

(2011) 07 GUJ CK 0030

In the Gujarat High Court

Case No : Letters Patent Appeal No. 882 of 2011 in Special Civil Application No. 3443 of 2011 and Civil Application No. 6165 of 2011 in Letters Patent Appeal No. 882 of 2011

Himmatbhai Vallabhbhai Patel

APPELLANT

Vs

Chief Engineer (Project) Gujarat Energy Transmission and Others

RESPONDENT

Date of Decision : 01-07-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226, 31
Electricity (Supply) Act, 1948 — Section 28, 29, 29(2), 42, 42(1)
Electricity Act, 1910 — Section 12, 13, 14, 15, 16
Electricity Act, 2003 — Section 164, 185, 185(2), 67, 67(1)
General Clauses Act, 1897 — Section 6
Telegraph Act, 1885 — Section 10
Works of Licensees Rules, 2006 — Rule 3

Citation : AIR 2011 Guj 405 : (2011) 2 GLH 781

Hon'ble Judges : S.J. Mukhopadhaya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Sangeeta N. Pahwa, for the Appellant; S.P. Hasurkar, for the Respondent

Judgement

J.B. Pardiwala, J.—In the present Appeal, the challenge by the Appellant -original writ Petitioner is to the judgment and order dated 22nd April 2011 passed by the learned Single Judge in Special Civil Application No. 3443/2011, whereby the learned Single Judge rejected the writ petition preferred by the Appellant herein - writ Petitioner.

2. Brief facts giving rise to this Appeal can be summarised as under:

1. Appellant is an agriculturist and owns certain parcels of agricultural land. On or around 1st April 2011, one of the officers of the Respondent No. 2 Company visited the agricultural land of the Appellant. The said visit was without any notice or intimation and during the conversation with the Appellant, the said

officer informed the Appellant that the Respondent Company is going to erect polls for laying 66 K.V. overhead electricity line which would pass through the agricultural land of the Appellant and that, therefore, polls will have to be erected in the land of the Appellant as well.

2. The Appellant asked for the document/proof/ authority granted in favour of the Respondent No. 2 Company to undertake the work of laying overhead lines. However, any satisfactory reply was not given. No consent of the Appellant as the land owner was obtained by Respondentno.2 Company nor any procedure as prescribed under the Electricity Act, 2003 was followed and, therefore, the Appellant objected to the decision of Respondent No. 2Company to erect polls passing through the land of the Appellant.

3. Since the objection of the Appellant was not paid any heed to by the officers of the Respondent Company, the Appellant and few others identically situated persons came before this High Court by way of a writ petition challenging the action of Respondent No. 2. The principal contentions raised by the Appellant hereinbefore the learned Single Judge were as under:

(a) that the action of the Respondents in proposing to erect polls for laying 66 K.V. overhead electricity lines passing through the agricultural land of the Appellant is arbitrary, illegal and in violation of the provisions of the Electricity Act, 2003. The main bone of contention in this regard was to the effect that the Respondents are bound to initiate appropriate proceedings for acquisition of the lands and the consent of the owners ought to have been obtained with prior notice before entering into their property;

(b) the second contention was to the effect that public notice dated 29th July 2010 published by the Respondents in this regard makes reference of the provisions of Repeal Act and that names of the villages where lands are situated and/or their survey numbers are not mentioned therein and, therefore, the notice is of no consequence. The contention was that the area where the land of the Appellant herein is situated is not mentioned in the notification. To put it more elaborately, the Respondents cannot undertake works in that area which are not included, mentioned in the notice dated 29th July 2010.

(c) the third contention before the learned Single Judge was to the effect that Respondent No. 3 Company is a transmission company and is not engaged in the business of supply of electricity under the Electricity Act, 2003, and that, therefore, cannot undertake the process of laying overhead electricity lines, without obtaining consent from the owner of the property, in view of the provisions contained under Rule 3 of "Works of Licensees Rules, 2006" framed in exercise of powers conferred by Section 67 of the Act, which, inter alia, provides that the licensee may carry out works with the prior consent of the owner for occupation of any particular building or land, however, any prior consent of the owner has not been taken by the Respondent Company.

4. That the Respondent Company does not fall within the purview of Section 164,

and that, therefore, the State Government could not have issued the notification conferring power of Telegraph Authority on the Respondent Company.

3. Learned Single Judge dealt with all the above referred contentions canvassed by the Appellant exhaustively and ultimately came to the conclusion that there is no merit in any of the contentions canvassed by the Appellant and accordingly rejected the petition.

4. We have heard learned advocate Mrs. Sangeeta Pahwa appearing for the Appellant - original Petitioner and learned advocate Mr. S.P. Hasurkar appearing for the Respondents. We have also perused the record and we have also gone through the judgment and order passed by the learned Single Judge, which has been impugned in the present Appeal.

5. We are in complete agreement with the reasoning's assigned by the learned Single Judge while holding that there is no merit in any of the contentions put forward by the Appellant. However, keeping in mind the importance of all these issues, we have decided to look into them in little detail and we would like to express our own opinion in this regard. We would also like to state that all the contentions which have been recorded above and which did not find favour with the learned Single Judge have been reiterated before us in this Appeal.

