
(2005) 12 BOM CK 0097

In the Bombay High Court

Case No : Writ Petition No's. 599 of 1994 and 1966 of 1997

Kalpana Rukhabdas Jain

APPELLANT

Vs

Chairman and Another

RESPONDENT

Date of Decision : 08-12-2005

Acts Referred:

Electricity (Supply) Act, 1948 — Section 28, 42
Electricity Act, 1910 — Section 12, 13, 14, 15, 16
Maharashtra Land Revenue Code, 1966 — Section 25
Penal Code, 1860 (IPC) — Section 188
Telegraph Act, 1885 — Section 10, 11, 16, 16(1), 16(3)

Citation : (2006) 4 BomCR 461 : (2006) 2 RCR(Civil) 478

Hon'ble Judges : Dharmadhikari B.P., J

Bench : Single Bench

Advocate : S.M. Puranik, in W.P. No. 599/1994 and G.E. Moharir, in W.P. 1966/1997, for the Appellant; S.M. Puranik in W.P. No. 1966/1997 for Respondent No. 2, G.E. Moharir in W.P. No. 599/1994 and T.R. Kankale, A.G.P. in W.P. No. 1966/1997, for the Respondent

Judgement

Dharmadhikari B.P., J.—In first writ petition the petitioner-land owner has questioned the order dated 25-1-1994 passed by the District Judge, Nagpur in Miscellaneous Civil Application No. 540/1992 upholding preliminary objection raised by respondents that the application moved by petitioner u/s 16 Sub-section (3) of Indian Telegraph Act, 1885 is not maintainable. The said proceedings were filed by present petitioner for recovery of compensation on account of removal of trees/cutting trees in the field property belonging to petitioner by respondents for the purposes of or to erect the overhead wires/lines. In the second writ petition the respondent in first writ petition namely Maharashtra State Electricity Board has questioned the order dated 23-5-1996 passed in M.C.A. No. 2/1995 by the District Magistrate, Nagpur. By the said order District Magistrate, Nagpur has permitted petitioner to remove the trees as contemplated u/s 18 of the Indian Electricity Act, 1910, but while so doing has directed the petitioner to uproot and remove the stumps of trees and to level the

land within a period of one month, so as to enable the land holder to undertake agricultural operations before the onset of monsoon. The subject-matter of both writ petitions is same and the parties are also same.

2. I have heard Advocate Shri S.M. Puranik for landholder in both the matters", Advocate Shri G.E. Moharir for Maharashtra State Electricity Board in both the matters, and learned A.G.P. for respondent No. 1 in W.P. No. 1966/1977.

3. The facts in brief are as under:

The Maharashtra State Electricity Board on 26-10-1989 issued notice under the provisions of Indian Telegraph Act, 1885 to land holder and informed her that 220 K.B. Khaparkheda Bhandara Line is to be laid which would pass through her field and for that purpose trees standing in her land would be required to be cut or removed. She was informed that the trees so cut or removed can be returned to her with understanding that she would not claim any compensation for that or the trees would be sold in auction. Loss caused to her was to be compensated as per value thereof arrived at either by revenue department or by Maharashtra Electricity Board. In the notice the trees which were to be removed are also specified. It appears that on 7-12-1989 the petitioner has replied to this notice and has given the height of trees standing in her land and also approximate cost of each tree. There was some correspondence between the parties and on 7-6-1991 the land owner has served a legal notice upon Maharashtra State Electricity Board. It also appears that she also submitted the Form No. III along with Panchanama as required by the Maharashtra State Electricity Board on 28-6-1991. In this background, it appears that though the land owner was insisting that the amount of compensation should be determined first before taking any action for cutting of trees, the trees were cut on 17-7-1992 with the help of police. Hence, in view of this action the land owner lodged police complaint on 18-7-1992 and thereafter issued registered notice on 30-7-1992. Ultimately on 18-9-1992 the land owner approached District Judge, Nagpur vide Civil Application No. 540/1992 u/s 16 Sub-section (3) of Indian Telegraph Act, 1885 for determining the compensation payable by Board to her. The application was opposed by Board by raising preliminary objection in relation to payment of Court fee under Bombay Court Fees Act and also about maintainability of application u/s 16, as according to Board action taken was not u/s 10(d) of Indian Telegraph Act, but the action was u/s 18 thereof.

