



W.P.(MD)No.6528 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.12.2022

Pronounced on : 22.02.2023

CORAM

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.P.(MD)No.6528 of 2013

and

M.P.(MD).No.1 of 2013

K.Gnaniah Nadar

... Petitioner

Vs.

1.The Power Grid Corporation of India,
62, Ground Floor,
Thilak Nagar,
Tirunelveli-1,
Rep by its Chief Manager.

2.The Executive Engineer (Distribution)
Tamil Nadu Electricity Board,
Tirunelveli.

3.The District Magistrate-cum-
District Collector of Tirunelveli,
Tirunelveli.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorarified Mandamus, calling for the



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records of the 3rd respondent, pertaining to his order in proceedings in Na.Ka.No.J2/81747/2009 dated 01.06.2011 on his filed, quash the same insofar as part of the compensation, claimed by the petitioner as payable by the 1st respondent on account of the 1st respondent's erection of an electric tower in his property and drawing of overhead electric lines over his property has been denied, directing the 1st respondent to pay to the petitioner Rs.7,85,380/- (Rupees seven lakh, eighty-five thousands, three hundred and eighty only) and solatium at the rate of thirty percent on the said sum of Rs. 7,85,380/- (Rupees Seven lakh, eighty-five thousand, three hundred and eighty only) with interest at the rate of eighteen percent per annum on the said amounts for the period from 31.03.2007, till the date of payment within a time to be fixed by this Court.

For Petitioner :Mr.K.N.Thambi
For Respondents :Mr.AR.L.Sundaresan
Assistant Solicitor General of India for R1
:Mr.S.Deenadhayan
Standing Counsel for R2
:Mr.V.Om.Prakash
Government Advocate for R3

ORDER

The instant writ petition had been filed challenging the order of the 3rd respondent made in Na.Ka.No.J2/81747/2009 dated 01.06.2011 and for a consequential relief to direct payment of compensation on account of



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erection of electric tower in the petitioner's property and drawing over head lines over his property for a sum of Rs.7,85,380/- and solatium of 30% on the said sum together with interest at 18% per annum.

2.The brief facts of the case is that the petitioner is an owner of the lands in Karuvantha Village, V.K.Pudur Taluk, Tirunelveli District. While so, the 1st respondent herein, without any notice to the petitioner, had started works to construct an electric towers and over head lines. Hence, the petitioner had approached this Court in W.P.(MD).No.2757 of 2006, wherein, by order dated 31.01.2007, this Court had directed the petitioner to submit his objections, if any, to the 3rd respondent herein. Immediately, the petitioner had submitted his objections and the 3rd respondent on 24.03.2007, had granted permission to the 1st respondent to erect tower in the petitioner's property, which was received by the petitioner only on 02.04.2007. In the interregnum, the 1st respondent had entered into the petitioner's property and had caused damage to the property as well as the trees standing therein. Hence, the petitioner had filed W.P.(MD).No.3156 of 2007 seeking for a Mandamus. By the time the said writ petition has come



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up for final hearing, the tower had already been erected and therefore, by order dated 13.06.2007, this Court had directed the 3rd respondent to fix compensation as per the Works of Licensees Rules, 2006 (hereinafter referred to as 'the Rules'). A notice of hearing was issued to the petitioner and the petitioner had given a detailed statement together with claim of compensation of various heads. However, the 3rd respondent, by his order dated 25.09.2007, awarded a compensation of Rs.13,480/-, against which, the petitioner had preferred another writ petition in W.P.(MD).No.10116 of 2007. This Court, by order dated 05.11.2009, had set aside the order passed by the 3rd respondent and remitted the matter for fresh consideration, holding that the 3rd respondent had failed to take into account the relevant materials, namely, for the land utilised for the purpose of erecting the tower, no compensation was awarded and also the loss caused due to drawing the high-voltage over head wire has also not been compensated, apart from that, various other claims have also not been considered. The said exercise was also directed to be completed by the 3rd respondent within a period of two weeks. As no orders were passed, the petitioner had filed a contempt petition before this Court in Cont.P.(MD).No.594 of 2010. The 3rd



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respondent, pending the contempt petition, had passed orders on 01.06.2011 rejecting the claim of the petitioner. Considering the order that has been passed by the 3rd respondent, the contempt petition came to be closed. The order dated 01.06.2011 is subject matter of this writ petition.

