

(2001) 01 KAR CK 0105

In the Karnataka High Court

Case No : Writ Petition No's. 8392, 15276 and 19524 of 2000

D.R. Girish

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 15-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Telegraph Act, 1885 — Section 16

Citation : (2001) 2 KCCR 854

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : M. Rangappa, in Writ Petition No. 8392 of 2000 N.K. Gupta, in Writ Petition No. 15276 of 2000 and V.A. Mohan Rangam, in Writ Petition No. 19524 of 2000, for the Appellant; M.V. Shamanna, for Respondent 1 in Writ Petition No. 8392 of 2000, A.G.A. for Respondent 4 in Writ Petition No. 15276 of 2000 and for Respondent 3 in Writ Petition No. 19524 of 2000, N.K. Gupta, for Respondent 2 in Writ Petition No. 8392 of 2000, for Respondent 1 in Writ Petition No. 19524 of 2000, S.A. Swami and Associates for Respondent 4 in Writ Petition No. 8392 of 2000, for Respondent 2 in Writ Petition No. 15276 of 2000, V.A. Mohan Rangam, for Respondent 1 in Writ Petition No. 15276 of 2000 and M. Rangappa, for Respondent 3 in Writ Petition No. 15276 of 2000, for the Respondent

Judgement

P. Vishwanatha Shetty, J.—Since all these petitions are connected, these petitions are taken up for final hearing and disposed of by this common order.

2. Writ Petition No. 8392 of 2000 is filed by one D.R. Girish who is the owner of land bearing Survey Nos. 93/2 and 94 situated at Laxmipura village, Anekal Taluk, Bangalore Rural District. In the said petition, the Petitioner has called in question the correctness of the order dated 22nd of February, 2000 passed by the District Magistrate, Bangalore District, in MSC.CR. No. 3 of 2000-2001, a copy of which has been produced as Annexure-E to the said writ petition.

3. The Petitioner in Writ Petition No. 15276 of 2000 is the Karnataka Power Transmission Corporation Limited, (hereinafter referred to as "the Corporation").

In this petition, the Corporation also has called in question the correctness of the order Annexure-E.

4. In Writ Petition No. 19524 of 2000, one Paramahansa Foundation Trust (R) is the Petitioner. In the said petition, the Petitioner has made three prayers. Firstly, it has prayed for a declaration that Section 16 of the Indian Telegraph Act, 1885 (hereinafter referred to as "the Act"), is unconstitutional; secondly, for quashing the notice dated 4th May, 2000, a copy of which has been produced as Annexure-E to the said writ petition; and thirdly, for a direction for appointment of an independent Expert in the field and with the assistance of the experts of the Corporation, to find alternate route by surveying the land of the Petitioner and other neighbouring lands for the purpose of drawing the proposed High Tension Wire.

5. The Petitioner in Writ Petition No. 19524 of 2000 appears to be the owner of lands bearing Survey Nos. 59, 60 and 61 and several other items of lands, which in all measure about 30 acres.

6. The few facts that may be relevant for the disposal of these petitions may be set out as hereunder:

(a) The Corporation had sponsored a Scheme known as "Establishing 220/66 KVA Sub-station at Malur and construction of 220 KVS Double Circuit transmission line from Somanahalli to Malur". The said Scheme was published in "Prajavani" Newspaper dated 2nd of December, 1996. It is the case of the Corporation that the total cost of the Project was estimated at Rs. 3,355 lakhs (Rupees Three Thousand Three Hundred and fifty five lakhs) and the same was financed by the Power Finance Corporation Limited, New Delhi; and the work was required to be completed within the contract period as otherwise the Finance Corporation was likely to withdraw the loan facilities extended to the Corporation; and the total length of 220 KV Double circuit transmission line covers about 60 Km., and the said transmission line is from the existing 220 KVS receiving Station at Somanahalli to the proposed 220 KVS Station at Malur in Kolar District; and the said Scheme has been sponsored with an intention to benefit the Rural District and also some of the portions of the Bangalore District, so that it may improve the voltage system of the entire Kolar District; and the Project Work is being carried on by the Major Works Divisions of the Karnataka Electricity Board from both the ends and the total number of locations where the towers had to be erected is 235; and both the Major Works Divisions of the Corporation have already stubbed and erected 113 Towers; and Location No. 58 where the Tower is to be erected falls on the property of the Petitioner in Writ Petition No. 19524 of 2000 (i.e., Paramahansa Foundation Trust (Registered)); and the Tower at Location No. 58 has already been stubbed; and four legs have been concreted and the super structure has also been completed except drawing up of the conductors (lines); and out of four legs, two legs of the tower at Location No. 59 fall in the property of the Petitioner in Writ Petition No. 19524 of 2000 (i.e., Paramahansa Foundation Trust Registered) and other two legs of the

