

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO.2155 OF 2023**

Maheshkumar G. Garodia, ]  
R/of Ghatkopar, Mumbai ] .. **Petitioner**

***Versus***

1. The Union of India, ]  
Through Deputy Salt Commissioner, Mumbai ]  
2. Kharghar Vikhroli Transmission Ltd., Ahmedabad ]  
Through Authorized Representative ]  
3. Collector and District Magistrate, ]  
Mumbai Suburban District, Bandra, Mumbai ] .. **Respondents**

Mr. Shyam Mehta, Senior Advocate, with Mr. Aditya Bapat and Mr. Shehzad A.K. Najam-es-sani, Advocates i/by Maneksha and Sethana, for the Petitioner.

Mr. Shriram Redij with Ms. Savita Ganoo, Advocates i/by Mr. Dharmesh Joshi, for Respondent No.1.

Mr. Venkatesh Dhond, Senior Advocate, with Mr. Shrinivas Bobde, Ms. Shweta Jaydev and Ms. Neha Sonawane, Advocates i/by Rashmikan and Partners, for Respondent No.2.

Mrs. P.H. Kantharia, Government Pleader, with Ms. Nazia Shaikh, Asst. Government Pleader, for Respondent No.3-State of Maharashtra.

**CORAM : A.S. CHANDURKAR & JITENDRA JAIN, JJ**

**The date on which arguments were heard : 22<sup>ND</sup> MARCH, 2024.**

**The date on which Judgment is pronounced : 17<sup>TH</sup> APRIL, 2024.**

**JUDGMENT : [ Per A.S. Chandurkar, J. ]**

1. RULE. Rule made returnable forthwith and heard learned counsel for the parties.

2. The question that arises for consideration in this writ petition filed under Article 226 of the Constitution of India is what would be the effect of work of laying transmission towers under provisions of the Indian Telegraph Act, 1885, (*for short, "Act of 1885"*), being carried out on the strength of a restraint order passed under Section 16(2) of the Act of 1885, which order is subsequently revoked as having been issued without jurisdiction?

3. The facts lie in a narrow compass. The 2<sup>nd</sup> respondent - Kharghar Vikhroli Transmission Ltd. (*"KVTL"*) is a licensee under Section 14 of the Electricity Act, 2003 (*for short, "Act of 2003"*) and is empowered to transmit electricity in terms of the Transmission License issued to it. KVTL was granted the work of setting up a 400 KV Receiving Station and laying of associated transmission towers for strengthening the Mumbai Transmission System. After obtaining all requisite permissions, including the leave of this Court, as required by paragraph 83(viii) of the directions issued in Public Interest Litigation No.87 of 2006 (*Bombay Environmental Action Group and Anr. Vs. The State of Maharashtra and Ors.*), KVTL commenced the said work. It was required to install forty-seven transmission towers, out of which seven towers were located on the lands leased in favour of the petitioner. An area to the extent of 1,250 sq.mtrs.

was to be affected by the five towers to be erected. There being an obstruction caused by the petitioner while undertaking the work of laying down the transmission towers, KVTL approached the office of the Resident Deputy Collector and Additional District Magistrate under Section 16 of the Act of 1885. On 3<sup>rd</sup> May 2023, the Resident Deputy Collector and Additional District Magistrate passed a prohibitive order against the petitioner restraining him from causing any obstruction when the aforesaid work was to be undertaken. An opportunity was granted to the petitioner to put-forth his say on 17<sup>th</sup> May 2023. This order is the subject matter of challenge in the present writ petition that was filed on 9<sup>th</sup> May 2023.

4. The learned counsel for the parties were heard on the issue of grant of interim relief. This Court by its interim order dated 4<sup>th</sup> July 2023 observed that it was necessary for the District Magistrate while passing an order under Section 16(1) of the Act of 1885 to hear such person likely to be affected by that order. Thus, while refusing to restrain KVTL from undertaking the work in question on the ground that the work that was being carried out was in public interest and that the same was likely to affect only 1,250 sq.mtrs. of the lands claimed by the petitioner, an opportunity of hearing the petitioner under Section 16(1) of the Act of 1885 came to be granted.

5. Pursuant to the interim order dated 4<sup>th</sup> July 2023, the Collector and District Magistrate, Mumbai Suburban District heard the petitioner in the light of his contention that the Resident Deputy Collector and Additional District Magistrate had no jurisdiction to pass the order dated 3<sup>rd</sup> May 2023. The Collector and District Magistrate passed an order on 26<sup>th</sup> June 2023 holding that the Resident Deputy Collector and Additional District Magistrate had no jurisdiction to pass the said order on 3<sup>rd</sup> May 2023. Hence, the order dated 3<sup>rd</sup> May 2023 came to be revoked by the Collector and District Magistrate. This fact has been brought on record by the petitioner in his affidavit-in-rejoinder.