3.Heard, Mr.K.N.Thambi, learned counsel appearing for the petitioner, Mr.A.R.L.Sundaresan, learned Additional Solicitor General for the first respondent, Mr.Deena Dhayalan, learned counsel for the second respondent and Mr.OM.Prakash, learned Government Advocate appearing on behalf of the third respondent.

4.The learned counsel for the petitioner would submit that the present impugned order dated 01.06.2011 is nothing but a re-production of the earlier order dated 25.09.2007. This Court had set aside the said order on accepting the contention of the petitioner that the compensation has not been arrived at by considering the various heads indicated in the said order. He would further contend that the 3rd respondent wholly erred in holding Works of Licence Rules would not be applicable to the facts of the case and



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that the compensation could only be calculated as per the Telegraphs Act.

He had also rejected the request of the petitioner for compensation of the land, which is not acceptable. He would also contented that the amount of Rs.13,480/- towards the damage of plant alone do not commensurate to the actual damages that has been caused by the 1st respondent to the plants and trees. He would further submit that the Works of Licence Rules have been framed under Section 67(2) of the Electricity Act. He would draw my attention Clause (e) of Sub Section 2 of Section 67 of the Electricity Act, which, according to him, provides for determination and payment of compensation or rent to the persons affected by the works under the Section. The Works of Licence Rules have been framed by the Central Government in exercise of their powers under Sub Section 2 of Section 76 r/w Sub Section 2 of Section 67. Therefore, he would contend that the provisions of the Rules is applicable to the case of the petitioner. He would also draw my attention to Rule 3 of the said Rules. Relying upon Sub Rule 2 of Rule 3, he would contend that the amount of compensation or annual rent or both will have to be paid by the licensee to the owner or occupier.



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5. The learned counsel for the petitioner would submit that the impugned order passed by the 2nd respondent is not in consonance with Sub Rule 2 of Rule 3. He would contend that there has been no consideration of any compensation for the land, which the petitioner is prohibited from putting to use, in view of laying the tower and the over head lines. He would further submit that, this Court in the earlier order dated 05.11.2009, had set aside the order of the 3rd respondent and had remitted the matter back on the ground that the compensation for the land, loss caused to the petitioner by laying the towers and the over head lines were not considered by the 3rd respondent. He would contend that the said order dated 05.11.2009 made in W.P.(MD).No.10116 of 2007 has become final as between the parties, since none of the respondents have challenged the same by way of further appeal. When that be so, the 3rd respondent ought to have considered payment of compensation under those heads. On the contrary, he rejected the claim as it is not acceptable. According to the learned counsel, the reason assigned by the 3rd respondent is nothing but an attempt to circumvent the order passed by this Court. He would further contend that the 3rd respondent, before passing the impugned order, had formed a committee to submit a report,



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wherein he had appointed the Chief Manager of the 1st respondent as a member of the committee to assess the damage caused to the petitioner. Such a nomination to the committee itself is ex-facie illegal, as a person who is liable to pay the compensation is made to be in the committee to determine the damages. Hence, he would plead that the impugned order will also have to be interfered on the ground of bias.

6.Countering his arguments, Mr.A.R.L.Sundaresan, learned Additional Solicitor General would submit that the 1st respondent is a licensee who had been authorised to exercise the powers of the Telegraph Act. He would submit that Section 164 of the Electricity Act, 2003 empowers the appropriate Government to authorise a licensee to exercise the powers passed by the Telegraph authority for placing of Telegraph lines and posts and for placing electric lines or electric plant for the transmission of electricity. He would rely upon the Gazette Notification issued by the Ministry of power, New Delhi dated 24.12.2003. He would further contend that the Works of Licence Rules would be not applicable to the facts on hand. He drew my attention to Sub Rule 3 of Rule 3 of the said Rules and



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contend that the said Rule specifically excludes application of Rule 3 to a licensee who have been authorised under Section 164 of the Electricity Act.

