

(2015) 06 KL CK 0104

In the High Court Of Kerala

Case No : W.A. No. 652 of 2015 in WP(C). 27558 of 2006

Kovvakkarathi Sarojini and Others

APPELLANT

Vs

The District Collector and District Magistrate and Others

RESPONDENT

Date of Decision : 12-06-2015

Acts Referred:

Electricity Act, 1910 — Section 51

Telegraph Act, 1885 — Section 16 (1), 17, 17(1)

Citation : (2015) 06 KL CK 0104

Hon'ble Judges : P.R. Ramachandra Menon, J; Babu Mathew P. Joseph, J; K.T. Sankaran, J

Bench : Full Bench

Advocate : Mahesh V. Ramakrishnan, for the Appellant; Joseph George, Government Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

P.R. Ramachandra Menon, J.

1. This appeal has been preferred by the writ petitioners who sought to challenge Ext. P3 order passed by the first respondent who is the competent authority under Section 16 (1) of Indian Telegraph Act, 1885 with Section 51 of Indian Electricity Act, 1910.

2. An electric line was sought to be drawn through the property belonging to the appellants so as to facilitate power supply to the premises of the third respondent. There was a dispute in this regard, which led to reference of the matter to the first respondent. The case projected before the first respondent from the part of the Board as well as the others concerned was that there was a public pathway and that the overhead line could be drawn through the public pathway and then it was to be taken to the premises of the third respondent. Existence of the public pathway was vehemently disputed on the part of the appellants herein. After considering the facts and figures, the District Magistrate passed an order by virtue of Ext. P3, permitting the line to be drawn through the

public pathway and to provide power supply to the third respondent. This in turn was sought to be challenged by filing the writ petition.

3. After hearing both the sides, it was found that there was absolutely no tenable ground so as to call for interference. Observing that the line was already drawn as early as on 14/08/2006, i.e., even before the filing of the writ petition, interference was declined and the writ petition was dismissed. The correctness of the said decision forms the subject matter of this appeal.

4. The matter came up for consideration before this Court on several occasions. There was inordinate delay in curing the defects noted and re-presenting the appeal after curing the same. After completion of service of notice, the delay of 1163 days was condoned as per order dated 03/03/2015 in C.M. Application No. 274 of 2015, subject to satisfaction of payment of Rs. 500/-, which is stated as satisfied. The matter stands still to be admitted.

5. When the matter came up for consideration before another Bench of this Court on 24/03/2015, it was submitted on the part of the appellant that the challenge against the impugned order was not intended to be pursued further and that the appellants would be satisfied, if the line could be drawn through the alternate route mentioned by the appellants which is passing through the property belonging to the appellants themselves. It was also stated that the appellants will be ready to meet the entire expenses for shifting the line. In the said circumstances, the following order was passed by the Court on that day:--

"Advocate Mahesh V. Ramakrishnan, the learned counsel for the appellants submitted that the present line which is drawn to the house of KunhIRaman can be shifted through the property of the appellants itself so that both parties will not be affected by such change of line. The learned counsel submitted that there is an electric post in the pathway on the eastern side of Property No. 4 marked in Ext. R2(a) and from that post, a line can be drawn towards the southern end of Property No. 5 and an electric post can be installed. Yet another electric post can be installed on the western extremity of the property of appellant No. 2 and from there connection can be given to KunhIRaman, the beneficiary. Learned counsel for the appellants submitted that the entire expenses for shifting that line can be met by the appellants. The learned counsel appearing for KunhIRaman submitted that he will get instructions with reference to the said suggestion. Learned counsel appearing for the Electricity Board submitted that he will get instructions as to the feasibility of drawing such a line as suggested by the learned counsel for the appellants.

Post on 08/04/2015."

6. Pursuant to the above interim order, the matter was considered by the authorities of the Board who has filed a statement dated 03/06/2015 before this Court, pointing out that the line could be shifted through the route D, G, H, C, F by dismantling the present line B, C, F. A rough sketch is also produced showing the topography, lay and location and also existence of the proposed line; as

Annexure-R2(a). The third respondent has filed I.A. No. 692 of 2015 to receive an additional document produced as Annexure-R3(a). According to the third respondent, the present course suggested from the part of the Board as proposed by the appellants is not a feasible one. This Court heard both the sides.

7. It is brought to the notice of this Court that serious disputes are pending between the appellants and the third respondent by way of civil suits before the Sub Court, Payyannur as A.S. Nos. 101 and 102 of 2010. Learned counsel for the third respondent submits that the idea of the appellants is to cause the line to be shifted from the existing pathway and to have the pathway vanished in the due course. This version is sought to be rebutted by the learned counsel for the appellants.

8. Going through the factual aspects, particularly with reference to the existence of pathway, this Court finds that the line was drawn through the alleged pathway, though obtained on the basis of the certificate issued by the concerned local authority, to the effect that there was a pathway. Learned counsel for the appellants submits that, it was due to the result of some misconception of fact by the Panchayat authorities or due to extraneous consideration. Whether there is a pathway or not, is not the subject matter for consideration before this Court and the said issue is pending consideration before the civil court. It is also the fact that the line has already been drawn and the power supply has been effected to the premises of the third respondent. The only remaining question is whether the line can be shifted, as sought for by the appellants, if the existing line is causing much adverse results.

9. In the above circumstances, this Court finds that the appellants can approach the authority of the Board by filing a petition under Section 17(1) of the Indian Telegraph Act, 1885 within "two weeks" from the date of receipt of a copy of this judgment; upon which it shall be considered and appropriate orders shall be passed by the concerned authority after affording an opportunity of hearing to both the sides including the third respondent herein. If the appellants are still aggrieved with the order to be passed by the concerned authority, then further remedy is available by way of sub Section 2 of Section 17 of the Act. It is made clear that applicability of Section 17 of the Indian Telegraph Act, 1885, is a matter which can be considered by the authority passing such order. All the issues are left open. Parties are free to proceed the matters dealing with the civil rights in the proceedings which are pending consideration before the civil court. No opinion is made with regard to the merits involved.

The writ appeal is disposed of as above.

K.T. Sankaran, J.

Advocate Mahesh V. Ramakrishnan, the learned counsel for the appellants submitted that the present line which is drawn to the house of Kunhiraman can be shifted through the property of the appellants itself so that both parties will not be affected by such change of line. The learned counsel submitted that there

is an electric post in the pathway on the eastern side of Property No. 4 marked in Ext. R2(a) and from that post, a line can be drawn towards the southern end of Property No. 5 and an electric post can be installed. Yet another electric post can be installed on the western extremity of the property of appellant No. 2 and from there connection can be given to KunhIRaman, the beneficiary. Learned counsel for the appellants submitted that the entire expenses for shifting that line can be met by the appellants. The learned counsel appearing for KunhIRaman submitted that he will get instructions with reference to the said suggestion. Learned counsel appearing for the Electricity Board submitted that he will get instructions as to the feasibility of drawing such a line as suggested by the learned counsel for the appellants.

Post on 08/04/2015.