

(2023) 11 KL CK 0175

In the High Court Of Kerala

Case No : Regular Second Appeal No. 177 Of 2022

Hamsa.A.P

APPELLANT

Vs

Secretary

RESPONDENT

Date of Decision : 15-11-2023

Acts Referred:

Code of Civil Procedure, 1908 — Section 9, 100, Order 14 Rule 2, Order 14 Rule 2(2), Order 41 and Rule 30, Order 41 Rule 30(2), Order 41 and Rule 31, Order 41 and Rule 33, Order 42 Rule 1
Electricity Act, 2003 — Section 2(30), 2(72), 126, 127, 145, 164(1)
Indian Penal Code, 1860 — Section 188
Specific Relief Act, 1963 — Section 41(h)
Indian Telegraph Act, 1885 — Section 3(1AA), 3(4), 3(5), 10, 10(b), 16, 16(c), 17

Citation : (2023) 11 KL CK 0175

Hon'ble Judges : A. Badharudeen, J

Bench : Single Bench

Advocate : P.B.Krishnan, P.B.Subramanyan, Manu Vyasana Peter, Sabu George, Riji Rajendran

Final Decision : Dismissed

Judgement

A. Badharudeen, J

1. This regular second appeal has been filed under Section 100 r/w Order XLII Rule 1 of the Civil Procedure Code, 1908 (hereinafter referred to as 'CPC'), challenging the decree and judgment dated 29.01.2022 in A.S.No.35/2020 on the files of the Additional District Court-I, Manjeri, arising out of the decree and judgment dated 20.12.2019 in O.S.No.430/2016 on the files of the Munsiff's Court, Manjeri. The appellants herein are plaintiff No.2 and supplemental plaintiffs 3 to 11 in the above suit and the respondents herein are the defendants.

2. Heard Sri.P.B.Krishnan, the learned counsel appearing for the appellants as well as Sri.Riji Rajendran, the learned Standing Counsel appearing for the Kerala State Electricity Board Ltd. in detail. Perused the records.

3. While admitting this appeal, my learned predecessor, as per order dated 25.03.2022, formulated the following substantial questions of law:

- i) Is the installation of an Electrical Transformer covered by the provisions of the Indian Telegraph Act, 1885?
- ii) Is not Sec.10, 17(1) and 17(2) of the Indian Telegraph Act, 1885 confined to the installation of a telegraph line and post by a telegraph authority?
- iii) Is not the prayer for removal of an electrical transformer from a private property outside the purview of the Indian Telegraph Act, 1885?
- iv) Is not the prayer for Prohibitory Injunction restraining the charging of electrical transformer outside the purview of the Indian Telegraph Act, 1885?
- v) Is the lower appellate court correct in law in readily inferring ouster of jurisdiction of the civil court under Sec.9 of the Code of Civil Procedure, 1908 and holding that the suit is not maintainable under Sec.41(h) of the Specific Relief Act, 1963?
- vi) Is the lower appellate court justified in not deciding all the issues in fact and law raised in the Appeal?"

4. I shall refer the parties in this regular second appeal as 'plaintiffs' and 'Electricity Board' for convenience.

5. The plaintiffs' case in brief:

The plaintiffs, who alleged to be the owners of the plaint A schedule property, filed the present suit for injunction, restraining the Electricity Board from charging the transformer erected/placed on the plaint schedule property and also for a mandatory injunction, directing the defendants to remove the transformer from the plaint schedule property.

6. The Electricity Board resisted the suit by filing written statement. The following contentions raised in the written statement. It was contended that the suit is not maintainable and the District Magistrate is the authority to decide the dispute which comes under Sec.16(1) of the Indian Telegraphs Act, 1885 read with Sec.164 of the Electricity Act. It was contended further that the plaintiffs have no right and possession over the property, where the transformer was installed and such installation was necessitated to adjust low voltage problem in Ward No.10 of Malappuram Municipality. According to the defendants, the Transformer was installed on the side of Moozhikal bypass Veluthedethmanna road and the place where the Transformer installed was the property relinquished by the local people. Further, the erection of transformer was started on 20.10.2015 and finished on 30.04.2016. The second plaintiff had produced copy of his title deed before the Assistant Engineer, KSEB and claimed that the Transformer was installed in Resurvey No.606/3, the plaint schedule property. Subsequently, the Taluk Surveyor measured the property and found that the Transformer was situated in Resurvey No.606/1. But no documents were

produced by the plaintiffs to prove their ownership in the property situated in Resurvey No.606/1. The defendants charged the Transformer on 24.07.2006 and as such, the relief of prohibitory injunction restraining charging of the transformer and mandatory injunction to remove the transformer must fail.

