

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/SPECIAL CIVIL APPLICATION NO. 3395 of 2024**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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**CHAUDHARI KARSHANBHAI KUBERBHAI & ORS.**

Versus

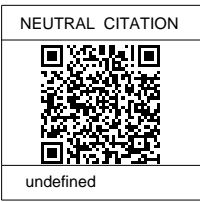
**COLLECTOR / DISTRICT MAGISTRATE PATAN & ORS.**

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**Appearance:**

MR AJ YAGNIK(1372) for the Petitioner(s) No. 1, 10,11,12,13, 14, 15, 16,17,18,19,2,20, 21,22,23, 24, 25,26,27, 28,29, 3,30, 31, 32, 33,34,35,36,37,38,39,4,40, 41,42, 43,44,45,5,6,7,8,9  
 MS. DHWANI TRIPATHI, AGP for the Respondent(s) No. 1  
 MOSON LE EXPARTS(11071) for the Respondent(s) No. 6,7  
 MR AKSHAT KHARE(5912) for the Respondent(s) No. 6,7  
 NOTICE SERVED BY DS for the Respondent(s) No. 1,2,3,4,5

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**CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**

**Date : 08/05/2024**

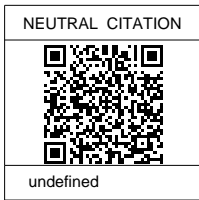
**ORAL JUDGMENT**

1. Issue **RULE**, returnable forthwith. Mr. Akshat Khare, learned advocate and Ms. Dhvani Tripathi, learned Assistant Government Pleader waive service of Rule for and on behalf of the respondent nos. 6 and 7 and respondent- State authorities receptively.

2. Heard Mr. A.J. Yagnik, learned advocate appearing for the petitioners, Mr. Akshat Khare, learned advocate appearing for the respondent nos. 6 and 7 and Ms. Dhvani Tripathi, learned Assistant Government Pleader appearing for the respondent -State authorities.

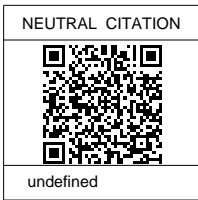
3. Brief facts leading to the filing of the present Petition reads thus:

3.1. The petitioners herein are the farmers and agriculturists, whose lands are situated within the revenue limits either of Patan, Saraswati or Chanasma Taluka of District: Patan



and who are affected by 765 KV D/C Banaskantha – Ahmedabad Transmission Line Project to lay down overhead transmission line from the lands of the petitioners. The respondent no.6 herein having undertaken construction of the aforesaid transmission line project, approached the respondent - District Magistrate under Section 16(3) of the Indian Telegraph Act, 1885, seeking permission to lay down transmission line.

3.2. The respondent – District Magistrate by impugned order dated 05.02.2024 duly produced at Annexure-A, Pg.34, after granting opportunity of hearing to the stakeholders granted permission to lay down the aforesaid transmission line, taking into consideration the representation for giving permission for installing electric poles and electric lines under the project for linking the 765 KV Banaskantha Sub Station (Power Grid) with 765 KV Ahmedabad (new) Power Grid sub station as well as representation of the affected farmer account holders and the company is ordered to pay the compensation as per rules under the provisions of the government for the loss of land to be caused due to work of tower base and corridor and the



compensation for loss caused to the standing crops shall be paid as prescribed by the concerned Mamlatdar. Furthermore, in case of mutation in possession due the resurvey, the measurement of land be conducted and it be ensured that compensation is paid to the affected farmers after measurement is carried out, correction is made in record and implementation is made accordingly.

3.3. The aforesaid order dated 05.02.2024 passed by the respondent – District Magistrate is the subject matter of challenge by filing the present petition, wherein, petitioners herein have prayed for the following reliefs:

“10. In view of above the Hon'ble Court may be pleased to exercise Writ Jurisdiction under Article 226 of the Constitution of India and issue Writ of Mandamus and/or Writ of Certiorari or any other appropriate Writ or pass order or direction in the nature of writ and thereby:

*“A. Your Lordships be pleased to hold and declare that the impugned order dated 05.02.2024 annexed at Annexure-A passed by the Respondent District Magistrate, Patan District under the provisions of the Indian Telegraph Act, 1885 is in violation of principles of natural justice and in violation of due process of law and hence illegal and unconstitutional and violative of fundamental rights of the petitioners and Be Further Pleased to quash and set aside the same;*

