



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3209]

FRIDAY ,THE NINETEENTH DAY OF APRIL
TWO THOUSAND AND TWENTY FOUR

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

**WRIT PETITION Nos.35273; 35423; 36265 of 2022; 450; 452; 1569;
9383; 21919; 22826; 22827 and 29389 of 2023**

Between:-

W.P.No.35423 of 2022

Muppa Shethu Narayana Rao and another

.... Petitioners

And

State of Andhra Pradesh and others.

..... Respondents

Counsel for the petitioners : Mr.P. Soma Sekhara Naidu
Mr.Seeta Ramaiah Tenneti
Mr.K.Laxmana Sastry
Mr.Palla Balu Anil Kumar
Mr.P.V.N.Kiran Kumar
Ms.Sudeepthi Potluri

Counsel for the respondents : G.P. for Energy
G.P. for Revenue
Mr. P. Veera Reddy, Sr. Counsel
for Mr.S.S.Varma
Mr.O.Manohar Reddy, Sr. Counsel
for Mr.Mudunuri Anand Kumar
Mr.AnupKoushik. K.
Mr.Venkat Challa
Mr.M.V.Kini Co. Advocates
Mr.Soma Sekhar Naidu
Ms.M.Uma Devi, Central Govt. Counsel

COMMON ORDER:

The issue involved in these batch of cases pertains to shifting / realignment of Transmission Lines and erection of the towers in the lands of the petitioners, the details of which are set out in the respective writ petitions, therefore, the same are disposed of by this Common Order.

2) The relevant facts, for better appreciation of the rival contentions, may briefly be stated as follows:

i) The National Highways Authority of India (for short “the NHAI”) under ‘Bharath Mala Pariyojana Project’ undertook formation of new Six Lane Green Field Vijayawada Bypass from China Avutapalli (design CH.000) to Gollapudi (design CH.30.000) to facilitate and ease the traffic on Vijayawada – Gundugolanu Section of NH-16 for a length of 30 Kms. The said project was awarded on Hybrid Annuity Mode (PKG-III) on 18.02.2021 with a total project cost of Rs.1,148.40 crores, out of which Rs.54.01 crores was allocated for land acquisition and Rs.93.25 crores was earmarked for utility shifting, which are causing obstruction for formation of the roads.

ii) Since for formation of new roads, shifting of the existing 400 KV High Tension(HT) utility lines laid by the Power Grid Corporation of India Ltd., (for short “the Power Grid”) is involved, an agreement dated 31.03.2023 was entered into between the NHAI and the Power Grid. As per the guidelines issued by the Government of India, Ministry of Power for 400 KV HT Lines, 46 meters of width of RoW (Right of Way) is prescribed and therefore, the land owners cannot cultivate the land or plant trees thereunder for their own safety and for the safety and integrity of the HT Lines.

- iii) The proposed location of the HT Towers and the RoW required was spread over several villages i.e., Vedurupavuluru, Nunna, Ambapuram, Gollapudi, Jakkampudi and K.V.Kandrika and falls under NTR and Krishna Districts. As the ROW of existing HT Lines is under possession of the Power Grid, at the request of the NHAI, the Power Grid agreed to shift / modify the existing HT Line as per the newly approved plans of the Power Grid on par with the existing design configuration, technical and safety measures. The payment of total cost of utility shifting / modification of lines and the cost of the land required for the said purpose will be borne by the NHAI.
- iv) Based on the approved technical plans of the Power Grid, requisitions were submitted to the District administrations of the NTR and Krishna Districts, pursuant to which *vide* Proceedings dated 23.11.2022, the District Collector, NTR District determined the compensation in respect of the lands situated in Gollapudi village, which would be affected by reason of relocation of existing HT lines.
- v) Aggrieved by the purported action of the respondents in laying the new HT Lines by relocating existing lines through the subject matter lands of the petitioners, Writ Petition Nos.35273, 35423, 36265 of 2022 and 450, 452, 1569, 9383, 21919, 22826 and 22827 of 2023 have been filed. Challenging the proceedings of the District Collector dated 23.11.2022, W.P.No.29839 of 2023 has been filed. In all the writ petitions, the contesting respondents i.e., NHAI and Power Grid / APTRANSCO filed their counter-affidavits, to which reply-affidavit was filed only in W.P.No.35423 of 2022.
- 3) Heard the learned counsel for the petitioners and the learned counsel appearing on behalf of the respondents. Perused the material on

record. Since arguments were addressed with reference to W.P.No.35423 of 2022, for the sake of convenience, it is taken as lead case.

