

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 6932 OF 2023**

Jagan Damu Kambari And Ors

...Petitioners

***Versus***

The State Of Maharashtra The The Principal  
Secretary And Ors.

...Respondents

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***Mr. Gaurav Potnis, i/by Adv. P.H. Potnis Advocates for  
Petitioner.***

***Dr. Birendra Saraf, AG a/w. Mrs. S.D. Vyas, 'B' Panel for  
the State/Respondent***

***Sr. Adv. Ashish Kamat, a/w. Adv. Haresh Moorjani a/w  
Adv. Devesh Juvekar a/w. Adv. Kavita Brid Chavan  
a/w. Adv. Honye Chandani Advocates for Respondent No. 3.***

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**CORAM : B. P. COLABAWALLA &  
M.M. SATHAYE, JJ.**

**DATE : AUGUST 2, 2023**

**P. C.**

1 The above Writ Petition is filed seeking the following  
reliefs:

- “A. That this Hon’ble Court be pleased to issue a Writ of  
Mandamus or a Writ/Order/Direction in the nature of  
the Writ of Mandamus holding and declaring that  
Section 10(b) of the Indian Telegraph Act is ultravires  
and unconstitutional.

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- B. That this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ/Order/Direction in the nature of the Writ of Mandamus directing the Respondents to acquire the land under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and the Article 14, and 300 A of the Constitution of India;
- C. That this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ/Order/Direction in the nature of the Writ of Certiorari quashing and setting-aside the said Government Resolution dated 1<sup>st</sup> December, 2022.
- D. That the Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ/Order/Direction in the nature of the Writ of Mandamus directing the State Government to modify Government Resolution dated 1<sup>st</sup> December, 2022, so that the compensation is paid as per Section 26 to Section 30 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;
- E. That in the alternative prayer clause A above, this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ/Order/Direction in the nature of the Writ of Mandamus directing the Respondents to acquire the lands of the Petitioners under Section 10(d) of the Indian Telegraph Act or under Section 67 of the Electricity Act and be guided by the principles of Section 26 to 30 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
- F. That this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ/Order/Direction in the nature of the Writ of Mandamus directing the Respondents to not mutate the 7/12 extract of the Survey Numbers/gat numbers mentioned in Exhibit A with regard to the compensation being paid for the Tower and the Transmissions lines set up on the lands for the Petitioners.
- G. For a Writ of Mandamus or a Writ in the nature of mandamus or any other appropriate Writ, Order or

direction against the Respondents, restraining the Respondents by themselves, their servants, agents, officers and subordinates, from entering into the Gat Nos mentioned at Exhibit A or taking any action whatsoever, against the Petitioners, their servants, agents, officers.”

2           As far as prayer clause “A” is concerned, Mr. Potnis, on 6<sup>th</sup> July 2023 itself, stated that he is not challenging the constitutional validity of Section 10(b) of the Indian Telegraph Act, 1885. This is recorded in our order dated 6<sup>th</sup> July 2023. In these circumstances, as far as prayer clause “A” is concerned, now nothing survives.

3           As far as prayer clause “C” & “D” are concerned, they challenge and/or seek modification of the Government Resolution dated 1<sup>st</sup> December 2022. The major ground on which the said Government Resolution (i) is challenged, or (ii) is sought to be modified, is that if the Petitioners accept the said Government Resolution and which provides for a Sub Divisional Level Evaluation Committee (for short the **“Evaluation Committee”**) to decide the compensation payable to the Petitioners, they would lose their statutory right to seek enhanced compensation as contemplated under Section 16(3) of the Indian Telegraph Act, 1885.

4           In answer to this argument, Dr. Saraf, the learned Advocate General, and Mr Kamat, the learned Senior Counsel appearing for the Transmission Licensee Company (Respondent No.3), took us through the said Government Resolution and pointed out that first, the Evaluation Committee passes an Order fixing the land value rates for a given village/area in which the transmission lines are to be installed. Thereafter, based on this Order of the Evaluation Committee, the Transmission Licensee Company will pass an Order computing the compensation on the basis of the Order of the Evaluation Committee. These Orders would be communicated to the landowners/farmers, and the compensation determined, would then be paid over to the concerned person subject to them submitting the KYC documents such as Bank details, Aadhar Card, 7/12 extracts etc. within 7 days. If the concerned landowner/farmer is not satisfied with the compensation determined, he has a right to approach the District Level Appellate Committee (for short the “**Appellate Committee**”) which is also set up under the Government Resolution. At that time, the landowner/farmer is given a sufficient opportunity to present his case and the Appellate Committee can (i) itself re-evaluate the order passed by the Evaluation Committee, or (ii) refer the matter to the Evaluation Committee for reconsideration, or (iii) dismiss the appeal, as the case may be. It was also pointed that

the said Government Resolution itself contemplates that the Appellate Committee will issue a Speaking Order with sufficient reasoning.

