



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH



DATED THIS THE 23<sup>RD</sup> DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

**WRIT PETITION NO. 200910 OF 2024 (GM-RES)**

**BETWEEN:**

1. BASAPPA ALIAS CHANDRASHEKHAR,  
S/O SANGAPPA GONAL  
AGE: 64 YEAR, OCC: AGRICULTURE,  
RESIDENT OF TOWN AND  
TQ: NIDAGUNDI, DIST: VIJAYAPURA-586213.
2. ADIVEPPA ALIAS ASHOK,  
W/O SANGAPPA GONAL  
AGE: 55 YEAR, OCC: ENGINEER,  
CARE OF MADANSING NO. F-153/A4,  
2<sup>ND</sup> FLOOR, LADOSARAI,  
NEAR HANUMAN MANDIR, NEW DELHI-110030.
3. RUDRAPPA,  
S/O SANGAPPA GONAL  
AGE: 52 YEAR, OCC: AGRICULTURE,  
RESIDENT OF TOWN AND  
TQ: NIDAGUNDI, DIST: VIJAYAPURA-586213.
4. SHANKARAPPA,  
S/O SANGAPPA GONAL  
AGE: 49 YEARS, OCC: ENGINEER,  
RESIDENT OF NO. 130, DRAKE ROAD,  
SOMERSET, NJ 08873, USA
5. MUTTAPPA,  
S/O SANGAPPA GONAL  
AGE: 45 YEAR, OCC: AGRICULTURE,





RESIDENT OF TOWN AND  
TQ: NIDAGUNDI, DIST: VIJAYAPUR-586213

**...PETITIONERS**

**(BY SRI AMEETKUMAR DESHPANDE SR. COUNSEL FOR  
SRI. SANGANABASAVA B. PATIL, ADVOCATE)**

**AND:**

1. STATE OF KARNATAKA  
THROUGH THE DEPUTY COMMISSIONER  
AND EX-OFFICIO DISTRICT MAGISTRATE,  
VIJAYPUR-586101.
2. GADAG NARENDRA TRANSMISSION LTD.,  
THROUGH ITS GENERAL MANAGER  
(TRANSMISSION) REGISTERED OFFICE,  
138, ANSAL CHAMBER-11 BHIKAJI CAMA PLACE,  
NEW DELHI-110066.  
AND ALSO AT CORPORATE OFFICE,  
AT RE NEW HUIB, COMMERICAL BLOCK-1 ZONE-6,  
GOLF COURSE ROAD, DLF CITY PHASE-V,  
GURUGRAM-122009.
3. PROJECT MANAGER  
GADA NARENDRA TRANSMISSION LTD.,  
H NO. 38, RENUKADEVI NILAYA,  
REVANASIDDDESHWARA NAGAR,  
GAJENDRAGADA  
DIST: GADAG-582114.
4. THE TAHASILDAR NIDAGUNDI  
TALUKA NIDAGUNDI,  
DIST: VIJAYAPURA-586213.
5. THE CIRCLE INSPECTOR NIDAGUNDI  
TALUKA: NIDAGUNDI,  
DIST: VIJAYAPURA-586213.
6. CENTRAL ELECTRICITY REGULATORY COMMISSION  
REPRESENTED BY ITS CHAIRPERSON  
3<sup>RD</sup> AND 4<sup>TH</sup>, CHANDERLOK BUILDING, 36  
JANPATH ROAD, NEW DELHI-110001.



7. THE UNION OF INDIA  
REPRESENTED BY ITS SECRETARY  
DEPARTMENT OF POWER  
SHRAM SHAKTI BHAVAN  
RAFI MARG, NEW DELHI-110001.

...RESPONDENTS

**(BY SRI D.R.RAVISHANKAR, SR. COUNSEL FOR  
SRI N. SHIVAKUMAR AND SRI SHARANABASAPPA M.  
PATIL, C/R2 AND R3 (IN CP 30232/2024)  
SRI SUDHIRSINGH R. VIJAPUR, DSGI FOR R7;  
SRI PRADEEP NAYAK, ADVOCATE FOR R6  
SRI VEERANAGOUDA MALIPATIL, HCGP FOR  
R1, R4, AND R5)**

THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI QUASHING THE IMPUGNED AT ANNEXURE -M PASSED BY RESPONDENT NO 1 IN NO. RB/LAQ/CR/38/2023-24 DATED 05-02-2024, TO THE WRIT PETITION II) A WRIT MANDAMUS OR ANY OTHER APPROPRIATE WRIT, ORDER, OR DIRECTION IN THE NATURE OF MANDAMUS THEREBY DIRECTING ALL THE RESPONDENTS TO PRODUCE ALL THE DOCUMENTS, MATERIALS, PAPERS SURVEYS, MAPS, ETC. RELATING TO THEIR PROPOSED ROUTE BEFORE THIS LORDSHIP TO SATISFY/VERIFY THAT THE SAID PROPOSED ROUTE IS FINALIZED AFTER FOLLOWING DUE PROCESS OF LAW TO LAY DOWN A 400 KV OVER-HEAD HIGH-TENSIONS LINES WHICH WILL PASS FROM THE CENTER PORTION OF THE PETITIONERS LAND AND AN ELECTRIC TOWER IS PROPOSED TO BE FIXED IN THE THE CENTER AREA OF AGRICULTURAL LAND BEARING LAND SY. NO 17/1 MEASURING 6 ACRES AND 02 GUNTAS OF THE PETITIONERS SITUATED AT VILLAGE KASINAKUNTE, TALUKA NIDAGUNDI, IN DISTRICT VIJAYAPUR III) A WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT, ORDER, OR DIRECTION IN THE NATURE OF MANDAMUS THEREBY DIRECTING THE RESPONDENTS TO REROUTE/DEVIATE/ALTER/SHIFT THE PROPOSED SUBJECTED ELECTRICAL TOWER FROM POINT A (CENTER PORTION OF THE SUBJECT LAND) TO POINT C OF POINT H SO THAT ELECTRIC TOWER MAY NOT BE PLACE IN THE CENTER AREA OF THE LAND AND HIGH-TENSION WIRES WOULD ALSO NOT PASS FROM THE CENTER PORTION OF THE AGRICULTURAL LAND OF THE PETITIONERS.



THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

**ORDER**

Heard Sri Ameet Kumar Deshpande, learned Senior Counsel for the petitioners along with Sri Sanganabasava B. Patil, Sri D.R. Ravi Shankar, learned Senior Advocate appearing for respondent Nos.2 and 3 along with Sri Sharanabasappa M. Patil, Sri Sudhir Singh R Vijapur, learned Deputy Solicitor General of India for respondent No.7 and Sri Pradeep Nayak, learned counsel for respondent No.6.