CONTENTIONS:

4) Mr. P. Soma Sekhara Naidu, learned counsel for the petitioners in W.P.No.35423 of 2022 advanced elaborate arguments. He submits that the petitioners originally possess land of an extent of Ac.1-50 cents situated in Gollapudi village and out of the same, an extent of 1174 Sq. mtrs., was acquired for the purpose of widening / extension of National High Way-5 from Gundugolanu – Vijayawada Bypass. He submits that 400 KV Over Head Transmission Line (OHTL) is existing about 50 mtrs., away from the petitioner's land mentioned above and as the petitioners came to know that the respondents are relocating the existing Transmission Lines, they made enquires and were informed that in view of the same, the existing Transmission Line would pass through the petitioner's remaining extent of land. He submits that by virtue of the proposed realignment/relocation, the balance left over land after acquisition of the said 1174 sq.mtrs., for road widening purpose would become useless as about 500 sq.mtrs., in the middle of the petitioner's land will be occupied by the tower and the Transmission Line passes across the same in the width of about 50 mtrs. He submits that in view of the High Voltage Transmission Line and the restrictions on constructions under the transmission carrier about 5 mtrs., on both sides, the petitioners cannot make any constructions in their land. He submits that in the said circumstances, the petitioner would not be in a position to make use of any part or portion of the land and thereby their rights guaranteed under Article 300A of the Constitution of India are infringed.

5) Referring to the provisions of the Electricity Act-2003 (for short “the Act”), the learned counsel submits that the same are meant only for the purpose of laying Transmission Lines for distribution or transmission of electricity by “the licensees” only. He contends that shifting of lines would not fall within the purview of laying transmission lines. He submits that the provisions of the Act and the leverages granted there under to the licensees are not available to NHAI. He contends that the exercise of shifting / modification of transmission lines at the instance of NHAI, which is not a licensee in terms of the Act, is not permissible. The learned counsel in elaboration submits that the Act is a special enactment which provides certain benefits in favour of the licensees and the scope of the provisions cannot be enlarged for other purposes. While stating that there is no dispute that the Power Grid is “a Central Transmission Utility”, the learned counsel contends that even as per Section 68(5) of the Act, it is only on the application of the licensee, any obstruction in respect of the overhead line can be removed. He submits that as the NHAI would not fall within the definition of Section 2 (39) of the Act / licensee, the shifting of Over Head Transmission Lines at the instance of NHAI is contrary to the provisions of the Electricity Act.

6) He further contends that a conjoint reading of Sections 67 and 68 of the Act makes it clear that it is to the licensee to make application to the District Collector in respect of laying of Over Head Lines and the District Collector has no power to pass any order under the provisions of the Act on the application made by NHAI. The learned counsel submits that the provisions of the Act and G.O.Rt.No.83, dated 20.06.2017 have no application to the NHAI with regard to the shifting of existing Over Head Transmission Lines, that the compensation, if any, arrived at by the District Collector is without authority of law. He also submits that reliance on Section 164 of the Act, which provides for the exercise of powers

under the Indian Telegraph Act, 1885 (in short “the Telegraph Act”) in certain cases is misconceived and even otherwise, the said provisions can be invoked by the licensee i.e., the Power Grid, but not at the instance of NHAI.

7) In so far as W.P.No.29389 of 2023, which is filed challenging the proceedings of the District Collector – 2nd respondent, dated 23.11.2022 determining the compensation in respect of the lands of the petitioners in the said writ petition, while denying the various allegations in the counter affidavits to the effect that after issuing notices and conducting enquiry in the presence of the petitioner and others compensation in respect of the subject matter land was determined by the District Collector, the learned counsel strenuously contends that no notices were issued at any point of time to the petitioners and in fact no material is placed before this Court in proof of the same, much less a Notification in respect of the proposed shifting of existing 400 KV HT Lines. He submits that in fact, in the counter affidavit filed by the NHAI contradictory stands have been taken and contends that the District Collector has no power or authority to determine the compensation as shifting of the existing line is not at the instance of the licensee / the Power Grid. Even otherwise also, nothing is divulged in the said proceedings as to the basis for fixing the compensation. The learned counsel further reiterates that in view of the proposed realignment of the Transmission Line, the entire extent of the petitioner’s land becomes useless and they would remain as land owner on paper. He submits that the NHAI or the Power Grid cannot shift the existing line and interfere with the lawful possession and enjoyment of the petitioner’s subject matter property and render it useless without acquiring the same as per the provisions of the Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 or National Highways Act, 1956.

8) The learned counsel also contends that under the guise of public purpose, the respondent authorities cannot impinge upon the petitioner's rights guaranteed under Article 300-A of the Constitution of India. He also contends that instead of relocating/realigning the existing transmission lines, the respondents should have examined the possibility of another way for laying National Highway. Making the said submissions and relying on the decisions in W.P.No.1503 and 5873 of 2019 dated 22.04.2019 of a learned Judge of the High Court for the State of Telangana in ***T.N. SEB v. Central Electricity Regulatory Commission***¹, learned counsel seeks to allow the Writ Petitions as prayed for.

