

RCS/17/2013

ORDER

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**IN THE COURT OF 3RD ADDITIONAL CIVIL JUDGE AND  
JMFC AT ANKLESHWAR**

**REGULAR CIVIL SUIT NO. 17 OF 2013.**

**Plaintiff:**

- 1. PRAKASHCHANDRA NATWARBHAI MODI  
13, RAMVATIKA OSICETY,  
ANKELSHWAR  
GUJARAT**
- 2. GEETABEN PRAKASCHANDRA MODI  
13, RAMVATIKA OSICETY,  
ANKELSHWAR  
GUJARAT**

**VERSUS**

**Defendant:**

- 1. AESSAR POWER TRANSMISTION COMPNY LTD.  
A/8, MATRUCHHAYA CHAMUNDRA MATANU MANDIR,  
ZADESHWAR ROAD,  
BHARUCH  
GUJARAT**

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**Appearance:**

N.K.MAJMUDAR For Plaintiff 1

B.V.RANA For Plaintiff 2

R.R.MODI For Defendant 1

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**ORDER BELOW EXH. 5**

1] That, the plaintiffs herein has filed the present suit for a permanent injunction. Along with this suit, the plaintiffs have submitted this application under Order- 39, Rule-1 & 2 read with Section-151 of Code of Civil Procedure, in which, he has prayed for following interim reliefs till final disposal of this suit:

- i) The defendant may be restrained from entering upon the land which is described in para-1 of the plaint, situated in Mandva Buzarg being Survey No.230 and the defendant itself or its agent or any person in collusion with the defendant be restrained from entering illegally upon the land in question and the defendant be restrained from causing damage through JCB machine or through any other instrument or vehicle and till the suit is being decided temporary injunction may be granted in favour of the plaintiff's.
- ii) Any other prayer which this Hon'ble Court may deem fit, please be granted.

2] **The brief facts of the case are as under :-**

That, the present plaintiff's residing with their family at the captioned address of the plaint and they are the owner and occupier of the land

bearing survey No.230 ad-measuring at 1-40-62 Hector-Are-Sq. Mtrs in the sim of Village Mandva Buzarg. In the said land plaintiff's had done plantation of different tress i.e. Mango, Banana, Saag Etc., and for all the years the plaintiff's have taking crop of banana and other agricultural products. It is averred by the plaintiff's that, the present defendant i.e. Essar Power Transmission Company Ltd., has given contract for construction of tower of high tension line to Kalpataru Transmission Ltd., and as per the notification the defendant has to lay down the line of various Districts of Gujarat- Surat, Bharuch and its villages- Gram panchayat Shukaltirth, Dadhal, Kondh, Kharod, Kosamba, Kim, Vadoli, Olpad, Ankleshwar, Jagadia and through the said villages, the line is to pass. That, the Vice president of Essar Power Transmission Ltd., had published a notice in daily Sandesh and Gujarat Mitra dated 23/08/2008 and it has been informed about laying down the line starting from the Zanor to Hazira 400 K.V.D.C. Energy Pareson line having length of 97 Kms., and the said line starting from P.P.V. Zanor (Gandhar) Elcetricity Sub-station would be ended to Hazira Electricity Substation, in the state of Gujarat and for the Construction and maintenance work KPTCL is

authorized through Dadhal, Kondh, Kharod, Kosamba, Kim, Vadoli, Olpad, Ankleshwar, Jagadia. It is further averred by the plaintiff's that, the said line is being laid down as per the provisions of Electricity Act, 2003 and the license is given by the Union of India. It is the case of the plaintiff's that, the defendant has not laid down the line as per the route approved by the Government of India. The present defendant, though plaintiff's suit land is not on the route of Jhanor to Hajira line, in absolutely different manner from the map and in illegal manner, the defendant along with the police party and other 20 to 25 person had entered upon the land of the plaintiff's along with the JCB machines and with the help of police bandobast had caused big pit and damaged the land through the JCB. It is averred by the plaintiff's that, the defendant and its contractor/ officers have spoiled 120 mangoes plantations and 25 coconut trees and have also caused huge damaged to the mango crops. Therefore, the plaintiff's gave an application dated 28/03/2012 in person to the Hon'ble Home Minister of Gujarat. The present defendant- Contractor had gave an application dated 20/03/2012 to police inspector, Ankleshwar for the police bandobast and on the basis of order of police

