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W.P.No.25019 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.09.2023

Pronounced on : 22. 12.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.25019 of 2022

M/s.Sree Maruthi Agrotech Ltd.,
Survey No.1402
Opp. to Lovelong Salt Factory
Kelambakkam - 603 103
Represented by its Director
Mr.K.Gurumoorthy

... Petitioner

Vs

- 1.The District Magistrate
The District Collector
Chengalpattu District
Chengalpattu.
- 2.The Superintendent Engineer
TANTRANSCO GCC-1
Thiru-Vi-Ka Industrial Estate
Guindy, Chennai.
- 3.The Revenue Divisional Officer
Chengalpattu.
- 4.The Tahsildar
Tiruporur.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 07.05.2022, issued by the first respondent in Rc.No.38018/2019/M2 and quash the same and further direct the first respondent to award the compensation payable to the petitioner in terms of Section 10 of the Indian Telegraph Act, 1885, Electricity Act, 2003 G.O.Ms.No.86 Energy (A1) dated 30.10.2019 and in terms of the recommendations dated 18.03.2020 of the fourth respondent in Na.Ka.No.374/2019/A1 within a reasonable time frame.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.J.Ravindran
Additional Advocate General
Assisted by Mr.D.R.Arunkumar
Standing Counsel for R2

Mr.V.Manoharan
Additional Government Pleader for R1,3 &4

ORDER

This petition is filed challenging the proceedings of the 1st respondent, the District Collector in Rc.No.38018/2019/M2, dated 07.05.2022, under which he had declined compensation recommended by 4th respondent for use of the salt pan lands.

2.1 The case of the petitioner in short is that, in 2008 it had obtained lease of



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652.18 acres of salt pan-lands from the Salt Department for a term of 20 years. While so, on 13.07.2011, the TANTRANSCO issued a notification of its intent to raise 17 high tension cable towers along the salt pans, of which 15 were proposed to be erected in the salt lands leased out to the petitioner.

2.2 On 01.10.2014, the Salt Commissioner, GOI, the lessor of the petitioner, gave a formal permission for laying the HT tower and drawing electric lines on certain conditions, which *inter alia* included obtaining a NOC from the lessees of salt pans. The petitioner did not raise any objections since the HT lines were drawn for a public purpose. However, the petitioner sought compensation from the second respondent, the TANTRANSCO, with regard to the lands acquired by it for raising its HT towers. In particular, it demanded compensation for (a) 150 acres of salt pan area which were affected by raising of the HT towers, (b) for demolition of certain constructions it has put up for facilitating the production of salt, during the course of erection of transmission towers, etc.,

2.3 On 17.08.2015, a document styled as a deed of license came to be entered into between the Salt Commissioner and the 2nd respondent. This agreement *inter alia* provided for payment of compensation by the 2nd respondent to such



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of the lessees of the salt pans who would be affected by the erection of high tension towers. In the meantime, the petitioner has been requesting the District Collector, the first respondent herein, for compensation through its representations dated 27.04.2019, 24.05.2019 and 28.09.2019. The first respondent in turn is believed to have forwarded the same to the second respondent to consider paying compensation to the petitioner as per G.O.Ms. 63 Energy A1 Department, dated 22.11.2017, and determine compensation through the Tahsildar, the 4th respondent herein.

2.4 Pursuant to the same, on 18.12.2019, a joint inspection of the property was conducted by 2nd and 4th respondents in the presence of the representative of the petitioner. During the inspection, it was specifically brought to the knowledge of the 2nd respondent that the brine supply channel over a distance of 6.25 k.m had to be closed for the project of the TANTRANSCO which in turn had affected the salinity of the sea water, that out of the 15 HT towers, 13 were erected in the productive area, and that these factors had brought down the production of salt by 28.57%. This apart re-lift pump of the petitioner was also damaged and this had resulted in further reduction of production by another 25%. Later, vide communications dated 08.01.2020 and 30.1.2020, the petitioner had provided the information necessary for it to justify its claim



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of compensation.

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2.5 On 18.03.2020, the 4th respondent had recommended that the petitioner be paid Rs.6.17 crores as compensation. This was rejected by the 2nd respondent vide his proceedings dated 31.03.2020, fundamentally on the ground that the G.O.Ms.63, dated 22.11.2017, which enables payment of compensation, operates prospectively, and inasmuch as the entire project was executed earlier to the said G.O., by 05.02.2017, the petitioner would not be entitled to any compensation. The petitioner would now institute W.P.11404 and W.P.11411 of 2020. This Court vide its Order dated 27.08.2020, directed the District Collector to hold an enquiry on the recommendations of the Tahsildar and the objection of the TANTRANSOCO and to dispose of the same.

