

(2021) 02 GUJ CK 0083

In the Gujarat High Court

Case No : R/Special Civil Application No. 883 Of 2020, Civil Application (For Interim Relief) No. 1 Of 2020

Ahmedabad East Infrastructure Llp & 1 Other(s) **APPELLANT**

Vs

Collector And District Magistrate, Gandhinagar & 2 Other(s) **RESPONDENT**

Date of Decision : 24-02-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 348(1), 348(3)

Indian Electricity Rules, 1956 — Rule 80(1), 82

Gujarat Town Planning And Urban Development Act, 1976 — Section 29(1), 29(1)(ii), 67

Indian Telegraph Act, 1885 — Section 10, 10(d), 11, 12, 13, 14, 15, 16, 16(1), 17

Electricity Act, 2003 — Section 164

Citation : (2021) 02 GUJ CK 0083

Hon'ble Judges : Vipul M. Pancholi, J

Bench : Single Bench

Advocate : S N Soparkar, Gaurav Mathur, Abhishek Shah, SP Hasurkar, Ronak Raval

Final Decision : Dismissed

Judgement

Vipul M. Pancholi, J

1. In this petition, which is filed under Article 226 of the Constitution of India, the petitioners have prayed that the order dated 05.05.2015 passed by

respondent No.1 "Collector and District Magistrate, Gandhinagar, be quashed and set aside and it is also prayed that the respondent No.3

Gujarat Energy Transmission Corporation Ltd. (GETCO for short) be directed to forthwith remove the tower foundation and towers put up in Survey

No.27 of village Nasmed, Taluka Kalol, District Gandhinagar.

2. Heard learned Senior Advocate Mr. S.N.Soparkar assisted by learned advocate Mr.Gaurav Mathur for Singhi & Co. for the petitioners, learned

Assistant Government Pleader Mr. Ronak Raval for respondent Nos. 1 and 2 and learned advocate Mr. S.P.Hasurkar for the respondent No.3.

3. The factual matrix of the present case is as under:

3.1. It is stated that petitioner No.1 is a Limited Liability Partnership firm, incorporated and registered under the provisions of the Limited Liability

Partnership Act, 2008. The petitioner No.1 is engaged in the business of development of townships. The petitioner No.2 is a partner of petitioner No.1.

3.2. It is stated that in order to promote construction of new and modern living spaces, considering the growing needs of the society and in public

interest, the Government of Gujarat issued Regulations for Residential Townships, 2009 ('the Regulations' for short) under the Gujarat Town Planning

and Urban Development Act, 1976 (hereinafter referred to as the 'Act of 1976'). It is stated that petitioner No.1, in terms of regulation No.7 of the

aforesaid Regulations, applied for permission to develop a township situated in village Nasmed, Taluka Kalol, District Gandhinagar, in the name of

Arvind Uplands under Section 29(1)(ii) of the Act of 1976 to the Government of Gujarat. The Government of Gujarat, vide order dated 29.09.2012,

directed Ahmedabad Urban Development Authority to grant inÂprinciple permission under Section 29(1) of the Act of 1976 in accordance with the

provisions and conditions contained in Schedule appended to the said Order. It is stated that as per the conditions mentioned in the Schedule, the

petitioner No.1 is bound to allot dwelling units to the Socially and Economically Weaker Section (SEWS for short).

3.3. It is further stated that pursuant to the permission granted by the State Government, the petitioner No.1 has undertaken the development of the

township, which is spread over in area of 135 acres at village Nasmed â?" Adhana, Taluka Kalol, District Gandhinagar. It is stated that substantial

construction of the township has been completed.

3.4. It is the case of the petitioners that SEWS housing is planned to be located at Survey/Block No.55 of village Nasmed, which forms the township.

Further in survey No.27, adjacent to SEWS housing land, the petitioner No.1 has planned public garden for recreation and use by the residents.

3.5. Petitioners have further stated that Ms. Aashna Sushilbhai Agarwal (erstwhile owner), who was the owner at the relevant point of time of survey

No.27, made an application for NonÂAgricultural use Permission with respect to

11448 sq. meters out of 14468 sq. meters of survey No.27. It is stated that the respondent No.1, vide order dated 30.04.2015, granted NA Permission on the terms and conditions stated therewith, with respect to the aforesaid land. It is the case of the petitioners that the aforesaid order was forwarded to the respondent No.3 as well as Uttar Gujarat Vij Company Ltd. (UGVCL). It is also stated that for remaining parcel of land admeasuring 3020 sq. meters of Survey No.27, erstwhile owner again made an application for NA permission which was granted by the respondent No.1 on 12.08.2015.

