

(2009) 10 OHC CK 0001
In the Orissa High Court

Rabindra Bhoi

APPELLANT

Vs

Chief Executive Officer, Central Electricity Supply Utility and
Another

RESPONDENT

Date of Decision : 21-10-2009

Acts Referred:

Electricity (Supply) Act, 1948 — Section 29
Telegraph Act, 1885 — Section 10, 16(3)

Citation : (2010) 109 CLT 163 : (2010) 1 OLR 804 Supp

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Judgement

M.M. Das, J.—The Petitioner is aggrieved by the action of the Opp. Parties in constructing a 132 KV Electric Tower over his land. The land in question is situated in mouza - Kesura appertaining to Chaka No. 300, Plot No. 671 under khata No. 122 measuring Ac. 0. 510 decimals, which is stated to be near the vicinity of capital city of Bhubaneswar in the district of Khurda. The Petitioner has alleged that on 9.8.2009, he found that some people were digging holes in his land with the help of JCB Machine. On being protested, the labourers working there threatened the Petitioner that if he interferes with the work, they will lodge criminal case against him. Some of the staff members of the Opp. Parties explained to him that they are instructed to construct a tower for drawing 132 KV line from Mancheswar to Badgad. It has been further alleged that nothing was communicated to the Petitioner with regard to construction of such a tower over his land & if the same is allowed, it will cause immense hardship to the Petitioner & the joint owner of the said property as the entire land which is used for cultivation will be affected & the Petitioner does not have any other immovable property to ache his livelihood.

2. A counter affidavit has been filed by the Opp. Party No. 2, inter alia, stating that the said 132 KV line has been augmented to be drawn as per the transmission scheme prepared by the Grid Corporation of Orissa Ltd., the predecessor of the Opp. Party No. 2, as per notification dated 14.4.1997 which

was Published in the Gazette on 9.12.1997 u/s 29 of the Electricity (Supply) Act, 1948 & the same has also been duly published in the Oriya Daily, "The Samaja" dated 25.7.1997. The tower in question being a part of the said scheme is now erected in accordance with law to draw electric line for transmission of electricity as per the alignment prepared by the expert engineers for the greater interest of the general public. The Petitioner having not made any representation/ objection at the relevant point of time is not entitled to cause any obstruction to the erection of such tower when the work is in full swing for early completion & twenty crores of rupees have already been invested. It has further been averred that before construction, of the tower, another publication was made in the Oriya daily, "The Samaja" as well as "The Sambad" on 27.9.2005. According to the Opp. Party No. 2, due to the stay order passed by this Court, the work has been stalled. The legal contention raised by the Opp. Party No. 2 is that the scheme having been prepared u/s 29 of the Electricity (Supply) Act, 1948, all provisions under Part-III of the Indian Telegraph Act, such as, Sections 10 to 16 thereof are to be followed under the scheme. Under the said provision, no person can create any obstruction in the execution of work, but instead, can make his claim for compensation before the District Magistrate or District Judge having jurisdiction, who will determine the compensation to the extent of minimum damage caused by the executing authority in course of executing the work under the scheme. Reference has been made to the decisions in the cases of The Orissa State Electricity Board and Another Vs. Pyari Mohan Patnaik and Others, & Smt. Susama Patel Vs. Grid Corporation of Orissa Ltd. and Others, , & the Judgments in O.J.C. No. 398 of 1989 (Chema Behera and Ors. v. State Electricity Board and Ors.) disposed of on 7.3.1989 as well as O.J.C. No. 2868 of 1998 (Bairagi Charan Nayak v. State of Orissa and Ors.) disposed of on 29.8.2000.

3. A rejoinder affidavit has been filed on behalf of the Petitioner to the counter affidavit of the Opp. Party No. 2, inter alia, stating that the Gazette notification as well as the paper publication was made in the year 1997 & the Petitioner who is the land owner had no scope to know of such notification. No notice whatsoever was issued to the Petitioner being the owner of the land regarding acquisition or utilization of his land in question. The Petitioner belongs to Scheduled Caste community & cannot be deprived of his land without any notice. It has been further averred that the Petitioner being the owner of the land has all right to protect his property & the provisions of the Land Acquisition Act has not been followed for acquiring the land of the Petitioner. The Petitioner relied upon the Judgment dated 11.9.2008 of this Court rendered in W.P. (C) No. 12762 of 2008 (Jyostna Rani Mallick v. Union of India & Anr).

4. Mr. Patnaik, Learned Counsel for the Petitioner submitted that in Jyostna Rani Mallick, (supra), this Court was dealing with a Writ Petition, wherein a prohibitory relief by way of restraining the Opp. Parties, particularly, Opp. Party No. 2 therein, being the Power Grid Corporation of India Ltd. (for short, "the Corporation") from unauthorized construction of Electric Tower over the land of the Petitioner in the said case & to pay necessary & adequate compensation, was