2.6 On 18.12.2020, the first respondent held an enquiry. It was extended to another sitting on 08.02.2021. Now, the first respondent had instructed the petitioner to approach the Salt Commissioner, and the latter, when approached, recommended payment of compensation through a communication from the Deputy Salt Commissioner, dated 22.03.2021. Thereafter, the 3rd respondent, the RDO concerned, conducted yet another joint inspection along with the Tahsildar, and in her report the 3rd respondent



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did record about the erection of 15 towers in the salt lands originally leased to the petitioner and also about the fact that 13 of them in Thaiyur Village, and two of them in S.No:188 of Kelambakkam village, which was a productive salt area.

2.7 Ignoring the same, the first respondent had rejected the petitioner's claim for compensation vide the impugned proceedings dated 07.05.2022. The grounds on which compensation was denied are:

- (a) Reduction in salt production cannot be directly linked to the erection of HT towers, as it is affected by multi various factors.
- (b) Petitioner being a lessee, and not the owner of the land, is not entitled to any compensation, more so, when petitioner is only a third party to the agreement between the Salt Department and TANTRANSCO.
- (c) The HT lines in the instant case were commissioned prior to G.O.Ms. 63 Energy A1 Department, dated 22.11.2017 and it has only prospective operation.
- (d) The Damage Assessment Committee constituted for the purpose of assessment of damages, did not find any evidence of loss suffered by the petitioner.



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This proceedings of the District Collector is now under challenge.

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3. Only the second respondent, TANTRANSCO has come forward to resist this petition. In its counter affidavit, it has pleaded:

- i. That the TANTRANSCO had obtained necessary permission from the Salt Department, and had also paid Rs.43,39,884/- to the latter as lease amount.
- ii. During execution of the work, no damage was made either to the salt pan or to any of the constructions of the petitioner. And of the 17 HT towers erected, only one fall within salt pan leased area and not the rest as was pleaded. And, there is no permanent structure which was required to be damaged for the project.
- iii. So far as the recommendations of the Tahsildar is concerned, it was made without giving the second respondent herein an opportunity of hearing in the matter, and it is not binding. G.O.Ms.63 has only prospective application, and a Tahsildar cannot give a retrospective operation.
- iv. Prior to the passing of the impugned proceedings, the District Collector formed Damage Assessment Committee vide his proceedings dated 06.04.2022. The said Committee had given its



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report after considering the report of the joint inspection made by the concerned Revenue Divisional Officer and the observation made by the Salt Department. They read as below:

- i. *The variability in the rate of salt production over time in the area under consideration is independent of the tower location but is impacted by climatic factors.*
- ii. *The petitioner being the lease holder of the land under consideration and not the owner of the land does not have any right to claim compensation for the land used by the TANTRANSCO, the owner of which is the Salt Department.*
- iii. *When there is a subsisting agreement between the TANTRANSCO and the owner of the land i.e., the Department of Salt, empowering the former to use the land under consideration, the petitioner, M/s.Sree Maruthi Agrotech Pvt Ltd., as a third party to the above said agreement, has no locus standi at all to claim compensation for the land utilized from the TANTRANSCO.*
- iv. *Moreover, the high tension lines under consideration were energized much before the coming into effect of the Government order on land compensation in G.O.(Ms) No.63 Energy (A1) Department, dated 22.11.2017 which envisages land compensation only on prospective basis and not on retrospective basis.*
- v. *The 'damage assessment committee' constituted for the purpose of assessing damages, if any, caused to the land under consideration, has not found any evidence of loss suffered by the petitioner M/s.Sree Maruthi Agrotech Pvt Ltd.*



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due to the presence of high tension electric towers in the area.

At any rate TANTRANSCO has not acquired the entire ownership over the land, but has only obtained the right to use the land for erection and maintenance of the HT line, for which the TANTRANSCO has to pay lease amount which it had already paid.

