

(2022) 06 GUJ CK 0065

In the Gujarat High Court

Case No : R/Special Civil Application No. 12223 Of 2021

Rasikaben Vikramsinh Chauhan

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 10-06-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 21, 226, 227, 300A
Electricity Act, 2003 — Section 14, 15, 63, 68, 68(1), 79(1)(e), 164
Indian Telegraph Act, 1885 — Section 10, 16, 16(1), 17, 63
Indian Penal Code, 1860 — Section 188

Citation : (2022) 06 GUJ CK 0065

Hon'ble Judges : Vaibhavi D. Nanavati, J

Bench : Single Bench

Advocate : Rashesh Sanjanwala, Rohan A Shah, Rushabh H Shah, Ishan Joshi, SP Hasurkar

Final Decision : Dismissed

Judgement

Vaibhavi D. Nanavati, J

1. The present writ-application has been filed under Article 226 of the Constitution of India seeking the following reliefs :-

“(A) Your Lordships may be pleased to allow the present Petition and issue writ of certiorari or any other appropriate writ, order or direction and quash and set aside notice dated 2-06.2021 issued by the Respondent Authority, annexed here with Annexure-A.

(AA) Your Lordships may be pleased to allow the present petition and issue a writ of certiorari or any other appropriate writ, order or any other direction and quash and set aside the order dated 17/09/2021 passed by the Ld. Sub Divisional Magistrate.

(B) Pending the hearing and final disposal of the present Petition, Your Lordships may be pleased to stay the operation, execution and implementation of

installation of overhead transmission lines and electricity poles on the subject land belonging to the Petitioner and all related activities thereto.

(C) Your Lordships may be pleased to pass ex-parte as interim relief in terms of Prayer (B) may kindly be granted.

(D) Your Lordships may be pleased to pass such other and further orders/reliefs as may be deemed just and proper in the interest of justice.”

2. The facts germane for adjudication of the present writ-application as stated by the writ-applicant are stated thus :-

2.1 The writ-applicant purchased the agricultural land by Registered Sale Deed bearing Survey No./Block No. 258 (Old Survey No. 111) admeasuring 6499 sq. mtrs. situated at Village : Bhanpura, Tal : Aanklav, Dist: Anand. The writ-applicant being the rightful owner and occupier of the subject land his name came to be mutated by Mutation Entry No. 1075 in Village Form No.6.

2.2 By order dated 31.03.2015 the Development Officer granted permission to the writ-applicant to convert the subject land into non-agricultural and the Mutation Entry came to be given effect into revenue records and copy of Village Form No.6 by Mutation Entry No. 1266 dated 23.04.2015.

2.3 The respondent authority by notification dated 01.02.2019 issued by the Central Electricity Authority: Government of India under Section 63 of the Electricity Act 2003, is granted license to lay a transmission line of 765 KV D/C High Tension Power Lines from Lakadia (Bhuj) to Waghodia (Vadodara).

2.4 Notice came to be issued by the respondent authority on 12.06.2021 upon the writ-applicant informing about the said project of erecting the transmission lines and further informed the writ-applicant to file their objections, if any with regards to the above referred project.

2.5 The writ-applicant by letter dated 23.06.2021 raised objections against the said notice issued by the respondent authority. Without deciding the objections the respondent authority initiated the activity of erecting electricity poles on the subject land.

2.6 The respondent (Sterlite Power) by its reply dated 01.07.2021 requested to the writ-applicant to refrain from obstructing the project of laying down the transmission line through the said route and further assured that the writ-applicant will be entitled to receive adequate compensation.

2.7 Taking into consideration the objections and representation raised by the writ-applicant and other land owners/farmers the Sub-Divisional Magistrate, Borsad issued notice dated 12.7.2021 whereby it was intimated that the hearing with respect to the permission granted for erecting transmission line was kept on 21.8.2021. The Sub-Divisional Magistrate after hearing respective parties by order dated 17.9.2021 directed the respondent authority to erect transmission line over the land belonging to the writ-applicant.

2.8 It is stated that the Sub-Divisional Magistrate by impugned order has not dealt with the submissions of the writ-applicant and straightway directed the respondent authority to lay the transmission line over the subject land belonging to the writ-applicant.

2.9 The writ-applicant approached this Court by filing the present writ-application under Article 226 of the Constitution of India initially challenging the notice dated 12.6.2021 issued by the respondent authority. Pending adjudication of the present writ-application the Sub-Divisional Magistrate, Borsad passed the final order dated 17.9.2021 and directed the respondent No.2 to lay down transmission line over the land belonging to the writ-applicant.