sought for. This Court took note of the fact that the said land was a Sthitiban/ homestead land of the Petitioner therein & the Corporation was raising unauthorized construction of an Electric Towers to draw electric line of 440 volt over the Petitioner's sthitiban homestead land for electrification from Baripada to Mendhasala. A contention was raised in the said case that the action of the Corporation was in flagrant violation of the provisions of Sections 12 to 18 of the Indian Electricity Act, 1910 (hereinafter referred to as "the Act, 1910") & the rules framed thereunder. Though the Act, 1910 has been repealed, the said provisions are applicable till the rules are framed under the Electricity Act, 2003. The said provisions of the Act, 1910 provides for a full-fledged procedure for acquiring the land for the purpose of electrification. The Division Bench relying upon various decisions of the Apex Court & referring to Article 300-A of the Constitution of India, interpreting which, the Apex Court has laid down in various decisions that the right to property is a Constitutional & human right though not a fundamental right, concluded that the Opp. Parties cannot be permitted to dispossess the Petitioner from his land in view of the provisions of Article 300-A of the Constitution, more so, when the dispossession from the land for the purpose of electrification is prescribed under Sections 12 to 18 of the Indian Electricity Act, 1910 & the rules framed thereunder, which are still in force till the rules are framed under the provisions of the Electricity Act, 2003 & the Opp. Party No. 2 cannot be permitted to go ahead in using the Petitioner's land for electrification in violation of the statutory provisions. This Court, in course of the Judgment, referred to various decisions of the Apex Court including the decision in the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , where the Apex Court held that public authorities cannot play fast & loose with the powers vested in them & persons to whose detriment orders are made are entitled to know with exactness & precision what they are expected to do or forbear from doing & exactly what authority is making the order. The Apex Court has also held in the case of Ram Chand and Others Vs. Union of India (UOI) and Others, that the exercise of power should not be made against the spirit of the provisions of the statute otherwise it would tend towards arbitrariness. Thus concluding, the Division Bench of this Court in the case of Jyostna Rani Mallik, (supra) in paragraphs 19 & 20 of the Judgment held as follows:

19. Therefore, it is evident from the above that whenever any action of the authority is in violation of the provisions of the statute or the action is constitutionally illegal, it cannot claim any sanctity in law, & there is no obligation on the part of the Court to sanctify such an illegal act. Every statutory provision requires strict adherence, for the reason that the statute creates rights in favour of the citizens, & if any order is passed de hors the same, it cannot be held to be a valid order & cannot be enforced. As the statutory provision creates legal rights & obligations for individuals, the statutory authorities are under a legal obligation to give strict adherence to the same & cannot pass an order in contravention thereof, treating the same to be merely decoration pieces in his office.

20. In view of the above, action of the Opposite Parties in dispossessing the

Petitioner from his land in contravention of the provisions under Article 300-A of the Constitution & the provisions of Sections 12 to 18 of the Electricity Act, 1910 & the Rules framed thereunder cannot be permitted & the Writ Petition deserves to be allowed.

5. Mr. P.K. Mohanty, Learned Counsel for the Opp. Party No. 2, on the contrary, submitted that the scheme having been framed u/s 29 of the Electricity (Supply) Act, 1948, the provisions of the said Act have been adhered to & no fault can be found with the Opp. Party No. 2 in erecting the Tower over the land of the Petitioner. In the case of Cheme Behera and Ors. (supra), on which reliance has been placed by the Opp. Party No. 2, another Division Bench of this Court considering drawing of high power electricity line over the homestead property of the Petitioner, under a scheme u/s 29 of the Electricity (Supply) Act, 1948, held that no justifiable reason is found to interfere in the matter as notice of the scheme was given according to the provisions of the said Act & pursuant to the said notice, the work which is of considerable public importance has progressed substantially, the Towers have been erected & the High tension line is being drawn. Referring to Section 16 of the Indian Telegraph Act, which is made applicable to the facts of the said case u/s 42 of the Electricity (Supply) Act, 1948, this Court found that it is clear that if the exercise of the power mentioned in Section 10 in respect of the 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. It is further provided in Sub-Section (3) of Section 16 that 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, being filed by either of the disputing parties, the District Judge within whose jurisdiction the property is situated, be determined by him. In view of such provision, this Court was not persuaded to accept the contention made on behalf of the Petitioners therein that they have been seriously prejudiced by any action of the Opp. Parties & interference by this Court is absolutely necessary. This Court also took note of the fact that interference at this stage will cause delay in execution of the scheme, which is of considerable importance, particularly, in view of the prevailing shortage of power in the State. The above principles have been followed in the other decisions referred to by the Learned Counsel for the Opp. Party No. 2.

6. It appears that the case of Jyostna Rani Mallick (supra) is distinguishable from the facts of the present case as in the said case, no scheme was framed u/s 29 of the Electricity (Supply) Act. But the question raised was with regard to drawing up of a 440 volt line (H.T. Line) over the lands of the Petitioner therein. It was, in that context, this Court made no reference to the provisions of the Electricity (Supply) Act.

7. In view of the ratio of the aforesaid decisions & the provisions of the Electricity (Supply) Act as well as the Indian Telegraph Act, this Court is not inclined to interfere in the matter. But, however, while disposing of the Writ Petition, this

Court directs that the compensation in accordance with Section 10 of the Indian Telegraph Act shall be computed by the competent authority & paid to the Petitioner. If .the Petitioner is still aggrieved, he may take recourse to Section 16(3) of the said Act & file appropriate application before the concerned District Judge for determination of just compensation.

8. With the aforesaid observations, the Writ Petition is disposed of. There shall be no order as to costs.

Consequently, all pending Misc. Cases stand disposed of & the interim order passed earlier stands vacated.