3.6. Now it is the case of the petitioners that they are planning to begin construction of SEWS houses and public garden in Survey No.55 and 27

respectively. Now the grievance of the petitioners is that in last week of May, 2019, the people deputed by respondent No.3 forcibly entered the

aforesaid area and began construction work of foundation for towers for laying overhead High Voltage tower Line in the area designated for public

garden i.e. Survey No.27. It is further the grievance of the petitioners that the alignment of the route is such that the electrical line supported by tower

will pass directly on top of the SEWS houses which are to come up in Survey No.55. When inquired, it was informed to the petitioners that the work is

being undertaken under the permission granted by the respondent No.1. Thereafter, the order dated 30.04.2015 was passed by the respondent No.1,

whereby the respondent No.3 was permitted to lay overhead transmission line which will pass through the SEWS housing land and erect transmission

towers on land bearing Survey No.27. When the petitioners came to know about the same, the objection was raised by the petitioner No.1 on

04.06.2019. It was pointed out that no permission/consent was sought by the respondent No.3 for carrying out construction work of foundation for

towers for laying overhead high voltage tower line at survey No.27, which would pass through the SEWS housing land. Relevant aspects were pointed

out to the concerned respondents. Thereafter, copy of the said order was received under the Right to Information Act. Thereafter various

correspondence took place between the petitioners and the respondents, details of which are given in the memo of the petition.

3.7. Petitioners have, therefore, filed the present petition challenging the order dated 05.05.2015 passed by the respondent No.1 as well as action taken

by the respondent No.3. Contentions raised by learned Senior Advocate Mr. S.N.Soparkar for the Petitioners

4. Learned counsel for the petitioners contended that the impugned order passed by the respondent No.1 as well as the action taken by respondent

No.3 is ex facie illegal and in violation of principle of natural justice and therefore the same be quashed and set aside.

4.1. That by virtue of the alignment of the proposed transmission line of the respondent No.3 and considering the location of the tower so placed, the

same is likely to pass just above the SEWS houses and would put the lives of the occupiers at peril. Learned counsel has referred Rule 80(1) of the

Indian Electricity Rules, 1956 (hereinafter referred to as the 'Rules of 1956'). After referring to the same, it is submitted that in terms of the aforesaid

Rule, and considering the fact that the proposed transmission line is for 220 kv, the respondent No.3, in order to adhere to the said Rule, will have to

leave approximately 18-20 feet above the SEWS houses. At this stage, it is also submitted that by virtue of Rule 82 of the Rules of 1956, the

petitioner No.1 may be prevented from constructing SEWS housing on the earmarked area. This would lead to violation of the order dated 29.09.2012

passed by the Government of Gujarat granting permission for the township and also may lead to cancellation of the Building Use Permission.

4.2. Learned counsel Mr. Soparkar would thereafter refer to the proviso 'd' to Section 10 of the Indian Telegraph Act, 1885 and thereafter contend

that the said proviso mandates that the telegraph authority i.e. the respondent No.3 herein, is duty bound to do 'as little damage as possible and shall

pay full compensation to all persons interested for any damage sustained by them'. It is submitted that, in the facts of the present case, the laying of

the tower and stringing of the line would result in huge damage by either causing cancellation of the Building Use Permission for the project or would

put the lives of the occupiers in danger. Thus, it would be impossible to compensate the petitioners in terms of money. It is also contended that the

entire township project of the petitioner No.1 would be jeopardized.

4.3. At this stage, learned counsel has referred the judgment dated 29.08.2013 passed by the Division bench of this Court in the case of Dilip Singh

Chauhan and others v. Gujarat Urja Vikas Nigam Limited rendered in Special Civil Application No.18334 of 2011, wherein the term 'any damage'

occurring in Section 16 of the Indian Telegraph Act, 1885 has been explained.

4.4. Learned counsel Mr. Soparkar would thereafter submit that the respondent No.3 was aware about the fact that the residential township may

come in the way of its route from the beginning. In support of the said contention, learned counsel has pointed out from the record that the erstwhile

owner submitted an application for grant of NA Permission with regard to land bearing Survey No.27. The respondent No.1 granted such permission

vide order dated 30.04.2015. It is submitted that the copy of the said order was marked to the respondent No.3. Prior to that, petitioner No.1 informed

the respondent No.3 with respect to the proposed township though it was not known as to whether the proposed transmission line would travel through

the township or not. It is contended that surprisingly, the respondent No.1, who passed NA order on 30.04.2015, passed impugned order dated

05.05.2015 under Section 16 of the Indian Telegraph Act, 1885 granting permission to respondent No.3 to lay transmission lines, in cases where there

was no obstruction. It is contended that before passing the impugned order on 05.05.2015, the respondent No.1 has not given any opportunity of

hearing to the petitioners.