3 Heard Rashesh Sanjanwala, the learned Senior Advocate appearing for Mr. Rohan Shah, the learned advocate appearing for the writ-applicant, Mr. S. P. Hasurkar, the learned advocate appearing for the respondent No.2 and Mr. Ishan Joshi, the learned AGP appearing for the respondent No.1.

Submissions on behalf of the writ-applicant :-

4. Rashesh Sanjanwala, the learned Senior Advocate relying on the submissions made in the writ-application submitted that the activity of laying the transmissions line and erecting electricity poles/towers which is carried out by the respondent No.2 authority is against the provisions and the procedure as laid down by various laws.

4.1 Mr. Sanjanwala, the learned Senior Advocate submitted that it is well settled law that the electricity lines are usually drawn over at agricultural land where minimum lands are utilized for erecting the tower and agricultural activities are not prejudiced. It is only under inevitable circumstances that towers are placed on private land or residential land. In respect to the same Mr. Sanjanwala, the learned Senior Advocate submitted that instead of passing transmission line through the land of the writ-applicant and other agriculturist it is viable for the respondent authority to deviate and pass the transmission line through Survey No.257 i.e. "Gauchar land" or Survey No.264 which is a "Gauchar land".

4.2 Mr. Sanjanwala, the learned Senior Advocate further submitted in accordance with the provisions of the Telegraphic Act, 1885 read with the provisions of Electricity Act, 2013, apart from paying full compensation, the legislature has also cast an obligation upon the telegraph authority to ensure that while laying down the overhead transmission line, minimum/little damage by caused. In view of same reiterating the said submission Mr. Sanjanwala, the learned Senior Advocate submitted that the respondent authority has arbitrarily exercised its powers by deliberating opting for present route of transmission line which is not only adversely affecting the land belonging to the writ-applicant, but also affecting other adjoining land bearing Survey Nos.259, 260, 266 and 267. Whereas on the other hand by opting either of the route passing through the Gauchar land, minimum damage can be caused to the said project which the respondent authority has chosen to ignore.

4.3 Mr. Sanjanwala, the learned Senior Advocate submitted that the respondent authority with a malafide intention have arbitrarily exercised its powers and in breach of its duty by deviating from opting for more physical route, leading to erection of more transmission towers and adversely affecting more numbers of private/residential land including that of the writ-applicant. No explanation has come forth from the respondent authority as to why the present route is selected for laying transmission line when the authority could have very well opted that feasible and practical route involving less number of plots/lands being adversely affect.

4.4 Mr. Sanjanwala, the learned Senior Advocate submitted that the respondent authority has no vested power to carry out or undertake activity on the subject land until the objections raised by the writ-applicant and the issue under dispute are adjudicated by the concerned authority and attain finality.

4.5 Mr. Sanjanwala, the learned Senior Advocate submitted that the writ-applicant has obtained permission dated 31.5.2015 from the District Development Officer, Anand for converting the subject land for non-agricultural purpose, more particularly for residential purpose, since the present route opted for laying down overhead transmission line are passing through the subject land it would render the land unsuitable for utilization as residential purpose or in inhabiting as the installation of electricity poles would pose great danger to the lives of private residents.

4.6 Mr. Sanjanwala, the learned Senior Advocate submitted that : -

(a) The order dated 17.9.2021 passed by the Sub-Divisional Magistrate nowhere deals with the submissions of the writ-applicant and has straight away directed the respondent authority to lay down transmission lines over the subject land belonging to the writ-applicant.

(b) The Sub Divisional Magistrate ought to have produced a copy of the joint inspection report carried out in presence of the writ-applicant and the respondent authority. The said report was never shown or presented to the writ-applicant and no opportunity was provided to the writ-applicant to rebut the said report.

(c) The Sub Divisional Magistrate ought to have considered that the contention of the writ-applicant that the pole situated in old Survey No.111, pole no.674 is at an angle point, and if the same is moved/changed, the same would result in loss of power as 90-degree angle deviation is to be taken. Mr. Sanjanwala submitted that if the same is taken at a bird's eye view, pole no.673 which is placed in survey no. 264 and if deviation is taken from there, the overhead transmission lines would then pass from gauchar land, bearing survey no.257 and from there 90-degree deviation can be taken and minimum damage would be caused in accordance with law. He submitted that, if the applicant authority while laying down overhead transmission lines by taking a 90-degree deviation from pole no. 673, subsequently, the overhead lines would then pass from the said gauchar land, causing minimum damage and still would provide the same output to the

respondent authority.

(d) Mr. Sanjanwala lastly submitted that though the respondent authority had alternative land available to them, the authority chose arbitrarily pass the overhead line from the plot of the writ-applicant which is not in accordance with law.

In view of the above submissions, Mr. Sanjanwala, the learned Senior Advocate submitted that the order passed by the Sub Divisional Magistrate dated 17.9.2021 being passed against the settled principles of law be quashed and set aside.

