
(2016) 12 UK CK 0015
In the Uttarakhand High Court
Case No : Second Appeal No. 106 of 2012

Govind Ballabh Pande	Vs	APPELLANT
Power Grid Corporation		RESPONDENT

Date of Decision : 05-12-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2017) 173 AIC 651 : (2017) 121 ALR 181

Hon'ble Judges : U.C. Dhyani, J.

Bench : Single Bench

Advocate : Ms. Menka Tripathi, Advocates, for the Appellants; Mr. A.S. Rawat, Sr. Advocate assisted by Mr. Kartikey Hari Gupta, Advocate, for the Respondent Corporation; Mr. Vijay Khanduri, Brief Holder, for the Respondent/State

Final Decision : Disposed Off

Judgement

U.C. Dhyani, J.(Oral)—Present Second Appeal has been filed by the plaintiff-appellant, under Section 100 of C.P.C., against judgment and decree dated 27.08.2012, passed by District Judge, Champawat, in civil appeal no. 09 of 2011, whereby the judgment and decree dated 09.03.2011, passed by learned Civil Judge (J.D.), Champawat, in civil suit no. 14 of 2007, was affirmed.

2. Plaintiffs Govind Ballabh Pande and Uma Charan Pande filed a civil suit against Power Grid Corporation for permanent prohibitory injunction and realization of damages. On the basis of pleadings of the parties, four issues were framed by the trial court. The parties led their evidence. The trial, court after considering the evidence brought on record and the oral submissions made by the parties, dismissed the suit vide judgment and decree dated 09.03.2011.

3. Aggrieved against the same, plaintiff Govind Ballabh Pande preferred a first appeal. Learned District Judge, Champawat, after considering the evidence brought by the parties before the trial court and after considering the oral submissions made by the parties before it, dismissed the first appeal. The parties

were directed to bear their own costs vide judgment and decree dated 27.08.2012. Aggrieved against two concurrent findings of two courts below, present second appeal has been preferred by the plaintiff-appellant. During the pendency of present second appeal plaintiff-appellant Govind Ballabh Pande expired on 20.04.2016, and subsequently substituted by his legal heirs.

4. Although five substantial questions of law have been proposed by the appellants while filing the present second appeal, but after hearing learned counsel for the parties and having gone through the concurrent findings of two court below, this Court is of the view that no substantial question of law arises in present second appeal and, therefore, the second appeal may be disposed of at the admission stage itself (without admitting the same).

5. Learned counsel for the appellants submitted that the appellant (original plaintiff) raised an objection against laying of high tension transmission line over his property, but despite that, the respondent-defendant proceeded with the same, in contravention of law. According to the appellants, the respondent ought to have issued a notice to the plaintiff-appellant before laying high tension transmission line over his property. The substance of argument of learned counsel for the appellants, therefore, is that opportunity of hearing was not granted to the plaintiff-appellant by the respondent-corporation. It is also the submission of learned counsel for the appellants that after laying the high tension transmission line, the property of the appellants has become useless. The Junior Engineer of the respondent-corporation had undertaken that the plaintiff-appellants would be suitably compensated for the damage caused to the fruit bearing trees of the appellants standing on their land, but the respondent-corporation had failed to do so. Other similarly situated persons filed a civil suit in respect of the same relief, in which suit, the respondent-corporation entered into compromise with them and they were suitably compensated, which was not done in the case of the appellants.

6. Learned counsel for the respondent-corporation replied that actual damage was never caused to any of the tress of the appellants. Notice dated 07.11.2014 sent by the respondent-corporation to the plaintiff-appellant is a notice of possible damage which in fact never occurred. High tension transmission line was laid as per the safe distance provided under the Indian Electricity Act. The respondent-corporation does not require acquiring of the land, for the respondent-corporation proceeds and acts as per Indian Telegraph Act, 1885 and Electricity Act, 2003. Learned counsel for the respondent-corporation submitted that the agreement, which was entered into between similarly situated person and the respondent-corporation, an understanding was there that the land owners will be suitably compensated for the damages caused to their fruit bearing trees, if their claim is found correct.

7. Learned counsel for the parties fairly conceded that a controversy of similar nature was resolved by this Court on 21.01.2015, in writ petition no. 2472 of 204 (M/S), titled as Smt. Shashi Sharma and others v. Power Grid Corporation and

others. Learned counsel for the parties further conceded that present second appeal should be decided in terms of law laid down by this Court in aforesaid writ petition, special appeal against which has been disposed of by the Division Bench of this Court vide order dated 12.03.2015.

8. It may be mentioned here that when writ petition no. 2472 of 2014 (M/S), Smt. Shashi Sharma and others v. Power Grid Corporation and others was decided by this Court vide judgment dated 21.01.2015, the petitioners-appellants preferred Special Appeal before the Division Bench of this Court. Special Appeal no. 71 of 2015 was decided by the Hon"ble Division Bench of this Court.