6. Mr. Shyam Mehta, learned Senior Advocate for the petitioner submitted that the entire premise on the basis of which KVTL carried out the work of laying down the transmission towers on the lands in which the petitioner had interest was without any authority of law. The petitioner was restrained by the order passed under Section 16(2) of the Act of 1885 from causing any obstruction. The prohibitive order dated 3<sup>rd</sup> May 2023 passed by the Resident Deputy Collector and Additional District Magistrate was the basis on which the work of laying the transmission towers was carried out. In view of the order dated 26<sup>th</sup> June 2023 passed by the Collector and District Magistrate, Mumbai Suburban District, it was clear

that the Resident Deputy Collector and Additional District Magistrate had no authority whatsoever to pass the prohibitive order on 3<sup>rd</sup> May 2023. Thus, on the strength of an order passed without jurisdiction, the petitioner was restrained from objecting to the work undertaken by the KVTL on his lands. It was thus clear that when the work of laying the transmission towers was carried out, KVTL had no authorization in law to do so. The petitioner was within his rights in obstructing the carrying out of the work of laying the transmission towers under Section 16 of the Act of 1885. This position was also recognized in paragraphs 15 and 16 of the interim order dated 4<sup>th</sup> July 2023 passed in the present proceedings. Reference was made to the interim order dated 16<sup>th</sup> December 2020 in Writ Petition (Lodging) No.3523 of 2020 (*The Union of India Vs. State of Maharashtra and Ors.*) with connected writ petitions. It was thus submitted that though the transmission towers had now been erected, this was done by restraining the petitioner from causing any obstruction on the strength of an order that was clearly without jurisdiction. It was thus urged that this Court may grant appropriate relief to the petitioner under Article 226 of the Constitution of India.

7. On the other hand, Mr. Venkatesh Dhond, learned Senior Advocate for KVTL opposed the prayers made in the writ petition. He submitted that as a licensee, KVTL was empowered under the Act of 2003 to lay down the

transmission towers. On valid permissions being granted to carry out that work, KVTL was entitled to do so without any obstruction by an occupier. Though it was a fact that KVTL had approached the Authority under Section 16 of the Act of 1885, it subsequently transpired that the said Authority that had passed the order on 3<sup>rd</sup> May 2023 had in fact no jurisdiction but that jurisdiction was with the Commissioner of Police. Since the work of laying down the transmission line had been carried out after obtaining due permissions, no relief whatsoever could be granted to the petitioner. It was not necessary for a licensee to obtain consent of an occupier and what was necessary was merely furnishing of the information that such work was intended to be carried out. After doing so, the work had been carried out and the same was now complete. Since no interim relief was granted to the petitioner on 4<sup>th</sup> July 2023, it could not be said that the said work had been illegally carried out by the KVTL. Larger public interest being involved, there would be no justification in directing the clock to be put back in these circumstances. It was thus submitted that no relief whatsoever could be granted to the petitioner.

8. Mr. Shriram Redij, learned counsel appearing for the 1<sup>st</sup> respondent pointed out that the petitioner was in possession of the aforesaid lands as a lessee pursuant to an agreement dated 15<sup>th</sup> October 1917. The lease granted was for a duration of ninety-nine years and on determination of

the lease, the petitioner's occupation was unauthorized. Though renewal of said lease was sought, the same had not yet been granted. Since only a small number of towers had been erected on the land of the petitioner, which work was also completed, no relief whatsoever could be granted to the petitioner.

9. We have heard the learned counsel for the parties at length and with their assistance, we have perused the documents on record. We have given due consideration to their respective submissions. It may be noted that though the petitioner has prayed for quashing the license dated 16<sup>th</sup> August 2022 granted by the 1<sup>st</sup> respondent to KVTL, this prayer was not urged before us. The grievance raised on behalf of the petitioner is to the consequence of being restrained from causing any obstruction to the laying of transmission towers by the order dated 3<sup>rd</sup> May 2023 passed by the Resident Deputy Collector and Additional District Magistrate, which order has been subsequently withdrawn on the ground that the said Authority had no jurisdiction to pass the same. Prior to the said order being withdrawn on 26<sup>th</sup> June 2023, the work of laying the transmission towers was carried out by KVTL. Thus, according to the petitioner, on the basis of an order that was without jurisdiction, the petitioner was precluded from objecting to the work being undertaken by KVTL on his land as a result of which the said work was completed.