tower fall outside the property of the said Petitioner; and in so far as the tower at location No. 59 is concerned, the earth work, digging the foundation to stub concrete for the purpose of stubbing of legs of pylon has already been completed; and at that stage, the Petitioner in Writ Petition No. 19524 of 2000 (i.e., Paramahansa Foundation Trust) caused obstruction in respect of two legs of the tower at location No. 59 and all the four legs of the tower at location No. 60. The Petitioner in Writ Petition No. 19524 of 2000 also had filed Writ Petition No. 24686 of 1999 before this Court complaining that inspite of the obstruction placed by it, the Corporation was proceeding with the work. In the said writ petition, this Court, by its order dated 21st of July, 1999, directed the Corporation to approach the District Magistrate as provided u/s 16(1) of the Act for removal of the obstruction placed by the said Petitioner; and thereafter, in the light of the order made by this Court, the Corporation had approached the District Magistrate for removal of the obstruction.

(b) The District Magistrate, after conducting necessary enquiry and spot inspection of the land belonging to the Petitioner in Writ Petition No. 8392 of 2000 (i.e., D.R. Girish) and the Petitioner in Writ Petition No. 19524 of 2000 (i.e. Paramahansa Foundation Trust) and on consideration of the alternate Scheme suggested by the Petitioner in Writ Petition No. 19524 of 2000 (Paramahansa Foundation Trust) and also the revised plan submitted by the Petitioner in Writ Petition No. 15276 of 2000 on 3rd of November, 1999, passed order Annexure-E dated 22nd of February, 2000 for erection of tower at location Nos. 58, 59, 59A and 60 in terms of the revised plan submitted by the Petitioner in Writ Petition No. 15276 of 2000 on 3rd of November, 1999 subject to the condition that the extra cost of Rs. 64,500/- to be incurred for realignment should be borne by the Petitioner in Writ Petition No. 19524 of 2000 (i.e. Paramahansa Foundation Trust).

7. Sri N.K. Gupta, learned Counsel appearing for the Corporation, challenging the correctness of the order Annexure-E, made two submissions. Firstly, he submitted that since the Scheme submitted by the Corporation had become final, the only thing the District Magistrate was required and empowered to do u/s 16(1) of the Act was to remove the obstruction placed by the Petitioner in Writ Petition No. 19524 of 2000 (i.e., Paramahansa Foundation Trust), and he had no authority in law to direct the alteration of the Scheme and also to direct the Corporation to realign the transmission line merely because the Petitioner in Writ Petition No. 19524 of 2000 had agreed to meet the realignment cost. He pointed out that since the Petitioner in Writ Petition No. 8392 of 2000 has raised an objection regarding the realignment and the Scheme as sponsored by the Corporation, did not run through the land of the Petitioner in Writ Petition No. 8329 of 2000, in the absence of the Scheme sponsored by the Corporation, it would not be possible for the Corporation to draw the realigned line in the land belonging to the Petitioner in Writ Petition No. 8392 of 2000. He further pointed out that the reasons assigned by the District Magistrate to alter the Scheme is totally erroneous in law and it was not permissible for the District Magistrate to

