

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6187 OF 2022
(Arising out of SLP (C) No. 18280 of 2021)

THE EXECUTIVE ENGINEER
MAHARASHTRA STATE ELECTRICITY TRANSMISSION
COMPANY LIMITED

Appellant (s)

VERSUS

DR. HIRALAL GANPATRAO NIMBALKAR & ORS.

Respondent(s)

WITH

SLP (C)D. No. 10583 of 2022

O R D E R

CIVIL APPEAL NO. 6187 OF 2022
(Arising out of SLP (C) No. 18280 of 2021)

Leave granted.

By the impugned judgment, the High Court has disposed of the Writ Petition No. 11042/2018 filed by the first respondent as follows:

"15. We direct respondent Nos. 2 and to 3 to initiate the acquisition proceedings on the south side of tower No. 2 beyond the margin land utilized for the protecting fencing, under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, within six months from today. The proposal for such acquisition shall be tendered on or before 15.10.2021 to the competent authority.

16. The hardships, agony and litigation have been

caused to the petitioner/ his brother owing to the high handedness of respondent Nos. 2 and 3 since 2012 till 2021. As such, an amount of Rs.5 lacs as costs, shall be deposited by respondent Nos. 2 and 3, on or before 15.10.2021 in this Court. The said amount of Rs.5 lacs shall be received by the brother of the petitioner, namely, Mr. Ajit Ganpatrao Nimbalkar.”

The appellant before us is respondent No. 2 before the High Court.

The case of the appellant in brief is as follows:

The appellant is a State Electricity Transmission Company authorized to use the immovable property of private individual for establishment of transmission lines. The towers required very little piece of land which is either rented or one time compensation is paid.

On 03.07.2009, the Government of Maharashtra resolved to approve 132 kV Nilanga-Umarga Transmission Line Scheme. The further case of the appellant is that after issuing notice to the affected farmers, they completed construction of Tower No. 2 in 2010. The case is that the Nilanga-Talikhed road was not in existence.

Respondent No. 1 filed an application in the year 2012 before the Collector. The Collector passed an order dated 26.09.2016. By the said order, the appellant was asked to remove the tower. The appellant challenged the said order of the Collector before the Maharashtra Electricity

Regulatory Commission. The Commission passed an order dated 01.03.2017 wherein it is *inter alia* found as follows:

"11. The material placed on record and arguments before the Commission show that, although the Transmission works of the 132 kV Nilanga-Umarga Transmission Line were completed in 2012, the entire process, including planning, survey, statutory approvals, etc. was initiated long before, in 2008. Tower No. 2 was completed in 2010, and the Line is in service and supplying power to the adjoining areas.

13. The disputed Tower No. 2 of the Transmission Line was commissioned nearly five years ago, in 2012. At this stage, the matter of shifting of the Tower to another site cannot be looked at in physical isolation as the actual locations of the Towers and the Line on either side of Tower No. 2 have been frozen long back. Various technical issues and potential threats to the Transmission System would be involved in shifting Tower No. 2 of the Line, which is in service and pumping power into the system. Any change in the Tower location would have a cascading effect on the entire alignment of the Line. It is for this reason that Transmission Lines are not shifted, unlike lower voltage Lines. Hence, the shifting of Tower No. 2 is not a feasible option, and the District Collector, Latur's Order is set aside to that extent. The Commission notes that the Respondents had also not sought shifting of the Tower in their application to the Collector.

Therefore, the Commission set aside the order of the Collector as noticed above and thereafter, we notice:

"14. The other option directed by the District Collector, in his Order, which was also sought by the Respondents in their application, is that an alternative access road be provided. The Petitioners, on the other hand, have disputed the contention that Tower No. 2 was erected on the road in the first place. The Commission notes that the Collector in his Order has fairly set out the basis (the Tehsildar, Nilanga's report, and relevant maps) for his finding that the Tower was erected on the Nilalanga-Talikhed road, and has accordingly given the option of

providing an alternative road. Considering the limited ambit of revision, the Commission is, therefore, not inclined to interfere with the Collector's Order in this regard. However, the Collector may be approached for any facilitation that might be required for the purpose, and a copy of this Order shall be forwarded to him."