7.By relying on the proviso to Section 164 of the Electricity Act, he would contend that the 1st respondent, being authorised by the Central Government to exercise the powers of the Indian Telegraphs Act for laying of electric towers and over head lines, is only bound by the provisions of the Indian Telegraphs Act. He would further contend that Section 10 and Section 16 of the Indian Telegraphs Act deals with the powers of an authority to enter upon others property for erecting towers and for drawing lines. He would submit that clause (d) of Section 10 mandates that, compensation to all persons interested for any damage sustained by them shall be payable. He would submit that clause (d) Sub Section 10 stipulates that no right shall be acquired other than that of an user in the property upon which the telegraph authority places any telegraph line or posts. Therefore, he would contend that the 1st respondent is only an user of the land of the petitioner and they do not acquire any rights in the land and in that context, he pleaded that the petitioner would not be entitled for any compensation as



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claimed by him including the solatium. He would further submit that Sub Section 3 of Section 16 provides for an alternate remedy by way of a petition before the District Judge, if there is a dispute concerning the sufficiency of compensation to be paid under Sub Section 10 Clause (d). He would, therefore, submit that the writ petition filed by the petitioner challenging the order of the 3rd respondent is not maintainable.

8. In support of his contention, he had relied upon a Division Bench judgement of this Court in W.A.No.380 of 2020 dated 18.08.2021 and submitted that if a person is aggrieved against the compensation, he has to approach the District Court invoking Section 16(3) of the Indian Telegraphs Act. He would further contend that the word 'sufficiency of compensation' used in Section 16(3) would also encompass within itself 'no compensation'. Therefore, he would submit that the claim of the respondent, that no compensation towards the land had been paid, also can be raised before the concerned District Court and need not to be entertained by this Court in this writ petition.



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9. He would further draw attention of this Court to the guidelines issued by the Government of India, Ministry of Power, dated 15.10.2015 and contend that the said guidelines provide for compensation of 85% of the land value for the tower based area, compensation towards diminution of value in the width of the right of way and even in respect of laying of lines under the Indian Telegraphs Act. However, the Central Government had directed the State Governments to frame guidelines considering that the acquisition of land is a state subject. Pursuant to the said guidelines, the State of Tamil Nadu had issued a Government Order in G.O.Ms.No.63 dated 22.11.2017, adopting the guidelines issued by the Central Government and the State Government Order has been modified by a further Government Order in G.O.Ms.No.86, Energy Department dated 30.10.2019, wherein, the compensation has been modified. The State Government order also has made the compensation only with prospective effect. Hence, he would submit that the case of the petitioner cannot be considered for grant of compensation for land, as the guidelines are only prospective, i.e., on the issuance of the G.O.Ms.No.63 in the year 2017.



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10. Countering the arguments of the learned counsel for the petitioner that the order passed by this Court in W.P.No.161106 of 2017 has become final as between the parties, he would submit that this Court had passed the above order, holding that the compensation of certain heads are not given. In the present impugned order, the 3rd respondent had considered those heads and has rejected the compensation. Therefore, it is for the petitioner to file an application invoking remedy under Section 16(3) of Indian Telegraphs Act and approach the District Court, which would be the competent Court. He would further submit that the issue of compensation is a disputed question of fact, which could not be gone into by this Court under Article 226 of Constitution of India. He would further contend that when there is a specific exclusion in the Works of Licensees Rules under Rule 3(3), in respect of licensee who have been empowered under Section 164, any direction issued by this Court in violation of Sub Rule 3 of Rule 3 of the Rules could not be implement. He would rely upon the judgement of Division Bench of this Court made in W.A.Nos.2032 of 2019, etc. batch dated 03.07.2019 and submit that the Division Bench, following the judgement of the Apex Court, had held that Rule 3 of the Rules would not



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be applicable in the cases where there had been an express delegation invoking Section 164 of the Electricity Act, 2009. He would submit that the present writ petition is not maintainable and the petitioner should be relegated to invoke Section 16(3) of the Indian Telegraphs Act, before the appropriate District Court.

