
(2011) 09 AHC CK 0019

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 39173 of 2011

Jagir Lal and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-09-2011

Acts Referred:

Electricity Act, 1910 — Section 10, 12, 12, 13, 14
Electricity Act, 2003 — Section 164, 2(67)
Penal Code, 1860 (IPC) — Section 186, 188
Telegraph Act, 1885 — Section 10, 10(d), 10(d), 16, 16(1)

Citation : (2012) 6 ADJ 784

Hon'ble Judges : Bharati Sapru, J; Ashok Bhushan, J

Bench : Division Bench

Advocate : Manoj Misra and Vishal Tandon, for the Appellant; Sobhit Dubey, B.B. Jauhari and C.S.C., for the Respondent

Final Decision : Disposed Of

Judgement

1. Heard Sri Manoj Mishra, assisted by Sri Vishal Tandon for the petitioners. Sri Sobhit Dubey for respondents 2, 3 and 4, Sri B.B. Jauhari for respondent No. 6 and the learned Standing Counsel for respondents 1 and 5. Counter and rejoinder affidavits have been exchanged between the parties. With the consent of the learned counsel for the parties, the petition is being finally decided.

2. By this petition the petitioners have prayed for a mandamus commanding the respondents not to dig/energise the electric line from over the land/building of the petitioners on plot No. 608, village Bhedpur. Tehsil Sadar, Pargana Jamour, District Shahjahanpur and further to quash the notice dated 7.7.2011 issued by respondent No. 4. Mandamus has also been prayed commanding the respondent not to dig any electric line over the land/building of the petitioners without obtaining permission from the District Magistrate, Shahjahanpur and such permission should only be granted after giving full opportunity of hearing to the petitioners.

3. Brief facts of the case as emerged from pleadings of the parties are that the petitioners are recorded Bhumidhars of plot No. 608 situate in village Bhedpur, Post Rai Khera, Tehsil Sadan, Pargana Jamour, District Shahjhanpur. Respondent No. 6 is operating an Amonia-Urea production facility at Shahjhanpur. The power requirement of the company is met by captive power generation. Respondent No. 6 company having surplus power generation submitted its offer for sale of surplus electricity to U.P. Power Corporation Ltd. It made a request to U.P. Power Transmission Corporation Ltd, respondent No. 2 for grid connectivity for sale of surplus power through Open Access System. U.P. Power Transmission Corporation Ltd. agreed for grid connectivity with the condition that respondent No. 6 will construct transmission line from its generating plant to the injecting point on its cost after depositing the supervision charges. After approval by U.P. Power Corporation, the laying of the transmission line began under the supervision of respondent No. 2. The towers were located by the respondent No. 2. The petitioners' case in the writ petition is that earlier the electric transmission line was not passing over the field of the petitioners but certain deviation was made in the route and line was shifted so as to pass over the plot No. 608 of the petitioners. A notice dated 27.6.2011 was issued by respondent No. 6 to the petitioners alleging that after completion of tower Nos. 21 and 22, the petitioners with an intent to create obstruction in the line have got two rooms constructed beneath the line, which is against the Electricity Rules. Executive Engineer of Electricity Transmission Division also gave similar notice dated 5.7.2011 to the petitioners asking the petitioners to remove their constructions. The petitioners claim to have sent a reply on 8.7.2011. Asstt. Director, Electricity Safety, Govt. of U.P. also issued a notice dated 7.7.2011 to the petitioners alleging breach of Rule 82 of Indian Electricity Rules, 1956. Prescribed Authority Regulated Area/City Magistrate, Shahjanapur has also issued notice to the petitioners on 22.7.11 asking the petitioners to stop illegal constructions. Petitioners further case is that no consent was taken from them for laying transmission line over the petitioners' plot and the construction of two rooms were raised before the line was drawn. Petitioners further claim that they have raised objection vide their reply dated 8.7.2011 and the respondents ought not to have proceeded any further without obtaining permission from the District Magistrate, Shahjhanpur.

