

(2008) 04 MAD CK 0128

In the Madras High Court

Case No : Writ Petition No. 21533 of 2007

T. Narayanan

APPELLANT

Vs

The District Executive Magistrate-cum-District Collector and
Power Grid Corporation of India Limited

RESPONDENT

Date of Decision : 04-04-2008

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 226, 227
Electricity (Supply) Act, 1948 — Section 45
Electricity Act, 1910 — Section 12, 13, 14, 15, 16
Electricity Act, 2003 — Section 10, 11, 12, 13, 14
Penal Code, 1860 (IPC) — Section 188
Telegraph Act, 1885 — Section 10, 16, 16(1), 16(2), 16(3)
Woks of Licensees Rules, 2006 — Rule 3(2)

Citation : (2008) 4 MLJ 1024 : (2009) WritLR 573

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : AR.L.Sundaresan and AL.Ganthimathi, for the Appellant; L.S.M. Hasan Fizal, Govt.Adv. for respondent 1 and Jayesh Dolia and Aiyar and Dolia, Ad v. for respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—This Writ Petition has been filed, praying for issuance of a writ of certiorarified mandamus, to call for the records of the first respondent relating to his order in D.Dis. No. 15 of 2007 dated 23.05.2007, quash the same and consequently forbear the second respondent from erecting any pillar or post for the purpose of transmission of high tension power over the lands in S.Nos.58/1, 2 and 3, 60/2 to 6, 61/1 to 5, 63/2, 64 to 68, 69/1, 2 and 3 and 70/1 and 2, 77/1A, 78, 79, 80/1 and 2 and 155/1 and 2 of an extent of 22.04 acres and S.Nos.86, 97/1 and 2, 100, 101, 103 to 106, 107/1, 2 and 3, 108, 118/1, 2 and 3, 119, 120/1 and 4, 121/1, 124, 125/1 and 2, 126, 127, 128/2, 129, 130, 142/1 and 2, 144 Part, 146, 147/1 to 5, 148/1 to 4 of an extent of 23.88. 1/2 acres in 79, Gudalur Village within Maraimalai Nagar Town Panchayat, Chingleput

Taluk, Kancheepuram District.

2. According to the petitioner, he is a businessman engaged in developing layouts of house sites by acquiring various parcels of land from various owners, making them contiguous and forming layouts consisting of several housing plots after providing open space, public roads, culverts, etc. and selling the same to various persons desirous of purchasing house sites. While so, he developed a layout of house sites over an extent of 23.88.1/2 acres of land in various survey Nos. of Gudalur Vilalge, Chingelput Taluk, Kancheepuram District falling within the Maraimalai Nagar Town Panchayat and submitted necessary applications to the Maraimalai Nagar Town Panchayat which was duly approved under proceedings dated 02.05.2007. He remitted a sum of Rs. 24,60,000/- towards approval charges and developmental charges and the layout plan was approved vide a resolution dated 30.04.2007. The petitioner started selling house plots to various persons and still holds several plots readily available for sale and he is responsible to ensure that the various purchasers of the respective plots derive full benefit out of their purchase and that they are not deprived of any of their rights by any action by any person against the title and possession of the property. That being the position, some pits were dug in his lands by the agents of second respondent Corporation and hence, he was constrained to file a writ petition in W.P. No. 49172 of 2006 seeking a writ of mandamus which was disposed of in the following terms:

...The Power Grid Corporation shall, as early as it deems fit, approach the District Magistrate concerned in each case for permission to deal with the objections raised by the petitioners in each case and the said District Magistrate shall consider the objections and pass orders in accordance with the provisions which have been extracted above.

