

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 11797 of 2013****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2022****In****R/SPECIAL CIVIL APPLICATION NO. 11797 of 2013****With****R/SPECIAL CIVIL APPLICATION NO. 11802 of 2013****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2022****In****R/SPECIAL CIVIL APPLICATION NO. 11802 of 2013**=====

POWER GRID CORPORATION OF INDIA LIMITED.

Versus

MANOJBHAI DASHRATHBHAI PATEL

=====

Appearance:

MR SUNIL S JOSHI(2925) for the Petitioner(s) No. 1

MR. S. M. GOHIL(3785) for the Respondent(s) No. 1

=====**CORAM: HONOURABLE MR. JUSTICE UMESH A. TRIVEDI****Date : 26/07/2022****ORAL ORDER**

These two petitions raise a common issue to be determined, at the instance of the present petitioner, and therefore, it would be appropriate to dispose of it by this common order.

1. What is challenged in this petition under Article 227 of the Constitution of India is an order passed by 4th Additional Senior Civil Judge, Ahmedabad (Rural) below application Exhibit-8 in Special Civil Suit No. 123 of 2012 and order passed by the very same Court, on same date, below same exhibit in Special Civil Suit No. 122 of 2012, whereby application filed by the petitioner -

original defendant, under Order VII Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”) praying for returning the plaint presenting the same before the District Judge, as contemplated under Section 16(3) of the Indian Telegraph Act, 1885(hereinafter referred to as “the Act, 1885”), which came to be rejected.

2. The Special Civil Suit Nos. 123 of 2012 and 122 of 2012 came to be filed by one Manojbhai Dashrathbhai Patel through Power of Attorney (POA) of Dashrathbhai Mohanbhai Patel before the Court aforesaid, claiming compensation as stated in the suit towards damages from the petitioner - original defendant in both the suits being Power Grid Corporation of India Limited. Though the suit is titled as ‘Compensation for an amount under Section 10(d) of “the Act, 1885”’, it came to be filed in a Court of original civil jurisdiction. On summons being served in both these suits, the petitioner - defendant submitted an application purporting to be under Order VII Rule 10 of “the Code” for returning of a plaint, contending that if there arises any dispute concerning the sufficiency of the compensation to be paid under Section 10(d) of “the Act, 1885”, it shall be determined, that too, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situated for the determination thereof.

3. Mr. Sunil S. Joshi, learned advocate for the petitioner – defendant, submitted that in view of Section 16(3) of “the Act, 1885”, the suit filed in the ordinary Civil Court is not maintainable once they dispute about the sufficiency of the compensation paid to them and it should have been filed before the District Judge within whose jurisdiction property is situate.

3.1 Drawing attention of the Court to the fact that respondents – plaintiff have been paid compensation, which has been accepted under a protest by them, much prior to filing of the suit, and therefore, if the respondents – plaintiff feel that it is insufficient or inadequate, they should have approached the District Judge, as provided under Section 16(3) of “the Act, 1885” instead of filing the aforesaid suit, and therefore, the order impugned passed by the Court concerned is illegal.

3.2 He further submitted that if the person disputes that under a different head, no compensation is paid, it should be treated to be a dispute with regard to sufficiency of the compensation and not the non-payment of compensation, and therefore, no suit is maintainable in view of Section 16(3) of “the Act, 1885”.

3.3 He has further submitted that what is paid to the respondents – plaintiff is the full compensation, according to the petitioner – defendant, and therefore, any dispute with regard to non-payment or sufficiency of compensation, District Judge

concerned where the property is situate would have been approached instead of claiming compensation for the damages caused by way of the aforesaid suit in the ordinary civil Court.

3.4 Relying on a decision in the case of ***Dilip Singh Chauhan v. Gujarat Urja Vikas Nigam Ltd.***, more particularly para 61, 64 and 65, it is submitted that the detailed guidelines are issued and position of the law is deduced in para 65 thereof, holding that if the compensation paid is not sufficient in comparison for the damage caused or otherwise, the owner/occupier has right to approach the District Judge under Section 16(4) of “the Act, 1885” so as to finalize the amount of compensation to be paid by the licensee to the owner / occupier.