4. On the aforesaid facts, the writ petition has been filed for the reliefs as noted above.

5. Sri Manoj Mishra, learned counsel for the petitioners in support of the writ petition contended that respondent No. 2 under whose supervision the transmission line is being laid is exercising power of Sections 10 and 16 of the Indian Telegraph Act, 1885 and in view of the fact that the petitioners have resisted laying of the transmission line, the permission of the District Magistrate ought to have been obtained by the respondents. It is submitted that the petitioners have never consented for laying the line hence without permission of the District Magistrate, the transmission line could not be laid down. He further

submits that in accordance with rule 3 of Works of Licensees Rules, 2006 framed under Electricity Act, 2003 since the petitioners who are the owner of the plot had raised objections, it was obligatory for the licensee to have obtained permission in writing from the District Magistrate for carrying out the work. Reliance has been placed on a Full Bench Decision of Kerala High Court, in Bharat Plywood and Timber Products Private Ltd. Vs. Kerala State Electricity Board Trivandrum and Others, ; Sh. Surat Singh v. Municipal Corporation of Delhi, AIR 1989 Del 51 and Thirthesh A.S. Vs. Under Secretary to the Government of Karnataka, Department of Power Corporation and Others, and further on the judgments of Division Bench of this Court in Prem Pal Vs. State of U.P. and Others, .

6. Sri B.B. Jauhari, learned counsel appearing for the respondent No. 6 refuting the submissions of the learned counsel for the petitioners contends that there is no requirement of obtaining any consent from the petitioners before laying the transmission line. Respondent No. 6 is not a licensee, hence Rules 2006 are not applicable. It is submitted that respondent No. 2 U.P. Power Transmission Corporation Ltd. is a State Transmission Utility as defined u/s 2(67) of Electricity Act, 2003. It is submitted that the petitioners never raised any objection regarding laying of the line and the objections were raised when the officials of the respondents were inspecting the spot on 18/6/11. Notice was issued to the petitioners on 7.7.2011 by respondent No. 4. It is stated that towers were already laid and the line drawn much before 18.6.2011 and at no point of time any protest was made by the petitioners prior to 7.7.2011. It is stated that no towers are in the filed of the petitioners and the plot in question is a brick kiln and only from one corner of plot the transmission line is going on and it was only after transmission line was drawn that the petitioners started making construction of two rooms beneath the transmission line. It is submitted that U.P. State Electricity Board was conferred with the power under Indian Telegraph Act, 1885 by notification issued on 31.5.1961 and the respondent No. 2 is fully empowered to exercise the power under the Telegraph Act. It is submitted that Licensees Rules, 2006 are not applicable since the power has been conferred on the respondent u/s 164 of Electricity Act, 2003 and according to the Licensees Rules, 2006, rule 3 is not applicable when the power is conferred u/s 164 of the Electricity Act, 2003. Furthermore, the respondent No. 6 not being the licensee, the Works of Licensees" Rules 2006 is not applicable. It is submitted that the petitioners having never protested, there was no occasion to approach the District Magistrate and the petitioners, if have suffered any loss, it is open for them to claim compensation in accordance with law. Reliance has been placed by counsel for the respondent on Division Bench judgment of this Court in Deva Raj Vs. U.P. State Electricity Board, Lucknow and Others, ; Mahabeer and others Vs. State of U.P. and others, ; judgment of this Court in writ petition No. 14712 of 07, Brij Raj v. U.P. Power Croproatation and others, decided on 19.3.2007 and in Prem Pal Vs. State of U.P. and Others, .

7. Sri Sobhit Dubey learned counsel appearing for the respondents 2, 3 and 4

refuting the submissions of the learned counsel for the petitioners, contends that there is no requirement of obtaining any prior permission from the petitioners for laying down the transmission line. The plan of transmission line which is being laid under the supervision of Executive Engineer, Electricity Transmission Division, Shahjahanpur has been duly approved and in plot No. 608, there is a pit due to earth being dug out for purpose of brick kiln and no tower is placed in the petitioners land. It is stated that no objection was ever raised by the petitioners with respect to the laying down of the line and it was only when notice was issued on 5.7.2011 by the Asstt. Director, Electrical Safety, a reply was sent. The power being exercised by the U.P. Power Transmission Corporation Ltd. u/s 164 of the Electricity Act, 2003, no construction was thereon on the plot in question and it is only after the line was drawn, the rooms were sought to be constructed by the petitioners. Reliance has been placed by the learned counsel on the judgments of Deoraj (supra); Division Bench judgment in Ghan Shyam Singh Rana v. Executive Engineer, U.P. Power Corporation Ltd and others; Division Bench judgment in writ petition No. 18972 of 2007, Balveer Singh and others v. State of U.P. and others, decided on 16.4.2007; judgment of Calcutta High Court in and on judgment of Division Bench of this Court in writ petition No. 11771 of 2011, Dharam Kishore Lal v State of U.P. and others, decided on 3.3.11 and the judgment of the Calcutta High Court in Ashis Kumar Ghosh and Others Vs. CESC Ltd. and Another, .

