

MHTH170017412024



(Order on application for temporary injunction)

**ORDER BELOW EXH.5**

This is an application under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908. The suit is for perpetual injunction.

**02. Description of suit property :**

Property No.	Ad-measuring area	Village
Survey No. 139/1	10.14	Betegaon , Tal-Boisar , Dist- Palghar.

Aforementioned property is here in after referred as 'suit property'.

**03. Plaintiff's case in short :**

The suit property is verkas land, the plaintiff is owner of the property prior to 1954 and he is owner and occupier of the suit property. The plaintiff on 15<sup>th</sup> March 2024, received notice issued by Maharashtra State Electricity Transmission Company Ltd.; the defendant. The said was claimed to be issued under section 164 of Electricity Act 2003 and section 13 of Indian Telegraph Act 1885. The subject of notice was to increase the height of the high tension cable wires. The high tension cable wires becoming obstruction in the construction of railway lines and railway stations therefore required to be relocated. Moreover the plaintiff is called upon to cooperate and support the representative of the defendants to carry their work. The notice is not clear about the establishment of new electricity poll upon the plaintiffs land. He further submits that the notice is flawed in law and it lacks specification as the nature and extent of work. The

said notice violates the principle of natural justice. And is without following the due process of law. The defendant trying to construct a structure upon the suit property. He also take police protection for execution of his work. The photographs of the suit property and the structure erected by the defendants is filed on record. The bread butter of the plaintiff is depend upon the suit property. Moreover the part of said property is already acquired for the bullet train project. The plaintiff is senior citizen and the defendants plan to erect large electric pole will impact the plaintiffs source of income. Therefore prayed for restrain the defendants from obstructing and disturbing the use and occupation of the plaintiff in said suit land.

04. Say of Defendants:

The defendant has filed say at Exh. 12 and oppose the application. It is submitted that application is bad by law, null and void, false and frivolous and mischievous. He denied the content of the application. The suit is hit by )7 Rule 3 of the CPC; as the plaintiff has not described the details of the suit property. The notice given to the plaintiff clearly mentioned the project designed by the central Government and the Ministry of Railways in order to speed up the railways transport in country. The defendant has followed the due process of the law. The equally efficacious remedy is available to the plaintiff therefore there is bar under section 41(h) of Specific relief Act. Therefore the plaintiff is not entitle for the consequential relief. Hence, prayed for reject the application.

05. Heard arguments advanced by Ld. Advocates for both sides at length. Perused the written arguments filed on record. Perused documents filed by the plaintiff along with list at **Exh.3** .

06. On hearing both the sides, following points arise for my determination and I have recorded my findings thereupon as follows:-

Sr.No.	Points for determination	Findings
1	Whether plaintiffs are having prima-facie case ?	No
2	Whether balance of convenience tilts in favour of plaintiffs ?	Does not survive
3	Whether plaintiffs will suffer irreparable loss if injunction is not granted ?	Does not survive
4	Whether plaintiffs are entitled for the relief of temporary injunction as prayed ?	No
5	What Order ?	Application is rejected.

### REASONS

07. It is settled principle of law that while deciding application for temporary injunction, mini trial should not be conducted. Three cardinal principles to be assessed while deciding this application are prima-facie case, balance of convenience and irreparable loss.

**As to point no.1 :-**

#### **Prima-facie**

08. To claim injunction, the plaintiff has to show prima-facie case in his favour. The term prima-facie case means a case which involves a fair and substantial question to be tried. A prima-facie case does not mean a case proved in its entirety but a case which can be said to have established if the evidence which is led in support of the same were believed. A triable issue is the crux of the expression prima-facie case.

09. At this juncture, primarily it is to be seen in whose favour prima-facie case lies. The plaintiff has filed on record 7/12 extracts of suit property. The notice received from the defendants. The copy of complaint, copy of statement of the plaintiff at Boisar police station and the photographs of the suit property.

10. To appreciate the submission of learned advocate for plaintiffs and to the decision of present application certain provisions in law needs to be referred and quoted for ready reference.