3.5 Relying on a decision in the case of ***Gajendrasinh Mahipatsinh Chudasma v. Torrent Power Grid Ltd. (Power Grid Corporation of India Ltd.) and another***, rendered in ***First Appeal No. 1887 of 2015***, more particularly para 12 and 13, it is submitted that for inadequacy of the compensation, jurisdiction is vested with the District Judge and the jurisdiction of the civil Court is ousted to determine the said issue. According to his submission, it is only in the case of no compensation paid, at best, the plaintiff can file a suit for direction to the defendant for computation and payment of compensation under “the Act, 1885”.

3.6 In short, according to his submission, the jurisdiction of the civil Court is ousted as remedy provided under “the Act, 1885” is before the District Judge challenging the sufficiency or adequacy of compensation to be paid under “the Act, 1885”. Therefore, according to his submission, the applications preferred by the petitioner - defendant under Order VII Rule 10 of “the Code” should have been accepted and plaint should have been returned to the plaintiff for presentation before it to the competent District Judge under “the Act, 1885”.

4. As against that Mr. S.M. Gohil, learned advocate for the respondents - plaintiff, submitted that the suit is filed before the civil Court, as no full compensation, as envisaged under Section 10(d) of “the Act, 1885” determined or paid to the plaintiffs, and therefore, there is no question of applying before the District Judge on the grounds mentioned in the suit, for the compensation thereof.

4.1 He has further submitted that according to petitioner - defendant, the compensation came to be paid through notice along with a copy of cheque where damage caused due to cutting of trees as also damage to the crops, a meagre amount is paid through cheque under a notice, according to the petitioner - defendant, issued under “the Act, 1885” as also under Section 68 and 164 of the Electricity Act, 2003, which is in no manner ‘a full

compensation' for the damage caused to the property for laying down the transmission line, and therefore, suit filed in the ordinary civil Court claiming damages is maintainable and the application preferred by the petitioner - defendant is rightly rejected by the concerned Judge.

4.2 Drawing attention of the Court to the plaint, it is submitted that even prior to the laying down of high tension power lines from the field of the respondents - plaintiff, the action of the petitioner - defendant was objected to and they were requested to change the route of proposed line, which led to filing of litigation before the High Court. However, the petitioner - defendant were permitted by the District Magistrate to lay down the transmission line from the property of the respondent - plaintiffs on assurance of a payment of full compensation, as defined under Section 10(d) of "the Act, 1885". The challenge to the said judgment and order of the High Court failed in a Letters Patents Appeal No. 1081 of 2010 permitting the petitioner - defendant to conclude the work and thereafter, determine the compensation and pay the same to the plaintiffs.

4.3 He has further submitted that under "the Act, 1885", there is no authority determined, which will adjudicate upon the amount of compensation under "the Act, 1885", the payment of the full compensation thereof is obligatory on the telegraph

authority. i.e. petitioner - defendant. He has further submitted that for determination of the compensation, apart from full compensation towards cutting of trees and the damage to the crops, the petitioner - defendant has along with a notice sent the cheque, which was accepted by the respondents - plaintiff with an objection as the said amount being insufficient. As such, according to the submission of learned advocate for the respondents - plaintiff, for insufficiency of said compensation paid, there is no prayer made in the suit itself, and therefore, respondents - plaintiff cannot be asked to prefer an application, that too, before the District Judge for the same. Therefore, he has submitted that the agricultural land of the respective respondents is falling under a commercial zone declared under the Gujarat Town Planning And Urban Development Act, 1976 (hereinafter referred to as "the Act, 1976"), and therefore, it has potentiality to be used for commercial purposes, the compensation towards the same for the land utilized by the petitioner for laying down transmission line as also remains to be unutilized because of the overhead transmission line, is neither determined nor paid, and therefore, it has to be claimed only by way of suit before the Civil Court.

