

**Prem Pal Vs. State of U.P. and Others**

**Prem Pal Vs. State of U.P. and Others**

**SooperKanoon Citation :** [sooperkanoon.com/917700](http://sooperkanoon.com/917700)

**Court :** Allahabad

**Decided On :** Mar-01-2011

**Judge :** Ferdino Inacio Rebello; Vineet Saran, J.

**Acts :** Indian Electricity Act, 2003 - Section 164, 2 (39); Works of Licensees Rules, 2006 - Rule 13,; [Indian Telegraph Act, 1885](#) - Section 10 (d), 3(6); Licensees Rules - Rule 3, 15

**Appeal No. :** WRIT - C No. - 6278 of 2011

**Appellant :** Prem Pal

**Respondent :** State of U.P. and Others

**Advocate for Def. :** C.S.C.; D.K. Mishra, Advs

**Advocate for Pet/Ap. :** Satyaveer Singh, Adv

**Judgement :**

1. The petitioner is the owner of the land having an area of 0.122 hectare of Gata No. 788, situated in village Shahzadpur Kanaini, Pargana & Tehsil Khurja, District Bulandshahr. His name is recorded as Bhumidhar with non-transferable rights over the said land. The petitioner does agricultural work over the said land, as the agriculture is the only source of his livelihood. According to the petitioner, the Power Grid Corporation of India is establishing a high tension electric line and for that purpose they have entered upon the petitioner's land and have constructed structures, as a result of which the said land cannot be used optimally for

agricultural work in future.

2. The case of the petitioner is that when he made enquiries and lodged complaints against encroachment in his land, some persons approached him and forcibly gave him a cheque of Rs. 26,800/-. The petitioner was also informed that it was the compensation for use of his land. The petitioner filed an application dated 19.01.2011 to the District Magistrate, Bulandshahr, returning the said cheque as also requesting him to restrain the persons concerned from occupying his land illegally. However, till date, no action has been taken. It is the case of the petitioner that respondents 2 and 3 are responsible for the same. In these circumstances, the petitioner has approached this Court for a direction to the respondents to give compensation for the land and crops and to decide his representations dated 12.01.2011 and 19.01.2011.

3. Considering the controversy, on behalf of respondent no.4, it is pointed out that no reply is required, as the compensation receipt dated 15.01.2011 would indicate that the respondent no.4 has determined the compensation for the crop damaged during foundation/erection/stringing work of the transmission line and had given the same to the petitioner. It is the case of respondent no.4 that the petitioner, if aggrieved, can apply to the District Judge, within whose jurisdiction the land is situated, for enhancement of compensation, and this Court should not interfere in exercise of its extraordinary jurisdiction, as the petitioner has an efficacious alternative remedy to approach the District Judge.

4. The question for our consideration firstly is, whether the petitioner has an adequate and efficacious alternative remedy to apply for enhancement of compensation?

5. The issue may be understood in the context of the Electricity Act, 2003 (hereinafter referred to as the 'Electricity Act') and the Works of Licensees Rules, 2006 (hereinafter referred to as the 'Licensees Rules'). Also relevant is the [Indian Telegraph Act, 1885](#) (hereinafter referred to as the 'Telegraph Act').

6. Under the Licensees Rules, Rule 3 is relevant and the same reads as under:-

"3. Licensee to carry out works.- (1) A licensee may -

(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;

(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:

7. 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 authorised by the State Government in this behalf, for carrying out the works:

8. 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 or Police, or the officer authorised may by order in writing direct for any such works, support, stay or strut to be removed or altered.

(2) When making an order under sub-rule (1), the District Magistrate or the Commissioner of Police or the officer so authorised, as the case may be, shall fix, after considering the representations of the concerned persons, if any, 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.

(3) Every order made by a District Magistrate or a Commissioner of Police or an authorised officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.

(4) Nothing contained in this rule shall effect the powers conferred upon any licensee under section 164 of the Act.

9. The next relevant provision is Rule 15 of the Licensees Rules, which reads as under:-

"15. Determination of dispute or difference by the Appropriate Commission.- When a matter is brought to the Appropriate Commission for determination under these rules, the matter shall be determined by the Appropriate Commission within a period of thirty days and after hearing the parties concerned."

10. Also relevant would be Rule 13, which reads as under:-

"13. Determination and payment of compensation to affected persons.- (1) Where the licensee makes default in complying with any of the provisions of these rules, he shall make full compensation for any loss or damage incurred by reason thereof to the person affected, as may be determined by the District Magistrate or by any other officer authorised by the State Government in this behalf, if not agreed mutually between the parties concerned."

11. A conjoint reading of these Rules would, therefore, show that a licensee can enter upon a land including private land for carrying out the work as a licensee. If the licensee enters upon the land and the owner or occupier raises objections, the licensee must obtain permission, in writing, from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government. The District Magistrate or the Commissioner of Police or the other officer so authorised, then has to fix, after considering the representations, the amount of compensation or annual rent, or both, which has to be paid to the owner or occupier. Rule 13 of the Licensees Rules, provides that if there be a default by a licensee, then he is bound to make full compensation for any loss or damage incurred by reason thereof to the person affected, as may be determined by the District Magistrate or by any other officer as may be authorised by the State Government, and if there be a dispute or difference in respect of compensation determined under Rule 13 (1), the dispute shall be decided by the Commission in terms of Rule 15 of said Rules. This seems to be a scheme of things under the Licensees Rules.