8. We have considered the submissions of the learned counsel for the parties and have perused the record.

9. The principal contention of the petitioners' counsel is that no consent having been given by the petitioners for laying the transmission line, it was obligatory for the respondents to have obtained permission from the District Magistrate for the same. Learned counsel for the petitioners contended that since the respondents are exercising the power under Sections 10 and 16 of the Telegraph Act, 1885, which provision itself oblige the respondents to obtain the consent of the District Magistrate and they having not obtained the same, their action is contrary to the statutory provision. The provisions of Indian Telegraph Act, 1885, which are relevant in the present case are Sections 10 (d) and 16, which are quoted below :

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

(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.

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 9 (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 their being exercised, he shall be deemed to have committed an offence u/s 188 of the Indian Penal Code.

(3) If any dispute arises concerning the sufficiency of the compensation to be paid u/s 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.

10. The provision which has been relied upon by the petitioners and which fell for consideration is Section 16 sub-section (1) referred to above. Section 16 sub-section (1) provides that if the exercise of the powers mentioned in Section 10 in respect of property referred to in clause (d) is resisted or obstructed, the District Magistrate may, in his discretion, order that telegraph authority shall be permitted to exercise them. Submission of the petitioners is that since petitioners have resisted the laying of the transmission line, it was obligatory for the respondents to have obtained permission from the District Magistrate.

11. Section 16 sub-section (1) fell for consideration before the Full Bench of Kerala in *Bharat Ply Wood and Timber Products Put. Ltd. (supra)*. Paragraph 23 which is relevant is quoted as follows :

It is clear from the wording of Section 16 and particularly from the expression "the District Magistrate may, in his discretion", that an order will not be forthcoming automatically. A District Magistrate may in his discretion in a given case refuse or decline to pass an order that the telegraph authority shall be

permitted to exercise the powers. The wording is significant. The District Magistrate does not grant permission to the authority. But he orders that the authority "shall be permitted." The discretion conferred by the section on the District Magistrate is certainly a judicial discretion, and, in cases where the District Magistrate refuses to pass an order that the telegraph authority shall be permitted to exercise the powers mentioned in Section 10 it is inconceivable that the telegraph authority may notwithstanding such refusal, continue to exercise such powers. The wording of the section is thus itself indicative of the fact that in cases of resistance or obstruction the District Magistrate will have to decide whether the authority should be permitted or not to exercise the powers u/s 16 of the Telegraph Act. This necessarily means that the telegraph authority cannot override or ignore the resistance or obstruction and continue to exercise the powers u/s 10 notwithstanding such resistance or obstruction. It follows that, when an owner or occupier resists or obstructs the exercise of the power u/s 10, the telegraph authority will have to approach the District Magistrate for an order under sub-section (1) of Section 16 and can exercise the power u/s 10 only in cases where the District Magistrate deems it fit to pass an order that he shall be permitted to do so. The power conferred by Section 10 is thus a conditional power; conditional on an order being passed u/s 16 (1) by the District Magistrate that the authority may be permitted, in case of resistance or obstruction, to exercise the power. This is so not only in regard to a telegraph authority but to the public officer or any other person authorised under the Electricity Act.

We are fortified in this view by what is provided by sub-section (2) of Section 16. If the telegraph authority has the power, notwithstanding the resistance or obstruction, to exercise the powers u/s 10 the resistance or obstruction by the owner or occupier, we conceive, would be an offence u/s 186 of the Indian Penal Code. That section makes voluntary obstruction to any public servant in the discharge of his public functions an offence, and such an offence is punishable with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with, both.

