



W.P.(MD).No.4715 of 2020

WEB COPY

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON: 22.09.2023**

**DELIEVERED ON: 05.10.2023**

**CORAM**

**THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.P.(MD).No.4715 of 2020**

**and**

**W.M.P.(MD).Nos.4088, 8780 and 8781 of 2020**

Ramaswamy (Died)

1.Seerathal

2.Rajamani

3.Rajalakshmi

... Petitioners

*(P1 to P3 are substituted vide Court Order dated 14.08.2023 in W.M.P.(MD).No.15921 of 2023 in W.P.(MD).No.4715 of 2020)*

**Vs.**

1.The Union of India,  
Through its Secretary,  
Ministry of Poer, Shram Shakti Bhavan,  
Rafi Marg, New Delhi – 110 001

*(R-1 is substituted vide Court Order dated 14.08.2023 in WMP(MD).No.15925 of 2023 in W.P.(MD).No.4715 of 2020)*



W.P.(MD).No.4715 of 2020

2.The Government of Tamil Nadu,  
Through its Secretary,  
Department of Energy,  
Fort St George,  
Chennai – 600 009.

3.The Tamil Nadu Transmission Company Limited,  
Anna Salai, Chennai – 2,  
Through its Managing Director

4.The Tamil Nadu Electricity Department,  
Generation and Distribution Corporation,  
Anna Salai, Chennai – 2.

5.The District Collector,  
Karur District,  
Karur.

6.The Deputy General Manager,  
Power Grid Corporation of India Limited,  
400/230 KV, Sub Station, Coimbatore Main Road,  
K.Paramathi Post, Karur District.

... Respondents

*(R-6 impleaded vide Court Order dated 06.08.2020 in  
W.M.P.(MD).No.8186 of 2020 in W.P.(MD).No.4715 of 2020)*

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the G.O.Ms.No.86 dated 30.10.2019 on the file of the second respondent and quash the same and further direct the respondents to acquire the petitioner's land in S.No.1138 in Kodanthur South Village, Aravakurichi Taluk, Karur District with interest from the date of occupation calculated as per the



W.P.(MD).No.4715 of 2020

provisions of “The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013”.

For Petitioner : Mr.T.S.R.Venkata Ramana,  
Senior Counsel,  
For M/s.V.Janaki Devi

For R-1 : Mr.M.D.Poornachari

For R-2 and R-5 : Mr.C.Baskaran,  
Government Advocate.

For R-3 and R-4 : Mr.S.Deenadhayalan  
Standing Counsel

For R-6 : Mr.S.Suresh,  
For M/s. Aiyar and Dolia

### **ORDER**

This Writ Petition is filed to quash the impugned order G.O.Ms.No.86 Energy (A1) Department dated 30.10.2019 on the file of the second respondent and further direct the respondents to acquire the petitioner's land in S.No.1138 in Kodanthur South Village, Aravakurichi Taluk, Karur District with interest from the date of occupation calculated as per the provisions of “The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013”, (hereinafter referred to Right to Fair Compensation



W.P.(MD).No.4715 of 2020

Act, 2013).

WEB COPY

2. The brief facts are that the petitioner is an agriculturist owning 2.05 acres of land in S.No.1138, Kodanthur South Village Aravakurichi Taluk, Karur District. The fifth respondent Collector by an order dated 21.06.2019 has permitted the fourth respondent to enter into the petitioner's land and erect high tension tower base and stringing corridor area to transmit electricity from Pugalur to Thiruvalem, which passes through the petitioner's land. The Union and State Government are making a National Grid for supply of electricity and it is for the general public. But while erecting, the Government is taking away the lands of citizens. Hence, the Government is liable to pay just and equitable compensation under the Right to Fair Compensation Act. The third and fourth respondents are agencies belonging to the Government of Tamil Nadu, who are executing the transmission project in Tamil Nadu, through the contractors. The District Collector is helping the other respondents to establish a National Power Grid. In the present case, the Power Grid Corporation is transmitting 400 KV power, which is a high voltage and dangerous power. The high velocity power, when touched can destroy men and matters in a fraction of second. Nothing



