

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 14617 of 2022**

PARTH KRISHNKANT PATEL

Versus

MANAGING DIRECTOR/ GENERAL MANAGER (LEGAL CELL)

Appearance:

MR SHITAL R. PATEL, ADVOCATE for

MR. KISHAN H DAIYA(6929) for the Petitioner(s) No. 1

for the Respondent(s) No. 1,2,3,4,5,6,7

CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA

Date : 01/08/2022

ORAL ORDER

1. In the present writ petition, the petitioner has *inter alia* prayed for the following prayers.

"[A] To issue any appropriate writ or direction to respondent/s No. 1 to 3 either Jointly or Individually by way of mandamus directing them to install the suitable transmission line of 220 KV underneath Final plot no. 67 Chandkheda of petitioner inside boundary edge of FP suitably to the extent causing minimum damage to the petitioner in the interest of justice on suitable terms and condition.

In alternative and without prejudice

[B] To pass a restrain order of permanent nature from changing in KV from 132 to 220 KV transmission overhead line to be operational which may pass from the final plot of the petitioner in the peculiar facts of the present case

[C] Pending the hearing and final disposal of this petition, direct the respondent No.4 - Chief Electricity Inspector and/or any other competent authority in law restraining from transmission line in question passing from the FP no. 67 to be operational in the facts of the present case."

2. It is the case of the petitioner that due to the overhead KV electric line which passes from the private land of the petitioner, the value of the land has deteriorated and the same is laid without any consent from the petitioner.

3. Learned advocate Mr. Shital Patel, appearing for Mr. Kishan Daiya, for the petitioner has submitted that the aforesaid electric line passes from the final plot of the petitioner and such electric line could not have been laid down without his consent or without giving any notice to him. It is submitted by him that in case of other citizens, the transmission line, which was going overhead, has been shifted to underground, whereas in the case of the present petitioner though he has requested the same but it is not shifted to underground and by such an action of laying the transmission line overhead, the value of the plot belonging to the petitioner has been reduced considerably. It is submitted by him that the respondents may be directed to lay the transmission underneath the final plot of the petitioner so that the value of the petitioner land may not be deteriorated. It is further submitted that since KV of transmission line is increased from 132 to 220 KV, the development / FSI margin set back affecting drastically and virtually diminishing the value of the whole property of the petitioner. He has submitted that because of this, the plot has been divided in two half and other half has become redundant.

4. I have heard learned advocate for the petitioner. I have also perused the documents placed by the learned advocate for the petitioner.

5. The grievance of the petitioner is with regard to laying down the towers as well as the transmission lines overhead of his plot, which has reduced the value of the plot.

6. At this stage, it would be apposite to refer to the judgment of the Division Bench of this Court passed in Letters Patent Appeal No.534 of 2022 dated 06.11.2020, in the case of Gujarat State Electricity Transmission Corporation Ltd., Vs. Ratilal Maganji Brahmbhatt, [(AIR 2021 CC 1044)] and in the case Himmatbhai Vallabhbhai Patel Vs. Chief Engineer (Projects) Gujarat Energy Transmission and others [(2011) 2 GLH 781. The Division Bench, while considering the analogous issue, in case of **Himmatbhai Vallabhbhai Patel, (supra)** has held thus : -

"51. We are of the view that it cannot be said that the land has been selected in breach of any of the constitutional provisions. It is not even argued or urged that any of the constitutional provisions have been violated in selecting the land of the ownership of the appellants. Therefore, no case for interference with the decision of the statutory authorities in selecting the land is made out by the appellants.

52. In the aforesaid view of the matter, the impugned action of the respondents cannot be held to be arbitrary, illegal or contrary to the provisions of the Electricity Act, 2003 on any ground whatsoever. Section 164 of the Electricity Act, 2003 read with Section 10 of the Indian Telegraphs Act, 1885 recognized the absolute power of the respondent Company to proceed with laying high tension electric lines or electric polls for the transmission of electricity on or over the lands belonging to the appellant herein subject to the right of the appellant to claim compensation if any damage is sustained by him by reason of laying such high tension electric lines. In other words, neither the acquisition of lands is necessary nor there is any need for consent of the appellant. Hence, no mandamus can be issued restraining the respondent Company from proceeding with the erection of polls and transmission lines through the land of the appellant. However, this shall not preclude the appellant to claim compensation by working out the appropriate remedy as available under law in case any damage is sustained to his property."

7. In the case of **Ratilal Maganji Bhrambhatt (supra)**, the Division Bench, after considering the provisions of the

Electricity Act and the similar issue and contention, has held thus :-

"58.21 Even if any Court issues any directions to consider the representation of any land owner or person interested, such directions are required to be considered only to the limited extent of payment of compensation, to be given by the licensee or the competent authority and the directions issued, if any, would not empower the District Collector-cum-District Magistrate, to pass any order, contrary to the orders, passed under Section 164 of the Act.

58.22. When the appropriate Government passes an order under Section 164 of the Act, the Collector is bound by the said order, and he is not superior to the Government, to hold that the Government has erred in passing an order, under Section 164 of the Act, authorising the licensee or the competent authority to carry out the work, in the route, which involves Techno- Economic Consideration.

58.23 The Act confers powers to the Telegraph Authority to determine the property over which the lines are to pass or posts to be erected. The powers of the District Magistrate under Section 16(1) of the Indian Telegraph Act, 1885, does not extend to any adjudication, as to from where and how, the line has to be drawn over any specific item of the property or where posts have to be erected or not, in any specific item of the property.

58.24 The Power of the District Magistrate is confined only to the extent of exercising his discretion in granting permission to the Telegraph Act, to execute the work, when an application is made by the licensee or the competent authority.