Contempt petition was filed by the first respondent. This culminated in order dated 19.07.2018. We notice the following:

"14. The main issue involved in this case is whether the Commission in its Order issued any specific directives to the Respondents regarding acquisition of land for construction of alternate road or not. There could be non-compliance of the Order if and only if the Commission had issued specific directives which the Respondents rejected, ignored, or diluted significant features of the directives. However, the Petitioner has neither in the Petition nor in a Rejoinder substantiated this crucial fact.

15. The plain reading of the Commission's Orders rulings quoted at para 11 and 12 as above makes it amply clear that the Commission has not issued any directives to the Respondents regarding acquisition of land and construction of alternate road. The Commission merely asked District Collector to take action on the demand of the Petitioner for a road after appraising the requirement under various programs being implemented in the District for road construction. It never asked Respondents to financially support any land acquisition proposal."

The first respondent thereupon filed writ petition which has generated the present appeal. Relief sought for in the writ petition is as follows:

"B) The Respondents be directed to start the acquisition proceeding in the matter of providing alternative way from Survey no. 171 situated at Nilanga Talikhed road, Taluka Nilanga, District Latur, under the provisions of Right to Fair Compensation and

Transparency in Land Acquisition 2013, by issuing any appropriate writ order or direction as the case may be.

C) The petitioner be granted damages of Rs.1,00,000/- per year for illegal use of his land from the year 2012 onwards, till acquisition of land by issuing any appropriate writ order or direction as the case may be."

The case of the first respondent appears to have been that the tower in question was located in the road and that it has resulted in the members of the public making use of the first respondent's land from the year 2012 and this was causing injury to the first respondent.

On the basis of the orders passed by the Collector and the Commission also, apparently the first respondent sought protection and wanted the land acquired. The High Court has proceeded to grant relief which we have already set out.

In the course of the judgment, we notice the following:

"The petitioner has frankly set out in the memo of the petition that the affected portion, on account of the public using it as a diversion to the Nilanga-Talikhed road due to unauthorized erection of Tower No. 2, falls in the portion utilized by the brother of the petitioner and both these brothers have a joint ownership. The Circle Officer's report dated 12.02.2018 reinforces the fact that the diversion road is being used through the affected portion, which was utilized by the brother of the petitioner for agricultural purposes. It is pertinent to note that the Circle Officer has said in clause 6 of his communication to the Tahasildar that the south side of tower No. 2 will have to be acquired beyond the protective fencing of the tower so as to be used as the Nilanga-Talikhed road.

13. In our view, this is a classic case of high handedness by respondent Nos. 2 and 3. They have shown scant respect to the orders of the District Collector as well as the order of the MERC. The MERC has clearly set out that the option suggested by the District Collector that the land which is being used as diversion from the agricultural field of the petitioner's brother, needs to be acquired, has also been completely ignored by respondent Nos. 2 and 3 thereby, compelling the petitioner to approach this Court by filing this petition. It is apparent that the said land could not be utilized for agricultural purposes from 2012 to 2017 and after the N.A. permission in 2017, the said land could not be sold or utilized for non-agricultural purposes since 2017 to 2021."

The appellant has a case that the brother, who is the subject matter of the observations in paragraphs 12 and 13 has, in fact, instituted a suit against the appellant. We have gone through the said suit. Interestingly, in the said suit, the case of the brother appears to be that the apparatus and the other equipment had been placed on his land. He has claimed compensation-damages from 2005-2016 for a sum of Rs.45 lakhs. The said suit is admittedly pending.

We have heard the learned counsel for the appellant and the learned counsel for the first respondent.

We may straightaway notice that the High Court has clearly erred in arriving at a compensation of Rs.5 lakhs and that too, ordering it to be paid to the brother of the first respondent. We think that it was not called for and cannot be supported.

