

The Superintending Engineer, Vs. Vadivelu and Bavayee

The Superintending Engineer, Vs. Vadivelu and Bavayee

SooperKanoon Citation : sooperkanoon.com/830613

Court : Chennai

Decided On : Jun-16-2009

Reported in : (2009)5MLJ1005

Judge : M. Duraiswamy, J.

Acts : Indian Electricity (Supply) Act, 1948 - Sections 10 and 42; [Indian Electricity Act, 1910](#) - Sections 12 to 16, 18, 19 and 51; [Indian Telegraph Act, 1885](#) - Sections 16; Telegraph Act, 1995 - Sections 10, 16, 16(1) and 16(3); Indian Penal Code (IPC) - Sections 188

Appeal No. : Second Appeal No. 1100 of 2000

Appellant : The Superintending Engineer, ;The Executive Engineer, ;The Asst. Exe. Engineer/C and I, and ;The Ass

Respondent : Vadivelu and Bavayee

Advocate for Def. : T.L. Thirumalaisamy, Adv. for Sarvabhauman Associates

Advocate for Pet/Ap. : N. Muthuswamy, Adv.

Disposition : Appeal dismissed

Judgement :

M. Duraiswamy, J.

1. The above Second Appeal arises against the judgment and decree in A.S. No. 33 of 1996 on the file of Subordinate Court, Sankagiri confirming the Judgment and Decree in O.S. No. 237 of 1993 on the file of District Munsif Court, Sankagiri.

2. The defendants in the suit are the appellants in the above second appeal. The respondents are the plaintiffs in the suit. The plaintiffs filed O.S. No. 237 of 1993 against the defendants for the following reliefs:

(a) Pass a Decree for permanent injunction in favour of the plaintiff and against the defendants;

(b) restraining the defendants and their subordinates from in any way erecting or putting any new Electricity poles and laying new wires and giving any new connections in the existing pole in suit properties or in the alternative;

(C) directing the defendants to put new poles in front of the S. No. 62/1, 68/1 and 68/2 and connecting some other poles out of suit properties. Through the courses shown as AOBCF and GHIJ in the plaint rough plan No. 2;

(C1) Grant a permanent mandatory injunction directing the defendants to remove the poles and wire drawn in S. Nos. 678/1 and 68/2 failing which making provisions for executing the permanent mandatory decree;

(d) awarding the cost of this suit.

3. The brief facts of the case of the plaintiffs in the suit are as follows:

(i) The second plaintiff is the wife of the first plaintiff. The suit properties belong to the plaintiffs. The plaintiffs are in possession and enjoyment of the suit properties.

(ii) According to the plaintiffs, there is a pakka metal road running North to South which starts from Salem Main Road and reaches Elampillai. On the eastern side of the metal road, there is a Tamil Nadu Electricity Board 110/K.V. sub station. To show the topography of the sub station, plaintiffs filed a rough plan. On the northern side of the sub station, there is one land belonging to Palaniappa Gounder and Panchayat Road and then first plaintiff's land. The defendants installed three poles in S. No. 62/1 belonging to the first plaintiff and the

defendants tried to put extra two or three poles in the said land, when there is no necessity to erect new poles. The defendants also erected poles in the road poramboke. The defendants without erecting new poles in S. No. 62/1, could have erected the poles in road poramboke. Similarly, the defendants tried to erect two or three extra electricity poles in S. No. 68/1 and 68/2. belonging to the second plaintiff. The plaintiffs proposed to start small scale industries and houses in the suit property. If the defendants erect extra poles in the suit property, the plaintiffs cannot plough the land and the lands cannot be used for agricultural purposes.

(iii) According to the plaintiffs, the defendants can erect poles in the road poramboke. Therefore, plaintiffs represented the matter to the defendants in person. But the defendants did not heed to the words of the plaintiffs. Hence, the plaintiffs have sent a representation to the defendants. In spite of the representation sent by the plaintiffs, defendants tried to erect new poles in the suit property. On the west of S. No. 62/1, poramboke land situate. Similarly, on the west and north of S. Nos. 68/1 and 68/2, poramboke lands situate. According to the plaintiffs, if the pole is erected and wire is drawn in the said poramboke land nobody will be affected. According to the plaintiffs, after the filing of the suit, the defendants tried to erect new poles in S. Nos. 68/1 and 68/2 by putting up poles and laying new wires in the said survey numbers. Therefore, the plaintiffs filed the suit.

4. The case of the defendants is as follows:

(i) According to the defendants, the Tamil Nadu Electricity Board has taken all steps to improve the voltage and supply condition surrounding the area where the substation has been erected. According to the defendants, the erection of 10 M.V.A. Power Transformer and other substation works have been completed and the supply has been commenced in the second week of October 1993.

(ii) According to the defendants, existing 22 KV line comes from Salem 230 KV substation running through the suit property for the past more than 30 years. According to the defendants, all the works were completed except erection of two poles and giving connection in the existing lines. According to the defendants, the Tamil Nadu Electricity Board has got powers for placing lines, poles etc., in any

land under Section 42 of Indian Electricity (Supply) Act 1948 and under Section 51 of the Indian Electricity Act 1910. Therefore, the defendants prayed for dismissal of the suit.

5. Before the trial court, the first plaintiff was examined as P.W.1 and 8 documents Exs.A-1 to A-8 were marked. On the side of the defendants, D.W.-1 was examined and Exs.B-1 & B-2 were marked.

6. The trial court, after considering the oral and documentary evidence of both the parties, decreed the suit as prayed for.