Sub-section (2) of Section 16 provides that if after the making of an order under sub-section (1), any person resists the exercise of the powers u/s 10 or does not give all facilities for their being exercised, he shall be deemed to have committed an offence u/s 188 of the Indian Penal Code. Section 188 of the Indian Penal Code makes disobedience to an order duly promulgated by a public servant an offence. This offence, as long as it does not cause or tend to cause danger to human life, health or safety, or cause or tend to cause a riot or affray, is punishable with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both. We notice that sub-section (2) of Section 16 has a positive as well as a negative aspect; the former being the duty on the part of the person having control over the property to give all facilities for the exercise of the power u/s 10 and the latter not to resist the exercise of such power. Nevertheless, it is clear that only resistance after an order has been passed under sub-section (1) of Section 16

that is deemed to be an offence u/s 188 of the Indian Penal Code. This necessarily implies that any resistance to the telegraph authority in the exercise of powers u/s 10 before an order u/s 16 (1) has been passed by the District Magistrate, is not an offence. The provision in sub-section (2) of Section 16 would become meaningless and absurd if even the initial resistance or obstruction is already an offence u/s 186 of the Indian Penal Code and punishable with a sentence more stringent than that which can be imposed u/s 188. We have, therefore, necessarily to understand the statute as enabling an owner or occupier or a person having control over the property over which a line is sought to be placed as having the right to resist or obstruct. When the telegraph authority is so resisted or obstructed, the District Magistrate can be approached. If he is approached, the District Magistrate would decide whether the authority should be permitted to exercise the powers. When the District Magistrate decides that he should be so permitted resistance thereafter is made an offence. And there is an obligation cast upon the owner or occupier to render all facilities for the exercise of that power. The sections (sub-sections (1) and (2) of Section 16) can only be understood in this manner. In short Sections 10 and 16 have to be read together, and when there is resistance or obstruction, the power u/s 10 can be exercised only when the District Magistrate passes an order u/s 16(1) that he shall be permitted to exercise them.

12. To the same effect is the judgment of the Division Bench of Karnataka High Court in Thirthesh A.S. (supra), following was laid down in paragraph 3 :

Having heard learned counsel for the appellant, the learned Government Advocate, who accepted notice for respondents 1 and 2 and Sri N.K. Gupta, learned counsel for respondents 3 and 4, we are of the view that in the light of the Full Bench decision of the Kerala High Court in Bharat Plywood and Timber Products Private Ltd. Vs. Kerala State Electricity Board Trivandrum and Others, and Mammoo Vs. State of Kerala and Another, , the representations Annexures "G" & "H" are liable to be treated as resistance or obstruction by the appellant for the purpose of Section 16(1) of the Indian Telegraph Act, 1885. Therefore, respondents 3 and 4 were bound to refer the matter to the District Magistrate u/s 16(1) of the said Act instead of waiting for the appellant to physically obstruct the fixing of the transmission lines and to commit an offence u/s 186 of the IPC. We are also of the view that this Court's decisions in Nagaraju v. Mahalingappa, ILR 1990 Kar 1515 and A. T. Thippeswamy v. Karnataka Electricity Board, ILR 1990 Kar 1038, do not stand in the way of treating the appellant's representation as his resistance or obstruction for the purpose of Section 16 of the Indian Telegraph Act. Before passing an order u/s 16(1), the District Magistrate has necessarily to issue notice to all persons interested and give them an opportunity to state their objections, if any. Without giving such an opportunity the District Magistrate will not have any material, at any rate, adequate material to decide whether he should pass an order that the authorities shall be permitted to draw the line.

13. In Prem Pal's case (supra), the Division Bench had also an occasion to consider Section 16 and the Licensee Rules, 2006. Paragraph 8 of the judgment is quoted below:

A conjoint reading of these Rules would, therefore, show that a licensee can enter upon a land including private land for carrying out the work as a licensee. If the licensee enters upon the land and the owner or occupier raises objections, the licensee must obtain permission, in writing, from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government. The District Magistrate or the Commissioner of Police or the other officer so authorised, then has to fix, after considering the representations, the amount of compensation or annual rent, or both, which has to be paid to the owner or occupier. Rule 13 of the Licensees Rules, provides that if there be a default by a licensee, then he is bound to make full compensation for any loss or damage incurred by reason thereof to the person affected, as may be determined by the District Magistrate or by any other officer as may be authorised by the State Government, and if there be a dispute or difference in respect of compensation determined under Rule 13(1), the dispute shall be decided by the Commission in terms of Rule 15 of said Rules. This seems to be a scheme of things under the Licensees Rules.

