

(2016) 07 CAL CK 0059

CALCUTTA HIGH COURT

Case No: Writ Petition No. 4327 (W) of 2016

Mohan Lal Sarkar

APPELLANT

Vs

Power Grid Corporation of India
Limited

RESPONDENT

Date of Decision: July 21, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226
- Electricity Act, 2003 - Section 164
- Telegraph Act, 1885 - Section 10, Section 16(3)

Citation: (2017) 1 CalLT 266 : (2016) 6 WBLR 83

Hon'ble Judges: Sambuddha Chakrabarti, J.

Bench: Single Bench

Advocate: Mr. Subir Sanyal, Mrs. Saumoli Sarkar, Advocates, for the Petitioner; Mr. Saptangshu Basu, Senior Advocate, Mr. Anirban Ray, Mr. Uttam Kumar Mondal, Advocates, for the Power Grid Corporation of India

Final Decision: Dismissed

Judgement

Sambuddha Chakrabarti, J. - The immediate occasion for the petitioner's approaching this Court is the letter dated February 20, 2016, written by the Assistant General Manager, Power Grid Corporation, Baharampur, i.e., the respondent no. 5 herein, to the petitioner which has been annexed as Annexure-P5. By the said letter the petitioner was given reply on the points raised by him by his letters dated January 22 and February 8, 2016 respectively.

2. The case of the petitioner in brief is that he owns certain lands in different plot numbers in the district of Birbhum. Of them one particular plot has certain valuable trees and the other is used as an agricultural land where different crops are cultivated throughout the year.

3. In the second week of January 2016, the petitioner was informed by the respondents that about 95 trees would be felled and the paddy standing on the other plot of land would be destroyed to draw overhead extra voltage 400 KV transmission line for execution of a certain scheme. He was given to understand that the extra high voltage transmission line would be drawn over the entire one plot of land through the middle portion which required the felling of the trees. The petitioner's request for shifting the overhead transmission line altering its height was declined by the officials of the respondent no. 1 Corporation. The petitioner has alleged that no notice has ever been given to him in order to draw overhead transmission line and no consent was ever taken from him. The petitioner made electronic representation against the proposal and he also submitted two written representations to the respondent no. 5 on January 22, 2016 and February 8, 2016 giving details of all the loss suffered by him for cutting of valuable trees and the future non-usability of the land consequent upon drawal of the overhead line. In reply thereto, the respondent no. 5 by the impugned communication, inter alia, informed the petitioner that the route diversion was practically impossible, felling of trees is followed all over India where new transmission lines were drawn and it was not possible to assess the actual compensation to be paid to the petitioner without the trees being felled first.

4. The petitioner has assessed the loss to be suffered by him on account of the trees at approximately at Rs. 30 lakhs and the value after 20 years would be more than one crore. The market value of the land per cottah in the area was approximately Rs. 30,000/-.

5. On February 22, 2016, the officers of the respondent no. 1 Corporation arrived at the spot and destroyed the wheat covering about 645 sq. ft over one particular plot of land. The respondent no. 6 served a memo under Sections 10 to 19 of the Indian Telegraph Act, describing the crops damaged and the measurement of the area of the land.

6. The petitioner has relied on different provisions of the Electricity Act of 2003 and Section 10 of the Telegraph Act and submitted that the licensee in order to draw overhead line, across or along any land is required to ensure as little damage as possible and to award compensation before the execution of the work. The respondent no. 5 not having done so had acted arbitrarily and improperly in holding that route diversion was not possible when the petitioner himself was showing an alternative way/route which would not cause any damage to his valuable trees.

7. The petitioner has, therefore, inter alia, prayed for a writ in the nature of mandamus commanding the respondents not to give any effect or further effect on the basis of the impugned letter and a writ in the nature of mandamus commanding the respondents to change the alignment or route of the overhead extra voltage transmission line sought to be drawn over the plots of the land of the petitioner. There is an alternative prayer for making the respondents assess the quantum of

compensation for cutting of the trees along with the value of the land and to make payment of such compensation prior to the work starts.

