
(2019) 05 MAN CK 0027
In the Manipur High Court
Case No : Writ Petition (c) No. 498 Of 2018

Seikhothang Haokip

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 06-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 30(1A), 31A(1), 32, 226, 300A
Indian Telegraph Act, 1885 — Section 5A, 10, 10(b), 10(d), 15, 16
Electricity Act, 2003 — Section 164

Citation : (2019) 05 MAN CK 0027

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : N. Biren, Momota Devi Oinam, Nitin Khera

Final Decision : Disposed Off

Judgement

Kh. Nobin Singh, J

[1] Heard Shri N. Biren, learned Advocate appearing for the petitioner; Smt. Momota Devi Oinam, learned Addl. AG appearing for Respondent Nos. 1, 2 & 3 and Shri Nitin Khera, learned Advocate appearing for the Respondent No. 4.

[2] By the instant writ petition, the petitioner has prayed for issuing a writ of mandamus or any other appropriate writ to direct the respondents to pay/release a sum of Rs.96,00,000/- (Rupees ninety six lakh) only as compensation for the damages caused to his land.

[3.1] Facts and circumstances as narrated in the writ petition, are that the petitioner is the Chief of the Mongbung Village, Jiribam District, Manipur. Some Heavy Electric Towers were erected/ installed passing through his village, agricultural land as well as homestead land causing damages to about 320 sq.ft covering a distance of 2 (two) kilometer. On account of the said heavy electric towers being erected/ installed passing through his village, his villagers were/ are unable to construct any kind of buildings including Government offices,

schools or private houses and on top of that, no plantation of trees, rubbers, bamboos, agricultural crops, etc. thereon is possible resulting in the helplessness of the villagers. The petitioner approached the respondents/ authorities concerned on many occasions for payment of compensation for the lands affected by the said installation of heavy electric towers but his application was never considered by the respondents.

[3.2] The petitioner learnt from the reliable sources that in respect of the land owners/ chefs of the neighboring villages namely Talbung, Mutugal, Phaital, Muktukhal, tarbung etc., certain amount of compensation had been paid to them, while the same being denied to the petitioner, although he is the owner of the said village, as is evident from the attested map/ scale of the SDC, Jiribam, paying Hill House Tax thereof. The petitioner submitted a representation dated 09-03-2018 to the authorities concerned/ respondents for payment of compensation and according to him, the amount of compensation calculated as shown in the tabulation at para 12 of the petition, came to be Rs.96,00,000/- (Rupees ninety-six lakhs) only. Being aggrieved by the inaction on the part of the respondents, the instant writ petition has been filed by him contending that the inaction on the part of the respondents is unreasonable being violative Article 14 of the Constitution of India.

[4] On 19-09-2018 when the matter came up for consideration, the learned counsel appearing for the respondent Nos. 1 to 3 submitted that the said heavy electrical towers were not erected/ installed by them and that the Power Grid Corporation of India Limited who had erected/ installed the same, ought to be impleaded as party respondent. Accordingly, this court directed that the Power Grid Corporation of India Limited be impleaded as the respondent No.4. In the affidavit filed on behalf of the respondent Nos.1 to 3, it has been stated that as per the report submitted by the Deputy General Manager, TD-II vide its letter dated 29-06-2018, the said heavy electric towers were not erected/ installed by them nor were the erection/installation undertaken by them and therefore, their names be deleted from the array of parties. However, a detailed affidavit has been filed on behalf of the respondent No.4 raising objections as regards the maintainability of the writ petition and in addition thereto, it has been stated that it is a company incorporated under the Companies Act, being a Government of India Enterprise with the purpose of establishing transmission line/ system and undertaking transmission of electricity through inter-state transmission system. It has been authorized to exercise powers vested in the telegraph authority under the provisions of the Telegraph Act, 1885. In fact, the transmission line was planned, constructed and installed by NEEPCO which was commissioned on 01-09-1998 and after the respondent No. 4 being founded on 23-10-1989, the assets including the transmission lines, were handed over to it in the year, 1992. On going through the relevant files, it was found that in the list of affected land owners, the petitioner's name was reflected at serial No.27 and that the compensation had been paid to him, about thirty years ago for the damages caused to the standing trees and crops, who had signed the undertaking/ letter

of Acceptance. The project being undertaken by it, is one of national importance and is in the interest of the public. The lands are not acquired by it and the petitioner continues to be the owner. It being the user only, pays compensation towards the damages caused to the surface, trees, crops etc. in accordance with Section 16 of the Telegraph Act, 1885. If there is any dispute with respect to quantum of compensation, it be decided by the competent authority having jurisdiction under the law and this court cannot adjudicate the issue relating to the disputed questions of facts and moreover, since the petitioner has concealed material facts, no indulgence shall be shown to him.