(i) Part -VIII of the Electricity Act deals with 'Works'. Section 67 of it provides for 'Works of licensees'. The relevant portion is quoted as under;

**67. Provision as to opening up of streets, railways, etc.**

(1) *a licensee may, from time to time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works such as;*

××××××××

(d) *to lay down and place electric lines, electrical plant and other works;*

(2) *The Appropriate Government may, by rules made by it in this behalf, specify;*

(a) *the cases and circumstances in which the consent in writing of the appropriate Government, local authority, owner or occupier, as the case may be, shall be required for carrying out works;*

(b) *the authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works;*

(c) *the nature and period of notice to be given by the licensee before carrying out works;*

(d) *the procedure and manner of consideration of objections and suggestions received in accordance with the notice referred to in clause (c);*

(e) *the determination and payment of compensation or rent to the persons affected by works under this section;*

(3) *a licensee shall, in exercise of any of the powers conferred by*

*or under this section and the rules made thereunder, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.*

(4) *Where any difference or dispute including amount or compensation under sub-section (3) arises under this section, the matter shall be determined by the Appropriate Commission.*

(5) *The Appropriate Commission, while determining any difference or dispute arising under this section in addition to any compensation under sub-section (3), may impose a penalty not exceeding the amount of compensation payable under that sub- section.*

(ii) Section 145 provides for 'Bar of jurisdiction' which runs as under;

**145. Civil Court not to have jurisdiction.**

*No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.*

(iii) Section 164 provides for exercising power of Telegraph Authority which runs as under;

**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.*

14. Part III of Indian Telegraph Act, 1885 relates to 'Power To Place Telegraph Lines And Posts'. Section 10 of it provides for power of telegraph authority which runs as under;

**(i) 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.*

(ii) Section 16 of Telegraph Act makes provision for compensation which runs as under;

**16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.**

(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.*

15. In exercise of the powers conferred by clause (e) of sub-section (2) of section 176 read with sub-section (2) of section 67 of the Electricity Act, the Central Government hereby makes the following rules regarding the works of licensees, namely 'The Works Of Licensees Rules, 2006'. The relevant provision i.e. rule 3 provides for procedure of licensees to carry out work, which runs as under,

### **3. Licensee to carry out works.**

*(1) A licensee may-*

*(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;*

*(b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of any overhead line on any building or land or having been so fixed, may alter such support:*

*Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government in this behalf, for carrying out the works:*

*Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorised may by order in writing direct for any such works, support, stay or strut to be removed or altered.*

*(2) When making an order under sub-rule (1), the District Magistrate or the Commissioner of Police or the officer so authorised, as the case may be, shall fix, after considering the representations of the concerned persons, if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.*

*(3) Every order made by a District Magistrate or a Commissioner of Police or an authorised officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.*

*(4) Nothing contained in this rule shall effect the powers conferred upon any licensee under section 164 of the Act.*

#### **REFERENCE OF CASE-LAWS**

11. Though neither parties have referred any citations, certain settled principles laid down by the various decisions of Hon'ble High Courts and Supreme Court are required to be referred.

(i) In ***Power Grid Corporation of India Vs. Rajbir Singh***, Civil Revision No. 5152 of 2008, decided on 30.01.2009 and reported in 2009

(5) RCR (civil) 742, the Hon'ble Punjab and Haryana High Court held that;

*“there is absolute right with the petitioner to instal tower in exercise of powers under the Electricity Act read with Telegraph Act. Respondents*

*No. 1 and 2 or any other land owner has right to receive compensation”.*

It is further held that injunction cannot be granted by court in respect of any action taken or to be taken in pursuance of any power inferred by or under the Electricity Act.

(ii) In ***Power Grid Corporation of India Limited Vs. Century Textiles & Industries Limited, AIR 2017 SC 1141***, Hon’ble Supreme Court has held that

*“.....As per the provisions of the Indian Telegraph Act, 1885, unobstructed access to lay down telegraph and/or electricity transmission lines is an imperative in the larger public interest. Electrification of villages all over the country and availability of telegraph lines are the most essential requirements for growth and development of any country, economy and the well- being/progress of the citizens. The legislature has not permitted any kind of impediment/ obstruction in achieving this objective and through the scheme of the Indian Telegraph Act, 1885 empowering the licensee to lay telegraph lines, applied the same, as it is, for laying down the electricity transmission lines”.*

(iii) In ***Vivek Brajendra Singh Vs. State of Govt. of Maharashtra, 2012 (4) Mh.L.J. 625***, Hon’ble Bombay High Court, Bench at Nagpur held that;

*“.....The present case does not involve the acquisition of land but only the user by the State for a limited purpose, for which there is provision for payment of compensation. Moreover, it seems unreasonable to confer on the owners or occupiers of land a choice about what should be the route of the electric line and where it should be placed, since such a decision must yield to the dictates of technical knowledge, expertise and viability. There is no doubt that if all owners and occupiers of land over hundreds of kilometers are allowed to have a say and object to the routes and if the validity of the orders passed under objection is allowed to be contested, the route may not get finalised for years. ”.*

(iv) In **G. V. S. Rama Krishna Vs. Managing Director, A. P. Transco**, AIR 2009 A.P. 158, the Hon'ble Andhra Pradesh High Court held that;

