

(2023) 06 GAU CK 0104

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 6149 Of 2012

Sabitri Boro

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 22-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Electricity Act, 2003 — Section 38, 68, 164

Indian Telegraph Act, 1885 — Section 10(d), 16(3)

Citation : (2023) 06 GAU CK 0104

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : A. Saikia, N.C. Das, A. Das, M. Chetia

Final Decision : Dismissed

Judgement

1. The present writ petition under Article 226 of the Constitution of India has been preferred by the petitioner challenging a letter dated 12.07.2012 of the Additional Deputy Commissioner, Kamrup, Amingaon and a letter dated 02.08.2012 of the respondent Power Grid Corporation of India Limited. The petitioner has also sought for a direction to the respondent authorities to give an alternative plot of residential land after paying adequate compensation and to constitute an independent committee to verify the plot of land of the petitioner for the purpose of qualifying/assessing the loss/compensation payable to the petitioner.

2. The facts which are necessary for consideration of the issues raised in this writ petition can be narrated, in brief, is follows : -

2.1. The respondent Power Grid Corporation of India Limited [PGCIL] is notified as a Central Transmission Utility under Section 38 of the Electricity Act, 2003. The Ministry of Power, Government of India in exercise of the powers conferred under Section 164 of the Electricity Act, 2003 had issued a Gazette Notification dated 24.12.2003 whereby the respondent PGCIL has been authorized to

exercise all the powers under Part III of the Indian Telegraph Act, 1885 in respect of the electrical lines and electrical places established or maintained or to be so established or maintained for the transmission of electricity or for the purpose of telephonic or telegraphic communication necessary for the proper coordination of the works. The respondent M/s North East Transmission Company Limited is a joint venture of M/s Power Grid Corporation of India Ltd., M/s ONGC Tripura Power Company Limited [OTPCL], and, six states of the North East India and others. The respondent no. 7, M/s North East Transmission Company Limited in course of its business, was given the task of construction of a 400 KV Double Circuit Transmission Line from Pallatana [Tripura] to Bongaigaon [Assam] for evacuation of electric power from then ongoing 726 MW Gas Based Power Project of M/s ONGC Tripura Power Company Limited [OTPCL]. The power project of M/s OTPCL to the North Eastern States includes : Pallatana – Charaibari – Silchar, Silchar – Khelerihat, Khelerihat – Byrnihat and Byrnihat Bongaigaon section of 400 KV Double Circuit Pallatana – Bongaigaon Transmission Line. The said transmission project was accorded approval by the Ministry of Power, Government of India under Section 68 of the Electricity Act, 2003. M/s North East Transmission Company Limited has also accorded transmission license by the Central Electricity Regulatory Commission [CERC] for the construction, operation and maintenance of the above transmission system. M/s PGCIL was in the task of supervising the construction works of the transmission system under consultancy agreement with M/s North East Transmission Company Limited. The project is of national importance to mitigate the power crisis in the north eastern region.

2.2. The petitioner was the wife of one Jatin Boro who was the only son of one Late Sadsing Kachari. It is not in dispute that Late Sadsing Kachari was the owner and possessor of a plot of land measuring 1 Bigha, 3 Katha & 7 Lessas [1B-3K-7L], covered by Dag no. 706 and K.P. Patta no. 260 located at Village – Khena Allibari, Mouza – Dakhin Rani, Revenue Circle – Palashbari, District – Kamrup [hereinafter referred to as 'the subject-plot', at places, for easy reference]. After the death of Late Sadsing Kachari, his son, Late Jatin Boro became the owner of the subject-plot and the name of Late Jatin Boro stood mutated in the revenue records. After the demise of Late Jatin Boro on 20.10.2002, the petitioner and her only son became the successors-in-interest of the subject-plot.

2.3. The subject-plot came under the purview of the Pallatana – Bongaigaon Transmission System project as the transmission line sought to be stringed was drawn over a part of the subject-plot. A notice dated 08.01.2011 came to be served upon the petitioner by the respondent M/s North East Transmission Company Limited stating inter alia that the 400 K.V. Byrnihat – Bongaigaon Electricity Transmission line would be transmitted overhead of the subject-plot and for stringing the electricity line, some of the trees, branches, etc. standing on the subject-plot would be cut and the damages and compensation would be paid to the petitioner as per the rates assessed by the revenue authorities of the

State Government. In course of time, the compensation amount payable for the trees, crops, etc. standing on the subject-plot came to be assessed at Rs. 3,47,800/- and the said amount was duly paid to the petitioner on 26.08.2011.