4.4 He has further submitted that mere denial by the petitioner - defendant in a reply to the notice with regard to

compensation claimed in the notice, cannot be treated to be an adjudication and/or payment of full compensation rejecting that part. The compensation, which is paid towards the damage to the crop as also the cutting of the trees, cannot be said to be a full compensation, as defined under Clause (d) of Section 10 of “the Act, 1885”, and therefore, there is no question of sufficiency or insufficiency of compensation paid so as to move the District Judge for the determination thereof.

4.5 He has further submitted that, at any rate, ouster of jurisdiction of the Civil Court is not specifically provided for in “the Act, 1885” and it cannot be easily inferred only on the basis that sufficiency of compensation is to be examined by way of an application before the District Judge. Therefore, according to the learned advocate for the respondent - plaintiff that it is a case of no compensation paid, apart from full compensation, as claimed in the suit towards damages, and therefore, there is no question of resorting to the remedy as suggested by the learned advocate for the petitioner - defendant to move the District Judge for insufficiency/ inadequacy of compensation by way of an application under sub-section 3 of Section 16 of “the Act, 1885”. Therefore, he has submitted that the order impugned passed by the Court refusing return of plaint under Rule 10 of Order VII of “the Code”, as prayed for by the petitioner - defendant, is rightly done, and therefore, these petitions are required to be rejected.

5. Having heard learned advocates for the appearing parties as also going through the record produced along with the same, one thing is clear in the suit that the respondent - plaintiff has not made grievance about insufficiency of a compensation which is already paid towards crops and the cutting of trees. At the same time, what is offered by the petitioner - defendant, by way of compensation, is towards cutting of trees and damage to the crops only, that too, claimed to be determined by the Mamlatdar and Executive Magistrate and paid through a notice along with the cheque, issued purportedly under Section 68 and 164 of the Indian Electricity Act, 2003 and the Electricity Rules.

5.1 However, the crucial question, which is to be determined in these petitions is with regard to jurisdiction of a Civil Court, which is invoked by the respondent - plaintiff to get the compensation for the damage caused to his property, whereby respondent - plaintiff is deprived of enjoyment of his property to its fullest extent because of overhead transmission lines. According to the petitioner - defendant when a compensation is paid towards part of a claim i.e. damage to the standing crops and the trees, for any other claim the person, should approach the District Judge by way of an application raising dispute with regard to sufficiency of the compensation.

5.2 In the present case, the petitioner - defendant is

empowered under Section 164 of the Electricity Act, 2003 by the appropriate Government for placing of electric lines, authorizing it to exercise all the powers vested in the telegraph authority under Part-III of “the Act, 1885” in respect of electric lines and electric plants established or maintained, or to be established or maintained for transmission of electricity or for the purpose of telephonic or telegraphic communication necessary for the proper coordination of the works, as a transmission licensee. Pursuant thereto, the petitioner - defendant laid overhead transmission lines from the agricultural land of the respondent - plaintiff claiming that as little damage as possible is caused to the property of the respondents and they have offered a compensation, which according to the petitioner - defendant, is the full compensation, as provided under Section 10(d) of “the Act, 1885”. If the notice along with the cheque, which was offered towards the compensation to the respondent - plaintiff is seen, claiming therein that for laying down of a transmission line, the compensation towards cutting of trees and the damage caused to the standing crop would be assessed by the competent authority as determined by the Executive Magistrate/Revenue Department and will be paid to the respondent - plaintiff. As such, who is the authority to determine the compensation towards the damage caused to the property of the affected person is nowhere defined either under “the Act, 1885” or under

the Electricity Act, 2003. However, Mr. Sunil S. Joshi, learned advocate for the petitioner - defendant submitted that it is for the transmission licensee to determine the said compensation seeking guidance from revenue authority towards determination thereof. If that argument is to be accepted, not only they have entrusted the said work to the Mamlatdar and Executive Magistrate, as reflected from page 56 of the notice, claimed to have been issued under Section 68 and 164 of the Electricity Act, 2003, read with Electricity Rules. If those notices and the compensation paid is seen, at no point of time, compensation for any damage sustained by the affected is ever contemplated except damage to the standing crop and the cutting of trees for laying down the transmission line.