bandobast, the contractor of the defendant had entered upon the village Mandva Sim instead of village Samor and in respect of agricultural field, survey No.230 along with the JCB Machine, it causes damage to banana crop, Mango trees, coconut crop and entire land is made in such a condition that no agricultural operation would be possible. It is further sated that, the defendant's officers while leaving the agricultural field, they used to tell the presently they had caused only this much damage, however, as and when they would come again, they will see to it that the land would not remain feasible for agricultural operation and such threats came to be administered. That, the present plaintiff's have stated in his plaint as well as injunction application, provisions of Electricity Act-2203, and Telegraph Act-1885, and as per that, for the installation of tower the consent of the owner is necessary and if it is not obtained then it held to be bad in law. It is further averred by the plaintiff's that, the present defendant, though the land of the plaintiff's has not been included in Jhanor to Hajira line, even in absolutely illegal manner they had committed trespass in the land of the plaintiff and caused damage and have threaten to cause further damage and therefore, in such

circumstances the necessity has arisen to seek permanent injunction against the defendant. It is stated that, there is a prima-facie case and balance of convenience is in favour of the plaintiff. The defendant had deliberately used JCB machine in the suit property and caused damage and has exhibited threats that the further damage will be caused and, therefore, the same is required to be prevented. If restrained order has been granted against the defendant, it would not cause irreparable loss to the defendant. In such circumstance injunction as prayed in ex.5 may please be granted.

Here, it is required to be mentioned that, after, service of summons and notice to the defendant, the present plaintiff's has been filed an application under O.6, R.17 for an amendment of the suit vide at Ex.18. In the said application the present plaintiff's state that, after the filling of the suit, the concerned officers/sub-contractor/ sub-agent of the defendant illegally and illogically without the consent of the plaintiff's entered in to the suit property and they had carried out the work of foundation beneath the land and they had covered the land measuring 75ft.X75ft. for doing foundation beneath the agricultural land of the

plaintiff's and in absolutely illegal manner four poles of huge tower have been installed. It is further states by the plaintiff that, the said installation of tower is absolutely illegal, illogical, arbitrary one and against the principles of natural justice and against the provisions of the Indian Electricity Act, 2003 and against the various provisions of the rules, regulations and therefore, the plaintiff's prays for mandatory injunction against the defendant. As per the said submission the plaintiff's want to amend the suit and pray to add para-2A, 2B and 2C after para-2 in the main suit. Plaintiff's had also sought to add para-A,B and C after para-I in the main suit. The said application has been allowed by the Court after considering the reply filed by the defendant's and hearing of both the parties and the necessary amendment has been carried out by the plaintiff as per the provisions of the law.

- 3] The Summons of the present suit has been served upon the defendant. The defendant appeared through it's lawyer and filed written statement at Ex.13 and Ex.35 of the amended plaint inter alia contending that statement in the suit and the interim application of the plaintiff's is not true. This court has no jurisdiction to entertain the suit and

hence it is required to be dismissed. It is contended by the defendant's that, they have informed to the plaintiff's on 27/05/2011 vide Sr.No.205 for carried out the work upon the agricultural land of the plaintiff's. The present plaintiff's had filed regular Suit No.56 of 2012 and it was withdrawn on 15/10/2012. It is further contended that, defendant had filed Special Civil Application No. 12179 of 2012 before the Hon'ble High Court and it was dismissed by Hon'ble High Court with a direction to represent before the District Magistrate Bharuch as per Sec.16(1) of the The Indian Telegraph Act,1885 and for that plaintiff's had agreed to appear before the District Magistrate and after hearing of the parties the District Magistrate gave an permission to work in the land of the plaintiff's. It is further contended by the defendant that, the present defendant had filed Special Civil Application No.1182 of 2013 before the Hon'ble Court against the order passed by the District Magistrate, Bharuch on 4/02/2013 for restrained to work in the field and it was not granted till today and the present suit filed by the plaintiff's for the same relief, so the suit of the plaintiff is barred by the principles of res-judicata and hence it is required to be rejected.

