

(2018) 12 J&K CK 0066

In the Jammu And Kashmir High Court

Case No : IA No. 02 Of 2018, Other Writ Petition (OWP) No. 489 Of 2019

Ghulam Ahmad Bhat @APPELLANT@Hash ?Union Of India And Ors

Date of Decision : 20-12-2018

Acts Referred:

Indian Telegraph Act, 1885 — Section 10

Citation : (2018) 12 J&K CK 0066

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Shafqat Nazir, Insha, Advocate, T. M. Shamsi, M. A. Beigh

Judgement

1. This order will dispose of application filed by respondent nos. 4 and 5 for vacation of the interim stay granted by this Court on 15.10.2018. Vide aforesaid order, status quo was directed to be maintained.

2. Briefly the facts of the case are that petitioner approached this Court seeking direction to the respondents to alter the alignment of 220 KV Double Circuit Amargarh-Wagoora High Voltage Transmission Lines, thereby leaving the land and residential house of the petitioner unaffected.

3. Learned counsel for the applicants-respondent nos. 4 and 5 submitted that main plea sought to be raised by the petitioner to claim the relief from this Court is that alignment of the Transmission Line was changed to benefit some other land owners. The plea is totally misconceived. The alignment of any Transmission Line is not decided by individuals rather the same is a result of collective effort of experts. The job is more precise in hilly terrain. The Transmission Line in the present case is portion of 220 KV D/C Kishenganga to T-point at Amargarh and 220 KV D/C Amargarh (Sopore) and from Amargarh (Sopore) to Wagoora (Budgam). It is a prestigious project for the State to transmit power from upcoming 330 MW HEP of NHPC. Entire exercise has been done after due approval from the Competent Authorities. Before planning to erect the Transmission Line, not only the topography of the area but even the soil is also tested to ensure that the same can sustain the load. Notification was issued by the Power Grid Corporation of India Limited (for short 'the Corporation'

hereafter), mentioning the details of the areas through which the Transmission Line will pass through. It was issued in exercise of powers in terms of Indian Telegraph Act, 1885 (hereinafter referred to as 'the Act').

4. He further submitted that entire project is complete, however, the line has to be laid connecting Tower No. 40/6 and Tower No. 41/0, which have already been erected. He submitted that it is only the portion of the land of the petitioner through which the line has to be laid and connected. But on account of the interim stay granted by this Court the prestigious project cannot be made use of. Crores of rupees have been spent by the Government on the project, which is funded by Central Government and the progress of which is being regularly monitored.

5. It is further argued that the plea raised by the petitioner that he had raised construction of his house on the land, which comes beneath the Transmission Line, prior to issuance of the notification dated 18.06.2015, is totally misconceived. In fact, only foundation was there. Entire construction has been raised after the notification was issued. To stop the construction, notice was issued to the petitioner with repeated reminders, which were received by him but still he never stopped the construction. The petitioner is treating himself above the law.

6. Learned counsel further submitted that, as the petitioner was not allowing the staff of the Corporation to lay the lines, OWP No. 862/2018 was filed by the Corporation with a prayer to direct the official respondents therein to stop the present writ petitioner from raising any construction on the spot so as to enable the Corporation to complete the process of laying the lines. The writ petition was disposed of on 22.05.2018 with directions to the Deputy Commissioner, Budgam, to take appropriate action on the representation submitted by the Corporation, after opportunity of hearing to the present writ petitioner as well as the Corporation. The Deputy Commissioner, Budgam examined the matter and constituted a Committee headed by the Executive Engineer to look into the matter. The Committee, after considering the stand taken by the present writ petitioner, found nothing wrong in the action of the Corporation. However, it opined that the writ petitioner having raised construction of his house in the alignment of the line, needs to be compensated.

7. The learned counsel for the Corporation further contended that the Corporation has no objection to compensate the writ petitioner for the house constructed by him, in case the same was existing prior to issuance of the notification dated 18.06.2015. For that the petitioner needs to prove his case before the Competent Authority as the stand of the Corporation is that entire construction had been raised after the notification had been issued on 18.06.2015. Further the submission is that in the kind of case in hand the Courts have always opined that interim stay should not be granted which results in creating hurdles in completing prestigious projects. Reliance has been placed on *Ranjivay Chand and anr v. State of J&K and ors* 2005 (II) S.L.J 96 Zahoor Ahmad

Shah Watali and ors v. State of J&K and ors 2016 (I) S.L.J 27 and Ramniklal N. Bhutta and anr v. State of Maharashtra and ors (1997) 1 SCC 134.

