

(1964) 06 MAD CK 0009

In the Madras High Court

Case No : Writ Appeal No's. 204 and 205 of 1963

B. Kulla Gowder and Others

APPELLANT

Vs

The Board of Revenue and Another

RESPONDENT

Date of Decision : 22-06-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 4(1), 4(2)

Telegraph Act, 1885 — Section 10, 16, 16(3), 16(4), 16(5)

Citation : (1965) ILR (Mad) 56

Hon'ble Judges : Natesan, J;Anantanarayanan, J

Bench : Division Bench

Advocate : M.K. Nambiar and K.K. Venugopal, for the Appellant; G. Ramanujam, for T. Chengalvaroyan and D. Raju for V. Ramaswami, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Anantanarayanan, J.—These related writ appeals are instituted before us from the judgment of Srinivasan J., in Writ Petition Nos. 1188 and

1189 of 1960, before the learned Judge in which the learned Judge declined to issue an appropriate writ quashing the order of the Board of

Revenue (first Respondent in the proceedings) reducing or refilling the compensation payable in respect of wattle plantation on certain lands, which

were entered into by the authorities of the electricity department, for departmental purposes. Most of the facts relating to this matter are not in

controversy, and the essential facts may be set forth as follows.

2. A certain B. Kulla Gowder (Appellant in these proceedings) was the owner of 8 acres of forest land covered by a plantation of wattle, cypress

and jungle wood, in survey Number 42-1 of Mulligoor village in Ootacamund

taluk. Admittedly, the authorities of the electricity department entered on this land in or about April 1956, and cut down many of the trees including the wattle plantation, in connection with the Kundah Hydro-Electric Scheme. They granted receipts to the proprietor (the Appellant) for the trees so cut down, and samples of such receipts are among the typed papers. The receipts are important, for the authorities specify them as certificates for compensation for tree clearance under Indian Telegraph Act. The authorities also stated in these receipts that the compensation will be paid for the trees cut down as assessed by the Revenue Department. Subsequently, on the 17th September 1957, the Government issued a notification u/s 4(1) of the Land Acquisition Act, for the acquisition of 4-22 acres out of the 8 acres covered by survey number 42-1, for purposes of the Kundah Project.

3. There is now no controversy with regard to the compensation for cypress and jungle-wood trees cut down by the authorities of the electricity department prior to 17th September 1957, the date of the Section 4(1) notification. As represented by Sri Nambiar for the Appellant, these amounts have been paid, or are being paid, and the rates of compensation have been accepted by both parties. The controversy relates exclusively to the compensation for the wattle plantation. Here, the Appellant relies upon the rates of compensation determined by the Collector of the District, to whom apparently a reference was made by the authorities of the electricity department. According to Mr. Nambiar, this was in pursuance of the undertaking in the receipts. The electricity board, which succeeded to the rights and obligations of the electricity department as far as the Kundah Project is concerned, contends before us, on the contrary, that the rates as determined by the Collector will not be applicable, and will not bind the electricity board. First of all, the award which followed the notification that we have referred to u/s 4(1) of the Land Acquisition Act, included compensation for wattle plantation also, though the plantation itself had been cut down, and had ceased to exist, by the date of the Section 4(1) notification. On this aspect, therefore, the argument is that, at least as regards the 4-22 acres out of the 8 acres, no further compensation is payable by the electricity board, for wattle plantation on this area. The second argument is that, in any event, the Board of Revenue later issued

proceedings superseding the rates determined by the Collector for wattle, and fixing a figure of rupees two hundred per acre, depending on the age

of the plantation. The writ petitions themselves were filed seeking to quash these proceedings of the Board of Revenue, on the ground that the

Board of Revenue had no jurisdiction to revise the order of the Collector in that fashion. We shall later discuss the extent to which the Appellant

would be entitled to claim such a relief under Article 226 of the Constitution, and the reasons which actuated the learned Judge (Srinivasan J.) to

decline to interfere on this aspect. For the moment, we shall turn to the relevant provisions of the Indian Telegraph Act, under which alone, as we

saw, the authorities of the electricity department purported to enter on the land and to fell the trees after undertaking to pay compensation.

4. These provisions are to be found in Section 10(d) of the Act, and Sections 16(3) and 16(4) of the Act. Section 10 enacts that the authorities

have the power to maintain a telegraph line in or upon any immovable property, and Sections 10 (a), (6) and (c) relate to the scope of the powers.

u/s 10(d), if the telegraph authority exercises the powers, and thereby causes damage to property, it is bound to pay full compensation to all

persons interested in that respect.

5. u/s 16(3) of the same Act, if any dispute arises between the parties concerning the sufficiency of the compensation to be paid u/s 10(d), either of

the disputing parties may take the dispute to the District Judge within whose jurisdiction the property is situate, for determination of the dispute. u/s

16(4), the procedure to be followed by the District Judge is briefly outlined. Section 16(5) states that such a determination of a dispute by a

District Judge, is to be final between the parties.