4. It appears that the learned District Judge considered the preliminary objection raised by Board and framed preliminary point about tenability and maintainability of said proceeding u/s 16(3) and after hearing both the sides found that the action taken by board was u/s 18 of Indian Telegraph Act and not u/s 10(d) of the Act. In that view of matter, the learned District Judge held that provisions u/s 16 Sub-section (3) were not applicable and therefore, dismissed the application of land owner. The land-owner has thereafter approached this Court in present W.P. No. 599/1994.

5. In relation to very same land and trees growing on it in 1995 the State Electricity Board moved application u/s 18 of Indian Electricity Act, 1910 before District Magistrate, Nagpur which came to be registered as Application No. 2/1995. In that application the Board sought permission to remove the trees as indicated in the schedule and map. The application was opposed by land-owner who pointed out that application u/s 18 of the Indian Electricity Act, 1910 was not maintainable at all. It was further stated that action could have been taken only u/s 10 of Indian Telegraph Act, 1885 and a specific ground was also raised that the State Electricity Board is not licensee as defined in Clause "h" Section 2 of Indian Electricity Act, 1910. It also appears that the land owner also made a grievance that the State Electricity Board should uproot the trees entirely and should level the land so as to save the land owner from repeated act of cutting/removal of trees and also consequential damages. The grievance made was considered by District Magistrate who by interim order dated 25-8-1995 permitted Electricity Board to cut the trees. Final order in this respect is passed on 23-5-1996 and while confirming the permission granted, the District Magistrate directed State Electricity Board to undertake action to uproot and remove stumps of trees and levelling of land within a period of one month so as to enable the landowner to undertake agricultural operations before the monsoon begins. It is only this direction which is questioned by State Electricity Board in W.P. No. 1966/1997.

6. Advocate Shri S.M. Puranik appearing for the land owner has contended that in view of provisions of Section 42 of Electricity (Supply) Act, 1948, the provisions of Indian Telegraph Act, 1885 govern the situation and the Board was not right in moving application u/s 18 of Indian Electricity Act, 1910. According to him the order dated 23-5-1996 passed by District Magistrate and earlier interim order dated 25-8-1995 are without jurisdiction.

7. Coming to W.P. No. 599/1994 he states that the learned District Judge has misread the order passed by Tahsildar granting permission to Board to cut the trees. He states that the order passed is u/s 25 of the Maharashtra Land Revenue Code. He states that this order has been misread as order u/s 18 of the Indian Telegraph Act, 1885 and therefore the learned District Judge has concluded that Board has cut the trees in exercise of powers u/s 18 of the Indian Telegraph Act, 1885. He states that trees were cut u/s 10(d) only. He invites attention to the language employed in Section 18 and states that said section not only covers the first erection of such lines by Board but also regulates its maintenance from time to time. According to him provisions for repairs, replacement, alterations from time to time require to be undertaken as a part of maintenance operation are made in Section 10 only, and therefore, there is no question of taking recourse to Section 18 of the Indian Telegraph Act, 1885 by the Electricity Board. According to him the preliminary objection as upheld by learned District Judge is therefore liable to be rejected and the District Judge must be directed to work out the compensation on merits u/s 16(3).

8. Advocate Shri Moharir appearing for State Electricity Board states that Section 42 of Electricity (Supply) Act, 1948 is only enabling provision and it does not prohibit the State Electricity Board from taking recourse to Indian Electricity Act, 1910. He contends that in the present case the Board found it convenient to approach District Magistrate because of the dispute between the parties and the said application has been rightly entertained and allowed by the District Magistrate. He, however, contends that the injunction granted by District Magistrate asking board to uproot and remove stumps of trees, and to level the agricultural land to make it fit for cultivation for landowner is without jurisdiction. According to him no such power is conferred upon the District Magistrate u/s 18 of the Indian Electricity Act, 1910.