6. We shall deal with the first contention as regards obtaining of consent of the land owner before erecting polls for electricity lines. The Electricity Act, 2003(Central Act 36 of 2003) has been enacted consolidating the laws relating to generation, transmission, distribution, trading and use of electricity and thereby repealing the Indian Electricity Act, 1910, Electricity (Supply) Act,1948 and Electricity Regulatory Commissions Act, 1998. The said Act came into force w.e.f. 10.06.2003.

7. The material on record shows that in exercise of powers conferred u/s 164 of the Electricity Act, 2003, the Government of Gujarat issued Notification dated 5th January 2007, thereby conferring upon the Gujarat Energy Transmission Corporation Limited the powers for placing electric supply lines or electric plants for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper coordination of works with the Telegraph Authority possess under the provisions of the Indian Telegraph Act,1885. In exercise of the said powers conferred under the Notification dated 5th January 2007, the Gujarat Energy Transmission Corporation Limited issued public notice dated 29th July 2010, which was also published in the Gujarat Government Gazette Part-II, notifying its proposal to erect transmission lines. The relevant portion of the public notice dated 29th July 2010 is reproduced herein below, which reads as under:

PUBLIC NOTICE

Preliminary Notification of proposed Scheme (under Section-29 and 42 of the Electricity Act (1948).

Ref. No. : CE(Pro.)/III/7497/2010: In pursuance of Section-29 Sub-section I and Section-42 of the Electricity Supply Act, 1948, it is hereby notified that the Gujarat Energy Transmission Corporation Limited proposed to undertake the following Schemes and shall have and shall exercise for the placing of any wires, poles, wall brackets, stays apparatus and appliances for Transmission and Distribution of Electricity or for Transmission of telegraphic or telephonic communication necessary for proper coordination of the works of the Gujarat Energy Transmission Corporation Limited, in the area indicated in the relevant clause below, all power which Telegraph Authority possesses, under Part-III of Indian Telegraphic Act, 1885 (XIII:1885) with regard to a telegraph established or maintained and the Gujarat Energy Transmission Corporation Limited shall not be bound by the provision of Section-12 to 16, 18 and 19 of the Indian Electricity Act, 1910 for the purpose of this Scheme."

Any license or any other person interested are hereby notified to make representation of objections, if any, to the Gujarat Energy Transmission Corporation Limited, Sardar Patel Vidhut Bhavan, Race Course, Vadodara-390007, on or before completion of two months after publication of this Notice for consideration of the Nigam. For further particulars or clarifications, the Chief Engineer (Pro.), Gujarat Energy Transmission Corporation Limited, Sardar Patel Vidyut Bhavan, Race Course, Vadodara-390007 or the Superintending Engineer (Transmission Circle), GETCO, Navsari/Gondal, Nadiad, may please be contacted.

8. It is evident on plain reading of the public notice that objections were invited from license or any other person interested on or before completion of two months after the publication of the notice for consideration of the Nigam. It is an undisputed position that no objections were raised at the relevant point of time in response to the public notice dated 29th July 2010.

9. As noticed above, prior to the enactment of the Electricity Act, 2003, the Indian Electricity Act, 1910, and the Electricity (Supply) Act, 1948 were in force and there were various provisions governing erection of transmission lines or other connected work through, in or upon or under the private lands.

10. As per Section 12 of the Indian Electricity Act, 1910, the consent of the local authority or of the concerned owner or occupier is necessary to enable the licensee to lay down or place any electric supply line or other work in, through or against any building or on, over or under any land not dedicated to public use whereon any electric supply line or work has not already been lawfully laid down by such licensee. u/s 51 of the Electricity Act, 1910, it was permissible for the Government to confer upon any public officer, Transmission Utility, Transmission Licensee or any other person engaged in the business of transmission or supplying energy to the public, any of the powers which the telegraph authorities possess under the Indian Telegraph Act, 1885 for the placing of electric supply lines

11. That apart, Section 28 of the Electricity (Supply) Act, 1948, provided for

preparation of a sanctioned scheme relating to the laying of transmission lines by generating company and u/s 29 every such scheme estimated to involve a capital expenditure exceeding such sum as may be fixed by Central Government shall be submitted to the Central Electricity Authority constituted under the said Act for its concurrence. That apart, Section (2) of Section 29 mandated that the generating company shall cause such scheme to be published in the Official Gazette of the State and in local news papers granting not less than two months time to the persons interested to make representations on such scheme. Section 42 of the Electricity (Supply) Act, 1948, further provided that where a provision is made in a sanctioned scheme for placing electric supply lines, notwithstanding anything contained in Sections 12 to 16, 18 and 19 of the Indian Electricity Act, 1910, the State Electricity Board shall have all the powers which the telegraph authority possesses under Part-III of the Indian Telegraph Act, 1885 with regard to a telegraph established by the Government for placing of any wires, poles and etc., for the transmission of electricity. The proviso to Section 42(1) further made it clear that where a sanctioned scheme does not make a provision as aforesaid, all the provisions of Sections 12 to 19 of the Indian Electricity Act, 1910 shall apply.