Submissions on behalf of the respondent No.2 :-

5. Mr. S. P. Hasurkar, the learned advocate appearing for the respondent No.2 submitted that the construction and erection of 765 KV Lakdia-Vadodara Transmission line is entrusted to the respondent No.2 by the Government of India through competitive bidding procedure. The said line is of 330 Kms of length from Lakadia (Bhuj) to Waghodia, Vadodara at the cost of approximately Rs 1500 crores. The project has time frame was of 18 months I.e the project was required to end of February, 2021. Even considering the remission of period due to pandemic, project is running behind the schedule because of right of way (ROW) issues in the said area.

5.1 Mr. Hasurkar, the learned advocate submitted that for such an ambitious project, the respondent No.2 has procured License under Section 14; prior approval under Section 68 and powers of Telegraph Authority under Section 164, of the Electricity Act 2003 (for short herein after referred to as 'Act of 2003') from the Central Electricity Authority.

5.2 Mr. Hasurkar, the learned advocate submitted that the Government of India felt need to increase the production of electricity to meet with pace of development of the country. For the said reason various generating companies have been permitted to bring huge generating units in Kutch Bhuj District and nearby area as a part of interstate transmission network. Once the energy is generated it has to be evacuated and put into the grid for its effective utilization. Mr. Hasurkar submitted that corresponding to increase in production of energy there is need to strengthen existing transmission network. It is for the very reason Government of India offered incentives to increase production of energy as well as strengthening corresponding existing transmission network.

5.3 Mr. Hasurkar, the learned advocate rebutted the contentions of the writ-applicant that the respondent is obstructing the passing of the line by submitting thus :-

(a) It is the route of line in question is decided on the standard parameters which are settled on the basis of long standing practices and various regulations regarding safety framed by competent authority.

(b) The in question is laid down after undertaking proper survey by experts in the field.

(c) There are no rules framed regarding preparation of the route. Procedure involved is established and settled by practice and manual.

(d) Before transmission line is laid, the expert agency undertakes survey of route in three stages according to the Manual of Transmission Line. Invariably this work is outsourced to specialized agencies in the field.

5.4 Mr. Hasurkar, the learned advocate submitted that the said three stages are, Reconnaissance (including walkover) Survey, Preliminary Survey and Detailed Survey. In the process of reconnaissance survey, a bee line is drawn between the two sub-stations. The bee line which is a straight line joining the two terminal points, is marked and a belt of width 10 kms (20 cms or the map), on either side of the centre line is shown. In the master mosaic, the bee-line, which is the straight line joining two terminal points, should be neatly marked with pencil. The bee-line represents the shortest length, although, for various reasons, it may not be feasible to construct the line along the bee-line. Keeping the bee-line constantly in mind, alternative routes, with minimum unavoidable deviations from the bee-line, are marked carefully and in doing so, the following guidelines are kept in mind.

(a) Allowing minimum number of crossings of major rivers, railway lines, national/state highways, overhead EHV power and telecommunication lines.

(b) Avoiding certain natural features like high mountainous terrain, steep slopes with cliff and huge boulders, large lakes and marshy places, etc.

(c) Avoiding populated areas, narrow gaps between two villages, large cash crop plantations and places of worship, etc.

(d) Avoiding close vicinity of aerodromes, radio stations, radar centers, rifle ranges, etc and also industrial installations where pollution, due to chemical effluents emanating there from, would affect the operation and maintenance of the power line.

(e) In view of the statutory requirements of the Forest (Conservation) Act, 1980, avoiding, as far as possible, the reserved and protected forests and wild life sanctuaries, where unavoidable, align the route so that the cutting of trees is kept to be the minimum.

(f) Keeping sufficiently away from continuous parallelism which Telecommunication and Railway Telephone lines with existing HV or EHV line, it is preferable to maintain a minimum separation of 300 meters.

5.5 Mr. Hasurkar, the learned advocate submitted that in the course of Walkover Survey, after making the various feasible routes on the map, a comparative study is made on the basis of the following data.

i) Route length

(ii) Number and type of angle points in each proposal indicating the sharpness of each deviation as measured on the map.

iii) Nature and number of major crossings.

iv) Deviation in the line due to civil or military aerodromes and other industrial installations.

v) Approach to the line for construction.

vi) Reaches through protected or reserved forests.

Vii) Long stretches of cultivated fields.

viii) Close parallelism with telecommunication and railway telephone circuits.

With the aforesaid details a walkover survey has to be carried out on all the alternative routes to arrive at the most economical route and to update the topographical maps available with the latest features observed during the survey.