The judgment of the Division Bench in Deoraj's case (supra) relied upon by the counsel for the respondents, was also a case where Section 10(d) of the Indian Telegraph Act fell for consideration. The argument that U.P. State Electricity Board had no jurisdiction to lay tower in the land of tenure holder was negated. It was held that owner had right to obtain compensation. It is useful to quote the following observations from paragraph 8 of the judgment:

Learned counsel for the State Electricity Board has, however, contended that Section 12 of the 1910 Act read with Section 26 of the 1948 Act had no application to the present case because by reason of the conferment of powers by the State Government on the State Electricity Board u/s 51 of the 1910 Act, the State Electricity Board acquired the right to construct the tower at the spot chosen by it even though the appellant may not consent thereto. It was contended further that by reason of Section 51 of the 1910 Act and the no notification issued u/s 28 of the 1948 Act, Section 10 of the Telegraph Act was clearly attracted and the appellant was entitled to obtain compensation for damage caused to him or loss suffered by him because of the construction, of the tower upon his land. There is in our opinion, force in this contention. Section 51 of the 1910 Act is in the following terms :

51. Exercise in certain cases of powers of telegraph authority.--Notwithstanding anything in Sections 12 to 16 (both inclusive) and Sections 18 and 19 the State Government may, by order in writing, for the placing of electric supply lines, appliances, and apparatus for the transmission of energy or for the purpose of telephonic or telegraphic communications necessary for the proper coordination of works, confer upon any public officer licensee, or any other person engaged in

the business of supplying energy to the public under this Act, subject to such conditions and restrictions (if any) as the State Government may think fit to impose, and to the provisions of the Indian Telegraph Act, 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.

There is on record the notification dated 31st May, 1961 issued by the State Government which runs as follows :

In exercise of the powers conferred by Section 51 of the Indian Electricity Act, 1910 (Act No. 9 of 1910), the Governor of Uttar Pradesh is pleased to confer, subject to the provisions of the Indian Telegraph Act, 1885, upon the Uttar Pradesh State Electricity Board, for the placing of electric supply line, appliances and apparatus for the transmission of energy the power which the telegraph authority possesses under the Indian Telegraph Act, 1885, with respect to the placing of telegraph lines and posts for the purposes of telegraph established or maintained by it.

The telegraph authorities possess powers with respect to placing of telegraph lines and posts for the purposes of telegraph established or maintained by it u/s 10 of the Telegraph Act. According to Section 10 of the Telegraph Act, "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 immoveable property; provided that--

(a).....

(b).....

(c).....

(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.

By virtue of the notification issued u/s 51 of the 1910 Act, the words "Telegraph authority" in Section 10 of the Telegraph Act will be substituted by the "State Electricity Board". In view of the notification u/s 51 of the Act of 1910 read with Section 10 of the Telegraph Act, it is thus not possible to contend that the State Electricity Board had no power to locate towers on the appellant's land. The only rights he has left now is to obtain compensation under the notification referred to above read with Section 10(d) of the Telegraph Act. Neither Section 51 of the 1910 Act nor Section 10 of the Telegraph Act provided any procedure under which compensation shall be determined. It is thus not necessary for the appellant to have made any formal application for determination of compensation

for loss, if any, suffered by him on account of the action of the respondents. Learned counsel for the State Electricity Board concedes, and in fact it has also been stated in one of the affidavits filed on behalf of one of the respondents, that the appellant has a right to obtain compensation for loss, if any, he has suffered. There is a duty, in our opinion, cast on the State Electricity Board to decide the compensation payable to the appellant for the loss suffered by him. We consequently have no reason to suspect that the respondents will not invite the appellant to put forward a claim for compensation for the loss which might have been suffered by him and to determine the compensation payable within a reasonable time.

14. The Division Bench judgment in Ghanshyam Singh Rana (supra) was also a case where it was held that land owners were entitled for compensation and following was laid down in paragraph 5.