2. Writ Petitioners being the brothers are the owners of land bearing Sy.No.17/1 measuring 6 acres 02 guntas situated at Kasinakunte village, Nidagundi Taluk, Vijayapura District.

3. Respondent No.2 being a Private Company has accepted the work of laying electric transmission line, RE source in Gadag Wind Energy Zone 2500 MW, after acquiring the SPV from REC Power Development and Consultancy Limited.



4. A general notice of meeting was circulated by the office of the 1<sup>st</sup> respondent on 22.02.2023 with regard to the subject-“In connection with the construction of 400 KV Gadag-Narendra 93 km two-way transmission line proposed by the Ministry of Energy, Government of India under Section 5(1) of the Indian Electricity Act, 2003, for the development of the Central Government’s proposed Koppal Zone Renewable Wind Power electricity line 400 KV Gadag-Narendra 93 km transmission line, Basavana Bagewadi, Nidagundi and Kolhar Taluk land owners are called for fixation of land compensation price.”

5. The land owners were asked to assemble at Zilla Panchayath Hall, Vijayapura, under the Chairmanship of District Commissioner on 28.02.2023 at 10.30 am for fixing the compensation for the lands that would be utilized for tower foundation and right of way, vide general notice dated 22.02.2023, at Annexure-A. However, there was no mention of passing of electricity line or proposed position of electric tower at the centre of agricultural lands of the petitioners in the said meeting notice.



6. Later on, on enquiry, petitioners came to know that a huge tower having foot area which will cover more than 200 sq. mtrs of land is proposed to be placed for laying the high tension wire of 400 KV. Since the location of placing the electrical tower was almost at the middle area of the agricultural land of the petitioners, after installing and laying electric line, remaining land would be divided into two halves resulting in total waste of entire land and therefore, petitioners raised objection for the proposal of erecting electrical tower and they wanted the same to be redesigned.

7. Petitioners approached the Deputy Commissioner on 28.02.2023 itself and raised their objections and thereby requested the respondents to relocate the towers so as to cause minimum damage to the land of the petitioners.

8. Petitioners further contend that despite raising such objections, till June 2023, there was a total lull and on 27.06.2023, petitioners were constrained to make a representation to the Deputy Commissioner for shifting the proposed location of the electrical towers from middle of the



land towards North West corner from point 'A' to point 'C' in the annexed plan. A notice was also sent to respondent No.2 and other Officers responsible for erecting the towers, vide Annexure-B.

9. Petitioners further contended that the installation of electrical tower and laying high tension electrical wire in the location as is proposed by 2<sup>nd</sup> respondent would not only result in waste of land, but, it is also unsafe for cultivation of the remaining land.

10. It is further contention of the petitioners that despite representation, there was no positive response from the respondents and therefore, petitioners were constrained to file a suit for permanent injunction in O.S.No.201/2023 on the file of the Civil Judge (Sr.Dn.), Basavana Bagewadi.

11. Petitioners also contended that graves of their parents are situated on the west side of their agricultural land as is shown at point 'D' in the annexed plan and in their memory, for the welfare of public at large, petitioners intend to build a



charitable hospital in the said land and there is no such facility in the vicinity for more than 50 to 60 kms.

12. It is also contended by the petitioners that mother of the petitioners died for want of necessary medical help and therefore, intention of the petitioners to construct a charitable hospital is in the right spirit and therefore, they requested the authorities to shift the tower.

13. The representation given to the Energy Department, Government of Karnataka, in this regard on 15.07.2023 is marked at Annexure-C. Yet another representation was made on 20.07.2023 vide Annexure-D.

14. It is further contended by the petitioners that based on the representations, 1<sup>st</sup> respondent sent a letter dated 05.08.2023 to 2<sup>nd</sup> respondent, vide Annexure-E directing them to verify the request made by the petitioners and take action as per the Rules and furnish necessary feed back to the petitioners.





15. In the suit O.S.No.201/2023, respondent Nos.2 and 3 filed their written statement that 2<sup>nd</sup> respondent is a SPV acquired from REC Power Development and Consultancy Limited post competitive bidding as per MOP guidelines, for development of interstate transmission system and have mentioned the entire MOP guidelines under the heading- "Transmission Line Construction Phase ROW issues-MOP guidelines."

16. It is further contention of the petitioners that despite such guidelines, respondents failed to give any notice and obtain consent of the petitioners.

17. It is also the case of the petitioners that no consent as per the provisions of Section 67(2) of the Electricity Act, 2003, was taken from the petitioners who are owners of agricultural lands and as such, there is serious procedural lapse on the part of 2<sup>nd</sup> respondent.

18. Petitioners also contend that the rules framed under Section 67 of the Electricity Act, 2003, govern the working of



licensee and not commission, and as such, the intended action on the part of the respondents is illegal.

19. It is also grievance of the writ petitioners that no survey of the land was conducted before the designing for erecting the towers and drawing up the lines so as to minimally affect the agricultural land. Petitioners further contend that line was also altered to suit to the needs of some other interested persons and therefore, the intended action is illegal. It is further contended that the Deputy Commissioner is entitled to hold an enquiry under Section 67(4) of the Electricity Act, 2003, and decide the objections raised by the petitioners.

20. Petitioners also submit that from the beginning of the project, petitioners are requesting to shift the tower from point 'A' to point 'C' on the North West corner of their property and an alternative point was also shown by the petitioners at point 'H'. The hand sketch is annexed as Annexure-F. For ready reference, Annexure-F is culled out hereunder:





23. Thereafter, the 1<sup>st</sup> respondent passed an Order on 05.02.2024 in No.RB/LAQ/CR/38/2023-24 and rejected the representation solely on the ground that shifting of location of present electric transmission tower will incur expenses to the 2<sup>nd</sup> respondent.

24. Thereafter, this Court passed an Order on 29.02.2024 in W.P. No.200035/2024 and rejected the writ petition filed by the petitioners, but extended the *status quo* order for a period of ten days and directed the petitioners to approach the Karnataka Electricity Regulatory Commission ('KERC' for short).

25. Subsequently, petitioners approached the KERC in O.P.No.6/2024, which came to be rejected by the Order dated 27.03.2024 vide Annexure-P.

