

IN THE HIGH COURT AT CALCUTTA CIVIL REVISIONAL JURISDICTION APPELLATE SIDE

Present:

THE HON'BLE JUSTICE PARTHA SARATHI SEN

C.O. No.1508 of 2022

Sabbir Khan

Vs

The Project Manager, West Bengal State Electricity

Distribution Company Limited & Anr.

For the Petitioner : Mr. Krishna Das Podder, Adv. : Mr. Pradip Paul, Adv.

For the O.Ps. : Mr. Sujit Sankar Koley, Adv.

Last Heard on: :20.02.2023

Judgment on: :24.02.2023

Partha Sarathi Sen, J.:-

1. The instant revisional application as filed under Article 227 of the Constitution of India arises out of the Judgement and Order dated April 13, 2022 as passed by Learned Additional District Judge, Fast Track, Third Court, Sadar, Paschim Medinipur in Misc. Appeal No. 35 of 2014 whereby and whereunder the said Court by the impugned Judgement allowed the said Misc. Appeal No. 35 of 2014 thereby setting aside the order No. 23 dated January 31, 2012 as passed by Learned Civil Judge (Junior Division), Danton, Paschim Medinipur as passed in Title Suit No. 53 of 2012 and thus rejected the petition as filed Procedure by the plaintiff under Order 39 Rules 1 & 2 of the Code of Civil on contest.

2. The plaintiff felt aggrieved and thus preferred the instant revisional application.

3. For effective disposal of the instant revisional application, the brief facts leading to passing of the impugned judgement is required to be discussed in a nutshell. It is the plaint case that the plaintiff is the rayat of the suit property over which he intends to construct his house by converting the suit property to a bastu land. It is the further case of the plaintiff that on 19.03.2012 the defendants and their men and agents came over the suit property and erected an electric poll over the suit property without the consent of the plaintiff with an intention to take High Tension Line over the suit property. It is further case of the plaintiff that in the event the defendants are successful in taking high tension line over the suit property, he would not be in a position to construct his house over the suit property and thus finding no other alternative, the plaintiff has filed the said suit against the defendants for permanent injunction and for other ancillary reliefs.

4. Based on the self-same facts, the plaintiff before the Trial Court filed an application for temporary injunction. The defendants of the said suit filed their written objection as against the said injunction application. Learned trial court after hearing both the sides was pleased to allow the said injunction application as filed by the plaintiff on contest by its order No. 23 dated January 31, 2012.

5. Feeling aggrieved with the said order dated January 31, 2012, the defendants of the said suit preferred an appeal before the first appellate Court which was allowed by the impugned judgement.6. Mr. Podder, Learned Advocate for the plaintiff/revisionist in course of his submission draws attention of this Court to the impugned judgement. It is submitted by him that Learned First Appellate while passing the impugned judgement misconstrued the provisions of Section-164 of the Electricity Act, 2003 herein after referred to as the said Act of 2003 visa-vis Section-10 of the Indian Telegraph Act,

1885 herein after referred to as the ' said Act of 1885 '.It is submitted by the learned Advocate for the plaintiff/revisionist that learned First Appellate Court mis-interpreted the word ' transmission ' as available in section 164 of the said Act of 2003 and thus wrongly hold that Rule 3 of Works of Licensing Rules 2006 is not applicable in the present lis. It is further submitted by the learned Advocate for the plaintiff/revisionist that since the defendants/opposite parties being the licensee are engaged in the distribution of electricity and not transmission of the same, Learned First Appellate Court ought to have hold the defendants must have to obtain necessary permission from District Magistrate for carrying out the work of electric supply line over the suit property in view of the provision of Rule 3 of Works of Licensing Rules 2006.It is submitted that is a fit case for allowing the instant revisional application by setting aside the impugned judgement as passed by the learned first appellate Court.

7. Per contra, Mr. Koley, Learned Advocate for the defendants/opposite parties also placed his reliance upon section 164 of the said Act of the said Act, 2003 and section 10 of the said Act of 1885.Attention of this Court is also drawn to a notification No.285-Power/III/3R-04/2005 dated August 16, 2005 as issued by Department of Power and Non-Conventional Energy Sources, Government of West Bengal. It is submitted on behalf of the defendants/opposite parties that by virtue of the aforesaid provisions of law and the aforementioned notification, the defendants/opposite parties being the licensee has been authorized to place electrical lines over the suit property and in doing so, if any damage is caused to the plaintiff/revisionist, he is at best entitled to get compensation in view of Section 10 (d) of the said Act of 1885.It is thus submitted on behalf of the defendants/opposite parties that the first appellate Court visualized the correct propositions of law and thus rightly passed the impugned judgement thereby vacating the order of injunction as passed by the trial court.

8. This Court has meticulously perused the entire materials as placed before this court. This court has given its due consideration over the submissions of the Learned advocates for the contending parties.

9. For effective adjudication of the instant revisional application a look to the provision of Section 164 of the Act of 2003 and Section 10 of the said Act of 1885 are required to be looked into. Section 164 of the Electricity Act, 2003 reads as under:

" 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 coordination 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 (13 of 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 ".

Section 10 of the Indian Telegraph Act, 1885 reads as under:

"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 established or 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; and

(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. "

10. On perusal of Section 164 of the Act of 2003, it appears to this Court that the word ' transmission of electricity ' is to be viewed liberally and not in a narrow compass. In considered view of this court the term ' transmission ' must include ' distribution ' also since the opposite parties being the licensees are duty bound to transmit electricity for distribution of the same to its consumers. In view of such, under no stretch of imagination it can be said that the defendants/opposite parties are not bestowed with the power under Section 164 of the Act of 2003 read with Part-III of the Act of 1885.It reveals further for the aforesaid reason in order to facilitate smooth transmission and distribution of electricity, Government of West Bengal has issued the notification dated 16.08.2005 authorizing the defendant/opposite party no.4 to exercise the power under Section 164 of the Act of 2003.

11. Such being the position this Court got no hesitation to hold that the defendant/opposite party no.4 has every authority to place electrical lines in exercise of the power as given to them under Section 164 of the said Act of 2003 read with Section 10 of the Act of 1885 and in doing so it need not require any permission from any authority as claimed by the present revisionist.

12. In view of such, this Court further holds that the provisions of Works of Licensees Rules, 2006 has got no application in the instant lis and accordingly the instant revisional application fails. Consequently the impugned judgement dated April 13, 2022 as passed by the learned Additional District Judge, Fast Track 3rd Court, Sadar, Paschim Medinipur in Misc. Appeal No.35 of 2014 is hereby affirmed.

13. Department is hereby directed to send copies of this judgement both to the learned Appellate Court as well as to the Trial Judge for their information and record.

14. Urgent Photostat Certified copy of this judgment, if applied for, be supplied to the parties expeditiously after complying with all necessary legal formalities.

(Partha Sarathi Sen, J.)