[5] It has been submitted by Shri N. Biren, the learned counsel appearing for the petitioner that in terms of the provisions of the Article 300-A of the Constitution of India, the petitioner was/ is entitled to compensation for the damages caused to his village, agricultural land, homestead land etc. In support of his contention, he has relied upon the decisions rendered by the Hon'ble Supreme Court. The first being the one rendered in State of Madhya Pradesh Vs. Narmada Bachao Andolon & ors., (2011) 7 SCC 639 wherein the issue relates to the payment of compensation and other benefits when a huge area of land was acquired for construction of Omkareshwar dam. The Hon'ble Supreme Court held that the compensation in that context had to be understood in relation to right to property. Secondly, in K.T. Plantation Private Limited & anr. Vs. State of Karnataka, (2011) 9 SCC 1, one of the issues was with regard to the scope of Article 300-A of the Constitution. The Hon'ble Supreme Court held:

"183. Payment of compensation amount is a constitutional requirement under Article 30(1-A) and under the second proviso to Article 31-A(1), unlike Article 300-A. After the Forty-Fourth Amendment Act, 1978, the constitutional primarily depends upon the terms of the statute and the legislative policy. Article 300-A, however, does not prohibit the payment of just compensation when a person is deprived of his property, but the question is whether a person is entitled to get compensation, as a matter of right, in the absence of any stipulation in the statute, depriving of his property.

Thirdly, in Anand Singh & ors. Vs. State of Uttar Pradesh & ors., (2010) 11 SCC 242, the question was as to whether the Notification dated 22-11-2003/20-02-2004 invoking urgency clause and dispensation of enquiry under Section 5-A were legal and valid and if the answer was in the negative, whether on the facts and circumstances, the appellants were entitled to any relief. The Hon'ble Supreme Court expressed its view that the appellants were not entitled to any relief, although the dispensation of enquiry under Section 5-A was not justified. Fourthly, in Laxman Lal (dead) through LRs & anr. Vs. State of Rajasthan & ors., (2013) 3 SCC 764, one of the issues involved herein is similar to that of Anand Singh case wherein the Hon'ble Supreme Court observed that though the right to property was no longer a fundamental rights but the constitutional protection continued inasmuch as without the authority of law, a person could not be deprived of his property. Fifthly, in Prabin Ram Phukan & anr.

Vs. State of Assam & ors., AIR 2015 SC 1252, the Hon'ble Supreme Court directed the State to pay the amount of compensation deposited by the IOC to the appellants whose lands were put to auction for recovery of land revenue.

[6] On the other hand, it has contended by Shri Shri N. Khera, the learned counsel appearing for the respondent No.4 that since no land of the petitioner was acquired by the respondent No.4, the question of payment of compensation for the land did not arise at all. It has further been submitted by him that as per the provisions of Section 10(b) of the Telegraph Act, 1885 which prohibits acquisition of any land for tower other than that of use only and agricultural activities are allowed to continue. However, in terms of Section 10(d), the user agency shall pay full compensation to all interested for any damages sustained to land owners towards damages, if any, to tree, crops etc. during the implementation transmission project. As per the records maintained in the office of the respondent No.4, it was found that its predecessor, NEETCO had, during the course of installation of the transmission lines, verified the land; assessed the damages and paid the compensation thereof which happened almost 30 years ago. The petitioner has not only concealed the material facts but has misled this court in this regard and moreover, there is an inordinate and unjustifiable delay in approaching this court. In support of his contention, he has relied upon the decision rendered in K.D. Sharma Vs. Steel Authority of India Limited & ors., (2008) 12 SCC 481 wherein the Hon'ble Supreme Court held:

"34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim."

In Chennai Metropolitan Water Supply and Sewage Board Vs. T.T Murali Babu, (2014) 4 SCC 108, the Hon'ble Supreme Court held:

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reasons, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would not invite disaster for the litigant who knocks at the doors of the court. Delay reflect

inactivity and inaction on the part of a litigant - a litigant who has forgotten the basis norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis."

In *Power Grid Corporation of India Vs. Century Textiles and Industries Limited & ors.*, (2017) 5 SCC 143, the Hon'ble Supreme Court held:

"23. Section 10 of the Telegraph Act, 1885 empowers the telegraph authority to place and maintain a telegraph line under, over, along or across and posts in or upon any immovable property. The provision of Section 10(b) of the Telegraph Act, 1885 makes it abundantly clear that while acquiring the power to lay down telegraph lines, the Central Government does not acquire any right other than that of user in the property. Further, section 10(d) of the Telegraph Act, 1885 obliges the telegraph authority to ensure that it causes as little damage as possible and that the telegraph authority shall also be obliged to pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

