

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

WRIT APPEAL No.382 of 2022

JUDGMENT: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. Srikanth Hari Haran, learned counsel for the appellant.

Mr. B.Narasimha Sarma, learned Additional Solicitor General of India for respondents No.1 and 2.

Mr. T.Srikanth Reddy, learned Government Pleader for Revenue for respondent No.3.

Mr. L.Ravi Chander, learned Senior Counsel, representing Mr. Sarang Afzulpurkar, learned counsel for respondent No.4.

2. Heard on the question of admission.

3. This intra court appeal emanates from an order dated 29.04.2022 passed by the learned Single Judge by which the writ petition preferred by the appellant, namely W.P.No.8333 of 2022, has been dismissed.

4. Facts giving rise to filing of this appeal briefly stated are that the appellant is the owner and is in possession of land bearing Survey Nos.68, 68/A and 69 of Garvipally Village, Talakondapally Mandal, Mahaboobnagar District, which measures Acs.16.10 guntas. The appellant with a view to develop the land held by it had developed the same as residential plots by forming a layout. Sometime in the last week of January, 2022, a survey was conducted in respect of the subject property. Thereupon, the staff of the appellant made enquiries and learnt that the Warora Kurnool Transmission Limited is conducting survey for laying overhead electricity line based on the licence issued by the Union of India and the Central Electricity Regulatory Commission. The appellant learnt that the transmission line was proposed to be laid cutting across the layout over 67 plots including the park area of about 240 square yards.

5. The appellant thereupon filed the writ petition before the learned Single Judge, *inter alia*, on the ground that neither any consent of the appellant was obtained before

laying down the transmission line nor any opportunity of hearing has been afforded to the appellant. It was submitted that the action of the respondents in laying the transmission line over the property belonging to the appellant is in violation of Rules 3 and 7(2) of the Works of Licensees Rules, 2006 (hereinafter referred to as, “the 2006 Rules”), as well as the same is in contravention of the provisions of the Electricity Act, 2003. The learned Single Judge, by an order dated 29.04.2022, dismissed the writ petition. Hence, this appeal.

6. Learned counsel for the appellant submitted that under Rule 3 of the 2006 Rules, the respondent No.4 was required to obtain the consent of the appellant. It is further submitted that no opportunity of hearing has been afforded to the appellant. However, the learned Single Judge has failed to appreciate the aforesaid aspect of the matter.

7. On the other hand, learned Additional Solicitor General of India as well as learned Senior Counsel for the respondent No.4 submitted that the provisions of the 2006

Rules have no application to the factual matrix of the case and in this connection attention has been invited to paragraphs 12 and 16 of the order passed by the learned Single Judge.

8. We have considered the submissions made by learned counsel for the parties and have perused the record.

9. Section 164 of the Electricity Act, 2003, deals with exercise of powers of Telegraph Authority in certain cases.

The same is extracted below for the facility of reference:

164. Exercise of powers of Telegraph Authority in

certain cases:- The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper coordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or

maintained, by the Government or to be so established or maintained.

10. While exercising powers under Section 164 of the Electricity Act, 2003, the authorities are under an obligation to follow the provisions of the Indian Telegraph Act, 1885 (hereinafter referred to as, "the 1885 Act"). Under Section 10(b) of the 1885 Act, the appellant is only entitled to the right of user and is entitled to seek compensation in case the transmission line is laid over its property. Section 16(3) of the 1885 Act further contemplates that in case a person is aggrieved by the quantum of compensation, he can approach the District Judge seeking enhancement of compensation.

11. So far as the submission that the prior consent of the appellant has not been obtained, it is pertinent to note that Rule 3(4) of the 2006 Rules itself provides that the rule shall not effect the powers conferred upon any licensee under Section 164 of the Electricity Act, 2003. It is pertinent to note that the provisions of the 2006 Rules apply in case of work contemplated by Section 67 of the

Electricity Act, 2003, and not under Section 68 of the Electricity Act, 2003. Admittedly, the work of laying down the transmission line has been completed and the transmission line has been commissioned.

12. For the aforementioned reasons, we do not find any ground to differ with the view taken by the learned Single Judge. However, the appellant shall be at liberty to take recourse to the remedy to seek compensation in accordance with law.

13. Accordingly, the appeal is disposed of.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

ALOK ARADHE, CJ

ANIL KUMAR JUKANTI, J

22.01.2024
vs