26. Being aggrieved by the said Order, petitioners have filed the present writ petition on the following grounds:

- o *"Because the Respondent No.1 has passed Impugned order dated 05.02.2024 is illegal and bad in Law and not considered objections filed by the Petitioners and complied with the*



*mandates of Electricity Act, 2003 as no consent of the petitioners as required u/s 67(2) of the Electrical Act, 2003 was taken and there is violation of Article 11, 21, 38(1), 39A, 41 and 300A of the Indian Constitution and thereby violated principles of natural justice.*

- *The said impugned order is passed without application of mind and without furnishing any cogent reason and liable to be quashed and set aside.*
- *The petitioners have not sought for cancellation of the laying of the high tension power line through their land, which divides their land diagonally in to two halves.*
- *The laying of the transmission line would make the entire land fallow, since no crop can be grown under the transmission line due to dangers associated with high tension power.*
- *The petitioners only wanted re alignment of the towers through their land only on one side which would be beneficial for all. The 3<sup>rd</sup> Respondent in their objections filed before the 1<sup>st</sup> respondent has not given any reason for accepting the request of the petitioners.*



- *The 2<sup>nd</sup> and 3<sup>rd</sup> respondents have stated that they have already installed the towers which is far from truth since the towers are yet to be erected and not even ground breaking work has been done as there is a standing crop of sugar cane which is yet to be harvested and transported to the near by sugar Factory.*
  
- *The request of the petitioners does not involve any other dispute as they are voluntarily permitting the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to put up the towers on their own land, but to one side so that they can continue to cultivate the land since they are solely dependent upon the income derived for this land to run their household and take care of their families.*
  
- *The 2<sup>nd</sup> and 3<sup>rd</sup> respondents should have first issued notice to the petitioners as their land is going to be affected as it amounts to violation of the principles of natural justice especially when the livelihood of the petitioners is going to be affected and may convert them from land owners to landless laborers.*
  
- *That, Section 10 of the Indian Telegraph Act provides that least damage should be done to the property of the land owner since the*



*property remains to be vested in them only and hence the power granted by the authority to erect towers is not absolute.*

- *The erection of the towers in the middle of about 6 acres of fertile sugar cane growing land will make it non cultivable since sugar cane grows to a height of about 8 feet from the ground and this act amounts causing maximum damage.*
  
- *That, apart high tension power lines carry strong electromagnetic field around them which is health hazard and people cannot work in the entire land when it is at the center of the land.*
  
- *That, sugar cane is prone to wild fires, which is a common feature during the early summer before the harvest is completed, as sugar cane has to mature to get the optimum yield of sugar and the fire hazard will prevent the petitioners from growing sugar cane in their land resulting leaving the land without cultivation which is a valuable irrigated land.*



- *The 1st Respondent relied upon an inspection report of the Executive Engineer of KPTCL that the proposed tower location has been changed at location No.23/1 is D+3 Type, which in no way has benefited the petitioners as the tower continues to be located at the center of their land.*
  
- *The report does not state why and when the type of the tower has been changed and was it done at the request of the petitioner and in what way the grievance of the petitioners have been addressed.*
  
- *The report does not address the grievance of the petitioners and is silent on why the towers cannot be shifted to one side of the land of the petitioners at a time when the petitioners are volunteering to provide the land for erection of the high tension towers.*
  
- *The petitioner is not seeking total removal of the towers or their construction but only want the yet to be fixed towers be located towards one side of the property which is permissible under law at a time when Section 17 of the Telegraph Act provides for shifting of existing towers itself.*





- *That Section 10(D), of the Telegraph Act clearly provides that minimum damage has to be done to the property of the owner.*
  
- *That, Section 17 of the Telegraph Act provides for removal itself of the towers and the 1st respondent has not given any finding regarding the reasons for shifting the proposed tower from the middle of the land to one side of the land belonging to the petitioners which will cause minimum damage and obstruction.*
  
- *It is submitted that, at time disposal of WP No. 200035/224 on 29.2.2024 this Hon'ble Court was pleased to directed the Petitioners to approach the Karnataka Electricity Regulating Commission, and as per the direction the petitioners have approached the Karnataka Electricity Regulating Commission and filed O.P No. 06/2024 and the Karnataka Electricity Regulating Commission was pleased rejected the Petition on 27.03.2024 on the ground that Petition is not maintainable for want of Jurisdiction to entertain the dispute Involved in the case. Hence the Petitioners have again filed this Writ Petition.*



- *It is submitted that, the reading of the order dated 05.02.2024 itself reflects that the proposed location of tower can be shifted and the deviations of line of proposed high tension wire is very much possible, except for some extra cost to the company. This scenario of incurring extra cost while shifting of proposed location has emerged due to delay, lapse and adamancy of respondent No.2 & 3 as the petitioners from February, 2023 itself had offered place at North-West Corner of their land for the purpose of shifting of proposed location of tower 23/1 but for last more than eleven months the respondents kept quite on the objections and proposal of petitioners and in November, 2023 raised partially built towers on either side of the petitioners land to portray that the proposal of petitioners will incur them extra cost.*
  
- *It is submitted that, the order dated 05.02.2024 is perverse and arbitrary also on the ground that no survey was conducted to explore the possibility of shifting of proposed survey nor the respondent no.1 looked into the survey report prepared by M/s Somveer Survey and Engineering Consultants, (having years of experience in conducting the survey*



*of lands for the purpose of laying of electrical transmission lines) for shifting of the proposed location of the electric transmission tower no.23/1 from point 'A' to 'C' on the land of petitioners observing that the shifting of proposed location of electric transmission tower is possible, which the petitioners submitted before the respondent no.1. Thereby depriving the petitioners from the protection guaranteed under Article 11, 21, 38(1), 39A, 41 and 300A of the Constitution of India."*

- *I state that it is further stated that in the said order dated 05.02.2024 the respondent no.1 did not look into contentions and merits of petitioners' application of objections and considered the completely false statement of respondent no.2 & 3 that-*
  - "..... already more than 95 percent of the project work is completed....."*
- *Whereas the fact is that in the preceding locations after AP23 not even foundation is laid at any location and in succeeding locations half built Electric towers are located and from no stretch of imagination it can be said that more*



*than 95 percent of the project work is completed.*

- o It submitted that, the respondent No.1 ought to have conducted a proper survey to explore the possibility for shifting of the location of proposed electric transmission tower from point 'A' I.e. centre of land to point 'C' i.e. north west corner but the respondent no.1 acting arbitrarily merely sent an executive engineer to conduct spot inspection. Despite of the fact that petitioners submitted a survey report prepared by M/s Somveer Survey and Engineering Consultants (having years of experience in conducting the survey of lands for the purpose of laying of electrical transmission lines) for shifting of the proposed location of the electric transmission tower no.23/1 from point 'A' to 'C' on the land of petitioners observing that the shifting of proposed location of electric transmission tower is possible.*
  
- o It is submitted that, no averments was ever made in the form of objections taking plea of teakwood plantations on the part of land but the respondent no.1 wrongfully and in order to deceive the contentions of the petitioners*



