

Deva Raj Vs. U.P. State Electricity Board, Lucknow and ors.

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Court : Allahabad

Decided On : Apr-13-1977

Reported in : AIR1977All452

Judge : Yashoda Nandan and ;S. Malik, JJ.

Acts : [Indian Electricity Act, 1910](#) - Sections 12 and 51; [Indian Telegraph Act, 1885](#) - Sections 10; Electric (Supply) Act, 1948 - Sections 26

Appeal No. : Special Appeal No. 1432 of 1969

Appellant : Deva Raj

Respondent : U.P. State Electricity Board, Lucknow and ors.

Advocate for Def. : V.K. Mehrotra, Adv.

Advocate for Pet/Ap. : Sripat Narain Singh, Adv.

Disposition : Appeal dismissed

Judgement :

Yashoda Nandan, J.

1. Aggrieved by the dismissal of his writ petition by a learned single Judge of this Court, the appellant has filed this special appeal. The writ petition was filed on the allegations that the appellant was the owner of an estate called Chandan Bari

Estate which is claimed to have been developed into a residential colony. In the writ petition it was alleged that the U. P. Electricity Board is laying a 132 KV transmission line between Yamuna Power House Dehradun and Dehradun. The transmission line runs through the appellant's estate. The appellant's case in the writ petition was that in March 1968 the Executive Engineer of the Hydel Transmission and Construction Division, Roorkee, discussed the suitability of a route for the transmission lines through the appellant's estate and an agreement was arrived at as to the exact route that the lines would take and the spots where the towers would be constructed but subsequently the respondents have marked out places for construction of towers Nos. 16 and 19 which were at variance from those which had been agreed upon between the parties. The appellant consequently on the 28th March, 1968 applied to the District Magistrate, Dehradun, under Section 12 of the [Indian Electricity Act, 1910](#) hereinafter referred to as the 1910 Act-- to direct the respondents to alter the positions of those towers. The application had not been disposed of till the time of the presentation of the writ petition but the respondents were continuing to construct the towers at the altered places illegally. In the writ petition it was prayed that the respondents be directed not to disregard Sections 12 and 18 of the 1910 Act by shifting the positions of towers Nos. 16 and 19 from the agreed places. A prayer was also made that the District Magistrate may be directed to decide the appellant's application forthwith.

2. A counter-affidavit was filed on behalf of the respondents stating that a scheme of construction of a 132 KV line was sanctioned in 1965. After a portion of it was constructed, it was found that its route needed to be altered. Consequent on a survey having been made, a new route was proposed which received the approval of the Superintending Engineer, Hydel Transmission Construction Circle, Roorkee. Towers Nos. 16 to 19 on this route were located on the land belonging to the appellant and the appellant had agreed to the location of four towers on his land. It was denied by the respondents that the Executive Engineer concluded any agreement with the appellant. According to the respondents, tower No. 16 had been installed at the present location with a view to avoid diversion which was not desirable for technical reasons. As far as tower No. 19 is concerned, it was asserted in the counter-affidavit initially filed that it had not been shifted from its intended site. A letter written by the appellant has been filed along with the

counter-affidavit showing that the site of tower No. 19 has been agreed to and approved by him. Some trees belonging to the appellant fall on the route of the transmission line and consequently the appellant was given notice to cut them. It is alleged in the counter-affidavit that the appellant removed some trees but two or three of them had to be removed by the respondents. In the counter-affidavit it has been asserted that in view of Section 51 of the 1910 Act and the notification issued under Section 28, of the Electricity (Supply) Act, 1948-- hereinafter referred to as the 1948 Act-- the respondents, under Section 10 of the Telegraph Act, were entitled to place the transmission line and the towers therefor over the appellant's land and if the appellant suffered any damage therefrom he could claim compensation for the same,

3. A rejoinder-affidavit was filed by the appellant re-asserting most of the allegations contained in the writ petition.

4. Subsequently an application was made for amendment of the writ petition. This amendment application was accompanied by an affidavit. Consequently a second counter-affidavit was filed on behalf of the respondents and a further rejoinder-affidavit was filed by the appellant.

5. When the writ petition came up for hearing before the learned single Judge, the appellant challenged the respondent's action on the following grounds as noted in the judgment;

'1. That there was no sanctioned scheme for the diversion,

2. That the respondents have violated Sections 12 and 18 of the Electricity Act.

3. That Section 10 of the Telegraph Act was not applicable and in the alternative it violated Article 14 of the Constitution." The contentions raised by the appellant did not find favour with the learned single Judge, who dismissed the writ petition.

6. It may be mentioned here that the appellant's grievance now is confined to tower No. 16 since from the counter-affidavit filed and the annexure thereto which is a letter written by the appellant himself it is clear that tower No. 19 was located at the spot where it is with his agreement.

7. During the hearing of the appeal learned counsel for the appellant contended that since the location of the tower in question was not contained in the scheme itself, in view of the proviso to Section 42 of the 1948 Act, all the provisions of Sections 12 to 19 of the 1910 Act were applicable. In the alternative, he contended that since there was no statement contained in the scheme prepared under Section 28 of the 1948 Act and published in accordance with Section 29 thereof the Telegraph Act, applied to the proceedings, the proviso to Section 42 of the 1948 Act was attracted and consequently Section 12 of the 1910 Act was applicable. Section 12 of the 1910 Act, as far as relevant for our purposes, may be extracted here.

