

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9847 OF 2022

Satish Hastimal Gandhi & Ors ...Petitioners
Versus
Maharashtra State Electricity Distribution Co Ltd ...Respondents
& Ors

Mr SC Wakankar, with Aishwarya Bapat, for the Petitioners.
Mr Hassan Khan, for Respondents Nos. 1 and 2.
Mr Tejas Kapre, AGP, for Respondent No. 3-State.
Ms Niyati Shah, for Respondents Nos. 4 and 11.
Mr VR Kasle, with Tushar Momaiyah, for Respondent No. 12.

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CORAM **G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.**

DATED: **27 FEBRUARY 2025**

PC:-

1. Heard learned counsel for the parties on the backdrop of the earlier order.
2. In our earlier order daed 12 February 2025, we had clearly observed that *prima faice* the transformer which has been installed, and as objected by the petitioners, was only for the benefit of respondents nos. 4 to 11 and which is located on a common area and on road of the society. We also observed that although transformer

permission could have been granted a nuisance could not have been caused to the petitioner who is a member of the society and/or unless consented by other members of the society which is a plot holder society. We had accordingly directed respondents nos. 1 and 2 to explore the possibility of a high-tension cable, if could be provided to respondents nos. 4 to 11 which could have resolved the issue. However, today we have not been informed of any such solution. We had also clearly observed, that in the event we find that the permission which is granted was not lawful, there shall no alternative but to direct removal of the transformer and to provide a normal supply to be granted by the Maharashtra State Electricity Distribution Company Limited (“MSEDCL”) as granted to the other members of the society. Accordingly, permitting the society to be impleade as a party, we had adjourned the proceedings.

3. In the light of the aforesaid observations as made by us, today the society is before the Court. We have also perused the reply affidavit filed on behalf of respondents nos 1 and 2 in which a submission not feasible is set out in paragraph 9 in regard to the high-tension line. However, it is stated in paragraph 4 that the society had issued a No Objection Certificate (“NOC”) dated 17 May 2025 and had granted permission to MSEDCL for the installation of the transformer. A copy of the said NOC is annexed to the said affidavit. The contents of the NOC in no manner whatsoever show that, it is a NOC granted by the society for installation of a transformer on the site as objected by the petitioner

which is a site within the premises of society and causing a nuisance to the petitioner. On a query being made by the learned counsel for the MSEDCL whether such NOC could at all be construed and considered to be a specific NOC, for the site in question, it is his contention that under the prevalent policy, it was orally informed to the MSEDCL to install the transformer at the said location.

4. It thus appears that a lawful procedure was not adopted by the MSEDCL or even the society in making allotment of the site for installation of such transformer. In fact there was no permission/NOC of the society for installation of a fresh transformer and too only for the benefit of respondents nos. 4 to 11, itself is surprising.

5. Be that as it may, we are of the clear opinion that the NOC as issued by the society could not have been acted upon by the MSEDCL in the manner it was issued. It is not legally sustainable. As accepted not only by respondents nos. 1 and 2 but also on behalf of respondents no. 4 to 11 that this is the very NOC which was obtained and acted upon.

6. It is thus clear that the MSEDCL could not have acted to install the transformer only for the benefit of respondents nos. 4 to 11, to set up the transformer at the site in question. By no stretch of imagination, such an NOC which is commonly relied upon by respondents nos. 4 to 11 as also MSEDCL could have been utilised

to undertake installation of the transformer in question. Such NOC ought to have been issued only in accordance with law after having taken consent of all the members of the society, as the area is a common area, considering the interest of the members on such common area.

7. In our opinion, the petitioner was correct in its contention that the joint actions of respondents nos. 1 and 2 and respondents nos. 4 to 11 as also the classic approval of the society, in this regard has caused serious prejudice to the petitioner and the petitioner is entitled to compensation. However, at this stage, we do not intend to dwell on the issue as we accept the fair stand taken by respondents nos. 1 and 2 and respondents nos. 4 to 11 as noted by us hereinabove.

8. Learned counsel for respondents nos. 1 and 2 having appreciated these facts would submit that respondent no. 1 can continue the supply of electricity to respondents nos. 4 to 11 from the existing transformer and by removing the objectionable transformer. He, however, states that about 45 to 60 days time is required for the objectionable transformer to be removed from the existing site. Learned counsel for respondents nos. 4 to 11 is also not averse for such course of action. Her only anxiety is that the power supply to respondents nos. 4 to 11 needs to be continued from the other transformer, which shall not be disturbed.

9. In our opinion, it would be appropriate that respondents nos. 1 and 2 accordingly take further steps to remove the transformer in question. The work in this regard be completed within a period of two months from today. The compliance in this regard to be reported to the Court on the adjourned date of hearing. However, prior to removal of the transformer, respondents nos. 4 to 11 be granted electricity connection supply from the existing transformer which shall not in any manner be disturbed.

10. We, accordingly, list the proceedings on 25 April 2025, when the report of the steps taken in this regard by respondents nos. 1 and 2, be placed on record.

11. Parties to act on an authenticated copy of this order.

(ADVAIT M. SETHNA, J)

(G. S. KULKARNI, J)