

(2000) 06 GAU CK 0040
In the Gauhati High Court
Case No : Civil Revision No. 342 of 1999

Assam State Electricity Board and Others	APPELLANT
Vs	
Rajen Kalita	RESPONDENT

Date of Decision : 06-06-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115
Electricity (Supply) Act, 1948 — Section 28, 29, 42
Electricity Act, 1910 — Section 12, 13, 14, 15, 16
Specific Relief Act, 1963 — Section 39
Telegraph Act, 1885 — Section 10, 16(3)

Citation : (2000) 2 GLT 654

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : N.N. Saikia, J. Chutia, N.J. Dutta and G. Deka, for the Appellant; P. Upadhaya, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Sarma, J.—A suit was filed being Title Suit No. 223/96 before the Learned Sadar Munsiff at Guwahati. The suit was for ejectment and permanent injunction.

2. The Plaintiff comes from the poor strata of the society and he is a fourth grade employee of Assam Engineering College. By taking loan from the authority he purchased 2 Kathas of land covered by KP Patta No. 84 and Dag No. 191 of Village Maj-Jalukbari under Jalukbari Mouza in the year 1988 vide Registered Deed No. 2356 of 1988. After purchase of the land he developed the same, in the year 1991, the Plaintiff constructed a Assam Type residential house over the portion of the land towards the west. It is stated in paragraph 2 of the plaint that a high tension Transmission Electric line passes by the southern boundary side of the Plaintiff's said land. The said high tension line is being drawn from the east to west and from this line several distribution lines have been drawn in the different places for supply of electricity to the individuals consumers in the Jalukbari and Maligaon area The Defendant No. 3. The Sub-Divisional Engineer of

the ASEB installed a pucca post in his land on 3.2.92 and drew an overhead High Voltage distribution line from the said main transmission line across the middle portion of the Plaintiff's land without his consent. The distribution line crosses about 85 ft. length of the Plaintiffs land and goes straight towards the Jalukbari Engineering College road on the North. The distribution line is drawn from South to North across the Plaintiff's land and is connected with transformer installed by the side of the said College Road. The Plaintiff vehemently objected the drawal of high tension line on his land and the Plaintiff has said that it will cause substantial loss and damage to his land besides causing constant apprehension of serious danger to his residential house. In spite of the objection the authority proceeded with the matter on the said line which is passing at just 5 Ft. distance from the Plaintiff's house. The Plaintiff was given the impression that it is a temporary line and it will be shifted soon from the land. But there was no initiative from the Defendant to shift the line. The Plaintiff has not been paid any compensation nor the ASEB authority obtained any consent from the Plaintiff and/or acquired the land from the Plaintiff. The ASEB authority has forcibly and illegally interfered with the Plaintiff's property. It is stated in paragraph 8 that the ASEB authority can easily shift the said line from the area and there is no any hurdle in doing so. He further pointed out that there is a village private patta of 16" ft. wide commencing from the Assam Engineering College Road, over which the line can be drawn. In paragraph 9 it is stated that this line which was drawn over the land of the Plaintiff came down due to cyclonic wind causing danger to the life and property of the Plaintiff. The post was on the land of the Plaintiff and it was partly damaged by the cyclone and there was a request from the Plaintiff at that time to shift the post from the land of the Plaintiff but in spite of doing that the authority on 1.6.96 alongwith the help of the police repaired the post and cut down several coconut trees standing nearby place and it was directed to the Plaintiff to shut his house nearby the said distribution line. There was even a threat that the authority shall demolish his house. It is inter alia out these allegations that this suit was filed with the following prayers:

(i) Ejectment of the Defendant by way of removing the electric line and post from the suit land.

(ii) Mandatory injunction directing the Defendants to remove/withdraw/shift the unauthorised overhead electric line drawn across the middle portion of the Plaintiff's land and electric post installed over his land.

3. A written statement was filed by the Defendant and in the written statement the Defendants has taken up the defence that they have the right to draw the line and place the post under the Electricity Act of 1910 and Electricity Act of 1948. Alongwith the plaint an application was filed under Order 39 Rule 1 and 2 of the CPC and Section 39 of the Specific Relief Act for a mandatory injunction with the prayer directing the Defendant to remove/withdraw/shift unauthorised electric line drawn therein across the middle portion of the Plaintiff's land and the electric post installed over the land be removed till the disposal of the suit.

