



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 26TH MARCH, 2016

SINGLE BENCH : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.47 of 2014

Petitioners : 1. Shri Thentook Bhutia,
2. Shri Sonam Tshering Bhutia,
3. Shri Samdup Tshering Bhutia,
4. Shri Phigu Tshering Bhutia,

All Sons of Late Dorjee Tshering Bhutia,
R/o Simick-Lingzey,
P.O. Khamdong,
P.S. Singtam,
East Sikkim.

versus

Respondents : 1. Teesta Valley Power Transmission Limited,
2nd Floor, Mundra Bhawan,
Opposite Sona Motors,
Near Orbit Mall,
Sevoke Road,
Siliguri – 734 001.

2. The Power and Energy Department,
Government of Sikkim,
through its Secretary,
Kazi Road,
Gangtok,
East Sikkim.



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3. The District Collector,
East District,
District Administration,
Centre Sichey,
East Sikkim.
4. Ministry of Power
through its Secretary,
Government of India,
Shram Shakti Bhawan,
New Delhi – 110 001.

Writ Petition under Article 226 of the Constitution of India

Appearance

Mr. N. Rai, Senior Advocate with Ms. Tamanna Chhetri and Ms. Bindu Gurung, Advocates for the Petitioners.

Mr. Tarun Johri, Mr. Arun Kumar Sarkar, Mr. Abhijit Sarkar and Mr. Shivadeep Roka, Advocates for Respondent No.1.

Mr. S. K. Chettri and Mrs. Pollin Rai, Assistant Government Advocates for State-Respondents No.2 and 3.

Mrs. Sabina Chettri, Legal Counsel for Energy and Power Department, Government of Sikkim, Respondent No.3.

Mr. Karma Thinlay Namgyal, Central Government Counsel with Mr. Thinlay Dorjee Bhutia, Advocate for Respondent No.4.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The brief facts as they unfold are that the Respondent No.1 is a Transmission Licensee under Section 14 of the Electricity Act, 2003 (hereinafter “the Act”) conferred with powers under



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Section 164 of the Act for the purpose for placing posts and electric lines, for transmission of electricity and is building a Dedicated Transmission Line for laying down 400 KV D/C Teesta III Kishanganj transmission line, passing through the States of Sikkim, West Bengal and Bihar. The Petitioners being brothers live in Gangtok, East Sikkim, but jointly own land measuring a total of 5.20 hectares with a standing 'kutcha' house at Patuk Block, Khamdong, East Sikkim, through which the route of the transmission lines pass. Overhead power lines are to be strung across the land of the Petitioners where High Tension towers have been constructed on either boundary of their land thereby diminishing its value. Aggrieved by the act of the Respondent No.1, the Petitioners have filed this Writ, the specific prayers of the Petitioners being three-fold, i.e., (i) that either the towers be removed from the existing sites to a portion of the Petitioners' land which will not destroy the utility of their entire land as is the position now; or (ii) in the alternative, the Respondent No.1 acquire their land at Rs.7,00,00,000/- (Rupees seven crores) only, as valued; and (iii) the Respondent No.4 be directed to cancel or withdraw the Licence issued to Respondent No.1 for undertaking the works as per Order dated 29-04-2010.

2. The Petitioners' case as advanced by Learned Senior Counsel is that in the process of the works of the Respondent No.1 for transmission of electricity the construction of the High Tension



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Electric Towers resulted in damage to a portion of the Petitioners' land on one side for which admittedly compensation was paid by the Respondent No.1. Now, stringing overhead power lines over the land of the Petitioners without their consent, will have long term detrimental health effects on the villagers and agriculture of the area and has led to devaluation of the Petitioners' land which had then been assessed at Rs.7,00,00,000/- (Rupees seven crores) only. Apart from having to discard plans for constructing an Eco-tourism Resort the land is not being acquired by Pharmaceutical Companies, being unfit on account of the electric transmission wires. Admittedly, the towers so constructed are not on the land of the Petitioners nor have the wires been strung across yet but once done besides the aforesaid ill-effects the entire land of the Petitioners will be rendered useless.

3. That the Petitioner No.2 approached the Respondent No.3 with their grievance as the Respondent No.1 had the option of adopting an alternative route, however, Respondent No.3 failed to issue any effective order for removal of the towers from the existing site despite spot verification indicating problems for future construction in the area. The matter was also taken up before the High Court Lok Adalat but remained unsettled. It is expostulated that the Respondent No.1 has not only violated the principles of natural justice as no public hearing was conducted before



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construction of the towers but also violated their right to property, apart from which they are liable under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, as no process was adopted for obtaining tribal land.

