
(2010) 05 SHI CK 0193
In the High Court Of Himachal Pradesh

Power Grid Corporation of India Limited	APPELLANT
Vs	
Basant Singh and Others	RESPONDENT

Date of Decision : 21-05-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 18
Telegraph Act, 1885 — Section 10, 16

Citation : (2010) 05 SHI CK 0193

Hon'ble Judges : Kurian Joseph, C.J.; Dev Darshan Sood, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kurian Joseph, C.J.—The question that arises for consideration in this case is whether the Telegraph Authority is bound to pay the land value by way of compensation while exercising its power to lay a telegraph line or post in any property. Section 10 of the Indian Telegraph Act, 1885 provides for the power to place and maintain telegraph lines and posts. It reads as follows:

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 those powers.

2. u/s 10(d) it is clear that the Telegraph Authority while exercising power conferred under the Section for drawing the line or placing a post etc. it shall do as little damage as possible and in case there is any damage it shall pay full compensation to all persons interested for any damage sustained by them by reason of the drawing line or placing tower. By a separate Notification this Act has been made applicable to exercise of the powers by the appellant under the provisions of erstwhile Indian Electricity Act, 1910 read with Electricity (Supply) Act, 1948. u/s 16 of the Indian Telegraph Act, if there is any dispute on sufficiency of the compensation, it is open to the disputing party to approach the District Judge of competent jurisdiction for adjudication regarding sufficiency of compensation. The provision reads as follows:

16(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.

3. u/s 10(d) of the Indian Telegraph Act, 1885 what is contemplated is the compensation for the damage caused to a property by drawing an electric/ telegraph line or placing a tower. It is not the compensation as understood under the Land Acquisition Act where the land itself is acquired. Once the land is acquired, the party from whom land is acquired ceases to be owner of the property and ownership, title and possession, after acquisition vests in the acquisitioning/ requisitioning authority. As far as the exercise of power for drawing of telegraph line or placing a tower etc. is concerned, the party is never divested of its ownership or title or possession. It is only a permissive use which is given a statutorily status. In the process, no doubt, the owner might suffer some injury. That injury is to be compensated in terms of the extent of injury like the adverse impact on the prospects of income or use of the property. It can never be land value as such since, as we have already stated above, the owner is never divested of his title, ownership or possession. But at the same time injury certainly could be there. u/s 10(d) or in exercise of power u/s 16(3) the question only shall be as to what is the extent of injury to the property over which line is drawn or tower is placed, to be compensated in terms of money and nothing more.

4. Having analysed the legal position as above, and on going through the factual position in the present case, we find that the learned District Judge has

misdirected himself in granting the land value itself by way of compensation by comparing the value of the property in the vicinity. That method is to be adopted, only when the Court exercises its power u/s 18 of the Land Acquisition Act, 1894 for the purpose of deciding land value in a case duly referred to the Court after acquisition of the property. The power that is exercised u/s 16(3) of the Indian Telegraph Act is not akin to the power exercised by the Reference Court under the Land Acquisition Act, 1894.

5. Therefore, certainly the order calls for interference in principle.

6. We find that the learned Single Judge apparently taking note of the amount being only Rs. 24,000/- was not inclined to go into the legal question and on facts it was apparently held that it is sufficient compensation.

7. In view of the factual position as above, we decline to interfere with the amount already granted to the party towards compensation. However, the law has to be made clear that the District Judge in exercise of the power u/s 16(3) of the Indian Telegraph Act shall not grant compensation akin to the land value that is fixed by the Reference Court under the Land Acquisition Act, 1894. Only to the extent of injury suffered by drawing the line or placing a tower, the owner shall be proportionately compensated.

8. The Letters Patent Appeal is disposed of.