

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 15199 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE SMT. JUSTICE ABHILASHA KUMARI SD/-**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | No |
| 2 | To be referred to the Reporter or not ? | No |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | No |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ? | No |
| 5 | Whether it is to be circulated to the civil judge ? | No |
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KALYAN SAAMRA BAROT (BATIYA)....Petitioner(s)

Versus

STATE OF GUJARAT & 3....Respondent(s)

Appearance:

MR ISHAN MIHIR PATEL, ADVOCATE for the Petitioner(s) No. 1

MR PP BANAJI, AGP for the Respondent(s) No.1 - 3

MR SP HASURKAR, ADVOCATE for the Respondent(s) No. 4

CORAM: HONOURABLE SMT. JUSTICE ABHILASHA KUMARI

Date : 28/11/2014

ORAL JUDGMENT

1. **Rule.** Mr. P.P. Banaji, learned Assistant Government Pleader waives service of notice of Rule on behalf of respondent Nos.1 to 3 and Mr.S.P. Hasurkar, learned advocate waives service of notice of Rule for respondent No.4.
2. This petition, under Article 226 of the Constitution of India, has been preferred with the following prayers;

[4][a] Direct the respondents to afford a hearing as contemplated by the notices issued by them (after giving fresh date and timing) on issues of compensation as well deviation or alternative routing of 'Transmission Electricity Lines and Towers'; and further direct the respondents to remain present at the venue and time that may be specified in such notices and decide upon the issue and pass necessary orders / directions;

[4][a][1] Quash and set aside the order dated 16.10.2014 passed by the District Magistrate, Kutch – Bhuj directing that transmission lines may be erected without any obstruction and that necessary police protection may be granted for the same.

[4][b] Direct the respondents to follow the mandate of Section 10(d) of the Indian Telegraph Act, 1885;

[4][c] Direct the respondents to deviate the route of installation / erection of the 'Transmission Electricity Lines and Towers' to the boundaries of the agricultural land so as to not detrimentally affect the agricultural use of the agricultural land; and by giving necessary compensation;

[4][d] During the pendency of this petition, restrain the respondents from installing / erecting any transmission lines and towers and / or felling any trees or removing any agricultural produce upon and in the petitioners' agricultural land;

[4][e] pass any further writ, order or direction as may be deemed necessary in the interest of justice.

3. Briefly stated, that facts of the case are that the petitioners are agriculturists, owning agricultural land bearing old Survey No.72/1 admeasuring approximately Hectare 4-20-88, situated at village Gelda, Taluka Mundra, District Kutch. The petitioners are also rearing livestock on their land. It is the case of

petitioners that their sole source of income is from agriculture and their livestock. The grievance of the petitioners is that respondent no.4 – The Gujarat Energy Transmission Corporation Limited (GETCO), is laying a 400 KV Double Circuit Mundra – Zerda No.1., Package – 1 line, which passes over the agricultural land of the petitioners. The petitioners are further aggrieved by the impugned order dated 16.10.2014, passed by the District Collector / District Magistrate, Kutch – Bhuj (respondent no.2), whereby, the said respondent has accepted the application under Section 16(1) of the Indian Telegraph Act, 1885 made by GETCO. The case of the petitioners is that the erection of the 'High Tension 400 KV Double Transmission Electricity Lines' by respondent No.4 is arbitrarily routed, without any justification, with a diversion, in a zig-zag manner. A huge diversion is made in a manner so that a large part of agricultural land of the petitioners can be utilized for transmission, whereas, the said transmission line could have been established in a straight-line. According to the petitioners, as a huge area of their land would be utilized for the construction of tower, their only source of income would be destroyed. Being aggrieved by the impugned order passed by respondent no.2 in favour of respondent no.4 – GETCO, the petitioners have approached this Court by filing the present petition.

4. Mr. Ishan M. Patel, learned advocate for the petitioner states that, on the perusal of the impugned order, it is clear that no opportunity of hearing has been granted to the petitioners. It is stated by respondent No.2 in the said order that for '**administrative reasons**,' the petitioners could not be heard. The impugned order is, therefore, violative of the principles of natural justice, especially, as the action of respondent No.4 would adversely affect the rights of the petitioners.
5. Mr. S.P. Hasurkar, learned advocate for respondent No.4 submits that, insofar as the aspect of hearing is concerned, he would not have anything to submit and the Court may pass an appropriate order, remanding the matter.
6. Mr. P.P. Banaji, learned Assistant Government Pleader appearing for respondent Nos.1 to 3 submits that, insofar as the opportunity of hearing is concerned, it does appear from the impugned order that the petitioners have not been granted any opportunity of hearing.
7. Though the learned advocate for the petitioner has raised several grounds on the merits of the case, however, the very first submission made by him, that is, that the petitioners have not been granted an opportunity of hearing, is clearly borne out from the impugned order dated

16.10.2014 passed by respondent no.2. It is clearly stated therein that due to '**administrative reasons,**' the petitioners have not been heard.

8. This clearly reveals that the impugned order has not been passed in consonance with the principles of natural justice. It would have been prudent for respondent No.2 to have granted the petitioners an opportunity of hearing, as they claim to be adversely affected by the order passed against them.

9. Hence, without going into the merits of the case, and with the consent of the learned advocates for the respective parties, the following order is passed:-

. The impugned order dated 16.10.2014, passed by the District Magistrate, Kutch – Bhuj, is hereby quashed and set aside. The matter is remanded to respondent No.2 for fresh decision after granting the petitioners an adequate and reasonable opportunity of hearing.

10. The petition is partly-allowed to the above extent. Rule is made absolute, accordingly.

11. Till such time as a fresh order is passed by respondent No.2, no further action shall be taken by respondent No.4, insofar as the land of the

petitioners is concerned.

. Needless to state that respondent No.2 shall decide the matter as expeditiously as possible, and without any avoidable delay.

Direct Service is permitted.

SD/-

(SMT. ABHILASHA KUMARI, J.)

* Vatsal