The present plaintiff's has suppress the order of the District Magistrate, Bharuch and not come with the clean hands before this Hon'ble Court and therefore, they are not entitled for injunction. It is contended by the defendants that, the huge amount is involved for the laying down the line by the defendant. Before, laying down the line the survey had taken place on proposed place and thereafter, notification had been issued for the inviting objection, if any within 60 days and it was not lodged. So, that work of the line had started in three stage. It is contended by the defendant that, the Essar Power Transmission Ltd., has got permission vide licence No.4 from central Electricity Regulatory Commission and it was published on 17/06/2009. It is contended that, if any crops damaged due to the work of the defendant's against that the compensation would be given as per the law. As per the provision of Sec.14, 15 67, 67(1) (D), 164 of Indian Electricity Act, and Sec.10 of Indian Telegraphs Act, defendant has got the powers to laying down the electrical line. It is contended that, this project, is for the the development for the nation and due to that more industries will be forward in motion. It is further contended from the defendant's side, as per the provisions of the act,

and judgment delivered by Division bench of Hon'ble Gujarat High Court in Patent Appeal No.882 of 2011, it is not necessary to acquire the land or got prior permission of the owner for the laying down the line. It is further contended by the defendant that, the plaintiff's are not entitled for relief as prayed in para-2 of the plaint. The plaintiff has only right for compensation and he has to address before the District Magistrate. Therefore, suit of the plaintiff's is required to be rejected. The defendant's have further contended that, as per the order of the District Magistrate defendant's had completed the work on 30/01/2013, in the field of the present plaintiff's. It is denied by the defendant that, below the four poles 1962 Sq. Fts and 3625 Sq. Fts land of the plaintiff's are covered for the foundation and it is also denied by the defendant that work done in the field of the plaintiff's are illegal. The defendant further contended that, work of 400 K.V. Gandhar N.T.C.P. Hajira double circuit line was completed on or before 9/03/2013 and the said line was charged at 3:04 Minutes on 9/03/2013. The defendant has contended that, village Mandva-Buzarg is within the Ankleshwar Taluka shown in the notification published by the defendant and as per the judgment

of the Hon'ble Gujarat High Court name of the village and detailed area is not necessary to mentioned in the notification. It is contended that, work done by the defendant's officer/ contractors with the police protection as per the order passed by the District Magistrate on 30/01/2013 and it was completed within the purview of law. It is further contended that, as per the plain reading of the Sec.164, need not to published Government notification or public notice to install over head line so, that in the absence of name of the village in the notice, it can not be said that line of work completed by the defendant is illegal. The plaintiff's have not entitled for the relief as prayed in the plaint in para-2B,2C. It is stated by the defendant that, the work was completed by the defendant in the plaintiff's land but as per the statement of the plaintiff's they suffered huge loss, the said statement of the plaintiff's is not acceptable. The defendant further contended that, the compensation are determined under Sec.16 of The Indian Telegraph Act,1885., and the present plaintiff had preferred an application for an compensation to the tune of Rs.32 Crores without any evidence and it was capricious and therefore, it was not paid. Looking to the plaint as well as

injunction application, there is no *prim facie* case in favour of the plaintiffs, balance of convenience is also not favour in the plaintiff's and, if injunction is not granted to the plaintiff there is no loss caused to him, but if injunction is granted against to the defendant it will definitely caused to the defendant and public at large. Ultimately, it is contended that the plaintiff's are not entitled to get any relief as prayed for and hence, the plaintiff's suit and injunction application deserves to be dismissed with costs. The plaintiff's have also filed his affidavit-in-rejoinder against the reply of the defendant and in which, he has specifically stated that the work done by the defendant and its officers/contractors are against the public notice / Notification and provision of the law.

- 4] For deciding the application **Exh.5**, the following issues arise for determination:
1. Whether plaintiff's prove his *prima facie* case?
  2. Whether balance of convenience is in favour of plaintiff's?
  3. Whether irreparable loss or injury will be caused to the plaintiff's, if injunction as prayed for is not granted?

## 4. What order?

5] My findings to the above issues are as under:

1]. In negative.

2]. In negative.

3]. In negative.

4]. As per final order.

-: **REASONS** :-

6] I have heard the arguments of the Ld. Advocate of respective parties. The plaintiff's and the defendant have produced various documentary evidence and judgments in support of their case, which will be referred in the judgment as and when it is required.

