
(2009) 06 KL CK 0171

In the High Court Of Kerala

Case No : Writ Petition (C) No. 12625 of 2009

Sudeesh

APPELLANT

Vs

K.S.E.B.

RESPONDENT

Date of Decision : 25-06-2009

Acts Referred:

Telegraph Act, 1885 — Section 10, 16, 16(1)

Citation : (2009) 3 KLT 860

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : K.M. Jamaludheen and Latha Prabhakaran, for the Appellant; P.P. Thajudeen, for the Respondent

Judgement

Antony Dominic, J.—Petitioners grievance is that respondents are proposing to install a transformer in the tarred road frontage of the petitioners property having an extent of 21.399 cents of land. Ext. P1 is the sketch of the petitioners property. According to the petitioners, coming to know of the above proposal of the respondents, they filed Ext.P3 objection to the 1st respondent. In spite of it, when steps were taken for installing the transformer, they filed this Writ Petition to prevent the respondents from proceeding with the proposal.

2. Statement has been filed on behalf of the respondents. In the statement, it has been clearly stated that the proposal of the Board is to install two poles and a transformer and that too not in the property of the petitioners, but on the public road. It is stated that the location of the transformer was selected as it was very near to the load centre and that the feeding arrangement is practically much suitable. It is also pointed out that there is no other technically suitable vacant location for the installation of the transformer and that all the vacant plots available in the area are unsuitable for their purpose.

3. Yet another point highlighted is that the petitioners property has a road frontage of 12.45 meters and that the double pole structure for transformer will occupy only 3 meters on the road side leaving a clear road frontage of 9.45

meters. It is stated that even if the proposal is carried out, that will not affect the ingress and egress of the petitioners to the property.

4. Counsel for the petitioners would argue that when objection has been raised by filing Ext.P2, respondents ought to have taken up the matter before the District Magistrate in terms of Section 16(1) of the Indian Telegraph Act.

5. However, counsel for the Board submits that Section 16 of the Indian Telegraph Act is inapplicable to the case in question in as much as the transformer is proposed to be installed not in the private property of the petitioners, but on the side of a public road.

6. I have considered the submissions made.

7. Section 10 of the Act provides that 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. Sub-section (d) provides that in exercising the power u/s 10, the authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property, other than those vested in or under the control of any local authority, the authority shall pay full compensation to all persons interested for any damage sustained to them.

8. Section 16 provides that if the exercise of the powers mentioned in Section 10(d) is resisted or obstructed, the District Magistrate may pass order that the Telegraph authority shall be permitted to exercise powers u/s 10.

9. A combined reading of Sections 10(d) and 16(1) of the Telegraph Act would therefore show that the power of the District Magistrate to remove obstruction as provided in Section 16(1) is only in relation to the properties covered by Section 10(d). In other words, the removal of obstruction can only be in relation to private property.

10. In this case, the specific case of the Board is that the transformer in question is proposed to be installed only in a public road and if that be the factual position, there is no question of the respondents making application u/s 16(1) of the Telegraph Act to the Additional District Magistrate, for an order under the said section.

11. Counsel for the petitioners then contended that there are several other convenient locations available in the locality where the structure in question could be erected. A reading of the statement filed on behalf of the respondents would show that they have identified the location in question mainly because it is very near to the load centre and that the feeding arrangement is practically much suitable. It is also their specific case that the other vacant plots are not technically suitable. One should concede that the respondents are the most competent persons to assess the technical suitability or otherwise of a location for installing a transformer. Once that freedom is conceded to the respondents, unless a case of mala fides or extreme arbitrariness is made out, this Court will not be justified in sitting in judgment over the choice of a location done by the

respondents.

12. In this case, I am not satisfied that the petitioner has succeeded in making out a case coming within the aforesaid parameters and calling for interference of the decision taken by the respondents regarding the location of the transformer in question.

13. Irrespective of all this, it is offered by the respondents that they are willing to shift the location of the proposed transformer to the north western corner of the petitioners property so that the inconvenience if any to the petitioners could be minimised. However, according to them, such proposal can be implemented only if the petitioners agree for installing the stay wires in their private property.

14. In view of the offer now made by the respondents, it is clarified that if the petitioners are willing to permit installation of the stay wires in their property, it will be open to the petitioners to approach the 2nd respondent, within 10 days from today, in which event, the 2nd respondent shall do the needful for shifting the proposed location of the transformer to the north western corner of the petitioners property.

Writ Petition is disposed of as above.