9. It will be relevant to quote paragraph nos. 21 to 24 of judgment and order dated 21.01.2015, as below:

"21. To sum up, the factual aspects of the controversy in hand are not in dispute. It is also not disputed that the transmission lines are being erected by the PGCI over the land of the petitioners. It is also under no dispute that by using such land by the PGCI, the market value of the land of the petitioners will be diminished. The law clearly spells out that the petitioners are entitled to compensation in terms of sub-clause (d) of proviso to Section 10 of the Act of 1885. Such compensation shall be quantified by the PGCI only when the work of erection of towers is complete. The power, which is exercised under Section 16(3) of the Act of 1885, is not akin to the power exercised by the reference court under the Land Acquisition Act. The petitioners have prayed for restraining the PGCI from forcibly erecting towers for laying transmission lines on their land. The law on the subject envisages that the PGCI cannot be restrained from doing so, even if it be conceded for the sake of arguments that the Act of 1885 is a Colonial Enactment and this pre-constitutional Legislation of colonial vintage is a drastic law. So far as the prayer in the alternative is concerned, the land of the petitioners is not required to be acquired by the PGCI for the purpose of laying transmission lines. The PGCI is not required to acquire any right other than that of user only in the property under, over, along, across, in or upon which the PGCI places any transmission line, in terms of sub-clause (b) of proviso to Section 10 of the Act of 1885. The petitioners are, therefore, not entitled to get the relief sought for by them in the present writ petition.

22. In view of above, the writ petition fails and is hereby dismissed.

23. The same will, however, not preclude the petitioners from taking recourse to other remedies, if any, as may be available to them under the relevant statute(s).

24. It is always open to the parties to sit together, consider each others" difficulties and reach to an amicable settlement."

10. In order to resolve the controversy, which has arisen in the second appeal, it will be apt to quote herein paragraph nos. 7 to 10 wherein certain observations were made by the Hon"ble Division Bench of this Court in Special Appeal no. 71

of 2015, as under:

"7. It is true that no consent, as such, of the owners is required; but, under the Indian Telegraph Act, 1885 Section 16 thereof, if the drawing of the line or doing the acts by the agency, like the Power Grid Corporation in this case, is resisted; they cannot, unilaterally and overruling the resistance, draw the line or put up the towers on the property of a person. The lawful resolution of this dispute is to be done through the mechanism of the District Magistrate being approached, the District Magistrate hearing the parties and taking a decision as per law as to whether permission is to be granted or not. It is only after the District Magistrate decides to grant permission, the authority concerned, which in this case is Power Grid Corporation, could lawfully carry out the acts, which it may, otherwise, be empowered to do. The District Magistrate is expected to apply its mind to the proposal, which is put before it, and the objections to the proposal and to consider the same, as it involves incursion into the property rights of the parties. It is, undoubtedly, true that, for carrying out the acts, compensation, as contemplated under the Land Acquisition Act, need not be paid; but, that is not to say that the property owner does not suffer an injury. By the acts of the Power Grid Corporation, it may be that a valuable property may be divided into valueless pieces. It is possible that, on hearing the parties, the parties may be in a position to point out that there is a better, viable, cost effective alignment, which may also equally serve the purpose. These are all matters ultimately for the District Magistrate to consider. Permission is not to be granted in a routine fashion. The decision must reflect application of mind by the District Magistrate to the relevant aspects and the contentions of the parties. An order granting permission of the nature, which the law contemplates, is not forthcoming in this case. We are told that the Magistrate has granted police protection. An order of permission is what the law predicates. If, after permission is granted and if there is a resistance, may be, protection could be ordered. But, without there being permission when, admittedly, the authority has approached the Magistrate, we would think that it cannot be countenanced in law as permission by the District Magistrate.

8. The learned Senior Counsel for the Power Grid Corporation submitted that the resistance was only to claim that the compensation under the Land Acquisition Act must be given and, therefore, no purpose will be served. What is relevant is that, whether there is a resistance. Once there is resistance, it was for the District Magistrate to have decided the matter.

9. The upshot of the above discussion is that, without permission being granted, the Power Grid Corporation cannot be permitted to carry out further acts. It is brought to our notice, on the one hand by the appellants / writ petitioners, that the towers were not erected at the time when the writ petition was filed. On the other hand, it is brought to our notice by the learned Senior Counsel for the Power Grid Corporation that seven towers have been erected as things stand. The matter is of considerable urgency according to the Power Grid Corporation.

10. The upshot of the above discussion is that the appeal must be allowed to the extent of directing that the District Magistrate must take a decision on the petition filed by the Power Grid Corporation, with opportunity of hearing to the appellants / writ petitioners. In view of the urgency, we pass the following order:

The appellants/writ petitioners and the officials of the Power Grid Corporation will appear before the District Magistrate, Udham Singh Nagar, on 16th March, 2015 at 11:00 a.m. No further notice need be issued by the District Magistrate either to the appellants or to the Power Grid Corporation. The District Magistrate will take a decision in the matter in accordance with law at the earliest, at any rate, within a period of two weeks. The position, as of today, will be maintained and further proceedings will depend upon the decision to be taken by the District Magistrate. The putting up of the towers on the property of the appellants / writ petitioners will be subject to the decision of the District Magistrate. We make it clear that the learned Single Judge is right in holding that compensation under the Land Acquisition Act need not be paid."

11. This Court, therefore, deems it appropriate to decide the present second appeal, as follows:

The District Magistrate, Champawat must take a decision on the petition filed by the appellants, with opportunity of hearing to the Power Grid Corporation. The appellants and the officials of the Power Grid Corporation will appear before the District Magistrate, Champawat, on mutually agreed date, which may be convenient to the appellants and the officials of the Power Grid Corporation. No further notice need be issued by the District Magistrate either to the appellants or to the Power Grid Corporation. The District Magistrate will take a decision in the matter in accordance with law at the earliest, at any rate, within a period of six weeks. Compensation under the Land Acquisition Act need not be paid, but if the District Magistrate comes to a conclusion, after going through the record and submissions of the parties that a loss has been caused to the fruit bearing trees of the appellants, he may direct the respondent-corporation to pay compensation to the appellants in the same manner as it was done in respect of similarly situated persons.

12. Second appeal thus stands disposed of. No order as to costs.