

S.A. Hakim Vs. The District Collector, Dindigul and Others

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Court : Chennai Madurai

Decided On : Nov-18-2015

Judge : R. Subbiah

Appeal No. : W.P.(MD).Nos. 11993, 11994, 12338, 12360 to 12368, 12376, 12493 to 12504, 12681 to 12692, 13099 to 13104, 13139 to 13144, 13348 & 13752 of 2015 & M.P.(MD).Nos. 1 & 2 of 2015

Appellant : S.A. Hakim

Respondent : The District Collector, Dindigul and Others

Judgement :

(Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus forbearing the respondents or their subordinates from in any way constructing high tension electric transmission tower and laying high electric transmission lines through the petitioner's land in Survey No.406/4, 418/5C, Lingavadi Village and Survey No.285/11 and 289/6B Reddiapatti Village, Natham Taluk, Dindigul District.)

Common Order:

1. All these writ petitions have been filed by the petitioners/land owners against the proposal of the Electricity Board/TANGEDCO to place the electricity line/towers for transmission of electricity in the route namely Alagarkoil-Natham-Sembatty. The writ petitioners herein are owning lands in different villages and survey numbers, in

the route, in which the proposed work of placing of electricity line/towers for the transmission of electricity has been undertaken by the Electricity Board/TANGEDCO (hereinafter in short 'Board').

2. It is the contention of the petitioners that they have planted mango trees, coconut trees, gooseberry trees and other trees in their respective lands by investing huge sum of money and that yielding from the said agricultural lands is the only source of income for them. Now, the trees are fully grown and right for harvest. While so, during July-2015, the subordinates of the 2nd respondent/Board entered into the properties of the petitioners and attempted to cut down the trees. When the petitioners enquired with the officials of the Board, they were informed that the respondents are going to erect electric transmission towers in the lands of the petitioners, in the proposed route namely Alagarkoil-Natham-Sembatty. Though the petitioners objected for the same, the officials of the Board, along with police force, forcibly removed the petitioners from their land and till date they are not allowed to enter into their lands. All the writ petitioners are facing the same problem with same difficulty. Further, the petitioners were informed by the Officials of the Board that the Board had issued a notification in the Dinamani Daily, on 27.02.2015 about the project and therefore, the petitioners have no right over their property and that the Board has all powers to cut down all the trees and erect electric towers.

3. It is specific case of the petitioners that obtaining prior consent from the owners of the land before laying any electric tower or line is mandatory under Section 12(2) of the Indian Electricity Act, 1910 (hereinafter referred to as 1910 Act ?). In the absence of any such written consent being obtained from the owner of the property, the 2nd respondent has no power to enter into any private land to construct or erect any electric transmission tower or line through such property. Hence, the action of the Board is in violation of the constitutional right of the petitioners viz., right to property, as the work is being done by the Official respondents without issuing any notice to the petitioners. It is further case of the petitioners that the property right of every citizen has been granted under Article 300A of the Constitution of India, which provides that no person shall be deprived of his right of property save by authority of law. The action of the Board in erecting

electricity line/towers in the lands of the petitioners is in violation of Articles 14 and 300A of the Constitution of India. Hence, the petitioners have filed the present writ petitions seeking for a direction from this Court forbearing the respondents/Board from in any way constructing high tension electric transmission towers and laying high electric transmission lines through the petitioners' lands.

4. Pending the writ petitions, by order dated 14.07.2015 this Court has granted interim stay of the impugned proceedings.

5. On appearance, the 2nd respondent viz., the Superintending Engineer, General Construction Circle, Tamil Nadu Electricity Transmission Corporation Ltd., has filed a petition to vacate interim stay, inter alia, stating that Tamil Nadu Electricity Transmission Corporation Limited is a 'State Transmission Utility' under the Ministry of Power, entrusted with statutory power to establish inter-State Transmission System spread across the State. The Company is a deemed Transmission Licensee in the capacity of State Transmission Utility as envisaged under Sections 39 and 40 of Indian Electricity Act, 2003 (in short '2003 Act'). Under Section 164 of the 2003 Act, the appropriate Government (the State Government herein) by an order in writing may provide for the purpose of placing of Electricity Line or Electricity Poles for the transmission of electricity, and confer upon the licensee any of the powers which the Telegraph Authority possesses under the Indian Telegraph Act, 1885. Section 164 of 2003 Act corresponds to Section 51 of 1910 Act and the same is saved by Section 185(2)(a) of 2003 Act. Therefore, the power conferred upon Tamil Nadu Electricity Board by the Government of Tamil Nadu under Section 51 of the 1910 Act continued to be exercised by the Board as though those powers have been conferred by Section 164 of the 2003 Act. Therefore, prior consent of the land owners under Section 12(2) of 1910 Act is not mandatory.