4.5. At this stage, learned counsel Mr. Soparkar submits that the respondent No.3 in the affidavit filed before this Court, stated that the respondent

No.3 has served notice upon Sharadbhai Patel on 21.11.2013 and therefore it is not open for the petitioners to contend that opportunity of hearing was

not provided to the petitioners.

In response to the said contention taken in reply, learned counsel Mr. Soparkar has submitted that the respondent No.1 granted NA Permission with

regard to land bearing Survey No.27 on 30.04.2015. The respondent No.3 did not inform the erstwhile owner about the purported laying of

transmission line. It is further submitted that the erstwhile owner executed the sale deed in favour of the petitioners on 13.05.2015 and as per the

relevant clause of the said Sale Deed, possession of the land is being transferred to the petitioner No.1 upon execution of the sale deed. Thus, it is

submitted that the contention of the respondent No.3 that Sharadbhai Patel was the occupier of the land in the year 2013 and notice was served to him

is totally misconceived. In fact till the execution of the sale deed, partners of the petitioner No.1 were not in possession of the land bearing Survey

No.27.

4.6. Learned counsel Mr. Soparkar thereafter contended that there is anomaly in the procedure adopted by the respondent No.3. Learned counsel has

referred notification dated 07.03.2013 issued by the respondent No.3 in English language with respect to the proposed transmission line being setÂup

by the respondent No.3 Copy of the said English version of the notification is placed on record at page 128 and 129 of the compilation. Learned

counsel has referred serial No.27 of the said notification, which refers conversion of an existing 220 KV single circuit VadaviÂChhatral line to 220

KV LILO and conversion of 66 KV subÂstation at Santej to 22 KV subÂstation and the area mentioned as â??area around and between Karsanpur,

Malosan, Abhrampura, Pamol and Gavadaâ?. Learned counsel has also referred Google Earth Image showing the route in terms of the notification

published in English language. It is contended that the said notification never covered survey no.27 of village Nasmed in the said route.

4.7. At this stage, it is pointed out that the Gujarati notification published on the very same date at serial No.27 includes village Nasmed. However, the

same is for a completely different line. Copy of the Gujarati notification is placed on record at page 166 and 167 of the compilation.

4.8. Learned counsel has, at this stage, referred to the provisions contained in Article 348(1) and (3) of the Constitution of India and submitted that

notification published in English language would be read to be a true notification and not the notification published in Gujarati language. In support of

this contention, learned counsel has referred to the decision rendered by the Hon'ble Supreme Court in the case of Park Leather Industry Private

Limited v. State of Uttar Pradesh, reported in (2001) 3 SCC 135.

4.9. Learned counsel Mr. Soparkar on the basis of the notification, which is published in English, submitted that it would not be possible for the owner

of a property to ascertain whether or not he has to object to the proposed route. The impugned order is passed by the respondent No.1 on the basis of

the notification dated 07.03.2013 published in the Official Gazette notifying the areas where the proposed transmission lines are to be laid. However, in

the notification, the area in question is not mentioned and therefore impugned order is required to be quashed and set aside.

4.10.Learned counsel Mr. Soparkar further submits that the Ministry of Power,

Government of India has prescribed the procedure for obtaining permission under Section 164 of the Electricity Act. It is the grievance of the petitioners that respondent No.3 has not followed the procedure prescribed for obtaining such permission. At this stage, from the decision rendered by this Court in the case of Dilip Singh (supra), it is contended that the respondent No.3 was duty bound to intimate the route of transmission lines to the concerned persons in order to raise objections. However, the respondent No.3 has failed to inform to the concerned owners.

4.11. Learned counsel Mr. Soparkar further contended that when the concerned persons of respondent No.3 forcibly entered the land in question in the month of May, 2019, the petitioners came to know about the construction activities on the premises in question. The petitioners, therefore, raised objections and respondent No.1 as well as respondent No.2 were informed about the activities of respondent No.3. From the record, it is pointed out that respondent No.3 addressed a communication to erstwhile owner i.e. Aashna Agarwal on 19.07.2019 and made an offer of compensation for some alleged damage to land bearing Survey No.27. Thus, it is contended that the respondent No.3 did not treat the partners of petitioner No.1 or petitioner No.1 as an owner and occupier of survey No.27.

