

P.Srinivasan Vs. the Senior Engineer

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Court : Chennai

Decided On : Jun-25-2014

Judge : C.S.Karnan

Appellant : P.Srinivasan

Respondent : The Senior Engineer

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

25. 06.2014 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN
W.P.No.10781 of 2014 & M.P.Nos.1 and 2 of 2014 1.P.Srinivasan 2.P.Ravi
3.P.Indira 4.P.Ellammal 5.P.Jaya 6.P.Saraswathi 7.Babu ... Petitioners Vs. 1.The
Senior Engineer, Tamil Nadu Transmission Corporation Ltd., Transmission Wing,
Salem, Salem District. 2.The Superintendent Engineer, General Construction
Circle, Tamil Nadu Transmission Corporation Ltd., (Transmission Wing), Salem,
Salem District. 3.The Executive Engineer, Tamil Nadu Transmission Corporation
Ltd., Transmission Wing (Tower Line Construction), Vengalapuram, Tiruppattur,
Vellore District. 4.The Assistant Executive Engineer, Tamil Nadu Transmission
Corporation Ltd., Transmission Wing (Tower Line Construction), Bhramapuram,
Katpadi, Vellore District. ... Respondents PRAYER: Writ Petition filed under Article
226 of the Constitution of India for a Writ of Mandamus, direction or order,
forbearing the respondents, their men, agents and subordinates from and in any
manner erecting and drawing Electricity High Tension Tower or High Tension

Lines in and across / above the agricultural lands of the petitioners, situate at Chinnavarikkam Village, Ambur Taluk, Vellore District, bearing Patta No.104, comprised in Survey No.14/1A, measuring extent of 0.07.0 hectares (0.18 acre), Survey No.14/1B, measuring extent of 1.11.0 hectares (2.74 acres) and Survey No.14/2, measuring extent of 0.48.0 hectares (1.18 acres), totaling 1.66.0 hectares (4.10 acres) without following the due process of law. For Petitioners : Mr.R.Munuswamy For Respondents : Mr.P.H.Aravind Pandian Additional Advocate General Assisted by Mr.Varun Kumar - - -

ORDER

The short facts of the case are as follows:- The writ petitioners are the absolute joint owners of an agricultural land, situated at Chinnavarikkam Village, Ambur Taluk, Vellore District, bearing Patta No.104, comprised in Survey No.14/1A, measuring extent of 0.07.0 hectares i.e., 0.18 acre, Survey No.14/1B, measuring extent of 1.11.0 hectares i.e., 2.74 acres and Survey No.14/2, measuring extent of 0.48.0 hectares i.e., 1.18 acres, totaling 1.66.0 hectares (4.10 acres), having acquired the same from their deceased father Pandari Chetty. The seventh petitioner, viz., Babu, S/o.Munisamy is only having right, share and interest in the well situated in the said lands as per the family arrangement. The petitioners 1 to 6 are in joint possession and enjoyment of the said agricultural lands and are cultivating the same as of now. The petitioners have been taking water from the said well for irrigation in their lands. The petitioners are agriculturists and it is the only avocation known to them to lead their life. Moreover, agriculture is the only source of income of their family. There are well grown coconut trees and they have also cultivated maize as internal in the lands, which are yielding now. Except the said lands, the petitioners do not have any other land for cultivation. While so, during the first week of March, some persons attached to the respondents Department have attempted to erect a High Tension Electricity Tower Line in their lands and they further informed them that they will draw the line across / above their lands, thereby cutting all the trees under the line. Further, the respondents are entering into their lands and erecting tower without any prior notice to them.

2. The writ petitioners additionally added that immediately they objected for erection of High Tension Electricity Tower in their lands, without any notice to them. Upon their objections, the above said employees informed them that they are carrying out the work at the instructions and instance of their higher officials, viz., the respondents herein and they were advised to approach the respondents and to get necessary relief from their agricultural lands being subjected for Erection of High Tension Electricity Tower and also from drawing High Tension Electricity lines. Thereafter, the petitioners went to the office of the third and fourth respondents to explain and ventilate their grievances and also about their poor economic status, that apart to request them to erect and draw lines in the Government lands, which are situated just adjacent to their lands, that in that event, it would not cause any loss or damage to any public. However, the respondents have failed to give them an opportunity to meet them in person and they returned with great disappointment.

