

(1995) 12 PAT CK 0010
In the Patna High Court
Case No : C.W.J.C. No. 1369 of 1995 (R)

Pratap Singh and Others

APPELLANT

Vs

Damodar Valley Corporation and Others

RESPONDENT

Date of Decision : 20-12-1995

Acts Referred:

Citation : (1995) 12 PAT CK 0010

Final Decision : Dismissed

Judgement

S.N. Jha, J.—The Petitioners in this writ petition seek a direction to the Respondents not to erect high tension electric wire over their raiyati lands without acquiring them under the provisions of the Land Acquisition Act and paying compensation. The aforesaid direction has been sought with respect to lands of Plot Nos. 21, 165, 398 and 498 of villages Bantara and Heretaja within Gola Police Station of District Hazaribagh which have been described as agricultural lands in the writ petition.

2. According to the Respondents, the lands are degraded lands and so far as Plot Nos. 21 and 165 are concerned, they do not belong to the Petitioners. As regards Plot No. 398 it has been stated that the amount of compensation has been paid to Smt. Gyan Devi, mother of the Petitioner No. 2 and, likewise, the amount of compensation with respect to plot No. 498 has also been paid to said Smt. Gyan Devi as well as Shri Jagannath (sic) other of Petitioner No. 1. It has further been stated that Petitioner Nos. 3 and 4 have declined to accept the compensation money on the ground that the same is insufficient. The money, however, is lying with the Circle Officer, Gola, which can be collected by the said two Petitioners from him.

3. As regards the question as to whether the electric poles can be erected over the raiyati lands without acquisition under the Land Acquisition Act, It is the case of the Respondents that the provisions of Indian Telegraph Act, 1885 empower the telegraph authorities to place and maintain the telegraph line over and across any immovable property. Section 51 of the Indian Electricity Act, 1910 empowers

the State Government to confer the powers of the Telegraph Authority under the Telegraph Act upon any public officer, licensee or any other person engaged in the business of supply of electrical energy under the Electricity Act. By virtue of notification dated 16.9.69 issued in terms of Section 51 of the Electricity Act the Damodar Valley Corporation is thus empowered to erect poles for transmission of electricity over the lands without its acquisition. Section 51 of the Electricity Act runs as follows:

57. Exercise in certain cases of powers of telegraph authority,-Notwithstanding anything in Sections 12 to 16 (both inclusive) and Sections 18 and 19, the (State Government) may by order in writing, (or the placing of (electric supply lines, appliances and apparatus for the transmission of energy or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged In the business of supplying energy to the public under this Act), subject to such conditions and restrictions (if any) as the (State 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 telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for purposes of a telegraph established or maintained by the Government or to be so established or maintained.

The Respondents have brought on record copy of the notification dated 16.9.69 from which it appears that the powers possessed by the telegraph authority under Sections 10 to 19 of the Telegraph Act have been vested in the Superintending Engineer, Damodar Valley Corporation, Transmission System Construction, Panchot for the placing of electric supply-lines, appliances and apparatus for the transmission of energy required for the construction and maintenance of extra high, high, minimum and low tension electric supply-lines of the Corporation in the districts of Hazaribagh, Singhbhum, Manbhum, Santal Paragana, Ranchi and Palamau.

4. Section 10 of the Indian Telegraph Act provides "telegraph authority may from time to time, place and maintain a telegraph line under, over, along, or across, and posts in or on, any immovable property". It is not necessary to notice other provisions which also have been made applicable as they are incidental to exercise of power u/s 10A perusal of the said provisions leaves no room for doubt that the telegraph authorities are competent to use the lands to maintain telegraph line, and upon issuance of notification u/s 51 of the Electricity Act, the authorized officer is also likewise competent to erect poles for maintaining electric lines for transmission of electricity.

5. The Electricity Act has been enacted to provide for the supply and use of electric energy. Such supply and use of electricity has become a necessity. In order to facilitate the generation and distribution of electrical energy, it is, therefore, necessary to make provisions and confer powers so that the authorities are empowered to erect poles and take electric line over the lands. If

for such use of the immovable property the necessity of acquisition under the Land Acquisition Act is not dispensed with, it would result in a very cumbersome situation in which the whole scheme of erection of poles and maintenance of electric lines may be stalled. A Full Bench of Kerala High Court in the case of Bharat Plywood and Timber Products Private Ltd. Vs. Kerala State Electricity Board Trivandrum and Others, has held that the provision of Section 51 of the Electricity Act conferring a right of user of the land within the meaning of Section 10 of the Telegraph Act is reasonable and in the interest of general public.

6. It may be pointed out that even though the ordinary procedure of acquisition of land has been dispensed with provisions have been made for payment of compensation and settlement of dispute. Proviso (d) to Section 10 of the Telegraph Act provides that in exercise of the powers conferred by that Section, the authority shall do as little damage as possible and in respect of property not vested in or under the control or management of any local authority, "pay full compensation to all persons interested in any damage sustained by them by reason of exercise of those powers". Section 16(3) provides that if any dispute arises in respect of sufficiency of the compensation to be paid u/s 10 Clause (d), it shall be determined by the District Judge within whose jurisdiction the property is situate on the application by either of the disputing parties for that purpose.

7. In the instant case, as stated at the outset, Petitioner Nos. 1 and 2 have already received compensation, according to the Respondents without protest, and so far as Petitioner Nos. 3 and 4 are concerned, their entitlement also is not disputed. They are said to be dissatisfied with its quantum. But in view of the provisions of Section 16(3) of the Act, it is open to them to receive the compensation already awarded to them under protest and to make an application for enhancement of the amount of compensation before the District Judge concerned in accordance with law. So far as the grievance as to user of the land for the purpose of erection of poles and transmission of electric line is concerned, in view of the provisions of Section 51 of the Electricity Act read with the relevant provisions of the Telegraph Act, referred to above, their grievance has to be rejected as being devoid of any substance.

8. This writ petition is accordingly dismissed with the observations made hereinabove.