*B. Your Lordships be pleased to hold and declare that the entire process of acquisition of Easementary rights and/or User Rights from the lands of the petitioners having been undertaken without*



*following due process of law and without publication of public notice in prominent newspapers having circulation in the region of the petitioners and thereby restricting and frustrating the rights of the petitioners in raising objections is illegal, malafide, manifestly arbitrary, violative of fundamental and statutory rights of the petitioners and hence vitiates the entire process and all consequential proceedings and thereby Be Further Pleased to quash and set aside the order dated 05.02.2024 passed by the District Magistrate, District Patan annexed at Annexure-A.*

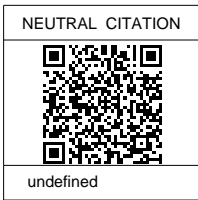
*C. Your Lordships be pleased to hold and declare that the entire process of acquisition of Easementary and/or User rights as undertaken by the respondent Utility Company without having published the public notice in prominent newspapers having circulation in the region of the petitioners and thereby restricting and frustrating the rights of the petitioners in raising objections and hence tantamounts to having played fraud upon the petitioners and since the element of fraud being manifest in the entire process, it vitiates the whole process and renders the order dated 05.02.2024 passed by the respondent District Magistrate, District Patan as non-est, bad in law and hence illegal and unconstitutional and Be Further Pleased to quash and set aside the same;*

*D. Alternatively, Your Lordships be Pleased to remand the matter to the respondent District Magistrate, Patan District for fresh and de novo consideration with a direction to afford proper, effective and adequate hearing to the petitioners and thereafter pass a reasoned order following the law laid down by the Hon'ble High Court in Special Civil Application No. 18334 of 2011 and LPA No. 1104 of 2013 and other allied matters and other subsequent guidelines and resolutions issued by the Government in the same regard;*

*E. During the pendency and/or final disposal of the present petition, Your Lordships be pleased to stay the execution, implementation and operation of the impugned order dated 05.02.2024 passed by the respondent District Magistrate, Patan annexed at Annexure-A.*

*F. Be pleased to grant ad-interim relief in terms of Clause D;*

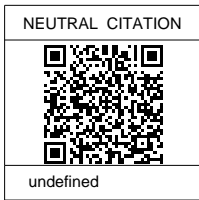
*G. To pass any other and further reliefs that may be deemed fit and proper and in the interest of Justice and Equity.”*



4. Heard Mr. Anand Yagnik, learned advocate appearing for the petitioners.

4.1. Mr. Anand Yagnik, learned advocate appearing for the petitioners herein mainly submitted that the impugned order passed by the respondent – District Magistrate dated 05.02.2024 is violative of the principles of natural justice to the extent that adequate opportunity was not provided to the petitioners herein and the aforesaid also results in violation of the principles of natural justice. It is mainly submitted by Mr. Yagnik, learned advocate that the petitioners herein at no point of time have been granted an opportunity to acquaint themselves with the process culminated by the respondents for laying down of transmission towers, since, no independent notices were issued, calling upon the petitioners for their objections or otherwise, the same is violative of due process of law.

4.2. Mr. Yagnik, learned advocate also submitted that the petitioners herein have not been given or provided a copy of the application filed by the respondent no.6. It was incumbent for the respondent no.3 to provide the petitioners with the copy of



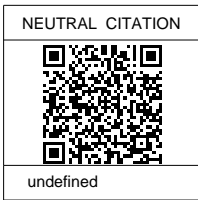
the application. It is submitted that only on the aforesaid ground with respect to non-supply of the copy of the application, the impugned order be quashed and set aside and the petitioners herein be granted re-hearing by the respondent no.3 herein.

4.3. Mr. Yagnik, learned advocate relied on the ratio as laid down in Special Civil application No. 18334 of 2011, Special Civil Application No. 4049 of 2014 and 2015 (8) SCC 519 (Para-20 to 28) and placing reliance on the aforesaid submits that the principles of natural justice were required to be followed by quasi-judicial authority also in its true spirit.