9. Coming to W.P. No. 599/1994 Advocate Shri Moharir contends that Section 10 deals only with the stage at which lines are erected and gives necessary powers to State Electricity Board for that purpose. He argues that the word "maintain" used in Section 10 does not mean regular maintenance operation and it is his contention that the line once put or erected has to stay there or has to be continued there and the word "maintain" has been used only in that sense to indicate that line once erected can be retained in same position or location by the State Electricity Board. According to him the power to cut trees is only u/s 18 of Indian Telegraph Act, 1885 and therefore the District Judge was right in holding that the provisions of Section 16 Sub-section (3) were not applicable. He points out that Section 16(1) of Indian Telegraph Act expressly refers to exercise of the powers of State Electricity Board u/s 10(d) thereof. He states that as said powers have not been exercised by Board, there is no question of taking recourse to machinery u/s 16 Sub-section (3) by the landowner.

10. Learned A.G.P. appearing for respondent No. 1 State of Maharashtra in W.P. No 1966/1977 has supported the order passed by the District Magistrate. He contends that the Board had approached to District Magistrate for seeking permission to cut the trees u/s 18 of the Indian Electricity Act, 1910 and therefore while granting such permission, reasonable conditions have been imposed by the District Magistrate, and those conditions are therefore within jurisdiction of said authority. According to him therefore, no case is made out for interference in writ jurisdiction.

11. Perusal of Section 42 of Indian Electricity (Supply) Act, 1948 shows that the said provision deals with situations when board has to take coercive steps for completing its task and it permits State Electricity Board to exercise the powers, conferred on telegraph authority under para III of Indian Telegraph Act, 1885 to achieve said purpose, if the scheme under which State Electricity Board is erecting the lines is a sanctioned scheme. However, if such scheme is not sanctioned proviso thereto casts obligation upon the State Electricity Board to take recourse to provisions to Section 12 to 19 of the Indian Electricity Act, 1910. Advocate Shri Puranik has placed reliance upon the judgment reported in Maharashtra State Electricity Board Vs. Janardhan Bhausaheb Desai and Another,

of this Court to contend that provisions of Indian Electricity Act, 1910 are not applicable. He has placed reliance upon paragraph No. 11 of the said judgment. The question considered by this Court there was, whether in the notification dated 30-10-1986 whereby the scheme framed u/s 28 of the Electricity (Supply) Act, 1948 was notified the authority was conferred on Board to exercise the powers under Chapter 3 of Indian Telegraph Act. Said question has been answered in paragraph No. 11 by observing that Section 42 of the Electricity (Supply) Act, 1948 empowers the Board to exercise the powers of the Telegraph Authority notwithstanding the provisions contained in Section 12 to 16 and 18 and 19 of the Indian Electricity Act, 1910. The question therefore, has been answered by observing that there need not be specific authorisation in notification published u/s 28(3) to enable Board to exercise powers of Telegraph Authority. The question involved in the present writ petition is entirely different. Here the board has contended that they exercised the powers u/s 18 of the Indian Electricity Act, 1910 though it could have in view of provisions of Section 42 of Electricity (Supply) Act, 1948 exercised powers u/s 18 of Telegraph Act. Said Section 42 is as under:

42. Powers to Board for placing wires, poles, etc. - Notwithstanding anything contained in Sections 12 to 16 and 18 and 19 of the Indian Electricity Act, 1910 (9 of 1910) but without prejudice to the requirements of Section 17 of that Act where provision in such behalf is made in a sanctioned scheme, the board shall have, for the placing of any wires, poles, wall brackets, stays apparatus and appliances for the transmission and distribution of electricity, or for the transmission of telegraphic or telephonic communications necessary for the proper coordination of the works of the Board, all the powers which the telegraph authority possesses under Part HI of the Indian Telegraph Act, 1885 (13 of 1885), with regard to a telegraph established or maintained by the Government or to be so established or maintained:

Provided that where a sanctioned scheme does not make such provision as aforesaid, all the provisions of Sections 12 to 19 of the first-mentioned Act shall apply to the works of the Board.

