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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 02nd JULY, 2024

IN THE MATTER OF:

+ **W.P.(C) 6501/2024 & CM APPL. 27098/2024**

J.C. FLOWERS ASSET RECONSTRUCTIONS PVT. LTD.

..... Petitioner

Through: Mr. Abhinav Vasisht, Senior Advocate with Mr. Chitranshul A Sinha, Ms. Akshita Sachdeva Jaitly, Ms. Pallavi, Ms. Arya Shrivastava, Advocates

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Apoorv Kurup, CGSC with Mr. Prashant Rawat, G.P., Mr. Gurjas Singh Narula, Advocate.
Mr. Jayant Mehta, Senior Advocate with Mr. Sanyat Lodha, Mr. Lavam Tyagi, Mr. Rajat Sinha, Advocates.
Mr. Apurv Tyagi, Legal Counsel for Power Grid

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner, an asset reconstruction company, has approached this Court for a direction to Respondent No.2 for changing the alignment/path and position of the electrical pole and high tension transmission line which is being built over the land pertaining to Khasra Nos.7/16 min (2-8) south side and 8/20/1 min (0-7) south side and other Khasras in the revenue estate of Village Khampur, New Delhi-110036 (*hereinafter referred to as "Subject*



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Property”).

2. The facts in brief indicate that Yes Bank Limited had extended credit facilities to five entities of one Presidium Group. Since the borrowers failed to make payments as demanded by Yes Bank, proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 were initiated. Physical possession of the land which had been mortgaged to Yes Bank was taken under Section 13(4) of the SARFAESI Act, 2002. Yes Bank *vide* an Assignment Agreement dated 16.12.2022 has assigned the debt to the Petitioner which as stated earlier is an asset reconstruction company. The Petitioner under the Agreement is in possession of the Subject Property and is trying to enforce its security interest to recover the outstanding amount due and payable against the Subject Property. The Respondent No.2/Power Grid Corporation of India (PGCI) is executing a 2x400KV D/C Maharani Bagh - Narela Line which forms part of the transmission scheme "Transmission system strengthening scheme for evacuation of power from solar energy zones in Rajasthan (8.1 GW) under phase-II G1 (Maharanibagh / Gopalpur - Narela 765/400 KV substation 400 KV interconnection)". The transmission scheme was approved on 23.01.2020 and high tension lines are being drawn.

3. It is the case of the Petitioner that if the transmission lines are drawn over the subject property which is in possession of the Petitioner, the value which the subject property could yield in an auction will be diminished which will be detrimental to the Petitioner. It is the case of the Petitioner that the alignment can be changed in order to minimize the damage that can be caused to the Petitioner. It is stated that the subject property which now



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stands mortgaged is intended to be used as a motel and the base of one of the transmission towers is proposed to be constructed in such a way that will make the subject property virtually not fit for being used as a motel. The Petitioner has tried to demonstrate that the tower site which is marked as AP-13 in the map is situated on the land which is in possession of the Petitioner and this particular tower deviates from the straight path between AP-12 and AP-14 which is the preceding and succeeding tower base. It is the case of the Petitioner that as depicted in the GSDL revenue map, the electric lines are not connected directly from point AP-14 to AP-12, instead a point AP-13 which is not forming a straight line and is of a longer distance, has been used. It is the case of the Petitioner that the same may have been done under undue influence of land-owners of the land with lines directly between AP-14 and AP-12. The alignment of the transmission line appears to have been changed and a longer route has been chosen despite availability of a straight route for erecting transmission poles.

4. It is further stated that the Petitioner which is in possession of the subject property since 16.12.2022 has not been put to any notice at all. It is also stated that Yes Bank came in the possession of the subject property in the year 2020 and they have also not been put to any notice regarding the laying of the transmission lines. It is the case of the Petitioner that the procedure that has been adopted by Respondent No.2 to raise the transmission lines is in violation of the Works of Licensees Rules, 2006 which has been brought in exercise of the powers conferred under Section 176(2)(e) read with Section 67(2) of the Electricity Act, 2003.

5. *Per contra*, it is the case of Respondent No.2/PGCI is that the



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alignment has been decided after giving a public notice on 18.07.2022 inviting objections from the public in the official Gazette of India and in the Indian Express and Dainik Bhaskar . It is stated that no representation was received to the public notice. It is the case of Respondent No.2/PGCI that the transmission line has to be laid down in a time bound manner. It is also stated that the alignment of the transmission lines are decided by technical experts and therefore, they cannot be deviated and diverted to satisfy all the land owners over whose land the transmission lines are being drawn.

6. Heard learned Counsel appearing for the Parties and perused the material on record.

7. Section 164 of the Electricity Act, 2003 provides that the Appropriate Government may, by order in writing, for the placing of electric lines for the transmission of electricity confer upon any officer, licensee or any other person engaged in the business of supplying electricity under this Act any of the powers which the telegraph authority possesses under the Telegraph Act with respect to the placing of telegraph lines. Section 164 of the Electricity Act, 2003 reads as under:

“164. Exercise of powers of Telegraph Authority in certain cases.—The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraph



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authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained.”