7] During the course of arguments, Ld. Advocate Shri N.K.Majmudar as well as plaintiff in person has submitted the following submissions:

**I)** That, the present suit has been filed by the plaintiff for declaration and permanent injunction and not for the compensation. It is submitted from the plaintiff's side that, if there is any dispute about the quantum of the compensation against the defendant, then it is barred by the Electricity Act, but the present suit of the plaintiff is in the civil nature under Sec.9

of the Civil Procedure Code, 1908. It is submitted that, the land of the plaintiff's is situated in the village Mandva Buzarg Sim and it is covered under the Gram Panchayat. On Feb'2013 the concerned officers/sub-contractor/sub-agents of the defendant entered upon the land with high handed manner and carried out the work of the construction without informing and consent of the plaintiff for installing 400 KV line tower. It is submitted that, as result of the construction of foundation the huge land is covered and the act of the defendant is absolutely illegal, illogical, arbitrary, without jurisdiction and breach of the principles of natural justice. It is further submitted that, the power vested to the defendant from the main authority which could not be used beyond the power given as per the license and approval, but here in this case act of the defendant beyond the power given by the main authority. It is further submitted that, the defendant and its officers have tried to take law in hand and carried out the construction work of tower and installation of cables in the field of the plaintiffs in absolutely illegal and arbitrary manner against the necessary notification issued by the central Government, 400 K.V. Line is not

15/35  
passing through the village Mandva-Bujarg,  
wherein subject matter land of the plaintiff's  
has been situated, against the notification issued  
by the central government, is in absolutely illegal  
manner. The act, of the defendant would be against  
the provisions of the Indian Telegraphs Act-1885,  
Indian Electricity Act- 2003, and it is against the  
principles of natural justice, therefore,  
plaintiff's sought amendment for mandatory  
injunction in the plaint against the defendant.  
The Ld. Advocate of the plaintiff's draw attention  
on judgments of Hon'ble Apex Courts and  
Sec.67,68,164 of the Indian Electricity Act2003,  
Sec.10 of Indian Telegraphs Act-1885,. It is  
further stated that the power used by the officers  
of the defendant is beyond the power given to the  
licensee and so, that act done by them is contrary  
to law. It is submitted that, in Annexure- III,  
Ex.33/3 there are three routes are mentioned but  
the line is installed by the defendant not as  
per the routes mentioned in route plan, which is  
signed by competent authority. It is further  
submitted that, the defendant had caused huge  
damaged to the Banana crops, mango trees, Gulmohar,  
coconut trees etc. It is further submitted that, the  
act done by the defendant is illegal and without

16/35

the consent of the land owners and defendant ought to have paid compensation prior to installation of the line, but it was not done by the defendant. The defendant has not laid down the line as per the route approved by the Government of India. So, therefore, plaintiff's have strong prima faice case, balance of convenience is also is in favour of the plaintiff and if, injunction will not be granted in favour of the plaintiff's he will suffer irreparable loss and it can not be compensated in terms of money.

**II)** Thereafter, the Ld. Advocate Mrs. R. R. Modi for the defendant has argued that, the license has been granted by the central electricity regulatory commission to the defendant in exercise of powers conferred under the Sec.14 of the Electricity Act-2003 for 400 K.V.D/c transmission line from Gandhar NTPC to Hazira and for that the defendant has got prior approval of the Government of India under Sec.68 of the Electricity Act,2003. The said approval is granted for laying of transmission tower and line between the states for approximately 432 Km. The Said line is Passing through agricultural lands of various villages, crossing over the National and State Highways, Railway lines, Local Authority areas Etc., and for carrying

out all activities the powers has been granted to licensee under Sec.164 of the Electricity Act, 2003 in which the powers under The Indian Telegraphs Act,1885 is also been granted. It is submitted by the Ld. Advocate of the defendant that, for laying down the transmission line, the notice is served to the plaintiff by post, in the said notice the plaintiff has been informed to cut down the trees coming in the way of line. It is further submitted that, the present plaintiff's had filed earlier suit No.56 of 2012, and it was withdrawn without the hearing of the defendant and therefore, the present suit of the the plaintiff's is deserves to be dismissed. The public notice was given by the defendant for inviting the problems if, any but the plaintiff did not lodged any complaint. It is submitted by the defendant that, the installation of transmission tower and line has been completed on the field of the plaintiff's is according to the law and as per the order of the District Magistrate, Bharuch. It is submitted that, the order passed by the District Magistrate was challenged by the plaintiff and he sought stay before the Hon'ble Gujarat High Court for stop the work upon the field and it was not granted till today and the present suit filed by the