3. Pursuant to the said order, based on a requisition letter dated 25.01.2007 from the Chief Manager of the second respondent, the first respondent, by a notice dated 05.02.2007, called upon the petitioner to appear before him on 19.02.2007 to put forth his objections, in respect of exercise of powers of Telegraph authority u/s 16(1) of the Indian Telegraph Act, 1885. Accordingly, the petitioner submitted his explanation stating that if the power line towers are erected in the approved layout, it will severely affect various purchasers and himself as there are several unsold plots and since 40 ft. on both sides of the power line has to be kept vacant, 700 x 33 metres of land will be rendered useless. Subsequently, though the relevant sale deeds and layout approvals were submitted for consideration of the first respondent, by proceedings dated 23.05.2007, the first respondent overruled the petitioner's objections stating that his reasons are purely out of commercial interest and the proposed park area has no commercial value to him as a promoter and that the alignment suggested by him was not technically feasible. Aggrieved over the said order, this Writ Petition has been filed on the grounds that:

a. the impugned order of the first respondent permitting the second respondent

to carry out the work of erecting high tension power lines through the lands of the petitioner as per Section 16(1) and (2) of the Indian Telegraph Act, is arbitrary, illegal, unjust and unsustainable in law.

b. the first respondent failed to consider the materials produced by the petitioner and has not assigned any reason as to why the change in the alignments could not be resorted to and has also failed to exercise his jurisdiction and power.

c. the impugned order of the first respondent remains silent as to the report and documents submitted by the Tahsildar of Chingleput Taluk and the Village Administrative Officer of Gudalur Village who had submitted that enough poramboke and Government vacant lands are available and the project could be executed without disturbing private properties and the change in the alignment through such poramboke and Government lands is feasible, and

d. the failure to determine the compensation also vitiates the passing of the impugned order.

4. The first respondent/District Collector has filed a counter, stating that the omission to state and give particulars in W.P. No. 49172 of 2006 about the proposed transmission lines being sought to be carried through the said lands cannot be by mistake and due to petitioner's lack of knowledge; the petitioner was not ignorant of the fact that power transmission lines have been proposed through the lands; however, suppressing this fact the petitioner had sought for and obtained approval of the lay-out; the petitioner, knowing fully well about the consequences of the proposed power transmission lines through the lands, had proposed and laid the layout plots; pursuant to the orders of the Court in W.P. No. 49172 of 2006, the first respondent issued notice, heard the petitioner's objections, considered the same and passed the order, dated 23.05.2007, permitting the Corporation to carry out the work; as such, the Corporation has been carrying out the work of transmission power line and, hence, the petitioner is not entitled to make any complaint, as the provisions of the Act have been duly complied with.

5. It is also stated in the counter that the petitioner and the officials of the second respondent were heard and the order was passed by the first respondent, rejecting the objections raised by the objector, keeping in mind the fact that the said transmission of electricity was an essential service and for the reason that the alignment as suggested by the objector was not technically feasible. Further, various modalities, ways and means were considered and thereafter it was found that it was not technically feasible to change the proposed alignment. The first respondent considered all the aspects of the matter before passing the order, granting permission to the second respondent to proceed with the proposed erection of electric transmission towers. The petitioner is entitled to any quantum of compensation, if at all the immovable property is damaged, that too the issue of paying compensation and receiving it is between the petitioner and the Telegraph Authority viz., Power Grid Corporation, as per the provisions of Section

16(3) read with Section 10(d). The contention of the petitioner that the first respondent is the authority to decide compensation is quite incorrect and irrelevant. The order is passed in public interest and the same is not liable to be stayed or set aside.

6. The further case of the District Collector is that he had perused the records and written statement filed by both the land owners and the officials of Power Grid Corporation of India Limited and enquired them on 19.02.2007 and had discussions with the officials of Power Grid Corporation and the land owners. Hence, the order passed by the first respondent is not vitiated by any infirmity and it is legally and constitutionally valid and maintainable and, as such, the Writ Petition is liable to be dismissed.

7. The second respondent Corporation has filed a counter, stating as follows:

(a) It is the Central Transmission Utility under the Ministry of Power and has been entrusted with the construction of Sriperambudur to Kalivanthapattu 400 KV D/C Power Transmission Line comprising 94 Towers with a length of 30.673 kms. at a total cost of Rs. 588.25 crores; the scheme is duly approved by Government of India to provide quality power at large with greater reliability particularly to the agricultural/residential/commercial establishments for the State of Tamil Nadu in general and South Chennai in particular and will be a big boost to the industrial and agricultural growth in the State and it is executing the project after observing all legal procedures and as per the existing provisions under the Electricity Act, Sections 10 to 19 of the Indian Telegraph Act, 1885, Indian Electricity Rules, 1956 and the Woks of Licensees Rules, 2006.