6. It is further stated by the 2nd respondent, in the counter, that the company/Board being a Transmission Utility was entrusted with the work towards construction of 110 KV Double Circuit Transmission Line on DC Tower with Panther Conductor from Alagarkoil-Natham-Sembatty Feeder at Valayapatty Sub-Station. The 110 KV Double Circuit Transmitter is a huge structure, which needs

20 meters width space to install the transmitters. The general public has submitted several representations and one such is dated 27.10.2010, stating that the tail end of the villages are not getting proper electricity supply, which is affecting the agricultural motors, drinking water motors and the same is affecting the cultivation; that no enough lighting facility is available and the children are not able to do their studies; thus, the general public requested to erect a sub-station and grant proper electricity supply. Based on the said request of the general public, a detailed study was carried out by the Board. While carrying out the detailed study, the reserve forest, hills, dam sites, developed habitable villages etc. were avoided to erect the towers. The vertical and horizontal clearance were checked and thereafter, the present route was confirmed, as it is the only technically feasible route that is available. Thereafter, the project was approved, published in the Government Gazette and also published in the newspaper. The present project is under the sanctioned scheme and the total distance covered by the General Construction Circle is 13.035 kilometers and the cost of the project is Rs.25 crores. The petitioners herein cannot seek forbearance against the Board from entering into their lands, as such power is vested with the Board/licensee under Section 51 of the 1910 Act, corresponding to Section 164 of the 2003 Act read with Section 10 of Telegraph Act, 1885, and G.O.16 Energy C-3 Department, dated 23.02.2012. As long as power is vested with the Board/licensee, writ petition prohibiting the authority created under the statute from performing its lawful duty, cannot be maintained. Further, in exercise of the power under Section 10 of the Telegraph Act conferred under Section 51 of the 1910 Act, corresponding to Section 164 of the 2003 Act, same having been saved by Section 185(2)(a) of the 2003 Act read with G.O.16 Energy (C-3) Department dated 23.2.2013, the Board has power to carry on the work as Telegraph Authority. Therefore, the claim of the petitioners that the Board has no power to enter into the land without the consent of the owners of the land is incorrect. Thus, the 2nd respondent/licensee sought for vacating the interim stay and for dismissal of the writ petitions.

7. The learned counsel Mr.B.Saravanan appearing for some of the petitioners herein submitted that Section 12(2) of the 1910 Act provides the procedures to obtain orders from the appropriate authority to proceed with the work in spite of the objection from the land owners. Section 12(4) of the 1910 Act provides for revision

before the State Government. The parimateria provision to Section 12 of the 1910 Act is Section 67 of the 2003 Act. Section 51 of the 1910 Act overrides Section 12 of the 1910 Act. Under Section 51 of the 1910 Act, to supply electricity to the public, any power which the Telegraph authority possesses under Sections 10 to 19 of the Indian Telegraph Act, shall be exercised. Under such circumstances, by invoking the power under Section 51 of the 1910 Act, by overriding Section 12 of the 1910 Act, State Government can issue notification to place electricity lines/towers without the consent of the owners of the land in the private lands; under such circumstances, there is no need to obtain consent of the land owner. However, Section 185(2)(b) of the 2003 Act provides that the provisions contained in Sections 12 to 18 of the 1910 Act and the Rules made thereunder shall have effect until the Rules under Sections 67 to 69 of the 2003 Act are made by the State Government. But, so far, Rules have not been made by the Government under Sections 67 to 69 of the 2003 Act. Hence, the provisions contained under Section 12 of the 1910 Act are still in force. It is further submitted by the learned counsel for the petitioners that by virtue of Section 51 of the 1910 Act, the competent authority can invoke the power, which the telegraph authority possesses under Telegraph Act, in respect of placing electricity lines. But, non-obstinate clause contained in Section 51 of the 1910 Act namely 'notwithstanding' has been purposely omitted to be mentioned in Section 164 of the 2003 Act, which fact would indicate that the primacy has been given to the Rules which may be framed by the State Government. Therefore, Section 164 of the 2003 Act has no overriding effect on Section 12 of the 1910 Act, which corresponds Section 67 of the 2003 Act. In this regard, the learned counsel Mr.B.Saravanan has also submitted that if the intention of the law makers was to provide Section 164 of the 2003 Act with power to override Section 12 of the 1910 Act and to have same powers as Section 51 of the 1910 Act, the said section would have been worded differently and would have started as

Notwithstanding anything contained in Section 67(2) or Rules framed thereunder...
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But, unlike to Section 51 of the 1910 Act, Section 164 of the 2003 Act does not have non-obstante clause. Therefore, by virtue of Section 174 of the 2003 Act,

Sections 12 to 18 of the 1910 Act would have the precedence over any other legislation. This would make it clear that even assuming that there was a conflict between the provisions of the Indian Telegraph Act, 1885 and the provisions of the Indian Electricity Act, 1910, the latter Act would prevail. Therefore, as per Section 12 of the 1910 Act, consent of the land owner is mandatory to place electricity line/tower for transmission of electricity.

8. Mr.B.Saravanan, learned counsel for the petitioners, would further submit that in fact, in the Works of Licensee Rules 2006, the Central Government has introduced Rule 3(4) with a specific purpose of bringing back the effect of non-obstante clause occurring in Section 51 in order to overriding the effect of sub-rules (1) to (3) of Rule 3 which provides for consent of land owners; thus, the Central Government by framing the rules has expressly chosen to give overriding effect, over the requirement of consent of the land owners. Under Section 164 of the 2003 Act, the State Government may accept the powers of the Telegraph Authority under the Telegraph Act, subject to the modifications and limitations that may be thought fit. Therefore, it is for the State Government to decide as to what rules are to be framed and to what extent the power of the Telegraph Authority was to be extended. Hence, in the absence of Rules framed by the State Government, Section 164 of the 2003 Act does not have overriding effect on any part of Section 67 of the 2003 Act, which corresponds to Section 12 of the 1910 Act. Therefore, the consent of the land owner under Section 12(2) of the 1910 Act is mandatory.