9) Mr. Seeta Ramaiah Tenneti, learned counsel appearing on behalf of the petitioners in W.P.Nos.35273 and 36265 of 2022, while adopting the arguments advanced by Mr. Soma Sekhara Naidu, made separate submissions. He contends that by virtue of proposed shifting of Transmission Lines, the petitioner would be deprived of the agricultural lands and his livelihood would be affected. He further submits that if the existing HT lines are coming in the way of laying National Highway, the respondent authorities should have examined the option of laying underground cable without affecting the lands of the petitioners.

10) Mr. P. Balu Anil Kumar, learned counsel appearing in W.P.No.21919 of 2023 while stating that the writ petitioners' residential plots would be affected in view of the proposed shifting of the HT Lines, also adopts the arguments advanced by the other learned counsel.

11) Mr. K. Lakshmana Sastry, learned counsel for the petitioners in W.P.Nos.9383, 22826 and 22827 of 2023 adopted the arguments advanced by Mr. P. Soma Sekhara Naidu. In addition, he submits that the lands of the petitioners were close to the main road, potential for forming

¹ (2007) 7 Scc 636

layouts and inview of the proposed shifting of the Transmission Lines their rights guaranteed by the Constitution of India would be adversely affected.

12) *Per contra*, Mr. P. Veera Reddy, learned Senior Counsel appearing on behalf of the NHAI refuting the various contentions advanced on behalf of the petitioners made his submissions stating that the subject matter project is undertaken in the interest and benefit of larger public to reduce the congestion of the traffic. Referring to the role of the Power Grid as set out in the counter affidavit and the agreement entered into between the NHAI and the Power Grid, the learned Senior Counsel submits that the shifting of the existing HT Lines is inevitable as the same are coming in the way / obstructing the laying of National Highway. He submits that Section 163 of the Act empowers any person i.e., NHAI, in the present case, to initiate action for shifting of the HT Lines. He submits that shifting of the existing HT Lines were undertaken by the respondent authorities in exercise of powers conferred under Sections 163 and 164 of the Act coupled with the provisions of the Telegraph Act. While stating that the provisions of the said Acts have to be read conjointly, the learned Senior Counsel submits that in terms of G.O. Rt.No.83 dated 20.06.2017, the petitioners are entitled for compensation and if they are aggrieved by the determination of the compensation or disputes the same, they have remedies under Law. He submits that the contentions raised on behalf of the petitioners that the shifting of the existing HT Lines at the instance of NHAI, which is not a licensee and determination of compensation at the instance of NHAI is not sustainable, merits no appreciation. He submits that 85% of the road works are completed, except shifting of power lines and further delay may lead to raising of claims by the concerned contractors. He submits that the shifting of existing lines is in accordance with the Standard Operating Procedure dated 03.03.2023 issued by the

Ministry of Power, Government of India and in terms thereof, the agreement was entered into between the Power Grid and NHAI, that the issues involve technical aspects, which cannot conveniently be gone into by this Court. He submits that the project of laying Six Lanes National Highway is of great public and National importance and interest of the petitioners shall yield to the same. Making said submissions and relying on the decisions in ***Power Grid Corpn. of India Ltd. v. Century Textiles & Industries Ltd.***,²; ***P.S. Manjunath v. Transmission Corporation of Andhra Pradesh Limited***,³; and ***K.Subrahmanyam v. State of A.P.***,⁴ etc; learned Senior Counsel urges for dismissal of the Writ Petitions.

13) Mr. O.Manohar Reddy, learned Senior Counsel, appearing on behalf of the Contractor in W.P.Nos. 35273 and 36265 of 2022 made his submissions. Referring to the counter affidavit filed on behalf of the Power Grid, more particularly para numbers 10 and 13, learned Senior Counsel submits that no reply affidavit is filed by the petitioners traversing the averments with regard to shifting of Transmission Lines, which involves technical aspects. He submits that HT Transmission Lines were erected by the Power Grid and shifting of the same is necessitated in view of the formation of six lane Bypass road. The shifting of HT Lines, pursuant to an agreement between NHAI and the Power Grid is in accordance with Law and he submits that various safety aspects have to be taken into consideration for the purpose of shifting of the HT Lines. During the said process, if the petitioners' properties are affected, he submits that they are entitled for compensation only. He also contends that the petitioners have not attributed any *mala fides*, that in the absence of the same, the action of the respondent authorities cannot be found fault

² (2017 5 SCC 143

³ 2021 SCC Online AP 1877

⁴ 2021 SCC Online AP 2944

with or interfered with. Learned Senior Counsel submits that the writ petitions lacks merits and the same are liable to be dismissed.

14) Learned Government Pleader Mr.P. Subhash appearing in W.P.No.29389 of 2023 made submissions to sustain the proceedings of the District Collector. He submits that at the instance of the Power Grid, a Government of India undertaking, and NHAI, the 2nd respondent / District Collector initiated the proceedings for determination of the compensation. He submits that the shifting of existing HT Lines spreads over the lands situated in more than four villages and no individual notices, which have been otherwise not contemplated under the provisions of the Electricity Act and the Indian Telegraph Act, are required. However, he submits that before determining the compensation, the District Collector, though there is no specific requirement, conducted meetings with the farmers / land owners and the petitioners have not pointed out any provision which requires issuance of individual notices. He submits that if the petitioners are not satisfied with the determination of the compensation they can seek enhancement of the same by invoking the relevant provisions of Law. While submitting that the compensation determined by the District Collector in respect of the subject lands of the petitioners in W.P.No.35423 of 2022 is 2 ½ times more than the market value and the petitioners cannot have any grievance in the matter, he submits that, at any rate, these aspects, which involve disputed questions of facts, cannot be adjudicated by this Court in exercise of powers under Article 226 of the Constitution of India. Learned Government Pleader submits that the petitioner can agitate their claims with regard to compensation before the learned District Judge under Section 16(4) of the Telegraph Act or the Electricity Act. He also submits that the contentions regarding determination of the compensation at the instance of the NHAI by the District Collector are misconceived and merits no acceptance. Making the

said submissions, the learned Government Pleader seeks dismissal of the writ petitions.

15) Mr. Anup Koushik Karavadi, learned counsel appearing on behalf of the TRANSCO in W.P.Nos.450 and 452 of 2023 while supporting the arguments advanced on behalf of the NHAI submits that since the land owners are entitled only for compensation, they cannot stall the project of shifting / laying of Transmission Lines, which was undertaken in public interest viz., Formation of National Highway. He refers to the decisions in ***Century Textiles & Industries Ltd., K.Subrahmanyam & Others*** (referred to supra) etc., and seeks dismissal of the writ petitions. The counsel appearing on behalf of Power Grid made submissions on the basis of the counter-affidavit and prays for dismissal of the writ petitions.

16) In reply, Mr. Soma Sekhara Naidu, learned counsel contends that the judgments relied on behalf of the respondents are not applicable to the facts of the case as the same pertains to the laying of new Transmission Lines by the licensees. He contends that G.O. Rt.No.83, dated 20.06.2017 provides for guidelines only and has no statutory force. The learned counsel reiterates his contentions to the effect that only the licensees under the Electricity Act have the benefit of the power by virtue of the Indian Telegraph Act. Referring to the arguments of the learned Government Pleader for Revenue, he submits that the petitioners did not attend any meeting as alleged in the counter affidavit and no material with regard to their participation is filed. He also submits that if the fixation of compensation is done in terms of the Land Acquisition Act, separate procedure is required to be followed, which is conspicuously absent in the present case. He submits that the determination of compensation by the District Collector by assuming powers, which are not vested with him, is without jurisdiction and the proceedings dated 23.11.2022 are liable to be set aside. Learned counsel also places reliance on the decisions of the

Hon'ble Supreme Court in ***Mohinder Singh Gill v. Chief Election Commr.***,⁵ ***Hindustan Petroleum Corporation Ltd., v. Darius Shapoor Chenai***⁶, and ***Tami Nadu State Electricity Board v. CERC & Others***⁷ ***etc.***, and urges for allowing the writ petitions.

17) Insofar as W.P.No.1569 of 2023 is concerned, Mr.Soma Sekhar Naidu appearing on behalf of the respondent No.4 requested to de-tag the same. However, the issue involved is also shifting / relocation of HT Lines because of laying of the above mentioned Six Lane National Highway. M/s.Lanco Kondapalli laid the Transmission Lines. Power Grid Corporation and NHAI filed detailed counter-affidavits. No reply-affidavits have been filed. As the subject matter land is part of the 30 KM stretch and the petitioner's grievance is the same, this writ petition is not de-tagged.

18) On an appreciation of the rival contentions, the main points that emerge for consideration by this Court are:

- 1) Whether the shifting of Transmission Lines at the instance of NHAI is not sustainable on the premise that the provisions of Electricity Act, 2003 have no application for shifting the existing Transmission Lines at the instance of a third party/NHAI?
- 2) Whether the determination of compensation by the District Collector through the proceedings impugned in W.P.No.29389 of 2023 is without jurisdiction or vitiated on the ground that the petitioners were not afforded an opportunity?
- 3) Whether the writ petitioners have adequate remedies available in Law and the writ petitions are not sustainable?

⁵ (1978) 1 SCC 405

⁶ (2005) 7 SCC 627

⁷ (2007) 7 SCC 636

Point No.1:

19) Before dealing with the contentions of the respective counsel, it may be appropriate to refer to the relevant provisions of the Act:

Section 2 (39) - "licensee" means a person who has been granted a license under Section 14.