*wrongfully mentioned the same under objections and submissions of petitioners in its order dated 05.02.2024. In fact it is always the prayer of the petitioners that the proposed electric transmission tower may be shifted from the centre of their land to North West corner which as on date has teakwood plantation and the petitioners are ready to cut down the tree for the purpose of erection of tower at that spot.*

- *It is submitted that, the Ld. Dy. Commissioner and ex officio District Magistrate failed to notice and appreciate a very important and material fact that the application of objections was filed in the beginning i.e. in the month of June, 2023 itself when the process of taking approval for the said electric transmission line was pending before the appropriate authorities. Moreover, the point which ought to be noted is that at that time till the month of November, 2023 no work was initiated by the respondent no.2 and 3 for the purpose of laying of electric transmission line and no reply was filed in January, 2024 by the respondents nor any action was taken upon the representation of the petitioners even after issuance of letter dated 05.08.2023 till several*



*months nor till November 2023 the half built towers were raised on either side of the petitioners land proposed for tower no.23/1.*

- *It is submitted that, the respondent no.1 failed to consider that in order to deceive the rights of the petitioner respondent no.2 and 3 raised half built structures on either side of the proposed site for 23/1 whereas at most locations proposed for towers preceding the location AP23, no structure is built not even foundation is laid.*
- *It is submitted that, the respondent no.1 failed to consider that he has an obligation and duty to consider the true and correct facts in order to pass a good and sustainable order.*
- *It is submitted that, the respondent no.1 failed to notice that the respondent no.2 and 3 did not comply with his own direction passed vide letter dated 05.08.2023.*
- *It is submitted that, the reading of the order dated 05.02.2024 itself reflects that the proposed location of tower can be shifted and the high tension lines can be deviated except for some extra cost to the respondent*



*company. The District Magistrate has rejected the application of petitioners solely on the ground that shifting of proposed location of Electric Transmission Tower will incur extra expenses. Saving the expenses of the company at the cost of ruining the entire land of the petitioners thereby directly affecting their livelihood is perverse and arbitrary, more-so when the petitioners are themselves providing the alternate site for tower erection.”*

27. Reiterating the grounds urged in the writ petition, Sri Ameet Kumar Deshpande, learned Senior Counsel for the petitioners contended that the inaction on the part of the respondents has resulted in grave miscarriage of justice and non shifting of the tower and the line as requested by the petitioners would result in total waste of agricultural land of the petitioners and sought for allowing the writ petition.

28. The writ petition grounds are opposed in *toto* by the contesting respondent Nos.2 and 3.

29. When the writ petition was taken up for consideration , a preliminary objection was raised on behalf of respondent



Nos.2 and 3 stating that KERC has no jurisdiction to entertain the request of the petitioners as it is the project that has been approved by the Central Electricity Regulatory Commission ('CERC' for short).

30. Thereafter, writ petitioners filed an application to implead the CERC and Union of India as party respondents. The said amendment was allowed by this Court and representation was permitted to be given by petitioners to CERC.

31. On behalf of CERC and Union of India, Sri Sudhir Singh R. Vijapur, learned Deputy Solicitor General of India, accepted notice and made submission to the Court that the representation of the petitioners would be considered by CERC. As such, the matter stood adjourned for consideration of the representation.

32. Sri Sudhir Singh R. Vijapur, on 18.04.2024, filed a memo along with an Order dated 12.04.2024 passed by the CERC, rejecting the representation given by the petitioners herein.





33. Sri Sudhir Singh R. Vijapur, learned Deputy Solicitor General of India for respondent No.7, and Sri D.R.Ravi Shankar, learned Senior Counsel for respondent Nos.2 and 3, thereafter submitted to the Court that under Sections 67 and 68 of the Electricity Act, 2003, petitioners cannot seek as of a right to shift the electricity lines.

34. Sri D.R.Ravishankar, learned Senior Counsel also contended that under Sections 10, 11 and 16 of the Indian Telegraph Act, 1885, laying of electric transmission lines by the licensee under the Electricity Act, prior consent of the land owner is not necessary.

35. Sri D.R.Ravishankar, learned Senior Counsel further contended that relocation of the towers *per se* cannot be accepted, as it would affect the whole project, not only installing the towers which carry the electric lines, but also on other technical grounds.

36. In support of his arguments, Sri D.R.Ravishankar, learned Senior Counsel placed reliance on the following judgments.



***(i) Century Rayond Limited vs. IVO Ltd. And others; Civil Appeal No.9063/2019 dated 27.11.2019.***

***(ii) Power Grid Corporation of India Ltd. Vs. Century Textiles and Industries Ltd. And others reported in (2017)5 SCC 143.***

***(iii) Ratilal Maganji Brahmmbhatt vs. State of Gujrat, R/Special Leave Application No.20373/2019 dated 06.11.2020.***

***(iv) Parth Kriushnakanth Patel vs. Managing Director, R/Special Leave Application No.14617/2022 dated 01.08.2022.***

***(v) Shiroliya Punabhai Sagarambhai vs. State of Gujarat, R/Special Leave Application No.3042/2023 dated 13.04.2023.***

***(vi) Patel Vinubhai Vihabhai vs. Executive Engineer & ors, reported in AIR 2021 Guj 76.***

***(vii) M/s Sree Rayalaseema Hi Strength Hypo Ltd. Vs. District Collector cum The District Executive Magistrate, Kancheepuram reported in (2018)4 MLJ 169.***

37. Sri D.R.Ravishankar, learned Senior Counsel also drew attention of this Court to the relevant provisions of the



Electricity Act, 2003 and Indian Telegraph Act, 1885, and prayed for dismissal of the writ petition.

38. It is also brought to the notice of the Court by the learned counsel for the respondents that the request of the petitioners is partially considered and electric lines are relocated by shifting the place of installation of towers 17 meters away from the existing graves of the parents of the petitioners and therefore, writ petition is to be dismissed.

39. In reply, Sri Ameet Kumar Deshpande, learned Senior Counsel on behalf of the petitioners contended that the petitioners are prepared to meet the additional expenses, if any, and also the feasibility report from a private expert is also placed on record for consideration and therefore, plea of the respondents that feasibility of shifting of the lines and involvement of additional expenses is only a ruse to reject the prayer of the petitioners and sought for allowing the writ petition.