8. By my order dated March 17, 2016, I directed the respondent no. 1 Corporation to measure the girth, height etc., of the trees in question and to decide the species of the trees before they are felled and to intimate the compensation payable to the petitioner as per the rate chart. So far as the other point taken by the petitioner, viz., route diversion, it has already been held in the said order that the Court is not the appropriate authority for deciding the same in view of a highly technical view expressed by the Corporation. The compulsions of the Corporation for selecting a certain route are best judged by the technical people of the Corporation for which the Court lacked requisite expertise. The reasons mentioned in the impugned letter cannot be considered as unjust. It was further observed that the petitioner's prayer for change of alignment ultimately came to route diversion. Therefore, with regard to the same prayer also the Court refrained from passing any order.

9. On the next date of hearing, i.e., April 7, 2016, the respondent no. 1 Corporation filed a valuation report in Court. Subsequently the petitioner filed a rejoinder.

10. In reply to the petitioner's contention that no notice was given to him, Mr. Bose, the learned Senior Counsel for the respondents, submitted that there was a newspaper publication in Ananda Bazar Patrika on January 9, 2014 about the concerned project. A copy of the said notice was supplied to the petitioner.

11. Mr. Sanyal, the learned Advocate for the petitioner, has assailed the same on the ground that the notice did not mention the name of the village of the petitioner. Therefore, the petitioner has been misled by the same and he could not raise any objection. He raised a question of discrimination as others were given the opportunity of raising objection by mentioning the name of the village. The petitioner was not aware that overhead transmission line was to be drawn over his plot of land. The constructive notice published in the newspaper has been a defective one. Mr. Sanyal further took the point that the valuation report filed by the respondent in respect of the trees amounting to Rs. 94,447/- has been made purportedly as per the rates of the department of Forest. According to him the stand of the respondents that the petitioner could approach the learned District Judge under 16(3) of the Telegraph Act does not arise. The question to be considered is whether the valuation or compensation has been vitiated by non-consideration of factors laid down by the Supreme Court in different judgments.

12. In particular, the petitioner relied on the case of **State of Haryana v. Gurcharan Singh and Another, reported in 1995 Supp (2) SCC 637**, for a proposition that the collector or the Court who determines the compensation for the land as well as the fruit bearing trees cannot determine them separately. The compensation is to the value of the acquired land. The market value is determined on the basis of the yield. Then necessarily applying a suitable multiplier the compensation is required to be

awarded. The market value of the land is determined twice over: once on the basis of the value of the land and again on basis of the yield got from the fruit bearing trees where market value is determined on the basis of the yield from the trees or a plantation. Eight years" multiplier shall be appropriate and for agricultural land 12 years" multiplier shall be a suitable one.

13. The next judgment relied on by the petitioner is **Airports Authority of India v. Satya Gopal Roy, reported in (2002) 3 SCC 527**. There the Supreme Court had followed the ratio decided in the case of State of Haryana (Supra) and held that while evaluating the market value of the acquired property, viz., land and fruit bearing trees standing thereon, value of both is to be determined as one unit. It would be open to the land acquisition collector or the court either to assess the land with all its advantages and to fix the market value thereof on the basis of comparable sale instances. The Supreme Court further observed that with regard to the fruit bearing trees, their life span including risk factor is also required to be taken into consideration. Following the principle of the judgment mentioned earlier the Supreme Court held that the compensation payable to the respondents was to be based on the yield from the trees by applying eight years" multiplier.

14. In the last judgment relied on by the petitioner in this respect was the case of **Kerala State Electricity Board v. Livisha and Others, reported in (2007) 6 SCC 792**, the Supreme Court held that the situs of the land, the distance between the high voltage electricity line laid there over and the extent of the line thereon passes through a small tract of land are to be taken into consideration. The value of the land would also be a relevant factor.

15. Based on these three judgments Mr. Sanyal argued that the net yield is to be taken into consideration by deducting the expenses incurred for getting the yield, value of the timber etc., and the yield of trees was to be multiplied by eight. None of the factors as laid down by the Supreme Court has been considered in the valuation report. It has further been argued by him that all that the petitioner invites the writ court is whether the decision making process have been properly discharged by the respondents. According to him, since the factors laid down by the Supreme Court have not been considered in the valuation report, the respondents should revisit the computation process and to pass a fresh order of computation and valuation in terms of the judgment.