9. In this regard, Mr.B.Saravanan learned counsel has also invited the attention of this Court to the judgment in Appeal No.83 of 2010, dated 07.09.2011, in the case of Maharashtra State Electricity Transmission Company Limited Vs. Shri Vikram Sunderdas Setiya and another, delivered by the Appellate Tribunal and submitted that under Section 121 of the 2003 Act, the Appellate Tribunal has got powers to issue direction to the appropriate Commission for performance of its statutory functions. In the said judgment, the Appellate Tribunal has clearly held that consent has to be obtained from land owner, if no rules have been framed by the State Government. Therefore, the order of the Appellate Tribunal binding everybody, till it is reversed by the Hon'ble Supreme Court under Section 125 of

the 2003 Act. In this regard, the learned counsel has made a detailed argument by inviting the attention of this Court to various passages from the said judgment of the Appellate Tribunal.

10. As next fold of submission, the learned counsel Mr.B.Saravanan submitted that under Article 300A of the Constitution of India, no person shall be deprived of his right to property, save by authority of law. Therefore, under law the prior consent from the land owner is essential and proceeding with the project without consent of the land owner is violative of the Article 300A of the Constitution of India. Further, the work sought to be carried out by the Electricity Board will deprive the rights of the innocent small farmers who have one or two acres for their credit where they have grown mango grove and coconut grove. Instead of considering a route which can avoid felling of trees in large number, the Electricity Board has chosen the lands of the petitioners as their voices can be suppressed without effect. Thus, he sought for a direction forbearing the official respondents from proceeding with the project on the proposed route.

11. Mr.Lajapathi Rai, learned counsel appearing for some of the petitioners herein, would submit that the damages estimated through the present process will cause felling down of more than one lakh trees of different kinds viz., mango, coconut, guava etc. The present process of placing electricity line involves long distance of nearly 20 kms and passing through fertile lands with standing trees bearing fruits. Instead of the present proposed route, it would be prudent on the part of the Board to erect electric poles for carrying electric wires in barren poramboke lands, from shorter distances. The taking point from Alagarkoil Sub-Station to proposed Valayapatti Sub-Station will only involve a distance of 8 kms and a similar connection from nearly Sempatti - Singampunari Sub-Station will involve a distance of 10 kms and Palamedu Sub-Station will involve a distance of 11 kms. The present venture undertaken by the Electricity Board linking the proposed sub-station of Valayapatti through the petitioners' land will involve the longest distance of 20 kms causing hardship to more number of people. Thus, the learned counsel sought for issuance of mandamus to the respondents forbearing them from proceed with the project on the proposed route.

12. Mr.M.Ponnaiah, learned counsel appearing for some of the petitioners herein, has also made a detailed argument, by inviting the attention of this Court to Sections 12(2) and 51 of the 1910 Act and Sections 67 and 164 of the 2003 Act. He has also submitted that non-framing of rules under Section 67, disentitled the respondents from taking shelter under Section 164 of the 2003 Act.

13. Per contra, Mrs.Srimathi, the learned counsel appearing for the Electricity Board, would contend that it is no doubt that if rules are not framed under Section 67 of the 2003 Act, Section 12 of the 1910 Act will be in force. But, in the instant case, high tension towers are erected for the public use. Since it is for the public use, the question of invoking Section 12(2) does not arise at all in this case. In support of her contention, the learned counsel for the Board has also invited the attention of this Court to Section 12(2) of the 1910 Act. The learned counsel for the Board, by referring the wordings 'not dedicated to public use' envisaged under Section 12(2), submitted that applying the principles of contextual interpretation, expression 'not dedicated to public use' would mean works not dedicated to public use, and it cannot be read with building and land, as building and lands are not dedicated and there is no such classification of land. Thus, the learned counsel for the Board submitted that consent of the owner of the land is necessary only in the case of supply of electricity to private person, and not for public use. In this regard, the learned counsel for the Board would further submit that this aspect was not dealt with in the judgment delivered by the Appellate Tribunal in Appeal No.83 of 2010, which was relied upon by the learned counsel for the petitioners.

14. That apart, Mrs.Srimathi, learned counsel for the Board would further contend that non-obstinate clause in Section 51 of the 1910 Act is because of sub-section 2 in Section 12 of the 1910 Act, but the same is not found in Section 67 of the 2003 Act and therefore, it is not necessary for non-obstante clause in Section 164 of the 2003 Act. The power under Section 164 of 2003 Act is not inconsistent with Section 51 of 2010 Act. The entire section is parimateria with each other except for the word 'Notwithstanding'. Therefore, under Section 185(2)(a), the power conferred under Section 51 is saved. In such case, the power conferred on the licensee is as that of the power conferred on the Telegraph Authority by the Telegraph Act, as it is intact. When the section is not inconsistent, the rule 'the

Special Law prevail over the General Law' is not applicable.

