

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Before:

**The Hon'ble The Chief Justice T. S. Sivagnanam
and
The Hon'ble Justice Hiranmay Bhattacharyya**

**MAT/807/2023
IA NO: CAN/1/2023,
CAN/2/2023
PRADIPTA MUKHERJEE
VS
STATE OF WEST BENGAL AND ORS.**

For the Appellant : Mr. Indrajeet Dasgupta,
Ms. Puspita Bhowmickadvocates

For the State : Mr. Anand Farmania,
Ms. Indu Mouli Banerjee ...advocates

For WBSEDCL : Mr. Srijan Nayak,
Ms. Rituparna Maitraadvocates

Reserved on : 06.07.2023

Judgment on : 12.07.2023

Hiranmay Bhattacharyya, J.:-

1. After hearing the learned advocates for the parties on 06.07.2023 and upon considering the statements made in the affidavit in support of the application under Section 5 of the Limitation Act this court was satisfied that the petitioner was prevented by sufficient cause for not preferring the instant appeal within the prescribed period of limitation and thereafter heard the learned advocates for the parties on the merits of the appeals and the judgment was reserved by the order dated 06.07.2023. In view thereof the marginal delay of 13 days in preferring the instant appeal is condoned. CAN 1 of 2023 accordingly stands allowed.

2. This Intra Court Mandamus Appeal is at the instance of the writ petitioner and is directed against a judgment and order dated March 16, 2023 passed by a learned Single Judge in WPA No. 28872 of 2022.
3. The appellant claims to have purchased a land in Mouza Muragacha under Police Station Sonarpur in the District of 24 Parganas (South) by a registered deed of sale dated 15.03.2011. In the year 2017, when the appellant started taking steps for construction of a house on the said land, it came to his notice that a high tension overhead electricity line has been drawn by the West Bengal State Electricity Distribution Company Limited (for short "WBSEDCL"). The appellant claims that no notice was served upon him prior to drawing the said high tension line. The appellant filed an application under Section 17(2) of the Indian Telegraph Act, 1885 (hereinafter referred to as, "the 1885 Act") which was wrongly captioned to be under Section 10(2) thereof. Alleging inaction on the part of the Distribution Licensee, the appellant moved a writ petition being WPA No. 6871 of 2022 which was disposed of on May 10, 2022 by directing the District Magistrate 24 Parganas (South) to decide the said application by treating the same to be under Section 17 of the 1885 Act. The District Magistrate issued notice to the respective parties and after directing a field enquiry to be undertaken, passed an order on October 20, 2022 observing that shifting of the high tension overhead line was technically feasible, subject to the payment of quotation amount by the appellant. Being aggrieved by the said order whereby the appellant was directed to bear the shifting charges, the appellant filed the writ petition being WPA No. 28872 of 2022.
4. The learned Single Judge, by the judgment and order dated March 16, 2023, dismissed the writ petition. Challenging such order the writ petitioner has approached this court.
5. Mr. Dasgupta learned advocate appearing in support of the appeal contended that the learned Single Judge failed to appreciate that Section 17(1) of the 1885 Act do not provide for payment of shifting charges by the land owner when no compensation amount has been paid to such land owner.
6. Mr. Nayek learned advocate representing the Distribution Licensee submitted that the appellant did not raise any objection at the time of laying of the high tension overhead line over his property. He further contended that the work of laying of the overhead line was executed

spanning a period of 3-4 years and the appellant did not make any claim for compensation at the relevant point of time. He further submitted that after the copy of the application for shifting of the high tension overhead line was received by the Distribution Licensee, an estimate and drawing was made for such shifting and a quotation was generated as per the norms. He submitted that the high tension overhead line can be shifted only if the appellant pays the shifting charges therefor.