3. The petitioners sent a detailed representation dated 24.03.2014 to the respondents putting forth their grievances and also requested them to stop the erection and drawing of the Tower line in their lands and also requested them to do the same in the adjacent Government lands. The petitioners categorically informed the respondents that they have not issued any notice to them before commencing the erection of High Tension Electricity Tower and Line through their lands as the drawing of line causes permanent damage to their cultivation. The respondents 1 and 4 have deliberately evaded the service of notice and postal covers were returned. However, the notice sent to the respondents 2 and 3 were received by them. Having received the notice and having come to know about their objections, the respondents have not considered their representations till date for the reasons best known to them. Further, there are sufficient Government lands available just adjacent to their lands and the respondents can very well erect the electricity tower and draw the High Tension Lines in the Government lands, without causing any trouble or damage to them and others from cultivating the lands. The petitioners further submit that once the respondents erect the tower and draw the line, then they cannot use the land under the tower and line for cultivation or any other purpose and it would cause permanent loss to them, that apart, the drawing of line across land will reduce or diminish the utility and value of

the land. Though there is alternative lands available for the respondents to draw the line just adjacent to their lands, the respondents, even without considering the above aspect and without taking into consideration the loss caused to them, have unilaterally decided to erect the electricity tower and High Tension Line across their lands, without any notice to them, in order to defeat their right and interest over the said lands. The respondents ought to have issued notice to the land owners before commencing the erection work in the private agricultural lands, as they are causing permanent damage to their agricultural lands and thereby causing permanent loss to them and also to their income by demolishing their well grown coconut trees and maize, which are valuable and they are the only income to lead their day to day life. Unfortunately, the respondents, by their high-handedness refused to hear them and also threatened them that they would take criminal action if they prevented them from carrying on their work in their lands, which is highly prejudicial.

4. Even though the work or project of the respondents is for public purpose, but under the guise of which, the respondents cannot take away their fundamental right to own and have lands and the respondents cannot be allowed to take the laws into their hands so as to trespass into the private properties of the petitioners and thereby trying to cause huge loss and damage to them by depriving them of their property. There are procedures contemplated in the Electricity Act and Rules thereunder, but the respondents should not be allowed to flout such procedures, especially, when they are dealing with small and poor agriculturists. Since the respondents have refused to receive their objections, they had immediately sent a representation to them requesting them to stop the proposed work and also requested them to consider their objections before proceeding with the erection of Electricity Tower Line work. Having received their representation and objection, the respondents failed and neglected to consider the same.

5. In spite of their above said reasonable objections, the respondents are still trying to proceed according to their plan, which is totally against their right and interest and is also in violation of principles of natural justice. The petitioners further submit that their entire family is depending upon agricultural activities for their day to day livelihood and therefore, the interest of the petitioners will certainly

outweigh the claim of the respondents. The respondents cannot even claim that the project is for the benefit of the public at large. Moreover, if there is no alternative site passage or place for erection of electricity high tension tower for drawing high tension lines available, then only the respondents can justify their action. On the contrary, there is a convenient and sufficient space and Government lands are available just adjacent to their lands and that will not cause any hindrance to anyone including the public in general, but the respondents to lessen their exercise, are trying to draw their lines across fertile agricultural lands. If the respondents continue to do the same across their lands, it would cause irreparable loss and damage and also greatly prejudice their basic and fundamental rights to own and have a property and also in complete violation of natural justice.

6. The fourth respondent has filed a counter statement stating that by virtue of the provisions contained in Section 164 and Section 185(2)(a) of the Electricity Act 2003, the Board shall have the powers of the Telegraphic Authority under the Telegraphic Act, 1885 (Central Act XIII of 1885) with regard to laying of the telegraphic lines and erecting poles. As such the Board, the transmission licensee, is not bound to give prior notices to the land owners before drawing overhead lines or erecting towers for transmission of electricity. He further submits that the Scheme was approved vide B.P.No.8, dated 04.02.2013 and published in both Tamil and English in Indian Express and Dinamani dated 27.03.2013 for wide publicity. He further submits that before the scheme is sanctioned by the Full Board, TANTRANSCO (TNEB) have scrutinized the data collected during the survey regarding environmental considerations, road crossing and river crossing and the inhabitants. Further, while conducting the surveys mentioned above, special cares were taken to avoid routing the transmission lines through reserve or protected forests, villages, bulk storage oil tank, oil pipeline, airports, cluster of hamlets to avoid or to minimize the damages.

7. The fourth respondent further submits that any notice need not be given to land owner before laying extra high tension (EHT) line on their land. The line could not be deviated due to technical feasibility, the work is carried out as per the approved route, and as per the Rules. He further submits that the TANTRANSCO (TNEB) is

now facing much more problems to provide the electricity power supply to the public due to the scarcity of electric power and the demand raising day to day development activities. Considering the present scarcity of Electric Power Supply and future development activities, the TANTRANSCO (TNEB) has planned to establish the new 400 KV sub stations along with the associated lines. Out of which, one of the 400 KV EHT line of Dharmapuri 400 KV sub station to Thiruvalam 400 KV sub station is being erected by the TANTRANSCO (TNEB).

8. The fourth respondent further submits that the new 400 KV line of Dharmapuri to Thiruvalam 400 KV sub station is very much essential to transmit the electric power from Northern states of India to Tamilnadu and also wind power from Southern region of Tamilnadu. So, this line is very much essentially required to facilitate the uninterrupted electric power supply to the public. He further submits that the TANTRANSCO (TNEB) has proposed to erect the EHT lines most probable in agricultural lands because the TANTRANSCO (TNEB) is not acquiring any lands but for making only use of it for laying tower foundation and drawing the line over the lands as per Section 164 of the Tamil Nadu Electricity Act 2003, the exercise of power of Telegraph authority in certain cases. He further submits that the compensation will be paid for actual damages caused during the execution of work according to the provision of Act for crops and trees whenever trees are required to be cut and removed from the line to have the adequate vertical and horizontal clearance for having safety of livelihood. No compensation for the land is offered by the TANTRANSCO.