5. Heard Ms. Dhvani Tripathi, learned Assistant Government Pleader appearing for the respondent- State.

5.1. Ms. Tripathi, learned Assistant Government Pleader has relied on the affidavit in reply filed by the respondent no.1, duly produced at page.399.

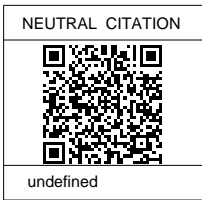
5.2. Ms. Tripathi, learned AGP, at the outset submits that the petitioners herein belong to Taluka: Patan, Saraswati and Chanasma of District: Patan and the 1<sup>st</sup> notice came to be issued



to all the concerned villagers on 30.11.2023, which is duly annexed at Page-45 to 49 to the petition, for which the hearing was held on 14.12.2023 and 15.12.2023. That some of the villagers remained present for the hearing and signed the rojkam, but some villagers refused to sign the rojkam and some did not remain present before the respondent authority. Ms. Tripathi, learned AGP, further submits that in the first hearing, 15 petitioners were present out of 45 petitioners.

5.3. Ms. Tripathi, learned AGP, further submits that, there were many villagers, who did not remain present before the respondent authority for the first hearing and in view thereof, to facilitate such villagers, 2<sup>nd</sup> notice came to be issued on 26.12.2023, however, due to unavailability of the respondent authority, hearing could not be held and therefore, 3<sup>rd</sup> notice came to be issued on 05.01.2004 to the affected villagers, calling upon them to remain present on 15.01.2024 before the respondent authority to raise all the grievances. Reliance was placed on the 2<sup>nd</sup> and 3<sup>rd</sup> notices duly produced at Annexure-R-2. The notice dated 05.01.2024 was also issued to the villagers, who

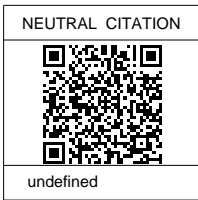




do not reside at the address stated in the records, notices were served through whatsapp and they were also informed through telephonic conversation about the hearing having scheduled on 15.01.2024.

5.4. Ms. Tripathi, learned AGP, submits that, the representatives of the respondent no.6 remained present in both the hearings and explained to the villagers that the villagers will be able to continue their agricultural activity under and around the electric line and the electric pole, which would be installed by the respondent no.6. The respondent no.6 also replied and shared the details with respect to the compensation to the villagers. The villagers never approached the respondent authority to provide for the application that was submitted by the respondent no.6, pursuant to which the respondent issued Notice and intervened.

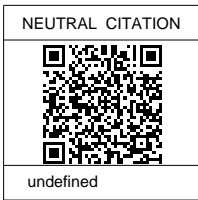
5.5. Ms. Tripathi, learned AGP, submits that, out of 45 petitioners, 3 petitioners remained present during the hearing on 15.01.2024 and placing reliance on the aforesaid submissions, submits that the petitioners have made false statements on oath



that no hearing was accorded after 15.12.2023. Ms. Tripathi, learned AGP, submits that, the petitioners were aware that a notice dated 05.01.2024 was issued and a second round of hearing was accorded to the villagers, who could not remain present for the first hearing.

5.6. Ms. Tripathi, learned AGP, submits that, the respondent no.1 – District Magistrate has very limited role, while adjudicating the application preferred by the electricity company for intervening. The respondent no.1 has limited power and role to see that the line is laid down with minimum damage caused to the trees and agricultural activity of the villagers on agricultural land. Ms. Tripathi, learned AGP, submits that, some lands in question in the present case are non-agricultural land, as the grievance was raised before the District Magistrate that once the electric line passes through their land, will they be able to construct and will they get development permission on the said land.

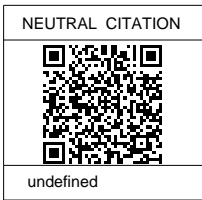
5.7. Ms. Tripathi, learned AGP, submits that, the only ground raised in the petition is that the petitioners were not



given adequate opportunity of hearing by the respondent no.1. To the aforesaid, Ms. Tripathi, learned AGP, submits that, the respondent authority as referred above issued three notices to the affected villagers and two effective hears were provided to the villagers. It is submitted that, all the possible endeavours were made by the respondent authority to serve the villagers, whether they reside in the village or not and therefore the contention of the petitioners that opportunity of hearing was not provided is completely a delay tactics on the part of the present petitioners.

