

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.6961 OF 2021
(Arising out of SLP (Civil*) No.7609 of 2021)

M/s. SUZLON ENERGY LTD.

Appellant

VERSUS

JAYANTHI & ORS.

Respondents

O R D E R

Leave granted.

This appeal challenges the judgment and order dated 06.05.2021 passed by the High Court of Judicature at Madras in W.A. No.1365 of 2021.

The instant proceedings arise out of Writ Petition No.15896 of 2020 filed by the respondents challenging the order dated 08.10.2020 passed by the third respondent in the writ petition, granting permission to the present appellant to erect electric towers in the lands of the writ petitioners, under Section 16(1) of the Indian Telegraph Act, 1885.

Various grievances were raised by the original writ petitioners which did not find any favour with the Single Judge of the High Court. However, the Division Bench of the High Court issued directions in paragraphs 4 and 5 of its order which were to the following effect:

"4, Though there does not appear to be any infirmity in the impugned order dated 31.03.2021 in W.P. No. 15896 of 2020 upholding permission granted to the Ninth Respondent under Section 16(1) of the Act to enter upon the property of the Appellants to erect the electric towers in the respective lands of the Appellants, it would be necessary at this juncture to refer to Section 17 of the Act, which reads as follows:-

17. Removal or alteration of telegraph line or post, on property other than that of a local authority:-

(1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line or post accordingly: Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

(3) A District Magistrate receiving an application under sub-section (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form;

and the order so made shall be final.

It is evident from the same that even after enter upon permission has been granted under Section 16(1) of the Act, a land owner is entitled to make an application to the jurisdictional District Magistrate for removing or re-locating the electric towers that have been erected under Section 17 of the Act. Having regard to the pragmatic considerations of cost effectiveness and time saving measures in the larger public interest, it would be appropriate at this stage taking into account the aforesaid rival submissions made by the Learned Counsel appearing for the parties that that enquiry under section 17(2) of the Act can be immediately conducted by the Third Respondent to examine all the contentions that are raised by the Appellants, including as to whether the Ninth Respondent is an Authority entitled to invoke section 16 of the Act, the route for locating the electric towers, the amount of compensation payable and the compromise said to have been entered by the Ninth Respondent with the Appellants. In view of that proposed enquiry, the further implementation of the orders in Na.Ka.No.6450/2020/E5 dated 08.10.2020 passed by the Third Respondent under section 16(1) of the Act shall be kept in abeyance and the parties shall maintain status quo till its completion. Depending upon its outcome, further action shall proceed in accordance with law. Though obvious, it is made clear that no view is expressed by this Court on the correctness or otherwise on the rival contentions of the parties in this regard.

5. In order to expedite the proceedings, Learned Special Government Pleader, on instructions, states that enquiry under section 17(2) of the Act would be conducted at 11.00 a.m. on 21.05.2021 before the Third Respondent and all the parties concerned including the Appellants and the Ninth Respondent may appear on the said date. The Appellants shall place their objections in writing before the Third Respondent on the said hearing and no further extension of time shall be granted for the same. If the Third Respondent is not in a position to take up the matter for hearing on that date, the adjourned date of hearing shall be informed to all parties concerned in the prescribed manner. As it is stated that the practice has been prevalent that parties can

be accompanied by their legal practitioner to represent on their behalf, they may avail such benefit. After affording full opportunity of personal hearing to all parties concerned including the Appellants and the Ninth Respondent and making necessary inspection of the property through the concerned officials, if necessary, the Third Respondent shall deal with each of the contentions raised by the respective parties and shall pass reasoned orders on merits in accordance with law and shall communicate the decision taken to them under written acknowledgement and file a report of such compliance before the Registrar (Judicial) of this Court by 30.06.2021 without fail."

In this appeal, challenging the directions so issued by the Division Bench of the High Court, the learned counsel appearing for the appellant made certain statements which were recorded in the order dated 01.07.2021 passed by this Court as under:

"Mr. M. Ajmal Khan, learned Senior Advocate appearing for the petitioner submits (a) the petitioner is willing to pay 300 per cent more compensation to the affected parties; (b) the agricultural operations of the affected parties will not in any way be prejudiced except to the extent of erection of poles or posts to carry overhead wires or lines, and no cabling or any kind of transmission lines will be running underground between the two poles or posts; (c) the petitioner will have a right of way for the purposes of maintenance and upkeep where its personnel would reach the poles or posts only on foot so that the agricultural operations of the affected parties will not be put to any prejudice."

Mr. M. Ajmal Khan, learned Senior Advocate appearing for the appellant reiterates all the submissions which were recorded in the order dated 01.07.2021 and has now gone to the

extent of submitting that the appellant would pay 500 per cent more compensation to the affected parties. Statement is recorded. The appellant shall be bound by the statements made on its behalf by its learned counsel.

Mr. V. Raghavachari, learned Advocate appearing for the respondents/original writ petitioners submits that considering the offer made by the learned counsel for the appellant, the matter be disposed of leaving all questions of law open to be decided in appropriate matters.

While allowing this appeal and setting-aside the order passed by the Division Bench of the High Court, we direct as under:

- a) The submissions recorded by this Court in its order dated 01.07.2021 shall be binding on the appellant, subject to the modification that instead of "300 per cent more compensation", the appellant shall pay "500 per cent more compensation" to the affected parties.
- b) Let the issue of compensation be determined by the concerned authority in accordance with law.
- c) The concerned authority (14th respondent) shall do well to dispose of the matter in that behalf as early as possible and preferably within two months from today.

- d) As and when such compensation is determined, the appellant shall pay 500 per cent more compensation to the affected parties within six weeks.
- e) The other undertakings recorded in the form of submissions recorded (b) and (c) in the order dated 01.07.2021 shall be scrupulously observed.

With these observations, the appeal stands allowed, the order passed by the Division Bench of the High Court is set-aside and that passed by the Single Judge, subject to the aforesaid modification, stands restored. There will be no order as to costs.

.....J.
(UDAY UMESH LALIT)

.....J.
(S. RAVINDRA BHAT)

New Delhi,
November 18, 2021