

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3171 of 2015

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Sami Ahmad S/O Late Nazir Ahmed, R/O- Omar Cottage, Village- Harpur,
P.O. and P.S. - Raghunathpur, District- Siwan.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate cum Collector, Patna.
3. The Sub- Divisional Officer, Siwan.
4. The Circle Officer, Raghunathpur, Siwan.
5. The Chairman, Bihar State Electricity Board, Bihar, Patna.
6. The Secretary Cum Engineer-in-Chief, Bihar State Electricity Board, Bihar, Patna.
7. The Executive Engineer, Bihar State Electricity Board, Siwan.
8. The General Manager Project, G.K.C. Zonal Office, Situated at 4th Floor, Maurya Lok Complex, Block

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anjum Perveen, Advocate
For the Respondent/s	:	Smt. N. Mishra, GA-13
For the BSPHCL	:	Mr. Anand Kr. Ojha, Advocate
		Mr. Ashok Kr. Varma, Advocate
		Mr. Akshansh Shanker, Advocate

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

2 10-07-2024 The present writ petition has been filed
seeking the following reliefs:-

*“1. i). To direct the respondents to
remove the electric poles fixed
illegally by the respondents on the
private (Khatiyani) land of the
petitioner pertaining to Tauzi no. 5544,
Khata no.149 Mauza Harpur P.S.
Raghunathpur, District- Siwan survey*



no. 224.

ii). To direct the respondents to pay compensation of Rs. 20,000/- to the petitioner for the loss caused by the fining of electric pole on the land of the petitioner, resulting into loss of agriculture produce."

2. At the outset, the learned counsel for the respondent-Company has referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Power Grid Corporation of India vs. Century Textiles & Industries Ltd. & Ors.***, reported in ***(2017) 5 SCC 143***, paragraphs no. 23 to 28 whereof are reproduced herein below:-

"23. Section 10 of the Telegraph Act, 1885 empowers the telegraph authority to place and maintain a telegraph line under, over, along or across and posts in or upon any immovable property. The provision of Section 10(b) of the Telegraph Act, 1885 makes it abundantly clear that while acquiring the power to lay down telegraph lines, the Central Government does not acquire any right other than that of user in the property. Further, Section 10(d) of the Telegraph Act, 1885 obliges the



telegraph authority to ensure that it causes as little damage as possible and that the telegraph authority shall also be obliged to pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

24. As Power Grid is given the powers of telegraph authority, Rule 3(1) of the 2006 Rules ceases to apply in the case of Power Grid by virtue of execution clause contained in sub-rule (4) of Rule 3 which reads as under:“

3. (4) Nothing contained in this rule shall effect the powers conferred upon any licensee under Section 164 of the Act.

”25. We, thus, have no hesitation in rejecting the argument of the writ petitioner that the impugned action of the Power Grid was contrary to the provisions of the Electricity Act, 2003.

26. We also do not find that the action of the Power Grid, in the given circumstances, by not shifting the transmission lines was arbitrary. From the facts noted above, it becomes apparent that not only it was unfeasible to change the alignment as almost entire work had already



been completed by the time the writ petitioner started protesting against this move, even otherwise, the Power Grid has given sufficient explanation to point out that all relevant factors/aspects were kept in mind while laying down the impugned transmission lines. Such transmission lines had to be in straight line to the extent possible for eliminating loss of transmission. It is also explained that electricity transmission is usually laid or crossed over agricultural land where minimum extent of land gets utilised for erecting towers and where agricultural activities are not prejudiced/obstructed in any manner. The purpose is to avoid buildings, religious places, ponds, etc. while laying down these transmission lines. It is only when it becomes inevitable that towers are placed on the private lands to the minimum and least extent possible. That is what was tried to achieve in the instant case. Another important factor, which needs repetition at this stage is that no blasting permissible within 300 m from the 400 kV line(already existing) or the tower structure. Mining of limestone can be taken up by adopting the methods other than use



of explosive / blasting—without damage to the tower foundation/tower structure or the line, which can be accomplished by using jackhammer / pneumatic hammer with compressor so as to avoid any damage to the line or tower. This aspect has also been taken note of by the learned Single Judge of the High Court in the judgment dated 11-3-2008 [Century Textiles & Industries Ltd. v. Power Grid Corpn. of India Ltd., WP (C) No. 1909 of 2007,decided on 11-3-2008 (Chh)]. The Division Bench[Century Textiles & Industries Ltd. v. Power Grid Corpn. of India Ltd., Writ Appeal No. 42 of 2008,decided on 2-8-2010 (Chh)] did not differ with any of these findings.

Accordingly, Civil Appeal No. 10953 of 2016 preferred by the writ petitioner stands dismissed.

27. At this stage, we deal with the direction of the Division Bench regarding compensation payable to the writ petitioner, or for that matter to the State Government. In the first instance, no such claim was laid by the writ petitioner in the writ petition or by the State Government before the High Court. Furthermore, the High



Court could not have given this task to the District Collector, which is contrary to the provisions of Section 16(c) of the Telegraph Act, 1885 which are extended to laying down of electricity lines. As per this provision, suchan authority vests with the District Judge.

28. These are sufficient reasons to allow Civil Appeal No. 10951 of 2016 preferred by the Power Grid by setting aside those directions. Ordered accordingly. We make it clear that if the writ petitioner feels that it is entitled to any compensation, the appropriate course of action is to file a suit before the District Judge concerned for this purpose. It would also be apt to point out at this stage that the Central Government has framed guidelines dated 15-10-2015 in this behalf which inter alia provide that the issue of compensation maybe resolved having regard to the mode and manner of assessment of compensation as per the said guidelines. Therefore, it would always be open to the writ petitioner to avail the remedy as per the said guidelines."

3. *Per contra, the Ld. Counsel for the*



petitioner submits that the petitioner be granted liberty to seek compensation in terms of the aforesaid Judgment rendered in the case of *Power Grid Corporation of India Ltd.* (supra).

4. Having regard to the submissions made by the learned counsel for the parties, the present writ petition stands disposed of in terms of the aforesaid judgment rendered by the Hon'ble Apex Court in the case of *Power Grid Corporation of India Ltd.*(supra) with liberty to the petitioner to seek appropriate compensation by approaching the concerned District Judge and in case, any such petition is filed within a period of eight weeks from today, the same shall be examined and considered on merits by the learned court below and disposed of expeditiously.

(Mohit Kumar Shah, J)

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