

(2014) 06 KAR CK 0101

In the Karnataka High Court

Case No : Writ Appeal No. 3864 of 2010 (GM-RES)

Chief Engineer (E), Transmission Zone, Karnataka Power
Transmission Corporation Limited

APPELLANT

Vs

Lokesh

RESPONDENT

Date of Decision : 05-06-2014

Acts Referred:

Telegraph Act, 1885 — Section 16(3)

Citation : (2015) 2 AKR 120 : (2015) 1 KarLJ 54 : (2015) 3 KCCR 2241

Hon'ble Judges : N.K. Patil, J;B. Sreenivas Gowda, J

Bench : Division Bench

Advocate : M.V. Devaraju for N. Krishnananda Gupta, Advocate for the Appellant; K.N. Sanath Kumar, Advocate for the Respondent

Judgement

B. Sreenivas Gowda, J.—Appellants have preferred this appeal, challenging the order of the learned Single judge of this Court dated 26-7-2010 passed in W.P. No. 14103 of 2009, whereby the learned Single judge has dismissed the writ petition and confirmed the order passed by the learned District Judge in Misc. Petition No. 45 of 2007. We have heard the learned Counsel appearing for the parties and perused the order passed by the learned Single Judge and the order impugned in the writ petition.

2. Facts leading to this appeal are stated as hereunder:

"When the work of construction of 66 K.V. Tubinakere - Mandya, Multi-Circuit Line (MCL) for a distance of about 10 kms. was under progress, it was stopped at location Nos. 35, 36 and 37 due to objections raised by the landowners viz. Lokesh the respondent herein, Smt. Pramila and the President of People's Education Society, Mandya respectively. Therefore, the appellants approached the District Magistrate of Mandya, requesting him to remove the objections raised by the landowners and grant them permission to proceed with the work. The District Magistrate by order dated 4-3-2002 ordered for removal of the objections raised by the landowners including the respondent and permitted the

appellants to carry out the work, pursuant to which the stub concrete at location No. 37 in the land belonging to the People's Education Society, Mandya, was completed during 2002. The landowners of location Nos. 35 and 36 namely - Lokesh, the respondent herein and one Smt. Pramila, aggrieved by the order of removal of objections passed by the District Magistrate, Mandya, had preferred Writ Petition Nos. 30531 and 30618 of 2002 respectively, before this Court, seeking to quash the orders passed by the District Magistrate mainly on two grounds. Firstly, the order passed by the District Magistrate is without issuing notice to them and therefore it is in violation of principles of natural justice and liable to be set aside. Secondly, if the appellants are not prevented from carrying out the work of construction of 66 K.V. Tubinakere - Mandya, multi-circuit line at the place proposed by them, it would render their entire land useless. During the pendency of the said writ petitions, this Court directed the Superintending Engineer (Electrical), Transmission (Works), Mysore, to inspect the spot and find out the feasibility of fixing the M.C. Tower without causing much damage to the lands of the respondent and Smt. Pramila. Pursuant to the said direction of this Court, the Superintending Engineer has inspected the spot and submitted a report stating that the M.C. Tower can be erected at the North-East location instead of the place where the appellants have proposed to install the M.C. Tower. This Court considering the report submitted by the Superintending Engineer, disposed of the writ petition filed by this respondent herein on 7-11-2003 with a direction to the appellants to erect the M.C. Tower on the North-East side of the land of the respondent, so as to cause least damage to his land and the respondent was given liberty to make a suitable application before the authorities under Section 16(3) of the Indian Telegraph Act, 1885 for necessary compensation in this regard."

3. Accordingly, appellants have drawn the electric line and have erected the M.C. Tower on the North-East side of the land of the respondent and thereafter respondent has made an application dated 3-9-2004 before the appellants, requesting them to grant him compensation as contemplated under the Indian Telegraph Act. Considering the application submitted by the respondent, appellants have granted him compensation of Rs. 56,712/-.

4. The respondent aggrieved by the quantum of compensation of Rs. 56,712/- granted by the appellants, filed a petition in Misc. Petition. No. 45 of 2007 before the District Judge at Mandya, under Section 16(3) of the Indian Telegraph Act, contending that out of 9 guntas of land in Sy. No. 195/19 of Kirangadooru Village of Mandya Taluk, belonging to him, the area of land utilised by the appellants for erection of M.C. Tower is 2173.42 sq. feet. Whereas, the appellants have paid him compensation for 513.75 sq. feet of land and have denied his claim for the remaining area of 1659.89 sq. feet and prayed for allowing his claim petition as prayed for.