A notification has already been issued on 31.5.1985 under this section applying the provisions of Indian Telegraph Act, 1885 (the Telegraph Act). A Division Bench of this Court in Deva Raj Vs. U.P. State Electricity Board, Lucknow and Others, , after considering these provisions held that the only right with a person is to claim compensation and he cannot object to the laying down of electricity poles. This decision has also been followed by a decision in E. Venkatesan and others Vs. Chairman, Tamil Nadu Electricity Board, Madras and others, . The old Act has been repealed by the Indian Electricity Act, 2003 (the new Act). It has similar provisions. It also provides that the notification already made shall be deemed to have been made under corresponding provisions of the New Act. In view of this, the petitioners cannot object to the laying down of the poles but can only claim compensation. The judgments in Brij Raj and Balveer Singh (Supra) are also to the same effect.

15. From the aforesaid judgments it is clear that all the Division Bench judgments of this Court have laid down that land owners on whose land electric line is drawn, is entitled to claim compensation.

There is no specific discussion of Section 16 sub-section (1) nor any such proposition has been laid down that even though laying down of line is obstructed, no permission of the District Magistrate is required. Section 16 sub-section (1) provides for consequences on exercise of power u/s 10. The provision contemplates if the exercise of power, i.e. the power of telegraph authority to place a telegraph line and post is resisted or obstructed, the District Magistrate in his discretion order that telegraph authority shall be permitted to exercise them. The powers conferred to the District Magistrate to exercise discretion in cases where laying of line is obstructed, is for a purpose and object. The object is that whenever a dispute arises between the telegraph authority and owner of the property on whose land line is to be laid down, the District Magistrate is to consider the facts of a particular case and then in his discretion, decide as to whether laying of line should be permitted or not. In the above, it is implicit that in a given case the District Magistrate may permit laying of the line or may

refused to permit the same. The power has been conferred with an object that the District authority may adjudicate and decide any such issue raised on such obstruction or resistance.

16. From the provisions of Sections 10 and 16 of the Telegraph Act and the provisions of U.P. Electricity Act, 2003, it is clear that there is no requirement of obtaining any permission from the owner of the property for laying down the transmission line. The only protection which has been given to the owner is one as contemplated u/s 16 sub-section (1) where the District Magistrate has been conferred with the power to take a decision in his discretion as to whether telegraph line be permitted to lay down or not. The District Magistrate can exercise that power either suo moto or on a request made by either the telegraph authority or by the owner of the land. There is no dispute that whenever telegraph line is laid down on a property of a person, he is entitled to claim compensation from the authority and in the event he is not satisfied with the amount of compensation, he is entitled to make an application to the District Judge as per Section 16 (3) of the Telegraph Act.

17. Now coming to the facts of the present case, there is no material on the record to come to a conclusion that the petitioners had at any point of time prior to June, 2011 raised any objection in laying down of the transmission line. They submitted a written reply only on 8.7.2011 when the notice was given to them. From the photographs which have been brought on record by the petitioners, as Annexure 3 to the writ petition, it is clear that poles have already been erected and lines have been drawn. It has been stated by learned counsel for the parties that lines have not yet been energised. Thus in the facts of the present case, lines have already been laid. However when Section 16 sub-section (1) provides for a remedy to an aggrieved person, it is open to an owner of land from whose property a line is being drawn, to represent the matter before the District Magistrate. In the present case, as stated above, the line has not yet been energised. It is just and proper that the petitioners be given liberty to represent the matter before the District Magistrate.

18. In view of the foregoing discussions and in view of ratio laid down in the judgments of this Court as noted above, as well as the judgments of Karnataka High Court and in Kerala High Court, following conclusions are irresistible.

1. There is no requirement of obtaining any consent of owner before laying a transmission line by an authority exercising power u/s 164 of the Electricity Act, 2003.

2. When owner of the property from where the transmission line is to be drawn obstructs or resists laying down of a line, it is open both for the owner as well as to the authority to approach the District Magistrate for appropriate orders and the District Magistrate in his discretion may permit the laying of the line or refuse such permission.

3. The owner from whose line the electric line is drawn, is entitled for

compensation from the authority and in the event he is dissatisfied with the amount of compensation, his remedy is to make an application before the District Judge u/s 16 subsection (3).

In view of what has been stated above, we are of the view that the petitioners be given liberty to submit representation before the District Magistrate, Shahjahanpur raising their grievances, which may be considered and appropriate decision be taken by the District Magistrate after giving opportunity to the respondents as well. The said decision shall be taken expeditiously, preferably within four weeks from the date a copy of this order is produced before him.

Writ petition is accordingly disposed of.