

**IN THE HIGH COURT AT CALCUTTA  
Civil Appellate Jurisdiction  
APPELLATE SIDE**

Present:

**The Hon'ble Justice Tapabrata Chakraborty  
&  
The Hon'ble Justice Raja Basu Chowdhury**

**F.M.A. 663 of 2022  
with  
IA No. CAN 1 of 2019 (Old No. CAN 11814 of 2019)  
with  
IA No. CAN 2 of 2019 (Old No. CAN 12462 of 2019)**

**Sukumar Samanta & Others.  
Versus  
The State of West Bengal & Others.**

*For the Appellants* : *Mr. Saibal Acharya,  
Mr. Sujit Bhunia.*

*For the State* : *Mr. Tapas Kumar Adhikari,  
Mr. Bipin Ghosh.*

*For the WBSETCL* : *Mr. Sumit Kumar Panja,  
Mr. Sumit Ray.*

*Hearing is concluded on* : *3<sup>rd</sup> November, 2022.*

**Judgment On** : **16<sup>th</sup> January, 2023.**

**Raja Basu Chowdhury, J.:**

1. By way of the present intra court mandamus appeal, the appellants' challenge the authority and jurisdiction of the District Magistrate to determine compensation payable to the appellants under Section 16 of

the Indian Telegraph Act 1885, (hereinafter referred to as the 1885 Act), concerning works executed by a transmission licensee for transmission of electricity, being empowered under section 164 of the Electricity Act 2003 (hereinafter referred to as the 2003 Act).

2. Briefly the facts are, that the appellants, who are also the writ petitioners claim to be lawful owners of diverse plots of land as detailed in the writ petition. Records would reveal that the writ application was filed by 18 several writ petitioners, three of them being joint holders. It is the appellants' contention that their lands are adjacent to Debra-Digha Highway. The appellants' further claim that the respondent nos. 1 and 2 on the basis of a policy decision taken by them had taken steps to install High Tension electricity line from Kharagpur to Debra Electricity station. It is also the appellants' case that men and agent of the respondent nos. 2, 3 and 4 without taking prior consent of the appellants, started the construction work of installing metal towers as well as laying High Tension Electricity Wires, upon the lands belonging to the appellant nos. 1 to 18.

3. This prompted the appellants to make representations so as to object to the works carried out by the respondents. Several such representations were made. By such representation the appellants had also sought the intervention of Block Development Officer and Project Manager of the respondent no. 2.

4. Mr. Acharya, learned advocate representing the appellants submits that since the aforesaid representations did not yield any result, a writ application being W.P. No. 13260 (W) of 2019 was filed before the Hon'ble High Court at Calcutta, *inter alia*, praying for issuance of a writ in the nature of Mandamus commanding the respondent nos. 2 to 4 not to install High Tension Electric Tower and High Tension Electric Wire upon the lands in question.

5. Mr. Acharya further submits that when the writ application was taken up for hearing, the learned senior advocate representing the respondent no. 2 had submitted that they had been authorised by the State of West Bengal under Section 164 of the Electricity Act, 2003 (hereinafter referred to as the 2003 Act), to carry out works, concerning transmission of electricity, as such the provisions of the 1885 Act, *inter alia*, including provisions relating to payment of compensation payable to the appellants on account of damage caused by the Transmission Company while setting up its transmission lines, applies. It is on the basis of submissions made on behalf of the respondent no. 2, that the learned Single Judge had directed the District Magistrate being the respondent no. 5 to consider all documents and pass a reasoned order, under Section 16 of the 1885 Act, within a period of 8 weeks from the date of communication of such order.

6. The appellants impugn the aforesaid judgment on several grounds.

7. Mr. Acharya, submits that provisions of Section 16 of the 1885 Act, cannot be made applicable for determination of compensation payable to the appellants. He says that the State Government has since published a notification in the extra ordinary Gazette on 18<sup>th</sup> October, 2006 notifying the West Bengal Works of Licensees Rules 2006 (hereinafter referred to as the 2006 Rules). As per the 2006 Rules although it was incumbent on the part of the respondent no. 2 to obtain prior approval from the appellants, over whose lands the High Tension Electricity Towers have been installed and the High Tension Electric wires have been drawn, no such permission has been obtained. To emphasis on the above, he relies on Rule 3 of the 2006 Rules. He further submits that the 2003 Act, defines licensee, to mean and include both distribution as well as transmission licensee and as such the respondent no. 2 is obliged to ensure compliance of 2006 Rules.