12. A Full Bench of High Court of Kerala in *Bharat Plywood and Timber Products Private Ltd. v. Kerala State Electricity Board, Trivandrum and Ors.* AIR 1972 Kerala 47 (FB) having interpreted the scope and object of Sections 12 and 51 of Indian Electricity Act, 1910 held that a licensee who has not been empowered by the State Government u/s 51 of the Indian Electricity Act, 1910 cannot place any electric supply lines in or over any property without the consent of the owner or occupier thereof. However, a person authorised u/s 51 can do so without the consent of the owner or occupier. The Full Bench further observed as under:

Though Section 12 enumerates various acts that can be done by a licensee for the purpose of laying down or placing electric supply-lines, such acts can be done only with the consent of the local authority or of the owner or occupier concerned (Section 12(2)). This is no power at all for. Without the consent nothing can be done. What can be done, therefore, u/s 12 cannot be compared with the exercise of powers u/s 10 of the Telegraph Act by a person empowered to do so u/s 51 of the Electricity Act.

13. So far as the scope of Section 42 of the Electricity (Supply) Act, 1948 is concerned, it was held by Andhra Pradesh High Court in *Bhaskara Housing (P) Ltd., Hyderabad Vs. APSEB, Hyderabad* and another, as under:

A cumulative reading of provisions of Sub-section (1) of Section 42 of the Electricity (Supply) Act, 1948 with that of proviso make it apparently clear that if the sanctioned scheme provides for any of the things contemplated under Sections 12 to 16, 18 and 19 of the Indian Electricity Act, 1910, the officers of the Board can exercise similar powers conferred upon the authorities of the Telegraph Department under Part-III of the Indian Telegraph Act, 1885. In the instant case, since the sanctioned scheme provides for laying of lines and

construction of towers, it should be held that the Board and its officers have the power to invoke the provisions of Part-III of the Indian Telegraph Act, 1885 and, therefore, prior consent is not necessary as required u/s 12 of the Indian Electricity Act, 1910.

14. An identical question was again considered by Andhra Pradesh High Court in B. Krishna Mandadi v. Power Grid Corporation of India Limited, Hyderabad 2002 (1) LS 332 and it was held as under:

A generating company engaged in generation, transmission and supply of electricity is empowered under the provisions of Electricity (Supply) Act, 1948 to lay electric poles, construct transmission towers on any private land without giving any notice and without causing damage to the property provided there is a scheme published as required u/s 28. Even while erecting transmission lines, if any damage is caused, by reason of Section 10 of the Telegraph Act read with Section 42 (1) and (2) of the Electricity(Supply) Act, 1948, a generating company has to pay compensation for the damage sustained by the owners of the land or owners of the crops.

15. From the ratio laid down in the above decisions, with which we are in complete agreement, it is clear that prior to the enactment of Electricity Act, 2003, consent of the owner or occupier was necessary where there was no authorization u/s 51 of the Indian Electricity Act, 1910. Similarly, where a sanctioned scheme is published as required u/s 28 read with Section 42 of the Electricity (Supply) Act, 1948, transmission towers or lines can be laid on any private land without giving any notice and without causing damage to the property. However, if any damage is caused, compensation shall be paid for the damage sustained as provided u/s 10 of the Indian Telegraph Act, 1885.

16. Both the Indian Electricity Act, 1910 and the Electricity(Supply) Act, 1948 stood repealed under the Electricity Act, 2003 which came into force with effect from 10.06.2003. Under the new Act i.e., Electricity Act, 2003 though there is no provision with regard to preparation and sanctioning of any scheme relating to establishment of generating stations, sub-stations or transmission lines as required u/s 28 of the repealed Electricity(Supply) Act, 1948, provisions similar to Sections 12 and 51 of the Indian Electricity Act, 1910 have been incorporated u/s 67 and Section 164 respectively.

17. The said Sections 67 and 164 of the Electricity Act, 2003 may be extracted hereunder:

Section 67 Provision as to opening up of streets, railways, etc. -

(1) A licensee may, from time-to-time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works such as

(a) to open and break up the soil and pavement of any street, railway or

tramway;

(b) to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;

(c) to alter the position of any line or works or pipes, other than a main sewer pipe;

(d) to lay down and place electric lines, electrical plant and other works;

(e) to repair, alter or remove the same;

(f) to do all other acts necessary for transmission or supply of electricity.

(2) The Appropriate Government may, by rules made by it in this behalf, specify, -

(a) the cases and circumstances in which the consent in writing of the appropriate Government, local authority owner or occupier, as the case may be, shall be required for carrying out works;

(b) the authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works;

(c) the nature and period of notice to be given by the licensee before carrying out works;

(d) the procedure and manner of consideration of objections and suggestions received in accordance with the notice referred to in Clause (c);

(e) the determination and payment of compensation or rent to the persons affected by works under this section;

(f) the repairs and works to be carried out when emergency exists;

(g) the right of the owner or occupier to carry out certain works under this section and the payment of expenses there for;

(h) the procedure for carrying out other works near sewers, pipes or other electric lines or works;

(i) the procedure for alteration of the position of pipes, electric lines, electrical plant, telegraph lines, sewer lines, tunnels, drains, etc.;

(j) the procedure for fencing, guarding, lighting and other safety measures relating to works on streets, railways, tramways, sewers, drains or tunnels and immediate reinstatement thereof;

(k) the avoidance of public nuisance, environmental damage and unnecessary damage to the public and private property by such works;

(l) the procedure for undertaking works which are not reparable by the Appropriate Government, licensee or local authority;

(m) the manner of deposit of amount required for restoration of any railways,

tramways, waterways, etc;

(n) the manner of restoration of property affected by such works and maintenance thereof;

(o) the procedure for deposit of compensation payable by the licensee and furnishing of security; and

(p) such other matters as are incidental or consequential to the construction and maintenance of works under this section.