5.6 Mr. Hasurkar, the learned advocate further submitted that in the course of walkover survey, one is required to go over the area associated with the alternative routes proposed and collecting features observed other than those existing on the map. In addition, the indication on the following features would also be required to be checked without fail.

i) Communication lines

ii) Power Lines

iii) Expanding villages and towns.

iv) Rich gardens and plantations, etc

v) Aerodromes, radar center, rifle ranges.

vi) Undulating reaches unfit for erection and maintenance.

vii) Roads constructed and roads improved recently.

viii) Steep sloping terrain or steep slopes of hills.

ix) Large tanks, lakes, water logged areas, etc.

x) Reserved Forests and wooded areas with high trees.

xi) High hillocks and stretches with large boulders.

xii) Irrigation wells likely to be made, tube well, pump houses.

xiii) Forests where menace of wild elephants persist

xv) Availability of saddles in still section for better crossing of valleys.

- xvi) Ghat Roads in hills
- xvii) Gardens with grafted fruit trees.
- xviii) Prohibited area declared under statutory regulations.
- xiv) Rocky areas.

5.7 Mr. Hasurkar, the learned advocate further submitted on completion of the Walkover Survey, the proposal of the most suited route is further studied and approval is obtained from the head of Department of Transmission before taking up preliminary survey.

5.8 Mr. Hasurkar, the learned advocate further submitted that thereafter preliminary survey is carried out and the object of the said survey is to transfer the route selected on the map on the ground with such deviation as may be necessary due to the aforesaid constraints. In carrying out the same, technical aspects are mainly taken into consideration. After taking into consideration all the aspects as aforesaid, a report is submitted to the Chief Engineer Project who approve the most convenient route. Mr. Hasurkar submitted that while fixing the transmission route, only, the most techno-economically feasible route is chosen causing least damage after complying with the statutory clearances and avoiding places of in-habitation, worship and densely populated areas.

5.9 Relying on the aforesaid submissions Mr. Hasurkar submitted that so far as present location in the land of the writ-applicant is concerned, location no 674 is falling in the land of the writ-applicant. Mr. Hasurkar referred to the map and submitted that without any expertise the said map would show thus :-

- 1) line is coming almost in straight direction to lands of the writ-applicant from upwards.
- 2) It takes turn of degree in the land of the writ-applicant and then proceeds to cross the river Mahi.
- 3) after location No 674 next location is after line river crossing.
- 4) The said location is special type of location standing on pile foundation to achieve requisite zag throughout while line is crossing the river.
- 5) Location 674 being angle point which so taken for achieving approximate 90 degree angle for crossing River Mahi. Any sort of deviation in the position of the said location will change whole alignment of the line and therefore the request of the writ-applicant to change spot of location cannot be acceded to.

5.10 Mr. Hasurkar, the learned advocate submitted that the Location 674 being angle point and river crossing point no change as stated above is possible and the contention of the writ-applicant that the route is deviated illegally is denied. The writ-applicant has not carried out any exercise before making such a statement and it is bald statement suitable to contention raised by the writ-applicant.

5.11 Mr. Hasurkar, the learned advocate submitted that Telegraph Act does not recognize any such distinction I.e agricultural land and non-agricultural land as contended by the writ-applicant. Although care is taken that the private lands, constructed areas, densely populated areas are always avoided as per settled norms Mr. Hasurkar relying on the map page-22 submitted that the location no 673 is in fact on gaucher land and same is on straight line. The deviation of location 674 is not possible as it being angle point and that is how the circumstances are inevitable and non-agricultural land of the writ-applicant is affected. Mr. Hasurkar, the learned advocate submitted that as of date the entire stretch of the land is open land and there is no construction on the said land.

5.12 Mr. Hasurkar, the learned advocate submitted that simply spotting some other location on map suiting to avoid the writ-applicant's land and alleging malafide on such basis against the present respondent No.2 is also a statement without any verification. The location No.674 in the land of the petitioner is angle point for river crossing the same is selected considering all necessary parameters.

5.13 Mr. Hasurkar, the learned advocate relied on the following judgments with regard to the law regarding construction and erection of transmission line exercising the powers of the Telegraph Authority under Telegrph Act:-

(a) 2011-2-GLH 781 Himmatbhai Patel V/s Chief Engineers project GETCO, paragraphs : 29, 32, 33, 49 and 52

(b) GETCO v/s Ratilal Maganji Barot. Letters Patent Appeal No.534 of 2020 decided on 6.11.2020, paragraphs : Pr 29, 58.9, 58.10, 58.11, 58.16 and 59 Special Leave Petition challenging the order passed in the Letters Patent Appeal No.534 of 2020 came to be dismissed by the Hon'ble Supreme Court.

(c) PowerGrid Corporation V/s Century Mills 2017-5-SCC-143, paragraphs : 20 and 24.

