

(2014) 04 RAJ CK 0129

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 586/2014

Madan Dan Arha and Another

APPELLANT

Vs

Rajasthan Rajya Vidyut Prasaran Nigam Ltd. and Others

RESPONDENT

Date of Decision : 21-04-2014

Acts Referred:

Constitution of India, 1950 — Article 300A

Electricity Act, 2003 — Section 164

Penal Code, 1860 (IPC) — Section 188

Telegraph Act, 1885 — Section 10, 10(d), 16, 16(3), 16(4)

Citation : (2014) 04 RAJ CK 0129

Hon'ble Judges : Amitava Roy, C.J.;Vijay Bishnoi, J

Bench : Division Bench

Advocate : Sandeep Shah, Advocate for the Appellant

Final Decision : Dismissed

Judgement

1. In assailment is the judgment and order dated 28.3.2014 passed in S.B. Civil Writ Petition No. 747/2014 thereby along with that writ petition, S.B. Civil Writ Petition No. 767/2014 was also dismissed.

2. We have heard Mr. Sandeep Shah, learned counsel for the appellants-writ-petitioners.

3. The facts in bare minimum are that the appellants-writ-petitioners claimed to be possessed of agricultural land included in khasras no. 761 and 771 situated in village Peshua, Tehsil Pindwara District Sirohi. According to them, about a decade ago, 132 KV line was drawn over this land by the respondent-Nigam so as to facilitate supply of power to J.K. Cement Industry for which certain poles/pillars were installed thereon. The appellants-writ-petitioners averred that though they objected to the project and claimed compensation, their requests were not heeded to. They have averred further that the high tension power line and the energy flow does create a strong magnetic field, so much so that no cultivation/agricultural exploit is possible in the vicinity thereof. Further, there is a constant

risk to life and property. The appellants-writ-petitioners have averred that adjoining their agricultural land, there is an existing railway track and that in view of broadening thereof to four tracks, relocation of the wires of 132 KV line existing on their land is proposed. According to them, the respondent-authorities accordingly visited their land and inspected the site and on enquiries being made they were told that new towers were to be installed. They however refused to disclose the details of such installations, but confirmed that the work as proposed would be carried out. Referring to a work order dated 4.12.2013 and the connected map, the appellants-writ-petitioners contended that new towers for stepped up power transmission would be erected for which there would be massive excavation of their land. That the respondents-authorities had turned a deaf ear to their pleas citing damage to their land, crops thereon and overall safety and instead had communicated that police assistance would be requisitioned if need be for execution of the project, have been stated. Contending that the contemplated action is illegal, the appellants-writ-petitioners sought judicial intervention.

4. The respondents in their reply clarified that the existing transmission line was not meant for supply of power to M/s. J.K. Cement Industry as alleged, but was to cater to the need of the public at large of Abu Road. Pleading that on account of alteration in the railway tracks some more towers/poles have become necessary to be installed, the respondents have denied that there is any proposal to set up 220 KV transmission line as apprehended by the appellants-writ-petitioners. According to them, the project in hand is for re-location of the presently existing transmission lines and the project has been undertaken in consultation and with the consent of the Railway Administration. Referring to Section 164 of The Electricity Act, 2003 (for short, hereinafter referred to as "the Act") and sections 10 and 16 of The Indian Telegraph Act, 1885 (for short, hereafter referred to as "the 1885 Act"), the respondents have pleaded that neither any prior consent nor notice nor intimation to the owner or occupier of the immovable property is a condition precedent for undertaking the project as contemplated and that for computation and payment of compensation, a civil forum has been provided and thus, the cavil pertaining thereto is also without any substance.

5. Whereas the appellants-writ-petitioners in their rejoinder contended that reliance on section 164 of the Act and sections 10 and 16 of 1885 Act was wholly inconsequential, the respondents by their additional affidavit brought on record the notifications dated 5.3.2014 issued by the Chief Engineer (T&C) of the Nigam permitting all essential activities to facilitate the drawal of the proposed transmission lines.

6. The learned Single Judge, on a consideration of the pleadings of the parties and the documents on record, rejected the appellants-writ-petitioners' plea of acquisition of their land as a pre-requisite for furtherance of the project of the respondents. Their objection in the context of compensation was also not

sustained. Referring to the notifications as mentioned therein, the learned Single Judge concluded that the respondents were authorized to enter into the agricultural land of the appellants-writ-petitioners for installation of the transmission lines and the poles. Reference was made inter-alia of Section 16 of 1885 Act qua the aspect of sufficiency of compensation and apportionment thereof. The apprehension of the appellants-writ-petitioners that they would be denied compensation was found to be not tenable. That the respondents did propose to execute the project for facilitating transmission of electricity to the public at large was noticed as well.

