

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 11 of 2012

In the matter of
Petition filed by Sou. Arunabai w/o Shivsing Pardeshi seeking legal action under
sections 142 and 149 of the EA 2003 against Maharashtra State Electricity
Transmission Company Limited

Shri V.P. Raja, Chairman
Shri Vijay. L. Sonavane, Member

Sou. Arunabai w/o Shivsing pardeshi
B/3, Ganesh Dham Society,
Gavanpada, Mulund(East),
Mumbai.

...

Petitioner

V/s

1. The Superintendent Engineer
EHV Construction Division,
Maharashtra State Electricity Transmission Co Ltd, Aurangabad
2. The Dy. Executive Engineer
EHV Construction Sub Division No II,
Maharashtra State Electricity Transmission Co Ltd, Aurangabad
3. The Manager,
M/S K.E.C. International Company Ltd.
Mhsoba Nagar, Harsool, Aurangabad.

... Respondents

For the Petitioner: Shri Pavan Uttarwar, Advocate and Shri Shiv Singh
Pardeshi, Representative

For the Respondents: For Respondent No.1:
Shri S. N. Quadri, Representative,

For Respondent No.2:
Shri B. V. Bilolikar, Representative
and Shri Abhijit A. Joshi, Advocate,

For Respondent No.3:
Shri Atul Parab, Representative.

ORDER

Dated: 27th March, 2012

The Petitioner Sou. Arunabai w/o Shivsing Pardeshi filed a Petition under affidavit before the Commission on 25/01/2012 seeking legal action against the Respondent Maharashtra State Electricity Transmission Company Ltd ('MSETCL') under sections 142 and 149 of the Electricity Act 2003('EA 2003').

2. The prayers of the Petitioner are as follows:-

“

- A. *That it be declared the tower No. 18 erected and installed by the respondents in the land Gut No. 101 of village Mahuli, Tq. Gangapur, Dist. Aurangabad as illegal Installation as it is installed without following due procedure of the law.*
- B. *That the respondents be also further ordered and directed to remove /demolish the said tower No. 18 at their own costs and risk within the specific period.*
- C. *That the respondents be directed and ordered to pay the compensation amount of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousands)with penal interest of 18% to the petitioner for the losses incurred since so many years and mental harassment caused.*
- D. *The land used for the tower has not only finished the commercial potential of the said property but also agricultural productivity forever and in view thereof the petitioner prays that the monthly rent of Rs. 30,000/- may be allowed to the petitioner till the remains in field. The Petitioner also prays this amount may be paid to the petitioner from the date installation of the tower.*
- E. *That the respondents be penalized for non compliance of regulations and provisions of law u/s 142 and 149 of the Electricity Act, 2003 for the wrongs and illegal acts committed by them while installing and erecting of*

the tower in the land Gut No. 101 of village Mahuli, Tq. Gangapur , Dist. Aurangabad knowingly and intentionally.

F. That the petition may be allowed with costs and the respondents be ordered and directed to pay costs of Rs. 25,000/- (Twenty five thousand) to the petitioner.”

3. The brief facts of the matter as submitted by the Petitioner are as follows:

- i) The Petitioner Sou. Arunabai w/o Shivsing pardeshi is the owner and possessor of the agricultural land bearing Gat No.101 of village Mahuli, Taluka Gangapur, District Aurangabad to the extent of 1H 98R. The Petitioner has also excavated a well in the portion of her land.
- ii) The Respondents are carrying out works of establishing Transmission line from 132 kV Gangapur S/Stn to 132 kV Vaijapur S/Stn passing through the Petitioner's agricultural land.
- iii) The Petitioner alleged that Respondents had carried out such work of Transmission Line without giving prior notice to the concerned land owners in that regard.
- iv) A Survey of the land was carried out by the Respondents by pegging down wooden pins in the agricultural land owned by the Petitioner and Petitioner's family, in order to carry out the work of establishing towers.
- v) Thereafter the Petitioner came to know from nearby farmers that the officers are going to establish a tower in Petitioner's agricultural land whereafter the Petitioner requested the Respondents to install the said tower on the boundary of the farm land, but in vain. It was submitted that the Petitioner had issued the first notice to the Respondents instructing them not to install the proposed tower without her written permission.
- vi) It was submitted that the Respondent have neither replied to the said notice nor informed the Petitioner about their proposed installation of tower on the Petitioner's land, as required under provision of Indian Telegraph Act, 1885 and Electricity (supply) Act, 1948, whereas it ought to have followed the procedure as enshrined under the EA, 2003 and the Works of Licensees Rules, 2006.
- vii) It was further submitted that the Respondents have completed the excavation of Pit, construction of foundation and erection/ installation of the Tower on the Petitioner's Land taking advantage of the Petitioner's absence during the period in which the aforesaid activities were carried out by the Respondent.
- viii) Thereafter as soon as the Petitioner came to know about the completion of tower on land belonging to her, the Petitioner sent the second notice strongly objecting to such work on their land and to stay such activities being carried out without her consent.

