

(1999) 07 AHC CK 0076
In the Allahabad High Court
Case No : C.M.W.P. No. 31917 of 1993

Mahabeer and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 09-07-1999

Acts Referred:

Electricity (Supply) Act, 1948 — Section 10, 42
Electricity Act, 1910 — Section 12, 13, 14, 15, 16
Telegraph Act, 1885 — Section 16(3)

Citation : (1999) 3 AWC 2479 : (1999) RD 559

Hon'ble Judges : Lakshmi Bihari, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : T.C. Sharma and M. Wasi Siddiqui, for the Appellant; S.P. Mehrotra and A.K. Mehrotra, S.C., for the Respondent

Judgement

Binod Kumar Roy and Lakshmi Bihari, JJ.—The petitioners have come up with a prayer to command the respondents not to interfere in their peaceful possession over their Plot Nos. 941, 944, 945 and 950 situate in Village Mohsinpur, Pargana, Tahsil and District Kanpur Nagar and not to make any plots besides to award compensation for spoiling and ruining their paddy crops standing over the aforementioned plots by relying upon an earlier order dated 13.3.1991 passed in the writ petition of Nagar Mahapalika, Kanpur Nagar and others. Civil Misc. Writ Petition No. 4867 of 1978.

2. According to the petitioners, they are Bhumidhars of the aforementioned plots on which they had sown paddy crops, that the aforementioned plots were neither give a handle to the respondents to interfere with their peaceful possession over the lands causing them wrongful loss, that on 6th September, 1993 respondent Nos. 3 and 4 forcibly entered the plots for making constructions for the purposes of high tension electric supply and spoiled and ruined their paddy crops causing a loss to the tune of Rs. 50,000, that they filed an application on 7.9.1993 in that regard with copies to all concerned including respondent Nos. 3 and 4 but without any result and hence this writ petition.

3. In the counter-affidavit filed on behalf of respondent Nos. 2 to 4, which has been sworn by Respondent No. 4, it has been stated, inter alia, that the plots in question stand recorded in the Khatauni in the name of Nagar Mahapalika, Kanpur ; that a Scheme for 33 KVA line was duly sanctioned for supplying electricity from Panki to 33/11 KVA Sub-station Kalyanpur for which construction work started : that four electricity poles were erected on 13.4.1991 in exercise of the powers conferred on the UPSEB under the provisions of Electricity (Supply) Act, 1948 and Indian Electricity Act, 1910 ; that only electric wires are passing through the plots in question and for that purpose no acquisition or requisition of the plots is required or compensation is required to be paid; that it is totally wrong to say that the lands or the alleged paddy crops were spoiled or ruined : that no loss whatsoever has been caused to the petitioners and accordingly the writ petition is liable to be dismissed.

4. The petitioners in their rejoinder to the aforementioned that against the Nagar Mahapalika, Kanpur and others petitioner No. 2 had moved this Court in C.M. Writ Petition No. 4867 of 1978 and vide judgment and order dated 13.3.1991 this Court directed the respondents of the said writ petition not to interfere with their possession appending its copy as Annexure-R.A. 1 and accordingly it is immaterial that the name of the Nagar Mahapalika has been recorded in the Khasra, and that in February, 1995 again also the crops and cut away their mango and jamun trees.

5. The learned counsel for the petitioners Sri T.C. Sharma pressed this writ petition and prays for grant of the aforementioned reliefs.

6. Sri Mehrotra, the learned standing counsel for respondent Nos. 2 to 4, on the other hand contended that the claim and allegations of the petitioners are incorrect as whatever was done, it was under the statutory scheme and no damage was caused in implementation thereof and the remedy, if any, of the petitioners lay in filing an application before the District Judge of the area concerned u/s 16(3) of the Indian Telegraph Act read with Section 10(d) of the Indian Telegraph Act read with Section 42 of the Electricity (Supply) Act as laid down by the Madhya Pradesh High Court in Rajak and Others Vs. National Thermal Power Corporation Ltd., Indore and Another, .

7. Sections 10(d) and 16(3) of the Telegraph Act reads thus :

7.1. 10 (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."

7.2. 16 (3) if any dispute arises concerning the sufficiency of the compensation to be paid u/s 10, clause (d), it shall, on either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

7.3. Section 42 of the Electricity (Supply) Act, 1948 read thus :

"Powers to Board for placing wires, poles, etc.--(1) Notwithstanding anything contained in Sections 12 to 16, 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 ordination of the works of the Board, all the powers which the telegraph authority possesses under Part III 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 and 19 of the first-mentioned Act shall apply to the works of the Board.

(2) A Generating Company may, for the placing of wires, poles, wall brackets, stays, apparatus and 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 subsection (1) and subject to the conditions referred to therein.

8. When a writ petition was filed seeking issuance of a writ of mandamus restraining the respondents from encroaching upon their fields and from putting up any erection or laying any over-head lines thereon before the Madhya Pradesh High Court, its Division Bench after considering the aforementioned provisions as well as some other relevant provisions of the Indian Electricity Act, held as follows :

"14. In the instant case, execution of the work of placing overhead transmission line and the erection of towers therefore is being carried out in accordance with a duly sanctioned scheme of the Generating Company NTPC which has all the powers for placing such wires and other appliances for transmission of electricity in terms of Section 42 of the Act which the Telegraph Authority possesses under Part III of the Indian Telegraph Act. 1885 in respect of a telegraph notwithstanding the provisions of Sections 12 to 16, 18 and 19 of the Indian Electricity Act. 1910, as per notification of the scheme published u/s 28(3) of the Act.

15. In view of the powers vested in the Generating Company NTPC u/s 42 of the Act read with Part III of the Indian Telegraph Act, there can be no valid objection by the petitioners to the implementation of the sanctioned scheme either unauthorised user of petitioners" land in respect of which compensation has been provided for under proviso (d) to Section 10 of the Indian Telegraph Act."

9. Having heard the learned counsel for the parties, perused their pleadings as

well as the aforementioned statutory provision and agreeing with the reasons given A.W.C. 156 by the Division Bench decision of Madhya Pradesh High Court, we are of the view that the best course for the petitioners was to move the District Judge, Kanpur Nagar for the redressal of their grievances as in view of the legal position that it will not be possible for this Court to by the petitioners in the summary proceeding without taking evidence.

10. Accordingly, while dismissing this writ petition, we give liberty to the petitioners to file an application within one month before the District Judge of the area concerned, within whose jurisdiction the lands aforementioned are situated, which if made within this period shall be considered and disposed of on merits after calling for a return from the U.P.S.E.B. and its authorities concerned in accordance with law.

11. In the peculiar facts and circumstances, we make no order as to cost.

12. The office is directed to hand over a copy of this order within one week to Sri P. K. Bisaria, learned communication to the District Judge, Kanpur Nagar for information to and follow up action.