



W.P(MD).No. 19974 of 2014

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2023

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THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P(MD)No.19974 of 2014

and

M.P(MD) No.1 of 2014

J.S.Ubaidur Rahman

..... Petitioner

- Vs-

1. The State of Tamil Nadu,
Represented by its Secretary,
Energy Department,
Fort St. George,
Chennai – 600 009.
2. The Chairman and the Managing Director,
Tamil Nadu Generation and Distribution
Corporation Limited,
144, Anna Salai,
Chennai – 600 002.
3. The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited,
Trichirappalli Electricity Distribution Circle,
Mannarpuram,
Tiruchirappalli.



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4. The Executive Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited,
Trichirappalli Electricity Distribution Circle,
Mannarpuram,
Tiruchirappalli.

5. The Assistant Executive Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited,
Trichirappalli Electricity Distribution Circle,
Mannarpuram,
Tiruchirappalli.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records, pertaining to the impugned order passed by the fifth respondent in letter No.உ.செ.பொ/ மிக தொகII/ திருச்சி/ அ.எண்.55/ கோபுக்ஞர் 110 கி.வோ.லைன்.2014 dated 01.09.2014 and quash the same and consequently direct the respondents to remove all the encroachments made in the petitioner land in S.No.536A2, Pallapatti Village, Aravakurichi Sub Divisions, Karur within the time frame fixed by this Court.

For Petitioner : Mr.G.Mohan Kumar

For Respondents : Mrs.D.Farjana Ghoushia
Special Government Pleader
for R1

: Mr.S.Deenadhayalan
Standing Counsel
For R2 to R5



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ORDER

This writ petition has been filed challenging an order of rejection of the petitioner's request to shift the electric tower from the petitioner's land.

2. Heard Mr.G.Mohan kumar, learned counsel appearing for the petitioner, Mrs.D.Farjana Ghoushia, learned Special Government Pleader appearing for the first respondent and Mr.S.Deenadhayalan, learned Standing Counsel appearing for the respondents 2 to 5.

3. The case of the petitioner is that the petitioner and his two sons are the absolute owner of the land in S.No.536A2 at Pallapatti Village, Aravakurichi Taluk, Karur District. On 14.05.2014, when the petitioner went to inspect the house site, to his shock and surprise, the petitioner found that the fifth respondent had trespassed into the patta land by erecting the new tower in his land. Hence, he immediately raised his objection and sent a representation on 17.05.2014 to the third respondent herein and also mark a copy of the same to the second respondent for calling upon them to remove the encroachments. By the impugned proceedings dated 01.09.2014, the



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fifth respondent had sent a impugned communication stating that the tower has been fully functioned and therefore there is no possibility of shifting the towers from the petitioner's land. Therefore, he had approached this Court, to quash the order and consequently, direct the respondents to remove the encroachments made in the petitioner's land.

4. The learned counsel appearing for the petitioner relying upon Article 300- A of the Constitution of India would submit that no citizen's land can be taken over by the authority without authority of any law. He would further submit that no notice has been issued to the petitioner. The petitioner made an objection and the same ought to have been placed before the appropriate authority for proper adjudication. Without referring the matter to the appropriate authority, the fifth respondent has rejected the same without jurisdiction and hence, on the ground alone, he would seek to set aside the order passed by the fifth respondent.

5. Countering his arguments, the learned Standing Counsel appearing for the respondents 2 to 5 would submit that an existing tower for carrying capacity of 110 Kilo Watts was in existence and works were carried out to



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ensure the safety regulations, by increasing the height of the tower width of the tower and therefore when the width of the tower was increased it had fallen upon the petitioner's land and that they being a licensee under the Electricity Act are entitled to invoke provisions of the Indian Telegraph Act and had laid the permission. He would further submit that they have not acquired the land but only acquired the right of user over the petitioner's land, which is statutorily permissible. Hence, he would seek to reject the writ petition prayed for by the petitioner.

6. I have considered the rival submissions made by the learned counsel appearing on either side.

7. It is an admitted fact that the portion of the tower has been laid in the petitioner's land. As per the provisions of the Indian Telegraph Act, which is exercised by the licensee under the Indian Electricity Act, they are entitled to enter upon the land belonging to another person for laying of towers and drawing of electrical lines. But however the land owners are entitled for damages as provide under Section 10(d) of the Act.



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8. In the present case, I do not find any procedure contemplated under the Indian Telegraph Act has been followed in spite of the objection raised by the petitioner, the same has not been forwarded to the appropriate authority seeking for permission to continue the work. Further, the petitioner had also not been paid the damages.

9. It is pertinent to note that the Central Government had issued the guidelines in the year 2015 as to what is the nature and extent of damage that a person would be entitled to for use of the lands for laying towers and the erection of towers and drawer of lines. I had an occasion to consider the said issue in W.P.(MD)No. 6528 of 2013 and delivered the judgment on 22.02.2023. Wherein it is already held that when the petitioner raised an objections, the same have to been referred to the District Magistrate as prescribed under Section 16(1) of the Indian Telegraph Act. Further Section 10(d) provides for full compensation for the damages sustained by the owner. By reason of exercise of the tower, no compensation whatsoever had been paid to the petitioner. The Division Bench of this Court in judgement dated 18.08.2021 made in W.A.No.380 of 2020 had held that the sufficiency



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of compensation would also include no compensation being paid. Hence, the recourse of the petitioner is to approach the learned District Judge concerned within whose jurisdiction, the property is situate and raise a dispute under Section 16(3) of the Indian Telegraph Act. Since the Towers were laid in the year 2014, at this stretch of time, if the petitioner approaches the authority prescribed under Section 16(3) of the Act, the same will be barred by limitation. But however, invoking the provision of Section 14 of the Limitation Act 1963, period namely, the date of filing the writ petition and the date of order in the writ petition can be excluded, if the petitioner approaches the learned District Judge concerned seeking for a just compensation in line with the guidelines issued by the Central Government in the year 2015.

10. Even though the prayer sought for in the writ petition cannot be granted at this length of time the petitioner would be at liberty to approach the learned District Judge of the concerned jurisdiction by taking out an application under Section 16(3) of the Indian Telegraph Act. The petitioner is at liberty to file an application before the District Judge of the concerned jurisdiction within a period of three months from the date of receipt of a



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copy of this order, if such an application is made, the concerned Court shall not raise issue of limitation.

11. With the above said direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

28.02.2023

NCC: Yes / No
Index : Yes / No
Internet : Yes / No
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To

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K.KUMARESH BABU, J.

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