

(2011) 02 MAD CK 0305

In the Madras High Court

Case No : Writ Appeal (MD) No. 932 of 2010 and M.P. (MD) No. 2 of 2010

The Superintending Engineer and The Junior Engineer,
Distribution, Tamil Nadu Electricity Board

APPELLANT

Vs

M. Sengu Vijay and The Superintending Engineer, Tamil Nadu
Water and Drainage Board

RESPONDENT

Date of Decision : 22-02-2011

Acts Referred:

Electricity (Supply) Act, 1948 — Section 42

Electricity Act, 1910 — Section 12(2)

Electricity Rules, 1956 — Rule 82

Telegraph Act, 1885 — Section 10, 11, 12, 13, 14

Citation : (2011) 8 RCR(Civil) 2115

Hon'ble Judges : R. Subbiah, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : M. Suresh Kumar, for the Appellant; P.L. Narayanan, for R1 and M. Ajmal Khan, for R2, for the Respondent

Final Decision : Dismissed

Judgement

R. Subbiah, J.—This appeal is preferred against the order dated 20.04.2010 passed by a learned single Judge of this Court in W.P.(MD) No. 2176 of 2010, whereby the learned single Judge allowed the writ petition filed by the 1st Respondent herein, by directing the Appellants and the 2nd Respondent herein to remove the electric poles and service lines from the 1st Respondent's land.

2. The brief facts, which are necessary to decide the issue involved in the writ appeal, are as follows:

The 1st Respondent is the owner of the land in S. Nos. 159/2, 160 and 161/1A situate in Alangara Peri Village within the Sub-Registration District of Gangaikondan, having purchased the same by a sale deed dated 09.04.2008 from one T. Komban. Subsequently, the said land was sub-divided as S. Nos. 159/2B, 160/2 and 161/1A2. The 1st Respondent had also obtained patta for the

said land and he applied for lay-out and the Director of Town and Country Planning approved the lay-out by his Proceedings No. 14/2009 dated 19.02.2009; but in the said Proceedings, the Director of Town and Country Planning observed that the electrical poles and lines situated in the subject land may be shifted along the road formed by the 1st Respondent in the lay-out at his cost. Since the said observation was without jurisdiction, the 1st Respondent approached the Appellants and the 2nd Respondent to find out the expenses involved in shifting the electrical poles and lines and initially, the 1st Respondent was informed that the expenses would be in between Rs. 80,000/- and Rs. one lakh. Believing the same, by a letter dated 30.03.2009, the 1st Respondent requested the Appellants Board to shift the electrical poles and lines. Subsequently, the first Respondent was informed that the expenses would be about Rs. 6 lakh and immediately, he approached the authorities and also sent a telegraphic notice to the Appellants, but there was no response. Hence, the 1st Respondent sent a legal notice on 20.11.2009 and called upon the Appellants to remove the electrical poles planted on the above said property within ten days from the date of receipt of that notice. Subsequently, the 1st Respondent filed the writ petition and prayed for a mandamus directing the Appellants to remove the electric poles and service lines from his land or in the alternative, direct the 2nd Appellant and the 2nd Respondent herein to bear the costs of re-locating the electricity poles and service lines in the subject land.

3. The case of the 1st Respondent/writ Petitioner was resisted by the Appellants contending that at the time of erection of electrical poles, there was no objection or obstruction from anybody against the Board including from the erstwhile owner of the subject property. Moreover, the Board is vested with the powers under Indian Telegraph Act to erect poles and draw lines wherever necessary in the interest of public. There are two sets of lines passing through the 1st Respondent's property, one set of lines, i.e. 6 poles, is for the welfare of the public and not for the benefit of any private individual and another set of lines, i.e. five poles, is for the benefit of the 2nd Respondent, namely, Water Supply and Drainage Board. It is the contention of the Appellant that if any individual is willing to shift the over head lines passing through the property, they have to bear the costs for shifting.

4. The learned single Judge, on a consideration of entire materials, allowed the writ petition, directing the Appellants Board to remove the electric poles and service lines from the subject land without insisting the 1st Respondent to pay the expenses for the same. Challenging the same, the present appeal has been preferred.

5. Heard the learned Counsel for both sides and perused the materials available on record.

6. In view of the submissions made on either side, the question arises for consideration in this appeal is, whether the Appellants Board (TNEB) is right in insisting the 1st Respondent to pay the expenses for shifting the electrical poles

and service lines from his property?

7. From the records, we find that there are two sets of lines passing through the 1st Respondent's property i.e. six poles were erected 22 years prior to the purchase of the property by the 1st Respondent and another five poles were erected in 2007 under a Scheme for the supply of electricity to the 3rd Appellant. The 1st Respondent had purchased the property from the original owner under a sale deed dated 09.04.2008. It is the specific contention of the 1st Respondent/writ Petitioner that no consent was given by the erstwhile land owner for erecting the electric poles in the subject land and under such circumstances, the Board cannot insist the 1st Respondent, who is the subsequent purchaser, to bear the expenses for shifting the electric lines from the subject land. In support of his contentions, Mr. P.L. Narayanan, learned Counsel for the 1st Respondent relied upon the judgments reported in the case of Smt. Durgesh Nandani Vs. State of Bihar and Others, and Bhel., Tiruchirapalli v. T.N.E.B. (2007) 2 MLJ 111.

