

(2022) 12 GUJ CK 0012

In the Gujarat High Court

Case No : R/Special Civil Application No. 4831 Of 2018

Brijeshkumar Dhirubhai Patel

APPELLANT

Vs

Gujarat Energy Transmission Corporation Ltd

RESPONDENT

Date of Decision : 20-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 12 GUJ CK 0012

Hon'ble Judges : Ashutosh J. Shastri, J

Bench : Single Bench

Advocate : Adil R Mirza, SP Hasurkar

Final Decision : Disposed Of

Judgement

Ashutosh J. Shastri, J

1. By way of this petition under Article 226 of the Constitution of India, petitioner has prayed for following reliefs:-

"18(A) Your Lordships be pleased to admit and allow this petition;

(B) Your Lordships may be pleased to issue appropriate writ, order or direction, quashing and setting aside the action of respondent of installing the pole near the part constructed residential premises of the petitioner in Survey No.1648 situated at Village Pardi Parnera, Taluka & District – Valsad;

(C) Pending the admission, hearing and final disposal of this petition, Your Lordships be pleased to restrain the respondents from putting up the pole near the part constructed residential premises of the petitioner in Survey No. 1648 situated at Village Pardi Parnera, Taluka & District – Valsad and further from demolishing the part constructed residential premises of the petitioner, in the interest of justice;

(D) Your Lordships may be pleased to grant such other and further reliefs as may be deemed fit and proper, in the interest of justice and equity;"

2. The background of facts which has given rise to the present proceedings is that the petitioner is the co-owner of land bearing Survey No. 1468 situated at Village Pardi, Parnera, District – Valsad. The said land is jointly owned by the family members of the present petitioner in which some of the family members have constructed their residential houses as well. The petitioner was also inclined to construct residential house over the said portion of land and even plan was also submitted before the Gram Panchayat, which was sanctioned on 11.07.2017. When the petitioner has put up construction to the extent of plinth level, the respondent authority on 20.03.2018 have intimated that electric pole for transmission of electric line is required to be installed nearby construction which is being put up by the petitioner and according to the petitioner, the said pole is to be erected at a distance of just 9 feet from the construction which is dangerous to the construction of the petitioner. On account of such intimation, the petitioner approached the respondent – Collector, Valsad by representation dated 20.03.2018 and tried to voiced out the grievance with such representation. Even the petitioner was also constrained to bring it to the notice of the concerned Police Inspector of Valsad Rural Police Station as well as DSP, Valsad on 21.03.2018, but no action has been taken so far and left with no other alternate, the petitioner is constrained to approach this Court by way of present petition under Article 226 of the Constitution of India.

3. Upon unilateral version, the Court was initially pleased to issue notice vide order dated 20.03.2018 and thereafter it seems that the matter has been adjourned from time to time and today when the matter is taken up for hearing, Mr. Adil Mirza, learned advocate appearing for the petitioner has submitted that the poles which are being erected just opposite to the construction which would cause immense apprehension in the mind of the petitioner and also may be harmful and same would also create hindrance to the construction and routine activity and as such, the authority may be directed to re-shift the poles.

It has also been submitted that the authority in an arbitrary manner has altered their plan unilaterally and changed the diversion which is impermissible and as such, the reliefs prayed for deserve to be granted in the interest of justice.

4. As against this, Mr. S.P. Hasurkar, learned advocate appearing for the respondent authority has submitted that by efflux of time, the electric poles have already been in the place where the same were intended to be implanted and now the electricity has also been charged on such line and as such, it is now not open for the petitioner to continue to agitate the relief for which the present petition was brought. Mr. Hasurkar has submitted that in view of this changed scenario, the petitioner at the best can avail alternate relief which may be available under the law and as such, the relief prayed for does not deserve to be granted and petition deserves to be dismissed. For substantiating his stand, Mr. Hasurkar has drawn attention of the Court to paragraph 8 and the contents contained therein from the affidavit dated 07.04.2018 reflecting on page 61 and has reiterated that electricity line has already been in function and as such, no

deviation now is possible. On the contrary, has submitted that lines are being sanctioned as per the experts advise and if petitioner is going to be affected to some extent, public work cannot be allowed to suffer and it is a settled proposition that whenever there is a conflict between public interest and private interest, private interest must be submerged. Hence, learned advocate Mr. Hasurkar has requested that the reliefs in the present form is not now possible to be extended.

5. Having heard the learned advocates appearing for the respective parties and having gone through the record, it appears that petition was brought at stage where the electric poles were to be implanted in the land belonging to the petitioner and after issuance of first notice, the interim order is not operative as a result of this, some development has taken place in between. From the affidavit-in-reply filed by the respondent authority, it is clearly emerging that the poles have already been implanted and the electric line has also been charged and as such, now question of stopping of work or restraining the authority from laying down the electric pole does not arise and as such, to that extent, an irreversible situation is created for which the petitioner can agitate the same before the appropriate forum permissible under the law. Since the Court has considered specific averments which have been made in paragraph 8 the Court deems it proper to reproduce hereunder :

"8.It is stated that somewhere in November, 2017, my Deputy Engineer has visited the site and for marking location at that time, there was no construction in existence. It is submitted that after marking of location petition has started this construction, and now he is contending before this Hon'ble High Court, GETCO is erecting transmission line right on his proposed construction. It is further stated that right from time of marking the location, me and my officers have made number of attempts to solve the issue despite after securing permission order from District Magistrate. Every time petitioner has changed the location of his construction in such manner that issue would remain as it is. I crave leave to refer and rely upon google map to have better appreciation of the topographical situation. Annexed herewith marked Annexure -IV is a copy of the map. I was ready to put up additional tower to pull behind the angel point so that location will not fall in his proposed construction. However, intention of the petitioner and his brothers to see that line will not pass from their land at all and were pressurizing to change the entire alignment which was not possible and against the policy of the GETCO. It is consistent practice of the GETCO that locations are changed maximum up to 5 to 10 meters in the same direction without changing the alignment. Petitioner has also requested intervention of local MP Dr. K.C. Patel who visited the site and attempted to help the petitioner. But looking to adamant approach of the petitioner and impractical solution offered by the petitioner, said local leader also recused himself from role of the mediator and thereafter we proceeded to carry out the work. It is in this set of circumstances petitioner has approached before this Hon'ble High Court. We have shifted alignment of the line to extent of more than one meter against the settled

policy of the GETCO to save his ongoing construction despite the fact that we were entitled to see that construction under the line shall be removed. This line was targeted to be charged on 30th March, 2018. All arraignment necessary for that purpose was already set. When we received the request for stopping the work the Tower was already erected and we were working on, with completing the patches of stringing the line. So far as the location in the land of the petitioner is concerned, patch of stringing was pending of 390 mtrs., only and the said was completed on 30th March, and line was charged immediately. We have already given press warning regarding charging of the line on 27.03.2018. Copy of the same is annexed herewith marked Annexure-V. I humbly submit that during this time, GETCO was to charge 101 substation and therefore any delay would have disturbed the entire planning – Annexed herewith marked Annexure-VI is a copy of the internal communication which will give the justification of the above statement.”

6. At this juncture, Mr. Mirza, learned advocate appearing for the petitioner considering the situation which is prevailing, under the instructions, seeks permission now to withdraw the petition with a view to make appropriate representation before the authority for ventilating the grievance voiced out in the petition and for seeking alternative relief. Permission as prayed for is granted. It is made clear that this Court has not expressed any opinion on such request which may be made and it is left it open to the respondent to consider independently.

7. In view of the above, the present petition stands disposed of as withdrawn. Notice is discharged.