



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4197 OF 2019

Power Grid Corporation of India Ltd.
(A Government of India Enterprise)
Through its Deputy General Manager,
Having its local office at
1200/765/400/220 KV Sub Station,
Chittepimpalgaon, NH-211,
Aurangabad - Beed Highway,
Aurangabad, District Aurangabad

.. Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Industries, Energy and Labour
Department, Mantralaya, Mumbai -32
2. The Collector, Jalna,
Jalna, District Jalna
3. The Committee for Determination
of Compensation for Fruit bearing Trees
And Other Trees
Through Sub Divisional Magistrate
Jalna, District Jalna
4. Badrinath Maroti Pathade,
Age 68 years, Occu. Agriculture,
R/o. Dudhanawadi, Taluka Badnapur,
District Jalna

.. Respondents

Mr. Girish S. Rane, Advocate for Petitioner;
Ms. R. R. Tandale, A.G.P. for Respondents No.1 to 3;
Mr. Pavan P. Uttarwar, Advocate for Respondent No.4

CORAM : S. G. MEHARE, J.
Reserved on : 21-02-2024
Pronounced on : 15-04-2024

JUDGMENT :-

1. The petitioner, who is admittedly deemed licensee under Section 38 of the Electricity Act, 2003, has impugned the judgment and order of respondent No.2, dated 10.10.2017 and the judgment and order dated 31.08.2017 (to be read as 31.08.2017 in view of corrigendum dated 24.09.2018) by respondent No.3.

2. The undisputed facts of the case were that the petitioner is the Central Transmission Utility (CTU) of India and a company established and set up by the Government of India incorporated under the provisions of the Companies Act. The petitioner had assigned the work of laying the transmission line. Due to the laying of the transmission line, the fields and the fruit-bearing trees in the fields of respondent No.4 were affected. The notice, as required under the provisions of law, was served to respondent No.4 on 27.12.2014. As per the petitioner's case, 84 sweet lime trees were to be affected. Therefore, a compensation certificate was accordingly issued. Respondent No.4 also signed the certificate dated 24.02.2015. It was assured to pay the compensation after cutting the trees. The District Agricultural Superintendent determined the valuation of the trees. He valued the trees, and the compensation for Rs. Rs.31,32,764/-. The compensation of Rs.36,00,621/- was paid to respondent No.4 and his sons. It was accepted without any demur. However, respondent

No.4 applied to respondent No.1 and disputed the number of trees affected due to laying the transmission line. It was alleged against the petitioner that he did not make the payment as promised ,and the watering of the trees was also affected. In short, he disputed the compensation.

3. The petitioner raised the objection that remedy against dissatisfaction of the compensation is under Section 16(3) of the Indian Telegraph Act, 1885. Respondents No.1 and 3 have no jurisdiction to entertain the petition. The disputes about the compensation granted as the jurisdiction lies in the District Court. However, finally, respondent No.3 / the Committee constituted as per the Government resolution, dated 02.11.2022, passed the impugned order without considering the jurisdiction objection.

4. Respondent No.2/ the Collector, by its order dated 15.01.2016, had determined the compensation. Against the said order, respondent No.4 has preferred a petition (Case No.77 of 2016) before the Maharashtra Electricity Regulatory Commission. The said Commission, in its order dated 09.11.2016 observed that respondent No.2/the Collector, Jalna, failed to quantify the amount of compensation to be paid, and the order states that the petitioner may approach the District Court under Section 16(3) of the Indian Telegraphic Act, 1885, if aggrieved by the compensation to be paid by the petitioner. Finally, the Commission directed the

District Collector, Jalna, to decide the amount of compensation after considering the submissions of both parties under the provisions of Works of License Rules, 2006, read with Section 67 of the Electricity Act, 2003. However, the adjudication or revision of this order if sought, would lie with Central Electricity Regulatory Commission (CERC) and not to this Commission. Thereafter, the Committee decided the matter on merit on 31.08.2017. Thereafter, the petitioner has preferred to review the application before the Committee.

