
(2016) 03 MAD CK 0133

In the Madras High Court

Case No : Writ Petition No. 7685 of 2016 and W.M.P. Nos. 6893 and 6894 of 2016.

K. Natarajan

APPELLANT

Vs

The District Collector, Dharmapuri District, Dharmapuri

RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:

Citation : (2016) 3 MLJ 885

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : V. Sanjeevi, Advocate, for the Appellant; R.M. Muthukumar Government Advocate and Jayesh B. Dolia, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

T.S. Sivagnanam, J. - The petitioner has filed this Writ Petition, challenging the order passed by the first respondent/District Collector, dated 31.12.2015, by which, the District Collector rejected the petitioner's objection for the erection of the Transmission Tower by the second respondent.

2. Heard the learned counsel appearing for the parties.

3. When the case was heard on 02.03.2016, the parties reconciled to the fact that there is no prima facie error in the order passed by the District Collector, as it is a reasoned order after hearing the arguments of both sides. At that juncture, the petitioner expressed his grievance that compensation, which has been paid to him, is paltry amount, and the petitioner was not informed as to the valuation adopted for the superstructure, which was standing on the property, and respondents have not followed the guidelines issued by the Government of India, Ministry of Power, New Delhi, for payment of compensation to the damages in regard to the right of way (row) for transmission lines. Considering the said submission, this Court passed the following order:-

"Heard Mr. V. Sanjeevi, learned counsel appearing for the petitioner, Mr. R.M.

Muthukumar, learned Additional Government Pleader accepting notice for the first respondent and Mr. Jayesh B. Dolia, accepting notice for the second respondent.

2. Though the petitioner has filed this Writ Petition challenging the order passed by the District Collector, regarding the location of the tower by the second respondent, after hearing the arguments of the learned counsel for the petitioner, this Court observed that the order passed by the District Collector is a detailed order, after inspection and notice to the petitioner and there is no prima facie error in the order.

3. The petitioner is convinced with the same, however, his grievance is that the compensation has not been properly computed and a sum of Rs. 7,17,907/- has been determined as compensation only for the building.

4. The learned counsel for the petitioner refers to the notification/guidelines issued by the Government of India, Ministry of Power for payment of compensation towards damages in regard to Right of Way for transmission lines. It is pointed out that the compensation of 85% of land value as determined by the District Magistrate or any other authority based on Circle rate/Guideline rate/Guideline value/Stamp Act rates for tower base area (between four legs) impacted severely due to installation of tower/pylon structure, has to be taken note of. Further, it is stated that compensation towards diminution of land value in the width of Right of Way etc., also have to be taken into consideration.

5. In this regard, there will be a direction to the respondents to file counter. It is made clear that the respondents are entitled to proceed with the erection of tower and the challenge to the impugned proceedings fails and the impugned order is upheld and the Writ Petition is confined only to the claim for compensation made by the petitioner.

6. Since the second respondent has already computed a sum of Rs. 7,17,907/- towards the compensation for the building, without prejudice to the petitioner's right, the petitioner is entitled to receive the same and the second respondent is directed to effect payment by next hearing date i.e., on 29.03.2016. "

4. Today, when the matter is heard, the learned counsel appearing for the petitioner submitted that the petitioner agreed to handover possession of the land to the second respondent, and the land has been taken over, building has been demolished, and the work towards erection of the transmission tower is in progress. Thus, this leaves us with the only issue as to whether the petitioner has been adequately compensated for taking over his land.

5. The petitioner would contend that the amount of compensation, computed by the second respondent at Rs. 7,17,907/- is ridiculously low, and the petitioner has not been furnished with the method of calculation, based on which, building valuation has been arrived at. Above all, it is contended that the compensation determined, and paid to the petitioner, accepted by him under protest, is without adhering to the guidelines notified for payment of compensation towards the

damages in regard to the right of way for transmission lines. The petitioner would state that there are guidelines notified by the Government of India, by order, dated 15.10.2015, and at this stage, it would be beneficial to refer to the operative portion of the guidelines, which reads as follows:-

" No. 3/7/2015-Trans

Government of India

Ministry of Power

Shram Shakti Bhawan

Rafi Marg, New Delhi - 110 001

Dated 15.10.2015

To

- (1) Chief Secretaries/Administrators of all ` the States/UTs (As per list attached)
- 2 Chairperson, CEA, New Delhi, with the request to disseminate the above guidelines to all the stakeholders.
3. CMD, PGCIL, Gurgaon.
4. CEO, POSOCO, New Delhi.
5. Secretary, CERC, New Delhi.
6. CMD of State Power Utilities/SEBs.

Subject : Guidelines for payment of compensation towards damages in regard to Right of Way for Transmission lines.

During the Power Ministers Conference held on April, 9-10, 2015, at Guwahati with States/UTs, it has, inter alia, been decided to constitute a Committee under the chair ship of Special Secretary, Ministry of Power to analyze the issues related Right of Way for laying of transmission lines in the country and to suggest a uniform methodology for payment of compensation on this count.