12. Under Section 164 of the Electricity Act, the Appropriate Government may confer any of the powers, which the telegraph authority possesses under the Telegraph Act, on any public officer, licensee or any other person engaged in the business of supplying electricity under the Electricity Act. The State Government, by notification dated 24th December, 2003, in exercise of powers conferred under Section 164 of the Electricity Act, has conferred on the Power Grid Corporation powers of the telegraph authority under Part III of the Telegraph Act. The powers conferred include to lay out electrical wires or set up power machineries over any immovable property for the sake of maintenance or to be laid out or to be maintained for the sake of telephonic or wire-related communication required for proper coordination in power transmission and works. Section 10 (d) of the Telegraph Act, which is relevant, reads as under:-

"10. Power for telegraph authority to place and maintain telegraph lines and posts.  
- 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) ....

(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."

13. The next relevant provision is Section 16, which reads as under:-

"16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority. - (1) ...

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3), or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same."

14. It will, thus, be apparent that the Authority under Section 10 of the Telegraph Act is bound to pay full compensation to all persons interested for any damage sustained by them, by reason of using the land or putting up any structure on the land thereby causing waste or damage. It is also provided that if a person is dissatisfied with compensation, such person may approach the District Judge within whose jurisdiction the property is situate, who will then decide the sufficiency of the compensation.

15. Considering that by exercising powers under Section 164 of the Electricity Act, the provisions of Part III of the Telegraph Act have been made applicable, the telegraph authority, which is defined in Section 3 (6) of the Telegraph Act, in the instant case, would be the Power Grid Corporation. Once the Power Grid Corporation determines the compensation under Section 10 (d) of the Telegraph Act, a person aggrieved by the said determination, can move the District Judge.

16. Now, the question for our consideration is whether there is a conflict between the exercise of powers by the Appropriate Commission under the Licensees Rules and exercise of powers by the Power Grid Corporation under Part III of the

Telegraph Act, which is a licensee. Under the Electricity Act, therefore, there appears to be two authorities who can decide about the inadequacy of the compensation. Will that result in a conflict in a matter of exercise of jurisdiction? In our opinion, by a proper reading and construction of the two Acts, there need not be any conflict. Both are Central Acts.

17. A licensee under Section 2 (39) of the Electricity Act, is a person who has been granted a licence under Section 14 of the said Act. Section 14 confers power on the Appropriate Commission to grant a licence to any person to transmit electricity as a transmission licensee, or to distribute electricity as a distribution licensee, or to undertake trading in electricity as an electricity trader, in any area specified in the licence. The expression 'licensee', therefore, is a wide term, which can include various kinds of licensees. Normally, the compensation will have to be determined in terms of the Licensees Rules. In those cases where, under Section 164 of the Electricity Act, the powers of Part III of the Telegraph Act have been conferred on a licensee, then in that class of cases, the compensation determined would not be under the Electricity Act or the Rules framed thereunder but under the provisions of the Telegraph Act. A construction of the provisions in this manner would lead to harmonious construction and will not result in conflict of exercise of jurisdiction under the Electricity Act on one hand and the Telegraph Act on the other. Under Section 10 of the Telegraph Act, the compensation is to be determined not by the District Magistrate or the Commissioner of Police but by the licensee itself, in the instant case, the Power Grid Corporation. The Power Grid Corporation, in the instant case, has determined the compensation. The petitioner was given a cheque which he had accepted on 15.01.2011. In our opinion, therefore, the remedy to the petitioner, if he is aggrieved by the insufficiency or inadequacy of the compensation, will be to apply before the District Judge within whose jurisdiction the land is situated, for enhancement of compensation or the like, which he is entitled to.

18. Our attention was invited to a judgment of this Court in *Deva Raj v. U.P. State Electricity Board, Lucknow & Ors.*, AIR 1977 All. 452, wherein it was held that neither the Indian Electricity Act, 1910 nor Section 10 of the Telegraph Act provided any procedure under which compensation which would be determined

and, thus, it was not necessary for the owner of the land to make any formal application for determination of compensation for the loss, if any, suffered by him on account of the action of the Electricity Board. This will not assist us considering the issues.

19. That, there is a power to locate a tower over the land possessed by private individuals and such individual would be entitled for the compensation for the damage sustained by him, was upheld by a Division Bench of this Court in *Janardan Pandey v. State of U.P. & Ors.*, Civil Misc. Writ Petition No. 41411 of 2007 decided on 5th September, 2007.

20. Considering the above discussion, this petition is disposed of, by directing the petitioner to apply, if not already applied, to the District Judge having jurisdiction for enhancement of compensation, and if such an application is made, the District Judge having jurisdiction to proceed to determine the compensation in accordance with law and dispose of the matter as expeditiously as possible.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**