

(2022) 11 BOM CK 0058
In the Bombay High Court
Case No : Writ Petition No. 3087 Of 2019

Hemlata And Others

APPELLANT

Vs

Maharashtra State Electricity Transmission Company Limited
And Others

RESPONDENT

Date of Decision : 17-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 300A
Indian Telegraph Act, 1885 — Section 10, 10(d), 16, 16(1), 16(3)

Citation : (2022) 11 BOM CK 0058

Hon'ble Judges : A.S.Chandurkar, J;M.W.Chandwani, J

Bench : Division Bench

Advocate : A.S.Mehadia, C.S.Kaptan, S.D.Zoting, T. H. Khan

Final Decision : Dismissed

Judgement

A.S.Chandurkar, J

1. Rule. Heard finally with the consent of the learned counsel for the parties.
2. The petitioners seek modification of the judgment dated 30.03.2019 passed by the District Magistrate, Nagpur in proceedings under Section 16(1) of the Indian Telegraph Act, 1885 (for short, the Act of 1885). By amending the writ petition, the petitioners have also prayed that the respondent no.1-Maharashtra State Electricity Transmission Company Limited be directed to acquire the entire land of the petitioners in accordance with the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, the Act of 2013). In the alternate, it is prayed that the petitioners be compensated by the respondent no.1 as regards all towers erected on the land of the petitioners in accordance with the Circular dated 31.05.2017 issued by the State Government.
3. The facts relevant for consideration of the prayers made in the writ petition are that it is the case of the petitioners that their predecessor Shri Chandru

purchased land admeasuring 2 H 40 R from Survey No.37 situated at Mouza-Sawangi, Tahsil Kalmeshwar, District Nagpur by a registered sale deed dated 20.10.1989. Shri Chandru expired on 11.03.2014 after which the petitioners as his legal heirs got knowledge about the aforesaid transaction. The petitioners thereafter got their names mutated in the revenue records and the land was re-numbered as field Survey No.91/2. The petitioners state that on visiting the said land, it was noticed that the respondent no.1 had erected about eighteen towers thereon. The petitioners sought information under the Right to Information Act, 2005 and were informed about the nature of towers erected by the communication dated 28.09.2017. Thereafter on 20.12.2017 the petitioners were informed that the towers in the said field were commissioned prior to the year 2010 before the Government Resolution dated 01.11.2010 was brought into force. In the meanwhile, on 11.07.2018 the petitioners issued a legal notice to the respondent no.1 and called upon them to acquire the entire land and pay them compensation in accordance with the Act of 2013. Since the petitioners noticed certain activities being undertaken on the said land at the behest of the respondent no.1, they sought to make enquiries in that regard. Thereafter on 03.12.2018 a complaint was lodged by the petitioners with the Tahsildar, Kalmeshwar. It is thereafter that the petitioners were served with a notice issued by the respondent no.1 purportedly under the Act of 1885. It was learnt that the proceedings have been filed under Section 16(1) of the Act of 1885 by the respondent no.1. The petitioners filed a reply in the said proceedings on 21.01.2019. The petitioners also filed written notes of argument before the District Magistrate. By the judgment dated 30.03.2019 the District Magistrate held that the respondent no.1 was entitled to continue the work of laying down 220 KV Line and erect transmission towers on the land in question. The petitioners were restrained from obstructing the said work. They were held entitled to compensation as per Government Resolution dated 31.05.2017. It was further directed that if no compensation was paid to the petitioners for the towers that were erected earlier, the same should be paid as per the prevailing government rates and valuation undertaken by the Sub-Divisional Magistrate. This was directed to be done within a period of one month. According to the petitioners this order dated 30.03.2019 having been passed with regard to three differently situated land owners, the same was the result of non-application of mind and was liable to be modified. In that backdrop, the petitioners have approached this Court by way of present writ petition.

4. Shri A.S.Mehadia, learned Advocate for the petitioners submitted that despite directions having been issued by the District Magistrate on 30.03.2019, the petitioners had not been paid any compensation for the towers erected by the respondent no.1. The direction to pay compensation as per Government Resolution dated 31.05.2017 within a period of one month had not been complied with. According to the learned counsel, the Sub-Divisional Magistrate determined the amount of compensation in terms of the Government Resolution dated 31.05.2017 and fixed the same at Rs.2,300/- per square meter. For the

land admeasuring 470 square meters, amount of Rs.21,62,000/- had been determined. However, on the pretext that the land had been valued as non-agriculture land the amount of compensation was not released in favour of the petitioners. The Executive Engineer of the respondent no.1-Company sought re-determination of the amount of compensation by his communication dated 05.10.2019. Such a course was not permissible and the petitioners were entitled for the compensation as determined in accordance with the Government Resolution dated 31.05.2017. Despite the interim order passed in the writ petition that direction to pay compensation had not been complied with.