7. Mr. Shah has insistently argued that the contemplated installation of poles/towers on the land of the appellants-writ-petitioners for enhanced power transmission is apparently illegal, the same being not preceded by acquisition thereof and payment of compensation due to them in law and thus, the impugned judgment and order ought to be interfered with. Apart from contending that there is no conferment of powers on the respondent-Nigam by the appropriate Government as mandated by Section 164 of the Act rendering the assailed action to be wholly incompetent, the learned counsel has urged that the notifications relied upon by the learned Single Judge are no substitute thereof and thus, intervention in the present appeal is warranted to interdict the apparently unauthorized action of the respondents. According to Mr. Shah, having regard to the appellants-writ-petitioners' constitutional right to property under Article 300A of the Constitution of India, the action as proposed is patently illegal and that the provision for payment of compensation as made by Sections 10 and 16 of 1885 Act does not constitute an equally efficacious remedy as accorded by the Land Acquisition Act, 1894.

8. We have analyzed the pleadings available on record and the arguments advanced.

9. Noticeably, it is the categorical stand of the respondents that the impugned action is endorsed by Section 164 of the Act. For ready reference, this provision is extracted herein below:-

164. Exercise of powers of Telegraph Authority in certain cases.- The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity 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 electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraphic 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.

10. A plain reading of the above text would reveal that the appropriate Government is authorized thereby to confer upon any public officer or any other person engaged in the business of supplying electricity under the Act, subject to such conditions and restrictions, as it may think fit to impose as well as to the provisions of the 1885 Act, any of the powers which the telegraph authority is possessed there under (1885 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. The notifications no. RVPN/CE/T&C/PTCC/F. (ROW)/D. 580 and 581 dated 5.3.2014 issued by the Chief Engineer (T&C), Rajasthan Rajya Vidhyut Prasaran Nigam Ltd., Jaipur indicate in clear terms that the same had been issued pursuant to the notification dated 28.2.2004 of the Energy Department of the Government of Rajasthan, Jaipur and published in the Rajasthan Gazette dated 8.3.2004, u/s 164 of the Act as well as by virtue of the powers of the telegraph authority under the 1885 Act available to the Chief Engineer of the Nigam, to erect electric lines/electric plants for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper coordination of works. Thereby, sanction has been accorded of the right of way for erection/construction/modification of 132 KV S/C Pindwara-Aburoad line for raising height of railway track crossing Swaroopgang and Banas at km 567/1-2 Ch. 90260 (line length approx. 0.802 km) and 132 KV S/C Pindwara-J.K. Laxmi Cement line for raising height of railway track crossing Aburoad-Pindwara at km 559/6-7 Ch. 97760 (line length approx. 0.695 km) for supply of electricity. The boundary/revenue area within which the transmission lines would pass has been mentioned as well.

11. Apart from the presumption of validity of an official act unless convincingly rebutted, according to us, the text of the notifications per se is overwhelmingly demonstrable of the conferment envisaged u/s 164 of the Act vesting the respondent-Nigam with the powers of telegraph authority possessed under 1885 Act with regard to placement of telegraph lines and posts for the purpose of a telegraph established or maintained by the Government or to be so established or maintained. The plea of want of competence thus in the attendant facts and circumstances and in the face of the notifications and absence of unimpeachable material to the contrary does not weigh with us.

12. Sections 10 and 16 of the 1885 Act being of substantial significance are also quoted hereunder:-

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 a 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.

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.

13. It would be apparent from Section 10(d) that in exercise of the powers conferred thereby the telegraph authority is to ensure that the damage is minimum and full compensation is paid for any damage sustained by reason of the exercise of such powers except in cases where the property is vested in or under the control or management of any local authority. Sections 16(3) and 16(4) provide for contingencies involving disputes with regard to sufficiency of compensation and entitlement of the claimants respectively. The forum of jurisdictional District Judge has been envisaged by the legislature to deal with such situations and to decide the controversy. In terms of Section 16(5), every determination of dispute made by the District Judge under subsection (3) or (4) would be final. In view of such unambiguous and presiding provisions contained in Sections 10 and 16 of the 1885 Act, we are of the comprehension that the learned Single Judge did not err in dismissing the appellants-writ-petitioners' apprehension to the contrary. In absence of any enjoinment in any of these enactments, we are also not wee bit convinced that acquisition of any immovable property being subject matter of any project as involved herein, is a condition precedent for the validity thereof.

14. In the wake of the above, we are thus of the firm opinion that the impugned judgment and order does not suffer from any error of fact or law and that no interference therewith is called for. The appeal lacks in