9. The fourth respondent further submits that the agriculturists can cultivate any crops like paddy, sugarcane, turmeric, banana, high breed variety of mango trees etc., so there is no restriction for cultivation of crops and also the compensation will be paid when the live trees are removed at the time of execution. He further submits that recently there is a judgment delivered by this Court in W.P.No.18367 of 2009, dated 29.10.2009, wherein, it is clearly ordered vide para 13 as follows:-
".a. No notice is necessary to the land owner before laying High Tension Line in their land. b. The permission of the land owner for laying High Tension wire over the above land of the petitioner is not necessary under Section 10 and Section 16 of the Indian Telegraph Act, 1885. c. Such permission is required only in the case

of the land owned by the local authority.". The fourth respondent further submits that the above work was commenced on 20.11.2013 and the same is under progress. As on date about 70% works have been completed and the TANTRANSCO has invested Crores of rupees 450 crores out of 700 crores in this project. He further submits that if the line is delayed the TANTRANSCO (TNEB) will be put into irreparable loss and will cause much hardships to general public and TANTRANSCO (TNEB).

10. The highly competent counsel, Mr.R.Munusamy appearing for the petitioners submits that all the seven writ petitioners are having an extent of 4.10 acres of lands and they are doing cultivation over the said lands. All the 7 families are depending upon their income derived from the lands for their livelihood. The families of all the petitioners are small agricultural families and now the respondents have erected High Tension Tower Line on the petitioners lands. Besides, the respondents are attempting to close the well which is situated in the said lands. Further, the activities of the respondents in erecting High Tension Tower and Line on the land amounts to trespass and is an illegal act and their occupation is an unlawful one even though it is for public purpose.

11. The highly competent counsel appearing for the petitioners further submits that without prior notice to the land owners and without conducting an enquiry, the respondents have forcibly acquired the petitioners' property for erecting High Tension Tower and Line over the said property and this act of theirs are violative of the fundamental rights of the petitioners. The respondents herein are State Government concerns and they are operating their big machinery against the poor agriculturist for acquiring their land unlawfully. The learned counsel in order to prove the occupation of the respondents of their lands, had produced photographs of the said lands. Further, the petitioners have raised a number of coconut trees over the said land and also raising dry crops, viz, maize (cholan). Hence, the very competent counsel entreats the Court to direct the respondents to remove the High Tension Tower Lines from their lands and prevent them from doing any other activities.

12. The very competent Additional Advocate General Mr.P.H.Aravind Pandian, submits that the respondents had erected a High Tension Electricity Tower Line on the petitioners' lands, for the welfare of the general public in large. As per the Indian Telegraphic Act, 1885 under Section 10, the respondents have ample power to enter into the immovable property for erecting High Tension Tower Line, for which, prior notice is absolutely not necessary. If the petitioners are aggrieved by the same, they are entitled to receive an adequate compensation from the respondents after making proper representations. Further, the erection work being undertaken in the petitioners' lands is at an incomplete stage and therefore, the respondents shall be permitted to carry out the unfinished work for the welfare of the general public, which is absolutely necessary. Further, the respondents have never made any attempt to close the petitioners' well. Hence, the highly Competent Additional Advocate General, Mr.P.H.Aravind Pandian, entreats the Court to dismiss the above writ petition as the petitioners' fundamental and personal rights had not been affected. Further, the question of trespass or illegal occupation does not arise in the instant case, since the Tower which is being erected is to serve the public.

13. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the affidavit of the petitioners and on scrutiny of typed-set of papers, this Court is of the view that the property on which the tower is being erected belongs to the petitioners. Further, the respondents have been erecting the High Tension Tower to and in the interest of the general public. However, the aggrieved petitioners are entitled to receive adequate compensation from the respondents after making necessary application. Hence, this Court directs the petitioners to file an application before the respondents for compensation and after receipt of the said application for compensation, the respondents shall assess the compensation after taking into consideration the damage caused to the crops and the extent of loss caused due to use of land for erection of the said tower. However, the respondents are at liberty to proceed further in completion of their project over the said land.

14. With the above observations, the writ petition is disposed of. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

25.06.2014 Index : Yes. Internet : Yes. r n s Note: Issue order copy on 04.07.2014.
C.S.KARNAN, J.

r n s To 1.The Senior Engineer, Tamil Nadu Transmission Corporation Ltd.,
Transmission Wing, Salem, Salem District. 2.The Superintendent Engineer,
General Construction Circle, Tamil Nadu Transmission Corporation Ltd.,
(Transmission Wing), Salem, Salem District. W.P.No.10781 of 2014 & M.P.Nos.1
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