

(2019) 09 CAL CK 0169

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 16292 (W) Of 2019

Subal Chandra Sikari

APPELLANT

Vs

West Bengal State Electricity Distribution Co. Ltd. & Ors

RESPONDENT

Date of Decision : 03-09-2019

Acts Referred:

Electricity Act, 2003 — Section 164
Indian Telegraph Act, 1885 — Section 10, 10(c), 10(d), 12, 16
Works Of Licensees Rules, 2006 — Rule 3, 3(4)
Constitution Of India, 1950 — Article 226

Citation : (2019) 09 CAL CK 0169

Hon'ble Judges : Shekhar B. Saraf, J

Bench : Single Bench

Advocate : Sounak Bhattacharya, Mrinal Kanti Ghosh, Sujit Sankar Koley, Jahar Dutta, Jaladhi Das

Final Decision : Disposed Of

Judgement

Shekhar B. Saraf, J

This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by installation of high-tension transmission line as also the poles on his land.

The case of the petitioner is that the Government and the Distribution Company, without taking resort to acquisition proceeding, are fixing the poles and drawing this line over the property of the petitioner. It is further submitted that Rule 3 of the Works of Licensees Rules, 2006 is not being followed in the particular case.

Learned Counsel appearing on behalf of the Distribution Company submits that the wires that are being constructed are transmission lines and not distribution lines. He submits that the company has been authorized by the State of West Bengal to carry out such transmission of electricity under Section 164 of the Electricity Act, 2003. He further submits that the relevant provisions that cover

such transmission are Sections 10, 12 & 16 of the Indian Telegraph Act, 1885. He submits that the provisions of Section 10 (c) and (d) are applicable in case of damage caused by the transmission company with respect to the property, full compensation is to be paid to the owners of such property. He further submits that the District Magistrate is the concerned authority to decide with respect to the disputes under Section 10 of the said Act of 1885.

In my view, the argument of Mr. Sounak Bhattacharya, learned Counsel appearing on behalf of the petitioner with regard to Licensees Rules is not legally tenable as Clause 4 of Rule 3 itself states that Rule 3 shall not effect powers conferred upon any licensee under Section 164 of the Electricity Act, 2003.

Mr. Bhattacharya further submits that the petitioner should be allowed to make an appropriate application before the District Magistrate who should decide the quantum of damages/compensation to be paid to his client within a time bound period.

After hearing the learned Counsel appearing on behalf of both the parties, I am of the view that this matter should be referred to the District Magistrate under Section 16 of the Indian Telegraph Act, 1885. This writ petition may be treated as an application before the District Magistrate.

The petitioner shall be at liberty to file additional documents to prove his title to the property and for the purpose of assessing the damage caused to his land.

Leave is granted to the petitioner to add the concerned District Magistrate, South 24-Parganas, as party respondent in this writ petition in course of the day.

The District Magistrate concerned, being the respondent No. 5, shall consider all the documents and pass a reasoned order under Section 16 of the Act of 1885 within a period of eight weeks from the date of communication of this order after granting an opportunity of hearing to the petitioner or his legal representative and other authorities as may be required (such as, BL&LRO concerned). Respondent No. 5 is directed to communicate the reasoned order to the petitioner within two weeks from the date of passing the reasoned order.

Upon determination of the compensation, the relevant authority should disburse the compensation within a period of three months from the date of determination of the compensation.

With the above observations, W.P. 16292 (W) of 2019 stands disposed of.

Since, no affidavit-in-opposition has been called for, the allegations made in the writ petition are deemed to have not been admitted by the respondents.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.