W.P.(MD).No.4715 of 2020

WEB COPY

can survive under the line to the depth of 10 meters (32 feet 10 inches) and 60 meters width (200 feet). The respondents are aware of this danger to society under the High Transmission Power. Hence, the Government should pay compensation for the entire land of 2.05 acres and the petitioner is entitled to be paid just and fair compensation for the land on which the tower base is established and as well as the line crossing in the petitioner's property. The contention of the petitioner is that the entire area would become unusable. But the respondents 3 to 5 are giving out that the petitioner is entitled to compensation under G.O.Ms.No.86, but only pittance is paid for the tower base area of three cents, for four legs of the tower are embedded into the soil and the stringing corridor area will be paid 20% of the assets value of the land. Since the G.O. is not paid just and fair compensation by calculating the area which has become unusable, the said GO is illegal, arbitrary and unconstitutional and suffers from the vires of excessive delegation and exercise of unjust executive power. Hence, the petitioner is before this Court.

3. Pending Writ Petition, the petitioner died on 07.09.2020 and the legal heirs of the deceased petitioner are substituted as parties. It was the case of the



W.P.(MD).No.4715 of 2020

third and fourth respondents that the project belongs to Power Grid Corporation India Limited and the said Company had filed a petition to implead themselves as party which was allowed on 06.08.2020. The petitioner has impleaded Union of India through another impleading petition.

4. The sixth respondent Power Grid Corporation of India Limited, has filed counter stating that it is the Government of India Enterprise and the Central Transmission Utility coming under the Ministry of Power. It is a Corporation of National Importance incorporated as a “Government Company”, under the provisions of the Companies Act, 1956. The sixth respondent is empowered under the provisions of Electricity Act, 2003 and the Indian Telegraph Act, 1885 to place and maintain power transmission towers and to draw transmission lines in any immovable property. As per Section 14 of the Electricity Act, 2003, the 'Central Transmission Utility' shall be deemed to be a 'Transmission Licensee', under the Act. As per Section 164 of 'The Electricity Act, 2003', the appropriate Government may by order in writing for the placing of electric lines or electrical plant for the transmission of electricity confer upon the Licensee any of the powers which the Telegraph authority possesses under



W.P.(MD).No.4715 of 2020

WEB COPY

the Indian Telegraph Act, 1885. The Government of India, in exercise of powers conferred under Section 164 of the Electricity Act, 2003, has passed an order dated 24.12.2003 vide Gazette of India No.1148 authorizing the Power Grid Corporation of India Limited to exercise all powers vested in the Telegraphic Authority. Under Section 10 of the Telegraph Act, 1885, the authority is empowered to draw lines, however cause minimum damage to the lands. Under Section 16(1) of Telegraph Act, 1885, if any person resists or obstructs, the District Magistrate may in his discretion permit to exercise their duty. Based on these powers, the 6000 MW capacity HVDC Bi-pole link was proposed and recommended by Southern Regional Power Committee (SRPC). Therefore, in order to evacuate the power, imported through this link to different parts of State of Tamil Nadu, the associated 400KV Lines were recommended by Southern Regional Power Committee and approved by the Ministry of Power, Government of India. The said Pugalur Transmission Lines run through 50 kms routed through Karur and Tirupur Districts with 138 towers was completed and commissioned on 30.03.2020. The respondent Corporation has successfully executed about 1,64,511 Circuit Kilometers of Power Transmission Lines and there are 249 numbers of sub-stations having