A generating company may, for the placing of wires, poles, wall brackets, stays, apparatus and appliances for the transmission of electricity, or for the transmission of telegraphic or telephonic communications necessary for the proper co-ordination of the works of the Generating Company, exercise all or any of the powers which the Board may exercise under Sub-section (1) and subject to the conditions referred to therein.

There is nothing in Section 42 of Electricity (Supply) Act, 1948 which prohibits Board from exercising powers u/s 18 of Indian Electricity Act, 1910, even in cases where the schemes are sanctioned. All these provisions are made to authorize Board to take all necessary steps for completion of its scheme in the interest of general public also by encroaching upon individual rights to the extent found necessary and they need to be interpreted accordingly by keeping in mind

that object and to further it. Under the circumstances, objection in relation to jurisdiction of District Magistrate raised by landowner is unsustainable. Moreover, the said order has lost its utility because in view of interim order passed therein on 25-8-1995 the trees were already cut as required by State Electricity Board and at final order which has been passed on 23-5-1996 trees were no longer there. The only question therefore is whether said authority while considering the issue of granting permission u/s 18(3) of Indian Electricity Act, 1910 could have directed the State Electricity Board to remove stumps and to level the land by uprooting the trees within a period of one month so as to enable the landowner to undertake agricultural operation before monsoon. In this respect provisions of Section 18 of the Indian Electricity Act, 1910 reads as under:

18. Overhead lines. - (1) Save as provided in Section 13, Sub-section (3) nothing, in this part shall be deemed to authorise or empower a licensee to place any (overhead line) along or across any street, railway, tramway, canal or waterway unless and until the State Government has communicated to him a general approval in writing of the methods of construction which he proposes to adopt;

Provided that the communication of such approval shall in no way relieve the licensee of his obligations with respect of any other consent required by or under this Act.

(2) Where any (overhead line) has been placed or maintained by a licensee in breach of the provisions of Sub-section (1), the State Government may require the licensee forthwith to remove the same, or may cause the same to be removed, and recover from the licensee expenses incurred in such removal.

(3) Where any tree standing or lying near an (overhead line) or where any structure or other object which has been placed or has fallen near an (overhead line) subsequently to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of energy or the accessibility of any works a Magistrate of the First Class or; in a presidency town, the Commissioner of Police, may on the application of the licensee cause the tree, structure or object to be removed or otherwise dealt with as he thinks fit.

(4) When disposing of an application under Sub-section (3), the Magistrate or Commissioner of Police, as the case may be, shall, in case of any tree in existence before the placing of the (overhead line), award to the person interested, in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

It shows that it enables the District Magistrate to pass the order for removal of such trees and also enables him to award compensation to the person interested, and he then reasonably enables the landowner who gets such compensation to recover the same from State Electricity Board. Thus, the provisions of Section 18(3) and (4) clearly shows the scope of power and authority available to District

Magistrate under it and compensation awarded has to be in relation to tree only. The said section does not confer any power upon District Magistrate to issue injunction directing the Board to uproot and remove the stumps completely or to level the land for cultivation. The said direction as contained in the impugned order dated 23-5-1996 is therefore found to be without jurisdiction. The same is therefore quashed and set aside. The Writ Petition No. 1966/1997 is accordingly allowed. Rule made absolute in it.

12. Coming to provisions of Section 10 of Indian Telegraph Act, 1885, the said section appears in Part III which has heading "Power To Place Telegraph Lines And Posts". The said section reads as under:

10. Power for telegraph authority to place and maintain telegraph lines and posts, -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 Immovable property;

Provided that -

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of telegraph established or maintained by the (Central Government), or to be so established or maintained;

(b) 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 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.