direct the Corporation to prepare an alternate Plan or sketch modifying the earlier Scheme proposed by the Corporation. Secondly, he submitted that the finding recorded by the District Magistrate that the realignment suggested and the proposal given by the Petitioner in terms of the revised plan submitted on 3rd of November, 1999 pursuant to the direction given by the District Magistrate, will not cause any inconvenience to any one, is totally erroneous in law. He pointed out that the Scheme as proposed by the Corporation would not cause any inconvenience either to the Petitioner in Writ Petition No. 19524 of 2000 or the Petitioner in Writ Petition No. 8392 of 2000. According to the learned Counsel, the extent of land owned by the Petitioner in Writ Petition No. 19524 of 2000 is more than 31 acres. He pointed out that since the transmission line is being drawn in a larger public interest and since the Scheme has become final, it is not permissible for the Petitioner in Writ Petition No. 19524 of 2000 to raise any objection. According to the learned Counsel, the nature of duties which is required to be discharged by the District Magistrate in a matter like this, is only in the nature of execution proceedings. In support of this submission, he relied upon the decisions of this Court in the case of S.M. Rao and Ors. v. State of Karnataka and Ors. AIR 1999 Kar 475; and Nagaraju Vs. Mahalingappa, . Sri Gupta also submitted that there is no merit in Writ Petition No. 19524 of 2000 filed by the Petitioner Paramahansa Foundation Trust. He pointed out that Section 16 of the Act is not liable to be declared as unconstitutional.

8. Sri M. Rangappa, learned Counsel appearing for the Petitioner in Writ Petition No. 8392 of 2000 (i.e., D.R. Girish), challenging the correctness of the order Annexure-E, also made two submissions. Firstly, he submitted that since the scheme already proposed by the Corporation had become final and as per the said Scheme, the transmission line for three towers were required to be located in the land of the Petitioner in Writ Petition No. 19524 of 2000 (i.e., Paramahansa Foundation Trust), it was not permissible for the District Magistrate, in the course of the proceedings initiated for removal of the obstructions raised by the Petitioner in Writ Petition No. 19524 of 2000, to pass the impugned order Annexure-E merely because the District Magistrate finds that the alternate Scheme suggested by the Petitioner in Writ Petition No. 19524 of 2000 is more convenient to the said Petitioner. Secondly, he submitted that if the finding given by the District Magistrate that if the Scheme as suggested by him is implemented, it would cause least harm or inconvenience to the parties, is totally erroneous in law. It is his submission that the Petitioner in Writ Petition No. 8392 of 2000 (i.e., D.R. Girish) is a small holder having only 3 acres of land and the land where the proposed transmission line as modified is required to be installed, is a coconut garden. He submits that the Petitioner being a poor agriculturist having a large family to maintain, if the transmission line is allowed to be erected as directed in the modified Scheme sponsored by the District Magistrate, the Petitioner will be put to irreparable injury and hardship.

9. However, Sri Mohanrangam, learned Counsel appearing for the Petitioner in Writ Petition No. 19524 of 2000, strongly supported the impugned order. He

pointed out that since the District Magistrate, after conducting enquiry and spot inspection, has passed the impugned order, there is absolutely no justification for this Court to interfere with the impugned order in exercise of its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. He also submits that Section 16 of the Act is also unconstitutional as it is archaic.

10. In the light of the rival contentions advanced by the learned Counsel appearing for the parties, the two questions that would arise for consideration in these petitions, are-

(i) Whether Section 16 of the Indian Telegraph Act is liable to be struck down as unconstitutional?

(ii) Whether the impugned order Annexure-E dated 22nd of February, 2000 passed by the District Magistrate is liable to be quashed?

(iii) Whether notice Annexure-E dated 4th of May, 2000 issued by the District Magistrate is liable to be quashed?

11. Now, let me examine the correctness of the challenge made to Section 16 of the Act. Before I proceed to consider the said provision, it is useful to extract Sections 10 and 16 of the Act. The said sections read as follows:

(a) Section 10:

10. Power for telegraph authority to place and maintain telegraph lines and posts.-The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immovable property:

Provided that-

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the Central Government or to be so established or maintained;

(b) the Central Government shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post; and

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

(d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in Clause (c); shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

(b) Section 16:

16. Exercise of powers conferred by Section 10, and disputes as to compensation, in case of property other than that of a local authority.-(1) If the exercise of the powers mentioned in Section 10 in respect of property referred to in Clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under Sub-section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence u/s 188 of the Indian Penal Code (45 of 1860).