4.12. It is submitted that when the persons of respondent No.3 started construction activities in the land in question, petitioners raised objections and therefore the only course of action permissible for the respondent No.3 is to approach the respondent No.1. Learned counsel has, at this stage, once again referred to the decision rendered in the case of Dilip Singh (supra) and placed reliance upon the observations made in paragraph 65(g) of the said decision.

4.13. Learned counsel would further contend that under the provisions of Section 17 of the Indian Telegraph Act, 1885, the District Magistrate is empowered to consider change/alteration of telegraph lines and therefore on the basis of the objections raised by the petitioners, the respondent No.1 is required to consider the same treating the same as application under Section 17 of the Indian Telegraph Act, 1885.

4.14. Learned counsel Mr. Soparkar lastly contended that the decisions upon which the reliance is placed by learned advocate for the respondent No.3 do not assist the case of respondent No.3 and on the contrary they assist the

case of the petitioners. Learned counsel, therefore, urged that the impugned order passed by respondent No.1 and the action of respondent No.3 be quashed and set aside.

Contention raised by learned advocate Mr. S.P.Hasurkar for the respondent No.3.

5. Learned advocate Mr. Hasurkar for the respondent No.3 submits that respondent No.3 is laying down transmission line while exercising powers of

Telegraph Authority as envisaged in Sections 10 to 16 of the Telegraph Act, 1885 conferred upon them by Government of Gujarat under Section 164

of the Electricity Act, 2003. It is submitted that the line is being laid down after complying all necessary permissions and formalities required under the

law. The line is being laid down for the use of public at large and strengthening existing network. The respondent No.3 being State Transmission

Utility, it is its statutory duty to maintain efficient and economic transmission network throughout the State of Gujarat.

5.1. Learned advocate Mr. Hasurkar has opposed this petition mainly on the ground that there is gross delay and laches in filing the present petition. It

is submitted that the petitioners have challenged the order dated 05.05.2015 passed by respondent No.1 after a period of five years and in the

meantime the construction and erection of the towers at various place has already taken place. It is submitted that laying of the line in question is of 27

kms. and contains 91 locations. Out of 91 locations, in 90 locations, the work of foundation is completed. Further, in 89 locations, erection is completed

and for 18.8 kms., stringing work is already over. It is pointed out that so far as land of the petitioners is concerned, erection of towers is completed.

The foundation work in the land in question of the petitioners was over on 02.01.2016. Thus, it is submitted that the petition is filed at this belated stage

where except stringing work everything is over and therefore this Court may not pass any order in favour of the petitioners at this stage.

5.2. It is pointed out from the affidavit in reply that after the impugned order is passed on 05.05.2015 by respondent No.1, foundation work on the

adjacent location 18/0 is completed on 02.01.2016. Work of location No.18/1 is completed on 08.01.2016. On 05.01.2016, work of adjacent location

18/3 is completed. All the aforesaid work is completed under police protection, as at the relevant point of time, occupiers were objecting. It is

submitted that prior to that, work of foundation of locations 18/4 and 18/5 was

already over in November and December, 2013 respectively. Even erection of towers of adjacent locations was over in the year 2016. It is also submitted that so far as erection work in the land in question of the petitioner is concerned, the same was over on 10.01.2020 just before this Court has granted stay in favour of the petitioners. Thus, it is contended that this petition be dismissed only on this ground.

5.3. Learned advocate Mr. Hasurkar thereafter submitted that Sharadbhai Govindbhai Patel is one of the partners of the petitioner No.1 LLP and was managing the affairs. He was occupier of the land in question at the relevant point of time and therefore notice was issued to him on 21.11.2013. Copy of the said notice was placed on record at page 163. It is further submitted that even while passing the impugned order, the respondent No.1 has issued notice to the concerned objectors and name of Sharadbhai Govindbhai Patel is referred in the said order. Thus, it is contended that notice was duly served to the partner of petitioner No.1 and therefore it is not open for the petitioners to contend that respondent No.1 has passed the impugned order without giving an opportunity of hearing to the petitioners. It is submitted that notices were served through Registered Post and the respondent No.1 after satisfying himself that the notices were duly served to the objectors, passed the impugned order. At this stage, it is contended that as per the decision rendered by this Court in the case of Himmatbhai Vallabhbhai Patel v. Chief Engineer (Project) Gujarat Energy Transmission and Ors., reported in 2011(2) GLH 781, while exercising the powers conferred under Section 164 of the Electricity Act, no notice or consent is necessary.