4. While resisting the case of the Petitioners, Learned Counsel for the Respondent No.1 countered that none of the legal rights of the Petitioners or their rights as owners of the land have been effected as only overhead power lines are to be drawn over the land of the Petitioners while for issuance of a mandamus there must be an existing legal right and an infraction of such right, besides, as is a well-settled legal principle, this Court cannot assess compensation. The Respondent No.1 has undertaken works as per the Order dated 29-04-2010 according approval under Section 164 of the Act, in addition to Government approval under Section 68 of the Act and are not subject to any consent or NOC from the Petitioners. The apprehension that the stringing of electric lines is going to adversely effect the health of the Petitioners is baseless and unfounded so is the submission with regard to value of the land. That carrying out works as per the Licence granted to the Respondent No.1 does not require or include acquisition of any plot of land. It is stated that where damage was caused to land owners by installation of towers on their land compensation was awarded but drawing of overhead power lines over the land of the Petitioners will



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not cause any damage to their property and thus does not entitle them to any damages or compensation. That the question of re-alignment of the High Tension Transmission Lines does not arise as alignment for erecting such towers is done after observing techno-economical feasibility of the matter and appropriateness of the route by experts in the field, keeping vertical and horizontal clearance while stringing as required by the Act and does not render it unsafe. It is contended that neither the application of mind for choosing the route nor the rationality of the decision has been challenged but the effect has been challenged as an afterthought. That as on July, 2015, 96% of the work have been completed, the only problem area now being the alignment corridor where the Petitioners are the land owners where the work has been stalled. That the Petitioners by their attitude were responsible for the matter not being resolved before the District Magistrate, East Sikkim. It is clarified that before commencing work through the village of the Petitioners, the Respondent No.1 wrote to the concerned District Collectors and in August, 2013, to the Patuk Gram Panchayat who issued an NOC and assured their cooperation.

5. While relying on Annexure R2 of their documents which was read *in extenso* by Leaned Counsel it was put forth that apart from the details of route alignment and justification detailed thereby they had also published Notifications on 17-09-2009 in 2



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(two) local Nepali vernacular newspapers in Sikkim, *inter alia*, specifying that the route would run through Patuk. Apart from Sikkim, Notifications were also published in newspapers in West Bengal and Bihar. It was also canvassed that bearing in mind the principles of the provisions of Section 4 of the Land Acquisition Act, 1894, a public notice in English was notified in the Gazette of India on 24-10-2009 which reiterated the routes of the transmission lines. No objections were received from any quarter. That the towers were constructed keeping in mind the public good with routes specified before embarking on the project.

6. That the Petitioners instead of approaching the District Magistrate as contemplated under Section 16(4) of the Indian Telegraph Act, 1885 (for short "Telegraph Act"), have approached this Court, when a Writ does not lie. It is, therefore, prayed that this Court relegate the matter to the appropriate forum under the Act and no case being made out for interference by this Court, the Writ Petition be dismissed.

7. The State-Respondents No.2 and 3 in their joint counter-affidavit have merely stated that the land of the Petitioners is situated at Patuk Block and as such laying of transmission line which was permitted by the Ministry of Power, Respondent No.4, vide an Order dated 29-04-2010, is passing through the route given



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in the Gazette of India Notification for laying of 400 KV D/C Teesta III Kishanganj transmission line.

8. The Respondent No.4 for its part, submitted that vide letter No.11/1/08-PG dated 28-01-2009 accorded prior approval of the Government under Section 68 of the Act to Respondent No.1 as per the route map submitted by the Respondent No.1. Any dispute regarding route alignment is to be adjudicated by the State Government or the appropriate Commission. It is reiterated that as per the procedure for obtaining authorisation under Section 164 of the Act, the Respondent No.1 had published the scheme in newspapers and Gazette of India for inviting comments from the public.

9. The rival contentions were heard at length and due consideration given. I have also perused all documents relied on by the parties.

10. It would be useful to first refer to the provisions of Section 164 of the Act which is reproduced herein below:-

"164. Exercise of powers of Telegraph Authority in certain cases.-The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper coordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and



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to the provisions of the Indian Telegraph Act, 1885, any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained."

11. The Ministry of Power, New Delhi, vide its Order dated 29-04-2010, conferred upon the Respondent No.1 all powers under Section 164 of the Act which a Telegraph Authority possesses under the Telegraph Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained by the Government or to be so established or maintained, subject to 6 (six) conditions that were enumerated in the order. The same Order also laid down that on 28-01-2009 the Government of India, Ministry of Power, had granted to Respondent No.1, approval under Section 68 of the Act for 400 KV/DC Transmission System from 1200 MW Teesta III HEP Kishanganj Pooling Station.

It may be stated here that Section 68 of the Act deals with provisions relating to overhead lines and requires that an overhead line shall, with prior approval of the Appropriate Government be installed or kept installed above ground in accordance with the provisions of Sub-Section (2) of the said Section. For brevity the entire Section is not being extracted here. Having said that, it is not disputed that powers under Section 164 of the Act and approval under Section 68 of the Act were conferred by the Ministry of Power, Respondent No.4 to Respondent No.1.