When it comes to the direction to acquire the land in the manner it is directed, we have already noticed the finding of the Commission in the contempt application. The High Court was dealing with a petition filed under Article 226. We would think that broadly in the context of all the findings and observations in paragraphs 12 and 13 which we have extracted, the High Court was not justified in giving peremptory directions to the appellant to acquire the land.

Mr. Sudhanshu S. Choudhari, learned counsel for the appellant would at the Bar make the representation (on instructions) that if the first respondent has a case that members of the public are making use of any part of his land for crossing over as a result of the tower being constructed where it is located, it will be open to the first respondent to protect his land by putting up an appropriate boundary wall. He would specifically, in answer to the query of the Court, submit that there is no legal obstacle. No doubt, if the law requires permission from the local authority, it can be done only after obtaining such permission. If no objection is required from the appellant, the appellant shall provide such no objection. Subject to the same, we find the directions which have been granted in this impugned judgment to be unsustainable. Accordingly, we set aside the impugned judgment and the directions as contained in paragraph 15 and 16 shall stand set aside.

The appeal is allowed as above, subject to the observations we have made in regard to the right of the first respondent.

We further make it clear that this judgment will not stand in the way of any action /demand in accordance with law on the basis of the order of the Collector as modified by the Maharashtra Electricity Regulatory Commission.

SLP (C)D. No. 10583 of 2022

There is an application for permission to file special leave petition filed by the brother of the first respondent, in Civil Appeal No. 6187 of 2022 (arising out of SLP (C)No. 18280 of 2021). Today, we have disposed of the civil appeal by allowing the same and setting aside the directions and the judgment impugned.

The petitioner seeks permission to call in question the order of the High Court. The petitioner was not a party before the High court.

While declining the permission, we make it clear that this will be without prejudice and remedies are open to the petitioner in law which the petitioner can seek in any appropriate forum.

The application for permission to file special leave petition is, therefore, declined. Consequently, the special

CA No. 6187/ 2022
(@ SLP (C) No. 18280/ 2021)

leave petition will stand dismissed.

....., J.
[K.M. JOSEPH]

....., J.
[HRISHIKESH ROY]

**New Delhi;
September 05, 2022.**

ITEM NO.40

COURT NO.6

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No. 18280/2021

(Arising out of impugned final judgment and order dated 06-09-2021 in WP No. 11042/2018 passed by the High Court of Judicature at Bombay at Aurangabad)

THE EXECUTIVE ENGINEER MAHARASHTRA STATE
ELECTRICITY TRANSMISSION COMPANY LIMITED

Petitioner(s)

VERSUS

HIRALAL GANPATRAO NIMBALKAR & ORS.

Respondent(s)

(With IA No.144590/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.144591/2021-EXEMPTION FROM FILING O.T.)

WITH

Diary No(s). 10583/2022 (IX)

(With IA No. 63659/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No. 63657/2022 - PERMISSION TO FILE PETITION (SLP/TP/WP/..))

Date : 05-09-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.M. JOSEPH
HON'BLE MR. JUSTICE HRISHIKESH ROY

For parties

Mr. Sudhanshu S. Choudhari, AOR

Dr. R. R. Deshpande, AOR
Ms. Prachiti Deshpande, Adv.
Ms. Priyanka Deshpande, Adv.

Mr. Shirish K. Deshpande, AOR
Ms. Rucha Pravin Mandlik, Adv.
Mr. Mohit Gautam, Adv.

Mr. Samrat K. Shinde, Adv.
Mr. Siddharth Dharmadhikari, Adv.
Mr. Aaditya A. Pande, Adv.

Mr. Sachin Patil, AOR

Ms. Pallavi Sharma, AOR

**UPON hearing the counsel the Court made the following
O R D E R**

SLP (C)No. 18280/2021

Leave granted.

The appeal is allowed in terms of the signed order.

Pending applications stand disposed of.

SLP (C)Diary No. 10583/2022

**Permission to file special leave petition is declined
and special leave petition is dismissed in terms of the
signed order.**

**(NIDHI AHUJA)
AR-cum-PS**

**(RENU KAPOOR)
ASSISTANT REGISTRAR**

[Signed order is placed on the file.]