(3) If any dispute arises concerning the sufficiency of the compensation to be paid u/s 10, Clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under Sub-section (3), that amount; and the District Judge, after giving notice, to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under Sub-section (3) or Sub-section (4) shall be final:

Provided that nothing in this Sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same.

"As it can be seen from Section 10 of the Act, the power is conferred on the Telegraph Authority from time to time to place and maintain telegraph line under, over along or across and posts in or upon any immovable property for the purposes mentioned in Section 10 of the Act. From the reading of Section 10 of the Act, it is clear that there is no transfer of ownership with respect of the property where the poles are required to be located or embedded. However, where the exercise of powers mentioned in Section 10 of the Act in respect of the property referred to in Clause (d) of Section 10 is resisted or obstructed by the owner or any other person, Sub-section (1) of Section 16 empowers the District Magistrate on a request made by the Authorities, to make an order permitting the Authorities to exercise the power conferred u/s 10 of the Act. Further, Sub-section (2) of Section 16 of the Act provides that if, after making an order under Sub-section (1), any person resists such exercise of those powers, or having control over the property, does not give all facilities for exercise of the power by

the Authorities u/s 10 of the Act, he shall be deemed to have committed an offence u/s 188 of the Indian Penal code. In other words, the power conferred under Sub-section (1) of Section 16 of the Act on the District Magistrate is for removal of obstruction placed by person/s in respect of the exercise of the power by the Telegraph Authority u/s 10 of the Act. This Court, in the case of S.M. Rao (supra), has taken the view that the power conferred on the District Magistrate is in the nature of power to be exercised in the execution proceedings. The power is conferred under the Act on the Telegraph Authority to enter upon the land of somebody else for the purpose of planting poles without therebeing any transfer of ownership of the property from the owner either to the State or to the Telegraph Authority in a larger public interest. The work relating to drawing of telegraph lines or for that matter, drawing of transmission lines for supply of electric energy, requires to be done expeditiously. As noticed by me earlier, reading of Sections 10 and 16 of the Act makes it clear that there is no transfer of ownership in respect of the property from the owner either to the State or to the Telegraph Authority. It is only the power granted to enter upon the land. Clause (d) of Section 10 of the Act provides for award of full compensation to all persons interested in the land who may suffer damage on account of such entry made into the land and drawing up of the line over the land. Sub-section (3) of Section 16 of the Act confers power on the District Judge to determine the compensation in the event a dispute is raised by the party not being satisfied with the quantum of compensation awarded. Sub-section (4) of Section 16 of the Act further provides that if any dispute arises as to the person entitled to receive compensation or the proportion in which the persons interested are entitled to share in it, the Telegraph Authority may deposit in the Court of the District Judge such amount as it deems sufficient. Further, power is conferred on the District Judge to determine the quantum of compensation payable to the parties; and if there is any dispute with regard to the persons who are entitled to receive compensation, to determine such dispute and to award the compensation. Section 51 of the Indian Electricity Act, 1910, confers power on the State Government to authorise or confer on any public Officer, licensee or any other person/s engaged in the business of supply of energy to the public under that Act subject to such conditions or restrictions as the State Government may deem fit. From the Scheme of Section 16 of the Act, it is clear that when a decision is taken to draw the electric/transmission lines on the property belonging to another person, if that person resists or obstructs the drawing of such line, the Deputy Magistrate is required to make an order permitting the Authority to draw the electric transmission line and on passing of such an order, every one interested in the land is required to give assistance for drawing up of the line/poles. The two grounds on which Section 16 of the Act is challenged are, firstly, the Act is an archaic Act; and secondly, the District Magistrate is not a Court and he being an Officer from the Indian Administrative Service, is likely to be misled by technical jargon in the report submitted by the so-called experts of the Corporation. I do not find any merit in the said contentions urged. The District Magistrate is a very high ranking officer of the State. This Court in the case of