5.14 Mr. Hasurkar, the learned advocate submitted that the aforesaid project as stated above is being carried out for the public purpose after obtaining all the approvals and permissions as required under the law. The respondent approached the District Magistrate Anand seeking permission under 16(1) of the Telegraph Act. The respondent also requested the District Magistrate to visit the site to appreciate the change or deviation not possible.

5.15 Mr. Hasurkar, the learned advocate submitted that the Location No.674 so far as Dist. Anand is concerned, is the last location and thereafter the said line enters in Vadodara. In Vadodara the respondent had already completed work on 63 locations, as of now those locations are completed by persuading the owners and occupiers and the work is in full swing. Mr. Hasurkar, the learned advocate submitted that through various orders passed by the various Coordinate Benches and Division Bench it is clarified that the work of laying down of transmission line may go on even during pendency of the proceedings. Lastly he submitted that the writ-application may not be entertained and the same be dismissed.

5.16 Mr. Hasurkar, the learned advocate lastly submitted that the respondent invited objections to the project through public advertisement as a part of the procedure for procuring powers of telegraph authority under the Telegraph Act. The writ-applicant has not raised any objection at that time and now the writ-applicant is estopped from raising any such contention, at this stage, when the project is in progress.

5.17 Mr. Hasurkar, the learned advocate relied on the order passed in the Special Civil Application No.14858 of 2018, paragraphs 13, 15 and 16.

6. By way of further reply to the draft amendment Mr. Hasurkar, the learned advocate relied on the order passed in the Letters Patent Appeal No.534 of 2020 and placed reliance on paragraphs 8.16 reverting to the submissions made by Mr. Hasurkar submitted that whether the land is agricultural or non-agricultural, as far as exercise of powers under the Telegraph Act are concerned, there is no prohibition in the said regard. Mr. Hasurkar, the learned advocate submitted that the writ-applicant would get compensation for such use depending upon jantri value of the land as envisaged in Government Resolution dated 14-08-2017 and also relied on Section 10 of the Telegraph Act. Mr. Hasurkar submitted that there is no construction as on date and the writ-applicant can plan his construction in accordance with the route of the line to provide for open space which is a mandatory requirement of planning construction on non agriculture land .

7. Mr. Ishan Joshi, the learned AGP appearing for the respondent No.1 adopted the submissions advanced by Mr. S. P. Hasurkar, the learned advocate appearing for the respondent No.2 and submitted that the order passed by the Sub-Divisional Magistrate, Aanklav dated 17.9.2021 is just and proper and the writ-application is required to be dismissed.

8. Position of law :-

(A) In the Letters Patent Appeal No.534 of 2020 in the judgment dated 6.11.2020, reported in 2021 (4) Gujarat Law Reporter, 2642, paragraphs 58.16, 58.17, 58.23, 58.27 and 58.29 reads thus :

"58.16 Section 16 states that if there is any resistance or obstruction, the District Magistrate may in his discretion, order that the telegraph authority shall be permitted to exercise all the powers. Further, after such an order, a person offering any further resistance is deemed to have committed offence under Section 188 of the Indian Penal Code. Once the technical feasibility of the project, has been approved by the appropriate Government, by issuing an order under Section 164 of the Electricity Act, 2003, no land owner or person interested can seek for shifting or re-aligning of the route, on the premise that the District Collector-cum-District Magistrate, has the powers to do so. The District Collector has no powers to alter any route or alignment, except to remove the difficulties faced by the licensee or the person authorised, pursuant to the orders issued under Section 164 of the Act.

58.17 If the intention of the Legislature was to seek for consent or permission from every owner and if the right of such owner has to be recognised, in terms of Section 16(1) of the Telegraph Act, due to resistance/obstruction, then the execution of any work or project, would be stopped at every stage. Needless to state that the execution of works, involving erection of towers and connection of overhead lines, is done, only after a detailed field study, by identifying a feasible route of the proposed transmission line, and while selecting suitable corridors, residential areas to be avoided, span length, the angle of deviation, extent of damage, likely to be caused, while erecting towers, maintenance cost of electric lines and towers and other factors, have to be considered. Public interest, in providing electricity to a large section of people and industrial establishments, etc., has to be given weightage over private interest.

58.23 The Act confers powers to the Telegraph Authority to determine the property over which the lines are to pass or posts to be erected. The powers of the District Magistrate under Section 16(1) of the Indian Telegraph Act, 1885, does not extent to any adjudication, as to from where and how, the line has to be drawn over any specific item of the property or where posts have to be erected or not, in any specific item of the property.

