(2014) 06 MAD CK 0160

In the Madras High Court

Case No : Writ Petition No. 9811 of 2013

K. Savithri APPELLANT

Vs

Superintending Engineer RESPONDENT

Date of Decision : 10-06-2014

Acts Referred:

Electricity Act, 2003 — Section 42
Telegraph Act, 1885 — Section 10, 10(d), 11, 12, 12

Citation : (2014) 8 MLJ 88

Hon'ble Judges : S. Vaidyanathan, J

Bench : Single Bench

Judgement

S. Vaidyanathan, J.—The petitioner has come forward with the present writ petition seeking to call for the records relating to the Letter

dated 02.01.2013 issued by the 2nd respondent vide., No. Vu. Po./E.Pe/SAM/ KO.DCW/No. 419/2012, and to quash the same and

consequently, to direct the respondents to shift the electric transformer from the petitioner''s land comprised in New S. No. 73/11C, Pottaneri

Nalla Goundanpatti Village, Mettur Taluk, Salem District, without insisting shifting cost. The case of the petitioner is that she is the owner of the

land in Old S. No. 73/4D1B (New S. No. 73/11C), situated in Pottaneri Nalla Goundanpatti Village, Mettur Taluk, Salem District, to the extent

of 12 cents. She purchased the said property by registered sale deed dated 10.05.2010. According to the petitioner, the Electricity Board has

erected Electric Transformer in the said land, before her purchase, and the Electricity Board did not get any consent from her vendor and did not

pay any compensation to her vendor; erecting Electric Transformer without getting any consent from the land owner and without paying any compensation, is not correct, and since she has purchased the said property, the Electricity Board will have to shift the Electric Transformer from

the petitioner''s land to the some other place.

2. The petitioner had also agreed to pay the reasonable charge for shifting the transformer and she has made necessary application to the Electricity

Board for shifting the Transformer. The Electricity Board vide its reply dated 02.01.2013 informed the petitioner that she has to pay a sum of Rs.

1,73,350/- within seven days, towards the cost of shifting the transformer from her land to some other place, failing which permission granted for

shifting the transformer would be cancelled. Hence, the petitioner caused a legal notice to the Electricity Board. Since the action of the Electricity

Board is illegal and contrary to the provisions of the Indian Telegraph Act and Indian Electricity Act, the petitioner has approached this Court by

way of filing the present writ petition, contending that when there is no consent either from the erstwhile owner or from the petitioner, installation of

the transformer within the premises of the petitioner is illegal.

3. Per contra, the learned counsel appearing for the respondents-Electricity Board submitted that consent of the erstwhile owner was taken, but

the same was verbally given and there was no evidence to the effect that the consent was given in writing. Further, the Electric Transformer was

erected as early as on 09.11.1989 and at no point of time, the erstwhile owner had objected to it and since it was beneficial to the erstwhile owner

and other persons, he kept quite and allowed the erection of transformer in that place. Since the transformer has been in existence there for more

than 11 years, the petitioner''s contention that no consent was taken from the erstwhile owner for erecting the transformer is incorrect. He further

contended that as per the Electricity Board Laws, for shifting the transformer, amount has got to be paid by the consumer and the Electricity Board

has right to demand the aforesaid amount. In case, the amount is not paid within the stipulated time, the permission granted for shifting the

transformer would be cancelled, which is fully justified by the Electricity Board Laws. Since the Transformer was erected with the consent of the

erstwhile owner of the land, the question of payment of compensation does not arise in this case.

4. The learned counsel for the Electricity Board has further submitted that for the

entire area in Pottaneri Nalla Goundampatti Village, the electricity

is being supplied with the help of the present transformer, which is in existence in the petitioner''s land. When the petitioner demands that it should

be shifted, she will have to pay the shifting charges, and as a matter of right, the petitioner cannot demand for shifting. Nearly after 25 years, the

petitioner is seeking for shifting of the transformer and the property was purchased by the petitioner only after 20 years of the erection of the

transformer. The petitioner has stepped into the shoes of the erstwhile owner. The verbal consent given by the erstwhile owner will bind the new

purchaser viz., the petitioner herein and the petitioner cannot, as a matter of right, seek for shifting of transformer without paying necessary charges.

5. Heard the rival submissions made on either side.

6. It is relevant to refer the following provisions of law, relied upon by the learned counsel for the Electricity Board.

Clause 5(6) of the Tamil Nadu Electricity Supply Code, 2004, reads as follows:

5. Miscellaneous Charges - (1)........(5)

(6) Service/line, Structure and equipments shifting charge - (1) The cost of shifting service/line structure and equipments shall be borne by the

consumer. The consumer shall pay the estimated cost of shifting in advance in full. The shifting work will be taken up only after the payment is

made.