(3) A licensee shall, in exercise of any of the powers conferred by or under this section and the rules made hereunder, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

(4) Where any difference or dispute [including amount of compensation under Sub-section (3)] arises under this section, the matter shall be determined by the Appropriate Commission.

(5) The Appropriate Commission, while determining any difference of dispute arising under this section in addition to any compensation under Sub-section (3), may impose a penalty not exceeding the amount of compensation payable under that subsection.

Section 164 -Exercise of powers of Telegraph Authority in certain cases:

The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraph authority possesses under that Act 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.

18. As could be seen, though Section 67(1) of the Electricity Act, 2003 is identical to Section 12(1) of, the Indian Electricity Act, 1910, Section 67(2) of the Electricity Act, 2003 varies from Section 12(2) of the repealed Indian Electricity Act, 1910. Section 67(2) does not say that the consent of the owner or occupier is mandatory but the matters where the property of other persons is affected by the works of the licensee have been left to be provided by the appropriate Government by way of Rules in exercise of its rule making power.

19. Admittedly no such Rules have been made till today. What shall be done till such Rules are made is provided u/s 185 of the Electricity Act, 2003 and the same maybe extracted hereunder:

Section 185: Repeal and saving -

(1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910 (9 of 1910), the Electricity (Supply) Act, 1948 (54 of 1948) and the Electricity Regulatory Commissions Act, 1998 (14 of 1998) are hereby repealed.

(2) Notwithstanding such repeal, -

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) the provisions contained in Sections 12 to 18 of the Indian Electricity Act, 1910 (9 of 1910) and rules made there under shall have effect until the rules under Sections 67 to 69 of this Act are made:

(emphasis supplied)

(c) the Indian Electricity Rules, 1956 made u/s 37 of the Indian Electricity Act, 1910 (9 of 1910) as it stood before such repeal shall continue to be in force till the regulations u/s 53 of this Act are made.

(d) all rules made under Sub-section (1) of Section 69 of the Electricity (Supply) Act, 1948 (54 of 1948) shall continue to have effect until such rules are rescinded or modified, as the case may be;

(e) all directives issued, before the commencement of this Act, by a State Government under the enactments specified in the Schedule shall continue to apply for the period for which such directions were issued by the State Government.

(3) The provisions of the enactments specified in the Schedule, not inconsistent with the provisions of this Act, shall apply to the States in which such enactments are applicable.

(4) The Central Government may, as and when considered necessary, by notification, amend the Schedule.

(5) Save as otherwise provided in Sub-section (2), the mention of particular matters in that section, shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897(10 of 1897), with regard to the effect of repeals.

19. In view of Section 185(2)(b) of the Electricity Act, 2003, it is not in dispute that the provisions contained in Sections 12 to 18 of the Indian Electricity Act, 1910, still govern the field since as on today no rules are made u/s 67(2) of the Electricity Act, 2003.

20. Therefore, the legality or otherwise of the impugned action of the Respondents in proposing to erect the poles for laying 66 K.V. Lilo - Bilasiya line through the lands of the Appellant has to be examined in the light of Section 67 of the Electricity Act, 2003 read with Sections 12 to 18 of the Indian Electricity Act, 1910 and Section 164 of the Electricity Act, 2003.

21. Out of Sections 12 to 18 of Indian Electricity Act, 1910, reference to Section 12 is sufficient for the purpose of the present case and the same runs as under:

Section 12: Provisions as to the opening and breaking up of streets, railways and tramways -

(1) Any licensee may, from time to time but subject always to the terms and conditions of his licence, within the area of supply, or, when permitted by the terms of his licence to lay down or place electric supply-line without the area of supply, without that area:

(a) open and break up the soil and pavement of any street, railway or tramway;

(b) open and break up any sewer, drain or tunnel in or under any street, railway or tramway;

(c) lay down and place electric supply-lines and other works;

(d) repair, alter or remove the same; and

(e) do all other acts necessary for the due supply of energy.

(2) Nothing contained in Sub-section (1) shall be deemed to authorise or empower a licensee, without the Consent of the local authority or of the owner or occupier concerned, as the case may be, to lay down or place any electric supply-line, or other work in, through or against any building, or on, over or under any land not dedicated to public use whereon, wherever or where under any electric supply-line or work has not already been lawfully laid down or placed by such licensee:

Provided that any support of an overhead line or any stay or strut required for the sole purpose of securing in position any support of an overhead line may be fixed on any building or land or, having been so fixed, may be altered, notwithstanding the objection of owner or occupier of such building or land, if the District Magistrate or, in a Presidency-town the Commissioner of Police by order in writing so directs:

Provided also, that, if at any time the owner or occupier of any building or land on which any such support, stay or strut has been fixed shows sufficient cause, the District Magistrate or in a Presidency town the Commissioner of Police may by order in writing direct any such support, stay or strut to be removed or altered.

