

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

205

CWP-11694-2018 (O&M).
Date of Decision: 20.09.2023.

SHAKUNTALA DEVI

... Petitioner

Versus

PUNJAB STATE POWER CORPORATION LIMITED AND
OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Nitin Verma, Advocate,
for the petitioner.

Mr. Saurav Verma, Advocate,
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

The present writ petition has been filed for seeking issuance of directions to the respondents to shift the electricity transformer/heavy machinery, which is alleged to have been installed in front of the house of the petitioner, in contravention to the rules prescribed under the Indian Electricity Rules, 1956.

Learned counsel appearing for the petitioner contends that the petitioner had purchased a two marla plot situated at village Nada, Hadbast No.350, Tehsil Kharar, District S.A.S. Nagar, Mohali, vide sale deed date 09.06.2015. The mutation of the said plot was carried out in the name of the

petitioner and thereafter, the petitioner raised construction on the said plot in the month of November 2017. However, the respondents erected electric poles in front of the house of the petitioner in the month of December 2017 and installed transformer thereon. A representation was submitted by the petitioner to the respondent authorities on 04.01.2018 for removal/shifting of the said transformer. He contends that the respondents have installed the transformer in violation of provisions of Rule 77 of the Indian Electricity Rules, 1956 and the provisions contained thereunder. As a result of such violation, the life and liberty of the petitioner is exposed to imminent and unsolicited danger. The respondents are thus under an obligation to ensure that the transformer is not only shifted but is also installed as per the guidelines and specifications provided under the Indian Electricity Rules, 1956.

Written statement dated 16.07.2018 had been filed on behalf of the respondents wherein the following factual aspects have been highlighted:-

“4. That at the time when the two poles were put in the colony for installation of the transformer there was only demarcation of the plots and no construction had been made. To avoid any dispute between the residents of the colony the two poles for the transformer were put in such a way that one of the poles was opposite one plot and the other pole was opposite the adjacent plot in the colony leaving the statutorily required distance from the boundary of the plots. It is further pertinent to mention here that the transformer has been put for the local distribution of electricity in the colony.

5 That the petitioner who has raised the illegal construction without there being any registry in her favour of the land or any plan of construction having been passed by any government agency has further made an illegal balcony of 3 feet which is jutting out on the road because of which the petitioner is now aggrieved.

6. That at the time of putting poles for the transformer there was no exit which was there and the exit for the petitioner's house was from the other side. It is only now that the wall has been broken and a gate has been put and now the petitioner wants the transformer and the poles to be removed from the site.

7. That there is a process by which grievances such as that of the petitioner can be addressed. If the other residents of the colony are agreeable for the shifting of the poles with the transformer then the petitioner can move the requisite application before the Corporation mentioning the details of the alternate land for shifting the transformer and the poles. And after an assessment has been made by the corporation on the feasibility of the same, an estimate will be given to the petitioner for the cost to be incurred for the shifting and on the deposit of which the poles along with the transformer will be shifted.”

Learned counsel appearing for the respondents has vehemently argued that the petitioner himself has violated the provisions of law and is now pleading a prejudice. He contends that the above said colony wherein the petitioner has raised construction is an illegal colony which has been carved out in violation of law. Be that as it may, at the time when the

electricity poles were set up, the same was put up opposite to two different plots after maintaining sufficient distance from the construction that would have to be raised. The illegal construction without obtaining sanction and approval of the building plan, was raised by the petitioner and the balcony has been extended into the street by 3 feet so as to interfere with the right of way of the transmission line. It is further pointed out that at the time when the poles were installed and the transformer commissioned, there was no exit at the point, which is now being claimed, and that exit of the petitioner's house was from other side. The wall has been broken subsequently and a gate has been installed only as guise to seek shifting of the transformer.

Learned counsel to substantiate his arguments further makes a reference to the photographs appended by the petitioner with the present writ petition as Annexure P-3 which shows that the construction was freshly being raised and the wall had been demolished to pave way for a gate to be installed. Further also no satisfactory explanation as to why the petitioner chose to put his gate at the place where it is now being positioned when there was space available on the other side and the gate could have been opened there as well and more so, when the poles for transformer had been set up much before the petitioner started the construction.

I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents available on record.

In so far as the reliance of the petitioner to the provisions of Rule 77 Indian Electricity Rules, 1956, is concerned, the said Rule

prescribes the ground clearance for setting up a conductor and for the transmission lines. Even though, there is no material on record to suggest that there has been such a violation, however, nonetheless, the respondents are directed to ensure that the necessary ground clearance and the height as prescribed under the applicable rules and regulations notified by the competent Authority are duly ensured at the site so that people are not put at peril on account of the electricity transformers being installed below the prescribed ground clearance.

In relation to the issue as to whether the transformer already established in front of the gate and ought to be removed or not, the contention of the respondent about the petitioner having opened the gate later in point of time; that the construction being raised is without obtaining due approvals from the competent Authority and that there is an illegal projection of balcony by 3 feet in street, have remained uncontroverted despite the reply having been filed in the year 2018 and a period of more than 05 years has elapsed since then. In the absence of any rebuttal to the said factual aspect, the inference that flows is that the petitioner herself is guilty of committing the above said illegality and is thereafter wanting to capitalize on the same by seeking shifting of the transformer. Such a modus operandi cannot be accepted as a basis for disrupting the entire planning by respondent distribution licensee, who is under obligation under Section 43 Indian Electricity Act, 2003, to provide electricity connection to the consumers.

The photographs that have been appended along with the petition reflect that the gate is being installed later in time and that the transformer pre-existed. The entire site plan has not been attached despite the case of the respondent being that the gate is to open in the street on the other side. The putting up of the gate towards the pole is thus inferred against the petitioner as an afterthought and as a measure to seek shifting of transformer.

In any case, the respondents have specifically pleaded in their written statement and in para 27 thereof that in the event the petitioner applies to the authorities as per the law and after obtaining the consent from the residents of the locality for shifting of the poles and installing the same at the undisputed place, subject to deposit of statutory charges, the respondents have no objection to the shifting of the transformer.

The present petition is accordingly dismissed at this stage since the petitioner has failed to show any illegality in the acts of the respondents, and the default is on the part of the petitioner. However, in the event, the petitioner approaches the respondents for seeking shifting of the transformer, in accordance with the procedure prescribed in law and complying terms thereof, such a request shall be considered by the respondents and expeditious decision be taken thereupon.

September 20, 2023.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No