It was then submitted that by erecting more than twenty towers on the land of the petitioners the same had become uncultivable and the same could not be put to any use whatsoever. The respondent no.1 therefore ought to be directed to acquire the entire land under the provisions of the Act of 2013 and the petitioners were entitled to be paid compensation accordingly. It was not disputed that about twenty towers were already in existence on the said land. Despite that the petitioners had not been compensated for the same. On the contrary, the amount of compensation already determined was sought to be reduced. Placing reliance on the decisions in *Sabha Mohammed Yusuf Abdul Hamid Mulla (Dead) by LRs and others Vs. Special Land Acquisition Officer and others* [(2012) 7 SCC 595] and *Sukh Dutt Ratra and another Vs. State of Himachal Pradesh and others* [(2022) 7 SCC 508] it was submitted that the petitioners could not be deprived of utilisation of their land in such manner. In view of the provisions of Article 300 A of the Constitution of India, the petitioners ought to be suitably compensated. It was thus submitted that the prayers made in the writ petition were liable to be granted.

5. Shri C.S.Kaptan, learned Senior Advocate for the respondent no.1-Company opposed the aforesaid submissions. At the outset, he submitted that the petitioners were seeking adjudication of various disputed questions of fact in the present proceedings. Such adjudication was not permissible in exercise of writ jurisdiction. Inviting attention to the pleadings in the writ petition and the reply as filed, it was submitted that the sketch map placed on record by the petitioners was not admitted by the respondent no.1. It was then submitted by the learned Senior Advocate that the proceedings were initiated by the respondent no.1 under Section 16(1) of the Act of 1885 with a view to prevent resistance or obstruction to the laying down of electricity lines and erection of towers on the land of the petitioners. In the said proceedings there was no question of acquiring any land for such purpose. The land owners were entitled only to the amount of compensation on account of any damage sustained by the exercise of power under Section 10(d) of the Act of 1885. The application under Section 16(1) of the Act of 1885 was made with regard to two towers and the petitioners were seeking to enlarge the scope of the said proceedings by seeking compensation for other towers that were already erected. The District Magistrate decided the proceedings on 30.03.2019 and restrained the petitioners from obstructing the work of erection of the towers. The petitioners have sought

modification of the said judgment without indicating the nature of modification sought. If the petitioners were not satisfied with the quantum of compensation as determined, they ought to invoke the remedy provided under Section 16(3) of the Act of 1885. No modification of that judgment could be sought in the present proceedings.

It was further submitted that the respondent no.1 could not be compelled to acquire the land of the petitioners especially when there was no need of the said land. The respondent no.1 merely sought to erect towers on the said land and the petitioners were entitled to be compensated for the same in accordance with the provisions of Section 10(d) of the Act of 1885. Reference was also made to the affidavit in reply filed on behalf of the respondent no.1 to oppose the prayers made in the writ petition. The learned Senior Advocate placed reliance on the decisions in *Ganpat Balaji Parate Vs. State of Maharashtra and others* [1991 Mh.L.J. 1515], *Vivek Brajendra Singh Vs. State Government of Maharashtra* [2012(4) Mh.L.J. 625], *Kishor s/o Ravindra Zope and others Vs. State of Maharashtra and others* [2013(1) Mh. L. J. 683], *Jarnail Singh s/o Sardar Bhagat Singh Rihal and another Vs. Maharashtra State Electricity Transmission Co. Ltd. and others* [AIR 2015 Bom 283], *Power Grid Corporation of India Limited vs. Century Textiles and Industries Limited and others* [(2017) 5 SCC 143], *Harihar Buildspace Pvt. Ltd., Nagpur Vs. Union of India and others* [2021(5) Mh.L.J. 144] and in Writ Petition No.5459 of 2021 (*Manish S. Jaiswal and anr. Vs. Sub-Division Officer, Ralegaon, District Yavatmal and others*) decided on 13.04.2022 to substantiate his contentions. It was thus submitted that the prayers made in the writ petition were not liable to be granted.