4.1 Heard both sides. The learned counsel for the petitioner would submit that the stance of the TANTRANSCO overlooks the communication from the Office of the Salt Commissioner dated 30.09.2014 to TANTRANSCO, wherein it has stipulated certain specific conditions, which reads as below :

"2. This permission is granted without prejudice to the Salt Dept, Government of India' right to charge the value of salt pan lands in future, if the salt pan area will be affected due to safety norms and would further subject to the following conditions as well as other usual terms and conditions:

- i. the TNTRANSCO will have to pay the lease money for the actual area used by them for erection of towers @ 6% of market value to be ascertained from the competent authority.
- ii. that the TNTRANSCO will obtain NOC from the salt lessees before starting erection of these 17 towers in their leased area.



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iii. that they will make good, if any, at their cost, in. case of damages to Salt Dept assets / interest and Salt Lessees assets / interests while erection of towers and in future maintenance."

Therefore, it is not that the Salt Department has given a blanket permission to the petitioner, ignoring the interest of its own lessee, and this correspondence is followed by a deed of licence entered into between the Salt Department of Government of India and TANTRANSCO dated 17.08.2015. Clauses 16, 17 and 19 of the deed of licence when read together, imposes certain specific obligation on TANTRANSCO to set right the damage if any, that would be caused to any individual during the course of execution of tower or maintenance of transmission lines etc.,

4.2 So far as the report of the Damage Assessment Committee constituted for its purpose is concerned, the petitioner was not even given a copy of the same, and hence, he did not have an occasion to make his claim before the Committee. The learned counsel for the petitioner further submitted that:

- (a) On 15.12.2022, the Office of the Deputy Salt Commissioner has addressed a communication to the District Collector, wherein it has indicated that the Damage Assessment Committee has not taken in consideration the loss of investment /re-location due to erection of HT



over head lines. The relevant portion of this communication is

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extracted below :

"2. The damage assessment committee constituted for the purpose of assessing damages, if any, caused to the land under consideration, has not found any evidence of loss suffered by M/s. Maruthi Agro Tech Ltd., due to the presence of high tension electric towers in the area. In view of this, the proceedings passed the Orders rejecting the application of M/s.Maruthi Agro Tech Ltd.,

3.Subsequently, the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, New Delhi has deputed a team of officers which visited the location on 09.06.2022 much after the Committee constituted by the District Collector visited the site. The team submitted the report to the Department for Promotion of Industry and Internal Trade, the same was communicated to this Office vide Ministry of Commerce and Industry, Department for Promotion of Industry & Internal Trade, No.P34016(16)4/2018-Salt/E-15935) dated 10th November 2022. (Copy enclosed). The recommendations of the Committee among other things are as under :-

- i. While assessing the damages, the Committee did not take into account of the loss of investment/re-location due to erection of HT Towers like remnants of pump house; permanent damages done to periphery bund during erection etc.,*



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- ii. *The area under the HT towers and surrounding area becomes infructuous for salt production, whereas the lessee has to pay for ground rent for the same.*

6. The Salt Commissioner's Organisation has no separate guidelines for payment of compensation for the salt works which are affected by the erection of HT Towers. However, as per the following, M/s. TANTRANSCO has to consider the compensation claims of the Salt lessees;

- i. *As per the terms and conditions No.3(ii) & (iii) mentioned in the Salt Commissioner, Jaipur approval communicated in C.No.6(5)P/2014/2014/12360 dated 01.10.2014 (Copy enclosed);*
- ii. *As per the terms and conditions No.5 & 6 of Deputy Salt Commissioner, Chennai C.No.11015/3/W/GI/2011/1267-1270 dated 02.02.2015 (Copy enclosed) conveying the approval of the Salt Commissioner, Jaipur.*
- iii. *As per the terms and conditions No.16 & 18 of Lease Agreement dated 17.08.2015 (Copy enclosed) executed and agreed by Salt Commissioner Organization (Signed by the Deputy Salt Commissioner, Chennai) and M/s.TANTRANSCO (signed by Superintending Engineer, GCC-I, TANTRANSCO, Guindy, Chennai);*



In view of the above, the Salt lessees are eligible for compensation as per G.O.Ms.No.(63)/Energy (A1) Department dated 22.11.2017 issued by the Government of Tamil Nadu."

(b) Secondly, even in the counter, it is admitted that a sum of Rs.43,39,884/-, which TANTRANSCO has paid to the Salt Department is only towards compensation for lease of rental or lease amount occasioned to the Salt Department owing to the erection of HT towers. This therefore cannot be equated to such damage which the lessees of the salt pan might have suffered. Therefore, the findings of the Salt Committee is not conclusive.