- ix) In response to the objections raised by the Petitioner, the Respondent No. 2 through various letters informed the Gangapur Police Station that the Petitioner and others are not allowing to do the balance work of pulling wires between the two towers and requested Gangapur Police Station to give police protection to the contractor to complete the balance work on the Petitioner's land.
 - x) The Respondent No. 2 vide his letter requested Deputy Collector to decide on compensation issue but the Deputy Collector neither responded nor decided the compensation.
 - xi) Thereafter the Petitioner had also issued third notice to the Respondents requesting for compensation of Rs. 2,50,000/- (Two Lakh Fifty Thousand) for the losses incurred. The Respondents did not comply as per the terms and contents of the notice, nor have the Respondents replied to the notice of the Petitioner. Therefore according to the Petitioner the Respondents have taken law into their own hands.
 - xii) The Petitioner has highlighted the fact that Appellate Tribunal for Electricity('APTEL') in Appeal No. 83 of 2010 while upholding the Order of the Commission in Case No. 41 of 2009 had clarified that in case of conflict between the provisions of Telegraph Act and the provisions of the Indian Electricity Act, 1910 the provisions of later would prevail overriding the former and in view thereof the consent of land owner becomes mandatory till any rules are framed by the State Government in that regard.
 - xiii) The Petitioner has filed the present Petition before the Commission under Sections 67, 68, 142 and 149 of E.A.2003.
4. The Commission vide Notice dated 08/02/2012 scheduled a hearing in the matter on 29/02/2012. During the hearing Shri Pavan Uttarwar , Advocate appeared on behalf of the Petitioner and the Representative of the Petitioner was also present. Shri. Abhijit A. Joshi, Advocate, appeared on behalf of Respondent No. 2. In the hearing the Petitioner reiterated the submissions made in the Petition.
5. Having heard the parties and after considering the materials on record, the Commission is of the view as follows:-

- (a) Section 185 (2)(b) of the Electricity Act, 2003 provides as follows:-

“the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 and rules made thereunder shall have effect until the rules under section 67 to 69 of this Act are made;”

Since, the rules under section 67 to 69 of the Electricity Act, 2003 have yet not been made by the State Government for the State of Maharashtra, the provisions contained in Sections 12 to 18 of the Indian Electricity Act, 1910 and rules made thereunder shall have effect. Section 12(2) and (3) of the Indian Electricity Act, 1910 provides as follows:-

“(2) Nothing contained in sub-section (1) shall be deemed to authorise or empower a licensee, without the consent of the local authority or of the owner or occupier concerned, as the case may be, to lay down or place any electric supply-line or other work in, through or against any building, or on, over or under any land’ not dedicated to public use whereon, wherever or whereunder any electric supply line work has not already been lawfully laid down or placed by such licensee:

Provided that any support of an overhead line or any stay or strut required for the sole purpose of securing in position any support of an overhead line may be fixed on any building or land or, having been so fixed, may be altered, notwithstanding the objection of owner or occupier of such building or land, if the District Magistrate or, in a Presidency town, the Commissioner of Police by order in writing so directs:

Provided also, that, if at any time the owner or occupier of any building or land on which any such support, stay or strut has been fixed shows sufficient cause, the District Magistrate or, in a Presidency-town the Commissioner of Police may by order in writing direct any such support, stay or strut to be removed or altered.

(3) When making an order under sub-section (2), the District Magistrate or the Commissioner of Police, as the case may be, shall fix the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.”

(b) Hence, the Commission is of the view that in terms of Section 12(3) the District Magistrate is mandated to fix the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier. The District Magistrate is mandated under Section 12 (2) to keep in view the objections raised by the owner or occupier of the land in respect of works carried out while fixing the amount of compensation or of annual rent, or of both. Therefore, except prayer ‘E’, it will be open to the Petitioner to raise all other prayers before the District Magistrate.

(c) Hence, an opportunity must be given for deciding the matter in terms of Section 12(2) and (3) of the Indian Electricity Act, 1910. Accordingly, the Commission is of the view that if a decision on the objections of the Petitioner and / or on compensation is not rendered within 30 days from the date of this Order, then the aggrieved party will have the liberty to move this Commission.

Accordingly the present matter in Case No. 11 of 2012 stands disposed of. No order as to costs.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman