



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9847 OF 2022

Satish Hastimal Gandhi & Ors.

... Petitioners

Vs.

Maharashtra State Electricity Distribution
Co. Ltd. & Ors.

... Respondents

Mr. S.C. Wakankar a/w. Ms. Aishwarya Bapat for the petitioners.

Mr. Hassan Khan for respondent nos. 1 and 2.

Ms. P.J. Gavhane, AGP for respondent no. 3-State.

Ms. Niyati Shah a/d. Mr. Abhishek Chitnis and Mr. Dhavan Shah for
respondent nos. 4 to 11.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.
DATED: 12 FEBRUARY 2025

P.C.

1. *Prima facie* we are of the opinion that transformer installation has been granted only for the benefit of respondent nos. 4 to 11 and that too on a common area/road of the Society, cannot stand the test of law. No transformer permission could have been granted if it is a nuisance and not consented by other members of the Society when it is a plot holders society is the contention as urged on behalf of the petitioner, to assert a continuing breach of the petitioners' right guaranteed under Article 300A of the Constitution. Also, in our prima facie opinion there cannot be any privilege enjoyed to the prejudice of the other plot holders of the Society.

2. In the facts and circumstances to put a quietus to the issue, we direct respondent nos. 1 and 2 to explore the possibility of a high tension cable whether could be provided to the structure of respondent nos. 4 to 11. This would resolve the issues. Let the instructions in that regard be taken. An affidavit justifying the legality of such installation be placed on record.

3. In the event we find that the permission which was granted was not lawful, there would be no alternative but to order removal of the transformer and provide for a normal supply to be granted by MSEB as granted to the other members of the Society.

4. We also permit the petitioners to amend the petition to implead the Society as party-respondent. Let amendment be carried out by tomorrow. Permission to the advocate for the petitioners to serve the added respondent by private service by all permissible modes and place on record an affidavit of service before the returnable date.

5. List the proceedings on **27 February, 2025 (H.O.B.)**.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)