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36-WP-4237-2019

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

36 WRIT PETITION NO. 4237 OF 2019

Power Grid Corporation Of India Ltd Thorough Senior Dgm Tl

VERSUS

The State Of Maharashtra And Others

...

Mr. Subhash H. Joshi And Joshi Sumit S, Advocate for the Petitioner.

Mr. K. B. Jadhavar, AGP for Respondent-State.

Adv. Ms.J. R. Nawale Advocate for Respondent No.2 and 3.

CORAM : KISHORE C. SANT, J.

DATE : 16<sup>th</sup> DECEMBER 2024

PC :-

1. Heard the learned Advocate for the parties.
2. The petitioner-Power Grid Corporation of India Ltd. had approached the learned Collector under Section 16(1) of the Indian Telegraph Act, 1885, with a prayer to restrain the Respondent Nos.2 and 3 from obstructing the work of erection of the tower by filing Case No.93 of 2013. The learned Collector i.e. District Magistrate, Aurangabad while deciding the said application has even granted the reliefs appearing clauses B, C and D i.e. directing the petitioner to pay to the respondents

compensation for the land Gut No.12 at village Ballalapur. The operative part of order dated 27<sup>th</sup> January 2014 reads as under:-

“A. The application filed by the applicant is allowed;

B. The Non-Applicant Namely Shri Ramesh Raosaheb Iname and Dnyaneshwar Raosaheb Iname; Village : Ranjangaon, Taluka : Paitha, Dist-Aurangabad; his servants, agents, relatives or any person authorized by him or acting on his behalf is hereby restrained, permanently, from creating resistance or obstruction of any nature whatsoever, in the installation, erection, and stringing, of the tower no.25/0 in the land in Gut No.-12 of Village Ballalapur, Taluka- Paithan, Dist-Aurangabad of the 400 kv M/C Aurangabad (PG)- Aurangabad (MSETCL) Transmission Line, by the applicant.

C. the Applicant, Power Grid Corporation of India Ltd., is hereby directed to make the payment of the loss of standing crops, and fruit bearing trees, to the non-applicants in accordance with the report of the Taluka Agriculture Officer Aurangabad dated 12/11/2013, within 45 days. If ever the applicant has made the part payment of the crop compensation, the same shall be adjusted towards the total amount of compensation payable to the non-applicants.

D. The Applicant, Power Grid Corporation of India Ltd., is hereby directed to submit the details of the areas of the towers, in the office of the District Collector for compensation towards land. Thereafter the Government valuation report of the area of the tower shall be called from the Office of the Joint District registrar class-1, Aurangabad within 7 days, and upon the receipt of the valuation report, the applicant shall pay the compensation amount to the non-applicant as assessed by this office, in accordance with law within the period of 45 days thereafter. A separate order of assessment of the actual compensation amount to be paid to the Non-applicant will be issued subsequently by this office.

E. The In-charge of the concerned police station is hereby directed to provide the requisite police assistance, to the applicant-Power Grid Corporation of India Ltd, in the event of the further obstruction/resistance by the non-applicant, in order to prevent the outbreak of the law and order situation, in accordance with the provisions of law.

F. Informed the parties and closed the proceedings.”

3. The petitioner is thus aggrieved by clauses C to E have approached this Court. It is the case of the petitioner that the District Magistrate does not have a power or authority to pass such orders. In view of Section 16(3) of the Act, it is only the District Judge who is to decide the

sufficiency of the compensation to be paid under Section 10(d) and for that purpose, the respondents should have approached the District Judge. In this case the learned Collector has exceeded its jurisdiction by giving direction in clauses C and E. He relied upon the judgment of the Hon'ble Apex Court in the case of the *Power Grid Corporation of India Limited Vs. Century Textiles and Industries Limited*<sup>1</sup>. The Hon'ble Apex Court in the the said case has clearly held that the question of grant of compensation is to be considered only by the District Judge in view of Section 16(3) of the Act. In the said case, the order of the Collector directing to pay compensation was set aside. The paragraph No.28 of the said judgment reads as below:-

“28. 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 Indian Telegraph Act, 1885 which are extended to laying down of electricity lines. As per this provision, such an authority vests with the District Judge.”

4. The learned Advocate for the Respondent Nos.2 and 3 opposes the petition. She submits that it is the petitioner, who on its own approached the learned Collector. The Collector has rightly passed the order. In the

1 2016 SCC OnLine SC 1534

alternative, she submits that since the Collector has passed the order in 2014, the Respondents could not approach the District Judge as already there was an order passed by the Collector in favour of the Respondent No.2 and 3. Now, if the respondents want to approach the District Judge, an objection may be raised as to delay and laches. Though limitation is not specifically provided, then it would be as per Article 137 of the Limitation Act i.e. three years. She thus submits that now even her remedy is barred because of the action of the petitioner. She thus prays liberty in that case to approach District Judge under Section 16(3), if the petition is allowed.

5. Learned AGP also opposes the petition stating that the petitioner on its own had approached the Collector and now is challenging the order passed by the Collector. The Collector has rightly passed the order by considering the provisions of law.

6. From the admitted facts it is clear that, the petitioner on its own approached the Collector for removal of obstructions. The application was specifically with a prayer to direct to the respondent Nos. 2 and 3 not to obstruct the work of erection of the tower and allowed it to carry

on the work of providing high tension transmission line. There was no prayer about the compensation, as naturally it is for the respondents to make claim before the District Judge. Thus, there was no question of the petitioner making any prayer as regards the compensation.

7. Looking at the Section 16(3) it is clear that, the dispute in respect of the sufficiency of the compensation is to be determined by the District Judge. In the present case, because there was already a direction by the Collector, the Respondents did not approach the District Judge. Not approaching District Judge in the present case by the respondent No.2 and 3 is thus justifiable and that would be taken a sufficient cause for delay or laches.

8. Considering all above, following order.

**ORDER**

- (i) Writ Petition is allowed.
- (ii) Clauses B, C and D of the impugned order dated 27<sup>th</sup> January 2014 passed by the District Collector and District Magistrate, Aurangabad are quashed and set aside.
- (iii) Respondent Nos.2 and 3 are at liberty to approach District Judge

for their grievance as regards the compensation under Section 16(3) of the Indian Telegraph Act, 1885.

(iv) The learned District Judge shall decide the proceedings for condonation of delay. The period for which petition was pending in this Court shall not be an impediment in deciding the said proceedings.

(v) Needless to say that still respondents are required to file application for condonation of delay.

(vi) With this petition stands disposed off as such.

(vii) Needless to say that, all the points are kept open.

**[KISHORE C. SANT, J.]**