8. The Works of Licensees Rules, 2006 which has been framed in exercise of the powers conferred under the Electricity Act, 2003 provides for procedure for licensees to carryout works. It is undisputed that the Respondent No.2/PGCI is a licensee under the Electricity Act. Rules 3, 10 and 16 of the Works of Licensees Rules, 2006, which are relevant, read as under:

3. Licensee to carry out works.-(1) A licensee may-

(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;

(b)fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of any overhead line on any building or land or having been so fixed, may alter such support:

Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government in this behalf, for carrying out the works:

Provided further that if at any time, the owner or occupier of any building or land on which any works



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have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorised may by order in writing direct for any such works, support, stay or strut to be removed or altered

(2) When making an order under sub-rule (1), the District Magistrate or the Commissioner of Police or the officer so authorised, as the case may be, shall fix, after considering the representations of the concerned persons, if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(3) Every order made by a District Magistrate or a Commissioner of Police or an authorised officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.

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

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10. Avoidance of public nuisance, environmental damage and unnecessary damage to the public and private property by such works.-The licensee shall, while carrying out works, ensure that such works do not cause public nuisance, environmental damage and unnecessary damage to the public or private property.

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16. Service of notice etc.-Whenever a notice or intimation is required to be served upon a person under these rules, the procedure provided under section 171 of the Act and rules made thereunder shall be followed.

9. The Petitioner seeks to challenge the alignment of the transmission



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lines on the ground that the transmission lines do not lie in one straight line and the transmission lines which pass through the subject property will diminish the value of the subject property

10. The Apex Court in Power Grid Corpn. of India Ltd. v. Century Textiles & Industries Ltd., (2017) 5 SCC 143, while dealing with an issue regarding change of alignment of transmission lines, has observed as under:

“21. It is not in dispute that in exercise of powers under the aforesaid provision, the appropriate Government has conferred the powers of telegraph authority vide Notification dated 24-12-2003 exercisable under the Telegraph Act, 1885 upon the Power Grid. It may also be mentioned that a Central transmission utility (CTU) is a deemed licensee under the second proviso to Section 14 of the Electricity Act, 2003. Power Grid is a Central transmission utility and is, therefore, a deemed licensee under the Electricity Act, 2003. This coupled with the fact that Power Grid is treated as authority under the Telegraph Act, 1885, it acquires all such powers which are vested in a telegraph authority under the provisions of the Telegraph Act, 1885 including power to eliminate any obstruction in the laying down of power transmission lines. As per the provisions of the Telegraph Act, 1885, unobstructed access to lay down telegraph and/or electricity transmission lines is an imperative in the larger public interest. Electrification of villages all over the country and availability of telegraph lines are the most essential requirements for growth and development of any country, economy and the well-being/progress of the citizens. The legislature has not permitted any kind of impediment/obstruction in achieving this objective and through the scheme of the Telegraph Act, 1885 empowering the licensee to lay telegraph lines, applied the same, as it is, for laying down the electricity transmission lines.

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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.

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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



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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 is 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 jack hammer/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.

11. The second contention of the Petitioner is that the laying down of the proposed transmission lines is contrary to the Works of Licensees Rules, 2006. It is the contention of the Petitioner that the no notice has been served on the owner or occupier of the subject property and since no notice has been served on the Petitioner which is in the possession of the subject property or to the Yes Bank which had taken possession of the subject property in the year 2010 by exercising its powers under Section 13(4) of the SARFAESI Act, 2002, the transmission lines cannot be permitted to be laid down in accordance with the proposed alignment.

12. The Apex Court in Century Rayon Limited vs. IVP Limited and



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Others, (2021) 20 SCC 758 has held that as per the provisions of the Telegraph Act, 1885, unobstructed access to lay down telegraph and/or electricity transmission lines is an imperative in the larger public interest and that the powers conferred under Section 164 of the Electricity Act, 2003 would overrule any right over any procedure that laid down under Rule 3 of the Works of Licensees Rules, 2006.

13. In any event, material on record as placed by Respondent No.2/PGCI shows that the general public was informed about the proposed route of transmission lines by bringing out advertisements in the Indian Express and Dainik Bhaskar inviting objections from the general public. Neither the Petitioner nor the owner nor the Yes Bank from whom the debts were assigned to the Petitioner had raised any objections to the public notice.

14. It has been stated by the learned Counsel for the Respondents that the alignment for the transmission line was approved by the Competent Authority on 20.06.2022 after conducting Techno-Economic Feasibility Study. As rightly contended by the learned Counsel for the Respondents that the alignments are decided by experts in the field and, therefore, this Court cannot sit over the decision taken by the experts as an Appellate Authority.

15. In view of the settled law as per the Electricity Act and Telegraph Act that unobstructed access to lay down electricity transmission lines is an imperative in the larger public interest and also in view of the fact that notices have been issued by the Respondent No.2/PGCI inviting objections from the public, this Court is not inclined to pass any directions as prayed for in the writ petition.

16. Resultantly, the writ petition is dismissed, along with pending



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application(s), if any.

JULY 02, 2024

S. Zakir

SUBRAMONIUM PRASAD, J