40. Having heard the learned counsel for the parties in detail and on meticulous perusal of the material on record, following admitted facts would emerge:

*(i) A general notice of meeting was circulated by the office of the 1<sup>st</sup> respondent on 22.02.2023 in connection with the construction of 400 KV Gadag-Narendra 93 km two-way transmission line proposed by the Ministry of Energy, Government of India under Section 5(1) of the Indian Electricity Act, 2003, for the development of the Central Government's proposed Koppal Zone Renewable Wind Power electricity line 400 KV Gadag-Narendra 93 km transmission line, Basavana Bagewadi, Nidagundi and Kolhar Taluk land owners are called for fixation of land compensation price.*

*(ii) Only one tower would be installed in the land of the petitioners.*

*(iii) Request of the petitioners is partially considered and tower is now relocated 17 meters away from the existing graves of the parents of the petitioners.*

*(iv) Request made by the petitioners for further shifting of the tower by 24 meters is rejected by the Deputy Commissioner.*



(v) *Filing of O.S.No.201/2023 on the file of the Civil Judge (Sr.Dn.), Basavana Bagewadi, and I.A.No.2 came to be rejected.*

(vi) *Filing of W.P.No.203450/2023 before this Court and granting of an order of status quo.*

(vii) *Dismissal of W.P.No.200035/2024 by this Court by the Order dated 29.02.2024.*

(viii) *KERC rejected the prayer of the petitioners in O.P.No.6/2024.*

(ix) *CERC rejected the request of the petitioners by the Order dated 12.04.2024 in Diary No.200/2024.*

41. The relevant statutory provisions that are utmost necessary for disposal of the writ petition are also culled out hereunder for ready reference:

**Sections 10, 11, 16 and 17 of the Indian Telegraph Act,**

**1885:**

***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 establish Ector 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;*

*(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.*

**11. Power to enter on property in order to repair or remove telegraph lines or posts.—**

*The telegraph authority may, at any time, for the purpose of examining, repairing, altering or removing*



*any telegraph line or post, enter on the property under, over, along, across, in or upon which the line or post has been placed. Provisions applicable to property vested in or under the control or management of local authorities.*

**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.*

**17. Removal or alteration of telegraph line or post on property other than that of a local authority.—**

*(1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to*





*another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line or post accordingly:*

*Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.*

*(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.*

*(3) A District Magistrate receiving an application under sub-section (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form; and the order so made shall be final.*

**Sections 67, 68 and 164 of the Electricity Act, 2003:**

**Section 67. (Provisions 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 –*

*(a) to open and break up the soil and pavement of any street, railway or tramway;*

*(b) to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;*

*(c) to alter the position of any line or works or pipes, other than a main sewer pipe;*

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

*(e) to repair, alter or remove the same;*

*(f) to do all other acts necessary for transmission or supply of electricity.*

*(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 suggestion 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;*

*(f) the repairs and works to be carried out when emergency exists;*

*(g) the right of the owner or occupier to carry out certain works under this section and the payment of expenses therefor;*

*(h) the procedure for carrying out other works near sewers, pipes or other electric lines or works;*

*(i) the procedure for alteration of the position of pipes, electric lines, electrical plant, telegraph lines, sewer lines, tunnels, drains, etc.;*

*(j) the procedure for fencing, guarding, lighting and other safety measures relating to works on streets, railways, tramways, sewers, drains or tunnels and immediate reinstatement thereof;*



*(k) the avoidance of public nuisance, environmental damage and unnecessary damage to the public and private property by such works;*

*(l) the procedure for undertaking works which are not repairable by the Appropriate Government, licensee or local authority;*

*(m) the manner of deposit of amount required for restoration of any railways, tramways, waterways, etc.;*

*(n) the manner of restoration of property affected by such works and maintenance thereof;*

*(o) the procedure for deposit of compensation payable by the licensee and furnishing of security; and*

*(p) such other matters as are incidental or consequential to the construction and maintenance of 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 of 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.*

**Section 68. (Provisions relating to Overhead lines): ----**

*(1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).*

*(2) The provisions contained in sub-section (1) shall not apply- (a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer; (b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or (c) in such other cases, as may be prescribed.*

*(3) The Appropriate Government shall, while granting approval under subsection (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary.*



*(4) The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.*

*(5) Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.*

*(6) When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.*

*Explanation. - For the purposes of this section, the expression "tree" shall be deemed to include any shrub, hedge, jungle growth or other plant.*

**Section 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, 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.”*

42. On careful perusal of the above provisions of law, it is crystal clear that in a matter of this nature, there is a very narrow scope for the Deputy Commissioner in considering the representations/ objections of a land owner or aggrieved party under Section 67 of the Electricity Act, 2003.

43. The Deputy Commissioner, within the scope of Section 67 of the Electricity Act, 2003, has considered the request of the petitioners and rejected in part by allowing of shifting of tower by 17 meters from the existing graves of the parents of the petitioners.



44. Admittedly, drawing of electricity lines from Gadag-Narendra 93 km transmission line, Basavana Bagewadi, Nidagundi and Kolhar Taluk, would serve the public at large inasmuch as, electricity power contributes to the over all development of the Country/State/Region in a great manner.

45. Practically, in every walk of life, electricity is utmost necessary. Unlike water, generated electricity cannot be stored. It should be immediately utilized/consumed soon after its generation. Once the electricity is generated, it needs to be transmitted to the end user for which, drawing of electricity lines are utmost necessary.

46. As on today, given the paraphernalia available in our country, the safe and best mode of transmission of electricity is by way of drawing over head high tension electrical wires. To support the electrical lines being not sagged, designs have been in place whereunder the lines are tagged to the towers.

47. Admittedly, technical experts have worked in this field and by their experience and also borrowing technical know how from countries across the globe, have by and large streamlined





the designs in drawing up of lines from the place of generation to the end point so as to yield maximum generated power to the end user. To achieve the same, designs/drawing must ensure least transmission loss beside being safety factor.

48. While so designing, care would be taken while drawing the lines so as to least affect the existing agricultural lands. But, invariably lines have to pass through the agricultural lands when the design encompasses the villages in it. Petitioners' land is one such place where the lines are being drawn.

49. As per the design made by the experts and in order to least affect the usage of the land by the petitioners, there exists a imminent need to install atleast one tower having regard to the area comprised in the land of the petitioners.

50. It is pertinent to note that, to achieve harmonious balance between the need of the authorities and the emotional feelings expressed by the petitioners, the position of the tower is relocated from its original position in the approved drawing by 17 meters away from the graves of parents of the



petitioners. To that extent request of the petitioners is already considered by the respondents.

51. Even after such relocation from the existing drawing, petitioners are not satisfied and their demand is to shift the lines by another 24 meters to the North West corner of the land of the petitioners. When the technical team of the respondents did not heed to such a modification, petitioners repeatedly approached the Deputy Commissioner and also took recourse to law by filing civil suit and, writ petition before this Court.

52. This Court, initially directed that the representations of the petitioners be considered by KERC. However, KERC declined to consider the request of the petitioners on the ground that such a request is not maintainable. Same was again called in question in the present writ petition. KERC took a stand before this Court that it is not the competent authority to consider the request of the petitioners and respondent Nos.2 and 3 are required to implement the design as is approved by CERC.



