
(2013) 09 KL CK 0072

In the High Court Of Kerala

Case No : Writ Petition (C) No. 13408 of 2013

Ali

APPELLANT

Vs

Additional District Magistrate, Palakkad and Others

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : (2013) 4 KHC 330 : (2013) 4 KLJ 524 : (2013) 4 KLT 428

Hon'ble Judges : C.K. Abdul Rehim, J

Bench : Single Bench

Advocate : Ajeesh K. Sasi, for the Appellant; P. Vijaya Bhanu , Shyson P. Manguzha, Government Pleader, Sajeevkumar K. Gopal, Standing Counsel, KSEB, M.M. Deepa, Unni Sebastian Kappen and P.P. Biju, for the Respondent

Judgement

C.K. Abdul Rehim, J.—Ext. P3 proceedings of the 1st respondent, issued u/s 17(2) of the Indian Telegraph Act, 1885, is under challenge in this writ petition. Dispute pertains to drawing of electric line for giving connection to the 4th respondent. An order issued by the 1st respondent on 24/01/2013, in exercise of power vested u/s 16(1) of the Indian Telegraph Act, was challenged by the 3rd respondent in a writ petition filed before this Court as W.P. (C) 4245/2013. In the judgment dt. 13/02/2013 this Court found that, electric supply line had already been drawn pursuant to the said order, and hence the 3rd respondent was permitted to move before the 1st respondent seeking shifting of the electric supply line in terms of Section 17. The 1st respondent was directed to consider the alternate route suggested by the petitioner, after hearing 3rd and 4th respondents. On the basis of judgment in W.P. (C) 4245/2013 the 3rd respondent approached the 1st respondent invoking Section 17. Ext. P3 is the proceedings issued by the 1st respondent. It is evident that during the pendency of the proceedings before the 1st respondent the petitioner herein as well as respondents 5 and 6 were impleaded. The 1st respondent permitted shifting of the line at the cost of the 3rd respondent through an alternate route suggested by the 3rd respondent, which is passing through the property of the petitioner, despite objection raised by the petitioner. It is aggrieved by Ext. P3, this writ

petition is filed. Contention of the petitioner is that, the impugned order is passed on total misconception of relevant statutory provisions and also on a misconception of the factual situation prevailing. The prejudice which will be caused to the petitioner by permitting shifting has been totally ignored, is the contention. The petitioner had relied on Ext. P2 sketch produced by the 2nd respondent before the 1st respondent in order to illustrate the factual situation. It is evident that electric connection to the 4th respondent was given through a route marked "ABC" in Ext. P2 sketch. The point marked as "A" is almost towards corner of the property of the 3rd respondent "B" is a point situated close to the said corner, within the property of the petitioner. "BC" stretch of the line passes only through property of the petitioner. The alternate route through which the shifting is now allowed is from point "A" to point "D" which is situated in the property of the 5th respondent, and then to the point "E" and "F" through property of the 6th respondent. Even though it is evident that respondents 5 and 6 have consented for such shifting, a major stretch of the line from the point "A" to "D" is crossing property of the petitioner. Further it is evident that there is an agricultural connection provided in the property of the petitioner, which presumably might have been taken from the point "C" marked in Ext. P2 sketch. That means by allowing the shifting an additional line has to be drawn through the property of the petitioner, apart from the line marked as "B" to "C" through the line marked as "A" to "D". Definitely this will cause disadvantage to the petitioner.

2. While considering sustain ability of the impugned order passed u/s 17(2), the relevant provisions need to be taken note of. Section 17(1) provides that, any person who desires to deal with the property wherein a telegraph line or post is placed in a manner as to render it 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 the post accordingly. Sub-section (2) of Section 17 provides that if the telegraph authority omits to comply with any such request, the person who made such request is entitled to approach the District Magistrate seeking order for such removal or alteration. The wordings in Section 17(1), "another part thereof" clearly indicates that shifting of the telegraph line or post from the existing position can be applied only to any other part of the property of the person who is making such application. Here is a case where the 3rd respondent had applied for shifting of a line situated through the property of the petitioner. The 1st respondent went highly erred in allowing such shifting in a manner causing prejudice and inconvenience to the petitioner. Therefore, I am of the view that there is total erroneous exercise of jurisdiction vested on the 1st respondent u/s 17(2) of the Act.

3. Learned counsel appearing for the 3rd respondent contended that it is actually a small extent of the route covering points "A" to "B" is crossing through property of the 3rd respondent, which is causing inconvenience. If that be so, what should have been done is to apply for shifting of the line to any other position within the

property of the 3rd respondent herself. On the other hand what was sought for and allowed is shifting of the line situated within the property of the petitioner. Further it is to be noted that the impugned order had resulted in a situation where an additional line is permitted to be drawn through property of the petitioner, apart from the existing line. Another contention raised is that, the shifting was sought for with an intention to facilitate the 6th respondent to get a new connection in the property held by him. For facilitating connection to the 6th respondent, shifting of the line which is situated in the property of the petitioner cannot be allowed. It is for the 6th respondent to apply for such connection and it is for the authorities of the Board to consider for providing such connection through any feasible route.

4. Under the above mentioned circumstances, this Court is of the considered opinion that Ext. P3 is an order passed on a total misconception of the legal position as well as factual position prevailing. Hence Ext. P3 cannot be sustained. Therefore the writ petition is allowed. Ext. P3 is hereby quashed. The position with respect to electric line already drawn on the basis of the earlier order of the 1st respondent has to continue.

5. However, it is made clear that the 3rd respondent will be at liberty to invoke remedies available u/s 17(1) before the appropriate authority of the Board if she is aggrieved in any manner with respect to the line already drawn through her property, seeking shifting of the line to any other convenient position within her property itself.

6. It is also made clear that the 6th respondent will also be at liberty to seek fresh connection in his property despite any observations contained therein. Learned counsel for the 3rd respondent submitted that on the basis of Ext. P3 order she had already remitted the amount for shifting of the line. In view of the fact that Ext. P3 has already been set aside the 2nd respondent is directed to make refund of the same.