5           It was also brought to our attention that the said Government Resolution itself provides that if for any reason, if any party is dis-satisfied with the decision of the Appellate Committee, the concerned party, viz, farmer/landowner/holder, or the Transmission Licensee Company, can file an appeal to the concerned Court of competent jurisdiction. Dr. Saraf and Mr. Kamat submitted that this has been provided in the Government Resolution keeping in mind the provisions of Section 16(3) of the Indian Telegraph Act, 1885. In other words, it was the submission of Dr. Saraf and Mr. Kamat that by participating in the machinery provided under the said Government Resolution (for determination / computation of compensation), the remedy of the Petitioners under Section 16(3) is not in any way barred or truncated.

6           Mr. Potnis fairly submitted that the Petitioners, in light of the submissions made by Dr. Saraf and Mr. Kamat, are not desirous of challenging the Government Resolution dated 1<sup>st</sup> December 2022 because now it has been made clear that if the Petitioners are

dissatisfied with the Order passed by the Appellate Committee, they can approach the District Court under Section 16(3) of the Indian Telegraph Act, 1885.

7           This now leaves us to consider the other prayers in the Petition. Prayer clause “B” seeks a Writ of Mandamus directing the Respondent to acquire the land of the Petitioners under the provisions of the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* (for short the “**2013 Act**”). Thereafter, prayer clause “E” seeks a Writ of Mandamus directing the Respondents to acquire the lands of the Petitioner under Section 10(d) of the Telegraph Act, 1885 or Section 67 of the Electricity Act, 2003 and be guided by the principles of Section 26 to 30 of the 2013 Act (for computing the compensation).

8           We find that both these prayers are wholly misconceived as there is no acquisition of the Petitioners property in the present case. What is acquired is the ‘right of user’ under the Indian Telegraph Act, 1885. The same cannot be equated with acquiring the property whereby the Petitioners are divested of their ownership rights, and which are then transferred to the acquiring body. This issue is no longer *res*

*integra* and is covered by a Division Bench Judgment of this Court (*Nagpur Bench*) in the case of ***Harihar Buildspace Pvt. Ltd., Nagpur vs. Union of India and Others* [2021 (5) Mh. L. J. 144]**. In this case also, a specific argument was made on behalf of the Petitioners that it was entitled to compensation under the 2013 Act for the ‘cost of land’ due to erection of the transmission tower. This argument was expressly negated by this Court by *inter alia* holding that under the provisions of the Indian Telegraph Act, 1885 there is no acquisition of the land whatsoever. The Division Bench opined that the entire Indian Telegraph Act, 1885 does not contemplate any acquisition of land and this is clear from the language of Section 10(b) which expressly mandates that 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 line or post. The Division Bench therefore opined that the provisions of the 2013 Act, and which are applicable only to acquisition of land, would clearly not be available for any user as contemplated under the Indian Telegraphic Act, 1885. The relevant portions of this decision read thus:-

**“4. It is in the above background that Shri Kothari, learned Counsel for the petitioner submits that:**

- (a) it was obligatory upon the respondent No. 3 to have awarded compensation to the petitioner for the transmission line passing through the petitioner's

property and the land used for erection of the towers.

- (b) the judgment of the District Magistrate dated 20-5-2010 clearly directed the determination and grant of compensation, in pursuance to which the 'entitlement of the petitioner for compensation cannot be disputed.
- (c) no citizen of the country can be deprived of his immovable property without being adequately compensated for the same.
- (d) the respondent No. 3 in its reply has admitted the entitlement of the petitioner for compensation.
- (e) the right to claim would begin after the work was completed and since work according to the respondent No. 3 was completed before 30-10-2010 when the line was commissioned, the respondent No. 3 ought to have made a determination under section 10(3) of the Telegraph Act, 1885 and awarded compensation.
- (f) the change of route under section 17(3) of the Telegraph Act, 1885, would not deprive the petitioner of the right to claim compensation, which survived and was in fact so directed to be determined by the District Magistrate in its judgment dated 20-5-2010.
- (g) the withdrawal of R.C.S. No. 351/2010, by the petitioner would not amount to waiver of the right under section 10(d) of the Telegraph Act, 1885, as the same was never the subject-matter of the suit.
- (h) the right under section 10(d) of the Telegraph Act, 1885 was an independent right available to the petitioner, contravention of which by the respondent No. 3, entitled the petitioner to approach this Court in its writ jurisdiction.

