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W.P.(MD)NO.2524 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.2524 of 2023 AND
W.M.P.(MD)No.2312 of 2023

K.Vellaichamy

... Petitioner

Vs.

1. The Superintendent Engineer(TNEB),
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Sivaganga Electricity Distribution Circle,
Sivagangai District – 630 562.
2. The Executive Engineer(E.E.),
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO),
Karaikudi Division,
Sivagangai District – 630 562.
3. The Assistant Engineer(AE),
Town / South/ TANGEDCO,
Karaikudi,
Sivagangai District – 630 562.
4. The Divisional Electrical Engineer,
General Southern Railway,
Madurai – 16.
(R-4 is suo motu impleaded
vide order dated 20.07.2023)

... Respondents



Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in Memo.No.SE/SEDC/SVGA/AEE/AE/GL/F.DCW/D.No.1267/2022 dated 21.10.2022 issued by the 1st respondent / Superintendent Engineer and quash the same as illegal, arbitrary, unreasonable and consequently directing the respondents to remove the Double Pole Switch Structure transformer and the high density dangerous cable wire which is laid down in the middle of the petitioner patta land (Patta No.1187) in Survey No.7/58 to the total extent of 0.02.0 Hectors (2225 sq.ft) at Ariyakudi Village and Panchayat, Sakkottai Union, Karaikudi Union, Sivagangai District.

For Petitioner : Mr.I.Murugesan
For R-1 to R-3 : Mr.S.Deenadhayalan,
Standing Counsel.
For R-4 : Mr.K.Govindarajan,
Deputy Solicitor General of India.

* * *

ORDER

Heard the learned counsel on either side.

2. The writ petitioner is a senior citizen. He purchased a piece of property vide sale deed dated 22.01.1997 (document



No.149/1997 on the file of Karaikudi Joint II Sub Registrar, Sivagangai District from one Mallika. The petitioner's grievance is that on account of the encroachment committed by TANGEDCO, the land purchased by him could not be put to any use. He therefore filed W.P.(MD)No.562 of 2021 for directing TANGEDCO to remove the electric lines and also relocate the transformer.

3. When the matter was taken up for hearing, the TANGEDCO informed the Court that if the petitioner pays a sum of Rs.3,37,310/-, they would shift the transformer and also the electric lines. This was not acceptable to the petitioner. I therefore directed the second respondent herein to prepare a revised estimate. The writ petition was disposed of on 29.06.2022 in the following terms:-

“ 4. The petitioner has enclosed the photographs in the typed set of papers. It is seen that a huge transformer has been erected right on the patta land of the petitioner. The conduct of the respondent in locating the pole and running the cable wires right through the



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middle of the petitioner's land cannot be appreciated. The petitioner is having hardly five cents of land and almost the entire land has been rendered unfit for putting up any construction. When I suggested that proper compensation can be paid to the petitioner herein, the petitioner's counsel stated that he would instead bear the cost of shifting.

5.The estimate prepared by the respondents appears to be patently unreasonable. Without even putting the petitioner on notice, the transformer in question was installed on the petitioner's land and to call upon the petitioner to pay a sum of Rs.3,37,310/- appears to be grossly unfair and inequitable. The respondents are therefore directed to prepare a revised estimate. The respondents have to bear in mind that they have used the petitioner's land without paying single paisa towards compensation. The respondents while preparing the fresh estimate will bear this



aspect in mind. The second respondent is directed to prepare a revised estimate after taking the approval of the first respondent and serve the same on the petitioner within a period of three weeks from the date of receipt of a copy of this order. If the cost set out in the revised estimate is unreasonable, it is open to the petitioner herein to move this Court again for relief. If the amount indicated in the revised estimate is acceptable to the petitioner, the petitioner shall pay the same and the shifting will be done within a period of eight weeks thereafter.”

4. Thereafter, the impugned order dated 25.10.2022 came to be passed by the third respondent. The estimate had gone up to Rs.7,92,346/-. Challenging the same, this writ petition came to be filed.

5. When the matter was taken up for hearing, it was submitted that since the land is located near the railway line,



the railways also will have to be associated in the process.

Thereupon, the fourth respondent was impleaded *suo motu* by this Court. It appears that in such cases, what is called as rate cut charges will have to be paid to the railways. I wanted the fourth respondent to quantify the said amount. But then, on account of the stand taken by the TANGEDCO, the learned Deputy Solicitor General declined to take any specific stand for the present.

6. The learned Standing counsel appearing for the TANGEDCO relied on Clause 37 of the Tamil Nadu Electricity Distribution Code and contended that the charges have been correctly quantified and that the estimate has been correctly prepared. According to him. The transformer was installed way back in the year 1973. According to him, when the petitioner purchased the property, it was already in existence and therefore, it is not open to the petitioner to complain. He prays for dismissal of the writ petition.

7. I carefully considered the rival contentions and went through the materials on record.



8. Even before commencing the arguments, the learned counsel appearing for the petitioner on instructions submitted that the petitioner would pay a sum of Rs.1 Lakh for shifting the transformer and also the electric lines from his patta land.

9. This undertaking is recorded. It is for the respondents to avail the said offer.

10. On the petitioner's land, at present, a transformer is standing and an electric pole has also been installed in the year 2010. As regards the transformer, it is beyond dispute that it was in existence right from the year 1973. The petitioner knew fully well when he purchased the same in the year 1997, the transformer was also standing. Therefore, it is too late for the petitioner to complain about the existence of the transformer. However, the TANGEDCO clearly erred in installing the electric pole in the year 2010 on the petitioner's land. The petitioner's consent has not been taken. The learned counsel appearing for the petitioner relied a catena of decisions; (2011) 3 MLJ 625 (Superintending Engineer, TNEB V. M.Sengu Vijay), (2014) 8 MLJ 88 (K.Savithri V.



Superintending Engineer), (2016) 8 MLJ 249 (Superintending Engineer V. I.Shanmugadurai), W.P.No.25391 of 2015 dated 05.04.2016 (A.D.Arun Praveen V. The Superintending Engineer, CEDC / South, Chennai), W.A.No.1164 of 2014 dated 07.03.2018 (The Superintending Engineer, Mettur Electricity Distribution Circle, TANGEDCO, Salem District V. K.Savithri), W.P.No.11734 of 2020 dated 23.06.2022 (D.Bakkiam V. The Chairman, TANGEDCO, Chennai) and W.P.No.25522 of 2022 dated 22.09.2022 (Dinesh Kumar V. The Chairman, Tamil Nadu Electricity Board, Chennai) in support of his contention that where without the consent of the land owner, there has been an installation, it has to be necessarily removed.

11. While the structure that originally existed at the time of purchase of the land by the petitioner in the year 1997 can remain, the later additions and installations will have to be necessarily removed. In other words, the electric pole that was laid by the TANGEDCO as well as the lines drawn in the year 2010 will also have to be removed. In the alternative, TANGEDCO can shift the entire structure after accepting the payment of Rs.1 Lakh from the writ petitioner.



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12. This writ petition stands disposed of accordingly. It is for the TANGEDCO to obtain necessary clearance from the southern railways. That would be an interdepartmental affair between the TANGEDCO and the southern railways. The petitioner cannot be vexed with the issue. No costs. Consequently, connected miscellaneous petition is closed.

17.08.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
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Note : Issue order copy on 31.08.2023.



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