7. Addressing the rival pleadings, the trial court raised necessary issues and tried the matter. PWs.1 to 4 examined and Exts.A1 to A14 were marked on the side of the plaintiffs. Similarly, DWs.1 and 2 examined and Exts.B1 to B4 were marked on the side of the defendants. CW1 examined and Court exhibits C1 to C5 were also marked.

8. The learned Munsiff appreciated the evidence and decreed the suit, directing the Electricity Board to remove the transformer installed in the plaint B schedule property within a period of six months.

9. The Electricity Board challenged the said verdict before the appellate court and the appellate court, as per judgment dated 29.01.2022, allowed the appeal and dismissed the suit, mainly answering the maintainability of the suit with reference to Section 164(1) of the Electricity Act, 2003, and Sections 10, 16 and 17 of the Indian Telegraph Act, 1885. It was found by the appellate court that as per Section 41(h) of the Specific Relief Act, 1963, an injunction cannot be granted when equally efficacious relief can certainly be obtained by other usual mode of proceedings. It was further held by the appellate court that the District Magistrate is the competent authority empowered to decide the matter in issue and the civil court lacks jurisdiction.

10. At the outset, the learned counsel for the plaintiffs submitted that the appellate court merely addressed the maintainability of the suit and dismissed the suit, holding that the same is not maintainable without addressing the other issues. Obviously, because of this challenge, substantial question of law (vi) has been formulated by this Court. Now question No.(vi) requires answer is; - whether the lower appellate court justified in not deciding all the issues in fact and law raised in the Appeal? First of all, I shall address this question to answer substantial question No.(vi).

11. While addressing this argument, it is relevant to refer order XIV Rule 2 of CPC. Order XIV Rule 2 of CPC provides that court to pronounce judgment on all issues and the same is extracted as under:

"2. Court to pronounce judgment on all issues.-

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to -

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

12. On reading the above provisions, it is emphatically clear that where issues of law and fact arise in the same suit, the court is bound to answer all the issues. To put it otherwise, when a court finds that the suit is not maintainable, after a full-fledged trial, then the court must answer the other issues so as to address the question of maintainability along with the other findings on other issues before the appellate/superior courts so that the appellate/superior courts could address all the issues with reference to the finding of the lower court. But the said mandate is subject to exceptions provided under Order XIV Rule 2(2) and the same include 2(2)(a), the jurisdiction of the Court or (b) a bar to the suit created by any law for the time being in force and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue. No doubt, the appellate court shall entertain the appeal and deliver judgment in tune with the mandate of Order XLI and Rule 30, 31 and 33 of CPC. To be more exhaustive, as per Order XLI Rule 30(2) of CPC, where a written judgment is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order passed in the appeal are read out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties or their pleaders immediately after the judgment is pronounced. Order XLI Rule 31 provides that the judgment of the appellate court shall be in writing and shall state (a) the points for determination, (b) the decision thereon, (c) the reasons for the decision; and (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled; and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein. So the appellate court shall answer the point/points raised for determination. Reading the above provisions, when the appellate court raises a point for determination as regards to jurisdiction of the court or a bar to the suit created by any law for the time being in force, the appellate court is not powerless to decide an appeal on the said point alone. Substantial question of law (vi) answered thus.

13. Coming to the crux of this dispute, mainly, as already pointed out, the question is as to whether when the Electricity Board installs or put up a transformer/transformers in the private property other than that of a local body without notice and consent of the private party, where the person aggrieved would approach to get such installation/installations removed? In this connection, it is necessary to address the question as to whether Section 145 of the Electricity Act, 2003, completely ousts the jurisdiction of the civil court. The

learned counsel for the plaintiffs argued specifically relying on Section 145 of the Electricity Act, 2003, that civil court jurisdiction not completely barred and the bar would operate in relation to matters specifically dealt in the Section. Whereas the learned Standing Counsel for the Electricity Board submitted that civil courts have no jurisdiction in relation to the matters dealt in Section 145 of the Electricity Act and the same includes prohibition to grant injunction by any court or authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

14. In order to address this question, reference to Section 145 of the Electricity Act is necessary and the same is extracted as under:

145. Civil Court not to have jurisdiction. - No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

15. Reading the above provision, civil court jurisdiction is barred (1) to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126, (2) an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and (3) no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. Thus, it is discernible that excluding the above three contingencies dealt in Section 145 of the Electricity Act, civil court jurisdiction is not totally barred and in view of Section 9 of CPC, civil court can deal with suits and other proceedings in relation to matters not covered by Section 145 of the Electricity Act. It is argued by the learned counsel for the plaintiffs further that even though in regard to the installation of electric lines and electric posts, there is no provision in the Electricity Act, in view of the mandate of Section 164 of the Electricity Act, the appropriate Government has the power to invoke the provisions of the Indian Telegraph Act. He also conceded two notifications issued by the Government of Kerala in this regard and placed by the learned Standing Counsel for the Electricity Board. The first one is notification dated 21.06.1969 and the second one is another notification issued by the Government of Kerala vide G.O.(P) No.5/2020/Power dated 24.08.2020. As per the above notifications, the Government in exercise of powers conferred by section 164 of the Electricity Act, 2003 (Central Act 36 of 2003), the Government of Kerala hereby confer upon the Engineers of the Kerala State Electricity Board Limited of and above the rank of Assistant Engineers to exercise, for the purpose of placing of electric lines or electrical plant for the transmission and supply of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works,

within their respective jurisdiction, all the powers which the telegraph authority possesses under Part III of the Indian Telegraph Act, 1885 (Central Act 13 of 1885) with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained. In such view of the matter, both sides have consensus in the matter of application of the relevant provisions of the Indian Telegraph Act, to address the dispute regarding putting up or installation of an electric post and line by the Electricity Board through the property of a private party, subject to the restrictions imposed by the provisions of the Indian Telegraph Act.

16. It is in this context, the substantial questions of law to be answered are: (i) Is the installation of an Electrical Transformer covered by the provisions of the Indian Telegraph Act, 1885? (ii) Is not Sec.10, 17(1) and 17(2) of the Indian Telegraph Act, 1885 confined to the installation of a telegraph line and post by a telegraph authority? (iii) Is not the prayer for removal of an electrical transformer from a private property outside the purview of the Indian Telegraph Act, 1885? According to the learned counsel for the plaintiffs, as per the definitions under Section 3 sub-sections (4) and (5) of the Indian Telegraph Act, the 'telegraph line' and 'post' were specifically defined and the same in no way include a 'transformer'.

17. Whereas it is submitted by the learned Standing Counsel for the Electricity Board that the definition of 'telegraph line' and 'post' dealt under Sections 3 sub-sections (4) and (5) of the Indian Telegraph Act shall be read along with Section 3(1-AA) of the Indian Telegraph Act as well as under Section 2 sub-section (72) of the Electricity Act. According to the learned Standing Counsel, the definition of the word 'telegram' means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images, and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means. Further, it is submitted that as per Section 2 sub-section (72) of the Electricity Act, the meaning of 'transmission lines' also is defined. The learned Standing Counsel for the Electricity Board also given emphasis to the definition of 'generating station' as provided under Section 2(30) of the Electricity Act to assert the point that the 'telephone line' and 'post', as defined under Section 3 (4) and (5) of the Indian Telegraph Act would include apparatus and appliances connected with wire or wires for the purpose of fixing or insulating the same and therefore, the matter in controversy shall be dealt as provided under Section 17 of the Indian Telegraph Act.

18. In view of the rival arguments, I am inclined to refer the definitions of 'telegraph line' and 'post' as contemplated under Sections 3(4) and 3(5) of the Indian Telegraph Act along with Section 3(1-AA) of the Indian Telegraph Act and Section 2(72) and 2(30) of the Indian Electricity Act. The definitions of 'telegraph line' and 'post' are as under:

"3(4) "telegraph line" means a wire or wires used for the purpose of a telegraph, with any casing, coating, tube or pipe enclosing the same and any appliances and apparatus connected therewith for the purpose of fixing or insulating the same;

3(5) "post" means a post, pole, standard, stay, strut or other above ground contrivance for carrying, suspending or supporting a telegraph line;

Section 3(1-AA) of the Indian Telegraph Act is extracted as under:

3(1-AA) "telegraph" means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images, and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means."

The definition of "transmission lines" under the Electricity Act, 2003 is extracted as under:

2(72) "transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station, together with any step-up and step-down transformers, switch gear and other works necessary to and used for the control of such cables or overhead lines and such buildings or part thereof as may be required to accommodate such transformers, switchgear and other works".

The definition of "generating station" under the Electricity Act, 2003 is extracted as under:

2(30) "generating station" or "station" means any station for generating electricity, including any building and plant with step-up transformer, switchgear, switch yard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof; a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station".