10. In *Vivek Brajendra Singh Vs. State Government of Maharashtra and Ors.*, 2012(4) *Mh.L.J.* 625, the Division Bench has while considering the challenge to the vires of Section 10 of the Act of 1885 held that from the scheme of Sections 10 and 16 of the Act of 1885, a hearing is not contemplated before an electric line is placed in any immovable property. However, hearing is contemplated if there is obstruction or resistance to such placing. In other words, it was held that no hearing was contemplated under Section 10 and a limited hearing was contemplated under Section 16 of the Act of 1885.

. The order dated 3<sup>rd</sup> May 2023 though restrained the petitioner from causing any obstruction to KVTL, it also informed the petitioner of an opportunity of being heard on 17<sup>th</sup> May 2023. Thus, the limited hearing as contemplated by Section 16 was offered to the petitioner. Though the requirement of Section 16 of the Act of 1885 was satisfied, the order was passed by an authority that had no jurisdiction to pass the same.

11. It is true that by the order dated 3<sup>rd</sup> May 2023 passed by the Resident Deputy Collector and Additional District Magistrate, the petitioner was directed not to obstruct the work of laying the transmission towers. Being aggrieved by this order, the petitioner has challenged the

same in the present writ petition. The petitioner's prayer for grant of interim relief was considered on 4<sup>th</sup> July 2023 and it was held that passing a restraint order so as to stop the activity of laying the transmission towers would be against public interest. Instead, the petitioner was granted an opportunity of being heard by the Competent Authority. It is in that backdrop that the Collector and District Magistrate found on 26<sup>th</sup> June 2023 that the order dated 3<sup>rd</sup> May 2023 had been passed by the Resident Deputy Collector and Additional District Magistrate without having any authority in that regard. In the interregnum, KVTL completed the said work. Thus, in effect, the petitioner was restrained by the order dated 3<sup>rd</sup> May 2023 from causing any obstruction to the work being undertaken by KVTL and that order came to be withdrawn on 26<sup>th</sup> June 2023 after finding that it was passed by an authority that had no jurisdiction to issue such directions. It is however to be noted that after the order dated 26<sup>th</sup> June 2023 was passed, the writ petition has not been amended to seek any consequential relief based on that order.

12. Ordinarily, on the offending order being found to be one without jurisdiction, the party suffering that order would be entitled to be put back in the position it was prior to passing of such order. However, this cannot be an absolute proposition. The factual situation would be required to be kept in mind before considering the prayer for being restored to the earlier

position. In a given case, if larger public interest militates against grant of such direction and the aggrieved party can seek compensation or damages in monetary form, such direction need not be issued.

. The work of laying the transmission towers has been found to be in public interest especially since the same was permitted to be carried out after seeking leave of this Court in terms of the directions issued in *Bombay Environmental Action Group (supra)*. Considering the nature of the work undertaken, we do not feel that it would be in public interest to direct the said transmission towers to be now removed so as to restore the petitioner's lands to their original position. In our view, the only relief that can be granted to the petitioner is a liberty to approach the Civil Court with a prayer to seek damages / compensation on the premise that the work of laying the transmission towers had been carried out by restraining the petitioner on the strength of the order dated 3<sup>rd</sup> May 2023 that has been subsequently found to have been passed without jurisdiction. We may note that under Section 10(d) of the Act of 1885, the petitioner is entitled to compensation for any damage sustained to his land during the exercise of powers conferred by Section 10 of the Act of 1885 by KVTL. Further, an opportunity to contest the sufficiency of compensation paid under Section 10(d) is also available under Section 16(3) of the Act of 1885. The liberty now being granted to the petitioner would be over and

above the statutory right to compensation to which he is entitled. It is thus open for the petitioner to agitate his rights in that regard before the Civil Court, if so advised. The rights, if agitated, would be subject to due adjudication in accordance with law. In these facts therefore we do not find that the interim order dated 16<sup>th</sup> December 2020 in *Union of India (supra)* can take the case of the petitioner any further.

13. For aforesaid reasons, the question framed is answered by stating that in view of larger public interest, we do not find that any relief can be granted to the petitioner in this writ petition except the liberty to claim damages / compensation against KVTL in accordance with law. Keeping that aspect open, Rule is disposed of in aforesaid terms, leaving the parties to bear their own costs.

[ JITENDRA JAIN, J. ]

[ A.S. CHANDURKAR, J. ]