8. Mr. Acharya further submits that the authority to determine compensation under sub rule 1 of rule 3 of 2006 Rules, vests with the District Magistrate or the Commissioner of Police or such other officers authorised by the State Government, as the case may be. Although the learned Single Judge had been pleased to direct the District Magistrate to decide, the compensation payable to the appellants, however, such decision had been directed to be taken in terms of section 16 of the 1885 Act. According to him it has never been the intention of the legislature to permit any licensee to carry out the works, without the consent of the owners. If 1885 Act is applied, no such consent would be required. He

further submits that once 2006 Rules have been framed under Section 67 of the 2003 Act, by the State Government, the same should get primacy and the 1885 Act cannot be made applicable for payment of compensation. He further submits that if determination of compensation is made by an authority under the 1885 Act, then no opportunity would be available to his clients to avail the remedy of referring the disputes if any, which may arise out of the determination of compensation, to the State Commission. He says that his clients would lose a forum which right has statutorily been conferred on his clients.

9. Mr. Acharya by drawing our attention to the supplementary affidavit affirmed by the appellant no.1 on 24<sup>th</sup> January, 2020, submits that the District Magistrate by an order dated 17<sup>th</sup> December, 2019 has already determined the compensation payable by the respondent no. 2 being the transmission licensee, to the land owners purportedly under Section 10(c) and (d) of the 1885 Act. Mr. Acharya submits that the aforesaid order had been passed by an authority who had no competence to pass the same. The above order, if sustained, would prejudice the appellants, as they would lose their right to refer the dispute as regards determination of compensation, to the State Commission. Mr. Acharya submits that the order passed by the learned Single Judge is not sustainable in law and the same should be set aside. The consequential order passed by the respondent no. 5 is also without jurisdiction, bad for reasons stated above and the same should also be set aside. He further submits that since work of setting up transmission towers and

energising the power lines have already been completed long ago, the District Magistrate should now be directed determine compensation payable to the appellants in terms of 2006 Rules framed under the 2003 Act.

10. *Per contra*, the Mr. Sumit Kumar Panja, learned senior advocate appearing for the respondent no. 2 submits that his client has been authorised under Section 164 of the 2003 Act, to carry out the works by the State Government. According to Mr. Panja, once such an order under section 164 of the 2003 Act is issued, the licensee become vested with the powers of the Telegraph authority and all the provisions of 1885 Act apply. According to Mr. Panja, the 2003 Act itself carves out an exception, of conferring a right on the transmission licensee to carry out its works by exercising powers under the 1885 Act. Mr. Panja submits that once the provisions of 1885 Act are made applicable, question of falling back on the 2006 Rules which has been framed under Section 67 of the 2003 Act cannot and does not arise. According to Mr. Panja the 1885 Act provides for manner of exercise of power by the District Magistrate as regards determination of compensation. Drawing our attention to sub-rule 4 of rule 3 of the 2006 Rules, Mr. Panja submits that the aforesaid rule 3 has no application in cases where a permission is accorded under Section 164 of the 2003 Act. As such there is no irregularity on the part of the learned Judge in directing the respondent no. 5 to decide the issue under Section 16 of the 1885 Act.

11. We have heard the advocates for the respective parties at length, we find that the primary question that falls for consideration in the instant appeal is whether the provisions relating to determination of compensation under the 1885 Act, can be made applicable in respect of works to be carried out by the transmission licensee, when empowered under Section 164 of the 2003 Act.

12. Before proceeding further we must indicate that perusal of Section 164 of the 2003 Act would demonstrate that in order to invoke the aforesaid section an order in writing from the appropriate Government, in this case being the State Government, needs to be issued. While responding to our query, Mr. Panja, has disclosed a notification dated 16<sup>th</sup> August, 2005 issued by the Principal Secretary, Government of West Bengal, wherefrom it would appear that the State Government in exercise of powers conferred by Section 164 of the said Act, has authorized the respondent no.2 to exercise all power vested in the telegraph authority under part III of the Act, 1885, in respect of electric lines and electric plant established or maintained, ought to be so established or maintained for transmission and/or supply of electricity or for the purpose of telephonic or telegraphic communication necessary for the proper coordination of the works within the licence area of the respondent no.2.

