

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

209

CWP-1551-2018

Date of decision: 07.08.2023

MANI RAM

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

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

Present:- Mr. S.P. Arora, Advocate and
Mr. Himanshu, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Ms. Ruchita Garg, Advocate for
Mr. Vishal Garg, Advocate
for the respondents No.2 and 4.

VINOD S. BHARDWAJ, J. (Oral)

The question which arises for determination is with respect to the power of the Government to exercise authority over the order passed by the District Magistrate under the Electricity Act, 2003 read with Telegraph Act, 1882 and Works of Licensees Rules, 2006.

2. Challenge in the present petition is to the order dated 04.08.2017 passed by the Principal Secretary to Government of Haryana, Department of Power, Chandigarh whereby a revision petition filed against the two order dated 22.06.2016 passed by the District Magistrate, Fatehabad has been allowed and the order passed by the District Magistrate was modified thereby substantially reducing the

compensation awarded to the petitioner.

3. Briefly summarized the facts of the present case are that the petitioner is owner and in possession of land measuring 2 acres and 04 kanals detailed out in the Jamabandi for the year 2011-12 (Annexure P-2) attached with the present petition. The transmission licensee i.e. HVPN entered into a contract with M/s Isolux Ingenieria C/Caballero Andante to construct transmission line to feed newly constructed 220 KV sub-station, Hukamwali, Fatehabad by making Loop in Loop out (LILO) arrangement of both circuits of existing 220 KV D/C Line from 400 KV sub-station (PGCIL), Fatehabad to 220 KV sub-station HVPNL, Chormar. The respondent proceeded to utilize the land of the petitioner measuring 2 acres and 04 kanals. The newly constructed 200 KV Loop out circuit line was under crossing the existing 400 KV D/C Fatehabad-Nuhiyanwali line with two nos. gantry location No.G1 & G2 and two No.220 KV tower. Each gantry consists of 03 Nos. small towers and two nos. of beams. Both gantries, tower No.77 and 78 of this line as well as one No. towers of already existing 400 KV D/C Fatehabad-Nuhiyanwali line were falling in two and a half acres of land of the petitioner. Hence, almost the entire land fell under the maze of wires. Initially a compensation @ Rs. 70,000/- per tower total amounting to Rs. 3,25,000/- was disbursed to the petitioner on 12.05.2016.

4. Feeling aggrieved of the constructions raised by the respondents, a claim/representation was submitted by the petitioner to the Deputy Commissioner, Fatehabad on 09.06.2016 specifically pointing out that as a result of construction of 9 numbers of towers

including the 06 gantry towers and 2 large size line towers installed in the field of the petitioner, the entire land of the petitioner to the extent of 02 acres has become totally barren and unfit for utilization. A request was thus made to the respondents to acquire the remaining land as well.

5. The Deputy Commissioner, Fatehabad wrote a letter to the Executive Engineer, ATS Division, Hisar on 10.02.2016 with regard to non payment of entire compensation in lieu of tower line and removal of small line from the field stating therein that size of the tower installed in the land of the petitioner is more than double the size of other installed towers. A letter was also forwarded by the Tehsildar, Fatehabad to the Deputy Commissioner, Fatehabad on 13.06.2016 regarding damage caused to the land on account of construction of loop out Hukmawali Circuit. It was informed that a spot inspection had been conducted and the loss suffered by the petitioner was assessed around Rs. 1 lakh per annum since no cultivation can be done on the said land below the Tower line.

6. The Executive Engineer, T.S. Division, Sirsa, also forwarded a letter on 22. 06.2016 to the Deputy Commissioner with regard to the hindrance and construction of the work of LILO of 220 KV Fatehabad-Chormar line. The Deputy Commissioner, Fatehabad was requested to pass necessary orders as the area of gantry is more than the area of two number of towers and recommending him to grant compensation to the owner of the land i.e. petitioner herein.

7. Pursuant to the report obtained from the concerned quarters and upon consideration of the rival submissions, the District Magistrate ordered that the petitioner be compensated to the tune of Rs. 1 lakh

annually as the land under the tower was reportedly not safe for cultivation. In addition to this, a compensation of Rs. 70,000/- per tower of a gantry as a crop compensation for damage was also awarded.

8. Feeling aggrieved of the order passed by the Deputy Commissioner-cum-District Magistrate, Fatehabad, the Superintending Engineer preferred a letter for making a change, however, the Deputy Commissioner responded to the same vide his letter dated 17.10.2016 that the matter having been already decided, it will not be possible for the the District Collector, Fatehabad to make any alteration therein and an advisory was issued that an appropriate appeal against the said order may be filed, if so advised, as per law.

9. A revision petition was thereafter filed by respondent No.2-Transmission licensee before the Principal Secretary to the Department of Power, Government of Haryana purportedly under Section 12 (4) of the Indian Electricity Act, 1910 against the two order dated 22.06.2016.

