

(2011) 04 PAT CK 0003
In the Patna High Court
Case No : CWJC No. 14584 of 2004

Chandra Bhushan Singh

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 3 PLJR 117

Hon'ble Judges : Birendra Pd. Verma, J

Bench : Single Bench

Advocate : Pranav Kumar and Uday Pratap Singh, for the Appellant; P.L. Jaiswal For the Union of India, Mr. Aminuddin Ahmad Khan For the Power Grid Corporation and Mr. S.K. Giri For the State, for the Respondent

Judgement

Birendra Pd. Verma, J.—Heard learned counsel for the petitioner, learned counsel for Union of India, appearing on behalf of respondent nos. 1 and 2, learned counsel appearing on behalf of respondent no. 3, as also learned counsel appearing on behalf of respondent nos. 4 to 6. The petitioner has filed the present writ petition under Article 226 of the Constitution of India for the reliefs, delineated in Paragraph-1 of the present writ petition, which are quoted hereinbelow:-

1. That, in the instant writ application the petitioner prays for the following reliefs:-

i. For issuance of an appropriate writ order or directions commanding the respondents to remove the electric poles fixed for carrying high voltage wire from commercially viable premises of the petitioner which is to be used for immediate business purpose and fix it in such a way as to not cause hindrance to the petitioner or any other public.

ii. For commanding the respondents to pay adequate compensation as fixation of pole in the frontal portion of land appertaining to the road has rendered a large

area unusable particularly for business.

iii. For commanding the respondents to provide a job as rendering the plot unsuitable for business purposes/ tantamounts to deprive a person of self-employment.

iv. For grant of any relief or reliefs that may arise in the facts and circumstances of the case.

2. Learned counsel for the petitioner submits that land belonging to the petitioner bearing plot no. 1880 appertaining to khata no. 126, situate at Village-Ekawana, P.S.-Udwant Nagar, District-Bhojpur has been used without" his consent and its frontal portion has been occupied by respondent nos. 4 to 6 by erecting/installing strut/electrical poles for carrying high voltage wire causing heavy loss to the petitioner, since the land in question is commercially viable. He further submits that under the provisions of the Indian Telegraph Act, 1885 (in short Act), as also under the provisions of the Works of Licensees Rules, 2006, framed under the provisions of the Electricity Act, 2003, respondent nos. 4 to 6 are obliged to pay adequate compensation for using/ occupying the land belonging to the petitioner. According to him, till date no compensation at all has been paid by the respondent concerned for using/occupying the said land. The petitioner claims to have submitted his representation before the authority concerned, but that has brought no fruitful result, compelling him to approach this Court by filing the present writ petition.

3. A counter affidavit has been filed on behalf of respondent nos. 1, 2, 4, 5 and 6, wherein facts stated in the writ petition on behalf of the petitioner has been disputed. However, it has not been claimed in the said counter affidavit that any amount of compensation has been paid to the petitioner.

4. Learned counsel appearing on behalf of the respondent nos. 4 to 6 has placed reliance on the averments made in the counter affidavit, referred to above. It is contended that as a matter of fact, only one leg/pole of the strut has been fixed in the land belonging to the petitioner. It is submitted that since crops of the petitioner was not damaged, therefore, compensation has not been paid to him. It is highlighted that in any case, there is no question of giving any job to the son of the petitioner for the use/occupation of any portion of land belonging to him.

5-6. In order to consider the claim of the parties, as indicated above, it would be appropriate to notice the provisions contained in the Works of Licensees Rules, 2006 (in short "the Rules"). Rule 3(1) and 3(2) of the said Rules are relevant for the purposes of decision in the present proceeding and are reproduced hereinbelow:-

3. Licensee to carry out works.-

(1) A licensee may-

(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, whereover or whereunder any electric supply line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land:

(b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support:

Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorized by the State Government in this behalf, for carrying out the works:

Provided further that if at any time. the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorized may by order in writing direct for any such works-support, stay or strut to be removed or altered.

(2) When making an order under sub-rule (1), the District Magistrate or the Commissioner of Police or the officer so authorized, as the case may be, shall fix, after considering the representations of the concerned persons. if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(Emphasis added).

7. From perusal of the provision of Rule 3(1)(a) of the Rules, it is apparent that for carrying out works or laying down or placing any electric supply line or other works either through or against any building or land, prior consent of the owner or occupier of the building or land is required to be obtained by the licensee. Rule 3(1)(b) of the Rules provides that if there is refusal by the owner or occupier of the building or the land, then permission can be obtained from the District Magistrate or the Commissioner of the Police or any other officer authorized by the State Government in this behalf. It further postulates that if works have already been carried out or any support of an overhead line, stay or strut has been fixed, if sufficient cause is shown by the owner or occupier of the building or the land, then the District Magistrate or the Commissioner of the Police, as the case may be, may direct for its removal or appropriate alteration. Rule 3(2) of the Rules further provides that District Magistrate or the Commissioner of Police, on being approached by the persons concerned, may fix an amount of compensation or of annual rent or both, which in his opinion is to be paid by the licensee to the owner or occupier.

8. This Court has already noticed the fact that the works have already been

completed, and some legs or strut have been fixed in the land of the petitioner, but no amount of compensation has been paid to him till date. It is claimed by the petitioner that because of erection of such electrical supply line, he has suffered heavy financial loss, as the land in question is/was commercially viable. It is also pointed out by the petitioner that before erection of electric poles or fixing some legs of the strut for electric supply line, consent of the petitioner was not obtained.

9. In the given facts of the case, this Court is of the considered opinion that entire matter must be examined by the respondent District Magistrate, Bhojpur, at Ara in terms of Rule 3 of the Rules 2006, which has been quoted above. The petitioner is hereby directed to appear before respondent District Magistrate within a period of four weeks from today with a detailed representation and a certified copy of the present Order. If such a representation is filed within the time prescribed, raising grievances either regarding removal or alteration of electric poles or strut, set up by respondent Power Grid Corporation of India, or for none payment of compensation for occupation of the land belonging to the petitioner, then respondent-District Magistrate shall be obliged to consider the same in terms of Rule 3 of the Rules, and after giving an opportunity of hearing to the petitioner and respondent Power Grid Corporation and its officials, shall decide the same by a speaking order. The entire exercise must be completed by respondent District Magistrate within a period of three months from the date of filing such representation by the petitioner.

10. If some amount of compensation or rent or both is found to be payable to the petitioner, then appropriate directions shall also be issued by the respondent District Magistrate for such payment by the respondent Power Grid Corporation and its officials within the time prescribed by him. It is made clear that so far as the prayer of the petitioner for providing a job to his son is concerned, that seems to be completely misconceived. The respondent District Magistrate is not required to take into consideration the prayer of the petitioner for providing job to his son, and to that extent, his prayer is rejected by this Court itself. Learned counsel appearing on behalf of respondent Nos. 4 to 6 has assured this Court that they would appear before respondent-District Magistrate within the aforesaid time, through an authorized lawyer for placing their case before the respondent District Magistrate.

11. It goes without saying that if the petitioner does not appear before the respondent District Magistrate and if such representation is not filed by the petitioner within the time prescribed along with a certified copy of the present order, then it shall be construed that present writ petition has finally been rejected by this Court. With the aforesaid observations/ directions, this writ petition stands disposed of.