7. Heard the learned advocates for the parties and perused the materials placed.
8. In view of the provisions of Section 164 of the Electricity Act 2003 the Distribution Licensee can exercise the powers of telegraph authority for the purpose of construction of power transmission towers, laying and drawing of high tension overhead lines under, over, along or across and for erection of posts in or upon the private property as well as for removal or alteration of such lines and posts from the property owned by private parties. Therefore, for the purpose of considering the dispute involved in this appeal this Court has to consider the relevant provisions of the Indian Telegraph Act, 1885.
9. Section 10 of the 1885 Act empowers the authority to place and maintain high tension electricity line and posts under, over, along or across and posts in or upon, any immovable property. Clause (d) states that in exercise of the powers under Section 10 the authority shall do as little damage as possible, and, when it has exercised those powers in respect of property other than that which is vested in or under the control or management of any local authority, shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.
10. It follows therefrom that in case the authority places or maintains an electricity line under, over, along or across, and electricity posts in or upon any immovable property such authority while doing so shall see that as little damage as possible is done to such property and to pay full compensation to all persons interested for any damage sustained by them by reason of such an exercise undertaken by the authority.
11. Section 16(1) states that if in exercise of the powers mentioned in Section 10 of the 1885 Act, in respect of the property referred to in Clause (d) of Section 10 of the 1885 Act a resistance or obstruction is caused, the District Magistrate may, in his discretion, pass an order

permitting the Distribution Licensee to exercise the powers to lay/ draw transmission lines and/or erect posts upon a private property.

12. In the case on hand a factual finding has been arrived at by the District Magistrate that no resistance or obstruction was caused by the appellant herein to the Distribution Licensee while such licensee was exercising its powers under Section 10 of the 1885 Act.
13. Section 10(d) of the 1885 Act casts a statutory obligation upon the Distribution Licensee to pay full compensation to all persons interested for any damage due to laying/ drawing of high tension overhead lines or post over, along, across, in or upon any property. Therefore, the question of payment of compensation shall arise only in case damage is caused.
14. In the case on hand it is not in dispute that the character of the land which is the subject matter of this writ petition was agricultural in the year 2011 when the petitioner claims to have purchased the said land. The character of such land continued to be agricultural land even when the work of laying/ drawing the overhead high tension line was done. Admittedly the petitioner did not raise any objection at the time of laying/ drawing of the said high tension overhead line.
15. The petitioner claims to have submitted an objection sometimes in the year 2017 praying for removal of electric high tension wire and pole from his property on the ground that he cannot construct his own houses on the said lands. The petitioner has specifically stated in Paragraph 4 of the stay application being CAN 2 of 2023 that pursuant to an application made to the concerned Block Land and Land Reforms Officer for conversion of the character of the land from “Sali” (agricultural) to “Bastu” (homestead), such authority by an order dated December 24, 2020 converted the classification of the said plot of land from agricultural to homestead. Therefore, admittedly prior to 24.12.2020, the appellant did not have any right to construct a house on the said property through which the overhead line was drawn/laid. The fact that the appellant did not apply for payment of compensation in terms of the provisions of the 1885 Act goes to support the order of the District Magistrate dated 20.10.2022 that no damage was caused by the concerned authority to crops or any property while exercising its powers under the 1885 Act during pole erection, conductor stringing or any other allied works and the line was drawn maintaining proper ground clearance as per the relevant rules.

16. The issue which falls for consideration in this appeal is whether the appellant has the liability to pay the shifting charges for removal of a high tension electric line or an electric post.
17. Section 17 of 1885 Act provides for removal or alteration of electric line or post on property other than that of a local authority. In order to decide the issue involved in this appeal, it would be relevant to take note of the provisions laid down under Section 17 of the said Act for which the same is extracted herein below-

“ Section 17 of the 1885 Act reads as follows:

"17. Removal or alteration of telegraph line or post, on property other than that of a local authority.--(1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in from, he may require the telegraph authority to remove or alter the line or post accordingly.

Provided that, if compensation has been paid under Section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

(3) A District Magistrate receiving an application under sub- section (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form; and the order so made shall be final."

18. Section 17 of the 1885 Act empowers the concerned authority to remove or alter the high tension overhead line from a property through which the said overhead line passes if the person interested in the said property desires to deal with such property in exercise of his right in respect of such property.