6. We have heard the learned Advocates for the parties at length and with their assistance we have perused the documentary material placed on record. It is seen that the present proceedings have been initiated pursuant to the application dated 20.12.2018 that was moved by the respondent no.1-Company under Section 16(1) of the Act of 1885 before the District Magistrate. In the said application reference has been made to tower numbers 1/C and 1/D in Survey No.91/2 owned by the petitioners. In the reply filed by the petitioners to the said application, it was stated that the power under Section 16 of the Act of 1885 was not delegated in favour of the Additional Collector and therefore the proceedings were not tenable. It was further stated that after having their names mutated in the revenue records, the petitioners had got the said land measured. They found that eighteen towers had already been erected on the land owned by them. If two more towers were erected, the land in question would be of no use for any agricultural/non-agricultural purpose. It was therefore stated that the said land be acquired under the Act of 2013 and compensation be paid to the petitioners. The District Magistrate while deciding the said application permitted the respondent no.1 to exercise power as Telegraph Authority in the field of the petitioners and other land owners. The petitioners were restrained from obstructing the work of laying down the aforesaid lines and erection of towers. Compensation was directed to be paid as per Government Resolution dated

31.05.2017. In addition, it was directed that if compensation was not paid for the towers erected earlier, the same should be paid as per prevailing policy and valuation determined by the Sub- Divisional Magistrate within a period of one month from the date of the order. As regards the effect of erection of towers in the field of the petitioners resulting the land not being feasible for cultivation, it was directed that this aspect be verified and proposal be sent to the higher Authority for decision.

7. This judgment dated 30.03.2019 passed under Section 16(1) of the Act of 1885 forms the basis of the claim made by the petitioners for grant of compensation. The petitioners also seek modification of the said judgment in the matter of payment of compensation by treating the said land as non-agricultural land and have also prayed that the entire land be acquired since it has been rendered incapable of any use due to erection of various electricity towers therein. In this regard, it is necessary to take note of the provisions of Sections 10 and 16 of the Act of 1885. Under Section 10 of the Act of 1885 the Telegraph Authority has the power to place and maintain telegraph lines and posts on any immovable property. As per proviso (d) thereof, the Telegraph Authority has to take care so as to cause as little damage as possible to the immovable property while exercising such powers and the person interested is entitled to be paid full compensation for any damage sustained by reason of the exercise of those powers. Under Section 16(1) of the Act of 1885 on there being any resistance or obstruction by the person interested when power under Section 10(d) is exercised, the District Magistrate has the authority to permit the Telegraph Authority to exercise such powers. Under Section 16(3) on a dispute with regard to sufficiency of compensation to be paid under Section 10(d) of the Act of 1885, either of the parties can approach the District Judge within whose jurisdiction the property is situated to resolve such dispute.

8. As noted above, the proceedings were initiated by the respondent no.1 for permission to erect two towers. While granting that permission the respondent no.1 was directed to pay compensation to the petitioners as per Government Resolution dated 31.05.2017. It has not been shown that either the petitioners or the respondent no.1 have taken recourse to the remedy provided under Section 16(3) of the Act of 1885 as regards the insufficiency/sufficiency of the amount of compensation granted. The petitioners however without resorting to that remedy urge that since compensation for the towers erected earlier has not been paid, the same should be directed to be paid in accordance with Clause (vii) of the directions issued by the District Magistrate in the judgment dated 30.03.2019. It is to be noted that according to the petitioners they noticed the fact that eighteen towers were already erected in their field when they got their names mutated in the revenue records. In other words, the said towers were already erected and according to the petitioners they were erected prior to 2010 as per reply given by the respondent no.1. In the reply filed to the writ petition, the respondent no.1 in paragraph 5 stated that the earlier execution of erection of towers was done by the Executive Engineer, EHV Project Division, Nagpur and

the respondent no.1 did not have any knowledge about the same. It has then been stated that the respondent no.1 was duty bound to pay compensation for the two towers for which necessary permission was granted as per the judgment of the District Magistrate dated 30.03.2019. In further affidavit filed by the respondent no.1 pursuant to the orders passed by this Court, reference has been made to the communication dated 20.04.2019 issued by the Executive Engineer, EHV Project Division, Amravati that the earlier towers were constructed prior to 2009 and at that time there was no provision for granting amount of compensation to the owners. In another affidavit dated 30.09.2022 filed on behalf of the respondent no.1 it has been specifically asserted in paragraph 4 that the State Government had issued Government Resolution dated 01.11.2010 in the matter of paying compensation for crops on account of damage caused due to erection of an electricity tower. It has also asserted that after 01.11.2010 till the filing of the application under Section 16(1) of the Act of 1885, the respondent no.1 did not erect a single tower in the field of the petitioners. In paragraph 6 it has been specifically denied that the respondent no.1 had erected more than twenty towers on the land of the petitioners.