11.In reply, Mr.KN.Thambi, learned counsel for the petitioner, relying upon the averments made in the counter affidavit, would submit that the 1st respondent does not come under any of the three categories, specified in Section 164 of the Electricity Act. Hence, the Government Order nominating the 1st respondent to exercise the powers under the Indian Telegraphs Act would be non-est. Hence, he would contend that the exclusion under Sub Rule 3 of Rule 3 of the Rules will not be applicable to the 1st respondent and therefore, he is liable to pay compensation under Sub Rule 2 of Rule 3 of the Rules. He would further contend that the guidelines issued by the Central Government are all beneficial to the owners/occupier of the land, which are sought to be entered upon for erection of towers and laying of distribution lines. Hence, he would submit that such benefit should



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also be extended to the others and it cannot be only applied prospectively.

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12. To this, Mr.A.R.L.Sundaresan, learned Additional Solicitor General would submit that if such a proposition is to be accepted, then it will open Pandora box and open flood gate of litigation, by various persons claiming compensation.

13. In reply to the said content, the learned counsel for the petitioner relied upon two judgements of the Hon'ble Apex Court in the case of **2015 (1) SCC 1** and in the case of **2013 (4) SCC 594** to state that opening of the pandora box cannot be the reason to deny justice to the affected persons.

14. I have heard the rival submission made by the counsel appearing on either side.

15. The first question that needs to be answered is under which enactment the petitioner is entitled to compensation. The relevant



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Statute/Rules for answering the questions, reads as under:-

ELECTRICITY ACT 2003

Section 67 (2)(e) the determination and payment of compensation or rent to the persons affected by works under this Section.

Section 164

Exercise of powers of Telegraph Authority in certain cases- *The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraphic Act, 1885 (13 of 1885), any of the powers which the telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained.*



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THE INDIAN TELEGRAPH ACT

Section 10:- Power for telegraph authority to place and maintain telegraph lines and posts - *The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along, or across, and posts in or upon, any immovable property;*

provided that-

a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the [Central Government], or to be so established or maintained;

b) 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 telegraph line or post;

c) except as hereinafter provided, the telegraphic authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little



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damage as possible, and when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

Section 16 (3)

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

WORKS OF LICENSEES RULES, 2006.

Rule 3. Licensee to carry out works -

(1) A licensee may-

a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;



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b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of any overhead line on any building or land or having been so fixed, may alter such support;

Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government in this behalf, for carrying out the works;

Provided further that is at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead lince, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorised may be order in writing direct for any such works, support, stay or strut to be removed or altered.

2) When making an order under sub-rule(1), the District Magistrate or the Commissioner of Police or the officer so authorised, as the case may be, shall fix, after considering the representations of the



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concerned persons, if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

3) Every order made by the District Magistrate or a Commissioner of Police or an authorised officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.

3) Nothing contained in this rule shall effect the powers conferred upon any licensee under Section 164 of the Act.

16. The 1st respondent is an arm of the Central Government which has been notified as a central transmission utility vide notification dated 27.11.2003 in Gazette of India No.1084 dated 04.12.2003. As per 2nd Proviso of Section 14 of the Electricity Act, a central transmission utility will be deemed to be a transmission licensee under the said Act. As the 1st respondent/Power Grid Corporation has been notified as a central transmission utility, they fall under Clause (a) to Section 14 as a transmission licensee. Under Section 164 of the Electricity Act 2003, the Central Government can confer upon a licensee, the powers vested under



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the Indian Telegraph Act, 1885 for placing electricity lines, electricity plant for transmission of an electricity. Hence, the Government Gazette notification issued under Section 164 of the Electricity Act 2003, conferring powers of the 1st respondent to exercise the powers vested under the Telegraph Act, is a valid notification and the contention raised by the learned counsel for petitioner to the contrary is rejected.

