



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

WRIT PETITION NO. 3994/2023

Syed Ashpaque S/o. Syed Shauqat Vs. The District Collector, Akola and Ors.

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

Court's or Judge's order

Mr. S. V. Sohoni, Advocate for Petitioner.

Mr. S. A. Ashirgade, Additional Government Pleader for Respondent No.1.

Mr. G. A. Kunte, Advocate for Respondent Nos.2 and 3.

CORAM : A.S.CHANDURKAR AND MRS.VRUSHALI V. JOSHI,JJ..

DATED : 22.08.2023

P. C.

. Heard.

2. The challenge raised in the present writ petition is to the order dated 17.02.2023 passed by the Collector in proceedings under Section 16(1) of the Indian Telegraph Act, 1885 (for short 'the Act of 1885'). By the said order the permission has been granted to the respondent Nos. 2 and 3 to lay transmission line for 132 KV supply from Patur to Malegaon. Since the petitioner owns Gat No.301/6 and tower No.108 would be passing through his agricultural field, he is aggrieved by the said order.

3. The learned Counsel for the petitioner submits that if the transmission line is permitted to be taken across the petitioner's agricultural field, serious prejudice would be

caused to him. Due to the laying down the transmission line there would be no construction permissible in the vicinity of the said land. It is submitted that by realigning the location of the transmission tower, the land of the petitioner can be avoided. Only for the reason that part of the transmission line would be passing through the forest area, the same cannot be a reason for allowing the application that was preferred by respondent Nos.2 and 3.

4. The learned Counsel for the respondent Nos. 2 and 3 submits that there is no right with the petitioner to seek a change in the alignment of the location of the transmission tower as requested by the petitioner. After considering all technical aspects coupled with the fact that if the line is taken from the forest area various permissions would be required to be obtained, the Collector has allowed the application preferred by the respondents. The learned Counsel has placed reliance on the decision in ***Shri Vivek Brajendra Singh Vs. State Government of Maharashtra & Ors. [2012(3) ALL MR 130]*** to submit that there is no right with a land owner to object to laying down of the transmission lines. The compensation pursuant to the impugned order has been determined and the legal interest

of the petitioner has been protected.

5. Having heard the learned Counsel for the parties and having perused the documents on record, we find that there is no express right with the petitioner that can be the basis for directing the respondent Nos.2 and 3 to shift the location of the transmission tower from its path. This aspect has been considered by the Division Bench in the decision in **Vivek Brajendra Singh** (*supra*). It has been held that the Act of 1885 does not confer such right with the land owner that his consent is required to be obtained while laying down a transmission line. A similar issue has been decided in **Writ Petition No.5459/2021 (Manish Sureshkumar Jaiswal & Another. Vs. Sub-Divisional Officer, Ralegaon, District Yavatmal & Others)**. In paragraph 8 it has been observed as under :

“8. It is thus clear that prior to determining the area through which the high tension line would pass or a tower would be erected there is no right of hearing conferred on a land owner. The provisions of Section 10 of the said Act do not provide for the same. The right of hearing has been read into Section 16(1) of the said Act in the matter of resistance or obstruction by a land owner when power under Section 10(d) is carried out.”

6. The Collector while passing the impugned order has referred to joint spot inspection and other technical aspects after which the application preferred by the respondents has been allowed. It is true that the agricultural land of the petitioner would be affected by laying down of the transmission tower. However under Section 16(3) of the Act of 1885, the right to receive compensation is reserved.

7. For the aforesaid reasons, we find that in absence of any legal right with the petitioner to require the respondent Nos. 2 and 3 to shift the location of the transmission tower, there is no case made out to interfere in writ jurisdiction. The writ petition is therefore dismissed with no order as to costs.

(MRS.VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)