5.4. Learned advocate would thereafter submit that in the notification published in English, there was printing error. The names of the villages at item No.22 at page 129 are same for item No.27, which is the transmission line in question. However, on the very same day, notification was also published in Gujarati language, copy of which is placed on record at page 166-167 of the compilation. It is submitted that in the notification published in Gujarati language, the names of the villages are correctly mentioned. Thus, petitioners cannot take advantage of the printing error committed at the time of publishing notification in English. It is also contended that neither the Electricity Act, 2003 nor under Telegraph Act, such notice is envisaged. In fact the notices were issued for convenience of the owners and occupiers of the land.

5.5. Learned advocate would thereafter submit that though the permission was given by the Government of Gujarat for construction of township in the year 2012, till 2020, the petitioners have not constructed ESWS housing.

5.6. It is submitted that respondent No.3 has erected towers and laid down the transmission line and except at one location even construction and

erection of towers in the land of the petitioner is already over before the petitioners have filed the present petition and now only stringing is left out and

therefore request of the petitioners to change the location is also not possible at this stage. It is submitted that by making false averments before this

Court that no notice was issued to the petitioners before passing the order, the petitioners got order of interim relief in their favour. In fact notice was

served to Sharadbhai Govindbhai Patel and there is no denial in the affidavit in rejoinder filed by the petitioners. Thus, petitioners have

misrepresented before this Court and therefore this Court may not grant any relief in favour of the petitioners. Learned advocate Mr. Hasurkar, at this

stage, has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of L. B. Gautam v. State of Uttar Pradesh, reported

in (2019) 6 SCC 441 and decision rendered by this Court in the case of Gujarat State Energy Transmission Corporation Limited v. Ratilal Maganji

Brahmbhatt rendered in Letters Patent Appeal No.534 of 2020, wherein it is held that once route is approved, no land owner or person interested can

seek shifting or realignment of the route. It is submitted that this decision is confirmed by the Hon'ble Supreme Court.

5.7. Learned advocate Mr. Hasurkar, therefore, urged that this petition be dismissed.

6. Having heard the learned counsel appearing for the parties and having gone through the material placed on record, it would emerge that pursuant to

the permission granted by the State Government, the petitioner No.1 has undertaken the development of the township, which is spread over in area of

135 acres at village Nasmed â?" Adhana, Taluka Kalol, District Gandhinagar. It is stated that substantial construction of the township has been

completed and SEWS housing is planned to be located at Survey/Block No.55 village Nasmed, which forms the township. So far as survey No.27 is

concerned, adjacent to SWES housing land, petitioner No.1 has planned public garden for recreation and use of the residents of the said township. The

dispute in the present case is with regard to Survey No.27 where the respondent No.3 has already completed foundation work of the adjacent location

on 02.01.2016 and thereafter now the erection work is also over in January, 2020. It is the case of the petitioners that respondent No.1 has not issued

any notice before passing the impugned order dated 05.05.2015 and therefore the said order is in violation of principles of natural justice. It is also the

case of the petitioners that proposed transmission line of 220 kv is likely to pass just above the SEWS houses, which are yet to be constructed, which

would lead to violation of the order dated 29.09.2012 passed by the Government of Gujarat granting permission for the township. It is also the case of

the petitioners that in the year 2013, Sharadbhai Govindbhai Patel was not the occupier of the land in question and therefore the notice dated

21.11.2013 could not have been served to him by the respondent No.3. The sale deed was executed on 13.05.2015 in favour of the petitioner No.1 and

thereafter the possession of the land in question was handed over to the petitioners. It is also the case of the petitioners that petitioner will suffer

irreparable loss which cannot be compensated in terms of money if the impugned order passed by the respondent No.1 and subsequent action of

respondent No.3 based on the said impugned order is not quashed and set aside. Further, it is also the case of the petitioners that there is discrepancy

in the notification published in English as well as Gujarati language. The notification published in English language would prevail and in the notification

published in English language, separate route is mentioned and therefore, petitioners could not raise the objections and make effective representation.

