

HIGH COURT OF MADHYA PRADESH : JABALPUR
(Division Bench)

Writ Appeal No. 485/2017

Bhawani Singh & others APPELLANTS

Versus

M.P. Power Transmission Co. Ltd. & Others RESPONDENTS

CORAM :

Hon'ble Shri Justice Hemant Gupta, Chief Justice

Hon'ble Shri Justice Anurag Shrivastava, Judge

Appearance:

Shri Ram Prasad Khare, Advocate for the appellants.

Shri K.S. Wadhwa, Advocate for the respondent No.1.

Whether Approved for Reporting : Yes

Law Laid Down:

- Erection of transmission line is not a case of acquisition of land as contemplated under Section 165 of the Electricity Act 2003 but use of surface of land in terms of Section 164 of the Electricity Act, which makes the provisions of the the Indian Telegraph Act, 1885 applicable for erection of the transmission line. Under such acquisition, land continues to vest with the land owner.
- For use of land for erecting transmission line, compensation is contemplated under Section 10(d) of the Telegraph Act. Against such award of compensation, aggrieved party may seek adjudication of the amount of compensation from the Court of District Judge within whose jurisdiction the property is situated. Therefore, no illegality is found in the order of learned Single Bench refusing to issue writ directing the Collector to determine the compensation of land and crops.

Significant Paragraph Nos.: 6 and 7

Reserved On : 20.02.2018

ORDER

(Passed on 28th February, 2018)

Per : Hemant Gupta, Chief Justice:

The challenge in the present appeal is to an order passed by the learned Single Bench on 06.02.2017 whereby the writ petition bearing W.P. No.19895/2016 filed by the appellants to determine compensation of land and to crop and to quash the order dated 17.11.2016 whereby the Collector has determined the amount of compensation for the crops standing on the land of the appellants, has been allowed in part.

2. The appellants are owners of land bearing part of Survey No.283 measuring area 0.275 Hectare situate at village Tamot, Tehsil Goharganj, District Raisen. In the said village, a Yarn plant has been established by M/s Sagar Manufacturing Pvt. Ltd. The said plant has been given 33 KV electric line by M.P. Power Transmission Company Ltd. However, the manufacturer applied for supply of electricity through 132 KV Sub-Station. To establish such 132 KV Sub-Station, the project of installation of transmission line has been approved by the State Government.

3. On an application filed by respondent No.1, the Collector determined the amount of compensation payable to the land owners vide order dated 17.11.2016. It is the said order, which was challenged by the appellants before the learned Single Bench. The learned Single Bench set aside the said order holding that the amount of compensation has to be determined by the District Judge in terms of Section 16(3) of the Indian

Telegraph Act, 1885 (in short “**the Telegraph Act**”), which is applicable to the erection of the transmission line in terms of Sections 68, 69 and 164 of the Electricity Act, 2003 (in short “**the Electricity Act**”). The learned Single Bench found that the provisions of Section 68 of the Electricity Act or Sections 12 and 16 of the Telegraph Act do not deal with determination of amount of compensation but provide for permission/approval for installation of the overhead lines. It is the Section 16(3) of the Telegraph Act which envisages that in the event there is any dispute regarding insufficiency of the compensation, the District Judge within whose jurisdiction the property is situated, is to determine the same.

4. Learned counsel for the appellants vehemently argued that the land has been acquired for the purposes of transmission line without following the procedure prescribed for acquisition of the land, which is applicable in terms of Section 165 of the Electricity Act, therefore, the entire action of the respondents in installing the transmission line is not legal.

5. We have heard learned counsel for the parties and find no merit in the present appeal.

6. The acquisition of land deprives the owner of the title and possession of the land whereas installation of overhead transmission line deprives the owner of user of the surface of the land. For such user, the compensation is contemplated under Section 10(d) of the Telegraph Act. If the amount of compensation is found inadequate, liberty is given to an aggrieved party to seek adjudication of the amount of compensation from the

Court of District Judge within whose jurisdiction the property is situated.

The relevant provisions of the Telegraph Act read 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, 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.

(Emphasis supplied)

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 sub section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code, 1960 (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 whole or any part of any compensation paid by the telegraph authority, from the person who has received the same.”

(Emphasis supplied)

7. For erecting the transmission line, the land is not acquired. It continues to vest with the land owner. The surface of the land is used in terms of Sub-section (b) of Section 10 of the Telegraph Act. For such user, detail procedure is prescribed under Section 16 of the Telegraph Act. Therefore, it is not a case of acquisition of land, as contemplated in Section 165 of the Electricity Act but use of surface of land for erection of the

transmission line in terms of Section 164 of the Electricity Act, which makes the provisions of the Telegraph Act applicable for erection of the transmission line.

8. In view of the above, we do not find any merit in the present appeal and accordingly the same is **dismissed**. However, the appellants are given four weeks' time to seek recourse for determination of compensation from the Court of District Judge in accordance with law.

(HEMANT GUPTA)
Chief Justice

(ANURAG SHRIVASTAVA)
Judge

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