Section 2 (72) - "transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a substation, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works;

Section 2(73) - "transmission licensee" means a licensee authorized to establish or operate transmission lines;

Section 2 (74) - "transmit" means conveyance of electricity by means of transmission lines and the expression "transmission" shall be construed accordingly;

Section 2 (75) - "utility" means the electric lines or electrical plant, and includes all lands, buildings, works and materials attached thereto belonging to any person acting as a generating company or licensee under the provisions of this Act;

20) Appropriate Commission may, on an application grant a license to any person under Section 14 of the Act –

(a) to transmit electricity as a transmission licensee; or

(b) to distribute electricity as a distribution licensee; or

(c) to undertake trading in electricity as an electricity trader, in

any area as may be specified in the license.

21) Second *proviso* to Section 14 of the Act, envisages that the Central Transmission Utility or the State Transmission Utility shall be deemed to be a Transmission Licensee under the Act.

22) Part VIII of the Act deals with works / works of licensees and provisions relating to Over Head Lines under Section 67 and Section 68 of the Act.

23) Section 164 of the Act provides for Exercise of powers of Telegraph Authority in certain cases and the same reads as follows:

“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 co-ordination 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, 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.”

24) Section 10 of the Indian Telegraph Act, 1885 deals with the power for Telegraph Authority to place and maintain telegraph lines and posts, which reads as follows:

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.

Section 16 of the Telegraph Act deals with exercise of powers conferred by Section 10 and disputes as to compensation, in case of property other than that of a local authority and the same reads as follows:

- (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 (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.

25) The Power Grid in its counter-affidavit asserted that the Government of India in exercise of powers under Section 38(1) of the Electricity Act notified the Power Grid as 'Central Transmission Utility' *vide* Gazette of India No.1084 dated 04.12.2003. Further that the Government of India in exercise of powers under Section 164 of the Electricity Act, 2003 notified Orders dated 24.12.2003 in Gazette of India No.1148 conferring all the powers vested in the Telegraph Authority under Part III of the Indian Telegraph Act on the Power Grid. By virtue of the said Notifications, being a "Central Transmission Utility", Power Grid is a deemed licensee in terms of second proviso to Section 14 of the Act and acquires all such powers which are vested in a Telegraph Authority, including power to eliminate any obstruction in laying down of Power Transmission Lines.

26) While not disputing the status of the Power Grid as a Central Transmission Utility, it is strenuously contended on behalf of the petitioners that NHAI is not a licensee under the provisions of Electricity Act or a Transmission utility in terms of the said Act and therefore shifting of the existing 400 KV Transmission Lines at the instance of NHAI in deprivation of the petitioners' rights guaranteed under Article 300-A of the Constitution of India is legally not sustainable. It is also their contention that the provisions of the Electricity Act, 2003 have no application as shifting of Lines is at the behest of NHAI and further that the powers under the above referred Acts on the Power Grid cannot be extended to others / NHAI.

27) With reference to the said contentions, it may be appropriate to note and it is also not in dispute that by virtue of powers conferred under the Electricity Act, 2003 and the Indian Telegraph Act, the Power Grid is empowered to place and maintain power Transmission Towers and draw Power Transmission Lines under, over, along or across and posts in or upon any immovable property. It is also not in dispute that the existing 400 KV HT Line was erected and being maintained by the Power Grid. It may also be pertinent to state here that the "Power Grid" does not acquire any right other than that of user only in the property by virtue of Sec.10(b) of the Telegraph Act. When the said Act empowers the licensee / Power Grid to lay Transmission Lines, the power or authority to shift Transmission Lines is implied and the contention that the provisions of the Act are meant for laying of lines and shifting of lines would not fall within the ambit of laying of lines is farfetched and cannot be accepted.

28) In the present case, as a part of 'Bharath Mala Pariyojana Project', the NHAI had undertaken laying / formation of six lane road with a stretch of 30 KMs i.e., Vijayawada Bypass from China Avutapalli to Gollapudi on Vijayawada – Gundugolanu Section of NH 16. In the course of execution

