

(1998) 02 KL CK 0016
In the High Court Of Kerala
Case No : O.P. No. 14422 of 1997-P

Moidu alias Kunnippa

APPELLANT

Vs

The District Magistrate and District Collector, Malappuram
and Others

RESPONDENT

Date of Decision : 09-02-1998

Acts Referred:

Telegraph Act, 1885 — Section 17

Citation : AIR 1998 Ker 158 : (1998) 2 ILR (Ker) 547 : (1998) 1 KLJ 598

Hon'ble Judges : S. Sankarasubban, J

Bench : Single Bench

Advocate : P.C. Sasidharan, for the Appellant; K.K. Raveendranath, Govt. Pleader, G. Janardhana Kurup, Standing Counsel and T. Krishnan Unni, for the Respondent

Final Decision : Allowed

Judgement

S. Sankarasubban, J.—Petitioner is a non-resident Indian, now at his home station at Valanchery in Malappuram District. He is proposing to construct a commercial building for his business in the 8 cents of land in Resurvey no. 72/2 of Valanchery Village. Grievance of the petitioner is that on the application of the fourth respondent, the first respondent-District Magistrate and District Collector, Malappuram -- in exercise of the power u/s 17 of the Indian Telegraph Act has ordered for the shifting of the 250 KVA transformer from the National Highway land in Valanchery Town in front of the petitioner's property facing the Kuttippuram Kozhikode National Highway where the petitioner has commenced the work for the commercial building.

2. According to the petitioner, the disputed transformer was installed in 1982 near Valanchery Town on the road side margin where there is sufficient vacant space left out. The land on the rear side of the transformer was purchased by one business group in which the fourth respondent is also having interest. At the plot the construction of a multi-storied building is underway. The presence of the

250 KVA transformer in front of the building appeared to them an inconvenience for the building. He moved the District Magistrate u/s 17 of the Indian Telegraph Act. District Magistrate has now passed an order, which is produced as Ext. P2. By Ext. P2 order, the District Magistrate has directed the Kerala State Electricity Board to shift the transformer to the most convenient new place within 15 days under intimation to the N. H. Authorities. The order also shows that the suitability of the site suggested by the petitioner has been obtained from the Assistant Executive Engineer, N. H. Sub-Division, Kuttippuram. Petitioner attacks the above order on the ground that the District Magistrate has no power, u/s 17 of the Indian Telegraph Act, to order shifting of the transformer from one site to another. Further, he submits that it was not necessary to shift the transformer from the existing site, as the present position is not at all causing injury to anybody. The Electricity Board was also against the shifting.

3. A counter-affidavit is filed on behalf of the fourth respondent. In the counter-affidavit, it is stated that the 250 KVA transformer was installed in 1982. It is located in such a location that it causes much inconvenience to the general public. It is just in front of the Valanchery bus stand and thereby causes serious obstructions to the vehicles coming out of the bus stand. Because of the location of the transformer, there is every chance of motor accidents at this busy junction at Valanchery. Counter affidavit also refers to the judgment in O. P. No. 7411/1996. That Original Petition was tiled by the Consumer Protection Development Council, Kuttiparam for identical relief, viz., to shift the transformer. O.P. No. 7411/96 was disposed of by this Court by Ext. P. 4(a) judgment permitting the petitioner to approach the concerned authorities, u/s 17 of the Indian Telegraph Act.

4. On behalf of the Electricity Board, a counter-affidavit has been filed. It is admitted in paragraph 3 of the counter-affidavit that though the Assistant Executive Engineer, N.H. Sub-Division, Kuttippuram had requested to shift the transformer from the present location, no immediate action could be taken for want of suitable location. It was further submitted that there was no public interest involved in the plea.

5. I was taken through the order of the District Magistrate as well as the counter-affidavits filed by the parties Section 17 of the Indian Telegraph Act reads as follows :

"17. Removal or alteration of telegraph line or post on property other than that of a local authority :-- (1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line or post accordingly :

Provided that, if compensation has been paid u/s 10, Clause (d), he shall, when making the requisition tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

(3) A District Magistrate receiving an application under Sub-section (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form; and the order so made shall be final".

Learned counsel for the petitioner submitted that Section 17 of the Indian Telegraph Act cannot be invoked to the facts of this case. Further, he submitted that there has been no proper enquiry by the District Magistrate.

6. To attract Section 17, the following conditions are necessary. (1) A telegraph line or post should have been placed over, along or across any property (2) the person entitled to the property deems it necessary to shift the telegraph line or post to another part thereof, and (3) He should make an application for removing or altering the telegraph line or post. Thus the person who applies u/s 17 of the Act should be the owner of the property in which the line or post is situated and his request should be to transfer the post to another portion in the same property. Here, admittedly the 4th respondent is not the owner of the property in which the transformer stands nor is there any prayer to shift the transformer to another portion in the same property. Hence, according to me, petition u/s 17 of the Act is not maintainable.

7. No doubt, some of the consumers approached this Court and obtained orders from this Court. But that does not mean that the fourth respondent's application should be allowed even without considering the question of jurisdiction. Here, the fourth respondent's application is having two reliefs; (1) to shift the transformer from the existing place and (2) to shift the transformer to a place very rear to the petitioner's property. This is not taken in u/s 17(1) of the Indian Telegraph Act. Hence, according to me 4th respondent's application u/s 17 (1) and (2) of the Indian Telegraph Act will not lie. Further, even if there is jurisdiction, the order passed by the District Magistrate is without any evidence. Counter-affidavit of the first respondent shows that there is no reason for shifting the transformer. But the District Magistrate has relied on the version of the National Highway authorities. Under the Act, it is for the authorities of the Board to move the matter. In view of the above, I quash Ext. P2. The petition will not lie before the District Magistrate.

8. The question as to whether the existing transformer causes traffic risks is to be considered by the Assistant Executive Engineer of the Electricity Board in

consultation with the Assistant Engineer, National Highway. District Magistrate cannot have any jurisdiction on the initiation of the National Highway Department, because it is the Electricity Department that should move the District Magistrate.

9. Hence, in any event of the matter, I quash Ext. P 2 and allow this Original Petition.