3. According to the petitioner, subsequently in the year 2012, the officials from the respondent PGCIL and respondent M/s North East Transmission Company Limited started taking steps for stringing the electricity transmission line over the Assam Type house of the petitioner standing on the subject-plot. When the same was objected to by the petitioner, the petitioner received a letter dated 25.01.2012 from the Senior Engineer, PGCIL to the effect that the process of stringing of the conductor and earth wire at Village – Khena Allibari, Mouza – Dakhin Rani was being undertaken and the estimated cost of the house, etc. of the petitioner was found out to be near Rs. 7,00,000/- as per the Assam PWD [B] Schedule of Rates. The letter dated 25.01.2012 further indicated that the actual amount might vary at the time of final assessment by the PWD and it was requested to the petitioner to allow the respondent authorities to continue the works without any disturbances. On receipt of the letter dated 25.01.2012, the petitioner submitted a representation before the Deputy Commissioner, Kamrup raising an apprehension that the electrical transmission line might be strung in violation of the then extant norms laid down by the Electricity Act, 2003. As the process of stringing the electricity transmission line was continued to be undertaken, the petitioner approached this Court by way of a writ petition, W.P. [C] no. 447/2012. In the writ petition, W.P.[C] no. 447/2012, the petitioner raised grievances on two aspects, firstly, that the electricity transmission line might be strung without keeping the norms of mandatory ground clearance of 9 meter in respect of the subject-plot; and, secondly, the compensation award was inadequate. The writ petition, W.P. [C] no. 447/2012 came up for final consideration on 19.04.2012. After hearing the learned counsel for the parties and after considering the nature of petitioner's grievance and the stand taken by the respondents, the writ petition came to be disposed of by an order of even date. It was ordered that the electricity transmission line could be strung subject to maintaining mandatory ground clearance of 9 metres. In so far as the matter of inadequacy of compensation is concerned, it was observed that after the final assessment was determined and paid to the affected land owner, the petitioner would be at liberty to proceed under Section 10[d] and Section 16[3] of the Indian Telegraph Act, 1885. It was further observed that since only Zirat compensation of Rs. 3,47,000/- had been paid till that date, the respondents should quantify the payable compensation within the stipulated period of time.

4. Pursuant to the order dated 19.04.2012 whereby the writ petition, W.P.[C] no. 447/2012 was disposed of, the District revenue authority made a survey in order to find out as to whether any additional trees from the subject-plot would be required to be cut for stringing the electricity transmission line. By a letter dated 12.07.2012, the Additional Deputy Commissioner, Kamrup, Amingaon wrote to the respondent PGCIL that the additional trees standing on the subject-plot were not in the Right of Way/corridor of the electricity transmission line which was

erected for the project and therefore, there was no requirement of cutting any additional trees. It was further indicated that the Assam type house of the petitioner was 11 meter away from the electricity transmission line. The impugned letter dated 12.07.2012 was followed by the impugned letter dated 02.08.2012 from the respondent PGCIL to the petitioner. By the impugned letter dated 02.08.2012, it was informed to the petitioner that no further compensation towards Zirat was found payable after survey as there was no requirement to cut additional trees standing on the subject-plot. It was further informed that neither the additional trees nor the Assam type house standing on the subject-plot was in the Right of Way/corridor of the electricity transmission line. As those were outside the Right of Way/corridor of the electricity transmission line stringed for the project, there was no requirement for paying any further compensation other than Rs. 3,47,860/- already paid towards compensation.

5. I have heard Mr. A. Saikia, learned counsel for the petitioner; Mr. N.C. Das, learned Senior Counsel assisted by Mr. A. Das, learned counsel for the respondent nos. 2, 3, 4 & 7; and Mr. M. Chetia, learned Junior Government Advocate, Assam for the respondent nos. 5, 6 & 8.

6. It is submitted by the learned counsel for the parties that the Assam Power Generation Corporation Ltd. had no role which has been impleaded as party-respondent no. 8 as no role in the Pallatana – Bongaigaon Transmission System project and thus, is not a necessary party.

7. It is contended on behalf of the petitioner, by referring to a photograph of the Assam type house standing on the subject-plot and the electricity transmission line erected in connection with the project, that the electricity transmission line has gone above the Assam type house standing on the subject-plot and as such, the respondent authorities are obligated to make adequate compensation for the Assam type house or in the alternative, to give an alternative plot to the petitioner for residence.

8. The above contention of the petitioner has been countered by the respondent authorities. The respondent nos. 2, 3 & 4 have filed a counter affidavit on 04.06.2013 and the respondent nos. 5 & 6 have filed a counter affidavit on 02.05.2013. The stance that has been taken by the respondent nos. 5 & 6 in their counter affidavit is to the effect that apart from the trees, crops, etc. standing on the subject-plot for which the compensation amount of Rs. 3,47,860/- was paid, no other trees standing on the subject-plot were in the Right of Way/corridor of the electricity transmission line. The house standing in the subject-plot, belonging to the petitioner, is also 11 meters away from the overhead electricity transmission line and there was no requirement for shifting of the house. It is further contended that the overhead electricity transmission line was stringed by keeping mandatory ground clearance.