19. The learned Standing Counsel for the Electricity Board placed a decision of this Court in *The Assistant Executive Engineer and Another v. Mujeeb Rahman A and Another* (Neutral Citation Number:2018:KER:53364), wherein this Court considered the definition of 'plant' and held that a clear definition of the term 'plant' could not be read out from any of the enactments or the regulations. It was held further that though in general terms, transformer is a plant; it is also a part of the distribution system.

20. The learned Standing Counsel for the Electricity Board also placed a decision of Apex Court in *The Power Grid Corporation of India Limited Vs. Century Textiles*

& Industries Limited and Ors. reported in AIR 2017(SC) 1141 and pointed out paragraph Nos.12, 21 and 25 therein to assert this point that the 'transformer' is to be held as an apparatus which would come within the definition of 'telegraph line' dealt under Section 3(4) of the Indian Telegraph Act. Paragraph Nos.12, 21, and 25 are as follows:

"12. We may mention here that two more writ petitions were filed in the High Court: one by Mr. Ram Naresh Singh and the other by Ajay Munjal Memorial Trust. Insofar as the case of Mr. Ram Naresh Singh is concerned, 524 towers are constructed in District Sasaram in the State of Bihar and only one tower is placed on the land belonging to Respondent Nos. 1 and 2 therein. The High Court of Patna has decided the case in favour of Respondent Nos. 1 and 2 on the ground that no notice was issued to them to seek their prior consent. Likewise, in the case of Ajay Munjal Memorial Trust, transmission lines laid down by the Power Grid covered the area of 418 kms. One such tower is placed on the land belonging to the said Trust. Here also, the challenge was made by the Appellant on the ground that their prior consent was not taken. However, in this behalf, the High Court of Jharkhand has repelled the challenge.

It is for this reason that Civil Appeal Nos. 8951 of 2011 and 8342 of 2009 were also heard along with the main case and the counsel appearing for the respective parties made their submissions, which have also been taken into consideration.

21. Section 10 of the Indian Telegraph Act, 1885 empowers the Telegraph Authority to place and maintain a telegraph line under, over, along or across and posts in or upon any immovable property. The provision of Section 10(b) of the Indian Telegraph Act, 1885 makes it abundantly clear that while acquiring the power to lay down telegraph lines, the Central Government does not acquire any right other than that of user in the property. Further, Section 10(d) of the Indian Telegraph Act, 1885 obliges the Telegraph Authority to ensure that it causes as little damage as possible and that the Telegraph Authority shall also be obliged to pay full compensation to all person interested for any damage sustained by them by reason of the exercise of those powers.

25. At this stage, we deal with the direction of the Division Bench regarding compensation payable to the writ Petitioner, or for that matter to the State Government. In the first instance, no such claim was laid by the writ Petitioner in the writ petition or by the State Government before the High Court. Furthermore, the High Court could not have given this task to the District Collector, which is contrary to the provisions of Section 16(c) of the Indian Telegraph Act, 1885 which are extended to laying down of electricity lines. As per this provision, such an authority vests with the District Judge."

21. Whereas, relying on the decision of the Power Grid Corporation (Supra), the learned counsel for the plaintiffs submitted that in paragraph No.26, the the Apex Court virtually held that the person who is entitled to get compensation should have to file a suit before the concerned District Judge for the said purpose

and regarding grant of compensation, and the District Magistrate has no power to grant compensation. In view of the submission, paragraph 26 of the said decision also is extracted hereunder:

26. These are sufficient reasons to allow Civil Appeal No. 10951 of 2016 preferred by the Power Grid by setting aside those directions. Ordered accordingly. We make it clear that if the writ Petitioner feels that it is entitled to any compensation, the appropriate course of action is to file a suit before the concerned District Judge for this purpose. It would also be apt to point out at this stage that the Central Government has framed guidelines dated October 15, 2015 in this behalf which inter alia provide that the issue of compensation may be resolved having regard to the mode and manner of assessment of compensation as per the said guidelines. Therefore, it would always be open to the writ Petitioner to avail the remedy as per the said guidelines."

22. While addressing the rival contentions, it is necessary to elicit the powers under the Indian Telegraph Act given to the District Magistrate as well as the District Court. In this regard, Sections 16 and 17 of the Indian Telegraph Act assumes significance. Therefore, the same also are extracted as under:

"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 this being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code (45 of 1860).

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 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.

17. Removal or alteration of telegraph line or post, on property other than that of a local authority –(1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line or post accordingly:

Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situated to order the removal or alteration.

(3) A District Magistrate receiving an application under sub-section (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to higher or lower level or for the alteration of its form; and the order so made shall be final."