13. Sub rule 4 of rule 3 of 2006 Rules, provides that nothing in rule 3 shall affect the powers conferred upon any licensee under Section 164 of the said Act. Undoubtedly, 2006 Rules has been framed under Section

67(2) of the 2003 Act. From the aforesaid rules, it seen that the rule 3 of the 2006 Rules framed under Section 67(2) of the 2003 Act has not been made applicable in cases where the licensee has been empowered under 164 of the 2003 Act. As such there is no conflict in exercising powers under 1885 Act.

14. We must, however, note that the primary question, which fell for consideration as to whether the respondent no. 2, by reasons being vested with powers under 1885 Act, assumes the mantle of a Telegraph Authority within the meaning of the 1885 Act, insofar as payment determination of compensation is concerned, is no longer *res integra*. The Hon'ble Supreme Court in the case of *Power Grid Corporation of India Limited Vs. Century Textiles and Industries Limited & Ors.*<sup>1</sup> has, *inter alia*, held :

*“19. Another submission made was that permission of the writ petitioner was not obtained which was needed as per Rule 3 of the 2006 Rules. Rule 3(a) reads as under:*

**“3. Licensee to carry out works.—**(1) A licensee may—

*(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;”*

**20.** *In the instant case, the aforesaid Rule is not applicable in view of Section 164 of the Electricity Act, 2003, which reads as under:*

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<sup>1</sup>*Power Grid Corporation of India Limited Vs. Century Textiles and Industries Limited & Ors., (2017)5 SCC 143*

**“164. 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 coordination 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 the 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 purposes of a telegraph established or maintained, by the Government or to be so established or maintained.”

**21.** It is not in dispute that in exercise of powers under the aforesaid provision, the appropriate Government has conferred the powers of telegraph authority vide Notification dated 24-12-2003 exercisable under the Telegraph Act, 1885 upon the Power Grid. It may also be mentioned that a Central transmission utility (CTU) is a deemed licensee under the second proviso to Section 14 of the Electricity Act, 2003. Power Grid is a Central transmission utility and is, therefore, a deemed licensee under the Electricity Act, 2003. This coupled with the fact that Power Grid is treated as authority under the Telegraph Act, 1885, it acquires all such powers which are vested in a telegraph authority under the provisions of the Telegraph Act, 1885 including power to eliminate any obstruction in the laying down of power transmission lines. As per the provisions of the Telegraph Act, 1885, unobstructed access to lay down telegraph and/or electricity transmission lines is an imperative in the larger public interest. Electrification of villages all over the country and availability of telegraph lines are the most essential requirements for growth and development of any country,

*economy and the well-being/progress of the citizens. The legislature has not permitted any kind of impediment/obstruction in achieving this objective and through the scheme of the Telegraph Act, 1885 empowering the licensee to lay telegraph lines, applied the same, as it is, for laying down the electricity transmission lines.”*

15. In the aforesaid judgment in paragraphs 23 and 24 the Hon’ble Supreme Court has also *inter alia* considered the applicability of the 2006 Rules and has, *inter alia*, held as follows:

**“23.** *Section 10 of the Telegraph Act, 1885 empowers the telegraph authority to place and maintain a telegraph line under, over, along or across and posts in or upon any immovable property. The provision of Section 10(b) of the Telegraph Act, 1885 makes it abundantly clear that while acquiring the power to lay down telegraph lines, the Central Government does not acquire any right other than that of user in the property. Further, Section 10(d) of the Telegraph Act, 1885 obliges the telegraph authority to ensure that it causes as little damage as possible and that the telegraph authority shall also be obliged to pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.*

**24.** *As Power Grid is given the powers of telegraph authority, Rule 3(1) of the 2006 Rules ceases to apply in the case of Power Grid by virtue of execution clause contained in sub-rule (4) of Rule 3 which reads as under:*

**“3. (4)** *Nothing contained in this rule shall effect the powers conferred upon any licensee under Section 164 of the Act.”*

16. Proceeding further the Hon’ble Supreme Court has concluded that the determination of compensation is required to be made in terms of the

provisions of the Telegraph Act, and that the final authority to determine sufficiency of compensation vests in the District Judge in terms of Section 16(3) of 1885 said Act.