plaintiff's for the same relief, hence suit of the plaintiff is required to be dismissed. The land of the plaintiff's is within the vicinity of the Ankleshwar area, so the contention raised by the plaintiff's that, the act done by the defendant is against the notification/public notice and is not be acceptable. The Ld. Advocate of the defendant submitted that, work of the 400 K.V. Gandhar N.T.C.P. Hajira double circuit line was completed on or before 9/03/2013 and it charged on the same day. It is further submitted from the defendant that, the village of the plaintiff is in Ankleshwar Taluka and as per the judgment of Hon'ble Gujarat High Court name of the village and detailed area is not necessary to mentioned in the notification. It is further submitted that, the work done by the defendant is as per the order passed by the District Magistrate on 30/01/2013 and it was completed within the preview of law. So, the dispute raised by the plaintiff's that, the act done by the defendant is illegal, illogical, arbitrary and against the notification is required to prove by leading evidence and it can not be acceptable at this stage without going in to the trial. It is further submitted that, the work done by the defendant is as per the law and it

19/35

is for the public interest so, in absence of main three ingredients to grant of injunction, the injunction application i.e. Ex.5, of the plaintiff's is required to be rejected with the cost.

8. **Point Nos. 1 to 3 :**

So far as all these issues are interconnected to each other, hence, in order to avoid repetition, I am of a view to decide all these issues together.

Considering the pleadings, evidence and the arguments of the Ld. Advocates of the respective parties, it is very clear that, the name of plaintiff's are running as a owner and occupier of the land bearing survey No.230 ad-measuring at 1-40-62 Hecter-Are-Sq. Mtrs in the Sim of Village Mandva-Buzarg and for that the plaintiff has produced the record of right i.e. Namuna No.7 at mark 4/1. In the said land plaintiff had done plantation of Mango, banana, Sag, Sisam trees etc., and it is seems form the documents produced by the plaintiff vide at Ex.3/4, which is the certificate given by the officer of the Gram Panchayat Mandva-Buzarg. The defendant published public notice on 23/09/2008 inviting problems, stating that the Essar Power Transmission Co. Ltd.

has received license for laying down the line from Zhanor to Hazira 400 K.V.DC energy pareson line having length of 97 Kms., and the said line is starting from N.T.P.C. Zhanor(Gandhar) electricity substation would end at Hazira electricity sub-station in the state of Gujarat and for the construction and maintenance work EPTCL is authorized through Dadhal, Kondh, Kharod, Kosamba, Kim, Vadoli, Ankleshwar, Jagadia. The said notice along with route is produced at Ex.3/6. The Chart at Ex.3/7,10/3 is showing villages of Bharuch District, Ex.10/1 is the letter to DSP Bharuch, Ex.10/2 is the letter written by the plaintiff to DSP Bharuch for removing police protection as per the order of the Police Commissioner on dated 29/01/2013, Ex.28/2,29/2,33/1 is the request letter written by the Essar Transmission Co. Ltd., for approval under Sec.164 of Electricity Act; for exercising the powers under Indian Telegraphs Act,1985, for placing of overhead Electric line of the associated transmission system of 2000 MW Mahan Thermal power project, Ex.28/3, 28/4, 29/3, 29/4, 33/2 is the public Notice, Ex.28/4, 29/5 is the public notice(Gazette of India)with evaluation of alternatives of Gandhar(Jhanor)- Hazira Route

Alignment regarding the constructing 400 K.V.D/C Line, Ex.33/2 is the Chart of Proposed alignment showing routes, Ex.28/4, 33/3 is the chart showing route, Ex.33/4 is the letter of central electricity regulatory commission, Ex.37/1 is the affidavit filed by the Director ministry of power, central Electricity Authority, Government of India before Hon'ble High Court of Gujarat in letter Patent Appeal No.1104 of 2013, Ex.37/1,37/2 is in relation with the RTI application made by the plaintiff. As per the record of this case as well as the submissions of the parties that, it is clear that the defendant had received license from the Government of India for laying down the line starting from Gandhar to Hajira 400 K.V.D/c energy paseson line having length of 97 Kmts., and the said line is starting from N.T.P.C. Zhanor- (Gandhar) electricity substation would end at Hazira electricity sub-station in the state of Gujarat and for the construction and maintenance work EPTCL is authorized through Dadhal, Kondh, Kharod, Kosamba, Kim, Vadoli, Ankleshwar, Jagadia. The defendant has produced the said licence received form the Central Electricity Regulatory Commission On 29.04.2008, vide at