7. From the material placed on record, it transpires that the respondent No.3 is laying down transmission line while exercising powers of Telegraph

Authority as envisaged under Sections 10 to 16 of the Telegraph Act, confer upon them by the Government of Gujarat under Section 164 of the

Electricity Act. The transmission line in question is for the use of public at large and for strengthening the existing network. It further transpires that

notification was published in the Gazette on 7th March, 2013 in English as well as Gujarati language. So far as the notification published in English is

concerned, it appears that at serial no.27, for the route in question, the area is wrongly printed. At serial no.22 of the said notification, same area is

also mentioned. It is the specific case of the respondent No.3 that it is a printing error. At this stage, it is required to be noted that on the very same

day, notification was also published in Gujarati, wherein at serial No.27, correct area is mentioned for the transmission line in question. Thus, the

residents of the said area had opportunity to raise objections/make effective representation on the basis of the said Gujarati notification. It is true that

as per the provisions contained in Article 348(1) and (3) of the Constitution of India, notification published in English language would be read to be a

true notification. However, in the facts of the present case, when it was a printing error and notification was correctly published in Gujarati language

with regard to the route of the transmission line in question, submission canvassed by learned counsel for the petitioners would not be helpful to him.

This Court cannot dispute the proposition of law laid down by the Honâ??ble Supreme Court in the case of Park Leather Industry Private Limited

(supra). However, in the facts of the present case, it would not render any assistance to the petitioner.

8. It is further revealed from the record that after the issuance of the notification, the respondent no.3 issued notice dated 21.11.2013 to one of the

partners of the petitioner no.1 â?? LLP i.e. Sharadbhai Govindbhai Patel. The petitioners have not filed any rejoinder denying that the said notice was

not served to one of the partners. Copy of the said notice is produced on record by the respondent No.3 along with the affidavit in reply. Copy of

the said notice is placed on record at page 163 of the compilation. If the said notice is carefully seen, it is revealed that specific reference is made with

regard to the transmission line of 220 kv Vadavi to Santej and Survey No.27 of village Nasmed, Taluka Kalol is also mentioned. Location No.18/2 was

also mentioned in the said notice. The petitioners have not denied the said aspect. It is only stated in the rejoinder that Sharadbhai Govindbhai Patel

was not the occupier and the notice was not served to petitioner No.1 or Ms. Aashna Agarwal. Thus, affidavit of one of the partners, viz. Sharadbhai

Govindbhai Patel, has not been filed by the petitioners in support of the said contention. On the contrary, from the material placed on record, i.e. the

Deed of Conveyance, it is clear that after the approval was granted by the Government for construction of the township in favour of the petitioner

No.1, Agreement to Sale for the land in question was executed between Aashna Sushilbhai Agarwal and the petitioner No.1 on 01.05.2012. The same

is registered with the office of Sub Registrar. Thus, it appears that pursuant to the execution of the Agreement to Sell, Sharadbhai Govindbhai Patel,

one of the partners of petitioner No.1 was occupying the land and therefore the respondent No.3 issued notice to the said person. Thus, the contention

raised by the petitioners about non-issuance of notice cannot be believed.

9. At this stage, it is also pertinent to note that when the concerned farmers including Sharadbhai Govindbhai Patel have raised objections for the

transmission line in question, the notices were issued by the respondent No.1 and reference of which is specifically mentioned in the impugned order

dated 05.05.2015 wherein the name of Sharadbhai Govindbhai Patel is mentioned as opponent No.13. Thus, it cannot be said that the impugned order

has been passed without giving notice to the petitioners.

10. It further transpires from the affidavit in reply filed by the respondent No.3 and from the contentions raised by learned advocate for the

respondent No.3 that foundation work on the adjacent location 18/0 is completed on 02.01.2016. Similarly, work of location No.18/1 is completed on

08.01.2016 and on 05.01.2016, work of adjacent location No.18/3 is completed by the respondent No.3. The said work was completed under police

protection since at the relevant point of time, the concerned occupiers were objecting for the same. It is not in dispute that even it is the case of the

petitioners that after execution of the Sale Deed dated 30.04.2015, the physical possession of the land in question was handed over to them. Thus, the

petitioners were aware about the work which was going on in the adjacent land in the year 2016. Even the work of erection of tower of adjacent

location was over in the year 2016. As per the case of the respondent No.3, even the work of erection of towers of location No.18/2 at Survey No.27

was over on 02.01.2016. Petitioners themselves have placed on record the photographs of the towers erected in the land in question. Thus, though the

petitioners were aware about the same, the petition is filed at belated stage. It is the specific case of the respondent No.3 that before granting interim

relief in favour of the petitioners by this Court, the work of erection of towers was also over on 10.01.2020. Respondent No.3 has further stated that

laying of the line in question is of 27 kms and contains 91 locations. Out of 91 locations, in 90 locations, the work of foundation is completed and in 89

locations, the work of erection is completed. Further, for 18.8 kms., stringing work is already over. So far as the land in question is concerned, only

stringing work remains. Thus, at this belated stage, the petition is filed before

this Court. Thus, this Court is of the view that when almost entire work of foundation and erection of towers is over, petitioners are not entitled to claim the relief as sought for by them at this belated stage. Even change of location at the cost of the petitioners is not possible, as contended by learned counsel appearing for the respondent No.3, otherwise there would be a further delay in completion of work of laying down of the transmission line.