17. In light of the above, we are of the opinion, it is the primary obligation of the respondent no.2 in terms of Section 10 (d) of the Telegraph Act, 1885 to determine compensation and disburse the same to all persons interested for any damage sustained by them, by reasons of exercise of authority conferred upon the respondent no.2, under Section 164 of the 2003 Act. If, however, any dispute arise as regards entitlement to receive compensation, or as to the proportion in which the persons interested are entitled to share in it, or as regards sufficiency of the compensation so determined or entitlement to receive compensation under the 1885 Act, the same shall be decided by the District Judge in accordance with section 16(4) of the 1885 Act.

18. In the present case the respondent nos. 2 to 4 have not disclosed any document or records so as to demonstrate that compensation has already been determined by them.

19. We, however, find that the appellants have made out a specific case that they have suffered damages, such fact would corroborate from the representation dated 17<sup>th</sup> of April, 2019. Records would, however, reveal that meetings had been convened to discuss issues relating to execution of 132kV transmission line project. Similar meetings were also convened by the District Magistrate, to discuss the issues raised by the persons

affected by the project, which, *inter alia*, includes the appellants and upon such discussion the said officer arrived at a finding that the compensation rate for agricultural land would be Rs. 20/- per square metre and value for non-agricultural land/bastu would be Rs. 173/- per square metre.

20. It has, however, been brought to our notice that pursuant to directions passed by the learned Single Judge, the respondent no. 5 has already determined compensation. We are of the view that the respondent no. 5 does not enjoy the authority or jurisdiction to make any determination in terms of the 1885 Act. We are also of the view that the respondent no.5 cannot be conferred with any power as are available to the Telegraph authority under Section 10(d) of the 1885 Act. In any event, no such decision can also be taken by the District Judge at the first instance without there being a determination by the respondent no.2 or its agents.

21. For reasons discussed above, the order impugned dated 30<sup>th</sup> July, 2019 passed by the learned Single Judge cannot be sustained and is, accordingly, set aside. The consequential order dated 17<sup>th</sup> December, 2019 passed by the respondent no.5 which is dehors the provisions of the 1885 Act, is also quashed.

22. We find that the matter has been pending for several years. We thus direct the respondent no.2 to consider the representation dated 17<sup>th</sup> of April, 2019, annexed at page 152 of the stay application and to take a

decision in the matter as regards the quantum of compensation payable to the affected persons including the individual appellants upon giving an opportunity of hearing to all interested parties and to communicate such decision to the appellants within a period of eight weeks from date of communication of this order along with a copy of the representation dated 17<sup>th</sup> of April, 2019. At the time of hearing the appellants would be at liberty to file additional documents in support of their claim. Upon determination of such compensation, the West Bengal State Electricity Transmission Company shall disburse same within a period of two months.

23. We, however, make it clear that if the appellants are aggrieved by the decision to be taken by the respondent no.2, it shall be open to them to challenge such decision before the learned District Judge having jurisdiction in terms of sub-section 3 of Section 16 of the 1885 Act.

24. We find that an application being CAN No.12462 of 2019 has been filed by 12 several applicants who are seeking addition as parties in the present appeal. We find that the applicants herein have not moved any application under Article 226 of the Constitution of India. They simply seek addition in the instant appeal. Since we have already directed the respondent no.2 to take a decision in respect of persons affected, we grant liberty to the applicants to approach the respondent no.2 within a period of 3 months from date. If such application is filed, within the time specified hereinabove the same shall be decided by the respondent no.2

upon giving an opportunity of hearing of all interested parties within a period of 8 weeks thereafter. Nothing therefore, survives in the application being CAN No. 12462 of 2019 and the same is, accordingly, disposed of.

25. With the aforesaid direction, the appeal being FMA No. 663 of 2022 and the application being CAN No. 11814 of 2019 are disposed of.

26. There shall, however, be no order as to costs.

27. Urgent certified copy of the aforesaid order if applied for be made available to the parties on urgent basis.

**(Raja Basu Chowdhury, J.)**

**(Tapabrata Chakraborty, J.)**