5.3 For considering the submission made by the parties and determination of the issue involved in this case, reference to Section 10, more particularly, Clause (d) of proviso as also Section 16(3) of "the Act, 1885" is required to be referred and which is quoted hereinunder for ready reference:-

"10. Power for telegraph authority to place and maintain telegraph lines and posts:-

a.

b.

c.

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.*

16. *Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority:-*

(1) ...

(2) ...

(3) *If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him."*

Considering the Section 10(d) of "the Act, 1885", it is clear that not only the telegraph authority/transmission licensee is obliged to determine but pay full compensation for any damage sustained by the persons by reason of the exercising of those powers and the words "any damage sustained" encompasses with it damage caused to the property either rendering person from enjoyment of the property itself in its fullest extent or diminishing its value because of laying down of a transmission line. It is not restricted to only the damage caused to the standing crop and the cutting of trees. Not only that, for laying down transmission line, there has to be a foundation made for a pillar that also utilizes the precious land of a person, apart from

non-user of the land covered under overhead transmission line for any potential commercial or non-agricultural purposes. Therefore, it is significant that telegraph authority/transmission licensee has to determine full compensation for any damage sustained and not the part compensation, which may suit them for cutting of trees as also damaging the standing crop and then asking the person to move the District Judge by way of application for insufficiency of compensation paid. According to me, it is a case of no-payment at all, of full compensation, for any damage sustained, and therefore, there is no necessity to approach the District Judge by way of an application under Section 16(3) of "the Act, 1885". For such damage to the property, the person aggrieved can surely invoke the jurisdiction of civil Court.

5.4 When full compensation encompasses within its fold, all types of damages conceivable, it is an obligation of the telegraph authority/transmission licensee to determine a compensation by calling upon a person affected to stake their claim under different heads/types and then determine the same either allowing or rejecting the claim for a particular damage caused to the property. Whereas in the present case, there is no full compensation determined and there is no complaint with regard to insufficiency of compensation already paid towards cutting of trees or damage to standing crop prayed for in a suit,

the respondent - plaintiff need not resort to remedy as suggested by the petitioner - defendant.

5.5 It may appear that inviting a person aggrieved to stake claims for damage on all heads, for which he claims compensation, is not provided under "the Act, 1885", but when the duty is cast upon the telegraph authority/transmission licensee to pay full compensation with a right to lay down transmission line in anybody's property even against his/their wish, they should not feel satisfied with the payment of compensation towards the cutting of trees or damage caused to the standing crop and then to presume that compensation towards any damage sustained/conceivable is rejected, so as to prefer an application under Section 16(3) of "the Act, 1885".

5.6 Once there is no payment of full compensation, there is no question of directing a person to approach District Judge by way of application against insufficiency of compensation. For non-payment of compensation under all heads of damages conceivable, remedy lies before the civil Court. Here in this case, no such compensation is even contemplated by the petitioner - defendant and they are satisfied with payment made towards cutting of trees and damage to standing crops.

If Section 16(3) of "the Act, 1885" is seen, the District Judge is concerned with the sufficiency/adequacy of

compensation and not the entitlement of compensation of a claim conceivable, in absence of determination of full compensation by the authority. Therefore, the argument that once a compensation is paid, maybe for damage caused to the standing crops or cutting of trees, it is presumed to be refusal of compensation towards other heads is required to be outright rejected. When the provision prescribes for determination and payment of full compensation for any damage sustained by a person, it has to be by an express order under all claims conceivable or else ouster of jurisdiction of civil Court for determining such compensation cannot be easily accepted, as contended.