S.M. Rao (supra), has taken the view that the power required to be exercised by the District Magistrate u/s 16 is in the nature of an order to be made in execution proceedings. He is not required to go into the correctness or validity of the Scheme framed to draw the transmission line or draw the electric Poles. Therefore, when the power of execution is conferred on as high an authority as a District Magistrate, in my view, the said power cannot be declared as unconstitutional on the ground that the District Magistrate is not an expert in the matter of framing of a scheme for the purpose of drawing electric lines. It is necessary to point out that the drawing of electric lines on a private property is made necessary for the purpose of giving power connection for the benefit of the members of the public. It cannot be disputed, as noticed by me, that in a matter like this, there is an element of urgency. Sub-section (3) of Section 16 of the Act provides for determination of the compensation to be paid to the person interested in the event of such person raising a dispute with regard to the insufficiency of the compensation awarded. Therefore, the person on whose land electric transmission/Telephone lines are drawn, and who is deprived of his right of the user of the property, is entitled for payment of just compensation. In the event the compensation awarded is considered by such a person as insufficient, the same is required to be determined as provided under Sub-section (3) of Section 16 of the Act by the District Judge. Further, as noticed by me earlier, there is no transfer of ownership of the property. Section 10 of the Act mandates the Authorities to cause minimum damage while drawing telegraph/electric poles/lines. It is clear that sufficient safeguard is provided u/s 16 of the Act to protect the rights of the parties on account of drawing of the poles on their land. Therefore, I do not find any merit in the contention raised that Section 16 of the Act is liable to be declared as unconstitutional in law.

12. Now, the other question that would arise for consideration is whether Annexure-E is liable to be quashed. As it can be seen from the operative portion of the impugned order-Annexure-E, the District Magistrate has directed that the erection of the towers for the purpose of drawing transmission/electric lines on location Nos. 58, 59, 59A and 60 should be as per the revised plan submitted by the Corporation on 3rd November, 1999 subject to the condition that the extra costs of Rs. 64,500/- is borne by the Petitioner in Writ Petition No. 19524 of 2000. It is useful to extract the operative portion of the direction given by the District Magistrate which reads as hereunder:

Therefore, I hereby order that the erection of towers at location Nos. 58, 59, 59A and 60 shall be as per the revised plan submitted by the Petitioner on 3.11.1999 and the extra cost of Rs. 64,500/- to be incurred in this realignment shall be borne by Respondent-1.

Therefore, it is clear that the District Magistrate has, in the impugned order, directed the revision of the scheme already proposed by the Corporation. The Scheme proposed was published in "Prajavani" dated 2nd of December, 1996. The Corporation made a request with the District Magistrate for removal of the

obstruction provided at Location Nos. 59 and 60. In the Notification dated 2nd December, 1996, objections were called for by the Corporation from the members of the public.

13. It is not in dispute that no one including the Petitioner in Writ Petition No. 19524 of 2000, had filed any objection to the said notification issued proposing the scheme. It is the case of the Corporation that since no objections were filed, steps were taken to execute the scheme and since the Petitioner in Writ Petition No. 19524 of 2000 resisted the execution of the scheme pursuant to the direction given by this Court in Writ Petition No. 24296 of 1999, the Corporation was constrained to move the District Magistrate for removal of the obstruction. It is the further case of the Corporation that at the instance of the District Magistrate, as an ad-hoc arrangement it gave a revised plan, subject to the condition that the Petitioner in Writ Petition No. 19524 of 2000 agrees to meet the cost of re-alignment and the owners of other lands consented for such re-alignment of the scheme. In writ petition No. 8392 of 2000, the owner of the land bearing location No. 58 has called in question, the correctness of the impugned order on the ground that he has objection to draw the transmission line in terms of the order impugned in the said writ petition. It is his case that it is not permissible for the District Magistrate to revise the scheme already proposed by the Corporation; and the revised plan was submitted by the Corporation pursuant to the direction given by him as per the suggestion made by the Petitioner in Writ Petition No. 19524 of 2000 (i.e., Paramahansa Foundation Trust). In this connection, it is useful to refer to the observations made by the District Magistrate in his order Annexure-E, which read as hereunder:

...The undersigned after conducting the inspection directed the Petitioner to prepare a plan as suggested by Respondent-1 and to submit the same along with the proposed extra cost which has to be incurred in case the alternate plan is to be considered.