5. The appellants after entering appearance in the said Misc. Petition No. 45 of 2007 resisted the same by filing statement of objections inter alia contending

that they had drawn a single circuit 66 KV line over the land of the respondent about 30 years back, and what was done by them now is only an extension of the line drawn earlier and the area utilised by the appellants for the said purpose is 513.75 sq. ft. and they have calculated the compensation for the said area at the rate of Rs. 110/- per sq. feet amounting to Rs. 56,512/-, based on the value shown in a sale deed registered with the Office of the jurisdictional Sub-Registrar and they have paid the said amount to the respondent and prayed for dismissal of the claim petition.

6. The respondent in support of his claim has examined himself as P.W. 1 and has produced six documents which were marked as Exs. P. 1 to P. 6. Per contra the appellants in support of their defence have examined the appellant 3 herein as R.W. 1 and they have produced a document which was marked as Ex. R. 1.

7. The learned District Judge upon consideration of oral and documentary evidence on record by holding that the claimant/respondent herein has proved his case that, area utilised by the appellants from the land of the respondent for construction of MCL Tower is 2173.43 sq. feet by producing Ex. P. 1 - a letter addressed by the Chief Engineer (E), Transmission Zone, KPTCL, to the Executive Director (Law and Industrial Relations), KPTCL, Bangalore, wherein it is stated that as per the spot inspection report submitted by the Superintending Engineer, the area of land utilised by the appellants for construction of MCL Tower is 14 x 14 metres i.e. 2173.43 sq. ft. and he is entitled to be paid compensation for the said area at the rate of Rs. 110/- per sq. feet and Ex. P. 1 is admitted by R.W. 1 and by negative the contention of the appellants herein that respondent is entitled to a compensation of Rs. 56,512/- is based on the legal opinion expressed by their Counsel as per Ex. P. 2 and their further contention that the tower was constructed about 30 years ago and at that time itself the respondent was paid the compensation, is not supported by any document, by judgment dated 27-1-2009 allowed the claim petition filed by the respondent herein and determined the compensation of Rs. 2,39,076/- and directed the appellants to pay a sum of Rs. 1,82,563/- to the respondent after deducting the amount of Rs. 56,512/- which is already paid to him.

8. The appellants aggrieved by the said judgment passed by the District Judge, Mandya, challenged the same by preferring W.P. No. 14103 of 2009 before this Court, mainly on the ground that the compensation awarded by the learned District Judge relying upon Ex. P. 1 which is an internal correspondence between two Officers of the appellants-Company, on the ground that it was admitted by R.W. 1 contrary to the legal opinion expressed by the Advocate of the appellants" Company is not sustainable in law and it is liable to be set aside.

9. The learned Single Judge of this Court has dismissed the writ petition by holding that the Chief Engineer (Elec.) in his letter-Ex. P. 1 addressed to the Executive Director, Law and Industrial Relations, KPTCL, Bangalore, has clearly opined that the respondent is entitled for a compensation of Rs. 2,39,076/- as the area occupied by the appellants is 9 guntas and R.W. 1 in his cross-

examination has admitted that what is stated in Ex. P. 1 is correct and he has further admitted that before sending the letter-Ex. P. 1, the Chief Engineer has obtained the legal advice and the report of the spot inspection and if that is so, the appellants cannot go back to contend that the respondent is not entitled for compensation as determined by the Chief Engineer in Ex. P. 1.

10. The appellants have sought to interfere with the said order of the learned Single Judge and to quash the order impugned in the writ petition mainly on two grounds:

"1. The letter-Ex. P. 1 addressed by the Chief Engineer (Elec.) to the Executive Director (Law and Industrial Relations, KPTCL) is an internal correspondence between the two officials of the appellants-Company and therefore whatever opinion expressed by the Chief Engineer (E) in Ex. P. 1 contrary to the legal opinion expressed by the Advocate of the appellants-Company, is not binding on the appellants-Company. Therefore, the learned District Judge has erred in relying upon Ex. P. 1 merely on the ground that it was admitted by R.W. 1 during the course of his cross-examination and allowing the claim petition filed by the respondent as prayed for and the learned Single Judge of this Court has erred in dismissing the writ petition and confirming the said order of the learned District Judge.