'12. Provisions as to the opening and breaking up of streets, railways and tramways.--(1) Any licensee may from time to time but subject always to the terms and conditions of his licence, within the area of supply, or, when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area-

(a).....

(b).....

(c) lay down and place electric supply lines and other works;

(d).....

(e) do all other acts necessary for the due supply of energy.

(2) Nothing contained in Sub-section (1) shall be deemed to authorise 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 or work has not already been lawfully laid down or placed by such licensee:

Provided that

Provided, also, that, if at any time the owner or occupier of any building or land on which any such support, stay or strut has been fixed shows sufficient cause, the District Magistrate or, in a Presidency town (ibid), the Commissioner of Police may by order in writing direct any such support, stay or strut to be removed or altered. (3) When making an order under Sub-section (2) the District Magistrate or the Commissioner of Police, as the case may be, shall fix 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.

(4)

It was urged that in view of Section 26 of the 1948 Act, Section 12 of the 1910 Act as extracted above is applicable to the State Electricity Board, even though it is not a 'licensee' according to the definition of that expression contained either in the 1910 Act or the 1948 Act. It was thus contended that without an order of the District Magistrate, the respondents acted without any legal authority in constructing tower No. 16 at the spot they have done and further that the District Magistrate failed to exercise jurisdiction in not deciding the application filed before him.

8. Learned counsel for the State Electricity Board has, however, contended that Section 12 of the 1910 Act read with Section 26 of the 1948 Act had no application to the present case because by reason of the conferment of powers by the State Government on the State Electricity Board under Section 51 of the 1910 Act, the State Electricity Board acquired the right to construct the tower at the spot chosen by it even though the appellant may not consent thereto. It was contended further that by reason of Section 51 of the 1910 Act and the no notification issued under Section 28 of the 1948 Act, Section 10 of the Telegraph Act was clearly attracted and the appellant was entitled to obtain compensation for damage caused to him or loss suffered by him because of the construction of the tower upon his land. There is in our opinion, force in this contention. Section 51 of the 1910 Act is in the following terms:--

'51. Exercise in certain cases of powers of telegraph authority-- Notwithstanding anything in Sections 12 to 16 (both inclusive) and Sections 18 and 19 the State

Government may, by order in writing, for the placing of electric supply lines, appliances, and apparatus for the transmission of energy or for the purpose of telephonic or telegraphic communications necessary for the proper coordination of works, confer upon any public officer licensee, or any other person engaged in the business of supplying energy to the public under this Act, subject to such conditions and restrictions (if any) as the State Government may think fit to impose, and to the provisions of the [Indian Telegraph Act, 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.'

There is on record the notification dated 31st May, 1961 issued by the State Government which runs as follows :--

'In exercise of the powers conferred by Section 51 of the [Indian Electricity Act, 1910](#) (Act No. 9 of 1910), the Governor of Uttar Pradesh is pleased to confer, subject to the provisions of the [Indian Telegraph Act, 1885](#), upon the Uttar Pradesh State Electricity Board, for the placing of electric supply line, appliances and apparatus for the transmission of energy the power which the telegraph authority possesses under the [Indian Telegraph Act, 1885](#), with respect to the placing of telegraph lines and posts for the purposes of telegraph established or maintained by it.'

The telegraph authorities possess powers with respect to placing of telegraph lines and posts for the purposes of telegraph established or maintained by it under Section 10 of the Telegraph Act. According to Section 10 of the Telegraph Act, 'the telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immovable property; provided that-

(a)

(b)

(c)

(d) In the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and when it has exercised those powers in respect of any property other than that referred to in Clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.'

By virtue of the notification issued under Section 51 of the 1910 Act, the words 'Telegraph authority' in Section 10 of the Telegraph Act will be substituted by the 'State Electricity Board'. In view of the notification under Section 51 of the Act of 1910 read with Section 10 of the Telegraph Act, it is thus not possible to contend that the State Electricity Board had no power to locate towers on the appellant's land. The only right he has left now is to obtain compensation under the notification referred to above read with Section 10(d) of the Telegraph Act. Neither Section 51 of the 1910 Act nor Section 10 of the Telegraph Act provided any procedure under which compensation shall be determined. It is thus not necessary for the appellant to have made any formal application for determination of compensation for loss, if any, suffered by him on account of the action of the respondents. Learned counsel for the State Electricity Board concedes, and in fact it has also been stated in one of the affidavits filed on behalf of one of the respondents, that the appellant has a right to obtain compensation for loss, if any, he has suffered. There is a duty, in our opinion, cast on the State Electricity Board to decide the compensation payable to the appellant for the loss suffered by him. We consequently have no reason to suspect that the respondents will not invite the appellant to put forward a claim for compensation for the loss which might have been suffered by him and to determine the compensation payable within a reasonable time.

9. There is, in our opinion, no merit in this appeal, which is hereby dismissed. Parties shall bear their own costs, Interim order, if any, is vacated.

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