58.27. The legislature has conferred powers on the appropriate Government to authorize a public officer or a licensee, etc., under the Electricity Act to exercise the specific powers of an authority under the Indian Telegraph Act, 1885. The authorisation may be general in favour of a transmission company or in a given case, special. The route is decided by the transmission company. The decision to mark a route for laying an electric line is a highly specialized and technical. At that time, it is unrelated to any specific land owner. The route may be for over hundreds of kilometers passing over Government lands, lands of local authorities and private lands and it may not be practicable to hear the land owners along the entire route.

58.29. The Electricity Act, 2003, is a progressive enactment, with a specific purpose of providing electricity to a large number of people, across the country, to promote industrial and sustainable development in all walks of life. Right of a land owner to possess and enjoy the property, though recognised as a Constitutional Right, under Article 300-A of the Constitution of India, such right has to yield to the Articles 14 and 21 respectively of the Constitution of India, which strive to achieve the Constitutional Goals, enshrined in the basic structure of the Constitution of India. [see T. Bhuvaneswari vs. The District Collector cum District Magistrate, Erode District, Erode, W.P. No.18548 of 2013, decided on 19.11.2013]”

The Hon’ble Division Bench in the above referred judgment held that by authorization in terms of Section 164 of the Electricity Act, 2003 read with Section 16(1) of the Indian Telegraph Act, 1885 authorises the licensee with all the powers of the Telegraph Act including the power to entertain any private project subject to condition that as little damage possible be caused, to give

adequate compensation to the land owner. The Hon'ble Division Bench held that once the technical feasibility of the project is approved by the appropriate Government by issuing an order under Section 164 of the Electricity Act, 2003, it is not open for the land owner or person interested to shift the realignment of the route. The Hon'ble Division further held that once the competent authority issuing authorization under Section 164 of the Electricity Act, the licensee is conferred with the power under Telegraph Act, 1985 to determine the property over which the lines are to pass or poles are to be erected. The transmission company has all the powers to decide the route and such decision is highly specialized and technical. At the same time, the said decision is unrelated to any specific land owner. Further it is reiterated that the public interest in providing electricity to a larger section of the people and industrial establishment etc., has to be given weightage over the private interest.

(B) Further in the Special Civil Application No.14858 of 2019 in the case of Patel Vasudevbbhai Hargovandas vs. District Magistrate and Collector, by order dated 27.9.2019, paragraphs 13 to 16 reads thus :-

"13. In that view of the matter, as the petitioners at the relevant point of time have not raised any objection when the sanction was sought by the respondent Nos.2 and 3 for laying down the transmission tower and necessary public advertisement was also issued in the year 2015. However, learned advocate for the petitioners submitted that such advertisement was not issued as per principles laid down by the Court in paragraph No.10(b) of the judgment rendered in Letters Patent Appeal No.1104 of 2013 as stated hereinabove. Be that as it may, the fact remain that no objections were raised by the petitioners before the transmission line was sanctioned and accordingly, the petitioners cannot raise any objection with regard to the route of the transmission line in proceedings under Section 16(1) of the Act.

14. In the case before Madras High Court also, the facts were different to the effect that the authority did not take any action or complied with the provision of Section 16(1) of the Act by approaching District Magistrate and therefore, the Court observed that there was illegal trespass over the property under Article 300A of the Constitution of India whereas, in the facts of the present case, the respondents have approached the District Collector for taking permission under Section 16(1) of the Act and therefore, it cannot be said that the respondents have illegally trespassed in the agricultural fields of the petitioners as the District Collector has granted permission by using discretion vested in him under Section 16(1) of the Act. In the case before Madras High Court, the Court, inspite of finding that there is illegal trespass, did not interfere because of the fact that the towers were already erected and therefore, in the public interest, it did not thought it fit to interfere or to give any direction to the respondents, inspite of violation of Section 16(1) of the Act. It would be fruitful to refer to the observation made by the Madras High Court, in paragraph No.19 of the judgment given in the case of D.Rajendran and others V/s Tamil Nadu Electricity Board and

others in W.A.No.1294 of 2017, which reads as under:

"In the normal course we should have directed the respondents to remove the tower erected by them without following the procedure prescribed under Section 16(1) of the Telegraph Act but now that the tower has been erected and the high tension line has also been drawn, we desist from doing so in public interest. At the same time, we place on record the affidavit filed by the Superintending Engineer of the 1st respondent Corporation TANTRANSCO on record. We direct the respondents to scrupulously follow the procedure prescribed under Section 16 of the Telegraph Act while erecting towers in future.

Any deviation or dereliction in following the procedure prescribed under Section 16 in future de hors undertaking given by the Corporation in the affidavit filed by the Superintending Engineer today will be viewed seriously."