Accordingly the Petitioner has prepared an alternate plan and has submitted it on 3.11.1999. According to the Petitioner an extra cost amount of Rs. 64,500/- is required to change the alignment. But this alignment would change the alignment of proposed line on the land of Sri Ravindranath Reddy and Sri Girish, Respondent Nos. 2 and 3. Hence it was ordered to issue notices to both of them to appear on 23.11.1999 and file their objections if any. The Respondent-2 has filed his objections on 14.12.1999 stating that he is the absolute owner of the land in Sy. No. 93/2 measuring 1 Acre and 61/2 Guntas. of Lakshmipura village, Jigani Hobli, Anekal Taluk. He has no objection for KEB erecting tower and draw line as per the original plan published by them. He has objection for any deviation which is at the instance of Respondent-1. Therefore he has prayed to direct the Petitioner to draw the high tension lines as per the plan published without any deviation from the same and without encroaching upon the land belonging to him.

Similarly, Respondent-3 submits that Sy. Nos. 93/2 and 94 of Lakshmipura Village, Jigani Hobli, Anekal Taluk belongs to him and he has no objection to the existing approved line in his land and any deviation from it, according to him is in violation of the principles of law as laid down u/s 10 of the Act.

Therefore, it is clear that the revised plan Annexure-D produced along with Writ Petition No. 15276 of 2000 was submitted by the Corporation at the behest of the District Magistrate and on the suggestion made by the Petitioner in Writ Petition No. 19524 of 2000 (i.e., Paramahansa Foundation Trust). The grievance made by the Petitioner in Writ Petition No. 8392 of 2000 (i.e., D.R. Girish) shows that he has serious objections for drawing up of the transmission line on his land on the basis of the revised plan Annexure-D. As noticed by me earlier, this Court, in the case of S.M. Rao (supra), has taken the view that the District Magistrate while exercising the power under Sub-section (1) of Section 16 of the Act, only exercises the power of an executing Court. It is useful to refer to the observation made by this Court at paragraph 9 of the judgment which reads as follows:

9. Therefore, there is a right in the Department for the purpose of implementation of a sanctioned scheme to enter into a property if authorised u/s 51 of the Act to lay its poles for drawing the electricity line. If they are resisted, the District Magistrate can be moved who can order removal of the obstruction if any. The scope of enquiry before the District Magistrate is thus far and no further. It is like an execution proceedings. All that the District Magistrate would be concerned with would be to ascertain, whether there exists a sanctioned scheme. He merely assist the Board to implement the scheme. It is like an executing Court which cannot jurisdictionally go behind the decree. Clearly in such an inquiry there is no scope for inquiry by the officer as to the feasibility or otherwise of the scheme itself. When, once thus a valid scheme shown to exist, then the authority exercising power u/s 16 is duty bound to order removal of any obstruction so as to implement the scheme. And any obstructions thereafter amounts to an offence punishable u/s 188 of Indian Penal Code.

14. I am of the view that the principle laid down by this Court in the case of S.M. Rao (supra), would, in all force, apply to the facts of the present case. Therefore, I find considerable force in the submission of Sri Gupta and Sri Rangappa that the District Magistrate could not have passed the impugned order directing the Corporation to draw the transmission line as directed by him in the impugned order. Further, it is also necessary to point out that if the Corporation, on consideration of the feasibility of the Scheme, has taken a decision to draw the transmission line as per the scheme proposed by it which has been notified by means of Notification dated 2nd December, 1996, a copy of which has been produced as Annexure-A in Writ Petition No. 8392 of 2000, in my view, it is not permissible for the District Magistrate to alter the said scheme. The Corporation is an expert in the field to decide as to how the transmission/electric line should be drawn. The District Magistrate is not an expert in the field. The District Magistrate, in the impugned order, except stating that it would be in the interest