53. Therefore, after impleading CERC, petitioners were given an opportunity to approach the CERC. CERC also considered the request of the petitioners in Diary No.200/2024 and rejected the representation of the petitioners by the Order dated 12.04.2024.

54. It is in this background the writ prayer of the petitioners is to be considered by this Court, that too by exercising the powers vested in this Court under Article 226 of the Constitution of India.

55. The Division Bench judgment of the Gujarat High Court referred to supra which also considered the judgment of the Apex Court in ***Power Grid Corporation of India Ltd. Vs. Century Textiles and Industries Ltd. And others*** reported in ***(2017)5 SCC 143*** referred to supra, has clearly ruled that it is impermissible to consider such request of a land owner under Section 17 of the Indian Telegraph Act, 1885, by the Deputy Commissioner. It is pertinent to note that the interplay of the above statutory provisions has been judiciously considered by the Division Bench of Gujarat High Court in the case of ***Ratilal***



***Maganji Brahmmbhatt vs. State of Gujrat, R/Special  
Leave Application No.20373/2019 dated 06.11.2020***

supra. After thorough survey of the legal precedents and analyzing the factual aspects involved in the said case which is more or less similar to the facts involved in the present case, the Division Bench of Gujarat High Court recorded its final conclusions as under:

58.1 [The Part III of the Telegraph Act, 1885](#), deals with the Power to place "Telegraph Lines and Posts" and there are other provisions in the said Act, applicable to all the properties. As seen from the plethora of cases, the powers conferred on the telegraph authority to place and maintain telegraph lines and towers, are traceable to [Sections 10, 11 and 14](#) of the Act, 1885 and by virtue of [Section 164](#) of the Electricity Act, 2003, it is conferred on any public officer, licensee or any other person engaged in the business of supplying electricity.

58.2 As per Clause (c) to [Section 10](#), the authority can exercise its powers in respect of the property of a local authority only, by obtaining permission of that authority, whereas, no such permission is required in relation to the property of others.

[Section 10](#) does not contemplate notice to an owner or occupier of land to show cause against laying of a line and it authorizes the telegraph authority, to place a telegraph line under, over, along or across any



*immovable property. The proviso makes it clear that the licensee or any other authorised person does not acquire any right, other than that of user of the property. The right conferred on the land owner is only to seek for payment of compensation for any damage sustained by him, by reason of exercise of the powers.*

58.3 [Section 10](#) of the Indian Telegraph Act, 1885, confers a legal sanction to a telegraph authority to enter into any private property, subject to the condition that, while entering into the property and during the course of execution of any work, the telegraph authority is under an obligation to cause as little damage, as possible, and shall pay full compensation to all the persons interested for any damage sustained by them, while exercising the powers conferred under [Section 10](#) of the Act.

58.4. When power of the telegraph authority to enter into any private property, is subject to the conditions to cause as little damage as possible, and when there is a provision for payment of compensation, the question as to whether, the said authority should seek for consent from the owner of the property, or provide him an opportunity of hearing before entering into the property, does not arise. However, the land owner may be informed of the work to be executed.

58.5 Since the powers under [Section 10](#) of the Indian Telegraph Act, 1885, can be exercised without acquiring the land in question, once an order is passed by the appropriate government under [Section 164](#) of the



*Electricity Act, 2003, the public officer, licensee or any other person engaged in the business of supplying electricity shall be entitled to proceed with the works of placing the electric lines without acquiring the land in question. Usage of the land by the licensee or the authorised person, does not amount to acquisition.*

58.6 [Section 164](#) of the Electricity Act, 2003, empowers the State Government to confer, by an order in writing, powers which the telegraph authority possesses under the [Indian Telegraph Act, 1885](#), with respect to placing of the telegraph lines and posts, on any public officer, licensee or any other person engaged in the business of supplying electricity under that Act, for placing of electrical plants and electric lines, in terms of [Section 2\(20\)](#), which defines "electric line", as any line which is used for carrying electricity for any purpose and includes--

*"(a) any support for any such line, that is to say, any structure, tower, pole or other thing in, on, by or from which any such line is, or may be, supported, carried or suspended; and*

*(b) any apparatus connected to any such line for the purpose of carrying electricity; "*

58.7 The power conferred on any public officer, licensee or any other person engaged in the business of supplying electricity under the [Electricity Act](#), for the abovesaid purpose, may be subject to such conditions, if any, the Government may deem fit to impose and also



subject to the provisions of the [Indian Telegraph Act, 1885](#).

58.8 The authorisation, in terms of [Section 164](#) of the Electricity Act, 2003, read with [Section 10](#) of the Indian Telegraph Act, 1885, authorising the public officer or licensee or any other person engaged in supplying electricity, all the powers of the Telegraph Authority, which includes the power to enter into any private property, subject to the condition that while entering into the property and the public officer or licensee or any other person, authorised under the Act, is under an obligation to cause as little damage as possible, with a guarantee for payment of compensation for the owner of the land or the persons interested.

58.9 [Sections 16](#) and [17](#) respectively of the [Indian Telegraph Act, 1885](#), do not limit the absolute powers of the telegraph authority to enter into any property for the purpose of enforcement of [Section 10](#) of the Indian Telegraph Act, 1885, read with [Section 164](#) of the Electricity Act, 2003, by which, the public officer or licensee or any other person engaged in the business of supplying electricity under this Act, is empowered to exercise all the powers, for the purpose of placing electrical plant, line, erection of towers, conductors, poles, etc. 58.10 The intention of the Legislature, is to provide electricity, in terms of [Section 43](#) of the Electricity Act, 2003. When the purpose of the Act, is to provide the basic amenity of electricity to the public at large, and if every objection/resistance has to be



entertained under [Section 16\(1\)](#) of the Indian Telegraph Act, 1885, then it would render [Section 10](#) of the Indian Telegraph Act, 1885 and [Section 164](#) of the Electricity Act, 2003, meaningless, thereby, the power conferred on the telegraph authority to enter into any property, subject to causing, as little damage as possible, with an assurance of payment of compensation to the damage, if any, would be redundant.

58.11 If [Section 16\(1\)](#) of the Act, has to be construed, conferring a right on the landowner to seek for an opportunity of prior notice or consent, then the very purpose of [Section 10](#) of the Indian Telegraph Act, 1885 and [Section 164](#) of the Electricity Act, 2003, would be defeated.

