

AD-10
Ct No.09
22.11.2023
TN

WPA No. 17266 of 2023

Basudev Saha and another
Vs.
The State of West Bengal and others

Mr. Saptansu Basu,
Mr. Samir Kr. Das Kar,
Mr. Soumya Ray

.... for the petitioners

Mr. Sk. Md. Galib,
Ms. Jyotsna Roy Mukherjee

.... for the State

Mr. Sumit Kr. Panja,
Mr. Sumit Roy

.... for the WBSETCL

- 1.** The report filed today by the WBSETCL be kept on record.
- 2.** Learned senior counsel appearing for the petitioners contends that the said report is as technical as possible but nowhere does it indicate clearly that there is no alternative route for shifting the high-tension overhead line from over the petitioners' property.
- 3.** Learned senior counsel further argues that in the least, Rule 80 of the 1956 Rules is required to be followed insofar as the requisite height to be left over the petitioners' property is concerned.

4. Learned senior counsel also argues that in terms of a previous order of this court dated April 05, 2023, the WBSETCL was required to give a notice to the petitioners before undertaking the work which was never done.
5. Learned counsel appearing for the WBSETCL places reliance on the judgments reported at *(2013) 8 SCC 738 (Orissa Power Transmission Corporation Limited and others vs. Asian School of Business Management Trust and others)* and *(2017) 5 SCC 143 (Power Grid Corporation of India Limited vs. Century Textiles and Industries Limited and others)* to lay stress upon the point that once a public work/project has been undertaken, the same is not generally upset by the High Court.
6. It is further argued that there is acute power shortage in the District of Dakshin Dinajpur which has been sought to be met by the present project. As such, an order to the contrary shall affect the public interest at large.
7. That apart, the petitioners purchased the property after the Notification of the project was published and cannot claim any equity as such.
8. Moreover, there is no sanction of the building being constructed by the petitioners, it is argued,

and orders have been passed under Section 144 of the Code of Criminal Procedure (CrPC) restraining the petitioners from carrying on with construction, which has been flouted by the petitioners.

9. Learned counsel for the State contends that the petitioners had applied for conversion of the land after the Gazette Notification of the project which was permitted initially. However, at present a proceeding is going on for cancellation of such permission.
10. It is further argued that the order under Section 144 of the CrPC was passed at the behest of the SDL&LRO.
11. Upon hearing learned counsel for the parties, it transpires that the proposition of law as settled by the Supreme Court is abundantly clear. As held in *Orissa Power Transmission Corporation Limited* (supra), the exercise undertaken by the High Court for ascertaining availability of alternative route through which the transmission line could be routed was held to be unwarranted in view of the circumstances of the case. In the present case as well, the relevant scheme/project was notified prior to the petitioners purchasing the property and making construction thereon.

As such, the petitioners are deemed to have been well aware of the said project, despite which the petitioners took a chance by purchasing the property and starting construction.

12. Also, since orders have been passed under Section 144 of the CrPC and as there is some doubt as to whether the petitioners have a valid sanction plan, the petitioners cannot claim any equity for constructing the building despite being aware of the project.

13. Insofar as the provisions of Rule 80 of the Indian Electricity Rules, 1956 are concerned, the provision as to clearance of high tension lines from buildings is applicable only to existing buildings which were already in place when the project commenced. However, in the present case, the line was drawn previously and the electrification of the same was restrained only because of an interim order passed in the present writ petition. Thus, the petitioners cannot take advantage of the same. In any event, the petitioners have taken a risk by purchasing the land and starting construction after notification of the project and continuing with the same after the line was physically drawn.

- 14.** Insofar as the order dated April 05, 2023 is concerned, the same cannot create any extra equity in favour of the petitioners which the petitioners do not already have. In the said order, it was recorded that the petitioners had recently purchased the property prior to which a Notification had been duly published indicating the nature of the work to be undertaken by the WBSETCL in the area. At the juncture of publication of such a notification, it is not always possible to identify the exact plots over which the electricity line shall be taken.
- 15.** However, such notification was sufficient to make the petitioners along with other people in the vicinity aware of the necessary implications of the project. In the order dated April 05, 2023 passed in WPA No. 7368 of 2023, it was only observed that if the WBSETCL started any work “on the property” of the petitioners, a notice would be given to the petitioners. The present project, however, does not directly pertain to any construction on the petitioners’ property but involves high-tension overhead line being taken over the property of the petitioners and several others. The same was thus covered by the general

notification in the Official Gazette which was published at the behest of the WBSETCL.

- 16.** In view of the above circumstances, there is no scope of interference in the present writ petition.
- 17.** Accordingly, WPA No. 17266 of 2023 is dismissed on contest, without any order as to costs.
- 18.** Needless to say, all interim orders passed earlier stand hereby vacated.
- 19.** Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)