*In view of section 164 of Electricity Act, 2003 and section 10 of Telegraph Act, 1885 the power of erection of poles and laying of transmission lines on private land is absolute. Neither acquisition of land is necessary nor consent of the owners of the land is required to be taken. However, owner would have right to claim compensation if damage is sustained by him because of such erection.*

12. Perusal of aforesaid quoted provisions of law and citations supra will make it clear that the consent of owner is not all required for the purpose of erection of poles and laying down electric lines. Section 10 of the Indian Telegraph Act, 1885 empowers the telegraph authorities to place and maintain the telegraph lines under, over, along or across and posts in or upon any immovable property. However, the said power shall not be exercised in respect of any property vested in or under the control or management of any local authority without the permission of that authority. The proviso (d) to Section 10 of Indian Telegraph Act, 1885 further made it clear that while exercising powers conferred under Section 10, the Telegraph authority shall do as little damage as possible and when it has exercised those powers in respect of any property other than the property under the control or management of the local authority shall pay full compensation to all the persons interested for any damage sustained by them by reason of exercise of the said powers. Undisputedly, the defendant is empowered under the relevant provisions of the law to erect poles and lay electric line in the land of even the private persons. The only remedy which that private person has in whose land the electric poles have been erected and electric wire has been installed is to get compensation from the said authority. Though the learned advocate for plaintiffs has given much stress upon the rule 3 of Works Of Licensees Rules, 2006, the rule is subject to exception and sub rule (4) provides that nothing contained in this rule shall effect the powers conferred upon any licensee under

section 164 of the Act. Thus the power under section 164 of Electricity Act will prevail over the rule 3 of Works of Licensees Rules.

13. One more aspect which neither defendant pleaded nor the learned advocate for plaintiffs has argued which is in respect of jurisdiction of the Court. Section 145 of Electricity Act, 2003 provides bar of jurisdiction of Civil Court. Perusal of section 145 makes it clear that “.....no injunction *shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act*”. Perusal of the wordings in section 145 of the said Act will *prima facie* makes it clear that it is not limited to only section 126 or 127 of the Act but also extends to “any action taken or to be taken” in pursuance of “any power conferred by or under this Act”. There is also specific bar under section 145 of Electricity Act restraining the Civil Court from granting injunction. Perusal of record, provisions of law especially section 164 of the Electricity Act, 2003 read with Section 10 of the Indian Telegraph Act, 1885 recognized the absolute power in respect of placing of electric supply lines or electric polls for the transmission of electricity on or over the private lands subject to the right of the owner/occupier to claim compensation if any damage is sustained by him by reason of placing of such electric supply lines. In other words, neither the acquisition of the lands is necessary nor there is any need for consent of the owner or occupier.

14. Moreover, considering the section 41(ha) of the The Specific relief Act , which stated as , if it would impede or delay the progress or completion of any infrastructure project or interfere with continued provision of relevant facility thereto or services being the subject matter of the project. Hence considering above discussion, I find no *prima facie* case is in favour of plaintiff to grant injunction. Accordingly, I answer point no.1 in negative.

**As to point no.2 and 3 :-****Balance of convenience & irreparable loss**

15. Having answered that there is no *prima facie* case in favour of the plaintiff and in answer to point No.2 and 3 a judgment of Hon'ble Bombay High Court in *Bhavna Vs. Navneet reported in 2015(3)MH LJ 472* assumes importance. In para 8 therein, his Lordships has observed that once the *prima facie* is not established, the further aspects as to balance convenience and irreparable loss are immaterial and they need not be considered. In this view of the matter, point No. 2 and 3 does not survive and are answered accordingly.

**As to point no.4 :-**

16. Relief of temporary injunction is an equitable relief and the party claiming relief are bound by principles of equity. The balance of convenience is also not in favour of the plaintiff and in case the interim injunction is confirmed in their favour, the land holders under the scheme will be prevented from taking benefits of said scheme and that will ultimately result in their irreparable loss and the same would certainly be against the larger public interest. Plaintiffs would also not suffer any kind of irreparable loss as they may claim compensation from the competent authority. Therefore, in absence of *prima-facie* case in plaintiff's favour, disentitles the plaintiff from the equitable relief of temporary injunction. Therefore, I answer point no.4 in negative.

**As to point no.5 :-**

17. In answer to point no.5, I pass following order,

**ORDER**

01. The application **Exh.5** is rejected.
02. No order as to costs.

Date – 30.08.2024.

( **S.R.Bandal** )  
Jt.Civil Judge Jr. Division,  
Palghar.