

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 3559/2022

Akbarali Karamali Gilani (Dead) thr. LR's and Ors.

Vs.

State of Maharashtra and Ors.

.....
Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders

Court's or Judge's order

.....
Mr. S. U. Bhuyar, Advocate for Petitioners.

Mr. S.M.Ukey, Additional Government Pleader for Respondents 1 to 3/State

Mr. D. M. Kale, Advocate for Respondents 4 to 6.

**CORAM : ROHIT B. DEO AND
MRS.VRUSHALI V. JOSHI, JJ.**

DATED : 29.03.2023

. Heard

2. Petitioners are seeking direction that respondent 4 – Chief Project Officer, Power Grid Corporation Limited, Nagpur (PGCL) shall pay compensation in view of the occupation of the land of the petitioners for the purposes of construction of tower and laying transmission cable, and the consequential loss as regards the crops and trees which were in the affected zone, and further that the compensation be paid in accordance with Government Resolution dated 31.05.2017.

3. We have given anxious consideration to the averment in the petition. In paragraph 6 of the petition there is an averment that petitioner 4 issued legal notice dated 11.12.2018 and in response, respondents 3 to 5 admitted not to have paid compensation to petitioner 4. In our considered view, there is clearly an attempt to mislead us.

We say so, since there is no disclosure whatsoever in the entire petition, that the compensation amount was as a fact deposited in the accounts, in the year 2019.

4. We have further perused the material on record, including the affidavits. We find that the grievance, notwithstanding the attempt to mislead us, is not that compensation is not paid at all. The grievance of the petitioners presumably is, that while the compensation which is paid is calculated on the basis of 2010 Government Resolution, the calculation of the compensation ought to have been on the basis of 2017 Government Resolution.

5. At this stage, we may note the provisions of Sections 15 and 16 of the Indian Telegraph Act, 1885 (Act of 1885), which read thus :

15. Disputes between telegraph authority and local authority – (1) *If any dispute arises between the telegraph authority and a local authority in consequence of the local authority refusing the permission referred to in section 10, clause (c), or prescribing any condition under section 12, or in consequence of the telegraph authority omitting to comply with a requisition made under section 13, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by such officer as the [Central Government], may appoint either generally or specially in this behalf.*

(2) An appeal from the determination of the officer so appointed shall lie to the [Central Government]; and the order of the [Central Government] shall be final.

Provisions applicable to other property

16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority – (1) *If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.*

(2) *If, after the making of an order under sub section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code (45 of 1860).*

(3) *If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.*

(4) *If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the*

compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3), or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same.”

6. Section 15 is pressed in service by the learned Counsel for the petitioners. Section 15 provides that if there is any dispute between the telegraph authority and a local authority in consequence of the local authority refusing the permission referred to in Section 10, clause (c), or prescribing any condition under Section 12, or in consequence of the telegraph authority omitting to comply with a requisition made under Section 13, or otherwise in respect of the exercise of the powers conferred by the Act, such dispute shall be determined by an Officer appointed by the Central Government.

7. The present dispute is not between the telegraph authority and local authority in respect of the matters categorized or articulated in Section 15. We have not understood why the learned Counsel is referring to the provisions of Section 15 in the context of the facts of the present matter. In the interest of maintaining restraint, we are not making any further observation.

8. Section 16 however is relevant. Sub Section (3) provides that if there is any dispute arises concerning the sufficiency of the compensation to be paid under Section 10, clause (d), the aggrieved person may prefer an application to the District Judge within whose jurisdiction the land is situated. We have no hesitation in holding, that the present dispute is covered by Sub Section (3). If the petitioners are aggrieved by the compensation paid, irrespective of the reasons or rational with persuaded the telegraph authority to determine the compensation, the petitioners are at liberty to approach the learned District Judge.

9. We are not inclined to consider the issues which can be agitated in the statutory application under Section 16(3) of the Act of 1885, in exercise of writ jurisdiction.

10. The petition is dismissed.

(MRS.VRUSHALI V. JOSHI, J.)

(ROHIT B. DEO, J.)

RGurnule