

**B.P.RAY, J.**

W.P.( C) NO.12872 OF 2008 (Decided on 27.08.2010)

**ANANDA CH. MOHANTY & ORS.**

..... Petitioners.

.Vrs.

**UNION OF INDIA & ORS.**

..... Opp.Parties.

**INDIAN TELEGRAPH ACT, 1885 (ACT NO.13 OF 1885) – SEC.10 & 16.**

For Petitioners - M/s. Subir Palit, A.K.Mahana, H.K.Ratsingh &  
A.Mishra.

For Opp.Parties – Mr. B.K.Das (C.G.C. for OP.1)  
M/s.P.K.Mohanty,N.Mohapatra,  
Smt.J.Mohanty,C.R.Nayak, S.N.Dash,  
(for OP.3,5,6)  
M/s. S.Mohanty, S.Pattnaik, Sandeep  
Pattnaik, R.Mohanty, S.Das,  
J.R.Mohapatra (O.P.4).

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**B.P.RAY, J.** In this writ application filed under Articles 226 & 227 of the Constitution of India the petitioners have sought for issuance of a writ of mandamus to the opp. Parties not to construct any tower on the land of the petitioners and not to draw electric line over the same while drawing 400 K.V. D/C (Double Circuit) transmission line from Meramundali to Duburi.

2. According to the petitioners, they are the land owners in respect of an area measuring Ac. 2.54 decimals under Khata No. 48, Hal Plot No. 1476 in Mauza Nimapalli. The land is home stead one and was adjacent to Express High Way. The petitioners came to know in December, 2007 that the construction of transmission line in question was being undertaken, which according to the petitioners, is dangerous to human life and properties. It was the further case of the petitioners that the tower line was sought to the undertaken in violation of the rights guaranteed under Article 300-A of the Constitution of India inasmuch as the land over which the power line was drawn has not been acquired under Indian Telegraph Act. On the basis of these pleadings the petitioners have filed the present writ petition to restrain the opp.parties from undertaking construction of Rengali-Meramundali-Duburi 400 K.V. D/C line.

3. Opp. Parties 5 to 7 have filed a detailed and elaborate counter affidavit enclosing therein the notification dated 8.1.1996 issued by the Orissa State Electricity Board (in short, "the Board") under Annexure-A/6. From the said notification it would appear that a scheme has been prepared u/s 29 of the Electricity (Supply) Act, 1948 and published under Annexure-A/6 inviting objections to the proposed transmission line in respect of various schemes including Rengali-Meramundali-Duburi 400 K.V. D/C line. The transmission line has been augmented for supplying electricity to the general public and various industrial units for industrial growth of the State. It was also further stated that in pursuance of notification under Annexure –A/6 a general notice was also published in the Oriya daily "The Samaja" in the publication dated 13.1.1996 reiterating the same. The

objections were required to be filed within two months from the date of publication of the advertisement. But no objection was received in pursuance of the notification issued. It was further stated in the said counter affidavit that pursuant to the scheme in question 279 E.H.T. towers in total were planned to be set up and erected in 279 locations as per the drawing and design prepared by the Board long since. Out of them, foundations in 226 locations for erection of towers have been completed and 197 towers have already been erected and in the mean time there has been substantial progress of drawing of line from Duburi side and thus 80% of the work has been completed. It was further stated in the counter affidavit that it was very much essential to complete 400 KV Meramundali-Duburi line for providing stable electricity to the command area for meeting expansion of industrial progress in the State. It was also stated that Orissa Power Transmission Corporation Ltd. Being the successor of the Board automatically by operation of Section 185(2) of the Electricity Act was competent to execute the work as per the scheme. It was also stated that since the scheme was prepared in the year 1996 for greater public interest, the petitioners' interest has to be sacrificed inasmuch as the petitioners have not specifically alleged over which portion of the land the construction of tower would cause damage. It was also stated in the counter affidavit that in the event any damage was caused, the appropriate remedies have been provided under Schemes 10 & 16 of the Indian Telegraph Act to claim compensation. The opp. Party No. 3, namely, Power grid Corporation of India has also filed a separate counter affidavit stating that a miniscule portion of the land of the petitioners would be utilized for the scheme without affecting cultivability of the land. It was also stated that the scheme having been implemented since 1996, the petitioners can have no valid objection to the implementation of the scheme in view of the fact that for use of the petitioners' land, compensations have been provided under proviso(d) to Scheme 10 of the Indian Telegraph Act. Accordingly, it was stated that the writ petition is devoid of merit and is liable to be dismissed.

4. I have heard learned counsel for the parties and perused the materials on record. The law on the subject is no more res integra. A Division Bench of this Court in a judgment dated 7.3.1989 passed in O.J.C. No. 398 of 1989 (**Chema Behera and others V. State Electricity Board & others**) has negatived the identical contention as that of the petitioners while dealing with the writ petition in which challenge was made to the High Tension Line drawn from Bhanjanagar to Chandaka via Nayagarh. A single Bench of this Court while disposing of O.J.C. No. 2868 of 1998 vide judgment dated 29.8.2000 (**Bairagi Charan Nayak V. State of Orissa & others**) has held that for the inconvenience caused to a private individual while erecting tower and drawing H.T.L. such person is to get compensation as envisaged under Sections 10 & 16 of the Indian telegraph Act and having held thus the writ petition was dismissed. Similarly in another writ petition bearing W.P.(C) No. 11408 of 2007 decided on 12.11.2007 (**Sanghamitra Biswal V. O.P.T.C.L. & others**) it was held that while erecting towers inconvenience is bound to be caused to the concerned individual to some extent and therefore, keeping in view the said fact legislation has provided remedy to such person to claim compensation as envisaged under Sections 10 & 16 of the Indian Telegraph Act and on such finding the writ petition was also dismissed.

5. In view of the law as laid down by this Court in the aforesaid decided cases, I would dispose of the writ petition with the observation that in case any inconvenience is caused to the petitioners while erecting towers on their land, the petitioners are free to invoke the provisions of Schemes 10 & 16 of the Indian Telegraph Act to claim compensation.

6. Subject to the aforesaid observations, the writ petition is dismissed.  
Writ petition dismissed.