[7] The undisputed facts which have emerged from the pleadings of the parties as aforesaid, are that the petitioner is the Chief of the Mongbung Village as is evident from the certificate dated 20-07-2015 produced by him along with rejoinder affidavit. At the time when the transmission line was commissioned/ erected on 01-09-1988 NEEPCO, the petitioner's father was the Chief of the said village. Prior to the erection/ installation of the transmission line, a joint inspection was conducted as is evident from the letter dated 12-06-1987 of the SDO (Elect), NEEPCO Ltd., Jiribam addressed to the Addl. District Magistrate (I), Jiribam and after the land of the petitioner being inspected, on 28-07-1987 tree, crop/ surface damage was assessed and the evaluation of different fruits was also done. The petitioner signed an undertaking/ letter of acceptance whereby he agreed to the formula deduced by the NEEPCO, Jiribam for the proportionate deduction from the claim in respect of the transmission line. The compensation thereof was paid to the petitioner without any objection being raised by him at that point of time.

[8] After about 30 years and that too, after the petitioner having been declared as the Chief of the Mongbung Village, claimed compensation in respect of the damages caused to his land on the ground that he is entitled to compensation under the provisions of Article 300-A. In order to substantiate it, the learned counsel appearing for the petitioner has relied upon various decisions of the Hon'ble Supreme Court as mentioned hereinabove. But on perusal thereof, it is seen that the facts of the said cases are not identical to that of the present case and therefore, the same will have no application at all. In the said cases, since the land was acquired, the question of payment of compensation did arise. But in the present case, the land of the petitioner was not acquired at all by the respondent No.4. The learned counsel appearing for the respondent No.4 made his submission raising some relevant points-one, the land of the petitioner was

not acquired by the respondent No.4 except the use thereof; two, so far as the damages caused to the land are concerned, it was duly assessed by the concerned authorities and the compensation thereof was paid, thereafter, to the petitioner; three, the instant writ petitioner is barred by delay and laches, as the same has been filed after about thirty years from the day when the cause of action arose; four, in the instant petition, the petitioner has suppressed material facts as regards the payment of compensation and five, the respondent No.4 which took over the assets and liabilities of NEEPCO, is required to act in accordance with the provisions of the Telegraph Act, 1885. His submissions have some force and merit. Section 10 of the Telegraph Act, 1885 reads as under:

"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 exercise of those powers."

[9] It may be noted that in the case of Power Grid Corporation of India Limited Vs. Century Textiles and Industries Ltd., the Hon'ble Supreme Court had the occasion to examine and consider the power and functions of the respondent No.4 in the light of the provisions of the Electricity Act, 2003 and the Telegraph Act, 1885. In terms of the provisions of Section 164 of the Electricity Act, 2003, any public officer, licensee or any other person engaged in the business of supplying electricity, can be conferred any of the powers which the telegraph authority possesses under the Telegraph Act, 1885. In this regard, it may be further noted that a Notification dated 24-12-2003 appears to have been issued by the appropriate Government. Therefore, the powers of the telegraph authority as conferred upon it under Section 10, 15 and 16 stand vested and are enjoyed by the respondent No.4. The Hon'ble Supreme Court has observed that the

telegraph authority or for that matter, the respondent No.4 causes as little damage as possible and that the respondent No.4 shall be obliged to pay full compensation to all persons interested for any damages sustained by them by reason of the exercise of those powers. While allowing the civil appeal being CA No.10951 of 2016, the Hon'ble Supreme Court observed that if the petitioner therein felt that it was entitled to compensation, it was open to it to file a suit before the District Judge concerned for that purpose and that it would be open to it to avail the remedy as per the guidelines dated 15-10-2015 issued by the Central Government. In respect of the appeal being CA No.8951 of 2011, it was observed that since the dispute raised was with regard to quantum of compensation, it was to be settled by the District Judge as per the provisions of Section 16 of the Telegraph Act, 1885.

[10] In the present case, the land of the petitioner was not acquired at all and while erecting/ installing the transmission line, certain damages were caused to his land for which adequate compensation had already been paid to him by the NEEPCO about thirty years ago. Therefore, in view of the decision rendered by the Hon'ble Supreme Court in Power Grid Corporation of India Limited Vs. Century Textiles and Industries Ltd. case, the instant writ petition is devoid of any merit and is liable to be dismissed by this court. In case the petitioner feels that the compensation granted earlier, was not sufficient or the damages caused to his land stood aggravated in course of time, it is open to him to approach the respondent No.4 for redressal of his grievance so that the same can be considered by it in accordance with law. In this regard, the petitioner appears to have submitted a representation dated 09-03-2018 to the State respondents who are not concerned with the installation of the transmission line.

[11] In view of the above and for the reasons stated hereinabove, the instant writ petition is dismissed with no order as to costs. It is open to the petitioner to submit a representation to the respondent No.4 for redressal of his grievance and in the event of such a representation being submitted by him, the same shall be considered and disposed of by the respondent No.4, as expeditiously as possible, in accordance with law.