16. The petitioner has further argued that since the right to property is affected in the name of public interest the writ court should ensure that the computation of compensation is made and paid to the petitioner prior to execution of the work and if computation of compensation and payment is made after the work it would amount to loss of property without any compensation and would be violative of Article 14 and 300A of the Constitution of India.

17. Mr. Bose the learned Senior Counsel appearing for the Power Grid Corporation (the "Corporation" for short), submitted that the respondent no. 1 is contracting 400 KV Double Circuit lines from Rajarhat to Purnia. The appropriate Government has conferred the power of Telegraph authority by a Notification dated December 24, 2003. This has enabled the respondent no. 1 to take all the steps for effecting the work as per Section 10 of the Telegraph Act. Though not compelled under any law, the respondent no. 1 had given notice of such project in several newspapers giving particulars of the project. All interested persons were asked to visit the office for a route alignment plan.

18. The more specific case of the Corporation is that work at only the land of the petitioner remains incomplete and consequently a project of national importance is suffering. He prayed for dismissal of the writ petition as the respondent no. 1 has undertaken the work pursuant to the approval given by the Ministry of Power, Government of India, under Section 68 of the Electricity Act, 2003 (the "Act", for short).

19. It appears that by a communication, dated September 13, 2011 prior approval of the Government under Section 68 of the Act was granted for Eastern Region Strengthening Scheme-V. The scope of work was also mentioned in the said communication.

20. The respondent no. 1 has been specified as the Central Transmission Utility and the Ministry of Power in exercise of the power conferred by Section 164 of the Act has been authorised to exercise all the powers vested in the Telegraph authority under Part-III of the Telegraph Act in respect of electrical lines and electrical plants established or maintained for transmission of electricity and for the purpose of telephonic or telegraphic communication necessary for proper coordination of the works. The respondents had produced in court evidence of newspaper publication intimating the public in general of the work undertaken and invited objections from them, if any. This was done to keep the people aware of the work of national importance being undertaken by the respondent no. 1, the Corporation. Mr. Sanyal submitted that the name of the village of the petitioner was not mentioned in the newspaper publication and consequently he did not get any opportunity to file his objection. Therefore, the newspaper publication remained for him an empty formality and without any substantial help.

21. The stand of the petitioner takes us to the question whether the omission to mention the name of the particular village in the notification rendered it invalid. This in turn further takes us to the consideration of whether the newspaper publication was a mandatory requirement for such a work by the transmission company.

22. The Andhra Pradesh High Court in the case of G.V.S. Rama Krishna and 7 Others. v. A.P. Transco, Rep. By Its Managing Director, Vidyuth Soudha, Erramanzil, Hyderabad and 3 others, (W.P. No. 860 of 2009) had occasion to deal with an almost

identical situation. After dealing with the earlier acts holding the field before the Act of 2003 came into being a learned Single Judge had held that Section 164 of the Act of 2003 read with Section 10 of the Telegraph Act, 1885 recognised the absolute power of the respondent therein to proceed with the placing of electric supply lines or electric posts for transmission of electricity on or over the private lands subject to the line of the owner or occupier to claim compensation if any damage is sustained by him by reason of placing of such electric supply lines. The Andhra Pradesh High Court held that neither the acquisition of the lands was necessary nor there was any need for consent of the owner or occupier. It is also relevant to note that since Sections 28 or 42 of the Electricity (Supply) Act, 1948 has not been saved under Section 185 of the Electricity Act, 2003, there is no need to publish a sanctioned scheme nor is it necessary to give any notice by publication in local newspapers as was required under the Act of 1948.

23. Thus, if it is not required to publish a sanctioned scheme nor is it necessary to give notice of the same an omission, if at all, in the newspaper publication can neither be fatal to the respondents authorities nor can the petitioner take any advantage of it.

24. Mr. Sanyal's effort to distinguish the judgment of the Andhra Pradesh High Court from the facts of the present case does not appear to be convincing. The distinction sought to be made on the respective stage of publication of the notification is not material for the present purpose. Moreover, in the present case also notification was published in respect of the villages through which overhead transmission line was proposed to be drawn. Thus the distinction was more academic than real. If at all it is a distinction, it is a distinction without any difference.

