

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.914 OF 2023

HONDU VITHAL GAONKAR

... PETITIONER

Versus

GOA TAMNAR TRANSMISSION PROJECT
LTD., THR MANAGER ENABLEMENT AND
ROW AND 4 ORS

... RESPONDENTS

Mr. F. E. Noronha, Advocate for the Petitioner.

Mr. A. D. Bhobe, Advocate for Respondent no.1.

Mr. D. Pangam, Advocate General with Ms. Maria Corriea,
Additional Government Advocate for the Respondent nos. 2 and 4.

Mr. Pravin Faldessai, Deputy Solicitor General of India, for the
Respondent no.5.

**CORAM:- M. S. SONAK &
VALMIKI SA MENEZES, JJ.**

DATED :- 12th December, 2023

P.C.

Heard Mr. Noronha, learned Counsel for the Petitioner, Mr. Pangam, learned Advocate General for the Respondent nos. 2, 4 and 5, Mr. Bhobe, learned Counsel for the Respondent no.1 and Mr. Faldessai, Deputy Solicitor General of India, for the Respondent no.5.

2. The learned Advocate General pointed out that the vires of the provisions which are impugned in this Petition was questioned in Vivek Brajendra Singh vs. State Government of Maharashtra & Ors., reported in 2012 (4) Mh.L.J. 625 and the challenge was not upheld.

3. For the present, we do not wish to go into the issue of constitutional validity, particularly because Mr. Noronha, on instructions, states that the Petitioner, for the present, could be satisfied if the concerned Magistrate gives the Petitioner an opportunity of hearing.

4. The learned Advocate General referred to the provisions of Sections 10 and 16 of the Indian Telegraph Act, 1885, (for short 'said Act'). He pointed out that an Order in terms of Section 16 has already been made by the Deputy Collector/Magistrate on 05.12.2023. The Petitioner has resisted the exercise of power under Section 10 of the said Act. Section 16 of the said Act provides that if the exercise of powers mentioned in Section 10 in respect of property referred to in clause (d) of said Section is resisted or obstructed, the District Magistrate, in his discretion, order that the Telegraph Authority may be permitted to exercise them. Now that the Petitioner has already objected, resisted, and obstructed to the exercise of powers in Section 10, the Magistrate will have to decide whether the Telegraph Authority should be permitted to exercise that despite such objections/resistance or obstruction.

5. The learned Advocate General states that the Magistrate will hear the Petitioner on 15.12.2023 at 3.00 p.m. Accordingly, the Petitioner will have to remain present for this hearing without insisting upon any

separate notice. If the Petitioner wishes to file written objections, he is granted leave to do so.

6. The Magistrate will then have to decide the matter in terms of Section 16 of the said Act and communicate the decision to the Petitioner within 15 days from the passing of the Order.

7. All contentions of all parties are left open. Even the questions of constitutional validity are not decided in this Petition and they are left open.

8. This Petition is disposed of.

9. All concerned to act based on an authenticated copy of this Order.

VALMIKI SA MENEZES, J.

M. S. SONAK, J.

ANDREZA PEREIRA  Digitally signed by ANDREZA PEREIRA
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