W.P.(MD).No.4715 of 2020

transformation capacity of about 4,14,774 MVA (Mega Volt Ampere) all over the nation of India. The transmission lines have stood the test of time and had not had any impact on human beings, animals, plants or any geological or on ecological system and there has been no complaint due to effects of electric field. It is approved by International Standards and Designs which are absolutely safe. With regard to the relief sought for production of G.O.Ms.No. 281 dated 07.09.2017, Guidelines dated 15.10.2015, G.O.Ms.No.63 dated 22.11.2017 are concerned, the same are all available in the public domain. It is pertinent to point out here that G.O.Ms.No.86 dated 30.10.2019 which is the subject matter of challenge in the instant Writ Petition was issued in supersession of G.O.Ms.No.63 dated 22.11.2017 and the same is referred to in the Government Order dated 30.10.2019 as well. Hence, the petitioner should have been aware about the issuance of G.O.Ms.No.63 dated 22.11.2017. With regard to production of impact assessment report is concerned, the same is not relevant for the adjudication of the present Writ Petition. And the Environmental Impact Assessment Notification will apply only in respect of projects conceived in Eco-Sensitive Zones around National Parks and Wildlife Sanctuaries and not otherwise. The Power Transmission Line Projects of this



W.P.(MD).No.4715 of 2020

respondent do not require environmental clearance. When such is the position, the question of furnishing the social environmental and other impact assessment report as sought for, does not arise. The transmission lines were drawn as per the prescribed law and norms. Hence, the respondents prayed to dismiss this Writ Petition.

5. The first respondent has filed counter stating that the appropriate authority is the sixth respondent and the challenge to G.O. is passed by the State of Tamil Nadu and the petitioner has not sought any relief against the first respondent. Hence, the first respondent prayed to pass appropriate orders.

6. Heard Mr.T.S.R.Venkat Ramana, learned Senior Counsel, for M/s.V.Janaki Devi, for the petitioner, Mr.M.D.Poornachari, learned counsel for the first respondent, Mr.C.Baskaran, learned Government Advocate, for the respondents 2 and 5 and Mr.S.Deenadhayalan, learned Standing Counsel for the respondents 3 and 4 and perused the records.

7. The sum and substance of the argument of the petitioner is that



W.P.(MD).No.4715 of 2020

beneath the line, there is electromagnetic field and it is dangerous for human existence and no plants will grow, for which the petitioner is relying on a booklet issued by as Association namely, Uyarmin Gopurangaluku Ethirana Vivasaya Sangangalin Kootam Iyakkam (உயர்மின் கோபுரங்களுக்கு எதிரான விவசாய சங்கங்களின் கூட்டு இயக்கம்) wherein, pictures are exhibited, wherein it shows a person was holding a tube light underneath the High Tension Tower and the tube light is illuminated. Small plants like Guava were affected due to the electromagnetic transmission. The human body being a conductor of electricity is conducting the electricity for which the petitioner shows it by using a screw driver, where it could be seen a light is illuminated inside the screw driver. By showing these pictures, the petitioner contended that the respondents ought to have taken note of the stringing corridor area which passes through the petitioner's land. Therefore, the petitioner is submitted that the compensation granted only for the four legs which stands in 3 cents of land is absolutely unjust, unfair compensation. The compensation ought to be calculated for the land even where the stringing corridor area are crossing through.



W.P.(MD).No.4715 of 2020

WEB COPY

8. The learned Senior Counsel elaborately narrated that right to own property is a fundamental right guaranteed under the Constitution of India. Therefore, any damage caused to the land ought to be adequately reasonably compensated. The learned Senior Counsel further submitted that the respondents are ‘acquiring’ the said land and hence the new Fair Compensation Act, 2013 is applicable and not G.O.Ms.No.86. The learned Senior Counsel submitted that using of land also amount to acquiring the land. This Court is not able to accept such contention, since under Section 10 of the Telegraph Act, 1885, specifically uses the phrase of “using the land” and no where it has been stated the land is acquired. The relevant Section is extracted hereunder:

