

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

Writ Petition (M/S) No. 1675 of 2024

Power Grid Corporation of India Ltd.

... Petitioner

Versus

Dharmendra Kumar & Another ... Respondents

With

Writ Petition (M/S) No. 1676 of 2024

Writ Petition (M/S) No. 1677 of 2024

Writ Petition (M/S) No. 1678 of 2024

Writ Petition (M/S) No. 1679 of 2024

Writ Petition (M/S) No. 1680 of 2024

Writ Petition (M/S) No. 1681 of 2024

Writ Petition (M/S) No. 1682 of 2024

Writ Petition (M/S) No. 1683 of 2024

Writ Petition (M/S) No. 1684 of 2024

Writ Petition (M/S) No. 1685 of 2024

Writ Petition (M/S) No. 1687 of 2024

Writ Petition (M/S) No. 1690 of 2024

Writ Petition (M/S) No. 1692 of 2024

Writ Petition (M/S) No. 1694 of 2024

Writ Petition (M/S) No. 1695 of 2024

Writ Petition (M/S) No. 1699 of 2024

Writ Petition (M/S) No. 1700 of 2024

Writ Petition (M/S) No. 1703 of 2024

Writ Petition (M/S) No. 1704 of 2024

Writ Petition (M/S) No. 1705 of 2024

Dr. Kartikey Hari Gupta, Advocate, with
Ms. Pallavi Bahuguna, Ms. Zeba Irum and Mr.
Rafat Munir Ali, Advocates for the petitioners.

Mr. K.K. Sah, Additional CSC, Mr. Anil
Dabral, Additional CSC and Mr. Devesh Ghildiyal,
Brief Holder, for the State.

Mr. Bharat Singh, Advocate, for the
private respondent no. 1.

J U D G M E N T

Hon'ble Manoj Kumar Tiwari, J.

Since common questions of law
and fact are involved in this batch of writ
petitions, filed by Power Grid Corporation of

India Ltd., therefore, these are being heard and decided together. However, for brevity, facts of WPMS No. 1675 of 2024 alone are being considered and discussed, which has been filed seeking the following substantive relief:

“(i) Issue a Writ, Order or Direction in the nature of Certiorari calling for records and quash/set-aside ex-parte Order dated 13.12.2022 (Annexure No. 1) passed by respondent no. 2/District Magistrate.

(ii) Issue a Writ, Order or Direction in the nature of Certiorari calling for records and quash/set-aside ex-parte Order dated 17.10.2023 (Annexure No. 8) passed by respondent no. 2/District Magistrate.”

2. The impugned order dated 13.12.2022, passed by the District Magistrate, Haridwar, is on record as Annexure-1 to the writ petition. By the said order, application filed by private respondents for enhancement of compensation was allowed and the petitioner was directed to pay compensation as per the guidelines issued by Ministry of Power, Government of India (wrongly mentioned as Ministry of Labour in the said order) on 15.10.2015. The said order has been challenged by the petitioner on the ground that Section 16(3) of the Indian Telegraph Act, 1885 enables the District Judge to determine compensation, whenever a dispute is raised by the land owner regarding sufficiency of compensation paid under Section 10(d) of the said Act, therefore, the order passed by the District Magistrate, by invoking power under

Section 16(3) of the said Act, is without jurisdiction.

3. Learned Counsel for the petitioner submits that Power Grid Corporation of India Ltd. has been notified as Telegraph Authority under Part III of Indian Telegraph Act, 1885. He relies on a notification, issued by the Ministry of Power, Government of India on 24.12.2003, which has been issued in exercise of power under Section 164 of the Electricity Act, 2003 and the same is on record as Annexure-2 to the writ petition.

4. It is not in dispute that High Tension Electricity Transmission Towers and Electricity Lines have been erected over the agricultural field of respondent no. 1. According to petitioner, compensation payable to the land owner was determined, as provided under Section 10(d) of the Indian Telegraph Act, 1885, which was paid to the land owners. However, the land owners, feeling dissatisfied with the amount paid as compensation, approached the District Magistrate, who had no jurisdiction to entertain an application for enhancement of compensation. He relies upon the provision contained in Section 16 of the Indian Telegraph Act, 1885, which is extracted below:

“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 sub section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for this being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code (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.”

5. By referring to sub-section (3) to Section 16, learned Counsel for the petitioner submits that the District Judge alone has the power to take decision regarding sufficiency or otherwise of the compensation determined under Section 10(d) of the said Act, therefore, District Magistrate could not have exercised that statutory power, which is available to the District Judge alone.

6. Learned Counsel for the respondent no. 1 contended that in the earlier writ petition, filed by his clients, a coordinate Bench of this Court had relegated the private respondents to the District Magistrate to reconsider the issue of compensation. He thus submits that the District Magistrate was well within his power to take decision on petitioner's application.

7. Learned Counsel for the petitioner, however, relies upon a judgment rendered by Hon'ble Supreme Court in the case of *Power Grid Corporation of India Ltd v. Century Textiles and Industries Ltd. & Others*, reported as (2017) 5 SCC 143, in which, while deciding a similar controversy, it was held that District Magistrate/District Collector has no jurisdiction to entertain an

application under Section 16(d) of the Indian Telegraph Act, 1885. Para 27, 28 and 29 of the said judgment are extracted below:

***“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, such an 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 may be 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.*

***29.** This appeal is filed by Power Grid in the case of Ram Naresh Singh. In this case, transmission lines are in District Sasaram in the State of Bihar. The complete work for laying down the transmission lines where 524 overhead towers have been erected by the Power Grid. Out of these, only 1 tower is*

located at the land belonging to Ram Naresh Singh. The dispute raised is with regard to quantum of compensation and as per the provisions of Section 16 of the Telegraph Act, 1885, it is to be settled by the District Judge. Thus, for all the reasons [Set out in paras 1 to 28, above.] given above in the case of Century Textiles & Industries Limited, this appeal of the Power Grid stands allowed and the judgment [Power Grid Corpn. of India Ltd. v. Ram Naresh Singh, 2011 SCC OnLine Pat 603 : AIR 2011 Pat 83] of the High Court is set aside."

8. The powers available to District Judge under Section 16(3) of the Indian Telegraph Act, 1885 are akin to appellate powers. It is settled position in law that appeal is creature of statute and appellate powers cannot be exercised by an authority unless the same are conferred expressly. Merely because coordinate Bench relegated the matter to the District Magistrate will not confer any jurisdiction to District Magistrate to entertain an application, filed under Section 16(3) of the Indian Telegraph Act, 1885.

9. In such view of the matter, the impugned order dated 13.12.2022 cannot be sustained. Accordingly, the same is set aside. The matter is remanded to District Judge, Haridwar, who shall decide the dispute regarding compensation by exercising power under Section 16(3) of the Indian Telegraph Act, 1885. This Court

hopes and expects that the District Judge shall take decision in the matter within four months.

(Manoj Kumar Tiwari, J.)
30.7.2024

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