58.25. Section 10 of the Indian Telegraph Act gives legal sanction to the licencing authority to enter into any property, to lay poles or posts or draw electric lines. But while doing so, the damage of the property should be less. If there is any resistance, the licensee or the authorised person may approach the District Magistrate-cum-District Collector, to grant permission.

58.26. Once the power is conferred on the licensee or any other competent authority, there can be no objection to the implementation of the scheme, on the principles of natural justice or on the ground of unauthorised use of the land.

58.27. The legislature has conferred powers on the

appropriate Government to authorize a public officer or a licensee, etc., under the Electricity Act to exercise the specific powers of an authority under the Indian Telegraph Act, 1885. The authorisation may be general in favour of a transmission company or in a given case, special. The route is decided by the transmission company. The decision to mark a route for laying an electric line is a highly specialized and technical. At that time, it is unrelated to any specific land owner. The route may be for over hundreds of kilometers passing over Government lands, lands of local authorities and private lands and it may not be practicable to hear the land owners along the entire route.

58.28. Having regard to the specialized and technical nature of the task, and the fact that the lines are laid for distribution of electricity, it is the view of this Court that, the Legislature has not provided for any notice or hearing to the public at large, or to the land owners. Therefore, when the appropriate Government authorises a person or any body under the Electricity Act, to exercise the powers of the Telegraph Authority, all the powers under the Indian Telegraph Act, 1885, are meant to be exercised.

58.29. The Electricity Act, 2003, is a progressive enactment, with a specific purpose of providing electricity to a large number of people, across the country, to promote industrial and sustainable development in all walks of life. Right of a land owner to possess and enjoy the property, though recognised as a Constitutional Right, under Article 300-A of the Constitution of India, such right has to yield to the Articles 14 and 21 respectively of the Constitution of India, which strive to achieve the Constitutional Goals, enshrined in the basic structure of the Constitution of India. [see *T. Bhuvanewari vs. The District Collector cum District Magistrate, Erode District, Erode, W.P. No.18548 of 2013*, decided on 19.11.2013]

59. In the overall view of the matter, we are convinced that no case is made out by the writ applicant for grant of any relief. The writ applicant, at any cost, wants to stall a very important public project by unnecessarily raising one objection or the other. If, ultimately, any damage is caused to his land, he would be adequately compensated in terms of money. However, it is difficult for us to accept the argument of Mr. Dholaria that as there is a statutory obligation cast upon the authority to ensure that minimal damage is caused, his client, as an affected person, has a right to ask the authority to shift the alignment or the route. In our opinion, the interpretation put forward by Mr. Dholariya of the

expression "do little damage to property" is not tenable in law. By virtue of the same, Mr. Dholaria cannot contend that as the value of the land may get diminished, the authority should change the alignment and reallocate the route. The expression "do little damage to property", in our opinion, should be construed as to ensure that while laying the pole at the place allocated, minimal damage is caused at the time of erection. It is always open for the writ applicant to raise dispute with respect to the sufficiency of compensation under Section 16(4) of the Telegraph Act before the District Judge in accordance with law."

8. The Division Bench has specifically rejected similar contention raised by the concerned person wherein such property transmission line was passing through their land and it was also contended that such laying of transmission line has diminished the value of the property. The Division Bench has held that at the most, the petitioner can raise the dispute with respect of compensation under Section 16(4) of the Telegraph Act before the District Judge in accordance with law. It is also held that neither the consent of the owner land owner is necessary nor he is required to be heard.

9. In a recent decision, the Division Bench in the order dated 23.12.2021 passed in Letters Patent Appeal No.823 of 2021 in an analogues issue has held thus : -

"9. In the background of the said stand taken by the second respondent, the owners/ occupiers of the land would have no choice about what should be the route of the transmission line and where it should be placed, since such a decision must always yield to the opinion of technical experts, technical experts would have examined the mode, manner and method in which the transmission line is to be drawn by taking into consideration the viability aspect also. In a given situation, where for the public cause, a transmission line is drawn and in the process, several towers are erected over the private lands in the ownership of individuals are allowed to have a say and object either to the route or to the alignment, in such circumstances, no transmission line

can be laid or erected. In other words, the individual grievances even if any, in public projects, will have to necessarily kneel before the public cause. At this juncture itself, we have looked into the alignment map which was also perused by the learned Single Judge, to examine the contention of appellants to find out whether conclusion arrived at for deviation of 14.42 degrees which has been taken at location No.471 was for the public good and find the answer in the affirmative. We say so, for the simple reason if any other alignments are to be adopted, it would have definitely affected the habitats of the two villages and as such, the contention raised by the petitioners' counsel before the learned Single Judge and reiterated before this Court cannot be accepted. The learned Single Judge has taken note of the judgment of the Coordinate Bench rendered in the case of Gujarat State Electricity Transmission Line Corporation Ltd. Vs. Ratilal Maganji Brahmbhatt (Barot) in Letters Patent Appeal No.534 of 2020, rendered on 6.11.2020, also to negative the contention of petitioners. Hence, we are of the considered view that petitioners have no vested right to seek either shifting of the alignment or shifting of the route inasmuch as technical feasibility report of the project having been approved by the Government by issuing appropriate authorization in exercise of the powers vested under Section 164 of the Electricity Act, 2003, in no circumstance, can be held to have been acted in a malafide manner. As such, contention raised by Mr. Jaimin Gandhi, learned counsel appearing for the appellants requires to be considered for the purposes of out-right rejection and accordingly, we reject the said contention."

It is held by the Division Bench that such person has no right to seek either shifting of the alignment or shifting of the route of the transmission line.

10. In view of the foregoing observations made by the Division Bench of this Court, the issue raised in the writ petition is no more *res integra*. Hence, the writ petition is rejected summarily.

(A. S. SUPEHIA, J)

MAHESH BHATI/pc/02