**(i) the petitioner is clearly entitled for compensation for the loss of its land due to Erection of the towers, that too under the RFCTRR Act 2013.**

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7. At the outset, to appreciate the rival contentions, it is necessary to consider the nature of relief which is sought in the present petition. The prayer clause (a) and (b) therefore being material are reproduced as under:

*"(a) quash and set aside the communication issued by Respondent No. 3 M/s Maharashtra State Transmission Company Ltd through its Executive Engineer, MSETCL Nagpur Dated 31-5-2019 filed at Annexure H.*

*(b) further be pleased to issue Writ of Mandamus or any other appropriate writ or order directing the Respondents to pay compensation along with interest since 30-10-2010 towards cost of land Adm. 14627. 52 sq. mtrs. used for erection of towers on survey No. 68 as per law and directed by the District Magistrate, Nagpur in its order dated 20th May, 2010 at Annexure-B.*

(emphasis supplied)

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10. The petitioner in prayer clause (b) claims compensation 'towards cost of land', which also is clearly not permissible under the provisions of the Telegraph Act, 1885, as there is no acquisition of land whatsoever, thereunder.

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23. As we have already held that the petitioner is not entitled to any compensation under section 10(d) of the Telegraph Act, 1885, it is not necessary to consider the plea that the petitioner is entitled to compensation under the RFCTRR Act, 2013. **Suffice it to say that the entire Telegraph Act, 1885, does not contemplate any acquisition of land. This is clear from the language of section 10(b) which expressly mandates that 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 line or post. Thus no acquisition of land is contemplated by the Telegraph Act, 1885 and therefore the provisions of RFCTRR Act, 2013, which are applicable only to acquisition of land, would clearly not be available, for any user as contemplated under the Telegraph Act, 1885."**

(emphasis supplied)

9           In light of the aforesaid decision of the Division Bench in the case of ***Harihar Buildspace Pvt. Ltd., Nagpur (supra)***, there is no question of granting prayer clauses "B" and "E".

10           As far as prayer clause "F" is concerned, this prayer really would not survive because the Petitioners have given up their challenge to the Government Resolution dated 1<sup>st</sup> December 2022. This very Resolution provides that after the completion of the project of construction of high-tension lines, the relevant Transmission Licensee Company should report to the Revenue Department for recording the payment of compensation to the concerned landowner, on the 7/12 extract of their land. This has been set out in the said Government Resolution for the simple reason that if the land is subsequently sold by the farmer/landowner, the party purchasing the land is put to notice

that compensation is already paid for user of a portion of that land for the purposes of erecting the transmission line(s).

11           As far as prayer clause “G” is concerned, it seeks to restrain the Respondents from entering into Gut Nos. mentioned at Exhibit-A to the Petition or taking any action whatsoever, against the Petitioners, their servants, agents and officers. We are of the opinion that considering the submissions recorded on behalf of Dr. Saraf as well as Mr. Kamat, we do not think that the Petitioners are entitled to these reliefs. We say this because Mr. Kamat, on instructions, has in fact stated to us that on the determination of the compensation payable to the Petitioners, they would be paid over the same subject to them submitting the KYC documents such as bank details, Aadhaar Card, 7/12 extract etc within 7 days of the said submission. Once this is the case, we do not see any reason why the Respondents ought to be restrained from entering into the Petitioners’ land for constructing thereon transmission towers and which is a public utility project. In these circumstances, we do not find that any case is made out by the Petitioners for grant of prayer clause “G” to the Petition.

12           We make it clear that once the Order of the Evaluation Committee as well as the Order passed by the Transmission Licensee Company (Respondent No.3) are served upon the Petitioners, they shall be at liberty to file appropriate appeal(s) before the Appellate Committee as provided under the said Government Resolution. If any party is aggrieved /dissatisfied with the order passed the Appellate Committee, they shall also be at liberty to file an application under Section 16(3) of the Indian Telegraph Act, 1885 to the District Judge within whose jurisdiction the property is situated.

13           The Writ Petition is accordingly disposed of in the aforesaid terms. However, no order as to costs.

14           This Order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

**[ M.M. SATHAYE, J.]**

**[ B. P. COLABAWALLA, J.]**