19. The learned Single Judge was right in holding that there is no stipulation in subsection 1 of Section 17 of the 1885 Act as to who will bear the shifting charges.
20. Proviso to Subsection 1 of Section 17, however, specifically provides that the amount requisite to defray the expense of the removal or alteration or half of the amount paid as compensation, whichever is the smaller sum shall have to be tendered to the concerned authority while making the requisition for removal or alteration. Therefore, the said proviso specifically states that the person on whose requisition the overhead line is to be altered or removed, he shall have to bear the requisite expense of the removal or alteration which shall, however, be limited to half of the amount paid as compensation.
21. Mr. Dasgupta, would contend that since subsection 1 of Section 17 do not stipulate that the land owner has to bear the shifting charges and the proviso thereto deals only with cases where compensation has been paid, the appellant cannot be saddled with the liability to pay the shifting charges.
22. Ordinarily a proviso serves to qualify or act as an exception to certain provisions of the main enactment. However, it is judicially settled that the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.
23. The Hon'ble Supreme Court in the case of **Dwarka Prasad vs. Dwarka Das Saraf** reported at **(1976) 1 SCC 128** held thus-

"16. There is some validity in submission but if, on a fair construction, the principal provision is clean, a proviso cannot expand or limit it. Sometimes a proviso is engrafted by an apprehensive draftsman to remove possible doubts, to make matters plain, to light up ambiguous edges. Here, such is the case.

18. If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the

whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.”

24. The Hon’ble Supreme Court in the case of **S. Sundaram Pillai and others vs. V.R. Pattabiraman and others** reported at **(1985) 1 SCC 591** held thus-

“43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment;

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.”

25. It is also well settled that where a substantive provision of a statute lacks clarity, a proviso may shed light on its true meaning. The Hon’ble Supreme Court in the case of **Union of India & ors. vs. VKC Footsteps India Pvt. Ltd.** reported at **(2022) 2 SCC 603** held thus-

“92.3. Where the substantive provision of a statute lacks clarity, a proviso may shed light on its true meaning:

“If the enacting portion of a section is not clear, a proviso appended to it may give an indication as its true meaning. As stated by Lord Herschell: (AC p. 655) “ Of course a proviso may be used to guide you in the selection of one or other of two possible constructions of the words to be found in the enactment, and shew when there is doubt about its scope, when it may reasonably admit of doubt as to its having this scope or that, which is the proper view to take of it.”

26. Subsection 1 of Section 17 of the 1885 Act lacks clarity with regard to fixing the liability to pay the expenses for removal or alteration. However, by reading Subsection 1 of Section 17 and the proviso appended thereto harmoniously and by following the golden rule of construction, this Court is of the considered view that the liability to

pay the expenses for removal or alteration has been fixed upon the person making the requisition by the proviso. The proviso to Section 17(1) throws light on the true meaning of the main enactment as the liability to pay the expenses for removal or alteration has to be fixed for the effective implementation of the main enactment.

27. The proviso, however, qualifies that in cases where compensation has been paid, the liability to pay expenses for removal or alteration shall be limited to half of the amount paid as compensation. This Court, therefore, holds that in a case where compensation under Section 10(d) of the 1885 Act has not been paid, the person who makes the requisition for removal or alteration has to bear the entire expenses of such removal or alteration. In the case on hand the appellant has made the requisition for removal of the high tension overhead line, therefore, the appellant has to bear the entire expenses of shifting of the high tension overhead line as the District Magistrate in his order dated October 20, 2022 has already found that shifting of high tension overhead line is technically feasible.
28. For the reasons as aforesaid this Court is not inclined to interfere with the ultimate conclusion arrived at by the learned Single Judge. The appeal accordingly stands dismissed. The connected application being CAN 2 of 2023 also accordingly stands dismissed. There shall be, however, no order as to costs.
29. Urgent Photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(T.S. Sivagnanam, C.J.)

(Hiranmay Bhattacharyya, J.)