Ex.12/1 and the defendant has obtained prior approval from the Ministry of power, Government of India under Sec.68 of the Elcetricity Act,2003, subject to the conditions on 23.05.2008, the said approval is produced at Ex.12/3. As per the said license and approval from the appropriate government the defendant has got right for the laying and installation of transmission towers and line. Thereafter,public notice/notification was issued by the defendants i.e. Essar Power Transmission Co. Ltd., in Government Gazette on dated 17.06.2009 regarding the constructing the 400 K.V.D/C line of route, and as per the notice in Gujarat state, the transmission line will pass through Shuklatirath, Dadhal, Kand, Kharod, Kosamba, Kim, Vadoli, Aolpaad, Ankleshwar, Jhagadi in Surat and Bharuch District. According to the submission from the plaintiff's side, the defendant's officers act contrary to the map and in illegal manner entered in to the land of the plaintiff with the police Bandobast along with the JCB and caused to huge damaged to the crops and trees of the plaintiff. Thereafter, on 6/02/2013 defendant's officers/contractors/sub- agents had entered in the land of the plaintiff with high handed manner and carried out the work of

construction and installed the four poles of huge towers and as a result huge portion of the land is occupied and the said land is of no use to the plaintiff. It is transpires from the record of this case there is map showing routes for the installing the line and the said maps, is produce by the plaintiff's vide at Ex.3/7,10/2 and at Ex,28/4,29/7 and 33/3 is the chart showing the proposed alignment of Jhahor-Hazira route. The submission of the plaintiff's is that, the laying of the transmission line by the defendants is against the their approved route, notification/public notice and therefore, the act of the defendant is illegal, illogical and arbitrary. It is further submission of the plaintiff's side that, the work done by the defendant without the prior consent and without paying compensation and therefore, it is against the principles of natural justice. It is transpires form the record of this case, that the license has received by the defendant, the approval is obtained from the ministry of power for transmission of line from Jhahor to Hazira and for laying down the line, the public notice was published by the defendant regarding the routes through which it passes. As per the public notice/notification published by the

defendant, in Gujarat state, the transmission line will pass through Shuklatirath, Dadhal, Kand, Kharod, Kosamba, Kim, Vadoli, Aolpaad, Ankleshwar, Jhagadi in Surat and Bharuch District. The plaintiff's heavily relied on the said notice and submitted that, the tower installed by the defendant in his field/ land situated at village Mandva-Buzarg is not within the vicinity of the area mentioned in the public notice. So, the line/tower installed by defendant is against the said notification/public notice. It is further submitted from the plaintiff side that, there are three route shown for laying down the transmission line but the defendant has not worked as per the said route. Therefore, the tower installed in the field of the plaintiff's by the defendant is illegal, arbitrary and against the law. Now, here at this stage it is required to mentioned some of the provisions of the law. The Sec.68 of the Indian Electricity Act, 2003 Say's that,

***Sec.68 Overhead lines.-(1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).***

***(2)The provisions contained in sub-section (1) shall not apply-***

(a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;

(b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or

(c) in such other cases, as may be prescribed.

(3) The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary.

(4) The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.

(5) Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.

(6) When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person

*interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.*

And Sec.164 of the Indian Electricity Act,2003 Say's that,

*Sec.164 Exercise of powers of Telegraph Authority in certain cases.—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 (13 of 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.*

