defendant-appellant that the appropriate Government in writing has conferred the power that of the Telegraph Authority under the aforesaid section. Rather the defendant-appellant has proceeded on the basis that the installation of the electric poles and the transformer on the property belonging to the plaintiffs-respondent was undertaken upon obtaining the consent from them but no iota piece of papers was produced that such consent was granted.

Several other provisions in this regard are also required to be recapitulated. Section 10 of the Indian Telegraph Act, 1885 confers power upon the telegraph authority to place and/or maintain the telegraph line over and under, along or across and post in or upon any more property

subject to the conditions incorporated therein to Section 10 of the Indian Telegraph Act, 1885 runs thus:

“10. Power to 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 that 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.”

Section 12 of the said Act provides that any person given by the local authority under Section 10 in relation to Clause C of Section 10 as quoted above, may be given subject to such reasonable condition as the authority may think fit to impose pertaining to the payment of any expenses to which the authority will necessarily be put in any consequence in exercise of powers conferred under the said Section 10.

It would be relevant to consider the provisions contained under Section 16 of the Indian Telegraph Act which runs thus:

“16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority –

- ***(1) If the exercise of the powers mentioned in section 10 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.

(2) If, after the making of an order under sub section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for this being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code (45 of 1860).

(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 those jurisdiction he property is situate, be determined by them.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and

hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same."

The meaningful reading of the abovementioned provision leaves no ambiguity that while exercising the power under Section 10 of the said Act if any resistance or obstruction is offered, the District Magistrate in his discretion may order that the telegraph authority shall be permitted to exercise them. It further provides that in case of any dispute concerning the sufficiency of the compensation, an application for such purpose be made either of the disputing parties to the District Judge who shall thereafter determine the same.

It is a specific case of the plaintiff-respondent that they offered resistance and protested for the installation of the electric post and the transformer at the property and, therefore, it was obligatory on the part of the defendant-appellant to approach the District Judge to seek an order for continuance of the said work.

Apart from the same the works of Licensees Rules, 2006 framed in exercise of power under Section 176 read with Section 67 of the Electricity Act, 2003 contained the exhaustive provision relating to the execution of work by the Licensee Rule 3 thereof provides that the licensee may carry out, lay down or place any electric supply line or other works through or against any building or over or under any line with the prior consent of the owner or occupier of any building or land. The aforesaid Rules further takes care of the situation where the consent is not given and an objection is raised; it is obligatory on the part of the licensee to obtain a permission in writing from a District Magistrate or the Commissioner of Police or any other officer authorised by the State Government for carrying out such work.

On conjoint reading of the aforesaid provision it is manifest that all the aforesaid provisions mandates not only the conferment of power by the appropriate Government but in case of any resistance or obstruction offered by the owner or occupier of the land where the electric lines or the transformer are to be installed, a specific order in writing from the competent authority is required to be taken. Presumably the defendant-authority took shelter under Rule 3 of the Works of Licensee Rule , 2006 which provides that any electric supply line or other works can be undertaken under or over any line with the prior consent of the owner or occupier of the building or line.

As indicated above the defendant-appellant miserably failed to produce any consent having obtained from the plaintiffs-respondent and

both the Courts have found that the aforesaid stand taken by the defendant-appellant has not been proved. It further appears that on the application taken out by the defendant-appellant the Commissioner was appointed to inspect the property in question to ascertain as to whether the electric poles and the transformer have engulfed within itself, the Smriti Mandir constructed by the mother of the plaintiff-respondent. The report reveals that all the poles are within a close proximity of the said mandir and the transformer is also affixed near to it. It was not necessary to have the inspection as the defendant/appellant is required to prove that all the necessary permission under the relevant provision of the statute have been obtained. The plaintiff-respondent categorically averred that they protested at the time of installation of the said poles and the transformer and therefore, it was obligatory on the part of the defendant-appellant to take recourse to the provision of the law as indicated above, as the stand of consent having obtained from them could not be proved. Once the Statute requires a particular thing to be done and in a particular manner it has to be done in such manner and not otherwise.

So far as the application for production of additional evidence under Order 41 Rule 27 of the Code of Civil Procedure is concerned, we do not find any infirmity in the order of the Appellate Court in rejecting the same. The Court may permit the appellant to produce additional evidence provided such evidence has a nexus with the core issue upon recording the satisfaction of the condition enshrined therein.

The evidence which is irrelevant and does not impact the issues involved in the suit cannot be permitted to be brought on record by way of additional evidence.

We thus do not find that the instant appeal involved substantial question of law. The appeal is thus dismissed.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Prasenjit Biswas, J.)

(Harish Tandon, J.)