15. The learned counsel Mrs.Srimathi appearing for the Board has also submitted that the power under Section 51 of the 1910 Act, has already been conferred on the Electricity Board by the proper Government viz., Tamil Nadu Government under G.O.Ms.No.1455, dated 06.06.1961 and the same was extended by Notification dated 28.06.2004. Under such circumstances, the Electricity Board being the licensee under the Electricity Act, 2003 is not bound by the provisions of Sections 12 to 19 of the 1910 Act. In this regard, the learned counsel has also relied upon the judgment delivered by the learned Single Judge of this Court in W.P.No.8844 of 2011 (R.Santhana Raj and another Vs. The Chief Engineer, Non-Conventional Energy Source, Anna Salai, Channai and five others), dated 08.11.2011 and submitted that even in the case on hand, by invoking power under Section 164, a notice was issued by the Government in G.O.Ms.No.16, dated 23.2.2013 for placing electricity line for transmission of electricity. Therefore, absolutely there is no need for obtaining prior consent from the land owner. For the same proposition, the learned counsel for the Electricity Board has also relied upon the judgment delivered by this Court in W.P.No.36566 of 2007, dated 28.01.2008, in the case of T.S.T.Kaznavi Vs. Tamil Nadu Electricity Board.

16. Apart from the above submissions, the learned counsel for the Board on the factual aspects would submit that it is incorrect to state that there is an alternative route. Considering the feasibility, the Board has chosen the land of the petitioners. Alternative route suggested by the petitioners is not technically feasible for the project. Before selecting the route, there was an aerial survey by the Board, in which the worship places, hills, lakes and water bodies and reserved forests were avoided. Then, the survey was carried out, to arrive at the cost of the project. After arriving at the cost of the project, the estimate was sanctioned. Thereafter, paper publication was issued. During the time of 'Check Survey,' the Board would collect the data of the survey numbers, then details of owners or occupiers of the land, distribute compensation forms and direct the land owners to approach the Village Administrative Officer to ascertain the damages and compensation. Therefore, it is incorrect to state that the Electricity Board is carrying out the work by depriving the innocent small farmers of their right to property.

17. Further, the learned counsel for the Board would also submit that for example, the electricity if supplied for 100 volts in supply end, then in the receiving end the voltages ought to be 93 volts. The permissible voltage regulation is 8% only. If it goes beyond the permissible limit, then there will be voltage drop problem. At present the problem is exceeding the permissible limit and touching dangerous level. In the instant case, during the year 2011 itself the problem was detected and on the side of Electricity Board also a proposal was submitted for another sub-station. Therefore, the present project is inevitable. Further, under Section 12(2), if consent is made mandatory, no one will give consent and there cannot be transmission of electricity at all. Thus, the learned counsel for the Board sought for dismissal of the writ petitions.

18. By way of reply, the learned counsel Mr.Saravanan appearing for the petitioners submitted that the interpretation of Section 12(2) given by the learned counsel for the Electricity Board is not correct. In this regard, the learned counsel for the petitioners submitted that the words 'not dedicated to public use would only mean the land not dedicated to public use and not in reference to the work to be carried out by the Board. Thus, the learned counsel for the petitioners submitted that if the Board wants to lay electricity line on the private land, then consent of the land owner is mandatory.

19. With regard to the submission made by the learned counsel for the Electricity Board that under Section 12(2), if consent is made mandatory, no one will give consent and there cannot be transmission of electricity at all, it is replied by the learned counsel Mr.Saravanan that under Section 12(2), without the consent of the owner or occupier of the land, a licensee cannot place any electric supply line or other work, through or against any building, or on, over or under any land belonging to such owner or occupier concerned. If there is an objection for fixing the electricity line from the land owner, then the electricity Board has to approach the District Magistrate and get an appropriate order from the District Magistrate. In this regard, the learned counsel for the petitioners has also placed reliance on the judgment reported in 2010(3) LW 880 (The Executive Engineer, Civil Transmission Line Construction Vs. Avanashi Gounder and another). Thus, the learned counsel for the petitioners submitted that once the District Collector has passed the order

under Section 16(1), Sub-Section 2 of Section 16 of Telegraph Act provides that if any person resists the exercise of those powers, he shall be deemed to have committed an offence under Section 188 of the Indian Penal Code. But, in the instant case, instead of approaching the District Magistrate to obtain appropriate order, in total violation to the provisions of the Electricity Act, 2003, the official of the Electricity Board are straightaway entering into the lands of the petitioners, without their consent, to lay electricity line for transmission of electricity.

20. Mr.Saravanan, learned counsel has also relied upon the judgment reported in 2010(3) LW 880 (The Executive Engineer, Civil Transmission Line Construction Vs. Avanashi Gounder and another), wherein it has been held as follows:-

11. Under Section 12 of the Indian Electricity Act, a licensee cannot without the consent of the owner or occupier concerned, place any electric supply-line or other work in, through or against any building, or on, over or under any land belonging to such owner or occupier concerned, Section 51 of the Indian Electricity Act however begins with the word Notwithstanding anything contained in Sections 12 to 16 ?. Thus, Section 51 is a non obstante clause and it overrides the provisions of Section 12 of the Indian Electricity Act. In other words, Section 12 must yield if there is a conflict between the said provision and Section 51 of the Act. In our considered view, learned single Judge did not examine Section 12 in the light of Section 51 of the Act, which contains a non obstante clause.