(3) When making an order under Sub-section (2), the District Magistrate or the Commissioner of Police, as the case may be, shall fix the amount of compensation

(4) Every order made by a District Magistrate or a Commissioner of Police under Sub-section (2) shall be subject to revision by the State Government.

(5) Nothing contained in Sub-section (1) shall be deemed to authorise or empower any licensee to open or break up any street not repairable by the Central Government or the State Government or a local authority, or any railway or tramway, except such streets, railways or tramways (if any), or such parts thereof, as he is specially authorised to break up by his license, without the written consent of the person by whom the street is repairable or of the person for the time being entitled to work the railway or tramway, unless, with the written consent of the State Government;

Provided that the State Government shall not give any such consent as aforesaid, until the licensee has given notice by advertisement or otherwise as the State Government may direct, and within such period as the State Government may fix in this behalf, to the person above referred to, and until all representations or objections received in accordance with the notice have been considered by the State Government.

(6) In this section, "occupier" of any building or land means a person in lawful occupation of that building Orland.

22. A reading of Section 12(2) of the Indian Electricity Act, 1910 makes it clear that the acts specified u/s 12(1) cannot be carried out without the consent of the concerned owner or occupier. However, the question that arises for consideration is whether Section 12 of the Indian Electricity Act, 1910 is applicable to the case unhand.

23. On an analysis of Section 67 and Section 164 of the Electricity Act, 2003, it is apparent that whenever an order is passed by the appropriate Government in exercise of the powers u/s 164 of the Electricity Act, 2003 for the placing of electric lines for the transmission of electricity, conferring upon any public officer, licensee or any other person engaged in the business of supplying electricity any of the powers which the telegraph authority possesses under the Indian Telegraph Act, 1885 with respect to the placing of telegraphic lines and posts for the purposes of a telegraph established by the Government, such public officer, licensee or any other person engaged in the business of supplying electricity stands in the same position as regards the exercise of power as the telegraph authority under the Indian Telegraph Act, 1885. However, in the absence of such an order u/s 164 of the Electricity Act, 2003, if a licensee, a person who has been granted a licence to transmit electricity or to distribute electricity under the Act, proposes to place electric lines, electric plant or other works necessary for transmission or supply of electricity, Section 67 of the Electricity Act, 2003 comes into operation and consequently it is mandatory to obtain the consent of the concerned owner or occupier as required u/s 12(2) of the Indian Electricity Act, 1910.

24. In the instant case, Section 164 of the Electricity Act, 2003 has admittedly

been invoked and in exercise of the powers conferred there under the Government of Gujarat conferred on the Gujarat Energy Transmission Corporation Limited the powers which the telegraph authority possess under the Indian Telegraph Act, 1885. Consequently, Section 12 of the Indian Electricity Act, 1910 has no application and the Gujarat Energy Transmission Corporation Limited, for the purpose of placing the electric supply lines in the private lands, is competent to exercise all the powers possessed by the telegraph authority under the Indian Telegraph Act, 1885.

Section 10 of the Indian Telegraph Act, 1885 which deals with the power of the telegraph authority to place and maintain telegraphic lines and posts runs as under:

Section 10: Power for telegraph authority to place and maintain telegraph lines and posts. -

The telegraph authority may, from time to time, place and maintain in 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 35 Subs. by the A.O. 1937, for "Government".[Central Government], or to be so established or maintained;

(b) the 36 Subs. by the A.O. 1937, for "Government".[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.

25. As could be seen, Section 10 of the Indian Telegraph Act, 1885 empowers the telegraph authorities to place and maintain the telegraph lines under, over, along or across and posts in or upon any immovable property. However, the said power shall not be exercised in respect of any property vested in or under the control or management of any local authority without the permission of that authority. The proviso (d) to Section 10 of Indian Telegraph Act, 1885 further made it clear that while exercising powers conferred u/s 10 the Telegraph

authority shall do as little damage as possible and when it has exercised those powers in respect of any property other than the property under the control or management of the local authority shall pay full compensation to all the persons interested for any damage sustained by them by reason of exercise of the said powers. It is also relevant to note that as per proviso (b) of Section 10 of the Indian Telegraph Act, 1885, 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 lines or posts.

26. Thus it is clear that the powers u/s 10 of the Indian Telegraph Act, 1885 can be exercised without acquiring the land in question, however, the only right that can be exercised is the right of user in the property and for the purposes mentioned in that Section.

27. For the aforesaid reasons, we are of the opinion that Section 164 of the Electricity Act, 2003 read with Section 10 of the Indian Telegraph Act, 1885 recognized the absolute power of the Gujarat Energy Transmission Corporation Limited to proceed with placing of electric supply lines or electric polls for the transmission of electricity on or over the private lands subject to the right of the owner/occupier to claim compensation if any damage is sustained by him by reason of placing of such electric supply lines. In other words, neither the acquisition of the lands is necessary nor there is any need for consent of the owner or occupier.