8. On the other hand, the learned counsel for the non-applicant/Writ petitioner submitted that right to property is a fundamental right. The petitioner cannot be deprived of his property in the manner it is sought to be done. He further submitted that, to state that even after getting the knowledge of the fact that Transmission Line is going to be erected in the land of the petitioner he would have raised construction of his house, is totally imaginary. Why the petitioner will spend lacs of rupees of his hard earned money to raise the construction of his house on the area which he knows will come beneath the power line. The construction had been raised three years prior to the issuance of the notification. It is established from the fact that in the year 2012, notice had been issued by the Revenue Department to the petitioner alleging construction on agricultural land. The petitioner had got the same compounded on payment of fine. He had also referred to the electricity bills which pertained to the year 2014.

9. He further submitted that petitioner had filed an application under the Right to Information Act for supplying information regarding change of alignment but the same was not supplied. He even referred to the report of the Patwari, who has stated that the house was in existence prior to issuance of notification dated 18.06.2015. He submitted that as due process was not followed, the petitioner cannot be deprived of his land. He apprehends that if compensation is not paid to the petitioner for the house which he had constructed, it will be of no use. He also narrated the ill effects of high tension wire passing above or close to the house. He further submitted that in case the interim stay is vacated, the writ petition itself will be rendered infructuous. Even if the factum regarding construction of the house before issuance of notification is disputed, however, there is no dispute that the house is existing as on today.

10. Heard learned counsel for the parties and pursued the paper book.

11. The facts which are not in dispute are that the Corporation got permission to lay 220 KV D/C Kishenganga to T-point at Amargarh and 220 KV D/C Amargarh (Sopore) and from Amargarh (Sopore) to Wagoora (Budgam) under the Scheme known as Transmission System Associated with Kishenganga HEP for transmission of power from the upcoming 330 MW HEP of NHPC. As stated by the learned counsel for the Corporation, entire work is over. Only the lines are to be drawn to connect Tower No. 40/6 and 41/0, which pass through the land owned by the petitioner. Beneath the alignment, there is a constructed house of the petitioner. The petitioner claims that it was constructed before issuance of notification dated 18.06.2015 proposing erection of Transmission Line whereas the stand of the Corporation is that house was constructed after the notification had already been issued. The plea raised in the writ petition is that alignment of the Transmission Line be changed so that the house of the petitioner is saved. There is a site plan produced on record by the petitioner himself which shows that the Transmission Line is proposed in a straight line passing through the land

of the petitioner. Change of alignment of which may not be possible at this stage, considering the fact that Towers on both sides have been erected and further it is the job of the experts especially in hilly terrains as to which route is to be adopted for erection of high power Transmission Lines.

12. Section 10 of the Act authorizes the authority to place and maintain a telegraph line under, over, along, or across, and posts in or upon any immovable property. Proviso (b) to Section 10 of the Act makes it abundantly clear that while erecting lines, the authority does not acquire any right other than that of user in the property, which is subject to payment of compensation. In the case in hand as well, notification dated 18.06.2015 has been issued for laying transmission line on the route as mentioned herein.

13. As has been observed in a judgment by the Division bench of Nagpur Bench of Bombay High Court in Vivek Brajendra Singh v. State of Government of Maharashtra and ors 2012 (4) BCR 116, there is no hearing contemplated against laying of lines. A decision to mark route for laying electric line is a highly specialized and technical. The route may be running into hundreds of kilometers passing through land owned by different owners and it may not be possible to offer hearing to all the owners, as only right to use small-small of portions of land on which towers or occupiers of the land on the route to suggest alternates. If that process is adopted, the project will never be completed as any such decision would be subject to judicial review and the State or its functionaries may not be able to provide infrastructure. Andhra Pradesh High Court in G.V.S. Rama Krishna and ors v. A. P. Transco and others, AIR 2009 AP 158, clearly laid down that the only right available to landowners is to receive compensation and damages, if any, sustained by them, as neither there is acquisition of land nor there is any need of consent of the owners or occupiers. Even in Power Grid Corporation of India Limited v. Century Textiles & Industries Limited and others, AIR 2017 SC, 1141 Hon'ble the Supreme Court had not interfered in the process of laying of power lines.

14. For the reasons stated above, in my opinion the application filed by the Corporation deserves to be allowed. The application is, accordingly, allowed. The interim stay granted on 15.10.2018 is vacated.

15. Let the main petition be listed for hearing on 07.03.2019.