58.12 Vis-a-vis [Section 185 \(2\) \(b\)](#) of the Electricity Act, 2003 and [Section 12 \(2\)](#) of the repealed [Indian Electricity Act, 1910](#), under which the consent of the owner or occupier is essential and on the issue, as to the enforceability of [Section 12](#) of the Act, until the Rules are made under [Section 67](#) of the Electricity Act, 2003, consent of the owner or occupier is necessary, only in the absence of any order, passed under [Section 164](#) of the Electricity Act, 2003.

58.13 Having taken into consideration the relevant provisions of the [Indian Telegraph Act, 1885](#) and [Electricity Act, 2003](#) and analysis of [Section 67](#) and [section 164](#) of the Electricity Act, 2003, the legal position is that, whenever an order is passed by the appropriate Government, in exercise of powers under





*[Section 164](#) of the Electricity Act, 2003, for placing of electric lines for the transmission of electricity, conferring upon any public officer, licensee or any other person engaged in the business of supplying electricity any of the powers which the telegraph authority possesses under the [Indian Telegraph Act, 1885](#), with respect to the placing of telegraphic lines and posts for the purposes of a telegraph established by the Government, such public officer, licensee or any other person engaged in the business of supplying electricity, exercises all the powers, as that of the telegraph authority, under the Indian Telegraph act, 1885.*

*58.14 However, in the absence of such an order under Section 164 of the Electricity act, 2003, if a licensee i.e., a person who has been granted a licence to transmit electricity or to distribute electricity under the Act, proposes to place electric lines, electric plant or other works necessary for transmission or supply of electricity, [Section 67](#) of the Electricity Act, 2003 comes into operation and consequently, prior consent of the concerned owner or occupier, may be required, under [Section 12 \(2\)](#) of the Indian Electricity Act, 1910.*

*58.15 The provisions of the Works of Licensees Rules, 2006 made under [Section 67 \(2\)](#) of the Electricity Act, 2003 are in pari materia to [Section 12](#) of the repealed [Indian Electricity Act, 1910](#). The Works of Licensees Rules, 2006 are applicable, only in a case, where the works have been taken up by the licensee, under [Section 67 \(1\)](#) of the Electricity Act, 2003. But*



*[Section 67 \(1\)](#) of the Electricity Act, 2003, as well as the rules made under [Section 67 \(2\)](#) would govern the field, only in the absence of an order, under [Section 164](#) of the Electricity Act, 2003.*

58.16 *[Section 16](#) states that if there is any resistance or obstruction, the District Magistrate may in his discretion, order that the telegraph authority shall be permitted to exercise all the powers. Further, after such an order, a person offering any further resistance is deemed to have committed offence under [Section 188](#) of the Indian Penal Code. Once the technical feasibility of the project, has been approved by the appropriate Government, by issuing an order under [Section 164](#) of the Electricity Act, 2003, no land owner or person interested can seek for shifting or re-aligning of the route, on the premise that the District Collector-cum-District Magistrate, has the powers to do so. The District Collector has no powers to alter any route or alignment, except to remove the difficulties faced by the licensee or the person authorised, pursuant to the orders issued under [Section 164](#) of the Act.*

58.17 *If the intention of the Legislature was to seek for consent or permission from every owner and if the right of such owner has to be recognised, in terms of [Section 16\(1\)](#) of the Telegraph Act, due to resistance/obstruction, then the execution of any work or project, would be stopped at every stage. Needless to state that the execution of works, involving erection of towers and connection of overhead lines, is done, only*



*after a detailed field study, by identifying a feasible route of the proposed transmission line, and while selecting suitable corridors, residential areas to be avoided, span length, the angle of deviation, extent of damage, likely to be caused, while erecting towers, maintenance cost of electric lines and towers and other factors, have to be considered. Public interest, in providing electricity to a large section of people and industrial establishments, etc., has to be given weightage over private interest.*

*58.18 If the authorities have to recognize the right of obstruction or resistance, in terms of [Section 16\(1\)](#) of the Indian Telegraph Act, 1885, then the moment, any notification is published, all the landowners or interested persons, who have the knowledge of the commencement of any development work, would immediately resist or obstruct the work, and may even seek for re-location or if the towers, posts had already been erected, may seek for re-alignment or removal of towers and plants, erected by the public officer or licensee or any other person, engaged in the business of supplying electricity, authorised to carry out the works, in terms of an order passed by the appropriate Government, under [Section 164](#) of the Electricity Act, 2003.*

*58.19 When a project involves huge expenditure, erection of many towers at various places and when such project involves, greater public interest, then even a single owner, under the pretext of making*



*objections/resistance, would attempt to stall the process of execution of the project. When entry into any property is legally authorised, with payment of compensation to the land owner, no prior consent is required.*

*58.20 The Apex Court and other Courts in India, have categorically held that the action of the licensee or the competent authority, in erecting poles or posts, in the property or drawing lines over the property, does not amount to acquisition of lands and it amounts to only user of the property to the extent indicated and therefore, there is no requirement to initiate any land acquisition proceedings, giving opportunity to the land owners, when execution of the work, is ordered under [Section 164](#) of the Act and accordingly, carried out by the licensee or any other competent authority.*

*58.21 Even if any Court issues any directions to consider the representation of any land owner or person interested, such directions are required to be considered only to the limited extent of payment of compensation, to be given by the licensee or the competent authority and the directions issued, if any, would not empower the District Collector-cum-District Magistrate, to pass any order, contrary to the orders, passed under [Section 164](#) of the Act.*

*58.22. When the appropriate Government passes an order under [Section 164](#) of the Act, the Collector is bound by the said order, and he is not superior to the*



*Government, to hold that the Government has erred in passing an order, under [Section 164](#) of the Act, authorising the licensee or the competent authority to carry out the work, in the route, which involves Techno-Economic Consideration.”*

56. The principles enunciated in the judgment of **Ratilal Maganji Brahmmbhatt** supra, was again followed by the learned single Judge of Gujarat High Court in the case of **Parth Kriushnakanth Patel vs. Managing Director, R/Special Leave Application No.14617/2022 dated 01.08.2022**, whereunder, practically similar facts of the present case was the subject matter. Learned single Judge following **Ratilal Maganji Brahmmbhatt** supra and also following the principles of law enunciated in yet another Division Bench judgment of the Gujarat High Court in the case of **Himmatbhai Vallabhbhai Patel vs. Chief Engineer (Projects) Gujarat Energy Transmission and others** in **(2011)2 GLH 781** has held as under:

*"51. We are of the view that it cannot be said that the Land has been selected in breach of any of the constitutional provisions. It is not even argued or urged that any of the constitutional provisions have been violated in selecting the land of the ownership of the*



*appellants. Therefore, no case for interference with the decision of the statutory authorities in selecting the land is made out by the appellants.*