(b) Sriperambudur to Kalivanthapattu 400 KV D/C Power Transmission Line is of 30.673 kms. length and has 94 towers in the entire section against which foundation work has been completed at 72 locations and 18 towers have been erected and the erection of balance towers is in progress and the project is expected to be completed and commissioned by September 2007 as per schedule.

(c) While fixing the transmission line route, only the most techno-economically feasible route is chosen causing least damage after complying with the statutory clearances and avoiding places of inhabitation, worship and densely populated areas.

(d) Since the transmission line requires a clear corridor of 48 metres only i.e. 24 metres on either side from the centre of the transmission line, all crops can be cultivated and the fruit-bearing trees of short height can be grown and building put up by maintaining sufficient safety electric clearance as per the Electricity Rules, 1956.

(e) The transmission line would not have any impact on human beings, animals, plants, etc. or on the geological or ecological system beyond the statutory clearance/norms provided by the Indian Electricity Rules, 1956.

(f) The laying of tower in the land will not render the land unusable as alleged and such a statement is made only with a view to mislead this Court inasmuch as it does not require the land but for erection of towers.

(g) Once the order is passed by the first respondent/District Collector u/s 16(1) of the Indian Telegraph Act, permitting this respondent to carry out the work for laying of tower lines in the petitioners property as per Section 16(2) of the Act, the petitioner has to provide all assistance to this respondent for carrying out the works and if any objection is made by the petitioner, it will amount to an offence u/s 188 of the Indian Penal Code and the petitioner can be prosecuted for the same.

(h) The second respondent is implementing the project of the Central Government and the same is for the benefit of the general public at large including the petitioner in the long run and that the interest of general public is of utmost importance than the interest of a particular individual.

8. Mr.AR.L.Sundaresan, learned Senior Counsel for the petitioner, has contended that the first respondent went wrong in passing a non-speaking order by simply recording the contentions of the respective parties and not recording the reasons for rejecting the objections of the petitioners and he ought to have considered the objections of the petitioners that the erection of Towers in the land belonging to the petitioner would make the entire land measuring an extent of 23.88 acres unusable for construction of houses. It is the further contention of the learned Senior Counsel that the first respondent ought to have seen that as per Sub rule 2 of Rule 3 of the Works of Licensee Rules 2006, he has to fix the compensation or annual rent or both, which should in his opinion be paid by the licensee to the owner or occupier, but he has not fixed the amount of compensation or annual rent as mandated by the provisions of the Works of Licensee Rules 2006; the first respondent also went wrong in not considering the objection of the petitioner that the proposed power line be diverted through the other poramboke lands available immediately next to the layouts and by overruling the said objection, the first respondent, without assigning any reasons, permitted the second respondent to carry out the work of erecting high tension power lines through the petitioner's lands, which is arbitrary, illegal, unjust and unsustainable in law and, therefore, the order passed by the first respondent cannot be sustained and the same is liable to be quashed.

9. In support of his contentions, learned Senior Counsel for the petitioner has cited the following decisions:

(i) State of Mysore Vs. S.S. Makapur, :

3...For a correct appreciation of the position, it is necessary to repeat what has often been said that tribunals exercising quasi-judicial functions are not Courts and that therefore they are not bound to follow the procedures prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from

all sources and through all channels, without being fettered by rules and procedure which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and given him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts.

(ii) Orient Paper Mills Ltd. Vs. Union of India (UOI), :

8. If the power exercised by the Collector was a quasi-judicial power-as we hold it to be-that power cannot be controlled by the directions issued by the Board. No authority however high placed can control the decision of a judicial or a quasi-judicial authority. That is the essence of our judicial system. There is no provision in the Act empowering the Board to issue directions to the assessing authorities or the appellate authorities in the matter of deciding disputes between the persons who are called upon to pay duty and the department. It is true that the assessing authorities as well as the appellate authorities are judges in their own cause; yet when they are called upon to decide disputes arising under the Act they must act independently and impartially. They cannot be said to act independently if their judgment is controlled by the directions given by others. Then it is a misnomer to call their orders as their judgments; they would essentially be the judgments of the authority that gave the directions and which authority had given those judgments without hearing the aggrieved party. The only provision under which the Board can issue directions is Rule 233 of the Rules framed under the Act. The rule says that the Board and the Collectors may issue written instructions providing for any supplemental matters arising out of these Rules. Under this rule, the only instruction that the Board can issue is that relating to administrative matters; otherwise that rule will have to be considered as ultra vires Section 35 of the Act.

