

1
THE HIGH COURT OF MADHYA PRADESH
Writ Petition No.27670/2018
Vishnu Singhal Vs. State of M.P. and others

Gwalior, Dated :04/12/2018

Shri Sunil Kumar Jain, Advocate for petitioner.

Shri Vivek Jain, Government Advocate for State.

This petition under Article 226 of the Constitution of India has been filed alleging that the petitioner is the owner of plot admeasuring 22500 sqft. falling in survey no.156 situated in Village Raghunathpur, Block Vijaypur, District Sheopur, on which the petitioner was intending to construct a warehouse for commercial purposes, however, respondents no.3 and 4 are going to install two big electric poles of 220 KV on the plot of the petitioner without acquiring the land. The petitioner was not heard before deciding to install the electric poles and even the compensation has not been paid or the alternate piece of land has not been given in exchange and thus, the respondents no.3 and 4 be restrained from erecting the electric poles in his field. It is further submitted that the Ministry of Power, Government of India, New Delhi has issued a circular dated 15/10/2015 directing that in case of transmission and distribution lines supported by 66 KV and above, the compensation at the rate of 85% of the land value as determined by the District Magistrate or any other authority due to installation of tower and or pylon structure would be paid and the compensation towards diminution of land value in the width of right of way should also be considered.

Per contra, it is submitted by the counsel for the respondents that under Sections 10 and 16 of Indian Telegraph Act it is not essential to acquire the land and even the prior consent of the owner for occupying the building is not necessary.

THE HIGH COURT OF MADHYA PRADESH
Writ Petition No.27670/2018
Vishnu Singhal Vs. State of M.P. and others

Heard learned counsel for the parties.

Section 164 of the Electricity Act, 2003 reads as under:-

“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.”

Thus, it is clear that the powers of the Telegraph Authority have been vested in and are enjoyed by the Power Grid.

Sections 10, 15 and 16 of the Telegraph Act reads as under:-

“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

THE HIGH COURT OF MADHYA PRADESH
Writ Petition No.27670/2018
Vishnu Singhal Vs. State of M.P. and others

or across, and posts in or upon, any immovable property:

Provided that—

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the Central Government, or to be so established or maintained;

(b) the Central Government shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post; and

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

(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.

* * *

15. Disputes between telegraph authority

THE HIGH COURT OF MADHYA PRADESH
Writ Petition No.27670/2018
Vishnu Singhal Vs. State of M.P. and others

and local authority.—(1) If any dispute arises between the telegraph authority and a local authority in consequence of the local authority refusing the permission referred to in Section 10 clause (c), or prescribing any condition under Section 12, or in consequence of the telegraph authority omitting to comply with a requisition made under Section 13, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by such officer as the Central Government may appoint either generally or specially in this behalf.

(2) An appeal from the determination of the officer so appointed shall lie to the Central Government; and the order of the Central Government shall be final.

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) If the exercise of the powers mentioned in Section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under subsection (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being

THE HIGH COURT OF MADHYA PRADESH
Writ Petition No.27670/2018
Vishnu Singhal Vs. State of M.P. and others

exercised, he shall be deemed to have committed an offence under Section 188 of the Indian Penal Code, 1860 (45 of 1860).

(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.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the *court of the District Judge* such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a *District Judge under sub-section (3) or sub-section (4) shall be final:*

Provided that nothing in this sub-section shall affect the right of any person to recover by suit

THE HIGH COURT OF MADHYA PRADESH
Writ Petition No.27670/2018
Vishnu Singhal Vs. State of M.P. and others

the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same.”

Thus, From the plain reading of Section 10 (b) of the Telegraph Act, 1885, it is clear that the Central Government does not acquire any right other than that of user only in the property. Further, Section 10 (d) of the Telegraph Act requires the Telegraph Authority to cause as little damage as possible and that the Telegraph Authority shall also be liable to pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers. Thus, in the light of Section 10 (b) of the Telegraph Act it is clear that the authority can install the electric poles with a limited right of user only and under these circumstances, if the respondents are intending to install their electric poles on the land of the petitioner, then they are not required to acquire the land, but by making the payment of compensation, they can enjoy the right of user only. Section 16 of the Telegraph Act, 1885 provides that in case any dispute arises concerning the sufficiency of compensation to be paid under Section 10 (d) of the Telegraph Act, then the application can be made before the District Judge within whose jurisdiction the property is situated. Therefore, it is clear that the authorities are under an obligation to act as per the provisions of Sections 10, 15 and 16 of the Telegraph Act.

In the present case, since the land is not acquired and only the limited right of user is enjoyed by the respondents, therefore, under these circumstances, the prayer made by the counsel for the petitioner for either acquisition of land or for

THE HIGH COURT OF MADHYA PRADESH
Writ Petition No.27670/2018
Vishnu Singhal Vs. State of M.P. and others

grant of alternate land in lieu of compensation cannot be accepted. It is nowhere mentioned in the writ petition that no proceedings have been initiated by the respondents for payment of compensation for exercising the right of user. In case if the petitioner feels that the compensation awarded to him is not adequate, then he has an alternative remedy under Section 16 of the Telegraph Act, 1885. Accordingly, this Court is of the considered opinion that this writ petition cannot be entertained for issuing any direction to the respondents.

The petition fails and is hereby dismissed.

Arun*

(G.S. Ahluwalia)
Judge