13. On perusal of this section reveals that the telegraph authority has been given power to place and maintain telegraph line under, over, along or across the line in any Immovable property, and Sub-section (d) thereof casts obligation upon telegraph authority to do as little damage as possible, and it also requires telegraph authority to pay full compensation to all persons interested for damages sustained by them by reasons of exercise of said powers. It is to be noted that the provisions of Section 10 does not make any distinction between the initial erection or its continuation. The section itself begins by using the words "from time to time". Thus, if the power is to be exercised from time to time, it is apparent that after erection is completed, State Electricity Board has been empowered to exercise powers u/s 10 even for the purposes of maintenance also and said powers are required to be exercised for repairs,

alterations etc. because the lines/wires are placed on the property of other person. The contention of Advocate Shri Moharir is that Section 10 is applicable only at the threshold when the line is first erected is therefore not acceptable. The word "maintain" has been used with word "place" and it indicates that the authority has been given power to maintain the telegraphic line. In this case the power to maintain the line means that the line must be kept functioning and in use and for that purpose exercise of powers u/s 10 is essential. Mere physical placing of line or towers or poles on the property of others is not enough but entire assembly must function and transmit electricity from one point to other across such property, that too safely without endangering human/animal life and property. The word "maintain" has been used to indicate that Board can use these powers even for smooth and safe use of such assembly for all times to come. The word "place" contemplates power to have lines placed forever and word "maintain" does not overlaps the meaning of that word at all.

14. Section 18 of Indian Telegraph Act also deals with removal of trees interrupting telegraphic communication. The said section has heading "Provisions applicable to all property". Said section reads as under:

18. Removal of trees interrupting telegraphic communication. -

(1) If any tree standing or lying near a telegraph line interrupts or is likely to interrupt telegraphic communication, a Magistrate of the first or second class may, on the application of the telegraph authority, cause the tree to be removed or dealt with in such other way as he deems fit.

(2) When disposing of an application under Sub-section (1), the Magistrate shall, in the case of any tree in existence before the telegraph line was placed, award to the persons interested in the tree such compensation as he thinks reasonable, and the award shall be final.

Sub-section (1) thereof permits Magistrate of the First Class or Second Class to remove such trees on application moved by telegraphic authority. Sub-section (2) states that while disposing of an application moved by telegraph authority, the Magistrate may award compensation as he thinks reasonable to the person interested in the trees. Thus, Section 18 at the most will be applicable if the power lines or telegraphic lines are already laid and are existence. In the facts of the present case the situation is otherwise.

15. The landowner has sent a legal notice dated 7-6-1991 to the State Electricity Board and said notice has been replied on 20-8-1991 by State Electricity Board. In the said reply the State Electricity Board has agreed to pay compensation to landowner as per guidelines for that purpose. It is stated that the compensation could not be paid because the same can be ascertained only after cutting of trees and after measuring of total quantity of Subabul plantation to be cut by State Electricity Board. It was also mentioned in the reply that matter was referred to concerned Range Forest Officer with a request to ascertain the compensation in the said matter. The State Electricity Board therefore, assured the landowner

that they had never denied liability of paying compensation. In paragraph No. 2 of reply it has been mentioned that though the work of construction and erection of towers as well as installation of high voltage lines was commenced, it was completed about six months back. Thus, the word appears to have been completed somewhere in the month of February, 1991. It is further mentioned in that reply that upper two circuits of said high power lines were partly charged and remaining lines i.e. lower two circuits could not be charged for the reason that the Subabul plantation was existing beneath those high voltage lines and it was therefore dangerous to start the transmission of electricity by charging said lines. The Electricity Board has mentioned in reply that due to induction of electricity from the said high voltage lines, there is danger to the human as well as animal life. It is thus more apparent that even on the date of said reply i.e. on 20-8-1991 the work of Board was not completed.

16. Provision of Section 10 of Indian Telegraph Act does not assist State Electricity Board only in respect of physical placing of the high voltage line across land of present land owner. It also speaks of lines which are charged and are being used. Therefore, the arguments of learned Counsel for State Electricity Board that exercise of powers u/s 10 is over once work of physical erection of towers and laying high voltage line is over cannot be accepted. Section 10 also contemplates the lines which are being used and therefore, the stage, if any as argued by learned Counsel u/s 10 of Indian Telegraph Act, is not completed even if the lines are actually commissioned and are put to use. In the facts of present case, it is apparent that till 1-7-1992 i.e. date on which the trees were cut lines were not commissioned. Thus, the word of erection was not complete till 1-7-1992. Further even if it is presumed that work of erection was complete prior to 1-7-1992, trees have been cut as the same was essential for avoiding loss of human life and animal life. In other words, the trees have been cut as otherwise the lines could not have been placed and charged. As already held about said work is also covered u/s 10 of the Indian Telegraph Act, 1885. Section 11 of Telegraph Act permits repairing and even for discharging that obligation power u/s 10 can be used. Section 18 of this Act deals with only "trees" and it is of no help to undertake all operations contemplated u/s 10 and 11 above.