9. It is asserted in the counter affidavit filed on behalf of the respondent nos. 2, 3 & 4 that there is no basis for the petitioner to challenge the letter dated

12.07.2012 and the letter dated 02.08.2012. There is also no basis for the petitioner to claim alternative plot of residential land. It is contended that an amount of Rs. 7,00,000/- for the Assam type house standing on the subject-plot, indicated in the letter dated 25.01.2012, was in anticipation that the overhead electricity transmission line might be strung over the said Assam type house. At the same time, it was mentioned that the same would be subject to final assessment. After actual stringing of the electricity transmission line for the project, it was found that the Assam type house of the petitioner came to be located at a distance of 11 meters from the electricity transmission line and the same is more than the required standard clearance. It is asserted that the trees, crops, etc. standing on the subject-plot which had actually fallen in the Right of Way/corridor of the electricity transmission line were cut in July, 2011 and a compensation amount of Rs. 3,47,860/- was paid to the petitioner. The petitioner has admitted about the receipt of the said amount on 26.08.2011. The respondents have contended that the photograph, referred to by the petitioner, is an incorrect projection of the actual ground situation.

10. I have considered the rival contentions of the parties and have also perused the materials brought on record by the parties through their pleadings.

11. From the respective contentions advanced by the parties, it is found that after receipt of the compensation amount of Rs. 3,47,860/-, the petitioner has not approached the Court of Jurisdictional District Judge under Section 16[3] of the Indian Telegraph Act, 1885 raising any ground as regards inadequacy of compensation amount so assessed and disbursed. It is further found that the petitioner has not raised any plea of not maintaining the mandatory ground clearance of 9 metres in respect of the overhead electricity transmission line strung by the respondent authorities over the subject-plot.

12. The only plea that is found to have been raised in this writ petition is to the effect that the overhead electricity transmission line strung by the respondent authorities has gone over the Assam type house standing on the subject-plot. The said contention has been strenuously denied by the respondent authorities by taking a common stand that the overhead electricity transmission line strung by the respondent authorities is beyond a distance of

11 metres from the Assam type house standing on the subject plot and thus, it has not in any manner come in the Right of Way/corridor of the overhead electricity transmission line requiring the respondent authorities to assess and pay any compensation. Thus, such conflicting stands taken by the parties have given rise to a disputed question of fact.

13. It is settled by a long line of decisions that the jurisdiction of a High Court under Article 226 of the Constitution of India is couched in wide terms and the exercise thereof is not subject to any restrictions except on the aspect of territorial jurisdiction. But the exercise thereof is discretionary. The very amplitude of the writ jurisdiction demands that it will be exercised subject to

certain self-imposed restrictions. It is also settled that the High Court is not deprived of its jurisdiction to entertain a writ petition under Article 226 of the Constitution of India merely because in order to consider the right of the petitioner to be granted the relief sought for questions of facts have fallen for determination. In a writ petition under Article 226 of the Constitution of India the High Court has the jurisdiction to try issues both of facts and law. In the process, the Court has to consider as to what facts are in dispute and what facts are not in dispute and such a stage comes after the exchange of pleadings in the form of affidavits from the parties is complete. A writ petition is ordinarily decided on the basis of the affidavits. When in a writ petition disputed questions of fact requiring appreciation of evidence, both oral and documentary and for determination of such disputed questions of fact examination of witnesses would be necessary then it may not be convenient to decide such a dispute in a proceeding under Article 226 of the Constitution and in such a case, the Court can decline to adjudicate a writ petition where determination of disputed questions of fact requiring elaborate evidence have fallen for consideration.

14. In the case in hand, the petitioner on the one hand and the respondent authorities on the other hand have taken diametrically opposite stands as regards the position of the overhead electricity transmission line stringed in connection with the Pallatana – Bongaigaon Transmission project. The main question that has fallen for determination is as to whether the said electricity transmission line has gone over the Assam type house standing on the subject-plot or has been stringed beyond 11 metres away from the Assam type house standing on the subject-plot, meaning thereby, it is beyond the mandatory Right of Way requiring no payment of compensation to the petitioner. The High Court in its discretionary and extraordinary jurisdiction under Article 226 of the Constitution of India does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The present one is such a case which would require determination of a disputed question of fact through both oral and documentary evidence with examination of witness of the parties in a full-fledged trial and it might require a field enquiry and as such, the present writ proceedings is found to be not the proper and appropriate proceedings to determine such disputed question of fact. In view of the discussion made and the reason cited, the present writ petition is found to be not maintainable and accordingly, it is found liable to be dismissed. It is accordingly ordered. There shall be no order as to cost. It is, however, observed that dismissal of the writ petition in the afore-stated ground would not preclude the petitioner to seek appropriate remedy available under the law before appropriate forum for redressal of the grievances.