of the first Respondent to give effect to the revised plan, has not considered the adverse effect if the revised plan is given effect to, in so far as the interest of the Petitioner in Writ Petition No. 8392 of 2000 (i.e., D.R. Girish) is concerned. It is also necessary to point out that when the provisions of Sections 28 and 29 of the Electricity Supply Act provide for the procedure to be followed for sponsoring a Scheme by the Authorities, the District Magistrate while exercising the power u/s 16 of the Act cannot direct modification of the Scheme proposed. Further, the facts of the case indicate that the land owned by the Petitioner in Writ Petition No. 19524 of 2000 (i.e., Paramahansa Foundation Trust) is about 32 acres and 35 guntas. It is a vacant dry land. No doubt, it is the case of the said Petitioner that the said land is required for the various activities of its Engineering College including for the purpose of constructing a building for the students hostel. In my view, that alone cannot be a ground to nullify the scheme proposed by the Corporation. It cannot be disputed that whenever a scheme is proposed for the purpose of drawing electric/transmission lines, the owner of the land where the electric/transmission lines are proposed to be drawn, would be put to some hardship or inconvenience. The said hardship is sought to be mitigated by providing compensation which is required to be determined by the District Judge whenever a dispute is raised with regard to the sufficiency of the compensation as provided under Sub-section (3) of Section 16 of the Act. Further, the land bearing location No. 58 belonging to the Petitioner in Writ Petition No. 8392 of 2000 consists of fully developed coconut garden. It is also not in dispute that the said Petitioner is an agriculturist who is a small farmer owning in all about 3 acres of land. In this situation, while drawing the scheme if the Corporation has preferred a vacant land belonging to the Petitioner in Writ Petition No. 19524 of 2000 who owns more than 30 acres of land, as against a garden land of a small farmer who owns about three acres, in my view, it is not permissible either for the District Magistrate while exercising his power under Sub-section (1) of Section 16 of the Act or for that matter, for this Court to nullify the scheme proposed by the Corporation. Further, as noticed by me earlier, no objection was raised by the Petitioner in Writ Petition No. 19524 of 2000 to the Scheme notified by the Corporation. In a matter like this, the Scheme framed by the Corporation must be allowed to stand unless it is shown that the said Scheme suffers from legal infirmity of a very serious nature and is totally illegal.

15. One other question that requires to be considered is whether notice Annexure-E dated 4th of May, 2000 produced in Writ Petition No. 19524 of 2000 is required to be quashed? Since I have taken the view that the impugned order Annexure-E dated 22nd of February, 2000 passed by the District Magistrate is required to be quashed and the Corporation is entitled to draw the transmission line in terms of the Scheme proposed, the Petitioner in Writ Petition No. 19524 of 2000 (i.e., Paramahansa Foundation Trust) cannot proceed to obstruct the drawing of the transmission line by putting up constructions. Therefore, I am of the view that notice Annexure-E dated 4th of May, 2000 produced in Writ Petition No. 19524 of 2000 is not liable to be quashed.

16. In the light of the discussion made above, I make the following:

ORDER

(i) The challenge made to Section 16 of the Act and also the challenge made to the impugned notice Annexure-E dated 4th of May 2000, is hereby rejected and Writ Petition No. 19524 of 2000 is also hereby rejected.

(ii) The Order Annexure-E dated 22nd of February, 2000 passed by the District Magistrate is hereby quashed. Accordingly, Writ petition Nos. 15276 of 2000 and 8392 of 2000 are hereby allowed.

(iii) The District Magistrate is directed to pass fresh orders in the light of the request made by the Corporation to remove the obstructions as provided u/s 16 of the Act in the light of the scheme proposed by it.

17. Since the matter has been pending consideration for some time, I am of the view that with a view to avoid unnecessary delay, it would be in the interest of justice to direct the parties in these petitions to appear before the Magistrate on 5th February, 2001. Accordingly, it is ordered and the District Magistrate is directed to pass appropriate orders in the light of the observations made above, as expeditiously as possible and at any event of the matter, not later than four weeks from 5th February, 2001.

18. In terms stated above, these petitions are disposed of.

19. Sri M.V. Shamanna, learned Additional Government Adv. is permitted to file his memo of appearance within four weeks from today.