(iii) S.N. Mukherjee Vs. Union of India, :

34. The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American Courts. An important consideration which was weighed with the Court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in

decision-making. In this regard a distinction has been drawn between ordinary Courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the stand point of policy and expediency.

35. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decisions-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

(iv) Valsamma Thomas Vs. Additional District Magistrate, Alappuzha and Another, :

12. Thus, on review of the authorities of this question, we come to the following conclusions:

- (1) The District Magistrate has to exercise his discretion judicially.
- (2) He has to pass the order u/s 16(1) of the Telegraph Act, after hearing the parties and after taking such evidence as is required with regard to the objections raised.
- (3) The order passed by the court should be a speaking order.
- (4) The order should reflect the objections raised by the parties and the reasons given by the Magistrate for accepting or rejecting the same.
- (5) The order should also reflect the materials relied on by the District Magistrate for arriving at the conclusion.

If the discretion is exercised by the District Magistrate as above, then unless it is shown that the findings are perverse or that the proceedings are vitiated by mala fides this Court will not be justified in interfering with such orders. This Court will not be justified in substituting its own opinion. It is also worth bearing in mind that this Court has not got technical expertise and will be slow to interfere with such matters.

(v) Canara Bank and Others Vs. Shri Debasis Das and Others, :

19. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

10. Per contra, Mr. Hasan Fazal, learned Government Advocate, appearing for the first respondent/District Collector has contended that the District Collector, who is also a Magistrate under the Act, has considered the entire objections raised by the petitioner independently and passed an order u/s 16(1) of the Indian Telegraph Act, 1885, overruling the objections of the petitioners, stating that the objections of the petitioner are purely based on commercial interests and thus permitting the Corporation to take the power line through the land owned by the petitioner. The learned Government Advocate strengthened his submissions on "eminent domain", pointing out that in the interest of greater public purposes, the individual interest cannot be against it and the authorities have every right to take note of the public interest over the individual interest. Therefore, there is no infirmity in the orders passed by the District Collector and the same cannot be interfered with.

11. On the other hand, Mr. Jayesh Dolia, learned Counsel appearing for the Corporation, has strenuously contended that the Corporation is the Central Transmission Utility under the Ministry of Power and has been entrusted with the Project to provide quality power at large with greater reliability particularly to the agricultural, residential and commercial establishments for the State of Tamil Nadu and it is executing the project after observing all legal procedures under the provisions of the Act and the Rules. He also submitted that in the entire section of the project, foundation work has been completed at 72 locations and 18 towers have been erected and the erection of balance towers is in progress and it is a time bound project to be completed and commissioned by

September, 2007 as per schedule and because of the pendency of the writ petitions, they could not proceed further. The learned Counsel made a point that the Government of India, in exercise of powers conferred by Section 164 of the Electricity Act, 2003, has passed an order dated 24.12.2003 to exercise all powers vested in the Telegraph Authority in respect of electrical lines and electrical plants established or maintained for transmission of electricity or for the purpose of telephonic or telegraphic communication necessary for the proper coordination of work. Also, according to the learned Counsel, as per Section 10 of the Indian Telegraph Act, 1885, it is not necessary to issue personal notice or to get prior consent from the private land owners and as per Section 10(c) of the said Act, if the property is vested in or under the control of any local authority, then, it is necessary for the Corporation to get permission from such authority. He vehemently contended that the transmission line route is as per the experts opinion and the most techno-economically feasible route is chosen, causing least damage after complying with the statutory clearances and avoiding places of inhabitation, worship and densely populated areas, including the geological or ecological system. Therefore, the whole process undertaken by the Corporation is for a public purpose and any re-alignment of this line at this advanced stage is not at all techno-economically feasible and any delay in completing the project or alteration in route will cause heavy loss to the Government exchequer. Hence, in the absence of any valid reasons to object to the erection of transmission lines and when there is larger public interest involved in the project and also there is no damage to the properties of the petitioner, the petitioners cannot stall the project by invoking the jurisdiction under Article 226 of the Constitution of India.