4.3 On an identical issue, the learned Single Judge of this Court in his judgment in ***L.Subramania Reddy & Others Vs The Deputy Salt Commissioner, Shastri Bhavan, Chennai*** [2007-3.L.W.360], has held that the lessee of the salt pan are entitled to compensation, and this reconciles with the first three conditions in the communication of the Deputy Salt Commissioner dated 30.09.2014. He also placed reliance on the judgement of this Court in ***Asreen Banu Vs The Tamil Nadu Transmission Corporation Ltd., (TANTRANSCO)*** [order in W.P.No.629 of 2023 dated 02.08.2023].



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4.4 The learned counsel for the petitioner further submitted that during the pendency of this petition, the Salt Department constituted a Committee of its officials, who had conducted a survey of the salt pans and have stated that the lessees indeed have suffered loss owing to the project of the 2nd respondent. The learned counsel also brought to the notice of this Court a report submitted by this committee to the 1st respondent vide its communication dated 15.12.2022. The learned counsel submitted that in view of this development, the petitioner would be happy, if he is allowed to appear before the Collector or such other committee which may be constituted for the purpose.

5. Representing the TANTRANSOCO, the learned Additional Advocate General made the following submissions :

(a) The petitioner has pivoted its contention for claiming compensation on two factors :

- i. G.O.(Ms) No.63 Energy (A1) Department dated 22.11.2017;
and
- ii. that, as a lessee of the salt pan, it has subsisting interest in the land, and the damage or loss, which his lease hold right has suffered owing to the erection of HT tower must be



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compensated.

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(b) So far as the first aspect is concerned, Vide another G.O.(Ms) No,86 dated 30.10.2019, the operation of G.O.(Ms) No.63 dated 22.11.2017 is made prospective, and it may apply only to those cases where HT towers are erected after its notification, the same is made applicable. So far as the present case is concerned, the HT towers were erected even prior to the notification of G.O.Ms.No.63 dated 22.11.2017.

(c) Turning to the second part of the claim, the impugned proceedings disclosed that a Committee of four members was constituted under the Chairmanship of Sub Collector I/C, Chengalpattu, for considering the compensation required to be paid to those who are affected by the erection of HT tower and running of HT electric lines. This Committee included a nominee of Deputy Salt Commissioner, and this Committee has not recommended that the petitioner is eligible for compensation. This aspect is highlighted even in the impugned proceedings. In this regard, it is relevant to mention that TANTRANSO had deposited Rs.43,39,884/- to the Salt Department. Inasmuch the Salt Department has received the compensation, now it is only appropriate for the petitioner to work



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out its claim against the Salt Department.

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(d) This apart, the project involved installation of 17 towers on the salt pan, of which only one tower falls within the plot that was leased to the petitioner by the Salt Department, and the Assessment Committee finds that the petitioner has not suffered any loss.

(e) And thirdly, there was a subsisting agreement between TANTRANSCO and Salt Department dated 27.02.2015, and if at all the petitioner feels aggrieved, then it ought to approach the Salt Department for compensation for anything protecting its interest. It is on the basis of these reasoning, the District Collector while considering the petitioner's claim under Section 10 of the Telegraph Act, chose to reject the petitioner's claim.

(f) And finally, if at all the petitioner feels aggrieved, it ought to have preferred an appeal under Section 16 of the Telegraph Act, before the concerned District Court.

(g) The correspondences between the TANTRANSCO and the Salt Department and the deed of licence entered into between them on 30.09.2014 and 17.08.2015 respectively, these are all inter-departmental correspondences or agreements, and the petitioner cannot take advantage of any of them.



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6. In reply, the learned Additional Advocate General would submit that so far as the applicability of ratio in *L.Subramania Reddy case* is concerned, on facts there is a mismatch between this case and the one involved in that case. Therefore, the said ratio cannot be telescoped automatically into this case. So far as the communication from the Salt Department dated 15.12.2022 is concerned, it is yet another instruction given by the Salt Department to the District Collector. The District Collector is performing the statutory functions under Section 10 of the Telegraph Act, and this letter cannot take away the effect to conclusiveness of the proceedings of the District Collector under Section 10 of the Act. If at all, the petitioner is aggrieved, its remedy is before the appellate authority under Section 16.