5.7 In absence of any specific provision barring the jurisdiction of Civil Court, a suit can be filed claiming compensation towards the damages in the Civil Court against the person, who has caused the damage.

5.8 The damages may be of several types, compensation for which can be claimed and if no compensation is paid, of any type, it is non-payment of the compensation, that too, full compensation, as defined under Section 10(d) of "the Act, 1885" and for claiming that compensation, civil suit is the only mode to be resorted to as there is no question of sufficiency of the said compensation.

5.9 In a given case, agricultural land, which is falling within the commercial zone under “the Act, 1976”, having a potentiality of commercial as also non-agricultural use, the person in whose property transmission line is placed will be deprived of such use for all time to come, not only for the land covered under the overhead transmission line but even margin, which is compulsorily required to be left for any such commercial or non-agricultural use thereof.

5.10 The judgment relied on by the learned advocate for the petitioner - defendant in the case of **Gajendrasinh** (supra) to contend that even if in a case of no compensation paid, the plaintiff can file a suit for direction to the defendant for computation and payment of compensation, is misconceived, as in the very said judgment, for non-payment of compensation even prior to filing of the suit, it has been held to empower Civil Court to have the jurisdiction over the suit filed for the same. However, as held hereinabove, in the present case, there is no compensation even contemplated by the petitioner - defendant for any damage sustained, as claimed in the suit, and therefore, it cannot be successfully argued that it amounts to a rejection of a ‘part of the claim’ so as to challenge the same before the District Judge by way of application under Section 16(3) of “the Act, 1885” for insufficiency of compensation. Learned advocate for the petitioner - defendant is not right in contending that there

is rejection of a claim towards compensation as claimed in the suit because it was not even conceived by the authority, apart from determining the same or refusal thereof.

5.11 According to me, under Section 16(3) of “the Act, 1885”, District Judge is authorized to consider only the sufficiency of the compensation paid and not on the entitlement of the compensation for any damage sustained to the property. For the entitlement of a compensation for any damage sustained, that too, for full compensation, it has to be determined by the Civil Court and not by the District Judge, as contemplated under Section 16(3) of “the Act, 1885”. Here in the present case, since it is a case of no compensation paid, the remedy of a person, who seeks such compensation, would not lie before the District Judge under sub-section (3) of Section 16 of “the Act, 1885” and ouster of the jurisdiction of the civil Court would, therefore, not apply. I am fortified in my aforesaid view, in view of what is observed in para 15 of the judgment in the case of **Gajendrasinh** (supra), I do not see any limitation in the powers of the Civil Court in exercise of its ordinary civil jurisdiction, to not only direct the telegraph authority to pay the full compensation but also in the process, compute the same itself.

5.12 Another decision, which is relied on by the learned advocate for the petitioner - defendant, in the case of **Dilip Singh Chauhan** (supra) is also not on the issue involved in the

present petitions, and therefore, reference to the same in detail is not required at all.

6. In view of what is stated hereinabove, I don't see any reason to interfere with the impugned order, whereby request made by the petitioner - defendant to return the plaint under Order VII Rule 10 of "the Code" for presentation of it before the District Judge, Ahmedabad Rural, in whose territorial jurisdiction the land of the plaintiff is situated. Therefore, while exercising jurisdiction under Article 227 of the Constitution of India, the impugned orders passed in both the petitions require no interference touching upon the jurisdiction of Civil Court for the suit filed by them on any ground whatsoever, and therefore, both these petitions are hereby *rejected*. Notice is discharged.

At this stage, Mr. Sunil M. Joshi, learned advocate for the petitioner - defendant, prays for stay of this order for a period of 3 - 4 weeks, which is hereby rejected, as while issuing notice in this case, that too, in the year 2013, no relief was ever granted, and therefore, I see no reason to stay the said order, and hence, it is rejected.

In view of the disposal of the main matters, connected Civil Applications in both the petitions also stand disposed of.

(UMESH A. TRIVEDI, J.)

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