*52. In the aforesaid view of the matter, the impugned action of the respondents cannot be held to be arbitrary, illegal or contrary to the provisions of the Electricity Act, 2003 on any ground whatsoever. Section 164 of the Electricity Act, 2003 read with Section 10 of the Indian Telegraphs Act, 1885 recognized the absolute power of the respondent Company to proceed with laying high tension electric lines or electric polls for the transmission of electricity on or over the lands belonging to the appellant herein subject to the right of the appellant to claim compensation if any damage is sustained by him by reason of laying such high tension electric lines. In other words, neither the acquisition of lands is necessary nor there is any need for consent of the appellant. Hence, no mandamus can be issued restraining the respondent Company from proceeding with the erection of polls and transmission lines through the land of the appellant. However, this shall not preclude the appellant to claim compensation by working out the appropriate remedy as available under law in case any damage is sustained to his property."*

57. Since the Division Bench ruling of the Gujarat High Court in **Ratilal Maganji Brahmmbhatt** supra has comprehensively dealt the interplay of different provisions of



Indian Telegraph Act, 1885 and Electricity Act, 2003, the other decisions referred to by the parties are not discussed in detail.

58. On careful consideration of the aforesaid judgments of the Gujarat High Court, suffice to say that the power of the Deputy Commissioner in entertaining the request made by land loser under Section 17 of the Indian Telegraph Act, 1885 coupled with Section 10 is very limited and is of narrow scope. All that the District Magistrate is entitled to consider in such circumstances is to pay adequate compensation as is found in Section 16 of the Indian Telegraph Act, 1885.

59. A conjoint reading of the provisions of Indian Telegraph Act, 1885, as well as Electricity Act, 2003, it is crystal clear that a person who loses the land for the purpose of either erecting of tower or passing of electric lines, has no vested interest in objecting for the design or location of the towers. But, in the case on hand, request of the petitioners has been considered by the District Magistrate and there is also shifting of tower by 17 meters of the position of the tower which would suffice the need of the petitioners.



60. The power conferred under Section 16 of the Indian Telegraph Act, 1885, is the only power that could be exercised by the Deputy Commissioner whereunder the Deputy Commissioner may determine the appropriate compensation for the usage of the land belonging to private persons when the said land is used for either erecting the tower or for drawing the electric lines.

61. From the language employed in the provisions of Telegraphic Act and Electricity Act as referred to supra, it is crystal clear that it is in the exclusive domain of the authorities to prepare a appropriate design/drawing. While so preparing the design, designers would definitely take into consideration the relevant parameters including sagging of lines, loss of power and more importantly, causing least damage, if the lines were to pass through private lands.

62. In the case on hand, the original design is altered by shifting the tower position by 17 meters away from the original design which shows that there is sufficient application of mind





on the part of the designers and the Deputy Commissioner in considering the request of the petitioners.

63. It is settled principles of law and requires no emphasis that when larger public interest is involved, private interest of an individual should yield to the larger public interest.

64. It is often said that in a project like this where paramount interest is the interest of the Nation, individual or private interest would lose its significance.

65. It is no doubt true that the Government cannot arbitrarily acquire the land for beneficial purpose even though right to possess the land is now not treated as a fundamental right and the Government in such circumstances, should take into consideration Article 300A of the Constitution of India. When such consideration is made, the Government or Governmental agencies should weigh pros and cons and arrive at a harmonious balance between the individual right of a person and the need of the public at large.



66. Said view of this Court is fortified by the recent judgment of the Apex Court in the case of ***Madhyamam Broadcasting Limited vs. Union of India and others*** reported in ***2023 SCC Online SC 366*** wherein, it is held as under:

*" The principle on which this departure can be and is justified is the principle of the overriding and paramount character of public interest. A valid claim for privilege made under [Section 123](#) proceeds on the basis of the theory that the production of the document in question would cause injury to public interest, and that, where a conflict arises between public interest and private interest, the latter must yield to the former."*

67. In yet another judgment of the Hon'ble Apex Court in the case of ***Yamuna Expressway Industrial Development Authority etc., vs. Shukuntla Education and Welfare Society and others etc.,*** reported in ***2022 SCC Online SC 655*** it has been held as under:

*"63. Insofar as the reliance placed by the respondents on the judgment of this Court in the case of [ITC Limited](#) (supra) is concerned, in our considered view, [the said judgment](#) would not be of any assistance to the case of the respondents. This Court in the said case in paragraph 107.1 has clearly observed that in the case of conflict between public interest and personal interest, public interest should prevail."*



68. Thus, on cumulative consideration of the material on record including the grounds urged in the writ petition and the need of the respondents in laying the electrical lines including installation of tower in the land of the petitioners, since already the design has been altered by shifting the tower position by 17 meters away from the existing graves of the parents of the petitioners, rejection of further request of the petitioners to further shift the tower by 24 meters on to the North West corner is thus just and proper.

69. More over, the alleged establishment of a charitable hospital cannot over ride the public interest involved in laying the electrical lines. Further, having regard to the modern day development in the field of architecture, even after installing the tower and drawing of electricity lines in the land of the petitioners, the remaining land can be utilized so as to construct a charitable hospital, if petitioners so desire.

70. further, if petitioners can consult an expert for redesigning of the existing lines by spending money, they can very well get a suitable advise from the modern architects in



constructing a charitable hospital in the remaining land without the design being further altered.

71. Any way, it is for the petitioners to think and act in that direction and this Court cannot agree to the request of the petitioners on a project of the petitioners which is yet to commence.

72. More over, petitioners are not only the persons who have been affected by the drawing of electrical lines and similarly placed land owners have already co-operated for the project. But for the legal action taken by the petitioners, the project would have been completed by now.

73. Taking note of the above aspects and also the delay already caused in implementing the project, this Court is of the considered opinion that the grounds urged in the writ petition are hardly sufficient to allow the writ petition that too by resorting to the powers vested under Article 226 of the Constitution of India.



74. The usual test that is required to be applied in a writ petition to find out the action that is sought to be implemented by respondent Nos.2 and 3 at the instructions of other respondents in implementing the project on one hand and the case that is made out by the petitioners that redesigning of the drawing on the other hand, when analysed by placing them in juxtaposition, this Court does not find any arbitrariness in the action of the respondents so as to exercise the power vested in this Court under Article 226 of the Constitution of India.

75. Accordingly, from the above discussion, this Court is of the considered opinion that the writ petition has to fail.

76. Hence, the following:

ORDER

(i) Writ Petition is ***dismissed***.

(ii) Despite dismissal of the writ petition, petitioners are entitled to seek necessary relief for awarding proper compensation.

**Sd/-  
JUDGE**

kcm  
List No.: 1 Sl No.: 60