17. Whenever there is any objection in fixing electric poles or drawing electric lines for transmission of energy, the Board should approach the District Magistrate and get an order from the District Magistrate that the authority shall be permitted to exercise the powers under Section 10 of the Act. The power to approach the District Magistrate is not only with regard to the Telegraph Authority but to the Public Officer or any other person authorised under the Electricity Act. Since the objection was raised by the 1st respondent/land owner and all the objectors have also filed the suit in O.S.No.28 of 2000 on the file of the District Munsif's Court, Perundurai and the case was also pending, TNEB approached the District Collector. Before the District Collector, Objectors have stated that if the tower is erected in a straight route, it will result in savings of the expenditure to TNEB. The

Electricity Board stated that the route suggested by the 1st respondent cannot be adopted as it would be detrimental to the interest of habitations nearby and there will be some hindrance to the route of 20th tower line because of the hillock in between. Pursuant to the direction from the 2nd respondent, District Revenue Officer along with the Objectors and TNEB officials inspected the field and filed the report. By perusal of the impugned order it comes to be known that the report of District Revenue Officer revealed that in case of acceptance of the new route as stated by the Objectors, no vertical clearance can be secured as per the norms prescribed by TNEB and the minimum height vertically should be 28 feet. District Revenue Officer's report stated that because of the existence of the hillock the vertical clearance could not be obtained and the District Revenue Officer reported that it is not safe to change the alignment since the scheme was almost completed at a cost of Rs.5 crores. Upon consideration of the objections of the land owners and the report of the District Revenue Officer, the District Collector has passed the order permitting TNEB to exercise the powers under Section 10 Part III of Telegraph Act and to continue the Project. ?

By relying upon the said judgment, the learned counsel for the petitioners Mr.Saravanan submitted that the proper course for the respondents is that if there is an objection from the land owners for placing electricity line for transmission of electricity, then they should approach the District Magistrate and get appropriate order from the District Magistrate.

21. Mr.Ponnaiah, learned counsel for the petitioners, has also replied that under Section 12(2), there was nothing on private and public purpose and the said section deals only with the supply of electricity line; hence, the respondents are not entitled to enter into the land of the petitioners without the consent of the petitioners. The learned counsel has also relied upon the following judgments:-

- (i) 2013 (5) LW 527 (V.Selvi Vs. The Assistant Engineer, TANGEDCO, Muthur);
- (ii) 2011 (3) MLJ 625 (Superintending Engineer, TNEB Vs. M.Sengu Vijay)
- (iii) AIR 2000 MADRAS 56 (S.Kannappan Vs. Commissioner, Tiruvottirur Municipality)

(iv) AIR 2011 PATNA 83 (Power Grid Corporation of India Vs. Ram Naresh Singh)

22. I have heard the submissions made on either side and perused the materials available on record.

23. In view of the submissions made on either side, the following questions fall for consideration:-

1) Whether the consent of the land owner is necessary to place electricity line for transmission of electricity?

2) Whether the consent is required under Section 12(2) of the 1910 Act, if the supply is effected for public purpose?

3) If prior consent from the land owner is not obtained, whether it would amount to depriving the person of his right to property?

24. With regard to the first point, it is the submission of the learned counsel for the petitioners that under Section 12(2) of the 1910 Act, consent of the land owner is mandatory to erect electricity line/tower in a private land. But, under the 1910 Act, by invoking the power under Section 51, in the case of emergency, the State Government can straightaway issue notification to place electricity line in a private land without the consent of the land owner. Since Section 51 of the 1910 Act contains a non-obstante clause, it excludes the operation of Section 12 of the Act. Though Section 164 of the 2003 Act is parimateria to Section 51 of the 1910 Act, Section 164 of the 2003 Act does not contain the non-obstante clause. The Section 67 of the 2003 Act is parimateria to Section 12 of the 1910 Act. Section 185(2)(b) of the 2003 Act provides that the provisions contained in Sections 12 to 18 of the 1910 Act and the Rules made thereunder shall have effect until the Rules under Sections 67 to 69 of the New Act are made. But, till date, no rules have been made under Sections 67 to 69 of the 2003 Act by the Government; therefore, Section 12 of the 1910 Act is still in force. But, in the absence of non-obstante clause in Section 164 of the 2003 Act, unlike Section 51 of the 1910 Act, now the licensee cannot straightaway erect high tension electricity lines/towers in the land of the petitioners by invoking the powers as provided under Section 10 of the

Indian Telegraph Act, by bypassing Section 12(2) of the Indian Electricity Act, 1910; thus, according to the learned counsel for the petitioners, the consent of the land owner is mandatory.

25. It is further contention of the learned counsel for the petitioners that if there is objection from the land owners, the respondents/Board can always approach the District Magistrate to get appropriate orders to place electricity line without the consent of the land owners; but, in the instant case, without doing so, the licensee/Board is straightaway trying to place electricity line in the lands of the petitioners, without their consent.

26. But, it is the reply of the learned counsel for the respondents/Board that Section 164 of the 2003 Act is not inconsistency with Section 51 of 1910 Act and the entire section is parimateria with each other except for the word 'Notwithstanding'. Therefore, when the notification is issued under Section 164 of the 2003 Act, by conferring power upon the licensee/Board for placing electricity line, there is no need for obtaining consent from the land owner. In this regard, the learned counsel for the respondents/Board has also relied upon the judgment delivered by the learned Single Judge of this Court in W.P.No.8844 of 2011, dated 08.11.2011, in the case of R.Santhana Raj and another Vs. The Chief Engineer, Non-Conventional Energy Source, Anna Salai, Chennai and others. The relevant portion in the said judgment reads as follows:-

40. A combined reading of Section 67(2)(a) to (d) of the 2003 Act together with (I) Rule 3(1) and 3(4) of the Works of Licensees Rules 2006 (II) Section 164 of the 2003 Act and (III) Sections 10 and 16 of the Telegraphic Act, 1885, would lead us to the following conclusions:-

(i) In normal circumstances, the licensee would require the prior consent of the owner or occupier of any land, by virtue of Rule 3(1)(a) of the Works of Licensees Rules 2006, read with Section 76(2)(a) to (d) of the Electricity Act 2003.