11. In the case of Dilip Singh Chauhan and others (supra), Honâ??ble Division Bench of this Court observed in para 59, 60 and 65(g) as under:

â??59. As per Section 10(d) there are two mandatory requirements; (1) Telegraph Authority shall do as little damage as possible; and (2) to pay full compensation to all persons interested for the damage sustained by them by the reasons of the exercise of those powers. The next aspect is what will

be the scope of as little damage as possible and what will be the scope of full compensation . Before we address on the said aspect, it will not be out

of place to mention that Indian Telegraph Act came to be enacted in the year 1885, much prior to not only Independence of our country, but could

rather be said as the law enacted in 19th Century. There are far more development not only in the rights of the citizens, but also in the obligation and

the way of discharge of duty by the authority and more particularly, after the Constitution has come into force in the country. Further, there are far

more development of science, the method and way of enjoyment of the properties by the citizens and so is for various scientific method developed for

laying down the lines. Telegraph lines are by now outdated on the date when we are to pronounce the judgement and they are to be substituted for the

electricity lines. Therefore, we need to keep in mind the said aspect too. As against the same, the Act of 2003 and more particularly Section 164 of

the Act are the laws of 21st Century. At the first brush we may say that by the laws of 21st Century i.e. Electricity Act, the power so conferred by

the Act of 19th Century are continued. If the Act of 21st Century providing the method and mechanism under Section 67 of the Act read with the

Rules of 2006 are considered, it does require the consent of the owner and also in absence of the consent, if the Police Commissioner or the

Magistrate is to grant permission simultaneous assessment of the compensation and the payment thereof subject to revisional power by appropriate

Commission, whereas the mechanism so provided under the Telegraph Act is

different, but while interpreting the provisions of the Telegraph Act for exercise of the power by any person as that of the Telegraph Act for laying down of the lines of electricity we need to keep in mind the rights and obligations so prevailing in 21st Century and it cannot be as that of 19th Century when the position of the country, including the development in the society and the science was far behind.

60. We may now further proceed to examine the matter, keeping in view the aforesaid backgrounds:Â?

(a) The interpretation of the words authority shall do as little damage as possible .

As such the language itself is clear for showing that the obligation is cast upon the authority to do as little damage as possible. Therefore, attempt on

the part of the authority shall be to minimal damage, taking into consideration the whole scheme of laying down of the line. As per the provisions of the

Act when the licensee is to lay down the lines for supply or transmission or even for maintenance of electricity generating power station, approval is to

be granted by the competent authority or the appropriate Government, as the case may be. Therefore, while granting approval the competent authority

or the appropriate Government, as the case may be, would discharge the duty objectively, taking into consideration the larger public interest. Even

after the approval is so granted, the attempt on the part of the authority would be to do least damage or as little damage as possible. Such would

include that the authority shall not lay down the line over the property of owner or occupier unless it is genuinely required and the lines shall be

organized in a manner, which will result into least possible damage. Further, if any change is possible in the line without disturbing, the main object of

passing of electricity, the same shall also be taken into consideration. We make it clear that it would not mean that the owner or occupier will have a

right for adjudication against the decision of the Electricity Company, more particularly because his suggestion is not accepted for alternative way or

that nonÂacceptance of suggestion of the owner or occupier would give a cause in the Court of law. But the obligation so created by the statute upon

the authority to do as little damage as possible should be discharged with the expertise knowledge, keeping in view the objective purpose of safety, the

curtailment of the rights of the owner or occupier for the enjoyment of the

property and the necessity to lay down the line. If the laying down of the line in spite of the apparent, alternative way available on the face of it, is insisted by the authority, it may not meet with the test of as little damage as possible, but if after taking into consideration of the aforesaid aspect an objective decision is taken to lay down the line over the property of the owner or occupier such would be permissible and it can be said that the obligation to do as little damage as possible is sufficiently discharged.