2. Both the learned District Judge and the learned Single Judge of this Court have erred in not considering that the appellants have constructed the MCL Tower at location numbers 35, 36 and 37 about 30 years ago, and what was done by them now is only an extension of the earlier one and area utilised by the appellants from the land of the respondent for the said purpose is only 513 sq. feet and they paid the compensation of Rs. 56,512/- to the respondent for the said area at the rate of 110 sq. feet.

Regarding first ground:

The contention of the appellants that they constructed M.C. Tower in the land of the respondent 30 years ago and the respondent was paid the compensation at that time itself and what is now being done by them is only an extension of the leg portion of the said tower, is liable to be rejected for the simple reason that it was not substantiated by producing documents to that effect and it has been rightly done so by the learned District Judge and confirmed by the learned Single Judge.

Regarding second ground:

The controversy between the parties is, what is the extent of area from the land of the respondent in Sy. No. 195 that was utilised by the appellants for erecting multi-circuit tower - whether it is 513.75 sq. ft. as contended by the appellants or it is 2173.42 sq. ft. as contended by the respondent. In this regard, it is useful to extract the relevant portion of Ex. P. 1-the letter dated 17-8-2004, addressed by the Chief Engineer (Elec.) to the Executive Director, Law and Industrial

Relations which reads as under:

"The stub concreting work has been done at location 35 and total dimension of stub occupied area is 12.41 x 12.41 mts. However extra 1.59 x 1.59 mts. required to have clearance from tower legs and to provide security fence for future maintenance. Hence, total area arrived to $((12.41 + 1.59) \times (12.41 + 1.59)) = (14 \text{ mts.} \times 14 \text{ mts.}) = 196 \text{ sq. mts.} = 2173.42 \text{ sq. feet.}$ "

It is no doubt true that Ex. P. 1 is an internal correspondence between two officials of the appellants-Company. But, what is required to be seen here is, the contents of Ex. P. 1 was admitted by R.W. 1 in the course of his cross-examination as true and therefore, it was rightly relied upon by the learned District Judge. Hence, on the basis of Ex. P. 1 alone, this Court could have straightaway dismissed the writ appeal filed by the appellants and confirmed the order passed by the District Judge and its confirmation order passed by the learned Single Judge and directed the appellants to pay the compensation to the respondent as ordered by the District Judge in Misc. Petition No. 45 of 2007, but what is troubling this Court is, what is the area utilised by the appellants from the land of the respondent for erecting multi circuit tower is not established by either parties to the proceedings. The report of the Superintending Engineer (Elec.) is not produced by either of the parties. Merely because R.W. 1 in his cross-examination has admitted that, what is stated by the Chief Engineer in his letter-Ex. P. 1, addressed to the Executive Director is true, it cannot be said that area utilised by the appellants in the land of the respondent for erecting multi-circuit tower is 2173.42 sq. ft. At the same time, what was lost sight of by the learned District Judge as well as by the learned Single Judge of this Court is, respondent examined as P.W. 1 in Misc. Petition No. 45 of 2007 has admitted in his cross-examination that area utilised by the appellants in his land for erection of multi-circuit tower is 513.75 sq. ft. Whether the respondent by mistaking the extent of area suggested to him as metre has answered so or not, is not clear as there is no re-examination to that effect. The fact remains that there is no material placed by either of the parties to the proceedings except Ex. P. 1 regarding the actual area utilised by the appellants from the land of the respondent for erection of multi-circuit tower. Hence, matter needs to be reconsidered by the District Judge. Therefore, we deem it just and proper to set aside the order passed by the learned District Judge as well as by the learned Single Judge of this Court and remit the matter to the District Judge for reconsideration of the claim of the respondent for payment of just and proper compensation, after affording opportunity to both the parties to lead additional evidence and to cross-examine on such additional evidence, if necessary.

Hence, we pass the following orders:

The writ appeal is allowed.

The order dated 26-7-2010 passed in W.P. No. 14103 of 2009 by the learned Single Judge of this Court is set aside. Consequently, the order dated 27-1-2009

passed in C. Misc. No. 45 of 2007 by the District Judge Court at Mandya is set aside. Matter is remitted to the learned District Judge to reconsider the claim of the respondent after affording opportunity to both the parties to lead additional evidence and to cross-examine on such additional evidence, if necessary, and to decide the same in accordance with law.

Since both the parties are represented before this Court through their respective Counsel, they are hereby directed to appear before the Additional District Judge, Mandya, on 10-11-2014, without awaiting further notice and obtain next date of hearing.

The learned Additional District Judge is directed to dispose of the matter within six month from 10-11-2014.

No order as to costs.