### *PART III*

#### *POWER TO PLACE TELEGRAPH LINES AND POSTS*

*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*



W.P.(MD).No.4715 of 2020

*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; and*

*c. except as hereinafter provided, the telegraph 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 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.*

9. Section 10 of the Telegraph Act, 1885 was elaborately discussed in several judgments and consistently, it has held that the Telegraph authority is only using the land and not acquiring the land. In such circumstances, the Fair Compensation Act will never be applicable to the present case. In the case of T.S.T. Kaznavi Vs. Tamil Nadu Electricity Board in W.P.No.36566 of 2007 vide judgment dated 28.01.2008 it has been held the respondents are only using the land and there is no question of acquisition, hence it is not necessary to issue any notice before using the said land. The relevant portion is extracted hereunder:

“25. It was in E.Venkatesan and others Vs. Chariman, Tamil Nadu Electricity Board, Madras and others (AIR 1997 Madras 64), S.S.Subramani,J. while



W.P.(MD).No.4715 of 2020

WEB COPY

construing Section 51 of the Electricity (Supply) Act,1948 along with Section 10 of the Indian Telegraph Act,1885, has held that while coordinating the work of transmission, the Electricity Board **need not acquire lands** and therefore, no notice is required to the owner before laying poles or constructing any tower, nor any consent is required, as the lands are used only for the purpose of laying electric lines. After analysing the entire case law as well as the provisions of the Act, in detail, the learned Judge held as under:

“19. From the above settled position of law, it is clear that when the Electricity Board exercises power under Section 51 of the Electricity Act read with Section 10 of the Telegraphs Act, they are not acquiring any land. **They are only making use of the land for the purpose of laying electric lines** for which full compensation is given for the damage caused. It is also clear therefrom that no notice is required to the owner before laying the poles or constructing any tower, nor any consent is required from them.”

....

28. In any event, on the facts and circumstances of this case, the major point which is urged by the petitioner is that the property was sought to be acquired without following due process of law and by virtue of various judgements, especially relating to the powers of the Board as "State Transmission Utility", there is no necessity to give any notice for the purpose of erection of tower or for making "transmission lines" and therefore, the petitioner is not entitled for the relief as claimed, except the right under Section 10(d) of the Indian Telegraph Act,1885, which enables the petitioner to get compensation for any damages sustained by him while the Board exercising its powers as "State Transmission Utility" and the compensation is determinable as per Section 16 of the Indian Telegraph Act,1885.”

From the above judgment it would be evident that the issue is settled that the respondents are not acquiring the land. In such circumstances, the petitioner cannot claim that the respondents are acquiring the property while erecting high tension towers.



W.P.(MD).No.4715 of 2020

WEB COPY

10. The learned Senior Counsel relied on the fourth schedule of Fair Compensation Act, 2013 and submitted if the land is acquired under Electricity Act, the Fair Compensation Act, 2013 is applicable. Under section 105 it is stated

“105. Provisions of this Act not to apply in certain cases or to apply with certain modifications.—(1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.”

However under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order 2015 the Electricity Act is included. The relevant portion of the Order is extracted hereunder:

*“Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 112 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government hereby makes the following Order to remove the aforesaid difficulties namely:-*

- 1. (1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order 2015  
(2) It shall come into force with effect from the 1<sup>st</sup> day of September 2015*
- 2. The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule,*



WEB COPY



W.P.(MD).No.4715 of 2020

*Rehabilitation and Resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of the land acquisition under the enactments specified in the Fourth Schedule to the said Act.”*

11. Since the Electricity Act, 2003 is included under the Removal of Difficulties Order 2015, the contention of the learned Senior Counsel that the Fair Compensation Act 2013 and prayed to direct the respondents to pay compensation under the Fair Compensation Act 2013. There is no doubt that the Fair Compensation Act 2013 is applicable whenever there is acquisition under Electricity Act, 2003. The Government would acquire land for Electricity Board for establishing Sub Stations, in such circumstances the said Fair Compensation Act 2013 would be applicable. But whenever the High Tension Towers are erected under section 164 of Electricity Act, 2003 read with Section 10 of Telegraph Act, 1885 there is no acquisition of lands. Under section 10 it is clearly stated there is no acquisition of land, but it is only using the land. Therefore the contention of the petitioner to grant compensation under Fair Compensation Act 2013 cannot be entertained.

