
2012 eGLR_HC 10006435

Before the Hon'ble MR K M THAKER, JUSTICE

ESSAR POWER TRANSMISSION COMPANY LIMITED AND 1 - PETITIONER(S) Vs. STATE OF GUJARAT
THRO SECRETARY AND 2 - RESPONDENT(S)

SPECIAL CIVIL APPLICATION No: 12179 of 2012 , Decided On: 03/10/2012

Nanavati Associates, Tushar Mehta, B.S.Patel

MR.K.M.THAKER 1. In present petition, the petitioners have prayed for below mentioned reliefs:-

"23(A) Your Lordships may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, order or direction, directing the respondent no.2 to take appropriate steps as envisaged under the Indian Telegraph Act, 1885, more particularly under Section 16 thereof against respondent no.3 for obstructing/resisting the laying of the 400 KV D/C transmission tower line from Gandhar (NTPC) to Hazira (Essar Steel) to ensure the smooth implementation and completion of the said project;"

2. The private respondent i.e. respondent No.3 has opposed the petition on various grounds. The respondent No.3 has alleged that the procedure prescribed under the Act, is not followed and the petitioner company is not competent to carry on the activity of laying Electricity Transmission Line and that the petitioner company's actions are contrary to the provisions under the Act.

3. The objections raised by the respondent No.3 are decided by the Division Bench of this Court in case between Himmatbhai Vallabhbhai Patel v. Chief Engineer (Project) Gujarat Energy Transmission & Ors. [2011(2) GLH 781], however, when the respondent No.3 has raised objection in the matter of allowing the petitioners to enter the land and/or to allow the transmission line laying activity to commence, then, the petitioner company will have to follow the procedure prescribed under the Act i.e. to make application before the competent court of Judicial Magistrate.

It is true that the petitioner company has asserted that all prescribed procedure under the Act have been followed and necessary notifications, including notification under Section 164 of the Act have been issued and the petitioner company has also issued notices to land owners - as required for the purpose of carrying on activity of laying Electricity Transmission Line.

In connection with the objections raised by the respondent No.3, learned Senior Counsel for the petitioners has relied on the order dated 18.7.2012 passed in L.P.A.No.844 of 2012 and other

connected matters wherein the Division Bench has observed that the electricity company should act in accordance with the directions contained in the said order.

4. Mr. Nanavati, learned Senior Counsel, appearing for the petitioners has submitted that the petitioner company will follow the procedure and directions passed by the Division Bench in the said order dated 18.7.2012 in L.P.A.No.844 of 2012.

4.1 Mr. Nanavati, learned Senior Counsel for the petitioners, has also submitted that present petition can be disposed of in light of the said order dated 18.7.2012 in L.P.A.No.844 of 2012.

5. Mr. Patel, learned advocate for the respondent No.3, also submitted that the respondent No.3 would not have any objection if the procedure and directions passed by the Court in the said order dated 18.7.2012 in L.P.A.No.844 of 2012 are followed by the petitioner company. He submitted that the respondent No.3 will appear before the competent Court. He, however, requested that all the objections of the respondent No.3 may be taken into consideration.

6. In this view of the matter, it would be relevant to take into consideration the observations by the Division Bench in the said order dated 18.7.2012 in L.P.A. No.844 of 2012, which read thus:-

"4. Challenge in the appeals filed by the Gujarat Energy Transmission Company Limited (hereinafter referred as "electricity company") is in connection with the order of the learned Single Judge by which the learned Single Judge while referring the writ petitions to the Larger Bench has continued the order of status quo till the Larger Bench decides the issues referred by the learned Single Judge before the Larger Bench. So far as Letters Patent Appeal Nos.842 and 843 of 2012 are concerned, the same are preferred by the individual land owners on the ground that the learned Single Judge has erred in not granting the interim relief in their favour. The electricity company wanted to erect transmission towers and the same were required to be erected in the lands of the individual land owners. The land owners filed respective petitions before the learned Single Judge challenging the action of the electricity company on the ground that without giving hearing to the concerned land owners and without fixing appropriate compensation, it is not open for the electricity company to install such transmission towers in the part of their lands as it may hamper agricultural activities. On behalf of the electricity company, reliance is placed on the judgment of the Division Bench of this Court in the case of Himmatbhai Vallabhbhai Patel Vs. Chief Engineer (Project), Gujarat Energy Transmission and others, reported in 2011 (2) GLH 781. Relying on the said judgment, it is argued by Mr.Hasurkar that the learned Single Judge was bound by the said judgment and even if the learned Single Judge ultimately decided to refer the issue to the Larger Bench, at least, there was no question of extending status quo as till the judgment of the Division Bench which is binding to the learned Single Judge is over-ruled in a given case by the Larger Bench, the law declared by the Division Bench is binding to the learned Single Judge and there was no question of granting any status quo order.

5. Learned advocates for both the sides have argued the matter on the question of granting or vacating the status quo at some length. However, during the course of hearing since consensus is prevailing between both the sides, it is not necessary to deal with the arguments in detail. In view of consensus prevailing between both the sides, we modify the order of the learned Single Judge by passing the following order.

6. The electricity company may approach the concerned Magistrate under the provisions of the Electricity Act, 2003 in case the action proposed by the electricity company is resisted by the concerned land owners and if the concerned land owners are not cooperating in the matter of handing over the possession of the lands for the purpose of allowing the electricity company to erect transmission towers. If any appropriate application is preferred, concerned Magistrate, after hearing the objections, if any, of the land owners may decide the application immediately without undue delay after hearing the concerned persons in order to comply with the principles of natural justice and the electricity company may accordingly proceed further on the basis of the order that may be passed by the Magistrate in this behalf as per the provisions of the Electricity Act. In case, any party has any grievance in connection with the order passed by the Magistrate, it is open for such party to take further recourse against the said order in accordance with law. The order of the learned Single Judge is accordingly substituted by the aforesaid order. It is clarified that this order is passed only in connection with granting of interim relief and the order of the learned Single Judge is considered to the aforesaid extent of granting interim relief. This Court has not examined the aspect as to whether reference could have been made to the Larger Bench or not as that point has not been pressed into service by Mr.Hasurkar in these appeals. It is further clarified that we have not examined in detail the grievance made by Mr.Hasurkar regarding granting of status quo as ultimately this order is passed in view of consensus prevailing between both the sides. It is needless to say that the electricity company may now proceed further regarding taking further steps in respect of erection of electricity transmission towers, as stated above, by making appropriate application to the concerned Magistrate and to act on the basis of the order passed by the concerned Magistrate."

6.1 In view of the said observations and in light of the submissions and request made by learned advocate for the contesting parties, present petition is disposed of in terms of the observations and directions made by the Division Bench in para Nos. 4, 5 & 6 of the order dated 18.7.2012. The parties shall act in accordance with the said observations and directions.

6.2 It is clarified and directed that the respondent company shall follow the same course of action as is directed by the Division Bench in para Nos.4, 5 & 6 of the above referred order. The contentions and objection of both sides are kept open, and the parties may raise all contentions and objections, as are available in law. With the aforesaid observations, direction and clarification, present petition stands disposed of. Notice is discharged.

Petition disposed of.