10. The above said revision petition was allowed by the Principal Secretary, Department of Power and the well reasoned and speaking order passed by the Deputy Commissioner, Fatehabad was set aside. Aggrieved thereof, the present petition has been filed.

11. Short reply on behalf of respondents No.2 and 4 i.e. the contesting respondents had been filed wherein the abovesaid factual matrix is not disputed, however, it has been averred that the construction of the power transmission line was carried out as per Section 164 of the Electricity Act, 2003 read with provisions of the Telegram Act, 1885 and that the overhead transmission lines have been

laid down for transmission of power for general need of consumers and for economic growth. In the event of the order dated 22.06.2016 being permitted to sustain, it will increase the cost of laying of transmission lines manifold and would be detriment to the larger public interest. Rest of the factual aspects have not been disputed.

12. Replication was filed by the petitioner to the above said short reply reiterating the submissions made in the present petition and disputing the defence taken by the respondents in their written statement.

13. Counsel for the petitioner has argued that the respondents have acknowledged that the transmission had been laid in exercise of the powers under Section 164 of the Electricity Act, 2003 read with corresponding provisions of the Telegraph Act, 1885. Notwithstanding that the Electricity Act of 2003 had come into force, yet, the revision petition had been preferred under Section 12 (4) of the Electricity Act, 1910. The exercise of the jurisdiction was thus invalid and suffered from want of authority. A reference is made to provisions of Section 16 of the Telegraph Act, 1885 as per which, in the event any of the parties dissatisfied with the compensation as awarded by the District Magistrate, an appeal may be preferred to the competent authority.

14. Controverting to the same, learned counsel appearing on behalf of the respondents reiterates the submissions noticed above and contends that an exorbitant compensation had been awarded by the District Magistrate and sustainability of said compensation is likely to cause severe detriment to the larger public interest. Accordingly, the compensation awarded by the District Magistrate was rationalized by

the Principal Secretary in exercise of the powers that had been conferred upon.

15. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present petition with their able assistance.

16. It is not in dispute that the Electricity Act, 2003 had come into force and the transmission lines had been notified after the coming into force of the Electricity Act, 2003. That being so, the transmission licensee becomes the deemed licensee under Section 164 of the Electricity Act to lay down the telegraphs lines. Section 16 of the Telegraph Act, 1885 is extracted hereinbelow:

Section 16 in The Indian Telegraph Act, 1885

16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority-

(1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under subsection (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code, 1860 (45 of 1860).

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

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3), or sub-section (4) shall be final: Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same.

17. The relevant extract of The works of Licensees Rules, 2006 is as under:-

13. Determination and payment of compensation to affected persons.-

(1) Where the licensee makes default in complying with any of the provisions of these rules, he shall make full compensation for any loss or damage incurred by reason thereof to the person affected, as may be determined by the District Magistrate or by any other officer authorised by the State Government in this behalf, if not agreed mutually between the parties concerned.

(2) Where any difference and dispute arises as to the amount of compensation determined under sub-rule (1), the matter shall be determined by the Appropriate

Commission.

14. Procedure for deposit of compensation payable by the licensee and furnishing of security.-(1) *The amount of compensation payable by the licensee under these rules shall be deposited by means of demand draft.*

(2) The security required to be furnished under these rules shall be in the form of Bank Guarantee from a Scheduled Bank or in any other form as may be notified by the Appropriate Government from time to time.

18. It is evident from a perusal of the same that the District Magistrate is the competent authority for assessing the compensation payable to the land owner with respect to any prejudice caused to him on account of laying of transmission lines. Any person who is aggrieved of the assessment being done by the District Magistrate may, if so advised, prefer an appeal before the Appellate Authority. Invariably, instead of taking recourse to the appropriate remedy available as per law, the respondents preferred a revision petition before the Principal Secretary of the Department of Power who did not have any such authority. The order in question thus suffered from want of authority and jurisdiction in law to determine compensation.

19. It has been held by the Hon'ble Supreme Court in the matter of **“Balwant N. Viswamitra versus Yadav Sadashiv Mule reported as (2004) 8 SCC 706**, that any order passed without an authority would be vitiated as the question of authority would go to the root of the award/order and such fundamental error cannot be corrected or be validated subsequently.

20. The said position of law being absolute and being reiterated on numerous occasions and taking into consideration that the

Government is not an Appellate Authority against the compensation computed by the Deputy Commissioner, I find that the Principal Secretary, Department of Power did not have any authority to decide an appeal/revision against the compensation awarded by the District Magistrate under the Telegraph Act.

21. The present petition is accordingly allowed and the order dated 04.08.2017 passed by the Principal Secretary, Department of Power, Government of Haryana is set aside.

22. The setting aside of the order shall, however, not stand in the way of the petitioner to raise a challenge to the said order in the manner known to law. In the event of any such appeal being so preferred, the period during which the present writ petition remain pending shall be taken into consideration for computing the limitation.

(VINOD S. BHARDWAJ)

JUDGE

AUGUST 07, 2023

Vishal sharma

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No