28. At this stage, we would also like to refer to a Division Bench's judgment of this High Court rendered in the case of Killol v. Shelat v. Municipal Corporation of City of Ahmedabad and Anr. reported in 2009 (1) GLH 13, which has been heavily relied upon by the learned Counsel appearing for the Appellant. This judgment has been relied upon in support of the contention that without affording opportunity of being heard, no order adverse to a person can be passed. Learned Counsel has relied upon paragraph 30 of this judgment, which is reproduced herein below:

It is by now well settled that without affording opportunity of being heard, no order adverse to a person can be passed. Principles of natural justice require that before taking action against the citizen, he must have a right to be heard. Such requirement of principles of natural justice can be abridged or even totally shut out. However, same can be done only by specific statutory provisions or by necessary implications. In other words, when the statute is silent, principles of natural justice can be read into it and unless a statutory provision specifically or by necessary implications dispenses with the principles of natural justice, hearing must be given before passing any adverse orders. In case of State Govt. Houseless Harijan Employees' Association v. State of Karnataka and Ors. reported in (2001) 1 SCC 610, the Apex Court observed that the requirements of natural justice will be read into statutory provisions unless excluded expressly or by necessary implication.

29. Relying on this principle of law which has been explained by the Division Bench, learned Counsel has submitted that consent of the owner is a must before the electric polls are erected for the transmission of electricity.

30. We have exhaustively dealt with this issue in the above referred paragraphs and we have explained as to why consent is not necessary. The paragraph which has been relied upon by the learned Counsel of the above referred judgment itself makes it clear that principles of natural justice can be read into a statute which is silent unless a statutory provision specifically or by necessary implications dispenses with the principles of natural justice. These observations are important.

31. As explained earlier that when the Electricity Board exercises power u/s 164 of the Electricity Act read with Section 10 of the Telegraphs Act, they are not acquiring any land, they are only making use of the land for the purpose of laying electric lines, for which, full compensation is given for the damage caused. It is clear the reform that no notice is required to the owner before laying the polls or constructing any tower, nor any consent is required from them.

32. It is also relevant to note that since Section 28 or 42 of the Electricity (Supply) Act, 1948 are not saved u/s 185 of the Electricity Act, 2003, there is no need to publish a sanctioned scheme nor it is necessary to give any notice by publication in local news papers as required u/s 29(2) of the Electricity (Supply) Act, 1948. In spite of the same, the notification dated 29-7-2010 was published in the Gujarat Government Gazette as well as local dailies inviting objections from the interested/aggrieved persons and no objections were received from anyone.

33. Madras High Court in the case of Venkatesan v. Chairman, Tamil Nadu Electricity Board, Madras, reported in AIR 1997 Madras 64, held in paragraph 19 of the judgment as under:

From the above settled position of law, it is clear that when the Electricity Board exercises power u/s 51 of the Electricity Act read with Section 10 of the Telegraphs Act, they are only making use of the land for the purpose of laying electric lines for which full compensation is given for the damage caused. It is also clear there from that no notice is required to the owner before laying the poles or constructing any tower, nor any consent is required from them.

34. Madhya Pradesh High Court in the case of Rajak and Others Vs. National Thermal Power Corporation Ltd., Indore and Another, observed in paragraph 15 as under:

In view of the power vested in the Generating Company NTPC u/s 42 of the Act read with Part III of the Indian Telegraph Act, there can be no valid objection by the Petitioners to the implementation of the sanctioned scheme either on the principles of natural justice or on the ground of unauthorized user of Petitioner's land in respect of which compensation has been provided for under proviso (d) to

Section 10 of the Indian Telegraph Act.

35. We may refer to one judgment rendered by the Karnataka High Court in this regard in the matter of S.M. Rao v. State of Karnataka, reported in AIR 1999 Karn 475. In paragraphs 17 and 20, the High Court observed as under:

17. The next contention is that Section 28 notification has not been duly published. As said earlier it is not an acquisition proceeding. The electrical line is being drawn for the supply of power to the consumers. It is sufficient to inform the public indicating the village through which the line is being drawn. As a matter of fact, the definite area on which the Tower etc., are to be placed can be known only after a spot inspection is made and viability is worked out. But I should certainly hasten to add, that if the Sy. Nos. in the village are also indicated, that will make the notification more precise. Such details will also inform the affected person to arrange his affairs. But, absence of these details are not fatal. When the line has to travel a long distance as in this case, non-mention of the Sy. Nos. is not certainly fatal. Many a time drawing of the line depends on the soil condition and other local situation as well. If that be so they cannot in advance contemplate as to through which property the line will have to be drawn. They need only say as to the village through which the line is being drawn. That has been complied in this case, and as such there is substantial compliance of the statute.

20. The other contention urged, namely that consent of the owners of the land through which the line travel was not secured by Respondents 4 and 5 before laying the poles and towers to draw the electric line recedes to background, when we remember that the line is being drawn in exercise of the powers conferred, under the Section 51 of the Electricity Act read with Sections 10 and 16 of the Telegraph Act. If there is an order in this behalf, then no consent is called for.

