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Court : Jharkhand

Decided On : Mar-24-2006

Reported in : AIR2006Jhar116; [2006(3)JCR503(Jhr)]

Judge : R.K. Merathia, J.

Acts : [Railways Act, 1989](#) - Sections 11; [Indian Electricity Act, 1910](#) - Sections 12(3), 19, 28 and 51; Electricity (Supply) Act, 1948 - Sections 2(6) and 70; Land Acquisition Act

Appeal No. : C.W.J.C. No. 2371 of 1997 (R)

Appellant : Md. Waris

Respondent : Union of India (Uoi) Through Chief Project Manager Railway Electrification Indian Railway and ors.

Advocate for Def. : P.K. Bhowmik and; Prabhash Kumar, Advs.

Advocate for Pet/Ap. : V. Shivnath,; Rekha Shanker,; Birendra Kumar and;

Judgement :

R.K. Merathia, J.

1. Heard the parties.

2. Petitioner had prayed for a direction restraining the respondents from causing damage to his land by drawing overhead electricity transmission line by railways between D.V.C. Grid Sub-Station, Naisarai, Ramgarh and Railway Sub-Station at Barkakana; and for directing the respondents to get his damages determined in accordance with law on account of putting up traction towers on the portion of his land.

3. It is not in dispute that the said electrical transmission was completed during the pendency of this writ petition as no stay was granted in this writ petition.

4. Mr. V. Shivnath, learned senior counsel appearing on behalf of the petitioner, with reference to Section 11 of the [Railways Act, 1989](#), submitted that the railways should have acquired the property of the petitioner under the Land Acquisition Act. In the alternative, he submitted that the petitioner is entitled for compensation under the provisions of Section 19 of the [Indian Electricity Act, 1910](#) (Electricity Act for short).

5. Referring to the notification dated 19th December, 1994 issued by the Department of Energy, Government of Bihar (Annexures R-1 to 4/3), learned Counsel for the respondents submitted that the Government of Bihar permitted the Railway Electrification, for erection of the said transmission line under Section 28 of the Electricity Act. With reference to Annexure-5, it was further submitted that permission of the land owners was sought by a general notice issued by the railways requesting them to co-operate in public interest and apply for compensation against the damage of trees or crops, if any, on the basis of prevailing rates available with the Divisional Forest Officer or Block Development Officer. It was further said in this notice that for such work of electrification, there was no provision of acquisition of land, as the ownership remains with the land owners and they will be in a position to continue with their cultivation. In this connection a letter of the Department of Energy, Government of Bihar, contained in Memo No. Pra-3/Lai-03/93-5 Patna dated 28.3.1995, under which all powers were given to the railways under Section 51 of the [Indian Electricity Act, 1910](#), was referred. It was thus submitted on behalf of the respondents that there is no

necessity and/or provision for acquiring land for such purpose, and so far as the compensation is concerned the petitioner may apply for the same before the competent authority.

6. The first question is whether the railway is bound to acquire land under the Land Acquisition Act for erecting transmission towers and drawing transmission lines?

7. Section 11(g) of the [Railways Act, 1989](#) provides that notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of this Act and the provisions of any law for the acquisition of land for a public purpose or for companies, and subject also, in the case of a non-Government railway to the provisions of any contract between the non-Government railway and the Central Government, a railway administration may, for the purposes of constructing or maintaining a railway-erect, operate, maintain or repair any electric traction equipment power supply and distribution installation in connection with the working of the railway.

8. In other words, the railway is authorized to erect its electric transmission line, 'subject to the provisions of any law for the acquisition of land for a public purpose.' In my opinion, such right of Railway is restricted, if any land is sought to be or has been acquired for a public purpose. If the Railways do not need or intend to acquire land for erecting overhead electric lines, the railway is not bound to acquire the land under the Land Acquisition Act. The railway has not taken over the ownership of the land. Moreover, the railway electrification is in public interest.

9. The next question is whether, if any damage has been caused, the petitioner is entitled to compensation?

10. From the said notification dated 19th December, 1994, it appears that the permission has been accorded to the railways by the Government of Bihar under Section 28 of the [Indian Electricity Act, 1910](#). As per the definition of licensee' in Section 2(6) of the Electricity (Supply) Act, 1948, it includes a sanction holder under Section 28 of the [Indian Electricity Act, 1910](#). Section 70 of the Electricity (Supply) Act, 1948 creates overriding effect on the [Indian Electricity Act, 1910](#) and it further says that the provisions of the Electricity (Supply) Act shall be in addition

to and not in derogation of the [Indian Electricity Act, 1910](#). Thus, in my opinion the railway became a licensee under the [Indian Electricity Act, 1910](#).

11. Section 19 of the [Indian Electricity Act, 1910](#) reads as under :

(1) A licensee shall, in exercise of any of the powers conferred by or under this Act, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

(2) Save in the case provided for in Section 12, Sub-Section (3), where any difference or dispute arises as to the amount or the application of such compensation the matter shall be determined by arbitration.

12. In view of this legal position, in my opinion the petitioner is entitled to compensation for the use of a portion of his land for erection of electricity transmission tower (s).

13. Accordingly, if the petitioner applies the railways will determine his claim and will pay compensation to him, if he is found entitled to any, within six months from the receipt of such application. If any dispute arises as to the amount or the application of such compensation, the matter shall be determined by the arbitration.

14. With these findings, observations and directions this writ petition stands disposed of. No costs.