7. Aggrieved over the judgment and degree of the trial court, the defendants filed A.S. No. 33 of 1996 on the file of Sub Court, Sankagiri and the lower appellate court after taking into consideration the materials available on record, confirmed the judgment and decree of the trial court and dismissed the appeal.

8. Aggrieved over the judgment and decree of the courts below, the defendants had filed the above second appeal.

9. Heard Mr.N.Muthuswamy, learned Counsel for the appellants and Mr. T.L. Thirumalaisamy, for the respondents.

10. At the time of admission, the following substantial questions of law arose for consideration in the above Second Appeal:

Under Section 42 of the Indian Electricity Supply Act, 1948 and Section 16 of the [Indian Telegraph Act, 1885](#), have not the appellants an absolute right to proceed with the implementation of the work covered under the sanctioned scheme, subject however to the liability to compensation alone if established?

11. The learned Counsel appearing for the appellants contended that already 22 KV power line has been drawn on the poles erected as per the sanctioned scheme 110KV-22 KV Elampillai sub station in order to improve the supply in that area. Therefore, the courts below ought not have granted decree in favour of the respondents. The learned Counsel further contended that if at all, any objections are there, the plaintiffs are entitled only for compensation. The learned Counsel

also contended that the electricity poles have been erected as per the provisions of the Section 51 of the Indian Electricity Act 1910 and Section 42 of Indian Electricity (Supply) Act 1948. The learned Counsel also contended that the erection of the poles are only in the interest of public.

12. The learned Counsel for the appellants relied on the Judgment reported in : AIR1999 Mad365 (TNEB Basin Bridge Power House v. Thangaprakasam), which reads as follows:

Telegraph Act, 1995, Section 10 - Electricity Supply Act, 1948, Section 42 - Electricity act, 1910, Sections 12 - 16, 18, 19 - Power of Electricity Board install posts, tower for carrying high tension wires - Board is entitled to claim right of user over property not belonging to them of above purpose - Section 10 of Electricity Supply Act empowers electricity Board to place and maintain telegraph line ;under, over, along or across and posts in or upon and immovable property - Such power to be exercised only for purpose of telegraph established or maintained by authority and right of Board is only user of such property and Board shall pay Full compensation to all persons interested for any damages sustained by them by reasons of exercise of powers Board - Individual owning land where Board proceeded with work of constructing concrete bases for installing high posts to draw high tension wire, cannot seek injunction restraining Board from doing so long as it is done in accordance with provisions of act and sanctioned scheme - Such individual can claim damages alone if any sustained by them.

13. Countering the submissions made by the learned Counsel for the appellants, the learned Counsel for the respondents submitted that the findings of the courts below are just and proper and the appellants have discriminated the respondents by not erecting any poles in the adjacent land. The learned Counsel further submitted that the appellants by erecting poles out side the respondents' land i.e., in the poramboke land, nobody will be affected or prejudiced.

14. On considering the submissions made by both the learned Counsel, it could be seen that the appellants had discriminated the defendants from the adjacent land owners. When the appellants had chosen to erect the poles in the poramboke land adjacent to the respondents' land, the necessity for erecting the pole inside the

respondents/plaintiffs land is not known. Merely because, the appellants/Board have powers to erect poles in any land under Section 42 of Indian Electricity (Supply) Act 1948 and under Section 51 of the Indian Electricity Act 1910, it does not mean that they can discriminate the land owners. In the present case, the affected and aggrieved parties are the respondents.

15. Further, when the poramboke land is available for erecting poles adjacent to the respondents land, the appellants could have erected the poles in the said poramboke land without affecting the respondents.

16. The learned Counsel for the respondents relied on the Judgment reported in : AIR1989 Delhi51 (Surat Singh v. Delhi Municipal Corporation), which reads as follows:

A bare reading of Clause (d) of Section 10 read with Section 16 of the Telegraph act would show that DESU has not got unrestricted powers to fix electric poles or to instal overhead lines over the land of any person when there is resistance or obstruction by that person. Sub-section (1) of Section 16 provides that if in the exercise of powers conferred by Clause (d) of Section 10, there is any resistance or obstruction, the District Magistrate may in his discretion order that the telegraph authority shall be permitted to exercise those powers. It is obvious therefore, that before passing any such order in the District Magistrate will give hearing to the person so resisting or obstructing the telegraph authority in the exercise of its powers. It is only after passing of the order by the District Magistrate if the person resists the exercise of powers by the telegraph authority or does not give all the facilities for the exercise of those orders when that person had control over the property, he is deemed to have committed an offence under Section 188 of the Penal Code. This Section 188 of the Penal Code provides for punishment for disobedience to order duly promulgated by a public servant. Under Sub-section (3) of Section 16 of the telegraph act a dispute concerning the sufficiency of the compensation to be paid under Clause (d) of Section 10 has to be determined by District Judge by referring the dispute to him by either of the parties. Further, it may be noted that the notification dated 19.1.4 aforementioned and to which reference was made as well by the lower appellate court, confers powers on the licensee

only and confers no powers on any public officer or any other person engaged in the supply of energy to public under the Electricity act. No other provision of law or any other notification has been brought to my notice in support of the contention that DESU authorities have right to fix electricity poles in private property whenever and wherever they so wanted.

17. Even in the present case, though the respondents had objected to the erection of the poles, the appellants did not obtain any prior order from the concerned authorities.

18. Therefore, considering the materials available on record and the rival submissions of both the learned Counsel, I find no ground much less substantial question of law to interfere with the findings of the courts below. Therefore, the above second appeal is liable to be dismissed. Accordingly, the Second Appeal is dismissed. No costs.