12. In support of their contentions, learned Counsel for the respondents have cited the following decisions:

(i) Bharat Plywood and Timber Products Private Ltd. Vs. Kerala State Electricity Board Trivandrum and Others, :

23. It is clear from the wording of Section 16 and particularly from the expression "the District Magistrate may, in his discretion", that an order will not be forthcoming automatically. A District Magistrate may in his discretion in a given case refuse or decline to pass an order that the telegraph authority shall be permitted to exercise the powers. The wording is significant. The District Magistrate does not grant permission to the authority. But, he orders that the authority "shall be permitted." The discretion conferred by the section on the District Magistrate is certainly a judicial discretion, and, in cases where the District Magistrate refuses to pass an order that the telegraph authority shall be permitted to exercise the powers mentioned in Section 10, it is inconceivable that the telegraph authority may, notwithstanding such refusal, continue to exercise such powers. The wording of the section is thus itself indicative of the fact that in cases of resistance or obstruction the District Magistrate will have to decide whether the authority should be permitted or not to exercise the powers u/s 16 of the Telegraph Act. This necessarily means that the telegraph authority

cannot override or ignore the resistance or obstruction and continue to exercise the powers u/s 10 notwithstanding such resistance or obstruction. It follows that, when an owner or occupier resists or obstructs the exercise of the power u/s 10, the telegraph authority will have to approach the District Magistrate for an order under Sub-section (1) of an order under Sub-section (1) of Section 16 and can exercise the power u/s 10 only in cases where the District Magistrate deems it fit to pass an order that he shall be permitted to do so. The power conferred by Section 10 is thus a conditional power; conditional on an order being passed u/s 16(1) by the District Magistrate that the authority may be permitted, in case of resistance or obstruction, to exercise the power. This is so not only in regard to a telegraph authority but to the public officer or any other person authorised under the Electricity Act.

(ii) 1994 WLR 445, M.Nithyanandam and two Ors. v. The Chairman, Tamil Nadu Electricity Board, Madras-2 and Ors.:

26. The above section, in my opinion, gives authority for placing the poles or the towers in a private land and Clause (d) referred to above provides for payment of compensation. Section 16(1) provides for the Board approaching the District Magistrate in case of resistance by the owner. Section 16(3) provides for the mode for fixing the compensation in case of dispute regarding the sufficiency of the compensation.

27. In the light of the non-obstante clause in Section 42, excluding in categorical terms the applicability of Sections 12 to 16, 18 and 19 of the Indian Electricity Act, 1910, in any considered opinion, it is not open to the petitioners to rely on Section 12 of the Indian Electricity Act, 1910. As stated above, the petitioners strongly relied on the decision reported in 1959 (II) MLJ 446. In that case, Basheer Ahmed Sayeed, J., was pleased to deal only with the scope of Section 12. The scope of Section 42 was apparently not brought to the notice of the learned Judge. Therefore, the petitioners herein cannot call in aid the said decision.

28. It was argued by Mr.A.Venkatesan, learned Counsel for the petitioners, that the learned Judge had observed in the above decision that only apparatus and appliances to be placed and high tension wire cannot at all be used or put up. The petitioners cannot rely upon the observations made by the learned Judge. Provisions of Section 42 are very clear and at the end of the 20th century, it is no longer open to anybody to contend the high tension towers cannot be put up.

(iii) A.M. Ismail and Others etc. Vs. Union of India (UOI) and Others, :

8. On a survey of these authorities, it is clear that the District Magistrate is discharging an administrative function and the general principle of natural justice and other procedural regulations would apply. The contention of the petitioners that the District Magistrate is given unlimited power and, therefore, the said provision is illegal cannot be accepted. The District Magistrate hears objectors and consider whether the objections raised by the property owners are

reasonable. If the District Magistrate is of the view that it is not proper to draw line through the objections" property he shall decline permission to draw line through their property. If, on the other hand, the District Magistrate, finds that the objectors are raising frivolous objections, the District Magistrate is competent to rule out such objections and direct the authorities to draw the proposed line. Therefore, I do not find that Section 16(1) of the Indian Telegraph Act, 1885 is in any way violative of Article 14 of the Constitution.