23. Section 10 of the Indian Telegraph Act deals with power for telegraph authority to place and maintain telegraph lines and posts. As per Section 10, 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 and the authority shall not exercise these powers except for the purpose of a 'telegraph' established or maintained by the Central Government, or to be established or maintained as per proviso to Section 10(a). But there is an exception in relation to property under control and management of any local authority and for which permission provided under Section 12 of the Indian Telegraph Act is necessary. It is clear from the statutory wording in Section 16(4) of the Indian Telegraph Act that disputes as to compensation while exercising powers conferred by Section 10 of the Act, other than the property of a local authority, the procedure laid down in Section 16(1) to (5) shall be followed and the same includes grant of compensation and determination of sufficiency thereof. In fact, the jurisdiction to decide the question as to compensation and its sufficiency is vested with the District Judge within whose jurisdiction the property is situated.

24. Section 17 of the Indian Telegraph Act provides that (1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line or post accordingly:

Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

25. Section 17(2) of the Indian Telegraph Act specifically provides that when the telegraph authority omits to comply with the requisition, the person making the requisition may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

26. Thus, the legal position is clear on point that the District Magistrate has the power to consider a requisition for removal of telegraph line or post other than that of a local authority. However, in order to exercise the said power, acting on the requisition of the person aggrieved, the dispute must be in relation to electric/telegraph lines and electric/telegraph posts.

27. It is true that when tracing out the definition of electric/telegraph lines and electric/telegraph posts, 'telegraph line' means a wire or wires used for the purpose of a telegraph, with any casing, coating, tube or pipe enclosing the same and any appliances and apparatus connected therewith for the purpose of fixing or insulating the same and "post" means a post, pole, standard, stay, strut or other above ground contrivance for carrying, suspending or supporting a telegraph line. But the definition of the word 'telegraph' introduced by way of amendment with effect from 01.04.2002 is more exhaustive. That is to say, 'telegraph' means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images, and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means.

28. It is relevant to note that the definitions of 'telegraph line' and 'post' provided under Sections 3(4) and 3(5) of the Indian Telegraph Act with effect from 01.10.1885. When the statute is amended with effect from 01.04.2002, defining of the term 'telegraph' has given a wider magnitude. Therefore, the definition of telegraph/electric line shall be understood conjointly reading Sections 3(1-AA) and 3(4) of the Indian Telegraph Act. If so, the definition of telegraph line should be read as a wire or wires used for the purpose of a telegraph, with any casing, coating, tube or pipe enclosing the same and any

appliances and apparatus connected therewith for the purpose of fixing or insulating the same and it includes any appliances, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images, and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means. No doubt, transformer is nothing but an apparatus, capable of transmission of power by stepping up and stepping down the power. If so, it could not be held that a transformer to be read in isolation from the definition of telegraph line dealt with Section 3(4) read with Section 3(1-AA) of the Indian Telegraph Act. If so, the remedy of an aggrieved person to get removal of the transformer is by making a requisition before the Telegraph/Electricity Authorities first. On failure to do so, by the Authority, he can make a requisition before the District Magistrate as provided under Section 17(2) of the Indian Telegraph Act read with Section 146 of the Electricity Act.

29. It is in this context, the mandate of Section 41(h) of the Specific Relief Act, 1963 assumes significance. It has been provided that when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust.

30. In the case at hand, indubitably, the plaintiffs, who are aggrieved in the matter of installation of transformer in their property and there is refusal of the demand, at the instance of the plaintiffs, by the Authority, they could very well make a requisition before the District Magistrate for the removal of the same and the said relief, couched in the form of mandatory injunction in the instant suit, civil court jurisdiction is barred as provided under Section 145 of the Electricity Act.

31. Summarizing the matter in issue, it is held that the finding of the appellate court in this regard is correct and the said finding does not require any interference.

32. Accordingly, this appeal fails and the same is dismissed.

33. It is specifically ordered that if the plaintiffs/appellants want to remove the transformer alleged to be put up in their property, they shall make a requisition before the District Magistrate within a period of four weeks from today and on receipt of such a requisition, the District Magistrate is directed to pass order therein, within six weeks from the date of receipt of the requisition.

34. It is ordered further that the plaintiffs/appellants want to pursue the relief of compensation for installation of the transformer in their property, they are at liberty to file an application by resorting to Section 16 of the Indian Telegraph Act, and for the said purpose, the period of this litigation shall be treated as one having no significance.

All interlocutory orders stand vacated and all interlocutory applications pending in this regular second appeal stand dismissed.

Registry shall inform this matter to the trial court as well as the appellate court forthwith.