The estimate will cover the following

(i) Charges for dismantling at the old site.

(ii) Charges for transport from the old site to the new site.

(iii) Charges for erection at the new site.

(iv) Depreciation on retrievable old materials, if any, not reused at the site.

(v) Cost of new materials, if required including transport.

(vi) Cost of irretrievable materials.

(vii) Overhead charges.

(2) Temporary dismantling and re-erection or shifting of a service connection within the same premises necessitated due to remodeling of premises

will be carried out on payment of the required charges for the same.

(3) Shifting of an existing service connection involving change in door number or

sub-door number or survey field number, shall be considered as a

new service connection only.

No shifting of an existing service connection is permissible unless all arrears in the service connection are paid, if so demanded by the licensee.

Clause 29(6) of the Tamil Nadu Electricity Distribution Code, 2004, reads as follows:

29. Service Lines - (1).....(5)

(6) The consumer shall permit the Licensee to install all requisite equipments such as Transformers, switchgears, meters etc., and to lay necessary

cables or overhead lines and to provide connections thereto on the consumer''s premises and shall also permit the Licensee to extend supply to

other consumers through the cables, lines and equipments installed in the consumer''s premises, provided that supply to the consumer in the opinion

of the Engineer is not thereby unduly affected.

7. A conjoint reading of the above two provisions of law is very clear that any consumer, who is seeking for shifting of the structure and

equipments, will have to pay the shifting charges. But, in the case on hand, the petitioner will not come under the word ""consumer"". If there is a

request from the petitioner for shifting of line/service connection, the charges mentioned in Clause 5(6) of the Tamil Nadu Electricity Supply Code,

2004, will have to necessarily be paid by the petitioner.

8. Admittedly, in this case, the petitioner does not come under definition of the word ""consumer"". The contention of the learned counsel for the

Electricity Board that the petitioner has made a request by letter given to them on 17.11.2012 along with undertaking, which is undated. The stamp

paper, alleged undertaking, refers to the date as 21.06.2012, which states that the petitioner was willing to pay the necessary charges for shifting

the transformer. In Clause No. 5 of the undertaking, the petitioner is stated to have given an undertaking that the Electricity Board has got right to

tap lines for others and she shall not claim refund as a later date. In clause 6, it says that the petitioner agreed to get back the amount paid by her,

in case, the Electricity Board could not execute the work due to various factors.

9. Per contra, it is the submission of the learned counsel for the petitioner that this undertaking was not given by the petitioner and that it is true that

she has requested for shifting of the transformer from her land, as it could be seen from the letter dated 17.11.2012, but no such undertaking was

given.

10. Be that as it may, any undertaking said to have been given by the petitioner will not have any legal force, as the same is not in consonance with

the above said provisions of law viz., Tamil Nadu Electricity Supply Code, 2004, and Tamil Nadu Electricity Distribution Code, 2004. No

evidence has been produced before this Court by the Electricity Board to show that the consent was taken from the erstwhile owner for erecting

the transformer in the place, which was purchased by the petitioner. Clause 5(6) of the Tamil Nadu Electricity Supply Code, 2004 and Clause

29(6) of the Tamil Nadu Electricity Distribution Code, 2004, relied upon by the learned counsel for the Electricity Board, would not be applicable

to the facts of this case, as stated supra, the petitioner is not a ""consumer"". If there is no consent from the present owner of the land to keep the

transformer in her land, it is duty bound on the part of the Electricity Board to remove the transformer from her land.

11. In this regard, it would be useful to make a reference to the judgment delivered by a Division Bench of Madurai Bench of this Court in W.A

(MD). No. 932 of 2010, dated 22.02.2011 in the case of the The Superintending Engineer and The Junior Engineer, Distribution, Tamil Nadu

Electricity Board Vs. M. Sengu Vijay and The Superintending Engineer, Tamil Nadu Water and Drainage Board , wherein it has been held has

follows:

10. A combined reading of Sections 10(d) and 17 of the said Act would show that the Electricity Board is bound to pay damages to the land

owner for causing damages in erecting the electric poles. Hence, in the absence of any specific consent from the erstwhile owner and also in the

absence of any damages not being paid by the appellants Board, mere silence on the part of the erstwhile owner of the subject property, cannot be

construed as implied consent. In this regard, a reference could be placed in the judgment reported in Smt. Durgesh Nandani Vs. State of Bihar and

Others, , wherein it has been held as follows:

17. Section 17 gives the land owner the right to ask for the removal or alteration of telegraph line or post as and when he would desire to deal

with the property in such manner as to render it necessary or convenient that the telegraph line or post should be removed. In that event the only

condition is that if the land owner had received compensation under Section 10(d), he must either pay the expenses of removal or alteration or half

the amount received by him as compensation, whichever may be the smaller sum.