5. The Government, by circular dated 25.08.2015, directed the Collectors to constitute the District Level Committees for determining the compensation. Thereafter, a Government resolution dated 31.05.2017 was issued with guidelines for compensation for the damages caused while erecting the transmission tower or the lands below the transmission line corridor. The said G.R. also prescribes for the constitution of the Committees under the Presidency of the Sub Divisional Magistrate. The petitioner contended that the said G.R. was restricted to compensation for the lands occupied by the towers and below the transmission lines only. In view of the Government resolution dated 31.05.2017 by order dated 10.10.2017, the Collector directed the Committee/respondent No.3 to determine the compensation.

6. The application of the petitioner raising objection as to

jurisdiction and rejection of the plaint under Order VII, Rule 11 of the Civil Procedure Code, was declined.

7. The arguments of the learned counsel for the petitioner based on the various judgments of this Court were that the Sub-Divisional Officer has no power to determine the compensation. If respondent No.4 was dissatisfied with the compensation granted to him, the jurisdiction lies with the District Judge under Section 16(3) of the Indian Telegraph Act.

8. To bolster his arguments, he relied on the number of cases from 2017 to 2021. In most of the cases, the petitioner was a party. He submits that the petition deserves to be allowed on the sole ground that the Sub-Divisional Officer has no inherent jurisdiction to pass the compensation.

9. The learned counsel for respondent No.4 vehemently argued that Section 185 of the Electricity Act 2003, has repealed the Indian Electricity Act, 1910 and the Electricity Regulatory Commission Act, 1998. Therefore, Section 16(4) of the Indian Telegraphic Act would come into the way. Section 67 of the Electricity Act, 2003 speaks of 'Works of licensee'. Sub-section (2) thereof provides that the appropriate Government may, by rules made by it in this behalf, specify the cases and circumstances in which the consent in writing of the appropriate Government, local authority, owner or occupier, as the case may be, shall be required

for carrying out works including many other rules that bind the licensee to follow. Sub-section (3) provides that the licensee shall cause little damage, detriment and inconvenience as may be and shall make full compensation for any damage, detriment or inconvenience caused by him or anyone employed. These rules pertain to the notice and the responsibility of the licensee to pay the compensation. He had vehemently argued that in view of Sub-section (4) of Section 67, the matters of dispute or differences, including the amount of compensation, shall be determined by the appropriate Commission.

10. Rule 13 of the Works of Licensees Rules, 2006, determines and compensates affected persons. The said Rule specifically provides that where the licensee makes a default in complying with any of the provisions of 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 any other officer authorized by State Government if not agreed mutually between the parties. If any difference or dispute arises as to the compensation under Sub-section (1), the matter shall be determined by the appropriate Commission. By a Government resolution dated 31.05.2017, the Committee was constituted. and conferred the powers to determine the compensation if there are differences. Hence, the Committee has jurisdiction to determine the compensation. Section 174 of the

Electricity Act, 2003 provides for an overriding effect of the Act. He further argued that Section 111 of the Electricity Act, 2003, provides for an appeal to the Appellate Tribunal against the order led by the appropriate Commission under this Act. He prayed to dismiss the petition as a statutory remedy is available to the petitioner to prefer the appeal.

11. Learned counsel for the petitioner relied on the following cases and many more cases.

12. In all the above petitions, a similar issue was dealt with about the jurisdiction of the District Court. The law has been crystallized, The Hon'ble Division Bench held that the claim of the farmers in such cases and disputes raised by them will have to be considered by the District Judge. The objections raised by the respondent about the constitution of the Committee and the provisions of the Electricity Act, 2003, were the same when this Court took the view that the District Judge shall deal with a dispute about the compensation under Section 16(2) of the Indian Telegraph Act. In view of the matter and the consistent view of the higher benches, this Court, Court does not find any reason to take another view. There is no substance in the objections raised by the respondent. Therefore, the petition is allowed. The impugned judgment and order of respondent No.2, dated 10.10.2017 and the judgment and order dated 31.08.2017 (to be read as 31.08.2017 in

view of corrigendum dated 24.09.2018) by respondent No.3, stand quashed and set aside.

13. Respondent is free to prefer the petition disputing the compensation before the concerned District Judge.

14. No order as to costs.

(S. G. MEHARE)
JUDGE

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