(b) Authority shall pay full compensation to all interested by the reason of exercise of the power. The language itself is apparent, inasmuch as the obligation is so created for payment of full compensation. There would be various methods of assessment of the compensation, but unless it is

identified that what damage is sustained, it may not be possible to assess the compensation. Therefore, the words any damage is required to be

interpreted to mean all type of damage. If the land is an agricultural land, the actual occupation of the area for construction of tower is one type of

damage, whereas the right curtailed of the owner or occupier to utilize the land for agriculture is another type of damage. If there is exclusive

occupation for construction of tower, the damage can be said to be to the fullest extent, since no rights whatsoever remains with the owner to enjoy

the property, whereas if the use is permissible in part, there may be damage to that extent to the rights of the owner or occupier for enjoyment of the

property. Further, if it is an agricultural land in the peripheral area or nearby area of city it will have the potentiality for non-agricultural use and even

if the towers are not constructed, but only overhead line is installed, such may result into curtailment of the rights of the owner or occupier of the

property to the fullest extent. In the same manner, if on account of the construction of the tower or laying down of the lines, including overhead lines,

the actual construction or utilization of the line by making any type of construction is not permissible as per the laws of the local authority, such would

also result into a damage to the rights of the owner or occupier. The same principles would apply with more vigor in a case where the line is already

located in the urban area or the urban agglomeration or within the area of the local authority, municipality or corporation, as the case may be.

xxx xxx xxx

¶65. In view of the aforesaid observations and discussion, following position of

law can be deduced:Â?

xxx xxx xxx

(g) While exercising the power as that of the Telegraph Authority under the Telegraph Act, on account of the notification under Section 164 of the

Act consent of the owner or occupier may not be required, but some reasonable prior intimation should be given to the owner or occupier, enabling

him to exercise his right to resist or obstruct, may be on the ground that the principles of least damage is not followed or may be on the ground that

appropriate compensation is not paid or otherwise. The moment there is resistance or obstruction by the owner or occupier, the licensee has to stop his

work, if any, or to withdraw from the property of the owner or the occupier. Thereafter, the licensee may approach before the District Magistrate for

permission to lay down the line and the District Magistrate in exercise of the power may grant permission, but while granting permission, he may be

required to examine the observance of the principles of little damage as possible and thereafter the permission may be granted. If permission is so

granted by the District Magistrate, thereafter the owner or occupier cannot interfere in the work of laying down of the line unless the order of the

District Magistrate granting permission is carried before the higher forum and any prohibitory order is passed by the competent forum or competent

Court known to law. While granting permission under Section 16(1), the District Magistrate is not required to examine the aspect of sufficiency of

compensation.

12. In the aforesaid decision, the Honâ??ble Division Bench has observed that if any change is possible in the line without disturbing the main object

of passing of electricity, the same shall also be taken into consideration. However, at the same time, the Honâ??ble Division Bench has further made

it clear that it would not mean that the owner or occupier will have a right for adjudication against the decision of the Electricity Company, more

particularly because his suggestion is not accepted for alternative way or that nonÂ?acceptance of suggestion of the owner or occupier would give a

cause in the Court of law. The obligation so created by the statute upon the authority to do as little damage as possible should be discharged with the

expertise knowledge, keeping in view the objective purpose of safety, the curtailment of the rights of the owner or occupier for the enjoyment of the

property and the necessity to lay down the line. From the stand taken by the respondent no.3, it is clear that alternate route is not possible. This Court

cannot go into the aspect whether the alternate route is available or not and whether the respondent No.3 should change the route or not. It is for the

expert to consider the said aspect. The respondent no.3 is required to pay the compensation to the affected persons.

13. The petitioners have pointed out about the hardship which will be caused on account of passing of the proposed transmission line which is likely to

pass over the ESWS housing of the petitioners. However, it is pertinent to note at this stage that though the permission was granted to the petitioners

to construct the township in the year 2012 and as per the terms and conditions of the order passed by the Government of Gujarat, petitioners are

required to construct ESWS houses in 5% of the land, till filing of the petition in the year 2020 i.e. for last 7 years, it is an admitted fact that petitioners

have not constructed the said houses.

14. In view of the aforesaid facts and circumstances of the present case, this Court is of the view that petitioners are not entitled to claim the relief/s,

as prayed for in the present petition. Petition is, accordingly, dismissed. Interim relief granted earlier stands vacated. In view of dismissal of the main

petition, civil applications do not survive and accordingly stand disposed of.

(Vipul M. Pancholi, J)

After the pronouncement of the judgment, learned advocate appearing for the petitioners requested that the interim relief granted by this Court at the

time of issuance of the notice, which is continued from time to time be extended for a period of two weeks so that the petitioners can approach before

the higher forum. Learned advocate Mr. Hasurkar appearing for the respondent No.3 has objected for the said request.

In view of the reasons recorded in the present order, the request made by the learned advocate for the petitioners for extension of stay is rejected.