17. In view of the aforesaid findings, the provisions of Rule 3 of the Works of Licensee Rules would not be applicable to the cases where the 1st respondent exercise the powers under the Indian Telegraph Act, in the light of sub Rule 3 of Rule 3. Hence, to the questions raised above, I am of the view that only the provisions of the Indian Telegraph Act would be applicable to the present case on hand.

18. The next question is as to what would be the entitlement of compensation, which the petitioner would be entitled to. Section 10 Clause (d) of the Indian Telegraph Act would mandate that, while exercising the powers of the said Act, the licensee shall pay full compensation to all the



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persons interested for any damage sustained by them. The words full compensation to all persons interested for any damage, adumbrated therein under Clause (d) of Section 10 will have to be interrupted. “**Full compensation**” is for the “**damage**” sustained by the person in the property by an act of the licensees exercising the powers under Section 10.

19. The term “**damage**” has not been defined either under the Electricity Act, the Rules or Indian Telegraphs Act.

19 (i). When a term is not defined under the Act, the definition of such term the Court can always looks upon the meaning given to the said term in the dictionary.

19 (ii) **New 9th Edition Oxford dictionary**: Defines the word “damage” as

Noun - Physical harm that impairs the value, usefulness, or normal function of something.

Verb - Inflict physical harm on (something) so as to impair its



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value, usefulness, or normal function.

19 (iii) **Advance Law Lexicon, 6th Edition, Volume - 2:**

The term “damage” has been extensively dealt with in Advance Law Lexicon by P.Ramanatha Aiyer, as follows:

a) Loss, or injury which results from an unlawful act, injury or deterioration, caused by the negligence, design, or accident of one person to another; depreciation in value, whether such depreciation is caused by a wrongful or lawful act; any hurt or hindrance that a man receives in his person or property or estate (Tomlin)

b) A synonym of 'damage' when applied to a person sustaining an injury, is 'loss'. Loss is the generic term. Damage is a species of loss. 'Damage' signifies the thing taken away__the lost thing which a party is entitled to have restored to him, so that he may be made whole again.

20. Section 10(d) of the Indian Telegraphs Act entitles full compensation to all persons interested for any damage sustained by them by reason of exercising such powers. Hence, the term “damage” in Section



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10(d) has to mean the loss, not only the damage to the standing trees and crops but also the physical harm that had been caused to the person which impair the value of the land, impairs the usefulness of the land and the depreciation, which includes diminution of the value of the land caused by the erection of towers and drawing of lines.

21. Right to property would encompass within itself the right to use the property beneficially, any intrusion of right to use a property definitely affect the Constitutional Right available to a person under Article 300 A of the Constitution of India. When a statutory authority performs an act in furtherance of a public duty, infringes upon a right of a property owner from beneficially enjoying his property; then such act would definitely violate the constitutional right conferred under Article 300 A of the Constitution of India. In the present case on hand, the respondents have laid towers in the petitioner's property to draw over headlines. By laying of such towers, there is an embargo upon the petitioner to use that portion of the property. Further, drawing of over headlines over the petitioner's property infringer upon his right to carry on any activity to his liking,



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thereby causing a disadvantage to the right of the petitioner, thereby diminishes the value of the property.

22. But however, Section 10 (b) of the Indian Telegraph Act, specifically mandates the Central Government does not acquire any right in the land except the user of the land under, over, along, across, in or upon which the authority draws the line and lays the Post. For such user, Section 10(d) provides for full compensation for the damage sustained. Damage here would also encompass within itself compensation to the land owner/interested person for loss suffered due to embargo placed on such person from fully/beneficially enjoying the property.

23. It is pertinent to note that the Central Government after considering various inconveniences caused to the person by laying of Towers/over headlines, had taken a Policy Decision and had framed guidelines in the year 2015 as to what is the damage that would be caused to a person. In view of the aforesaid guidelines, I need not analyse under what heads the damage need to be assessed.