(ii) But if the appropriate Government has, in terms of Section 164 of the 2003 Act, by order in writing, conferred upon any Public Officer or licensee, the powers of a telegraph Authority under the Indian Telegraph Act, 1885, for placing of electric

lines or electric plant, then the requirement of prior consent under Rule 3(1)(a) need not be complied with. This is in view of Rule 3(4) of the Works of Licensees Rules 2006.

(iii) In other words, if the appropriate Government had passed an order empowering the licensee to exercise any of the powers conferred by the Telegraph Act, 1885, then the licensee can invoke Sections 10 and 11 of the Telegraph Act, 1885 and simply enter upon any private land and carry out necessary works, without the prior consent of the owner. But if the appropriate Government had not passed any order in terms of Section 164 of the Electricity Act, 2003 conferring such a power upon the licensee, to exercise any power under the Telegraphic Act, then the licensee has to obtain prior consent of the owner or occupier, as per rule 3(1)(a) of the Works of Licensees Rules 2006 to carry out the works.

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58. Therefore, in the light of the foregoing discussion, the following conclusions emerge:-

(i) The provision of Section 12(2) of the Electricity Act, 1910, requiring the licensee to obtain consent of the owner or occupier of the land on which it is proposed to carry out certain works, stands repealed, in terms of Section 185 (1) and 185(2)(b) of the Electricity Act, 2003, with the issue of the Works of Licensees Rules, 2006, in exercise of the power conferred by Section 67(2) of the 2003 Act.

(ii) Primarily, Rule 3(1)(a) the Works of Licensees Rules, 2006 requires the licensee to obtain the prior consent of the owner or occupier of any building or land on which it is proposed to carry out certain works.

(iii) If the owner or occupier refuses to give consent and raises objections, the licensee may obtain permission in writing from the District Magistrate or the Commissioner of Police, in terms of the first proviso under Rule 3(1).

(iv) But, in cases where powers are conferred upon the licensee under Section 164 of the Electricity Act, 2003, the provisions of Rule 3(1) to (3) of the Works of Licensees Rules, 2006 will not apply. In other words, where the appropriate

Government had conferred upon the licensee, the powers of a Telegraph Authority under the Telegraph Act, 1885, the licensee need not take recourse to the procedure prescribed by Rules 3(1) to (3) of the Works of Licensees Rules, 2006. But, the licensee shall take recourse to the provisions of the Telegraph Act, 1885.

(v) Since Section 164 of the 2003 Act, corresponds to Section 51 of the 1910 Act, the power conferred by the Government upon a licensee, in terms of Section 51 of the 1910 Act, is saved by Section 185(2)(a) of the 2003 Act. Therefore, the power conferred upon the Tamil Nadu Electricity Board by the Government of Tamil Nadu under Section 51 of the 1910 Act, could continue to be exercised by the Board, as though those powers were conferred under Section 164 of the 2003 Act.

(vi) Section 10 of the Telegraph Act, 1885, does not contemplate consent or permission of the owner or occupier of a property, for the purpose of placing and maintaining a supply line, under, over, along or across and posts in or upon any immovable property. The only case where Section 10 contemplates permission is in respect of a property vested in or under the control or management of any local authority.

(vii) Though Section 10 of the Telegraph Act, 1885, does not make it incumbent upon the licensee to obtain permission of the owner or occupier, it does not also reduce his ownership or right of possession into something farcical. The right of the owner or occupier to resist or obstruct any act undertaken under Section 10, is recognised indirectly in Section 16(1), which requires the licensee to obtain an order of the District Magistrate, in such circumstances. A careful reading of Section 16(1) would show two things viz., (a) that the District Magistrate exercises his power under this section, in his discretion and (b) that what the District Magistrate does under Section 16(1) is akin to the removal of obstruction as ordered by an Executing Court in terms of Order XXI rules 97 and 98 of the Code. Any resistance on the part of the owner punishable offence under Section 188 of the Indian Penal Code, by virtue of Section 16(2) of the Telegraph Act, 1885.
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In this regard, one more reference could be placed in the judgment delivered by the learned Single Judge of this court in W.P.No.36566 of 2007, dated 28.01.2008,

in the case of T.S.T.Kaznavi Vs. Tamil Nadu Electricity Board, wherein it has been held as follows:-

21. Section 164 of the Electricity Act, 2003, enables the appropriate Government to confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under the Act, the powers of the telegraph authority under the Indian Telegraph Act, 1885 for placing of electric lines and electrical plant for the transmission of the electricity, or for the purposes of a telephonic or telegraphic communication necessary for the proper co-ordination of the works, etc. The said sections read as under:

"Section 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 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."