of the said National Highway works, the relocation / re-alignment of the existing 400 KV High Tension Transmission Lines became imperative. In the counter-affidavit of NHAI, it is *inter alia* stated that after formation of the bypass at a height of 7.6 meters at Gollapudi Village, the electrical vertical safety clearance was reduced to 6.9 meters from finished road level (FRL) to conductor (null point) and therefore to maintain the mandatory 14.5 meters vertical clearance from the finished road level, new tower with 22.1 meters height from the ground level by maintaining 14.5 meters mandatory vertical clearance from the finished road level, is necessitated. The Power Grid, the utility owning agency of the existing HT Lines proposed to remove the existing tower and shifting to new location. The relocation of the transmission lines is to ensure the safety of heavy traffic including over sized vehicles, which passes through the six lane Road. In connection with the said works, the NHAI and Power Grid entered into an agreement dated 31.03.2023 for shifting of existing 400 KV Transmission lines infringing with the construction of six lane of Vijayawada bypass from China Avutapalli to Gollapudi on Vijayawada – Gundugolanu. Thereafter, the shifting of 400 KV HT Lines was undertaken. It is not in dispute that the shifting of existing HT Lines was at the instance of NHAI. However, the compelling reason for shifting of the said lines is laying of six lane National Highway and the existing High Tension Lines would cause hindrance to the traffic and also cause serious threats to safety of the public at large using the said bypass road. In such a situation, if the Power Grid which owns the 'ROW' enters into an agreement for shifting of the existing HT Lines, the petitioners cannot have any say in the matter, except for payment of compensation. The action of the Power Grid in relocating the HT Lines at the behest of NHAI is traceable to the power and authority of Power Grid to lay the Transmission Lines as envisaged under the Act.

29) Therefore, the contention that the shifting of the existing HT Lines at the instance of NHAI though it is not a licensee or transmission utility and the provisions of the Act have no application merits no acceptance and the same are rejected in facts and circumstances of the case.

30) Further the shifting / relocation is not at the instance of a private party, but National Highways Authority of India, constituted under the provisions of National Highways Authority of India Act, 1988 for Development, Maintenance and Management of National Highways and for matters connected therewith or incidental thereto.

31) In the counter-affidavit of the respondents i.e., Power Grid and NHAI clearly spelt out the importance laying of six lane bypass Road, the technical aspects with regard to shifting of Transmission Lines etc.

32) Therefore, the shifting of Transmission Lines at the instance of NHAI cannot be projected as contrary to the provisions of the Act. In the considered opinion of this Court, the same are applicable to the present fact situation.

33) Further, the petitioners have not attributed any malafides, except a vague allegation that the respondents are trying to relocate the Transmission Lines to favour the people of their choice.

34) The Hon'ble Supreme Court in **Union of India v. Kushala Shetty**⁸ *inter alia* held as follows:

25. The plea of the respondents that alignment of the proposed widening of the national highways was manipulated to suit the vested interests sounds attractive but lacks substance and merits rejection because except making a bald assertion, the respondents have neither given particulars of the persons sought to be favoured nor placed any material to prima facie prove that the execution of the project of widening

⁸ (2011) 12 SCC 69

the national highways is actuated by mala fides and, in the absence of proper pleadings and material, neither the High Court could nor this Court can make a roving enquiry to fish out some material and draw a dubious conclusion that the decision and actions of the appellants are tainted by mala fides.

Point No.1 is accordingly answered against the petitioners.

Point Nos.2 & 3:

35) The learned counsel for the petitioners in W.P.No.29389 of 2023 argued that the proceedings of the District Collector are without jurisdiction etc., in view of the contentions mentioned supra.

36) *Per contra*, it is contended that the compensation in respect of the lands was arrived at in terms of G.O.Rt.No.83 dated 20.06.2017 that too after convening meeting with the farmers and the petitioners also attended the same. That apart, it is stated that the compensation is 2 ½ times more than under the Land Acquisition Act, but the same is vehemently opposed by the learned counsel for the petitioners.

37) At this juncture, it may be appropriate to mention that the Government of India by virtue of powers under Section 176 (2) (e) of the Electricity Act, 2003 framed “the Works of Licensees Rules, 2006(herein after referred to as Rules).” Rule 13 of the said Rules provides for Determination and Payment of Compensation to affected persons, which reads as follows:

13. Determination and payment of compensation to affected persons:

..-(1) Where the licensee makes default in complying with any of the provisions of these rules, he shall make full compensation for any loss or damage incurred by reason thereof to the person affected, as may be determined by the District Magistrate or by any other officer authorized by

the State Government in this behalf, if not agreed mutually between the parties concerned.

(2) Where any difference and dispute arises as to the amount of compensation determined under sub-rule (1), the matter shall be determined by the Appropriate Commission.

38) The State Government in exercise of Powers conferred on it under Section 180 r/w Sec.67(2) of the Electricity Act, made the Andhra Pradesh Works of Licensees Rules, 2007. Rule 13 of the said Rules is identical to the above extracted Rule.

39) In view of the conclusion that Act, 2003 is applicable to the case on hand, the Rules made there under are also applicable for the very same reasons.