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24. The said guidelines have been framed by the Government of India based upon a recommendation of a committee under the Chairmanship of Special Secretary, Ministry of Power to analyse the issues relating to the right for laying of transmission lines in the Country. The said committee had consisted, representatives from various State Governments also. After considering the recommendations, the Government of India formulated guidelines for determining the compensation towards damages, as stipulated under Section 67 and 68 of the Electricity Act 2003, and Section 10 and 16 of Indian Telegraph Act. The said guidelines is in addition to the compensation towards normal crop and tree-damages. For better appreciation, the relevant portion of the aforesaid guide lines is extracted here under:

"2.The Recommendations made by the Committee are hereby formulated in the form of following guidelines for determining the compensation towards “damages” as stipulated in Section 67 and 68 of the Electricity Act, 2003 read with Section 10 and 16 of Indian Telegraph Act, 1885 which will be in addition to the compensation towards normal crop and tree-



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damages. This amount will be payable only for transmission lines supported by a tower base of 66 KV and above, and not for sub-transmission and distribution lines below 66 KV

(i) Compensation @ 85% of land value as determined by District Magistrate or any other authority based on Circle rate/Guideline value/Stamp Act rates for tower base area (between for legs) impacted severely due to installation of tower/pylon structure.

(ii) Compensation towards diminution of land value in the width of Right of Way (RoW) corridor due to laying of transmission line and imposing certain restriction would be decided by the States as per categorisation/type of land in different places of States, subject to a maximum of 15% of land value as determined based on Circle rate/Guideline Value/Stamp Act rates.

(iii) in areas where land owner/owners have been offered/accepted alternate mode of compensation by concerned corporation/Municipality under Transfer Development Rights(TDR) policy of State. The licensee/Utility shall deposit compensation amount as per (i) & (ii) above with the concerned Corporation



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Municipality/Local Body or the State Government.

(iv) For this purpose, the width of RoW corridor shall not be more than the prescribed in the table at Annex-2 and shall not be less than the width directly below the conductors.

3.Necessary action any kindly be taken accordingly. These guidelines may not only facilitate an early resolution of RoW issues and also facilitate completion of the vital transmission lines through active support of State/UT administration.

4.All the States/UTs etc are requested to take suitable decision regarding adoption of the guidelines considering that acquisition of land is a State subject."

It is very amusing that the Central Government had requested the concerned State Government to adopt the guidelines for application, in view that the acquisition of land is a State subject. In my view, this request is uncalled for, either under the Electricity Act or under the Indian Telegraph Act, as no land is sought to be acquired, but only right to use is sought to be established.



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25. The Central Government, having framed the guidelines, as to what would be the compensation for the use of land and for diminution of value, should have directed that such compensation be paid under the respective enactments namely, Electricity Act and the Indian Telegraph Act. Since the authority like the 3rd respondent are state authorities to determine the compensation both under the Works of Licensees Rules, 2006 and the Indian Telegraph Act, 1885. The issue of Government Order by the State of Tamil Nadu holding that such compensation would only be prospective, is not correct.

26. I have come to such conclusion for the following reasons:

27.(i) The statutory enactments viz., Electricity Act as well as the Indian Telegraphs Act entitles the person to compensation for the damages suffered by the person in view of the erection of towers and drawing of overhead lines. The claim of such damage has been disputed as to what extent a person is entitled for such damage. Different views have been taken by various Courts and Authorities to determine the compensation. The



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Central Government by its guidelines under 2015 has laid to rest as to what is the damage. Such guidelines will have to necessarily “relate back” to the date of such legislation. The doctrine of “relating back” will have to be applied in such situations since the guidelines of the Central Government is only explaining or what the term damage adumbrated in the relevant statutes mean to.

27 (ii) It is also incumbent upon this Court to apply the doctrine of fairness and the duty to act fairly is a doctrine developed in the administrative law to ensure the rule of law and to prevent failure of justice. It is a principle of good conscience and equity since the law to act is fair and reasonable. Undisputably the statutes viz., Electricity Act as well as the Indian Telegraphs Act creates an obligation on the licensee to compensate the persons for the damage suffered by him.

