

(2009) 08 DEL CK 0403

Delhi High Court

Case No: Writ Petition (C) 518 of 2000

Mahanagar Telephone Nigam
Ltd.

APPELLANT

Vs

District Magistrate and Another

RESPONDENT

Date of Decision: Aug. 27, 2009

Acts Referred:

- Telegraph Act, 1885 - Section 10, 10(2), 17

Citation: (2009) 176 DLT 472

Hon'ble Judges: Hima Kohli, J

Bench: Single Bench

Advocate: Ravi Sikri, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

Hima Kohli, J.

The present writ petition is directed against the order dated 27.10.1999 passed by the District Magistrate, Delhi, on a complaint dated 16.8.1997 made by respondent No. 2, directing the petitioner/MTNL to remove the obstruction from the respondent No. 2's drive way and relocate the pillars of the junction boxes at a suitable place.

2. Counsel for the petitioner states that the provisions of Section 17 of the Indian Telegraph Act, 1985, (hereinafter referred to as the Act") are not applicable to the facts of the present case as the three junction boxes in question have not been installed by the petitioner within the property of respondent No. 2 and rather, the same are on public land. He states that Section 17 of the Act can come to the aid of only such persons, who are aggrieved by the action of the petitioner of installing telegraph lines on the private property or the property with which, an aggrieved party intends to deal with in any manner. He submits that in the present case, the three telegraph lines/junction boxes were laid on land belonging to the local authorities and no objection had been raised by any private party at the relevant

time, and that the only requirement to be fulfilled by the petitioner at the time of laying the telegraph lines on a property vested in a local authority, was to take permission from the said authority, as envisaged under proviso (c) of Section 10 of the Act. Hence, it is stated that the complaint of respondent No. 2 for removal of junction boxes fixed across the front wall of his property, was misplaced and was liable to be rejected.

3. During the pendency of the present writ petition, respondent No. 2 expired and his legal heirs were brought on the record. However, none has entered appearance on their behalf even after notices were issued to them and duly received. Perusal of the file shows that a counter affidavit was filed by respondent No. 2 under index dated 17.05.2000, wherein the impugned order dated 27.10.1999 was sought to be supported. It was averred in the counter affidavit that laying of junction boxes had totally blocked the respondent No. 2's drive way which was the only entry to his house. It was further stated that in view of the fact that the decision of the learned District Magistrate was based on the report of the SDM, which remained unchallenged by the petitioner, it cannot dispute the findings of facts returned by the learned District Magistrate.

4. A perusal of the impugned order shows that the SDM of the area was directed to visit the site, i.e, House No. 27, Surya Niketan, Delhi and submit an inspection report. In the said report dated 16.4.1999 (Annexure R-2 to the counter affidavit), the SDM observed that the petitioner/MTNL had installed three extension boxes in front of the plot, subject matter of the writ petition. He also examined the sanction plan of the DDA and noted that the extension boxes came in front of the proposed gate as per copy of the plan submitted by respondent No. 2. While taking note of the distance between the junction boxes and the boundary wall of the plot, the SDM observed that there was every possibility that if the main gate is constructed as per the proposed site plan, then the drive way of the respondent No. 2 would be obstructed. Taking into consideration the aforesaid report of the SDM, the learned District Magistrate arrived at the conclusion that the junction boxes were liable to be removed on account of causing obstruction to the respondent's drive way, with further directions to the petitioner to relocate the same at a suitable place.

5. The contention of the counsel for the petitioner that the provisions of Section 17 of the Act do not come to the aid of the respondent No. 2, has to be seen in the light of the said provision, which is reproduced hereinbelow for ready reference:

Section 17: Removal or alteration of Telegraph line or post on property other than that of a local authority.

(1) When under the foregoing provisions of this Act a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority; and any person entitled to do so desires to deal with that property in

such a manner as to render if necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line or post accordingly:

Provided that if compensation has been paid u/s 10 Clause (d), he shall when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situated to order the removal or alteration.

(3) A District Magistrate receiving an application under sub section (2) may in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form; and the order so made shall be final.

6. A perusal of the aforesaid provision makes it apparent that any person, who is entitled to or desires to deal with the property, along/across of which, a telegraph line or post has been placed by the Telegraph Authority in such a manner as to cause obstruction, may call upon the authority to remove or alter the line or post to another place. It, however, stipulates that if the authority fails to comply with the requisition, the aggrieved party may apply to the District Magistrate for removal or alteration. In the present case, respondent No. 2 approached the District Magistrate in view of the failure on the part of the petitioner/MTNL to remove the junction boxes existing along or across his property. Merely because the junction boxes are affixed on public land, does not mean that respondent No. 2 could not have invoked the provisions of Section 17, as even a junction box/telegraph line situated along or across the private property comes under the purview of the said provision. Thus, the plea of the petitioner that Section 17 of the Act could not have been invoked by the respondent No. 2, as the junction boxes were on public land, is found to be devoid of merits and is turned down.

7. During the pendency of the present proceedings, considering the long lapse of time since the institution of the present petition, it was deemed appropriate to verify the current position at site. The petitioner was therefore called upon to place on the record the latest photographs of the junction boxes existing at the site, in relation to the boundary wall of the respondent No. 2. Needful has been done. A perusal of the photographs placed on the record by the petitioner/MTNL shows that there now exists a gate on the boundary wall of the property in question, which is located right behind the junction boxes and cannot be freely accessed on account of obstruction caused by the junction boxes. The situation has thus changed. At the time of passing

the impugned order, there was only a boundary wall enclosing the plot in question and the SDM had given his report on the basis of the sanction plans and the site visit. Now, there is a gate installed at the opening of the drive way, right in front of which the junction boxes of the petitioner are found to be installed. As a result, the gate cannot be opened completely, but only partially and there is a hindrance to the gateway of the property. Thus, the report of the SDM relied upon in the impugned order is only fortified by the current photographs of the site, filed by the petitioner/MTNL.

8. In view of the aforesaid facts and circumstances and the current position at site, this Court is of the opinion that there is no illegality, arbitrariness and perversity in the impugned order dated 27.10.1999, which deserves interference in judicial review. The writ petition is dismissed with no orders as to costs. The petitioner/MTNL is directed to relocate the three junction boxes at a suitable place, within a period of eight weeks.