Subsequently, this Ministry had constituted a Committee with representatives from various State Governments and others. The Committee held several meetings to obtain the views of the State Governments on the issue and submitted its report along with the recommendations (copy of the Report is at Annex- 1)

(2) The recommendations made by the Committee are hereby formulated in the form of following guidelines for determining the compensation towards damages as stipulated in sections 67 and 68 of the Electricity Act, 2003 read with Sections 10 and 16 of Indian Telegraph Act, 1885, which will be in addition to the compensation towards normal crop and tree damages. This amount will be payable only for transmission lines supported by a tower base of 66 KV and

above, and not for sub transmission and distribution lines below 66 KV:-

(i) Compensation @ 85 % of land value as determined by District Magistrate or any other authority based on Circle rate/Guideline Value/Stamp Act rates for tower base area (between four legs) impacted severely due to installation of tower/pay lone structure.

(ii) Compensation towards diminution of land value in the width of right of way (ROW) Corridor due to laying of transmission line and imposing certain restriction would be decided by the States as per categorization/type of land in different places of States, subject to a maximum of 15% of land value as determined based on circle rate/guidelines value/stamp Act rates.

(iii) In areas, where the landowner/owners have been offered/accepted alternate mode of compensation by concerned corporation/Municipality under Transfer Development Rights (TDR) Policy of State, the licensee/Utility shall deposit compensation amount as per (i) and (ii) above with the concerned Corporation/Municipality/Local Body or the State Government.

(iv) For this purpose, the width of ROW corridor shall not be more than that prescribed in the table at Annex-2 and shall not be less than the width directly below the conductors.

(3) Necessary action may kindly be taken accordingly. These guidelines may not only facilitate an early resolution of ROW issues and also facilitate completion of the vital transmission lines through active support of State/UT administration.

(4) All the States/UTs etc., are requested to take suitable decision regarding adoption of the guidelines considering that acquisition of land is a State subject."

6. Thus, in terms of the above guidelines, compensation at 85% of land value, has to be determined by the District Collector or District Magistrate, based on Circle rate/Guideline Value/Stamp Act rates for tower base area (between four legs) impacted severely due to installation of tower/pay lone structure. Further, the compensation towards diminution of land value in the width of right of way (ROW) corridor due to laying of transmission lines and imposing certain restriction, would be decided by the States, as per categorization/type of land in different places of States, subject to a maximum of 15% of land value, as determined based on circle rate/guidelines value/stamp Act rates.

7. Therefore, the submission of the learned counsel appearing for the petitioner is that, compensation ought to have been determined in terms of the aforesaid guidelines notified by the Government of India, dated 15.10.2015.

8. The second respondent has filed a counter affidavit, justifying their action, which need not be gone into at this stage, since already the work towards the erection of transmission tower is in progress. All that has to be seen is as to the stand taken by the second respondent is with regard to the effect of the guidelines issued by the Government of India, dated 15.10.2015. To find this

aspect, it would be suffice to refer to para Nos. 14 and 15 of the counter affidavit, wherein, the second respondent has accepted that they would pay the compensation in terms of the guidelines on determination of the same by the District Magistrate/District Collector, however, they seek to restrict only to para 2 (i) of the said guidelines.

While the second respondent accepts that they are bound by the above said guidelines, they cannot restrict it by stating that the claim should be made by the petitioner only in terms of para 2 (i) of the guidelines. The petitioner, being the land owner, it is well open to him to invoke all provisions, which according to him, are applicable to the land in question and make a claim for compensation before the District Collector/first respondent.

9. Further, it has to be pointed out that, so far as the award of compensation mentioned in the impugned order, the District Collector in the penultimate para, has made vague observation, stating that the petitioner is entitled to proper compensation. Therefore, to that extent, the order passed by the District Collector is held to be not tenable, as it is inconsistent with regard to the manner in which the compensation has to be determined as per the guidelines framed by the Government of India. Accordingly, while upholding the order passed by the District Collector to the aforesaid extent, there will be a direction to the petitioner to submit his claim statement before the first respondent/District Collector, in accordance with the guidelines framed by the Government of India, dated 15.10.2015, along with a copy of this order, clearly setting out as to what is the basis of his claim, and the petitioner is entitled to invoke all the clauses under the guidelines. On receipt of such claim statement, the first respondent shall issue notice to the second respondent, and after affording an opportunity to file their reply/counter, and thereafter, shall issue notice to the petitioner and the second respondent, fixing a date for hearing the parties in person, direct the second respondent to produce all documents, including the building valuation report, and after perusing all the documents, hear the parties in full, and pass a reasoned order, by strictly adhering to the guidelines prescribed by the Government of India. The first respondent is directed to give the second respondent, three weeks" time to file reply/counter, and after receipt of the claim statement from the petitioner and after reply/counter affidavit is received from the second respondent, after serving a copy of the same to the petitioner in advance, the first respondent shall fix a date of hearing within a period of 10 days thereafter, and after hearing all the parties in full, shall pass appropriate orders within two months from the date on which hearing is concluded.

10. In the result, the Writ Petition is disposed of on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.