Section 185. Repeal and saving.-

(1)

(2) Notwithstanding such repeal,-

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the

corresponding provisions of this Act;"

22. Thus by exercise of the powers under Sections 164 and 185(2)(a) of the Electricity Act,2003 and in continuation of the powers already conferred under Section 51 of the Indian Electricity Act,1910, the respondent Electricity Board acted as a telegraph authority under the Indian Telegraph Act,1885 in performing the functions as State Transmission Utility. The relevant provision from Indian Telegraph Act,1885 reads as under:

"51. Exercise in certain cases of powers of telegraph authority.- Notwithstanding anything contained in Sections 12 to 16 (both inclusive) and Section 18 and 19, the Central Government in the case of inter-State transmission system and the State Government in the case of inter-State transmission system, as the case may be, may, by order in writing, for placing of electric supply-lines, appliances and apparatus for the transmission of energy or for the purpose of the telephonic or telegraphic communication necessary for the proper co-ordination of works, confer upon any public officer, Central Transmission Utility, State Transmission Utility, licensee, Transmission licensee or any other person engaged in the business of transmission or supplying energy to the public under this Act, subject to such conditions and restrictions (if any) as the Central Government or the State Government, as the case may be, may think fit to impose, and to the provisions of the Indian Telegraph Act, 1885 any of the powers which the telegraph authority possess under the Act, with respect to the placing of telegraph-lines and posts for the purpose of a telegraph established or maintained by the government or to be so established or maintained."

23. While construing the provision of Section 10 of the Indian Telegraph Act,1885, along with Section 42 of the Electricity (Supply) Act,1948, a Full Bench of Kerala High Court in *Arya Antherjanam vs. Kerala State Electricity Board, Trivandrum* (AIR 1996 Kerala 309 (FB)) held that in respect of cutting of trees for the purpose of erecting transmission lines, the land owners are entitled to claim compensation for diminution in market value of the property.

A reading of the dictum laid down in the above judgments would show that once the powers are conferred upon the licensee under Section 164 of the Electricity

Act, 2003, the provisions of Rule 3(1) to (3) of the Works of Licensees Rules, 2006 will not apply and hence, in my considered opinion, the prior consent of the owners of the land is not mandatory for the Board to enter into the lands for the purpose of placing the electricity line or electricity poles for the transmission of electricity.

27. In the instant case, a notification under Section 164 of the 2003 Act vide G.O.(Ms).No.16, Energy (C3) Department, dated 23.02.2012 was issued by the Tamil Nadu Government, by conferring the powers on the licensee to place electricity lines for the transmission of electricity, which the telegraph authority possesses under the provisions of the Indian Telegraph Act, 1885 (Central Act 13 of 1885). Therefore, the question of obtaining consent from the land owners does not arise in this case. Hence, I am not inclined to accept the submission made by the learned counsel for the petitioners based on Section 12(2) of the 1910 Act.

28. With regard to the second ground, it is the contention of the learned counsel for the Board/respondents that if electricity line for transmission of electricity is placed for public purpose, absolutely no consent is necessary from the land owners under Section 12(2) of the 1910 Act. In other words, it is the submission of the learned counsel for the respondents that if electricity supply is effected for public purpose, Section 12(2) of the 1910 Act has no application. In this regard, the learned counsel for the Board/respondents has also invited the attention of this Court to Section 12(2) of the 1910 Act and submitted that the words 'not dedicated to public use' envisaged under Section 12(2) of the 1910 Act are only with reference to the works not dedicated to the public use. Thus, it is the contention of the learned counsel for the respondents that if the work is not dedicated to public use, then only the consent of the land owner is necessary.

29. But, it is the submission of the learned counsel for the petitioners that the wordings 'not dedicated to public use' envisaged under Section 12(2) of the 1910 Act, are only with reference to the land and if the land is not dedicated to the public use, then consent is necessary. In view of the submissions made on either side, I am of the opinion that it would be appropriate to extract Section 12(2) of the 1910 Act hereunder_

12. Provision as to the opening and breaking up of streets, railways and tramways:-

(1) ...

(2) Nothing contained in sub-section (1) shall be deemed to authorize or empower a licensee, without the consent of the local authority or of the owner or occupier concerned, as the case may be, to lay down or place any electric supply-line or other work in, through or against any building, or on, over or under any land not dedicated to public use whereon, wherever or whereunder any electric supply-line work has not already been lawfully laid down or placed by such licensee: ?

A careful reading of Section 12(2), it is seen that, as contended Mr.M.Ponniah, learned counsel for the petitioners, there was no such definition like 'private' or 'public' purpose. The said section has to be read as follows:-

in ?, through, against any building = to place electric supply

Line or other work

(or)

on, over (or) under any land = such land not dedicated to

public use

whereon, where over

(or) whereunder = any electric supply line

or work has not already

been lawfully laid down.

Therefore, I am of the considered opinion that the words 'not dedicated to public use' envisaged under Section 12(2), are only with reference to the land not dedicated to the public use. But, it is the submission of the learned counsel for the respondents/Board that there is no classification to the effect that the land

dedicated to the public use; under such circumstance, it has to be construed that the words 'not dedicated to the public use' are only in reference to the work that has to be carried out by the respondents/Board.