27 (iii). Unfortunately, it had taken decades for the Central Government to issue guidelines to what is the damage that would be caused to a person in these cases. Had the Central Government given a meaningful



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interpretation even at the inception, we would not be faced with this situation. In my view, applying the doctrine of “relating back” and “Doctrine of fairness”, the guidelines issued by the Government in the year 2015 will have to be applied to the cases prior to 2015. I support the aforesaid view since the damage caused to a person is the continuing damage till the electric towers and the overhead lines continue to be in his land.

28. The compensation payable is not something new that is sought to be introduced either under the Electricity Act or under the Indian Telegraph Act. In both the said enactments, the provisions for damages for laying of towers and drawing of lines is already embedded in the statute. The issue as to what is the heads under which the damages to be calculated, has always been a dispute between the licensees and the owners/occupier of the land.



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29. The Central Government guidelines indicating that the diminution value of the land should also form part of that damages by only a clarification to the word 'damage' embedded in Section 10(d) of the Indian Telegraph Act and Section 67 Sub-Section 2(e) of the Electricity Act. When that be so, the contention of the learned Additional Solicitor General, relying upon the State Government's Notification that the compensation under these heads would only be prospective, cannot be accepted.

30. I do not support the arguments of the learned Additional Solicitor General that such conclusion would open flood gates/pandora box. When I have held that the guidelines will have to “relate back” to the date of the statutes, it would only fair upon the welfare state to extend the compensation for such damage to every person who had suffered it. The said argument is also rejected on the doctrine of fairness. I would usefully refer to the Constitution Bench Judgment of the Hon'ble Apex Court reported in 2002 4 SCC 388. The relevant paragraph of the aforesaid judgment is extracted hereunder:

*“True, due regard shall have to be had as regards
opinion of the Court in Ranga Swamy [(1990) 1 SCC 288 : 1990*



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SCC (L&S) 76 : (1991) 16 ATC 525 : AIR 1990 SC 535] but the situation presently centres around that in the event of there being any manifest injustice would the doctrine of ex debito justitiae be said to be having a role to play in sheer passivity or to rise above the ordinary heights as it preaches that justice is above all. The second alternative seems to be in consonance with time and the present phase of socio-economic conditions of the society. Manifest injustice is curable in nature rather than incurable and this Court would lose its sanctity and thus would belie the expectations of the founding fathers that justice is above all. There is no manner of doubt that procedural law/procedural justice cannot overreach the concept of justice and in the event an order stands out to create manifest injustice, would the same be allowed to remain in silentio so as to affect the parties perpetually or the concept of justice ought to activate the Court to find a way out to resolve the erroneous approach to the problem? Mr Attorney-General, with all the emphasis in his command, though principally agreed that justice of the situation needs to be looked into and relief be granted if so required but in the same breath submitted that the Court ought to be careful enough to tread on the path, otherwise the same will open up a Pandora's box and thus, if at all, in rarest of the rare cases, further scrutiny may be made. While it is true that law courts have overburdened themselves with the litigation and delay in disposal of matters in the subcontinent is not unknown and in the event of any further appraisal of the matter by this Court, it would brook no further delay resulting in consequences which are not far to see but



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that would by itself not in my view deter this Court from further appraisal of the matter in the event the same, however, deserves such an additional appraisal — the note of caution sounded by Mr Attorney-General as regards opening up of a Pandora's box, strictly speaking, however, though may be very practical in nature but the same apparently does not seem to go well with the concept of justice as adumbrated in our Constitution. True it is, that practicability of the situation needs a serious consideration more so when this Court could do without it for more than 50 years, which by no stretch of imagination can be said to be a period not so short. I feel it necessary, however, to add that it is not that we are not concerned with the consequences of reopening of the issue but the redeeming feature of our justice delivery system, as is prevalent in the country, is adherence to proper and effective administration of justice in stricto. In the event there is any affectation of such an administration of justice either by way of infraction of natural justice or an order being passed wholly without jurisdiction or affectation of public confidence as regards the doctrine of integrity in the justice delivery system, technicality ought not to outweigh the course of justice — the same being the true effect of the doctrine of ex debito justitiae. The oft-quoted statement of law of Lord Hewart, C.J. in R. v. Sussex Justices, ex p McCarthy [(1924) 1 KB 256 : 1923 All ER Rep 233 : 93 LJKB 129] that it is of fundamental importance that justice should not only be done, should manifestly and undoubtedly be seen to be done, had this doctrine underlined and administered therein. In this context, the decision of the House



