
(2015) 08 AHC CK 0004

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 43113 of 2015

Bright Buildwell Pvt. Ltd.

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Act, 2003 — Section 164, 67(2), 67(4)
Telegraph Act, 1885 — Section 10
Uttar Pradesh Urban Planning and Development Act, 1973 — Section 3

Citation : (2015) 8 ADJ 65 : (2015) 112 ALR 772

Hon'ble Judges : Rakesh Tiwari, J; Mukhtar Ahmad, J

Bench : Division Bench

Advocate : Anil Kumar Goswami and Farha Faiz, for the Appellant; Pankaj Shukla, Santosh Kumar and Pankaj Agarwal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties and perused the record. The petitioner is challenging the impugned order dated 26.6.2015 passed by respondent No. 7, District Magistrate, Hapur, District Hapur. The petitioner has further prayed a writ of mandamus restraining respondent No. 2, Uttar Pradesh Power Transmission Corporation Limited, Lucknow from laying down Transmission line or carrying out any works in connection thereto over lane relating to khasra Nos. 709, 739, 686, 687, 707Ka, 707Kha, 689Ka, 689Kha, 690Ka, 690Kha, 699-Meen, 700-Meen, 701-Meen, 704-Meen and 706 at village Accheja, Hapur.

2. For ready reference, the relevant portion of the order dated 26.5.2015 is quoted below:

"As per Section 164 of the Electricity Act, 2003 with Section 10 of the Indian Telegraph Act, 1885 recognized the absolute owner of the Transmission licensee to proceed with placing of electric supply lines or electric polls for the transmission of electricity on or over the private lands subject to the right of the

owner/occupier to claim compensation if any damage is sustained by him by reason of placing of such electric supply lines. In other words, neither the acquisition of the lands is necessary nor there is any need for consent of owner or occupier."

3. The petitioner is a consortium company working with another consortium company M/s. Excel International Realty Limited having its registered office at F-22 Main Wazirabad Road, Khajurikash, Delhi. It is incorporated under the provisions of Companies Act, 1956. The petitioner's company is a registered developers with the Hapur Palkhwa Development Authority, Hapur (hereinafter referred to as the "HPDA"), which has been constituted under Section 3 of the U.P. Urban Planning Development Act, 1973. The company applied to the HPDA for grant of licence of integrated township in village Accheja at Hapur as the petitioner had proposed to develop an integrated township over the property in question, which was to be developed in accordance with the Government orders dated 21.5.2005, 29.12.2005 and 28.4.2006. The proposed integrated township over the property in question had sanctioned of the Government of U.P. therefore, the petitioner applied for grant of licence, which was accordingly, granted by HPDA vide letter dated 25.11.2009 for a period of two years.

4. It appears that under the draft Master Plan 2021 published by HPDA, the area in question was earmarked for industrial use. The petitioner filed objection and sought conversion of lands use from industrial to residential in order to enable the petitioner to execute the project in terms of the licence granted to it.

5. It further appears that the petitioner has not deposited the amount of conversion charges except giving assurances that he is ready to deposit the same. Even Master Plan for integrated township has not been sanctioned and the licence which was granted to the petitioner on 25.11.2009 stood expired on 24.11.2011.

6. It also appears from the record that respondent No. 2 is a State Transmission Utility as defined under Section 67(2) of the Electricity Act, 2003 and at present respondent No. 8 is laying down 765 Kv High Tension Transmission Line between Mainpuri to Hapur.

7. The petitioner contends that respondent No. 8 in collusion with respondent No. 9 is in the process to erect a high voltage transmission line between Mainpuri to Hapur and aforesaid high voltage transmission line between Mainpuri and Hapur is being shifted in collusion with respondent Nos. 8 and 9 and they are shifting it from scheduled location of Tower No. 105 as shown in green ink to new changed location of tower No. 105 as shown in Annexure-2 to the supplementary-affidavit.

8. Learned counsel for the petitioner also submits that notices were served upon a third person in collusion with respondent Nos. 8 and 9 and with another person and neither compensation has been paid to the petitioner's company nor any notice has been served upon it; that the District Magistrate, Hapur, respondent No. 7 had formed a committee consisting of respondent Nos. 3, 4, 5 and 6, who

are said to be defaulters and that respondent No. 9 misinterpreted to the provisions of law with regard to letter No. 2047 dated 25.6.2015, which is quoted in the last portion of the impugned order dated 26.5.2015.

9. It is argued that a perusal of letter dated 27.3.2015 issued from the office of respondent No. 3 would clearly show that permission has been granted to change the line against the sanctioned route map on which respondent No. 8 wants to start work on a fabricated route map.

10. It is lastly argued by the learned counsel for the petitioner that from perusal of letter dated 9.4.2015 issued by respondent No. 5 to respondent No. 3 it appears that in the aforesaid work all the responsibilities relating to structural stability of the polls are of respondent No. 3, who is working under respondent No. 9 and that if scheduled location of tower No. 105 has been shifted to new changed location of tower No. 105, structural stability of the land in question would be effected.

11. Sri Pankaj Shukla, learned counsel appearing for respondent Nos. 2, 3, 4, 8 and 9 raised an objection that an alternative remedy is available to the petitioner under Section 67(4) of the Electricity Act, 2003, as award has already been made in this matter and compensation of the land has also been given to the land owners.

12. Sri Pankaj Agarwal, learned counsel for respondent No. 8 submits that he has been informed today that suit for the same cause of action being Suit No. Nil of 2015, Bright Buildwell Pvt. Limited v. U.P. Power Corporation Ltd. and others, is already pending in the Court of Civil Judge (Senior Division), Hapur, therefore, this writ petition for the same cause of action will not be maintainable.

13. Learned counsel for the petitioner has vehemently denied of either having received the compensation or the petitioner having filed the aforesaid suit.

14. After hearing learned counsel for the parties and on perusal of the record we find that the licence of the petitioner for development of integrated township had already been expired on 24.11.2011 and that the company had offered for depositing the money towards renewal fee but neither the amount has been deposited nor the licence of the petitioner has been renewed. If there is any question of change of structural stability, it would be the responsibility of respondent Nos. 6 and 8 to take care of the same while shifting the location of tower in question. We are sure that if there is any change in the location of tower, the respondents should take care that structural stability of the tower would not be effected.

15. Sri Pankaj Agarwal, learned counsel for respondent No. 8 submits that there is absolutely no change in structural stability and it is a matter of fact which cannot be decided by this Court under Article 226 of the Constitution of India.

16. The formation of the Committee by respondent No. 7 for holding an enquiry into the matter and submission of the report by the aforesaid alleged defaulter

members is wholly vague merely because the SDM was the trainee officer at that time, hence it would be sufficient to hold that she was incompetent to submit the report.

17. The petitioner, in our opinion, has no right after its licence has expired, to legally maintain this writ petition particularly, after the enquiry report has been submitted by the Enquiry Officer. For all the reasons stated above, the writ petition is dismissed. No order as to costs.