30. In respect of the question as to whether the words 'not dedicated to the public use' envisaged under Section 12(2) are only in reference to the land or work that has to be carried out by the respondents/Board, the judgment delivered by the Bombay High Court reported in AIR 1958 Bom 510 (State and anr Vs. Shantilal R.Desai) gives a fitting answer. The relevant portion in the said judgment reads as follows:-

Mr. Kavlekar argues that public road must be regarded as land "dedicated to public use". We agree that that is the natural meaning of that expression. The same expression occurs in the corresponding English Acts and has been known to cover public streets. Sub-section (2) of Section 12, therefore means, in so far as is relevant, that a licensee must have the consent of the Municipality if he wishes to exercise the powers mentioned in Sub-section (1) in respect of Municipal land which does not consist of a public street, unless on such land a supply line has already been lawfully laid down. It is clear that this provision does not apply to work on public streets at all. It is a negative provision, and it says that certain works cannot be executed by a licensee without the consent of the Municipality. Mr. Kavlekar wants us to interpret this provision to mean, in the first place, that all other works, not covered by Sub-section (2), can be executed without the consent of the Municipality, and secondly, that since the licensee can execute such works without the consent of the Municipality, the provision of Section 13(1) requiring a licensee to give a notice to the Municipality can have no application to such a case.

6. The argument of Mr. Kavlekar would, it is obvious, lead to absurd results. It would mean that a licensee may, without giving any intimation to the Municipality, "open and break up the soil and pavement" of any public street to lay down a supply line. He may similarly set up an electric pole in the middle of a public street. On this view, no notice is required to be given to the Municipality by a licensee before executing any work on a public street whether a supply line has been laid

thereon or not, or on any other Municipal land if a supply line has been lawfully laid thereon.

7. It is wrong in our judgment to interpret Sub-section (2) of Section 12 as a positive provision that all works not covered by that sub-section can always be executed irrespective of whether the Municipality approves or disapproves of them. It is also wrong to assume that a notice to the Municipality is required to be given only where the consent of the Municipality is necessary. A notice amounts to an intimation in advance, and has to be given in all cases covered by Section 13(1), including the very limited cases mentioned in clause (p) of that sub-section. That clause, as stated earlier, relates to the repair, renewal or amendment of existing works without altering the character or position thereof, and the clause requires a licensee to give a forty-eight hours' notice before executing such work.
?

From the dictum laid down in the said judgment, it is clear that the public road must be regarded as land 'dedicated to public use'. The land not dedicated to the public use has to be regarded as private land. The interpretation given by the learned counsel for the petitioner/respondents that the words 'not dedicated to the public use' means only the work that has to be carried out by the respondents is not correct.

31. Therefore, I am not inclined to accept the submissions made by the learned counsel for the respondents that for placing electricity line for transmission of electricity for public purpose, Section 12(2) of the 1910 Act will not apply.

32. But, at the same time, I find that as observed in earlier paragraphs, on conferring power under Section 164 of the Electricity Act, 2003 by the State Government, bypassing Section 12(2) of the 1910 Act, the respondents can straightaway carry out the work in private land without obtaining consent of the land owner by invoking powers as that of the Telegraph authority under the provisions of the Indian Telegraph Act.

33. It is yet another submission of the learned counsel for the petitioners that if the prior consent is not acquired from the land owner, it would deprive the land owner

of his right to property and it is in violation of Section 300A of the Constitution of India.

34. But, I am of the opinion that the property right is a fundamental right and it is not a right granted under the constitutional law. Therefore, it is left to the legislature to deprive a person by authority of law. If such law takes away the property of a person, the validity of such law cannot be challenged by him before any Court of law on the ground that no compensation has been made. In the instant case, the owners of the lands are entitled for compensation. In fact, Section 16 of the Telegraph Act provides mechanism of compensation and the petitioners can have no grievance. In this regard, a reference could be placed in the judgment delivered by a Division Bench of this Court in W.A.(MD).No.602 of 2011, dated 23.08.2011, in the case of C.Ram Prakash and another Vs. Power Grid Corporation of India Ltd., and another, wherein it has been held as follows:-

22. Scope of Sections 10 and 16 of the Indian Telegraph Act, 1885:- The power under Section 10 of the Indian Telegraph Act, 1885 is rather wide and extensive. While exercising the power, it is not necessary for the respondent No.1 to put the individuals, who owned the land on notice. Admittedly, the respondent No.1 has got power under Sections 10 and 16 of the Indian Telegraph Act, 1885. Such a power has been conferred upon the respondent No.1 in public interest. The exercise of the said power by erecting the towers with overhead lines would not amount to an acquisition. It is true that such an action would diminish the value of the property of an individual, but at the same time it cannot be termed as an acquisition. Since Section 16 of the Indian Telegraph Act, 1885 provides mechanism of compensation, the appellants can have no grievance.

Section 16 of the Indian Telegraph Act provides for a mechanism by which the respondent No.1 can approach the second respondent, if there is an obstruction or resistance. It is not necessary that in each and every case the respondent No.1 will have to approach the second respondent whenever there is an objection. The word objection has got a different connotation than the words resistance or obstruction. A resistance or obstruction would mean preventing the statutory body from carrying out the public duty. Whereas an objection is merely a form of protest.

Further, under Section 16 of the Indian Telegraph Act, the respondent No.2 has got no power to go into the merits of the case and find out as to whether the alignment proposed is correct or not and there is any possibility of realignment. The prescription of Section 16 of the Indian Telegraph Act is very specific to provide aid to the respondent No.1 to perform its statutory duty..... ?

The dictum laid down in the above judgment is squarely applicable to the present facts of the case. When the petitioners are entitled for compensation, I am not inclined to accept the submissions made by the learned counsel for the petitioners that since the consent was not obtained from the owners of the land, it would deprive the land owners of their right to the property. Therefore, on the whole, I am of the opinion, absolutely there is no merit in the writ petitions and the writ petitions are liable to be dismissed.

For the foregoing reasons, the writ petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

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