From the aforesaid, it becomes clear that there is a serious dispute with regard to the point of time when the earlier towers numbering eighteen came to be erected. According to the information supplied by the respondent no. 1 to the petitioners these towers were erected prior to 2010. We therefore find that in the light of the material on record, this disputed question as regards the time when the said eighteen towers were erected cannot be resolved. Moreover, it has been asserted by the respondent no.1 that it has not erected the said eighteen towers which assertion has not been countered by the petitioners.

9. The petitioners while seeking modification of the judgment dated 30.03.2019 passed by the District Magistrate have also prayed that they be suitably compensated for the said eighteen towers. It may be observed that the scope of the proceedings initiated under Section 16(1) of the Act of 1885 by the respondent no.1 was with regard to the obstruction to the erection of two towers which is clear from its application dated 20.12.2018. The said two towers bear numbers 1/ C and 1/D in Survey No.91/2. While deciding those proceedings, we do not find that Section 16(1) of the Act of 1885 empowers the District Magistrate to issue directions with regard to payment of compensation for the towers already erected. The remedy for seeking compensation for the towers already erected cannot be in proceedings under Section 16(1) of the Act of 1885 for the reason that the District Magistrate is merely concerned with whether the Telegraph Authority can be permitted to exercise the powers mentioned in Section 10(d) of the Act of 1885 on it being resisted or obstructed. Seeking compensation for towers already erected prior to initiation of proceedings under Section 16(1) cannot be made a subject of adjudication in such proceedings. Moreover, in the present case there is a serious dispute as to who has erected the said eighteen towers. Direction No. (vii) of the impugned judgment dated 30.03.2019 reads as under:

“(vii) If the applicant has not paid compensation to the non-applicant for previous tower which is situated in field, the applicant shall pay proper compensation to non-applicant as per the prevailing government G.R. Rules, etc. and valuation determine by the Sub-Divisional Magistrate. Applicant shall pay compensation to non-applicant within a period of one month. As submitted by non-applicant due to construction of tower in his field continuously (2,3 times) his land is no longer feasible to cultivate for agriculture income. Hence this is to be verified and do the needful, send proposal to higher authority for decision and convey to non-applicant.”

10. A writ under Article 226 of the Constitution of India cannot be issued to compel the respondent no.1 to do an act pursuant to a direction issued by the statutory authority if it is found that there was no power vested with that statutory authority to issue such direction. The respondent no.1 can be directed only to act in accordance with law and as permissible under the relevant statute. It is true that the said direction to pay compensation for towers erected earlier has not been challenged by the respondent no.1. However, if the direction to pay compensation for towers already erected is found to be beyond the purview of Section 16(1) of the Act of 1885, it would not be permissible for this Court to direct the respondent no.1 to comply with such direction by issuing a writ under Article 226 of the Constitution of India. The petitioners would have to invoke appropriate jurisdiction to receive the amount of compensation for the towers already erected especially when there is serious dispute with regard to the time when those towers were erected as well as regards the authority erecting the same.

11. Insofar as the prayer for acquiring the petitioners’ land is concerned, such direction cannot be issued especially when the respondent no.1 has sought to invoke the powers under Section 10(d) of the Act of 1885 for erection of towers to facilitate transmission of its electricity. This position is clear from the law as laid down in Power Grid Corporation of India Limited and Vivek Brajendra Singh (supra). We are therefore unable to issue that direction as prayed for.

12. We find that the only direction that can be issued to the respondent no.1 is to comply with the judgment dated 30.03.2019 passed by the District Magistrate to the extent the same relates to two towers that were the subject matter of the application filed under Section 16(1) of the Act of 1885 on 20.12.2018. The directions in that regard are contained in Clauses (iii) to (vi) of the impugned judgment dated 30.03.2019 passed by the District Magistrate. Hence subject to any order, if passed, under Section 16(3) of the Act of 1885, the directions issued in Clauses (i) to (vi) would bind the respondent no.1. The respondent no.1 shall comply with the said directions as regards the two towers bearing Nos. 1/C and 1/D in Survey No.91/2 owned by the petitioners is concerned. The necessary compliance be done within a period of six weeks from today if the same has not yet been complied with. The writ petition is disposed of in aforesaid terms.

Rule accordingly. No costs.

(M. W. CHANDWANI, J.) (A.S.CHANDURKAR, J.)

At this stage the learned counsel for the petitioners prays that the interim order operating be continued for a period of eight weeks.

This request is opposed by the learned counsel for respondent No.1. For the view that we have taken as regards Section 16(1) of the Act of 1885, we do not find it necessary to continue the interim order for further period of eight weeks. Hence that request is rejected.