10. Coming to the facts of the cases, petitioners' objection is that there are alternate lines and this was not considered by the District Magistrate. It may be noticed that this line was proposed in 1992 and because of the obstruction it could not be drawn. The proposal is to draw 3 K.M. Long 11 K.V. Line for the purpose of voltage improvement and by the proposed scheme about 400 persons are benefited. There is also proposal to instal a transformer at Edayirickapuzha. Most of the petitioners are also benefited by the proposed line. It is true that some of the petitioners will have to suffer a little inconvenience by the drawal of these lines. But considering the benefit that may derive to the consumers, the objections raised by the petitioners are not weighty and the District Magistrate rightly overruled these objections. The question was elaborately considered by the District Magistrate rightly overruled these objections. The question was elaborately considered by the District Magistrate and the alternate suggestion to construct the line along the public road was also found not feasible. It is also pointed out that the route is by the side of a thodu and the petitioners are not seriously affected in the sense that their trees are not to be cut and removed to a greater extent.

(iv) E. Venkatesan and others Vs. Chairman, Tamil Nadu Electricity Board, Madras and others, :

20. In this case, the fact that there was a notification in 1961 is not a matter in dispute. Subsequently proceedings have been issued by the first respondent on 18.12.1993 whereby the scheme was approved, and it was also declared that the Board will exercise power of Telegraph Authority u/s 45 of the Electricity Supply Act, and, therefore, the Electricity Board shall not be bound by the provisions of Sections 12 to 16, 18 and 19 of the Indian Electricity Act, 1910. In view of the notification and also the approved Scheme, no argument can be put forward by the petitioners that the officers of the Electricity Board are not entitled to enter the property or to draw the electric line. Once the power under the Telegraphs Act is given to the public officers of the Board, they are also entitled to dig pits and also instal towers over the property. The question of consent from the petitioners does not arise for consideration, nor is it required under law.

(v) A decision of the Division Bench of this Court in W.A. No. 572 of 2001 in the case of The Chairman, Power Grid Corporation of India Ltd. and Anr. v. Vivasaya Vizhipunarvu Iyakkam:

4. Mr.Dolia, learned Counsel appearing on behalf of the appellants says that the

direction by the learned single Judge is beyond the scope of Section 10 of the Telegraphs Act. He says that the Act nowhere provides that while erecting the lines, the compensation should be decided in advance, and then alone the trees should be cut, whereas, the respondents herein and the original petitioners before the learned single Judge very earnestly point out that once the trees are cut, there would be no question of firstly their identification and secondly about a proper compensation being decided upon, as in that case, the concerned authorities would not have, anything available to know about the age and capacity of yield, etc.

(vi) An unreported judgment of this Court in W.P.Nos.49172 of 2006, etc. batch of cases:

22. In at least one writ petition, it is contended that instead of the transmission towers being installed in a straight line, there is a deviation. For this, there may be perfectly justifiable technical explanation on the side of the Corporation. This project has been conceived by technical experts, and considering the magnitude of the project and the fact that it covers large extent of land running through many districts, the minor deviations that the petitioner alleges must be ignored. However, it is the jurisdiction of the District Magistrate to consider the objections, and it will be possible for the objector as well as the Corporation to explain before the District Magistrate the manner in which the land lies and prove either that the erection of the transmission towers is improper or that the erection of the towers has been done in the optimum manner possible and that there could be no other way of doing it.

(vii) A recent judgment of the Supreme Court reported in (2007) 1 SCC 641 in the matter of Daulat Singh Surana and Ors. v. First Land Acquisition Collector and Ors.:

68. The right of eminent domain is the right of the State to reassert either temporarily or permanently its dominion over any piece of land on account of public exigency and for public good.

74. The power of compulsory acquisition as described by the term "eminent domain" can be exercised only in the interest and for the welfare of the people. The concept of public purpose should include the matters, such as, safety, security, health, welfare and prosperity of the community or public at large.

75. The concept of "eminent domain" is an essential attribute of every State. This concept is based on the fundamental principle that the interest and claim of the whole community is always superior to the interest of an individual.

13. Heard the learned Counsel for the respective parties and perused the material available on record, the relevant provisions of the Act and the Rules and also the decisions cited by the counsel for the parties.

