



Sachin Janardhan Daivadnya and Ors.

V/s.

Sahayak Abhiyanta Maharashtra Rajya Vidyut Vitaran Co.

Maryadit Limited Shakha Kabnur and Ors.

Order passed below Exh.No.21

Fundamentally, by instituting the present Suit, it is the Plff./s who seek relief of Mandatory and Perpetual Injunction.

(2) By filing present Appln.U/Order VII R.11 of the CPC, prayer is made for rejection of Plaint. It is mentioned that – इलेक्ट्रीसिटी अॅक्ट चे कलम १४५ मधील तरतुदीनुसार स्टेट इलेक्ट्रीसिटी कमिशनकडे दाद मागणे जरूरी.....अशा प्रकारचा दावा चालविण्याचा अधिकार दिवाणी न्यायालयास नाही.दिवाणी प्रक्रिया संहिता कलम ८०(२) ची बाधा.

(3) The *sombre* scenario unfurled by this proceeding begins with grievance of Plaintiffs' that :-

In fact, vide registered sale deed, the Plff/s. purchased CTS. No.25125. Its NA property, with which Deft.No.3 has no concern at all. C.T.S.No.25115 belongs to Deft.No.3. By misrepresenting the Electricity Board, Deft. No.3 succeeded to erect electricity pole in C.T.S.No.25125, instead of C.T.S.No.25115.

(4) Deft.No/s.1 and 2 filed their Written-Statement (Exh.No.22).

(5) Heard both the sides at length. Perused.

(6) If a Civil Judge is to write detailed orders at different stages merely because the counsel would address argumts. at all stages, the snail-paced progress of proceedings in trial Courts would further be slowed down. Thus, it is quite unnecessary to write detailed orders.

No one can dispute the legal proposition that the Courts shall look into the Plaintiff and not W.S., to consider the Application for rejection of plaintiff. If we summarized the argument as advanced by the learned Advocate for Defendant No.3, main thrust is that, the jurisdiction of the Civil Court is impliedly barred in respect of matters, remedy lies elsewhere. He concluded by saying that the Plaintiff/s though having efficacious remedy, without approaching to State Electricity Commission, knocking the doors of the Civil Court, that too without issuing mandatory Notice U/Sec.80(2) of the C.P.C. Thus, at this initial stage, this is a fit case to shoot down the litigation. Audience is also given to Mr.Patil, Advocate representing Defendant No/s.1 and 2.

(7) While deciding the present Application, I refrain from considering the truthfulness of narration of facts in Plaintiff/WS because those cannot be judged at the stage of rejection of Plaintiff. In this case the Plaintiff/s. are not disputing the ownership of Defendant No.3 and *vice versa*. This Court is aware that there are restrictions on the power of the Civil Court to try and entertain such types of litigation because Sec.164 of the Electricity Act provides that Electricity Board can lay electric supply lines or electricity over private lands without acquiring those lands and without even obtaining consent of owners of those land and owners of lands may seek compensation for any damage caused to their lands in so erecting those lines under law available. (K.Subba Raju V/s. Executive Engineer, TLC Division, Vishakhapattanam, 2010 (4) ALT 758). I go further and state that, even, the Court *prima-facie* convinced with the submission as advanced by Ld.Adv. for the Defendant No.3 that remedy lies elsewhere; but, we need to take into consideration what is fact in issue. Issue is not in respect of an objection to erect the pole. Its an objection of misrepresentation of property to erect the electricity pole.

(8) Undisputedly, the jurisdiction of the Civil Court is expressly barred under the provisions of Sec.145 of the Electricity Act, 2003. In authoritative

pronouncement – the Addl.Executive Engineer and Ors. V/s. Kishor Mohanlal Paliwal and Ors. CRA No.122/2022, Hon'ble Bombay High Court, Nagpur Bench also observed that, the jurisdiction of the Civil Court is expressly barred to that extent. However, in that case, the Plaintiffs were challenging the action of erecting and installing of electric tower for supplying the electricity from the generation plant to specified destination. Thus, in that case, relief of temporary injunction was sought against the Deft/s with the prayer that the Deft/s may be restrained from creating and third party interest in the suit property. Observation was that, the work undertaken by the Authority of the Company falls within the purview of Section 40 of the Electricity Act.

(9) Perusal of record. WS Exh.No.22 – page No.3 states उभा केलेला पोला हा प्रतिवादी नं.३ चेच २५११५ या मिळकतीमध्येच उभा केला असल्याचे स्पष्टपणे दिसून येते...वादींनी या प्रतिवादींनी सि.स.नं.२५११५ मध्ये उभा केलेला पोला हा आपल्या सि. स.नं.२५१२५ या मिळकतीमध्ये उभा केलेला आहे असे दर्शविणारा कोणताही कागद या कामी हजर केले नाही. (I repeats, to consider the Appln for rejection of plaint, the Courts shall look into the Plaint and not W.S. But, to know where the shoe pinches, I quotes above mentioned one sentence.)