36. We may also refer one another judgment of this High Court rendered in Special Civil Application No. 2813/2010 and Special Civil Application No. 2814/2010 decided on 30th March 2010, wherein the learned Single Judge of this Court has held as under:

16 On an analysis of Section 67 and Section 164 of the Electricity Act, 2003, it is very obvious that whenever an order is passed by the appropriate Government in exercise of the powers u/s 164 of the Electricity Act, 2003 for placing of electric lines for the transmission of electricity, conferring upon any Public Officer, licensee or any other person engaged in the business of supplying electricity any of the powers which the telegraph authority possesses under the Indian Telegraph Act, 1885 with respect to the placing of telegraphic lines and posts for the purposes of a telegraph established by the Government, such public officer, licensee or any other person engaged in the business of supplying electricity stands in the same position as regards the exercise of power as the telegraph authority under the Indian Telegraph Act, 1885. It is, however, true that in

absence of such an order u/s 164 of the Electricity Act, 2003, if a licensee i.e. a person who has been granted a licence to transmit electricity or to distribute electricity under the Act, proposes to place electric lines, electric poles or other works necessary for transmission or supply of electricity, Section 67 of the Electricity Act, 2003 comes into operation and consequently it is mandatory to obtain the consent of the concerned owner or occupier. In the present case, Section 164 of the Electricity Act, 2003 has admittedly been invoked and in exercise of the powers conferred hereunder, the Government of India conferred on the Respondent No. 1 the powers which the telegraph authority possesses under the Indian Telegraph Act, 1885. Consequently, the Respondent No. 1, for the purpose of laying High Tension Power Lines through the lands of the Petitioners, is competent to exercise all the powers possessed by the telegraphic authority under the Indian Telegraph Act, 1885.

17 Section 10 of the Indian Telegraph Act, 1885 empowers the telegraph authorities to place and maintain the telegraph lines under, over, along or across and posts in or upon any immovable property. However, the said power shall not be exercised in respect of any property vested in or under the control or management of any local authority without the permission of that authority. The proviso (d) to Section 10 of the Indian Telegraph Act, 1885 further makes it clear that while exercising powers conferred under Section-10, the telegraph authority shall do as little damage as possible and when it has exercised those powers in respect of any property other than the property under the control or management of the local authority, shall pay full compensation to all the persons interested for any damage sustained by them by reason of exercise of the said powers. It is also important to take note of proviso (b) to Section 10 of the Indian Telegraph Act, 1885, under which, 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 lines or posts. Thus, it is apparent that the powers u/s 10 of the Indian Telegraph Act, 1885 can be exercised without acquiring the land in question and the only right that can be exercised is the right of user in the property and for the purposes mentioned in that Section.

18 The above discussion makes it abundantly clear that Section 164 of the Electricity Act, 2003 read with Section 10 of the Indian Telegraph Act, 1885 recognized the absolute power of the Respondent No. 1 to proceed with laying High Tension Electric Lines or electric posts for the transmission of electricity on or over the lands belonged to the Petitioners subject to the right of the Petitioners to claim compensation if any damage is sustained by them by reason of laying such High Tension Electric Lines, in other words, neither the acquisition of the lands is necessary nor there is any need for consent of the Petitioners.

37. The aforesaid discussion and the analysis of all the relevant provisions of the Act: Repeal as well as the Act of 2003, takes care of the first contention i.e. 3(a), and contention No. 3(c), which is almost interlinked.

38. We shall now deal with the contention as regards the omission of the name of the village and/or survey number where the land of the Appellant herein is situated, in the notice dated 29th July 2010.

39. It is apparent that the public notice dated 29th July 2010 has been issued not for one project but for almost 30 different projects/schemes proposed and planned to be undertaken by Respondent No. 2 Company for laying over headline in different areas in different cities/towns.

One of the entries in the said notice i.e. Entry at Serial No. 7 reads thus:

Erection of 66 KV Lilo line to proposed 66 KV Bilasiya Form 66 KV Barejadi-Vehlal line on D/C Tower with ACSR panther Conductor and establishment of 66 KV Bilasiya S/S-6.823 K.M.

Area around and between Villages Balda, Pedhor, Jhank, Ta. Dascroi, Dist. Ahmedabad.

422.00

40. Relying and reading name and brief particulars of the scheme as provided at Serial No. 7 and the area of work, the Appellant contends that there is no reference of the place where his land is situated.

41. In this context, it is pertinent to note that in view of the fact that in all entries in respect of all areas, the phrase used in the said notice is "area around and between....." and the names of all villages or any specific area or specific survey number through which the land is to be laid i.e. the area and survey number forming part of the route are not necessarily to be mentioned with all details in the notice.

42. Learned Single Judge has rightly held that the notice merely broadly describes the area through which the proposed overhead electricity line would be passing i.e. proposed route of the line would be passing.

