

High Court of Sikkim

Record of proceedings

RFA No.06 of 2018

Eric Pazo

Appellant

VERSUS

Jorgay Namka and Others

Respondents

Date : **29-10-2021**

CORAM : **THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

For Appellant

Mr. A. K. Upadhyaya, Senior Advocate.
Ms. Gita Bista, Legal Aid Counsel.

For Respondents
R-1

Mr. Jorgay Namka, Advocate.
Mr. Simeon Subba, Advocate.

R-2 to R-5

Mr. A. Moulik, Senior Advocate.
Mr. Ranjit Prasad, Advocate.

ORDER

I.A. No.04 of 2021 is an application under Section 151 of the Code of Civil Procedure, 1908, filed by the Superintending Engineer (EHV), Energy and Power Department, Government of Sikkim, seeking to intervene in the instant matter contending that a Comprehensive Scheme of Strengthening of Transmission and Distribution System for electricity in Sikkim is being constructed towards which the laying of transmission lines have been completed including stringing, except for one span of 335 meters between Tower No.11/0 and Tower No.12/0, i.e., approximately 100 meters out of 335 meters. That, the landowners' of Plot No.282 did not permit the laying down of the transmission lines on account of disputes of ownership of the lands. Hence, the Power Department be allowed as an intervenor and directions be issued to the parties to permit the department to take requisite steps for laying and stringing transmission lines.

Learned Senior Counsel for the Respondents No.2 to 5 submits that Section 16 of the Indian Telegraph Act, 1885, provides that if the exercise of the powers mentioned in Section

High Court of Sikkim

Record of proceedings

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. That, in the light of the said legal provision, the parties ought to have been before the concerned District Magistrate and not before this Court and the application be dismissed on this ground alone.

Learned Senior Counsel for the Appellant submits that a No Objection Certificate has been issued by the Appellant in this regard and he has nothing further to submit.

Learned Counsel for the Respondent No.1 has no submissions to make.

Heard Learned Counsel for the parties.

Section 10 of the Indian Telegraph Act provides for power for telegraph authority to place and maintain telegraph lines and posts. Section 16 has already been discussed hereinabove. The State Government has failed to place before this Court any records to indicate that necessary steps in terms of the Indian Telegraph Act, 1885, have been resorted to by them. Further, no records have been placed before this Court to indicate that the parties before this Court in the instant Appeal, at any point of time resisted or obstructed the laying of the transmission lines or that the District Magistrate had ever issued notice to the parties which were ignored by them.

In view of the shortcomings discussed hereinabove, the State Government is to take necessary steps before the appropriate Authority.

Consequently, I.A. No.04 of 2021 deserves no consideration and stands dismissed and disposed of accordingly.

Learned Counsel for the Appellant submits that Respondent No.2, who was representing Respondent No.4 also, has since passed away and steps are required to be taken in this regard. As the Death Certificate of the Respondent No.2 is yet to be obtained they require some time to take steps in the matter.

High Court of Sikkim

Record of proceedings

Not opposed.

Considered.

The Appellant to take steps in the interregnum.

List on 22-02-2022, as found convenient by the parties.

Judge

29-10-2021

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