5.8. Ms. Tripathi, learned AGP, submits that, once the villagers are served with the notice by the electricity company and the electricity company has been granted powers under Section 164 of the Electricity Act, the grievance with respect to the breach of the principles of natural justice, as they are served with the public notice and the respondent authority has served individual notice to the villages and the villagers choosing not to remain present before the respondent no.1 – authority, cannot be said to be in breach of the principles of natural justice.

5.9. Placing reliance on the aforesaid submissions, Ms.

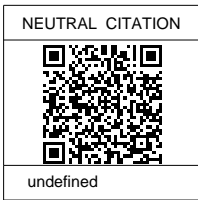


Tripathi, learned AGP, submits that, the present Petition be dismissed.

6. Heard Mr. Akshat Khare, learned advocate appearing for the respondent nos. 6 and 7.

6.1. Mr. Khare, learned advocate placed reliance on the affidavit-in-reply filed by the respondent nos. 6 and 7, duly produced at Pg.330.

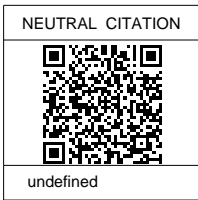
6.2. Mr. Khare, learned advocate submits that, POWERGRID, a "Maharatna" Central PSU, for one of its transmission line expansion project, had incorporated wholly owned subsidiary M/s Power Grid Khavda RE Transmission System Ltd. (Respondent No. 6) for Transmission Network Expansion in Gujarat associated with integration of RE projects from Khavda and connecting it to rest parts of the country. The Ministry of Power through "Central Electricity Authority" (CEA), pursuant to Sec. 164 of Electricity Act, 2003, had conferred powers of Telegraph Authority to respondent no. 6 for the purpose of said project and acquired "Right of Way" (ROW) to



enter the land/property for laying of transmission line. The claimants are only entitled for for compensation towards ROW / laying of transmission line which is only for diminishing value of land.

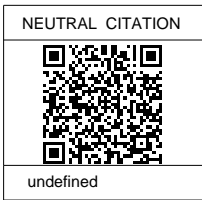
6.3. Mr. Khare, learned advocate submits that, pursuant to the directions of Hon'ble Supreme Court in *Civil Appeal no. 5396 of 2016* {arising from SLP (C) no. 30704 of 2013}, the Ministry of Power, Govt. of India issued a guideline dated 15/10/2015 issued to State Governments & Union Territories, with respect to compensation under ROW. Accordingly, the State of Gujarat issued Government Resolution vide dated 14/08/2017 and amended vide GR dated 31.12.2021 prescribing rate of compensation under case of ROW.

6.4. In the present case Government of India, through Ministry of Power, had circulated a Guidelines u/s. 63 of Electricity Act *M/s. REC Power Development & Consultancy Ltd.* was appointed "Bid Process Coordinator" to lay "Banaskantha – Ahmedabad 765 kV D/c transmission line with 330MVA<sub>r</sub>, 765 kV Switchable line reactor on each ckt at Ahmedabad S/s end and



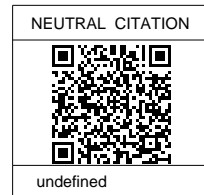
associated line” {further referred as “*said transmission line*”} passing through various villages of Banaskantha District in State of Gujarat. The Central Electricity Authority (*CEA*) had issued approval letter dt. 21/12/2022 {at pg.no. 357} u/s. 68 of Electricity Act to Respondent no.6 for “Transmission Network Expansion in Gujarat associated with integration of RE projects from Khavda potential RE zone on build, own, operate and transfer basis” [further referred as “said transmission network”] which included laying of said transmission line. The said project was to be completed in 24 months by 09/03/2025 at an initial estimated project cost of Rs.815.12 crores approximately. The entire project is for public purposes and will be beneficial particularly for the State of Gujarat.