17. In this background if the impugned order passed by the learned District Judge is looked into the learned District Judge read Sections 10 and 18 together and has found that powers exercised are u/s 18 of Indian Telegraph Act, 1885. However, it is difficult to subscribe the said findings. At this stage (during dictation) Advocate Shri Moharir has invited attention of this Court to the judgment of Madras High Court reported in AIR 1940 Mad. 900. It appears that provisions of Section 18 of Telegraph Act are considered therein and it has been held that the said section applies only to cutting down of trees after line has been erected. Perusal of said judgment reveals that Madras High Court found that where a line is laid across a top it would first of all be necessary to cut down certain trees in order that the line might be laid. It is further observed that thereafter it may become necessary to cut certain other trees which prevent

laying of line. It is observed that in such cases, engineer has no power to cut the trees himself, and he has to apply to Magistrate who presumably would have to exercise his discretion as to what trees the owner is bound to clear away. It is further found that admittedly engineer who cuts down some trees without any application to Magistrate by exercising authority u/s 10 is bound to award compensation. It is also observed that any other trees that had to be cut down for laying of the line would also be governed by Section 10(d), even though the Magistrate, passed orders concerning them. Those trees which were cut down after line was erected on the order of Magistrate would be covered by Section 18, and the Magistrate's valuation would be final. Thus, none of the observations herein considered the issue which has fallen for consideration before this Court and the same does not support case of Board. On the contrary here it is apparent that trees were required to be cut for laying of the line and it is also a matter of record that those lines could not be commissioned because presence of the trees. Hence, it is squarely covered by Section 10(d) of Telegraph Act, 1885, and therefore I find that this judgment is of no assistance for the State Electricity Board.

18. Learned District Judge has also found that permission u/s 18 of the Indian Telegraph Act has been given to State Electricity Board on 4-10-1991 by Executive Magistrate. Perusal of said order dated 4-10-1991 demonstrates that Tahsildar Saoner has granted permission to State Electricity Board u/s 25 of Maharashtra Land Revenue Code. Section 18 of the Indian Telegraph Act which has already reproduced above clearly shows that the offending trees are caused to be removed by Magistrate First Class or Second Class. It is the contention of Advocate Shri Moharir that Tahsildar is also a Magistrate. However, from reading of order, it is apparent that Tahsildar has not used powers u/s 18 of Indian Telegraph Act, 1885. Not only this, but Section 18 does not contemplate grant of permission to State Electricity Board to remove or cut such trees. The obligation is put upon Magistrate of First Class or Second Class himself to cause the tree to be removed or dealt with in such other way as he may deem fit. Under the circumstances, it is apparent that permission granted to State Electricity Board on 4-10-1991 was not u/s 18 of the Indian Telegraph Act, 1885.

19. Section 16 of the Indian Telegraph Act, 1885 reads as under :

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 (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 (45 of 1860).

(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.

The moment finding is reached that removal of trees by Board was not u/s 18 of Telegraph Act but u/s 10(d) thereof, the impugned order holding that Section 16 has no application needs to be interfered with, as there is corresponding failure to exercise jurisdiction.

20. The finding that Section 16(3) of Indian Telegraph Act, 1885 is not available to the landowner reached by learned District Judge is found to be misconceived and erroneous. The same is therefore, quashed and set aside. The application moved u/s 16(3) of Indian Telegraph Act, 1885 is restored to the file of the District Judge, Nagpur for its further adjudication on merits. The objection of M.S.E.B. about Court fees is kept open as the same is not considered by learned District Judge in the impugned order. As the matter is very old the District Judge, Nagpur is directed to dispose of the same as early as possible or in any case within a period of six months from the date of communication of this order to him. Rule made absolute in above terms. No costs.