4. An objection was filed on behalf of the ASEB and the matter was heard by the learned Munsiff and the learned Munsiff by order dated 29.5.97 (the learned Civil Judge (Jr. Divn) No. 2, Guwahati) granted the prayer of mandatory injunction on the following terms:

In view of the forgoing discussion and considering the urgency of filing this suit I hereby direct the Opp./ASEB to shift the overhead electric line drawn across the middle portion of the Petitioner land and electric post installed over his land within one month. On a condition that if Petitioner fails to prove his case in the main suit or in the event of the dismissal of the suit, then the Petitioner shall be liable to compensate for the reinstallation of electric line to its original position.

5. The learned Civil Judge (Jr. Division) at Guwahati took up the objection raised by the ASEB which may be summarised as follows:

(i) The Board has not raised the said line forcibly and illegally. The Petitioner was not the owner of the land when the line was being installed. This line has been installed as per plan after necessary survey and following normal procedure. There was no understanding and/or assurance regarding the shifting of the line. The Board has installed the line in exercise of power conferred under the law and as such the same has not been done illegally.

6. By rejecting the pleas raised by the Board the mandatory injunction as quoted above was granted by the learned Civil Judge (Jr. Division) at Guwahati. There was an appeal being Misc. Appeal No. 35/97 before the learned Civil Judge (Sr. Division) No. 1 at Guwahati and the learned Civil Judge (Sr. Division) No. 1 by judgment and order dt. 2.6.99 dismissed the appeal and hence this revision.

7.1 have heard Mr. N.N. Saikia, learned advocate for the Petitioner Mr. P. Upadhaya, learned advocate for the Respondents and I have also heard Mr. A.K. Goswami, learned advocate as Amicus Curiae with regard to the power of the Electricity Board to draw line over the private property of somebody and/or to construct a post on the private property of somebody. I have also asked Mr. Goswami to focus on this point as it involves public interest. The question to be decided is that whether the Board has been given power to draw line over the private property of somebody according to its whims and pleasure and whether the law places some restrictions with regard to that. Before we go to the second question let us first decide the legality and validity of the temporary mandatory injunction granted by the trial court and upheld by the appellate Court. There is no need to go to the other decisions as the matter now has been crystalised by a decision of the Apex Court reported in *Dorab Cawasji Warden Vs. Coomi Sorab Warden* and others, wherein the Supreme Court after considering the different decisions in paragraphs 14 and 15 has laid down the law as follows:

Para 14:

The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which

preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

- (1) The Plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
- (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
- (3) The balance of convenience is in favour of the one seeking such relief.

Para 15:

Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the Court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive or complete or absolute rules, and there may be exceptional circumstances needing action, applying them as pre-requisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.

8. In 1994 (2) GLR 104 State of Assam Director of State Lotteries v. M.S. Associates New Delhi. This Court in paragraph 10 of the judgment has pointed out as follows:

Further, the suit itself was for permanent injunction and in such suit temporary injunction must be granted in a cautious manner, because by granting temporary injunction relief in the suit is being granted. That should not be done by the Court. No doubt, in specific cases temporary injunction may be granted. The procedure of granting temporary injunction should not be adopted as a general and normal course.

9. AIR 1956 Cal which was referred in the judgment of the Apex Court in 1990 (supra) was further considered by the Calcutta High Court, in Indian Cable Company Limited Vs. Smt. Sumitra Chakraborty, wherein in paragraph 9 it has been pointed out as follows:

(a) But in my opinion the said decision is no authority for an absolute proposition that no relief on an interlocutory application can be granted under any circumstances which may amount to granting of the main relief prayed for in the suit. Mcnair, J: in the said decision merely pointed out that as a general rule such

a relief is not granted in the absence of apparent urgency and injury to the applicant. When I refer to the decision I find that McNair, J. did take note of and approve of the principle as enunciated in English cases which acknowledged the existence of a power in a Court to give such a relief on an interlocutory application as may also be the substantial prayer in the suit."

(b) It is indeed true that such a relief should be granted only in exceptional cases. Though exercise of such a discretion should be limited to rare and exceptional cases, still at the same time no Court should think, as has been the view taken by the learned Subordinate Judge, that in law there is any absolute bar to the Court granting such a relief. In deserving cases, the Court should not hesitate to come in aid of a litigant and uphold the cause of justice by granting such a relief.