15. In the facts of the present case also, it is an admitted position that majority of the transmission towers on the sanctioned route of transmission line are already erected and stringing is also done except agricultural field of the petitioners and therefore, in the public interest also it would be necessary to permit the respondents for laying down towers as expeditiously as possible.

16. In view of the foregoing reasons, no interference is called for in the impugned order while exercising the powers under Articles 226 and 227 of the Constitution of India and therefore, the present petition, being devoid of any merit, is summarily dismissed. No orders as to cost."

Analysis :-

9. The writ-applicant is owner/occupier of the land bearing Survey No./Block No. 258 (Old Survey No.111) admeasuring 6499 sq.mtrs. situated at Village : Bhanpura, Tal : Aanklav, Dist: Anand. The Development Officer by order dated

31. 03.2015 granted permission to the writ-applicant to convert the subject land earlier being agricultural land into non-agricultural and the Mutation Entry No. 1266 dated 23.04.2015 came to be mutated in the revenue record and Village Form No.6 to the said effect.

9.1 The grievance of the writ-applicant is with regard to the transmission line of 765 KV D/C High Tension Power Lines being laid from Lakadia (Bhuj) to Waghodia (Vadodara) and has mainly contended that the said line abuts the subject land owned/occupied by the writ-applicant and the writ-applicant has further sought a writ/direction to quash and set aside the order dated 17.9.2021 passed by the Sub-Divisional Magistrate, Borsad directing the respondent No.2 to construct/erect transmission line over the land belonging to the writ-applicant. It is the case of the writ-applicant that the respondent No.2 be directed to deviate and direct that the said transmission line, pass through Survey No.257 i.e. "Gauchar land" or Survey No.264 which is also "Gauchar land". It is further the case of the writ-applicant that laying down of the transmission line from the subject land which is owned and occupied by the writ-applicant would affect the

market value of the subject land and submitted that the writ-applicant's land is agricultural or non-agricultural, as far as provision under the Telegraph Act is concerned, there is no provision in the said regard. Under Section 10 of the Telegraph Act the writ-applicant would only get compensation for such use depending upon the Jantri value of the land envisaged in the Government Resolution dated 14.8.2017. Moreover, there is no construction and the writ-applicant can plan the construction in accordance with the route of the line to provide for open space which is mandatory requirement for planning construction on non-agricultural land.

9.2 The Central Electricity Regulatory Commission in the Petition No.445/TL/2019 by order dated 4.3.2020 granted permission with regard to the transmission license to the respondent No.2 under Sections 14, 15 and 79(1)(e) of the Electricity Act, 2003 read with CERC (Procedure, terms and conditions for grant of transmission license and other related matters) Regulation 2009, with respect to the grant of transmission license to Lakadia Vadodara Transmission Project Ltd. The respondent No.2 under Section 68 sought prior approval of the Government under Section 68(1) of the Electricity Act, 2003 for transmission project "WRSS-21 (Part- B) Transmission System strengthening for relieving other loading observed in Gujarat Intra-State system due to RE injections in Bhuj PS" in favour of Lakhadia Vadodara Transmission Project Ltd. The said approval came to be granted for Lakhadia-Vadodara 765 kV D/c line for approximate length of 330 MVAr switchable line reactors alongwith reactor bays and 500 ohm NGR-one each to be installed at both ends of Lakhadia-Vadodara 765 D/c line. On 28.8.2020 permission under Section 164 of the Electricity Act, 2003 for laying down the electricity line came to be published in the Gazette duly produced at page-60 which reads thus:-

"M/s Lakadia-Vadodara Transmission Project Limited (LVTPL) had complied with the MoP's procedure for obtaining the authorization under section 164 of Electricity Act, 2003 for the above transmission scheme. Now, after careful consideration, Central Electricity Authority, Ministry of Power, Government of India, under section 164 of the Electricity Act, 2003, confers all the powers to M/s Lakadia-Vadodara Transmission Project Limited for laying above overhead line, which telegraph authority possesses under the Indian Telegraph Act, 1885 with respect to placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by Government or to be established or maintained subject to following terms and conditions for installing the above mentioned lines, namely:

- (i) The approval is granted for 25 years:
- (ii) The Applicant shall have to seek the consent of the concerned authorities i.e. local bodies, Railways, National Highways, State Highways etc. before erection of proposed lines;
- (iii) The Applicant shall have to follow regulations/codes of the Appropriate

Commission regarding transmission, O&M, open access. etc .. framed under Electricity Act. 2003.

(iv) The Applicant has been entrusted with the responsibility for laying of electric lines under the transmission scheme "WRSS-21 (Part-B) Transmission System Strengthening for relieving overloading observed in Gujarat Intra-state system due to RE injections in Bhuj PS". The details of the works are published in the Gazette of India dated 14th December - 20th December, 2019.