18. As noted above, by virtue of Sec. 42 of the Electricity (Supply) Act the Board acquires the powers under Part III (Sections 10 to 19B) of the

Indian Telegraph Act in case provision is made in sanctioned scheme and the powers under sections 12 to 19 of the Telegraph Act in case the

sanctioned scheme does not make such provision.

19. The entry and presence of the Board on the petitioner''s land may, therefore, be held to be valid and lawful by virtue of the powers conferred

by the above discussed provisions of the Telegraph Act but then it naturally follows that in case the entry over a private piece of land was without

the permission or consent of the land owner and on the basis of the statutory power under the provisions of the Telegraph Act then the question of

removal of the pole would also be governed by the provisions contained in Sec. 17 of the Act. In terms of Sec. 17, if the land owner was not paid

any damages under Sec. 10(d) then he is not obliged to make payment of the expense of the removal. In case, however, the land owner was paid

damages under Sec. 10(d) of the Telegraph Act, he can ask for the removal of the lines/poles only on tendering either the amount requisite to

defray the expense of the removal or half of the amount paid as compensation, whichever may be the smaller sum.

20. On a consideration of the relevant legal provisions and on hearing counsel for the parties, the legal position that emerges can be summed up as

follows:

(i) In case the Board fixes and installs electric poles and/or other appliances on a private piece of land or takes an overhead line passing through a

private piece of land without the express permission or consent of the land owner and in exercise of the powers conferred by part III of the Indian

Telegraph Act, the question of removal or alteration of the line, pole or other appliances etc. will be governed strictly by the provisions of Sec. 17

of the Indian Telegraph Act and in those cases the provisions of Rule 82 of the

Indian Electricity Rules will have no application.

(ii) The provision of Rule 82 shall apply to cases where the Board fixes and installs electricity lines/poles or other appliances on a private piece of

land or carries an overhead line through a private piece of land on the invitation of the land owner or with his express permission or consent.

21. Now coming back to the facts of this case, it is an admitted position that the two poles were fixed on the land in question without the approval

and consent of its owner. It, therefore, follows that the Board fixed the two poles in exercise of the right conferred by the provisions of the Indian

Telegraph Act. There is no material to indicate that the petitioner or the erstwhile owner of the land was paid any damages under Sec. 10(d) of the

Indian Telegraph Act. The proviso to Sec. 17(1) would, therefore, have no application in this case and the petitioner, therefore, has no legal

obligation to pay the expenses of the removal of the two poles. The Board is bound to remove the two poles at its own expenses. The impugned

demand as contained in Annexure 5 is accordingly quashed"".

The principles enunciated in the above judgment support the case of the 1st respondent/writ petitioner.

11. A perusal of the factual aspects of the unreported judgment (W. A. (MD) No. 531 of 2009) relied on by the appellants shows that a

transformer was put lawfully by the Board during the lifetime of the owner of the land. The Division Bench of this Court has also observed in that

case that the land owner should have granted permission or consent for erecting the transformer. Admittedly, in this case, it is the specific stand of

the Board that since the original erstwhile owner did not object to the erection of the electric poles, it has to be construed as ''implied consent'' and

it is clear that no consent was obtained from the erstwhile owner. Therefore, the said judgment relied upon by the learned counsel for the

appellants cannot be made applicable to the facts of the case. Under such circumstances, we are of the view that there is no valid ground to

interfere with the order passed by the learned single Judge and the writ appeal is liable to be dismissed.

12. In this case, it is true that in the year 1989, the erstwhile owner and other persons would have thought that using the place for keeping the

electric transformer may be useful for everyone. But, now, the present owner, the petitioner, feels that it should be shifted to some other place, as

there is no consent either from the erstwhile owner or from the present owner/ petitioner. Even if any undertaking is given by the petitioner, it cannot

be put against her. It is true that the petitioner has requested for shifting the transformer from her land to some other land and agreed to pay

reasonable amount for the same. But, when the charges so demanded is at Rs. 1.75 lakhs and odd, the petitioner went back from her assurance,

that cannot be put against her. In view of the foregoing discussion, the writ petition deserves to be allowed and accordingly, the same is allowed as

prayed for. The respondents are directed to shift the transaction from the petitioner''s land to some other land, within a period of three months from

the date of receipt of a copy of this order. However, there is no order as to costs.