10. I respectfully agree with this decision of the Calcutta High Court Ramesh Devchand Pala Vs. Jayantkumar Gordhandas Madani and Others, has dealt with this question. That was a case where the Plaintiff was unlawfully dispossessed by taking law in his hands by Defendants from suit shop in which he was carrying on business for nine years and in that background the learned trial Court granted mandatory injunction and it was on that background that a mandatory injunction was issued for restoration of the possession as the Court came to a finding that if that is not done that will amount to encouraging muscle power of the Defendants. It is on this background of law that we must decide this particular case.

11. Before going to that aspect of the matter let us also decide the stand taken by the ASEB that the statute gives them powers to erect the line and/or to install the post anywhere they like. For this proposition of law the learned advocate for the Petitioner places reliance on the following sections i.e., Section 12(1)(e) of the Indian Electricity Act, 1910. Section 12(1)(e) is quoted below:

12. Provisions as to the opening and breaking up of streets, railways and tramways? (1) Any licensee may, from time to time but subject always to the terms and conditions of his licence, within the area of supply, or, when permitted by the terms of his licence to lay down or place electric supply-lines without the area of supply, without that area:

- (a) open and break up the soil and pavement of any street, railway or tramway;
- (b) open and break up any sewer, drain or tunnel in or under any street, railway or tramway;
- (c) lay down and place electric supply-lines and other works;
- (d) repair, alter or remove the same; and
- (e) do all other acts necessary for the due supply of energy.

12. u/s 12 of the Indian Electricity Act, 1910 the licensee including the State Electricity Board, the State Government, and the Generating Company may act

in the manner prescribed therein. However, a comparison of the provision of the Electricity Act, 1910, shows that while Section 12 is an enabling provision which specifies the general acts which may ordinarily be exercised by a licensee, on the other hand, Section 51 of the said Act, in certain cases, lays down the special power which the State Government may expressly invest in a licensee or any other person through a written order. Where a licensee or any person acts in accordance with the provisions of Section 51 of the Electricity Act, 1910, then in such a case Section 12 of the said Act will not apply, and to this extent its scope is circumscribed. This Section 12 came up for consideration before a number of High Courts and I discussed the case in seriatim. In *Bharat Plywood and Timber Products Private Ltd. Vs. Kerala State Electricity Board Trivandrum and Others*, the Full Bench decision of the Kerala High Court has held that the Section 12 only specifies the acts which may be done by a licensee with the consent of the local authority or occupier. Their Lordships observed that the said Section 12 does not confer any power upon the licensee, because in the absence of consent nothing could be done. I with all humility agree with the Full Bench decision inasmuch as if any other interpretation is given, to Section 12(1) that will jeopardise the interest of the owners of the land and such interpretation must not be given in a democratic set up where we are governed by the Rule of law. No doubt, this restriction imposed u/s 12 of the Act of 1910 is inapplicable, in case, the licensee executed the electrical works over public property.

13. The next case in this point is AIR 1929 226 (Lahore) In this case Section 12 of the Act of 1910 came up for consideration. There a post was erected on the land of a person. Permission from the District Magistrate was obtained not before erecting but after the institution of the suit by the owner of land. The Lahore High Court further pointed out that there is no law authorising the District Magistrate to grant permission to an electric company to lay electric line over the land of a private person. The Lahore High Court has further pointed out that the ordinary Rule of law is that whoever owns the site, is the owner of everything up to the earth and such owner, therefore, object to the laying of electric wire on his land although the line may be laid more than 30 feet above land. This decision is the correct interpretation of Section 12 of the Electricity Act of 1910.

14. Next case relied on is *Surat Singh Vs. Municipal Corporation of Delhi*, wherein the Delhi High Court has pointed out that the Act of fixing poles and laying overhead electric lines in private property will be unauthorised in the absence of prior permission of the District Magistrate when the resistance is offered by the owner of private property. In paragraph 10 of that judgment the Delhi High Court has pointed out that even if the power is conferred on the Board, by invoking the power of the Telegraph Act, the power can be exercised by the Board only on a notification issued by the State Govt. and in this particular case no such notification has been produced before me and in the absence of that notification the power given u/s 10 of the Telegraphic Act shall not be available to the Board.