(10) I have minutely perused the letters Dtd.03.12.2020, 15/03/2023] 16/01/2023] Letter Dtd.13/03/2023 issued by Asstt.Engr., (MSEDC, Kabnur) help the Court to know the factual matrix, wherein it has been mentioned that सदर नकाशानुसार इलेक्ट्रीक पोल हे गट नं.२५११५ उभे असल्याचे दिसते. It appears that the Electricity Board basically relied upon the measure ment carried out at the behest of Deft.No.3. However, the Plff/s are firm and stating on solemn affirmation that, electricity pole is standing in CTS No.15125 and not in CTS No.15115.

(11) At this stage, when both the Plff/s and Deft.No.3 are stating different locations of the electricity pole, thus, to resolve the controversy, it would be better, firstly to know, where actually it stands. Because, we need to take

into consideration the main grievance. It is not case of the Plaintiff/s that he is objecting to supply the electricity supply to Deft.No.3, even it is not his case that, the Electricity Board has no right to lay electric supply lines or electricity over his private land. He is not disputing the point of either acquisition of compensation. He came with a very specific case that, Deft. No.3 misrepresented Deft/s 1 and 2 and succeeded to erect electricity pole in CTS No.15125 (property owned by the Plff/s) however, prepared documents to show that, it is standing in CTS No.15115.

(12) Thus, according to me, unless it is brought before the Court the exact location of electricity pole, effective adjudication cannot be made. Suppose, measurement is carried out, spot inspection is done and then it is brought on record that, electricity pole is standing in CTS No.15115, automatically, the Plff/s will be out of Court. Along with the provisions of Electricity Act, we need to take into consideration the civil rights; no one can be permitted to evade it, under the guise of embargo to try and entertain the Civil Suit.

(13) Thus, without adverting to the merit of the case, if before shooting down present litigation by taking resort of Sec.145 of The Electricity Act, we prefer to identify the location where the electricity pole is standing, according to me, no prejudice would be caused to anybody.

(14) If it is proved that said pole is standing in the property of the plaintiffs, fate of the suit will be different because fundamentally then it would not touch the matter of which assessing officer referred to in Sec. 126 or the Appellate Authority referred to in Sec.127 or the Adjudicating Officer appointed under the said Act is empowered to determine and no injunction shall be granted by any Court in respect of any action taken in pursuance of any power conferred by or under the said Act.

(15) For the sake of argumt., if relying upon letter Dtd.13/03/2023, it is held that electricity pole is not either erected or as on today standing in C.T.S.No.25125 then nothing remains to be adjudicated. But, when the

Plff/s are knocking the doors of the Civil Court, his grievance needs to be redressed. Because, it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. We cannot forget that, every trial is voyage of discovery in which truth is the quest. Regard must be had that, the Plff/s are not disputing the ownership of Deft.No.3, but, disputing the location of electricity pole. As the parties are worrying mentioning different locations of the electricity pole, to resolve the controversy, according to me, haste is not warranted. Thus, instead of shoot ing down the plaint, (keeping open all legal points), at this stage, prime requirement is to have factual matrix on record. Thus, if Appln filed U/O. XXVI, R.9 of the C.P.C. is allowed, heavens would not fall. At the most, some time would be consumed; however, the facts which comes before the Court, will definitely and concretely help the Court to arrive at right conclusion. Hence the order:-

ORDER

1. Application filed U/O.VII, Rule 11 of the C.P.C. is rejected, at this stage. However, liberty to revive the same.
2. Separate order is being passed on an Appln filed U/O.XXVI, Rule 9 of the C.P.C.
- 3 Nothing shall be construed as a discussion on merit or de-merit of the case.

(Ganesh Ambadas Ghule)
3rd Joint Civil Judge, Jr.Divn.,
Ichalkaranji, Tal.Hatkanangale,
Dist. Kolhapur.
JO Code : 2594.

Date : 09 August, 2023.

I affirm that the contents of this P.D.F. file Judgment/ Orders are same, word to word, as per the original Judgment / Order.

Name of stenographer	Shri. Sanket Sanjay Bhopale
Name of Court	Shri. G. A. Ghule 3 rd Jt. Civil Judge Jr. Div., & Judicial Magistrate First Class , Ichalkaranji.
Date of Dictation	09/08/2023.
Order signed by P.O. on	23/08/2023.
Order uploaded on	23/08/2023.