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of Lords in R. v. Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No. 2) [(1999) 1 All ER 577 (HL)] seems to be an epoch-making decision, wherein public confidence in the judiciary is said to be the basic criterion of the justice delivery system — any act or action even if it is a passive one, if erodes or is even likely to erode the ethics of judiciary, the matter needs a further look.”

31. I have already held that the damage suffered by a person is continuing damage and for that reason, he would be entitled to the damages. But, however, such calculation of damages will have to be made on the date when the original damage that was inflicted upon.

32. In the light of the aforesaid reasoning and findings, I am of the view that the order of the 3rd respondent has not considered the question of damages in its right prospective. Here, I am bound by a judgement of the Hon'ble Division Bench of this Court, relied upon by the learned Additional Solicitor General in W.A.No.380 of 2020 dated 18.08.2021. the relevant portion in the said judgement is extracted hereunder:



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"6. Section 10(d) has to be read in conjunction with Section 16(3). Section 16(3) speaks of "any dispute". Therefore, one has to concern with the disputes between the owner and the telegraphic authority. We cannot define the dispute in a restrictive way. Such definition is not meant to be introduced under Section 16(3) and that is the reason why it clearly says that any dispute between the parties while exercising the power by the telegraphic authority under Section 10(d). Therefore, Section 10(d) imposes an element of responsibility to the telegraphic authority asking it to exercise caution and restraint with respect to a possible damage to any property, any dispute in the exercise of such a power would be amenable to Section 16(3). The word 'sufficiency of compensation' has also to be given a wider interpretation. When we speak about the sufficiency of compensation it will also include the case of no-compensation as well. Otherwise not only Section 10(d) but Section 16 would become redundant and otiose. There is no difficulty in understanding the aforesaid provision in Section 16(3), which confers the power on the District Court to adjudicate upon any dispute between the telegraphic authority on the one hand and the owner on the other



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hand.

7. In such view of the matter, we are inclined to permit the first respondent/writ petitioner to approach the District Court within a period of eight weeks from the date of receipt of a copy of this judgment invoking Section 16(3) by making an application. On such application, we expect the jurisdictional District Court to decide all the issues on the question of sufficiency of the compensation provided the writ petitioner would be able to show the damage."

33. Therefore, the petitioner would be at liberty to approach the concerned District Court, invoking Section 16(3) of the Indian Telegraph Act by making an appropriate application within a period of 12 weeks from the date of receipt of a copy of this order.

34. One other reason I would lay emphasis to direct the petitioner to approach the District Court is that, if this Court set asides the order impugned in this writ petition and remits the matter back to the 3rd respondent, the 3rd respondent will take his own time to pass an order and



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thereafter, the petitioner will have to approach the District Court under Section 16(3). The time that the respondent would take to dispose of the claim of the petitioner would also be utilised before the jurisdictional forum. When the petitioner approaches the District Court, the concerned District Judge shall also take into consideration the guidelines issued by the Central Government dated 15.10.2015, for awarding a just compensation and I hope such application shall be disposed of by the District Judge, as expeditiously as possible.

35. The writ petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

22.02.2023

Index : Yes / No
Speaking Order/Non Speaking Order
sbm



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- 1.The Power Grid Corporation of India,
62, Ground Floor,
Thilak Nagar,
Tirunelveli-1,
Rep by its Chief Manager.
- 2.The Executive Engineer (Distribution)
Tamil Nadu Electricity Board,
Tirunelveli.
- 3.The District Magistrate-cum-District Collector of Tirunelveli,
Tirunelveli.



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K.KUMARESH BABU, J.

sbn

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and
M.P.(MD).No.1 of 2013

22.02.2023