43. We do not find any merit even in this contention.

44. Coming to the last contention to the effect that the Respondent Company does not fall within the purview of Section 164, and that, therefore, the State Government could not have issued the notification conferring power of Telegraph Authority on the Respondent Company is also without any merit. So far as this contention is concerned, the learned Single Judge has held as under:

18.7. The provision u/s 14 of the Act, inter alia, contemplates "licensee" in three categories viz. (a) transmission licensee (b) distribution licensee and (c) undertaking engaged in trading licensee. Whereas the provision u/s 39 of the Act deals with the functions of transmission utility and inter alia provides that the transmission utility shall not engage in the business of trading in electricity provided further that the State Government may transfer and vest any property, interest in property, rights and liabilities connected with, and personnel involved

in transmission of electricity, of such State Transmission Utility, to a company or companies to be incorporated under the Companies Act, 1956 (1 of 1956) to function as transmission licensee through a transfer scheme to be effected in the manner specified under Part XIII and such company or companies shall be deemed to be transmission licensees under this Act and Sub-section (2) of Section 39 provides that the functions of the State Transmission Utility shall be (a) to undertake transmission of electricity through intra State transmission system and (b) to discharge all functions of planning and coordination relating to the intrastate transmission system etc. Now even according to the Petitioner, the Respondent company is a "State Transmission Utility". Thus, there is no dispute on this count. Once that position is settled, immediately the provision u/s 14 and particularly the proviso of Section 14 would come into play. The proviso reads thus;

Provided further that the Central Transmission Utility or the State Transmission Utility shall be deemed to be a transmission licensee under this Act.

18.8. Thus proviso postulates that a transmission utility (which the Respondent Company is) shall be deemed to be a "transmission licensee.

45. We are in complete agreement with the reasoning's assigned by the learned Single Judge in this regard.

46. We would also like to state that it is a settled position of law that suitability of the land sought to be acquired or used for any public purpose is not to be adjudged by the Court in exercise of power under Article 226 of the Constitution of India. It is for the appropriate authority/Government to decide as to which particular land would be more suitable for the public purpose in question. In this connection, reference can be made to a decision of the Supreme Court in the case of State of Punjab and Another Vs. Gurdial Singh and Others, In paragraph 8 of the reported decision, the Hon'ble Supreme Court has, inter alia, observed as follows:

This power to select is left to the responsible discretion of Government under the Act, subject to Articles 14, 19 and 31 (then). The Court is handcuffed in this jurisdiction and cannot raise its hand against what it thinks is a foolish choice. Wisdom in administrative action is the property of the executive and judicial circumspection keeps the court lock-jawed save where power has been polluted by oblique ends or is otherwise void on well-established grounds. The constitutional balance cannot be upset.

47. Again in the case of Ramgir Uttamgir Goswami v. State of Gujarat, reported in 1988 (1) GLR 502, the Hon'ble Supreme Court has, in paragraph 7 of the reported decision, observed that the assessment of suitability of the land proposed to be acquired for the concerned public purpose is primarily for the authority to consider. Paragraph 7 of the judgment reads as under:

The next submission of Mr. Mehta was that the land acquisition authorities have

failed to consider what were the other lands available which could have been more conveniently acquired for the public purpose referred to earlier. It was pointed out by him that in the writ petition, the Appellant (Petitioner) has alleged that he could have pointed out certain other lands and open spaces where the twelve families rendered homeless by the floods of Tapti river could have been housed. With reference to these allegations, the Respondents in their counter-affidavit filed before the Gujarat High Court have rightly pointed out that the Appellants had not given any details regarding other more suitable lands available for acquisition and hence it was not open to him to make a grievance on that score. Moreover, in paragraph 29 of the counter affidavit, the Respondents have pointed out that the lands referred to by the Appellant in his petition were not suitable for housing the victims of the floods because they were low-lying lands and not suitable for residential purposes. The assessment of suitability of the land proposed to be acquired for the concerned public purpose is primarily for the Land Acquisition Officer to consider and no good reason has been shown to us which could warrant interference with his decision. Moreover, we are satisfied that the Appellant had not even given proper particulars of the other lands which, according to him, were available for acquisition and were more suitable for acquisition and hence he can make no grievance on the score of proper consideration not having been given to the question of acquiring of such lands.

48. We are of the view that it cannot be said that the land has been selected in breach of any of the constitutional provisions. It is not even argued or urged that any of the constitutional provisions have been violated in selecting the land of the ownership of the Appellants. Therefore, no case for interference with the decision of the statutory authorities in selecting the land is made out by the Appellants.

49. In the aforesaid view of the matter, the impugned action of the Respondents cannot be held to be arbitrary, illegal or contrary to the provisions of the Electricity Act, 2003 on any ground whatsoever. Section 164 of the Electricity Act, 2003 read with Section 10 of the Indian Telegraphs Act, 1885 recognized the absolute power of the Respondent Company to proceed with laying high tension electric lines or electric polls for the transmission of electricity on or over the lands belonging to the Appellant herein subject to the right of the Appellant to claim compensation if any damage is sustained by him by reason of laying such high tension electric lines. In other words, neither the acquisition of lands is necessary nor there is any need for consent of the Appellant. Hence, no mandamus can be issued restraining the Respondent Company from proceeding with their action of polls and transmission lines through the land of the appellant. However, this shall not preclude the appellant to claim compensation by working out the appropriate remedy as available under law in case any damage is sustained to his property.

50. We do not find any merit or any justifiable ground to entertain this Appeal

and, therefore, the Appeal is hereby dismissed with no order as to cost.

51. As the main Appeal has been ordered to be dismissed, no orders are passed on Civil Application. Civil Application stands disposed of accordingly.