Discussion & Decision

7.1 Is the petitioner entitled to compensation? Volley of arguments for and against the petitioner's claim for compensation, resembling a ping pong game, is seen played. Here, this Court finds a space to intervene to set right a fundamental jurisprudential misconception about the stands which TANTRANSCO has entertained for declining compensation to the petitioner on the ground that it was not the owner of the land. The inference is that a



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lessee of the land would not be entitled to compensation.

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7.2 A lease is a transfer of right of enjoyment which the owner of an immovable property has over his/her property, to another, by which the lessee is vested with an interest in land. Hence, during the subsistence of the lease, even the lessor cannot interfere with the possession and enjoyment of the land by the lessee, except in accordance with the terms of the lease or as provided in law. Therefore, inasmuch as the petitioner was a lessee of the land which the TANTRANSCO has utilised for its project involving erection of HT lines, the petitioner is entitled to be compensated.

8. The next issue is who has to compensate and what is the size of the compensation? If the communication of the Salt Commissioner anterior to the commencement of the project, dated 30.09.2014 is read alongside the deed of licence which it had entered into with the TANTRANSCO, dated 17.08.2015, it only insists that the latter shall obtain a NOC from the lessees. It does not speak about payment of compensation. The petitioner here relies on a condition conveyed in the aforesaid communication as per which TANTRANSCO is required to “*make good, if any, at their cost, in case of damages to Salt Dept assets / interest and Salt Lessees assets / interests while*



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erection of towers and in future maintenance". The context in which this condition appears, does not indicate that it can refer to payment of compensation to the petitioner.

9. The next document that interests the Court is the inter-departmental licence agreement dated 17.08.2015, entered into between the Salt Department and the TANTRANSCO. Condition No.11 stipulates that TANTRANSCO is required to pay lease amount for the area occupied by the latter for its project. It therefore, makes obvious that the area thus earmarked for the project was necessarily withdrawn from the property leased to the petitioner and that the same is handed over by the Salt Department to TANTRANSCO. This area is therefore not available for the petitioner any more for salt manufacture. It may be that the petitioner might have issued a NOC to the TANTRANSCO, but that does not imply that the petitioner should not be paid compensation to which it is entitled to.

10. So far as the extent to which the petitioner may claim compensation is concerned, it is one of fact. Here, if the project of the TANTRANSCO has occasioned any damage to the petitioner, then the latter is required to be compensated. On this aspect this Court has varying reports. One report



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recommends a compensation of around Rs.6.50 crores, where as the other by the RDO after the disposal of the W.P.Nos.11404 & 11411 of 2020 recommends nothing. In between the Salt Department has also now awakened to the issue, and it is now coming out with its own stands. And there is a Damage Assessment Committee, and the petitioner contends that its report was not served on it, and this allegation goes without a denial.

11. On a careful appraisal of the aspects herein above discussed, this Court finds that at one extreme there is a jurisprudential misconception, and at the other end there is denial of principles of natural justice when the petitioner was not served with the copy of the report of the Damage Assessment Committee. And there is no explanation forthcoming as to why there are two reports, one recommending compensation to the tune of Rs..6.5 crores and the other giving nothing. And everything is done in the absence of Salt Department during enquiry.

12. This Court is now left with little option than to remand the matter back to the District Collector, the first respondent to hold a fresh enquiry with a notice to the Salt Department to participate in the proceedings. The first respondent is also required to share the copy of the report of the Damage Assessment



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Committee to the petitioner. Here it is relevant to deal with the submissions of the learned Additional Advocate General where he argued that if at all the petitioner is aggrieved, his remedy lies before the concerned District Court under Section 16 of the Telegraph Act. The facts before the Court are still inconclusive for the District Court to decide anything on merits. Secondly, there are strong legal and jurisprudential misconception seen entertained, and as indicated above, there is also non-compliance with the principles of natural justice. This necessarily warrants interference under Article 226 of the Constitution.

13. In conclusion, this Court sets aside the impugned proceedings of the first respondent dated 07.05.2022, and remands the matter back to the District Collector, the first respondent. The first respondent is directed to issue notice to the Salt Department requiring it to participate, and as and when the notice is issued, the Salt Department shall participate in the proceedings before the District Collector. Accordingly, the petition stands allowed. No costs.

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N.SESHASAYEE.J.,

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Pre-delivery order in
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