

Harekrishna Talukdar Vs. The Assam Power Distribution Co. Ltd [Lar] and Others

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Court : Guwahati

Decided On : Jun-26-2014

Judge : The Honourable Chief Justice Mr. a.M. Sapre & Ujjal Bhuyan

Appeal No. : Writ Appeal No. 238 of 2014

Appellant : Harekrishna Talukdar

Respondent : The Assam Power Distribution Co. Ltd [Lar] and Others

Advocate for Pet/Ap. : Mr. P.K. Roy Choudhury

Judgement :

A.M. Sapre, CJ.

Heard Mr. P.K. Roy Choudhury, learned counsel for the appellant and Mr. B. D. Das, learned Standing Counsel, ASEB, appearing for the respondents.

This is an intra-court appeal under Rule 2(3) of Chapter VA of the Gauhati High Court Rules filed by the writ petitioner of WP(C) No.2695 of 2014 against the interim order dated 20.06.2014 passed by learned Single Judge.

By the impugned order, the learned Single Judge declined to consider the prayer made by the petitioner for grant of ad interim writ in the pending writ petition filed

by him and therefore feeling aggrieved by declining to grant him the prayer for an interim writ in relation to the subject matter of the writ petition, the writ petitioner has filed this appeal.

The case of the appellant (writ petitioner), in substance, is that he is the owner of a plot of land measuring 25 bighas covered by part of Dag No.4 to 11 corresponding to Patta No.F.S. Grant No.1 of village Panikheti under Beltola Mouza in the district of Kamrup and another plot of land measuring 25 bighas (14 Bighas covered by part of Dag No.278 to 286 and 11 Bighas covered by part of Dag No.288 to 295) corresponding to Patta No.F.S. Grant No.1 of village Panikheti under Beltola Mouza in the district of Kamrup, Assam. These two plots of land were purchased by the petitioner by two registered sale deeds dated 14.05.2011 and 15.05.2013 bearing Sale Deed Nos.4059/2011 and 3847/2013 respectively. The petitioner complains that respondent No.1 and 2 in execution of a scheme, by name Rajib Gandhi Vidyutikaran Yojana for supply of electricity to the villagers of the said village, are laying overhead lines over his land. He has complained that to install the overhead lines, the respondent Nos.1 and 2 are erecting/installing electric posts on his land without ensuring compliance of Rule 3 sub-clause (1)(b) of Works of Licensees Rules, 2006 framed in exercise of the powers conferred by Section 67(2) read with Section 176(2)(e) of the Electricity Act, 2003.

In other words, the grievance of the petitioner is that respondent Nos.1 and 2 have no authority to install/erect the electricity posts on the land belonging to private person/s such as the petitioner herein unless the respondent Nos.1 and 2 obtain permission in writing from either District Magistrate of the area or the Commissioner of Police or any other officer authorized by the State Government in that behalf for carrying out such works as mentioned in the Works of Licensees Rules, 2006.

It is essentially with these grievances, the petitioner has filed the writ petition for restraining the respondent Nos.1 and 2 from going ahead with the construction/installation/erection of the electricity poles on the land belonging to the petitioner till District Magistrate/Commissioner of Police or any other officer authorized by the State Government in that behalf issue certificate for making such

construction/erection of electric poles.

The respondents have filed their return, inter alia, contending that the respondents are ensuring compliance of the terms and conditions of the scheme for providing electricity to the villagers in question and therefore no fault can be found in their scheme or in its implementation. It is also contended that the scheme in question does not envisage any kind of such requirement and therefore it is not necessary to obtain any permission from the District Magistrate or any other officer authorized by the State in that behalf. It is also contended that the electrical posts are being installed/erected on the public road and not on the land belonging to the petitioner and therefore there is no need to obtain any permission from the concerned authorities specified in Rule 3(1)(b) of the Works of Licensees Rules, 2006.

Having heard the learned counsel for the parties and upon perusal of the record of the case, we are inclined to dispose of this appeal with the following directions, which in our opinion would also result in the disposal of the main writ petition itself out of which this appeal arises.

Rule 3(1)(b) of the Works of Licensees Rules, 2006 reads as under:

(b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an 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 authorized 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 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 any other officer authorized may by order in writing

direct for any such works, support, stay or strut to be removed or altered.

Similarly, Clause 7.6 of the Scheme reads as under:

7.6 Indian Electricity Rules.

The implementing agency shall adhere to the conditions stipulated in the relevant sections of Indian Electricity Rules and relevant rules under Electricity Act 2003 in regard to construction, erection and commissioning of electric supply lines (overhead and underground), systems and apparatus for low, medium, high voltage and EHV systems and for supply of power. However, as per REC norms, for 11 KV overhead lines, the permissible voltage regulation shall not be more than (-)8% on the lower side.

A reading of clause 7.6 of the Scheme would make it clear that in order to ensure implementation of the Scheme, the provisions/conditions of Electricity Act and the Rules are made applicable and obviously so for supply of electricity to the villagers in question. In other words, one cannot now deny that the scheme only provides for providing electricity to the villagers but how and in what manner it is required to be supplied has to be done on the basis of provisions of the Electricity Act read with the Electricity Rules. In the light of clause 7.6 of the Scheme it is clear that provisions of the Electricity Act and the Works of Licensees Rules, 2006 are made applicable while implementing the executive scheme.

Rule 3(1)(b) of the Works of Licensees Rules, 2006 in clear term provides that if any support is to be given to overhead lines by erecting electric poles on the land belonging to private party then in that event, permission of District Magistrate or Commissioner of Police or any other authorities specified by the State Government in that behalf has to be obtained by the licensee, as in this case the respondent No.1.

In this case, we notice that there is a dispute between the petitioner and the respondent No.1 so far as the place of installing electrical poles are concerned. The case of the petitioner is that erection of the poles is being done in his private land referred above whereas the case of the respondents is that they are

erecting/installing the poles on the public road.

In our view, this disputed question of fact can only be tried by the District Magistrate concerned or Commissioner of Police or any other officer authorized by the State Government in that behalf. So long as this dispute is not resolved by the District Magistrate, no poles can be constructed/ installed/erected on the land of any private party without any permission of the concerned authority.

Accordingly and in the light of the foregoing discussions, we allow the writ petition in part and accordingly issue a writ of mandamus against respondent No.4 who is the District Magistrate, Kamrup (M), to make an enquiry into the matter as to whether electrical poles in question are being constructed/erected/installed on the petitioners land as specified above or on the public road as contended by the State authority (respondent Nos. 1 to 3).

Let the enquiry, as directed, be conducted in accordance with law as per Rule 3 of the Works of Licensees Rules after affording an opportunity of being heard to the petitioner as well as the respondents (A.S.E.B.) within one month. The District Magistrate shall make a spot inspection and will also peruse the sale deeds of the petitioner and find out exactly where electrical poles are being installed/erected by the respondents and then issue necessary certificate if he comes to a conclusion that electrical poles are being constructed/erected/installed on the land belonging to the petitioner as required under Rule 3. Needless to say, the District Magistrate shall pass reasoned order.

With the aforesaid observations and directions, the appeal stands accordingly allowed in part.

This order, in our opinion, would also result in disposal of the main writ petition being WP(C) No.2695 of 2014 itself out of which this appeal arises.

A copy of this order be filed by the parties before the District Magistrate, Kamrup (M), to enable him to decide the matter as directed.

No cost.