6. The arguments upon this aspect of controversy, may be briefly set forth as follows : According to Sri Nambiar, the Board of Revenue had no

jurisdiction whatever to issue some independent proceeding, revising or refixing the compensation for wattle determined by the Collector of the

district. The Collector was the person to whom the authorities of the electricity department had made the reference, in terms of the language of the

very receipts issued by those authorities. Learned Counsel for the electricity board (successor to the authorities of the electricity department),

raises the following contentions. Firstly, he contends that this Court would have

no jurisdiction under Article 226 to set aside the order of the Board of Revenue nor has any case been made out for quashing that order, which is not in exercise of any statutory power. Secondly, he contends that, since the subsequent award following the 4(1) notification did include compensation for wattle plantation which existed on the acquired land previous to the date of the 4(1) notification, though this might be an erroneous basis of award that would preclude the Appellant from claiming compensation in respect of the area of the acquired land. Thirdly, he contends that Section 10(d) and Section 16 of the Indian Telegraph Act, 1885, do not apply to the facts of the case. The powers, exercised by the authorities of the electricity department in the present case, are not at all referable to the provisions of Sections 10 (a), (6) and (c). Hence, the authorities of the electricity department must either be construed as having acted as trespassers pure and simple, whether through a civil trespass or a criminal trespass, or as having acted under cover of an independent private contract between the parties.

7. We shall immediately, repel the last argument, for it appears to us to be totally unsustainable, and also to be invalid on the vital principle that party cannot both approbate and reprobate, and cannot induce another party to alter his position by a representation and then to go back on that representation. We have no doubt whatever that the authorities of the electricity department did not commit either civil or criminal trespass, and though they might conceivably have exceeded those powers, that they purported to act only by virtue of powers vesting in them u/s 10 and Section 16 of the Indian Telegraph Act. The point is not whether the particular object for which this land was entered upon and the trees thereon cut, would fall within the ambit of Sections 10 (a), (b) and (c) of the Act; the point is that, admittedly, there is no other statutory basis for the officers of the electricity department to enter on the land at all, or to cut the trees. The Section 4(1) notification is an independent proceedings which came into existence on a much later date, and, which actually did not include the entire property. The very receipts that we have quoted conclusively prove that a representation was made that the trees were felled under orders of authorities, exercising their powers under the Indian Telegraph Act.

It was because of this representation that the Appellant permitted the authorities

to enter on the land to fell the trees presumably, but for such representation, he could have taken legal proceedings to prohibit the entry. There is scant grace, and even less justice, in the argument sought to be seriously advanced before us that the authorities of the electricity department, having by the representation deluded the Appellant into permitting their entry, could now be heard to contend that they were trespassers. We do not think that we should permit this argument to prevail, and we have no hesitation in rejecting it.

8. Equally, it seems to be clear to us that no award could legally comprise within its scope, any compensation for property which was not in existence on the date of the 4 (1) notification. This is self-evident, and needs no citation of authorities. The scheme of the Land Acquisition Act itself is based upon the payment of compensation for property acquired with reference to the particular date of the 4 (1) notification, and it is noteworthy that even the authorities of the State have a right of entry only subsequent to that notification, u/s 4(2) of the Act. If any award had erroneously included compensation for trees which existed prior to the date of the 4 (1) notification, and which did not actually exist on that date, that is not a matter which could be of avail, as far as the obligations of the electricity board under the Indian Telegraph Act are concerned. The electricity board is bound to pay proper compensation for the wattle plantation also, in accordance with Section 10(d) and Section 16(3) of the Act, to which we have earlier referred to. We are not further concerned with this award, which we now understand is pending reference u/s 18 of the Land Acquisition Act before a civil Court. Sri Nambiar definitely concedes before us that the Appellant will not be legally entitled to compensation for the cut down wattle plants under the award.

9. We agree with the learned Judge (Srinivasan J.), in his view that, however, no case has been made out by the Appellant for interference in writ jurisdiction as far as the order of the Board of Revenue revising the order of the Collector is concerned. As the learned Judge has observed that order is not referable to any statutory power or even to an administrative instruction. At the highest, it can only be construed as a departmental proceeding between the Board of Revenue and the Collector. Whether that order be erroneous or otherwise, it is difficult to see how, or why, that

order should be struck down by this Court in exercise of writ jurisdiction. The learned Judge also pointed out that the Appellant had appropriate

remedies u/s 16(3) of the Indian Telegraph Act, and he, quoted certain dicta of Ramachandra Ayyar J., (as he then was) in earlier writ petitions

(Writ Petitions Nos. 803 and 804 of 1958 and 507 of 1960), in which this Court declined to interfere, in almost identical circumstances, upon

similar grounds. Hence, no justification appears to exist for interference in writ appeal with the judgment of Srinivasan J.

10. But, it has to be made equally clear that the authorities of the electricity board cannot escape their obligations under the provisions of the Indian

Telegraph Act, upon the very facts as represented before us. Learned Counsel for the Board states that the Board is now willing to pay

compensation for the wattle plantation, only upon that revised basis which is the subject-matter of the proceedings of the Board of Revenue. Sri

Nambiar for the Appellant states that his client is not satisfied with this compensation, and that he claims compensation according to the rates

originally determined by the Collector. There is thus a dispute between the parties within the scope of Section 16(3) of the Act, which dispute

should be determined by the District Judge of relevant jurisdiction, in appropriate proceedings. Consequently the Appellant is referred to those

provisions, and we have already made it clear that the Respondent-Board cannot escape liability under those provisions, either on the argument

that the provisions of the Indian Telegraph Act do not apply between the parties, or on the argument that some later award has erroneously

included compensation for wattle trees cut and removed prior to the date of the 4 (1) notification, and that the electricity board is, therefore, not

bound to pay with regard to the wattle plantation of that area. But, subject to these exceptions, the electricity board may raise any defence open to

it in the proceedings before the District Judge which may eventuate. It is needless for us to observe that the District Judge has a full judicial

discretion to determine the rates for compensation, since the Court is not bound by the orders of the Board of Revenue or even by the earlier

assessment by the Collector. With these observations, the writ appeals are dismissed ; the parties will bear their own costs.