Herein, in this case license has been given to the defendant for 400 K.V.D/C (twin conductor)

transmission line from Gandhar NTPC Swichyard to Hazira etc., which is produced at Ex.12/1 and approval of the work is given by the Government of India, which is produced vide at Ex.12/3. The notice/notification was published by the defendant from which area or vicinity, the 400 K.V.D/C Transmission Line will pass. The present plaintiff relied on this public/notification, saying that, his land which is situated in the Sim of Mandava-Buzard village is not coming in the way mentioned in the notice. So, therefore, the act done by the defendant for laying down the transmission line upon his field is illegal and not as per the route. It is transpires from the said notice cum notification **in Gujarat state this transmission line passes through Shuklatirath, Dadhal, Kand, Kharod, Kosamba, Kim, Vadoli, Aolpaad, Ankleshwar, Jhagadi in Surat and Bharuch District.** Here in this notice it specifically mentioned that the line will pass through Ankleshwar and Bharuch District. The plaintiff's land is situated in the Sim of village Mandva- Buzarg Ta. Ankleshwar, Dist.: Bharuch. So, the plaintiff's land is comes within the vicinity/area of the Ankleshwar Taluka, Distrcit Bharuch. It is also the submission of the plaintiff that, the three route shown by the

defendant and in all these three routes the plaintiff land is not coming even, though the defendant had themselves and arbitrarily decided the route and installed transmission tower in the filed of the plaintiff. The said documents produced by the plaintiff's vide Ex.28/4,29/5 along with the notification/ Notice. Looking to the said document, it is the Evaluation of Alternatives of Gnadhar (Jahanor)-Hazira Route Alignment, as per my view the said routes are alternative and the said routes are also passe through the vicinity of the area of Ankleshwar Taluka. The plaintiff's land also covered in the vicinity of the area of the Ankleshwar Taluka, so the submission of the plaintiff's that the, tower installed by the defendant's against that is not acceptable. Because as per the Judgment of the Hon'ble Gujarat High Court in the Case of **Himmatbhai Vallabhbhai Patel Versus Cheif Engineer (project)Gujarat Energy Transmission and Ors. In L.P.A.No.882 of 2011, reported in 2011(2) GLH Page No.781**, held that, the area and survey number of forming part of the route are not necessarily to be mentioned with all details in the notice. Here in this, case in public notice/Notification the word used as, In Gujarat State, this transmission line pass through ....

Ankleshwar, Jhagadia in surat and Bharuch District.

It is further held that, as per Sec.164 of Indian Electricity Act, 2003 read with Sec.10 of Indian Telegraph act, 1885 recognized the absolutely power to proceed with electric poles for the transmission over head line on or over the private lands subject to the right of the owner /occupier to claim compensation if any damaged is sustained by him by reason of placing of such electric supply lines. In other word, neither the acquisition of the lands is necessary nor there is need for consent of the owner or occupier. It is further held by the Hon'ble Gujarat High Court, that electricity board exercises power under Sec.164 of Indian Electricity Act, 2003 read with Sec.10 of Indian Telegraph act, 1885, they are not acquiring any land, they are only making use of the land for the purpose of laying electric lines, for which, full compensation is given for the damage caused. It is clear therefrom that no notice is required to the owner before laying the poles or constructing any tower, nor any consent is required from them. So, the line installed in the plaintiff's land, the plaintiff's are entitled for the compensation as per the law.

It is further contention of the plaintiff's that, the consent of the land owner is require

to be taken by the licensee for the carrying out the said work as per Sub-Rule- (4), Rule-3 of The Work of Licensee Rule-2006. This submission is not acceptable because in the same rule there is an exception, that where it is clearly mentioned that, nothing contained in this rule shall effect the power conferred upon any licensee under Sec.164 of the Act,. Going through the document produced by the vide list at Ex.12/4,29/8 i.e. The Gazette of India, Ministry of Power on 17<sup>th</sup> June, 2009 has clearly stated that, the defendant has been conferred powers under Telegraph Act,1885 by Sec.164 of the Electricity Act,2003. So, the defendant's has absolute power to proceed with for lying electric posts for the transmission of electricity on or over the lands belonged to the plaintiffs subject to the right of the plaintiff's to claim compensation if any damaged sustained by them.

It is transpires form the record, that the defendant's officer/agent/workers went to the field of the plaintiff's for installation of electric poles but plaintiff did not allow them to work so, the present defendant has made an application before the District Magistrate at Bharuch under Sec.16 of The Indian Telegraph Act,

and the said application was allowed by the District Magistrate. And after, obtaining order, the defendant has carried out the said work and completed the construction of Transmission line and electricity is flowing to the said line. The said documents is produced by the defendants vide at Ex.40/1.