12. The Petitioners now seek revocation of the Licence granted to the Respondent No.1 by the Respondent No.4, the grounds being that conditions laid down in the Order dated 29-04-2010, specifically condition (ii) was not complied with, viz.,

- “(i)
- (ii) the Licensee shall have to seek the consent of the concerned authorities i.e. local bodies, Railways, National Highways, State Highways etc. before erection of proposed line;
- (iii)
- (iv)
- (v)
- (vi)”

That there is nothing on record to indicate consent of the concerned local bodies. In rebuttal, it was reiterated by Learned Counsel for Respondent No.1 that public notices had been issued as also a Gazette Notification and communication made to the concerned District Collector and Panchayat, no objections were put forth by any person including local bodies. In this regard, attention of this Court was invited to Annexures R2 and R9 to R15.

13. While addressing this argument of the Petitioners concerning consent, the Hon’ble Apex Court in *T. Narasimhulu and Others* vs. *State of Andhra Pradesh and Others*¹ discussing the case of *State of Maharashtra* vs. *Mayer Hans George*² held that –

1. (2010) 6 SCC 545
2. AIR 1965 SC 722



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"17. It will be clear from the law laid down by this Court that where the law prescribes the mode of publication of the law to become operative, the law must be published in that mode only, but where the mode of publication of the law is not prescribed by the law, such law should be published in some usual or recognised mode to bring it to the knowledge of all persons concerned. In the present case, the contention of the appellants before the Tribunal or the High Court was not that the government order in GOMs Nos. 35 and 51 that the amendment to Rule 2 of the Forest Service Rules would have retrospective effect from 8-4-1986 was never made known by any reasonable mode, but that it was not published in the Official Gazette. This contention of the appellants, as we have seen, has no merit."

14. Earlier in time, in *Subhas Ramkumar Bind alias Vakil and Another* vs. *State of Maharashtra* the Hon'ble Apex Court held at Paragraph 20, *inter alia*, that –

"20. *Notification in common English acceptation means and implies a formal announcement of a legally relevant fact and in the event of a statute speaking of a notification being published in the Official Gazette, the same cannot but mean a notification published by the authority of law in the Official Gazette. It is on formal declaration and publication of an order and shall have to be in accordance with the declared policies or in the event the requirement of the statute then in that event in accordance therewith.*"

15. In the matter at hand, it may of course be mentioned here that the Petitioners could not point out to this Court any provision for issuance of notice in the Acts concerned. In my considered opinion the scheme of the Indian Electricity Act and the Telegraph Act do not envisage a prior notice. The Act of the Respondent in issuing prior notice was by way of abundant caution

3. (2003) 1 SCC 506



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in the backdrop of the provisions of the Land Acquisition Act, 1894. Further, on going through the documents relied on by the Respondent No.1, firstly, it is evident that they had published notices on 17-09-2009 in 2 (two) Nepali vernacular newspapers being “Hamro Prajashakti” and “Himali Bela” circulated in the State of Sikkim as well as in other vernacular languages in West Bengal in Bengali and Bihar in Hindi. There was also a public notice published in the Hindi vernacular and in English in the Gazette of India on 24-10-2009. While going through the Order dated 29-04-2010, the licensee is required to seek the consent of the concerned authority it does not specify that they will seek individual consent.

16. In fact, Section 67(2) of the Act does not say that the consent of the owners or occupier is mandatory. In this connection, it may be pointed out that the relevant portion of Section 10 of the Telegraph Act reads as follows:-

“10. Power for telegraph authority to place and maintain telegraph lines and posts.–
(a)
(b)
(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and
(d)”

It is not the case of the Petitioners that their property was under the control or management of any local authority, therefore,



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question of seeking the consent of the local bodies for constructing the towers and drawing the overhead lines over the land of the Petitioners does not arise. Hence, Notification as detailed above suffices for the purpose.

17. Apart from the above, it is not denied that spot verification of the land of the Petitioners on plot no.989 was carried out where land was found damaged due to a slide caused by the construction of a tower. Compensation of Rs.1,04,060/- (Rupees one lakh four thousand and sixty) only, was paid to the Petitioners not only for the damage to the land but also for a variety of trees standing on their land, i.e., Orange trees, 150 Groves of *Amliso* (broom plants), "*Kimboo trees*", "*Panisaj*", "*Okhar*" and for a Hand Packed Wall. Evidently the Petitioners had clear knowledge of the intention of the Respondent No.1 as it is not denied that towers had already been constructed on their two boundaries drawing an obvious inference that the overhead lines would be strung from one tower to the next. The Respondent No.1 does not appear to have flouted any conditions as agitated by the Petitioners, therefore, there appears to be no reason for the prayer for revocation of Licence.