25. I find sufficient substance in the submission of Mr. Bose that once the Central Government has conferred power upon the respondent to exercise all the powers vested under Part-III of the Telegraph Act, application of Section 67 of the Act and Rule 3 of the Works of Licensee's Rules are excluded. Rule 3(4) makes it quite obvious.

26. The respondent no. 1 has also taken permission from the department of Forest for felling and disposing of trees in non-forest areas.

27. I cannot accept the stand of the petitioner that the respondent no. 1 shall not proceed with any further work until and unless the amount payable to him by way of compensation is first decided and paid. Such a submission in the case a project work having a national importance cannot be simply accepted. Stopping the work of such a huge magnitude is bound to cause loss for the entire nation, particularly, the countless inhabitants of the areas likely to be benefited by the completion of the said project work.

28. This, however, does not mean that an individual owner of land or properties thereon in any form whatsoever shall have no remedy. The law does not render such a petitioner remediless. The Hon"ble Judge of the Andhra Pradesh High Court in the case referred to above had elaborately discussed the right of an individual to get compensation in similar circumstances. The respondent No. 1 shall pay full compensation to all persons interested for any damage sustained by them by reason of exercise of the powers. The right of the petitioner to get compensation is never taken away. In an unreported judgment of this Court in Ghostho Bihari Das v. State of West Bengal and Others., (W.P. No. 4465 (W) of 2015 dated February 23, 2015), this Court had the occasion to deal with a similar allegation. The petitioner of that case was the owner of a certain plot of land in the District of Burdwan and noticed electric towers being attached to his land without any prior permission. He also alleged that he had not been paid appropriate compensation for the land on which high tension tower was being erected. Section 10(d) of the Telegraph Act was considered and it was held that the respondent was liable to pay compensation to all the persons interested for any damage sustained by them by reason of exercise of power under Section 10 of the said Act. Section 16 (3) of the Telegraph Act empowers a dissatisfied person to move before the learned District Judge within whose jurisdiction the property is situated for determination of the quantum of the compensation payable to such person.

29. That case was dismissed as the petitioner had not exhausted the remedy available to him under the Telegraph Act. The Court observed that if the petitioner was not satisfied with the compensation to be paid by the authority he could definitely approach the learned District Judge.

30. The judgments relied on by Mr. Sanyal have no application at the present stage. They primarily deal with the factors to be taken into consideration for determining compensation for felling of trees. The petitioner is certainly entitled to compensation. At the stage of computing the compensation these factors will be relevant for the authorities to consider.

31. Mr. Sanyal's further submission that if the computation of compensation is made after the felling of the trees and drawal of overhead line it will amount to loss of property and violation of Articles 14 and 300A of the Constitution of India. Article 14 cannot be invoked by the petitioner unless he can establish that in the act of felling of trees the authorities have discriminated against him and they paid the compensation to other owners of trees before they were cut down. So far as Article 300A of the Constitution of India is concerned the right of the petitioner to get compensation has not been denied by the respondents. However, the question is whether a public purpose can be deferred till such compensation is made. The law on the point is very well settled. Public interest is an essential ingredient of public purpose. If an act to achieve public purpose has to be accomplished expeditiously such an act must be reckoned to have been done by the state exercising its power of

eminent domain. It does not offend any of the rights of the petitioner. The right of eminent domain is the right of the state through its agencies to assert its dominion even over a private property without the consent of the owner if there exists any public exigency or is necessary for the benefit of the public. After all, private interest must give way to the public purpose.

32. In such view of it, no mandamus can be issued in favour of the petitioner restraining the respondents from proceeding with the project work through the land of the petitioner. But this has not been disputed by the respondents as well that petitioner's right to seek compensation through the machinery provided under the Telegraph Act, 1885 remains intact. On the contrary, the effect of stopping the work of such a huge magnitude would be against the interest of the country.

33. Thus, I find no merit in the writ petition and the same is dismissed.

34. However, I direct the respondents authorities to compute the amount of compensation payable to the petitioner, if not already made, and to make payment of the same as early as possible, preferably within a period of twelve weeks from the date.

35. There shall be no order as to costs.

36. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.