12. Since there is no acquisition and consequently the Fair Compensation Act 2013 is not applicable. However there was demand to grant compensation



W.P.(MD).No.4715 of 2020

for erection of High Tension Towers as well. Therefore, the Government had issued G.O.Ms.No.86 granting compensation to the land owners, but the contention of the Learned Senior Counsel is that the same is not just and adequate compensation. The G.O. is not adequately compensating for the damages that being caused to the land, more so when the stringing corridor area are drawn above the land.

13. The said Government Order grants 100% compensation for the damage caused to the land where the four legs of the High Tension Towers are located, wherein two different compensation is paid for the land i.e. for tower based upto and including 3 cents and tower area beyond 3 cents and part thereof. And 20% compensation for Stringing Corridor Area. The strong objection of the Learned Senior Counsel is that the beneath the stringing corridor area the tube light gets illuminated, the human body is conducting electricity, hence it is highly risk to grow even small crops. Hence the area beneath stringing corridor area to an extent of 10 meters in depth (32 feet 10 inches) and 60 meters width (200 feet) should also be taken into account and grant 100% compensation for the same. For which the petitioner is relying on



W.P.(MD).No.4715 of 2020

the thesis submitted by one S.Somasekaran to Madurai Kamaraj University, wherein it is stated that “the Electro Magnetic Field around the stringing corridor area drastically affect the physiological and biochemical characteristics of the crop plants and it reduces the plant biomass production. The Electro Magnetic Field is exerting stress on the plants thereby reduce the growth of plants. The herbs were severely affected due to the effect of Electro Magnetic Field in forest lands.

14. This Court is of the considered opinion Mandamus cannot be issued against the Government for taking any policy decision. Hence, this Court cannot give any positive direction to consider the petitioner's claim. But the reasons cited by the petitioner regarding unusable of land is genuine cause and the issue ought to be addressed. Therefore, the first respondent Central Government is directed to address the issue raised by the petitioner. The second respondent State Government is directed to reconsider the G.O.Ms.No.86 in the light of the above observations and consider to grant compensation for the particular distance where other activities is risky especially to an area beneath stringing corridor area to an extent of 10 meters in depth (32 feet 10 inches)



**W.P.(MD).No.4715 of 2020**

WEB COPY

and 60 meters width (200 feet). The first and second respondents are directed to consider the claim of the petitioner and pass appropriate orders within a period of four (4) months from the date of receipt of a copy of this order.

15. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

**05.10.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes/ No  
Nsr



W.P.(MD).No.4715 of 2020

WEB COPY

To

- 1.The Secretary,  
The Union of India,  
Ministry of Poer, Shram Shaki Bhavan,  
Rafi Marg, New Delhi – 110 001
- 2.The Secretary,  
The Government of Tamil Nadu,  
Department of Energy,  
Fort St George,  
Chennai – 600 009.
- 3.The Tamil Nadu Transmission Company Limited,  
Anna Salai, Chennai – 2,  
Through its Managing Director
- 4.The Tamil Nadu Electricity Department,  
Generation and Distribution Corporation,  
Anna Salai, Chennai – 2.
- 5.The District Collector,  
Karur District,  
Karur.
- 6.The Deputy General Manager,  
Power Grid Corporation of India Limited,  
400/230 KV, Sub Station, Coimbatore Main Road,  
K.Paramathi Post, Karur District.



WEB COPY



W.P.(MD).No.4715 of 2020

**S.SRIMATHY, J.**

Nsr

W.P.(MD).No.4715 of 2020

05.10.2023