40) Referring to Rule 3 of the above referred Rules, a contention was raised that as the prior consent of the petitioners was not obtained, the action on the part of the respondents is not sustainable. Reliance is placed on the decision of a Learned Judge of the High Court of Telangana in **T.Sudhakar Reddy v. State of Telangana**, wherein it was held that Rule 3 has statutory force of Law and must be followed by the Licensees. However, while rejecting the similar contentions, a Learned Judge of this Court following the judgments of the Hon'ble Supreme Court dismissed W.P.No.7793 of 2021(K.Subrahmanyam & Others referred to supra) *vide* Orders dated 03.05.2021. The decision of the Learned Single Judge was upheld by a Division Bench *vide* Orders dated 17.09.2021 in W.A.No.303 of 2021 wherein Rule 3(4) of the Rules and the relevant Case Law including the **Power Grid Corporation v. Century Textiles & Industries Limited**⁹, was discussed. In Para Nos.24 & 25 of the said decision, the Hon'ble Supreme Court held as follows:

⁹ (2017) 5 SCC 143

“24. As Power Grid is given the powers of telegraph authority, Rule 3(1) of the 2006 Rules ceases to apply in the case of Power Grid by virtue of execution(exclusion) clause contained in sub-rule (4) of Rule 3 which reads as under:

“3. (4) Nothing contained in this rule shall effect the powers conferred upon any licensee under Section 164 of the Act.”

25. We, thus, have no hesitation in rejecting the argument of the writ petitioner that the impugned action of the Power Grid was contrary to the provisions of the Electricity Act, 2003.”

41) In view of the above stated factual and legal position, the contentions advanced on behalf of the petitioners are rejected.

42) With regard to determination of compensation by the District Collector, Rule 13 extracted above is explicit. Apart from the same, the Central Government issued Guidelines for payment of compensation towards damages in regard to Right of Way for Transmission Lines *vide* Notification dated 15.10.2015, with reference to which, in the Power Grid case cited supra, the Hon’ble Supreme Court, held as follows:

“28. These are sufficient reasons to allow Civil Appeal No. 10951 of 2016 preferred by the Power Grid by setting aside those directions. Ordered accordingly. We make it clear that if the writ petitioner feels that it is entitled to any compensation, the appropriate course of action is to file a suit before the District Judge concerned for this purpose. It would also be apt to point out at this stage that the Central Government has framed guidelines dated 15-10-2015 in this behalf which inter alia provide that the issue of compensation may be resolved having regard to the mode and manner of assessment of compensation as per the said guidelines. Therefore, it would always be open to the writ petitioner to avail the remedy as per the said guidelines.”

43) In the present case, it may be mentioned that in the light of the above said Guidelines, the Government of Andhra Pradesh issued G.O.Rt.No.83 dated 20.06.2017 and the compensation in respect of the subject matter lands was determined by the District Collector, stated to be at 2 ½ times more than the market value. It appears that the compensation arrived by the District Collector was questioned by the NHAI before the A.P.Electricity Regulatory Commission (APERC) in terms of Rule 13(2) of the Rules referred to supra *vide* Revision Petition No.2 of 2023. In the Counter-Affidavit filed by the District Collector / Respondent No.13 therein, the justification for granting more compensation was explained. It appears that the NHAI had not pursued the above mentioned Revision Petition and agreed to the compensation as determined by the District Collector. Be that as it may. The petitioners have not questioned the said G.O.

44) This Court on considering the matter is of the opinion that the District Collector has the competence and jurisdiction to determine the compensation in respect of the lands in question. Accordingly, the contentions raised on behalf of the petitioners in this regard are rejected.

45) However, the other submissions with reference to non-issuance of any Notification in respect of shifting / relocation of the HT Lines as also non-issuance of any notice to the petitioners while determination of compensation needs to be examined.

46) Insofar issuance of Notification is concerned, a Learned Judge of the erstwhile High Court of Andhra Pradesh at Hyderabad in **Devisetty Ramaswamy v. Chief Engineer**¹⁰ after referring to the other precedents opined that there is no provision in the Act of 1885 which mandates prior notice or an opportunity of hearing to be provided to the owner / occupier

¹⁰ 2013 (4) ALD 88

of a premises affected by laying of Lines or posts and therefore, there is no question of such owner / occupier being put on notice or demanding an opportunity of hearing before the grounding of the scheme. Following the said decision, this Court is inclined to hold that non-issuance of Notification is not fatal nor would affect the rights of the petitioners.

47) But so far as issuance of individual notices before determination of compensation is concerned, it is contended on behalf of the petitioners in W.P.No.29389 of 2023 that no notices are issued and the proceedings of the District Collector are therefore, liable to be set aside on that ground. Contradicting the same, the learned Government Pleader argued that the proceedings determining the compensation was passed, after giving opportunity to the petitioners and in the enquiry they participated. However, no material in this regard was filed by the respondents and therefore the arguments advanced on their behalf in this regard, merits no appreciation.