(v) The Applicant shall operate the lines after approval of Electrical Inspector / Chief Electrical Inspector of Central Government.

(vi) The approval is subject to compliance of the requirement of the provisions of the Electricity Act, 2003 and the rules made there under by the applicant.

(vii) M/sLVTPPL shall have to submit the requisite clearances to Central Electricity Authority after obtaining the same from concerned authorities like Civil Aviation. Defence etc ., at the time of Electrical Inspection.

P.C. KUREEL, Secy.

[ADVT .- III/4/Exty./250/2020-21]"

The powers of Telegraph Authority under Section 164 of the Electricity Act 2003 granted on 28.8.2020 by the Central Electricity Authority is duly produced at page 60. The public notice with regard to the aforesaid project i.e. Lakadia Vadodara Transmission Project Ltd., came to be published in leading daily newspaper which are produced at pages 75, 76, 77 and 78. The public notice with respect to the aforesaid project i.e. Lakadia Vadodara Transmission Project Ltd., came to be published in the Gazette which is duly produced at page-

84. The said route of the transmission line from Lakadia (Bhuj) to Waghodia (Vadodara) is duly produced at page-84.

9.3 Further the respondent at the initial stage did not object to the said project when the objections were called for by the respondent authority by issuing public advertisement in the leading daily as referred above. At this stage, it is not open for the writ-applicant to object to laying down of the said transmission line. Further the contention advanced by the writ-applicant that the Magistrate was required to consider the laying down of electric pole from the land occupied/ owned by the writ-applicant also cannot be accepted in view of the settled legal position that the District Magistrate is not empowered to pass an order of deviating the transmission line or erection of the pole.

9.4 The writ-applicant has pointed out personal hardship that would be borne by the writ-applicant if the aforesaid transmission line is permitted to pass through the agricultural land owned by the writ-applicant and for the aforesaid reason contended that the said transmission line be deviated from Survey No.257 i.e. "Gauchar land" or Survey No.264 which is a "Gauchar land".

In view of the specialized and technical nature of preparing the route of transmission line as referred to above having undergone the technical procedure of laying down the lines, as stated by Mr. Hasurkar, having passed through all three stages and thereafter the said map which is duly produced at page-22 has been prepared. Merely on the ground of alleged malafide the route cannot be directed to be changed at the instance of the writ-applicant. The allegations of malafide as alleged by the writ-applicant can be said to be bald allegation and the writ-applicant has failed to fortify the same.

9.5 The writ-applicant has no vested right to seek alteration with regard to the alignment and shifting of the route in view of the fact that the writ-applicant is in receipt of all the requisite permission as required and the Government has issued appropriate authorization in exercise of powers vested under Section 68 of the Act, 2003 as also Section 164 of the Act, 2003. The order dated 17.9.2021 passed by the Sub-Divisional Magistrate, Borsad by exercising powers under Section 16(1) of the Telegraph Act whereby the respondent authority allowed the application preferred by the respondent No.2 considering the submissions advanced by the writ-applicant seeking deviation of 90 degree of transmission line to pass from Survey No.673 held that, if the tower is to be relocated from its present place, the construction work of the front and the backside lines will have to be done again. It will cause delay in the project and additional expenditure.

9.6 The Sub-Divisional Magistrate also considered the ratio as laid down in the Special Civil Application No.20373 of 2019 and Letters Patent Appeal No.534 of 2020 held that the telegraph authority is empowered to grant permission to lay down the transmission line, once the permission have been granted under Sections 16 and 17 of the Indian Telegraph Act, 1985 and that the owner of the land cannot object to the same. However, it is open for the owner of the land to seek higher compensation before the District Magistrate under Section 63 of the Indian Telegraph Act, 1985. The Sub-Divisional Magistrate, Borsad allowed the application preferred by the respondent No.2.

9.7 Further there is no reason for this Court to question to laying down of the route which has been sanctioned by the authority for laying down the transmission line in accordance with law after following due procedure of law as discussed above.

9.8 The route in question is decided on standard parameters which are settled on the basis of long standing practice and various regulations as referred to above, framed by the competent authority. From the map duly produced at page-22, it is clear that the location No.673 is in fact on 'Gauchar land' and the same is in straight line. Further the deviation of location No.674 is not possible, it being angle point and river crossing point. Further the public interest in providing electricity to public at large by installing the transmission line has to be given more weightage over the personal interest of the writ-applicant.

10. In view of above, this Court is not inclined to grant the prayers by exercising

its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. Further no error much less any error of jurisdiction can be said to have been committed by the respondent authority while deciding the application preferred by the respondent No.2, consequently no interference is called for in the order date 17.9.2021 passed by the Sub-Divisional Magistrate. Hence, the writ-application fails and the same is rejected.