15. The next case is AIR 1960 Mad 374 (*South Madras Electric Supply*

Corporation Ltd. at Tiruchirapalli through its managing agents Seshqyasyee Bros Ltd. v. T.L. Jagannatha Aiyar and Ors. where the Madras High Court pointed out that if the high tension line is fixed on the Plaintiffs land without permission a suit for removal of the same is maintainable in the Civil Court. So, this power claimed by the ASEB u/s 12 is not available and the contention of Mr. Saikia on this point shall fall through.

16. Next Section relied on by the learned advocate for the Petitioner is Section 28 of the Indian Electricity (Supply) Act, 1948. Section 28 is with regard to the power and sanctioning of schemes. Before I go to discuss this Section I make it clear that nothing was produced either before the trial Court at the time of hearing of the injunction or before this Court regarding sanctioning of such a scheme. Be that as it may, even if the scheme is sanctioned there is certain other requirement which must be adhered to by the Board. The legal requirement is publication of the claim in accordance with the provisions of Sections 28 and 29 of the Electricity (Supply) Act, 1948. Once the scheme is so published the Board is competent to exercise the power of the Telegraph authority referred to Section 10 of the Telegraph Act. Any person whose private property is adversely affected has a right to receive compensation under 42 of the Electricity (Supply) Act, 1948 read with Section 16(3) of the Telegraph Act. There is no material whatsoever in this particular case that such a scheme was ever published by complying to the requirement of the Sections 28 and 29 and that not being done the power/privilege available under the Telegraphic Act of 1885 shall not be available to the Board. So, this contention of Mr. Saikia also must fall through.

17. The next Section relied on is Section 42 of the Electricity (Supply) Act. Section 42 of the Electricity (supply) Act along with the proviso came up for consideration before a large number of High Courts including The Orissa State Electricity Board and Another Vs. Pyari Mohan Patnaik and Others, wherein in paragraph 8 Orissa High Court has laid down the law as follows:

So long as provision for placing maintaining or taking any wires, poles and appliances for the transmission and distribution of electricity, as mentioned para 1 of Section 42 of the Electricity (Supply) Act is not made in the sanctioned scheme, the powers under Part III of the Electricity Act 1910 will not be available and the provisions of Sections 12 to 19 of the Electricity Act shall apply to the works of the Board. Where the complained-of electric transmission line over the suit land belonging to the Plaintiffs was not in accordance with any sanctioned plan and that the complained-of alteration was done by a Superintending Engineer and the Board had not accorded any sanction for the said alteration. So the protection u/s 42 of the Electricity (Supply) Act was not available to the Electricity Board. The execution of the work could not be legalised retrospectively by granting ex-post facto sanction. Therefore, the provisions of Sections 12 to 19 of the Electricity Act would apply to the complained-of transmission line. So, the Board was not at all authorised to take the said transmission line on and over the

Plaintiff's suit land, especially in view of their admitted objection and stiff opposition to that effect, without following the relevant provisions of Section 12 to 19 of the Electricity Act.

18. So, the benefit of Section 42 also shall not be available to the Board as the Board did not comply with the prior requisite as required by law. Therefore, all the contentions of Mr. Saikia, learned advocate for the Petitioner fall through and are devoid of any merit and the same are rejected.

19. The only question which now requires decision is that whether temporary mandatory injunction which was issued by the trial Court and affirmed by the appellate Court should be set aside by me in exercise of power u/s 115 of the Code of Civil Procedure. I find this order has been passed to uphold the cause of justice and it shall not defeat justice. The ASEB being a public body has caused injury to a poor person and that should not be the attitude of the authority. They did not follow the procedure laid down by law and by force they constructed a post on the private land of somebody and drew high tension line over the property of that poor man and even now they are in a position to shift the line from the private land of the Respondent/Plaintiff. In that view of the matter, I do not find it just and proper for the ends of justice to set aside the temporary mandatory injunction and mat order of temporary injunction shall hold the field and this revision shall stand dismissed. However, I grant further 6(six) months time to the ASEB to do the needful in terms of the mandatory injunction. The Civil Revision is dismissed with cost of Rs. 5,000/- (Rupees five thousand only) payable by the ASEB to the Respondent/Plaintiff.