48) Further, as against the compensation determined by the District Collector, Rules provide for Revision to the Electricity Regulatory Commission. In such circumstances, determination of compensation without due opportunity would place the petitioners in a disadvantageous position and deprive them to agitate / pursue the Revision effectively. Therefore, the impugned proceedings of the District Collector, warrants interference on the ground of denial of reasonable opportunity and the same are accordingly set aside. But the same would not preclude / come in the way of the respondents proceeding with the relocation of existing High Tension Lines. As opined by the learned Judge in **Devisetty Ramaswamy's case** referred to supra, "the petitioner's entitlement to compensation cannot be a ground to hinder the completion of the scheme."

49) At this stage, it may be appropriate to deal with another contention advanced on behalf of the petitioners with regard to Article 21 and 300-A of the Constitution of India. However, the same merits no acceptance in the light of the decision of a Division Bench of the erstwhile High Court of Andhra Pradesh at Hyderabad in **Sri Sai Surya Gardens (P) Ltd., v. Union of India**¹¹. The petitioner in the said case challenged the provisions of Section 164 of the Electricity Act on the ground that no procedure has been followed and the respondents are acting in a high handed manner thereby causing loss to the petitioner's property and almost depriving them from using and enjoying the property and such an action is hit by Articles 14, 21 and 300-A of Constitution of India. The Hon'ble Division Bench dismissed the said writ petition holding that "the respondent /Corporation can exercise enough power to lay Transmission Lines across the property of the petitioner, except claiming compensation the petitioner cannot validly challenge the action of the Board on the ground that it affects his valuable rights."

50) As regards compensation, the petitioners can make a claim with cogent evidence before the appropriate Forum that as a result of laying of HT Lines by relocating the existing Lines, they would be entitled for more compensation on the premise that their entire land would become useless and seek appropriate orders. Therefore, the writ petitions are not sustainable.

The point Nos.2 & 3 are answered accordingly.

51) The other contentions advanced on behalf of the petitioners more particularly with regard to alternative route and under the guise of public interest, the interest of the petitioners shall not jeopardized, sounds reasonable, but the same merits no acceptance. According to the NHAI,

¹¹ 2004(4) ALD 2917

85% of the road works are completed and the Project is of great National importance. That apart, the route alignment in respect of laying / erection of High Tension Power Lines and laying / construction of National High Ways involves technical issues well within the realm of the concerned authorities. The Courts would be loathe to interfere in such matters which require technical expertise. The legal position in this regard is well settled in **Kushala Shetty's case** referred to above and the relevant portion of the expression of the Hon'ble Supreme Court is extracted for ready reference:

"28. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of national highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for the development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of national highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The court can nullify the acquisition of land and, in the rarest of rare cases, the particular project, if it is found to be ex facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither has any violation of mandate of the 1956 Act been established nor has the charge of malice in fact been proved. Therefore, the order under challenge cannot be sustained."

52) In **Ramniklal N. Bhutta v. State of Maharashtra**¹², the Hon'ble Supreme Court was dealing with a Land Acquisition Notification issued for

¹² 1997 (1) SCC 134

a public purpose i.e; “For Bombay Electric Supply and Transport Undertaking for Bus Station.” The Hon’ble Apex Court while emphasizing the need for economic development of the country, *inter alia* held that Courts have to weigh the public interest vis-à-vis, the private interest. The relevant portion of the judgment reads thus:

“Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with china economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, Taiwan and Singapore. It is, however, recognized on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernization. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenge the acquisition proceedings in courts. These challenges are generally in shape of writ petitions filed on High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power or grant in stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers. It may even be

open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say.”

53) The decisions relied on by Mr.Somasekhar Naidu, are of no aid, in the light of the legal position concerning the laying of Transmission Lines and National Highways referred to supra. It is also settled Law that the private interest shall yield to public interest.

54) For the foregoing reasons and conclusions, writ petition Nos.35423, 35273, 36265 of 2022, W.P.Nos.450, 452, 1569, 9383, 21919, 22826, 22827 of 2023 are dismissed. However, this Order would not preclude the petitioners to avail the remedies with regard to their claims for compensation before the appropriate authority / District Collector, in accordance with Law.

55) The Proceedings dated 23.11.2022 impugned in W.P.No.29389 of 2023 to the extent of the petitioners therein are set aside as the respondents have failed to establish their stand that the compensation was determined after affording opportunity and the writ petition is disposed of with a direction to the District Collector, N.T.R.District to determine the compensation payable by giving an opportunity of hearing to the petitioners in the said writ petition. Needless to emphasize that the petitioner’s entitlement to compensation cannot be a ground to hinder the execution of the project undertaken in the interest of public at large.

56). Interim orders, if any, shall stand vacated. No order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

NINALA JAYASURYA, J

Date: 19.04.2024.
SSV/BLV

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

**WRIT PETITION Nos.35273; 35423; 36265 of 2022; 450; 452; 1569;
9383; 21919; 22826; 22827 and 29389 of 2023**

Date: 19.04.2024

SSV/BLV