14. Power Grid Corporation of India Limited has been entrusted with the construction of Sriperambudur to Kalivanthapattu 400 KV D/C Power

Transmission Line comprising 94 Towers with a length of 30.673 kms. at a total cost of Rs. 588.25 crores. The said scheme is duly approved by Government of India to provide quality power at large with greater reliability particularly to the agricultural/residential/commercial establishments for the State of Tamil Nadu in general and South Chennai in particular and will be a big boost to the industrial and agricultural growth in the State. The Corporation is an authority to execute the project after observing all legal procedures and as per the existing provisions under the Electricity Act, Sections 10 to 19 of the Indian Telegraph Act, 1885, Indian Electricity Rules, 1956 and the Woks of Licensees Rules, 2006. It appears that the project work has commenced and it is a time bound project. Out of 94 towers in the entire area, foundation work has been completed at 72 locations and 18 towers have been erected and the erection of balance towers is in progress and the project is expected to be completed and commissioned by September 2007 as per schedule.

15. As per Section 14 of the Electricity Act, 2003, Central Transmission Utility shall be deemed to be a Transmission Licensee and as per Section 164 of the Act, the appropriate Government may by order in writing for the placing of electric lines or electrical plant for the transmission of electricity confer upon the Licensee any of the powers which the Telegraph Authority possesses. Accordingly, the Power Grid Corporation has been entrusted with the power to exercise all the powers in respect of electrical lines and electrical plants established or maintained for transmission of electricity or for the proper coordination of work.

16. Similarly, as per Section 10 of the Indian Telegraph Act, it is not necessary to issue personal notice or get prior consent from the private land owners and as per Section 10(c), if the property is vested in or under the control of any local authority, it is necessary for the Corporation to get permission from such authority.

17. It transpires that the project has been taken over and the route finalised on expert opinion and also taking note of the techno-economically feasible route and it is causing least damage after complying with the statutory clearances. Further, the viability of erecting such a transmission line takes the most techno-economically feasible route avoiding places of inhabitation, worship and densely populated areas. It is seen that since the transmission line requires a clear corridor of 48 metres only i.e., 24 metres on either side from the centre of the transmission line, all crops can be cultivated and fruit bearing trees of short height can be grown and building put up by maintaining sufficient safety electric clearance as per the Electricity Rules, 1956, and this transmission line would not have any impact on human beings, animals, plants etc. or on the geological or ecological system beyond the statutory clearance. Therefore, the whole process undertaken by the respondent is for a public purpose and any re-alignment of this line at this advanced stage is not at all techno-economically feasible.

18. Earlier, this petitioner moved this Court by filing a Writ Petition, before

exhausting the remedy under the relevant provisions of the Act. On a careful consideration of the matter and upon perusing the entire materials, this Court passed an order on 18.01.2007 in W.P. No. 49172 of 2006 and other connected matters and disposed of all the petitions with the following direction:

The Power Grid Corporation shall, as early as it deems fit, approach the District Magistrate concerned in each case for permission to deal with the objections raised by the petitioners in each case and the said District Magistrate shall consider the objections and pass orders in accordance with the provisions which have been extracted above. This project involves huge expenditure and therefore, we cannot permit any avoidable delay. The petitioners cannot think that by avoiding any notice or summons from the District Magistrate, they can indefinitely delay the matter. Immediately on receipt of the request by the Corporation for permission, the District Magistrate shall issue notice to the respective objectors and after hearing their objections, shall pass orders in accordance with law, within a period of six weeks from the date on which the Corporation makes a request for permission to the District Magistrate.

19. Based on the above directions, the District Collector has proceeded under the provisions of Section 16(1) of the Indian Telegraph Act to hear the objections of the petitioner along with the submissions of the Power Grid Corporation. An enquiry was conducted on 19.02.2007 and the objectors filed their written submissions so also the Corporation.

20. The learned District Magistrate, after going through the written submissions filed by both the land owner and the Corporation, held as follows:

T.Narayanan of Gudalur Village, Chengalpattu Taluk submitted that since he is a plot promoter and promoting House sites at 79 Gudalur Village and spent very large amount for developing the lands as House sites, and that purchasers are from middle class and if the power line towers are erected in his approved layout, it will severely affect the purchasers and the petitioner himself. He continued that because the necessary ground clearance for the power line is said to be 40 feet on both the sides of the line, totally 700 x 33 metres of land will be rendered as useless and submitted that there are other poramboke lands so that, the said power lines may be diverted through that land.