The Ld. Advocate for the plaintiff's has relied on a Judgment reported in **AIR 2011 Patna Page No.83, Power Grid Corp. of India Ltd. Versus Ram Naresh Singh & Ors.** In this Judgment, the Hon'ble High Court has held that, laying of the transmission towers on private land, prior consent of the owner is necessary. This judgment is not applicable to this case in my view because the defendant has obtained the prior approval under Sec.68 of the Electricity act, 2003 and conferred all the power of the Telegraph Authority under Sec.164 of the Electricity Act, 2003 for carrying out the laying down the said work. And as against, in the case of **Himmatbhai Vallabhbhai Patel Versus Cheif Engineer (project)Gujarat Energy Transmission and Ors.** In **L.P.A.No.882 of 2011, reported in 2011(2) GLH Page No.781**, The division bench of Hon'ble Gujarat High Court has stated that, as per Sec.164 of Indian Electricity Act, 2003 read with Sec.10 of

Indian Telegraph act, 1985 recognized the absolutely power to proceed with electric poles for the transmission over head line on or over the private lands subject to the right of the owner /occupier to claim compensation if any damaged is sustained by him by reason of placing of such electric supply lines. In other word, neither the acquisition of the lands is necessary nor there is need for consent of the owner or occupier.

The Id. Advocate for the defendant's has cited following various judgment.

**1. 2012(1)CTC Page No.504.**

**2. 37 GLR Page No.448.**

It is held by the Hon'ble Court, that all subordinate Courts and inferior tribunals within the territory of this state and subject to the supervisory jurisdiction of this court are bound by it and must scrupulously follow the said decision in letter and spirit.

**3. 2000(1)G.L.H. Page No.605.**

It is held by the Hon'ble Court, that mandatory injunction is granted in very rare case. May be granted to restore "status-quo" existing on the date of institution of suit- not to be granted to establish a new state of things, different from state which existed on the date when the

suit was instituted.

**4. 2002(2) G.L.H. Page No.282.**

It is held by the Hon'ble Court, that final relief cannot be granted at interim stage- Prima facie case cannot be the only consideration at the cost of balance of convenience and the public interest.

**5. 1996(2) G.L.H. Page No.253.**

It is held by the Hon'ble Court, that Injunction- Courts- Should be slow in granting injunction against public project which are meant for the interest of the public at large as against the private proprietary interest or of few individuals.

The ratio laid down by the Hon'ble High Courts, is acceptable to this court with all respect and applicable to this case in my hand. The another judgment cited by the defendant's i.e. Power Transmission Corporation Ltd. V/s. Asian of Busines Management, on this judgment the plaintiff side also relied and saying that, the defendant's has no power to changed the line against the notification. But, here in this case the word Ankleshwar and Bharuch district is mentioned in the notification/ public notice. In the said

judgment as per the defendant's even the scheme has changed by the co., then the land owner is only entitled for the compensation only.

It is the submission of the plaintiff's, that the act of the defendant's is illegal, illogical, arbitrary and against the law. The said submission of the plaintiff can not be decided at this stage without going into the merits of the case in detailed and without leading evidence, when the plaintiff sought mandatory injunction in the plaint to remove the said transmission poles installed in his field.

At the outset the injunction prayed by the plaintiff for restraining the defendant's to the carried out the said work in his land is also not be pleased at this stage as the laying of the transmission tower and line is already installed by the defendants, so the relief claimed by the plaintiff is in-fractious.

As discussed above, plaintiff's is failed to proved his case, plaintiff's has no prima faice case and balance of convenience is also not in favour of the plaintiff. If the injunction is not granted in favour of the plaintiff, he will not suffer irreparable loss because he has right for compensation. But, if

the injunction prayed by the plaintiff is granted, the defendant will suffer an immense loss and hardship because line has already installed and since the project is of national importance the general public will suffer. Thus, in my view, the temporary injunction as asked by plaintiff's cannot be granted against the defendant, hence I decide issue No.1 to 3 in negative accordingly. In the result, I pass following final order in the interest of justice.

**-:ORDER:-**

1. The present application Exh.5 is rejected.
2. No order as to costs.

Signed and pronounced in the open Court on this  
15<sup>th</sup> day of May, 2014.

**Date : 15-05-2014**

**Place : ANKLESVAR**

**(S.S.PATEL)  
3RD ADDITIONAL CIVIL JUDGE AND  
JMFC, ANKLESHWAR**