8. Per contra, it is the specific contention of Mr. M. Sureshkumar, learned Counsel for the Appellants that at the time of erecting the poles, no objection was raised by the erstwhile owner. Therefore, it has to be construed that implied consent was given by the erstwhile owner and as such, now the 1st Respondent cannot deny the payment of expenses if he wants the lines to be shifted. The learned Counsel for the Appellants relied on the decision reported in Jaipur Development Authority v. State of Rajasthan AIR 1999 Rajasthan 240 and an unreported judgment of a Division Bench of this Court dated 22.10.2009 rendered in W.A. (MD) No. 531 of 2009).

9. As per Section 12(2) of the Indian Electricity Act, the Electricity Board is bound to get consent from the owner of the property before laying electrical poles and lines. Now, it is the submission of the Appellants Board that since no objection was raised by the erstwhile owner, it was construed as an implied consent. In our opinion, in the absence of any specific consent given by the previous land owner, the core question that has to be decided is, whether his silence in allowing the Board to erect the poles in the land could be taken as an implied consent or not. To decide this question, we have to look into the relevant provisions of the Indian Telegraph Act. Section 10(d) reads as follows:

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...

(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.

Section 17 reads as follows:

17. Removal or alteration of telegraph line or post, on property other than that of a local authority: (1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line of post accordingly:

Provided that, if compensation has been paid u/s 10, clause(d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

(3) A District Magistrate receiving an application under Sub-section (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form; and the orders so made shall be final.

10. A combined reading of Sections 10(d) and 17 of the said Act would show that the Electricity Board is bound to pay compensation to the land owner for causing damages in erecting the electric poles. It is not the case of the Appellants that the erstwhile owner was paid compensation while erecting the poles. Hence, in the absence of any specific consent from the erstwhile owner and also in the absence of payment of compensation by the Appellants Board, mere silence on the part of the erstwhile owner of the subject property, cannot be construed as implied consent. In this regard, a reference could be placed in the judgment reported in AIR 2000 PATNA 135 (supra), wherein it has been held as follows:

17. Section 17 gives the land owner the right to ask for the removal or alteration of telegraph line or post as and when he would desire to deal with the property in such manner as to render it necessary or convenient that the telegraph line or post should be removed. In that event the only condition is that if the land owner had received compensation u/s 10(d), he must either pay the expenses of removal or alteration or half the amount received by him as compensation, whichever may be the smaller sum.

18. As noted above, by virtue of Section 42 of the Electricity (Supply) Act the Board acquires the powers under Part III (Sections 10 to 19B) of the Indian Telegraph Act in case provision is made in sanctioned scheme and the powers

under Sections 12 to 19 of the Telegraph Act in case the sanctioned scheme does not make such provision.

19. The entry and presence of the Board on the Petitioner's land may, therefore, be held to be valid and lawful by virtue of the powers conferred by the above discussed provisions of the Telegraph Act but then it naturally follows that in case the entry over a private piece of land was without the permission or consent of the land owner and on the basis of the statutory power under the provisions of the Telegraph Act then the question of removal of the pole would also be governed by the provisions contained in Section 17 of the Act. In terms of Section 17, if the land owner was not paid any damages u/s 10(d) then he is not obliged to make payment of the expense of the removal. In case, however, the land owner was paid damages u/s 10(d) of the Telegraph Act, he can ask for the removal of the lines/poles only on tendering either the amount requisite to defray the expense of the removal or half of the amount paid as compensation, whichever may be the smaller sum.

20. On a consideration of the relevant legal provisions and on hearing counsel for the parties, the legal position that emerges can be summed up as follows:

(i) In case the Board fixes and installs electric poles and/or other appliances on a private piece of land or takes an overhead line passing through a private piece of land without the express permission or consent of the land owner and in exercise of the powers conferred by part III of the Indian Telegraph Act, the question of removal or alteration of the line, pole or other appliances etc. will be governed strictly by the provisions of Section 17 of the Indian Telegraph Act and in those cases the provisions of Rule 82 of the Indian Electricity Rules will have no application.

(ii) The provision of Rule 82 shall apply to cases where the Board fixes and installs electricity lines/poles or other appliances on a private piece of land or carries an overhead line through a private piece of land on the invitation of the land owner or with his express permission or consent.

21. Now coming back to the facts of this case, it is an admitted position that the two poles were fixed on the land in question without the approval and consent of its owner. It, therefore, follows that the Board fixed the two poles in exercise of the right conferred by the provisions of the Indian Telegraph Act. There is no material to indicate that the Petitioner or the erstwhile owner of the land was paid any damages u/s 10(d) of the Indian Telegraph Act. The proviso to Section 17(1) would, therefore, have no application in this case and the Petitioner, therefore, has no legal obligation to pay the expenses of the removal of the two poles. The Board is bound to remove the two poles at its own expenses. The impugned demand as contained in Annexure 5 is accordingly quashed.

The principles enunciated in the above judgment support the case of the 1st Respondent/writ Petitioner.

11. A perusal of the factual aspects of the unreported judgment (W.A. (MD) No. 531 of 2009) relied on by the Appellants shows that a transformer was put lawfully by the Board during the lifetime of the owner of the land. The Division Bench of this Court has also observed in that case that the land owner should have granted permission or consent for erecting the transformer. Admittedly, in this case, it is the specific stand of the Board that since the erstwhile owner did not object to the erection of the electric poles, it has to be construed as "implied consent. Thus it is clear that no consent was obtained from the erstwhile owner and no compensation was also paid by the Board which is a mandatory requirement to be followed. Therefore, the said judgment relied upon by the learned Counsel for the Appellants is not applicable to the facts of this case. Under such circumstances, we are of the view that there is no valid ground to interfere with the order passed by the learned single Judge and we confirm the order of the learned single Judge.

For the foregoing reasons, the writ appeal fails and accordingly, the same is dismissed. No costs. Consequently, connected M.P. is closed.