For this, M/s.Power Grid Corporation of India Ltd. contended that during their survey there was no marked layout in that stretch and only vacant lands were there. Since they are empowered to carry out the powers of the Telegraph authority by Indian Electricity Act 2003 and Indian Telegraph Act 1885, to enter upon any immovable properties for erecting the towers. In this particular case foundations for location A.P.32,34/1,35/0,35/1,35/2 have all been cast and the location 34/0 which is proposed at the petitioner's land (i.e.) the Annai Nagar, that too in the park area of that layout, which was existing at the time of the petitioner's survey. The petitioner submitted that no deviation of the alignment is possible as it would involve crossing the forest and also alignment will be

changed minimum by 90 degrees which is technically not feasible.

On hearing both sides, it is felt that the objections raised are purely based on the commercial interests of the objector and considering the fact as submitted by the petitioner concern that the said tower would be erected on the proposed park area which is of no commercial value in view of a Plot Promoter, the alignment as suggested by the objector is not technically feasible, and hence objections of the objector hold no grounds and hence rejected keeping in mind the fact that the said transmission of electricity is an essential service.

The above order of the District Collector is under challenge in this Writ Petition.

21. The main controversy that centres around is, whether the the District Collector has considered the objections in the light of the directions of this Court and also in the manner known to law ?

22. This Court is not an expert body to go into the feasibility or non-feasibility of the transmission lines to be erected and the factual matrix controverted to by the parties in making alignment of route of transmission lines and also to consider the alternate alignment in the light of the objections of the petitioner. This Court is duty bound to examine whether the order passed by the District Collector is in conformity with the law laid down; the procedure adopted by the authorities; the manner in which the enquiry was conducted and also whether the decision taken by the Collector is in accordance with law.

23. Learned Senior Counsel for the petitioner has contended that the District Magistrate has not taken into account the objections made by the local authority and without their permission, the transmission line cannot be allowed to pass through the layout, meant for park area.

24. It is seen from the records that the proceedings were initiated long back and the petitioner has come before this Court by filing Writ petition in December,2006. Considering the overall facts and circumstances of the case, this Court passed an order on 18.01.2007 and pursuant to the direction made in the said order, the District Collector has passed a reasoned order, dated 23.05.2007, after bestowing his attention to the objections raised by the petitioner, including the park area in the layout.

25. What is now contended by the petitioner is that an objection was made by the Executive Officer of Maraimalai Nagar Municipality, Kancheepuram District on 09.07.2007 and the same was not taken into account by the District Collector.

26. As already stated, the District Collector has passed the impugned proceedings on 23.05.2007, after a thorough analysis of the objections and the counter objections made by the parties. But, the objection filed by the Maraimalai Nagar Municipality was on 09.07.2007, which was much later to the passing of the impugned proceedings. Further, pursuant to the direction given by this Court, the District Collector called upon the parties to file their objections and immediately on receipt of the objections and hearing them, passed a

reasoned order, which cannot be interfered with. Therefore, the contention of the petitioner that the objection raised by the Municipality was not considered by the District Collector cannot be sustained.

27. It is well settled in Daulat Singh Surana's case, referred to above, that public interest is always superior to the interest of an individual. In addition, when the Corporation exercises powers u/s 164 of the Indian Electricity Act read with Section 10 of the Indian Telegraph Act, they are not acquiring the land, but they are only making use of the land for the purpose of laying electric lines, for which compensation can be awarded for the damages caused. Moreover, the project is a time bound one, which has already been delayed by now, and any further delay would render the project in vain and more cost effective.

28. Therefore, viewed at from any angle, the petitioner has not made out any case to interfere with the order passed by the District Collector. As such, this Writ Petition is dismissed.

29. However, as the learned Senior Counsel for the petitioner has contended that the petitioner has a right to get compensation for the loss he has suffered, the Corporation is directed, that on receipt of application from the petitioner for payment of compensation, to fix the amount of compensation in accordance with law, on the basis of the market value prevalent on the date of erection of poles and pay the same to him, if he is entitled to it, within a period of three months from the date of receipt of a copy of this order.

30. No costs. Consequently, the connected M.P. No. 1 of 2007 is also dismissed.