18. Having dealt with that we may now consider the provisions pertaining to compensation.

In Section 10(d) of the Telegraph Act, it is laid down that-



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“(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.”

Thus, if there is any damage to property the provisions of Section 10(d) of the Telegraph Act postulates that compensation shall be paid. Section 16 of the Telegraph Act comes into play if a dispute arises with regard to the exercise of powers by the licensee or the amount of compensation. Section 16(1) reads that –

“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) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.
.....”

This Section thereby empowers the District Magistrate to exercise his discretionary power in terms of the provision extracted hereinabove.

Section 16(3) and 16(4) are concerned with the quantum of compensation or persons entitled to it and are usefully reproduced below: -

“(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.



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(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."

Thus, the Section succinctly explains the powers of the concerned authorities and the intent of the provision requires no further elucidation.

19. However, while dwelling on the question of compensation, the thrust of the argument of the Petitioners is not about seeking compensation for damage caused to property on their land or for that matter diminution of the value of the land but they seek acquisition of their entire property by the Respondent No.1. While considering this matter assistance in the decision of Hon'ble Apex Court in ***Kerala State Electricity Board vs. Livisha and Others*** may be resorted to wherein it was held, *inter alia*;

"9. Both telegraph lines and electrical lines are required to be drawn over the agricultural lands and/or other properties belonging to third parties. In drawing such lines, *the entire land cannot be acquired but the effect thereof would be diminution of value of the property over which such line is drawn.* The Telegraph Act, 1885 provides for the manner in which the amount of compensation is to be computed therefor."

4. (2007) 6 SCC 792



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10. The situs of the land, the distance between the high voltage electricity line laid thereover, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small tract of land or through the middle of the land and other similar relevant factors in our opinion would be determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used."

The above judgment, therefore, clearly lays down that when telegraph and electrical lines are being drawn over properties of third parties, the entire land cannot be acquired but the compensation can be calculated on the basis of diminution of the value of the land. Suffice it to say that the Act which has been discussed above does not envisage acquisition of the land on which the electric posts may be constructed or acquisition of land on which the lines are taken under, over, along, or across. While considering Annexure 6 relied on by the Petitioners, the Respondent No.3 appears to have dealt with the dispute but could not impose a decision on Respondent No.1, the prayers of the Petitioners being for acquisition of land and re-alignment of route and not compensation.

20. To conclude it may be reiterated that a cumulative reading of Section 164 of the Act and Section 10 of the Telegraph Act recognises the powers conferred on Respondent No.1 to proceed with the placing of overhead power lines, towers, posts for the transmission of electricity on or over private land. It goes without saying that under Section 16, the owner is entitled to claim



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compensation for damages which may occur in the process. In the same breath, however, it must be stated that there is no requirement for the Petitioners' consent nor is there any provision for the Respondent No.1 to acquire the Petitioners' land for the above purpose.

21. Having regard to the above discussions, it is clear that the Petitioners have put the cart before the horse and, rushed to this Court when in fact they ought to have approached the appropriate forum to vent their grievances, if any, with regard to compensation. Obviously there cannot be any order to the Respondent No.1 to acquire the land. Further, in view of the arguments put forth by the Respondent No.1 there also cannot be any order for re-alignment of the transmission posts as all safety parameters have been given due consideration and advance notice given in the year 2009, whereas construction only commenced in 2013 affording the Petitioners adequate time to move the appropriate authority, if they had been so aggrieved, which in the absence of any objection does not appear so.

22. It may be worthwhile highlighting here that although in the Writ Petition it is admitted that the Petitioners ordinarily live in Gangtok and their main house is at Simick Lingzey, 5 kms. away from the place where the tower construction works were undertaken, viz., Patuk, Labong. To the contrary, in Annexure 6, the



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application addressed to the District Collector, Respondent No.3, dated 26-09-2013, by Sonam Tshering Bhutia, Petitioner No.2, states that "*I am in the possession of the land situated at Patuk, Kokaley, East Sikkim being an ancestral property owned by my father Lt. Dorjee Tshering Bhutia, where I have constructed a residential house investing all my hard-earning money (sic). It is pertinent to state that I don't have any other property except my above mentioned property, where I am residing with my entire family members.*" The above statement being contrary to the previous submissions reflected above, leads one to suspect the *bona fides* of the Petitioners with regard to their prayers.

23. In the result, the Writ Petition stands dismissed and disposed of, however, it would be open to the Petitioners to approach the appropriate authority for compensation if they are so entitled in accordance with Law.

24. No order as to costs.

Sd/-
(Meenakshi Madan Rai)
Judge
26-03-2016

Approved for reporting : **Yes**

Internet : **Yes**