6.5. Mr. Khare, learned advocate submits that, it had started the work of constructing the lines pursuant to Sec. 67(1) of the Electricity Act, 2003 read with Sec.10 of Indian Telegraph Act 1885. The work done by respondent no. 6 for the laying of said transmission line are as per the powers conferred under the law and also after obtaining the requisite permission of the



concerned authority. Further, respondent no. 6 has given prior initiation of work for laying said transmission network to all affected farmer/petitioners and had also issued public notice in Indian Express (in English) on 09/06/2023 and in Rajasthan Patrika (in Hindi) on 08/06/2023 and in Divya Bhaskar (in Gujarati) on 08/06/2023 and in Weekly official Gazette on 17/07/2023 {at pg. no. 386}. Further, During work of laying of transmission line, the farmers of Taluka Chanasma Dist. Patan, had raised obstruction / agitation. Therefore, respondent no.6, vide its letter dt. 26/06/2023, 06/07/2023, 24/07/2023, 19/08/2023 29/08/2023 and 20/10/2023 and 23/12/2023 {at 389 to 398} had requested Respondent no.1 - District Magistrate, Patan to intervene under sec. 16(1) of Indian Telegraph Act 1885.

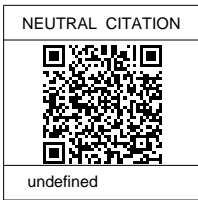
6.6. The Respondent no. 1 - District Magistrate through Additional District Magistrate, had issued notices dt. 30/11/2023 [at pg. no. 45 to 49] to all affected farmers including petitioners for calling them for personal hearing on 14/12/2023, 15/12/2023 & 15/01/2024. The said notices also intimate the reason for hearing and issues involved, thereby meaning, petitioners were



having knowledge of purpose of hearing. It is for this reason; petitioners have also raised objections by their letter dt.23/11/2023 & 26/11/2023 & 30/12/2023 [at pg. no. 49A to 49/F] with respect to sufficiency of compensation. Neither of the petitioners have ever raised or demanded for copy of letter/application made u/s. 16(1) of Telegraph Act. Therefore, at this stage, it is not open for the petitioners to raise such objection of not receiving copy of applications. Thereafter, upon giving sufficient opportunity of hearing and raising objections, the District Collector, vide order dt. 05/02/2024 [at pg. no. 34], had passed a speaking order after recording all objections of farmers with respect to compensation and after satisfying the objections of petitioners, the Ld. District Magistrate had permitted respondent no. 6 to proceed to lay said transmission line/network.

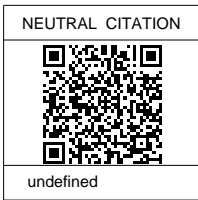
6.7. Mr. Khare, learned advocate submits that, one of the contention of petitioners is not getting meaning full principals of natural justice without giving sufficient opportunity of hearing to petitioners for raising their objections. It is important to note that





the petitioners were in knowledge of laying subject transmission line way back in June 2023 through public notices {at pg. 317-318} and CERC orders which petitioners have placed on record {at pg. 303 to 316} along with petition. Further, the respondent - ADM had also issued 15 days advance notice for personal hearing before the respondent - DM which is also placed on record at pg. 45 to 49 along with petition. Furthermore, the petitioners had appeared before respondent - DM and had also submitted their written objections which is also placed at pg no. 49A to 49F along with petition, wherein, the petitioners had never raised any objections with regard to violations of principles of natural justice and violation of due process of law except objection for compensation.

6.8. Mr. Khare, learned advocate submits that the present petition is nothing but misuse of process of law. However, for sufficiency of compensation petitioners not remedyless as alternative remedy is available u/s. 16(3) of Indian Telegraph Act. Further, this Hon'ble Court as well as the Hon'ble Supreme Court had repeatedly upheld the doctrine of Eminent Domain, whereby

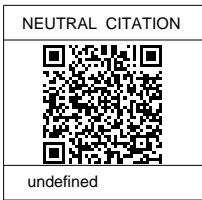


the private interest must yield to public interest. The petitioners herein have miserably failed to establish any statutory right to demand copy of application filed u/s. 16(1) of Telegraph Act, thereby meaning there has been no infirmity in impugned order.

6.9. Mr. Khare, learned advocate lastly submits that present petition is required to be dismissed and respondent no.6 should be permitted to continue the work of lying of transmission as per law in the public welfare.

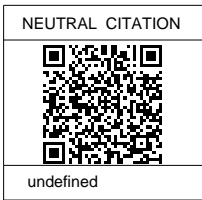
7. Having heard the learned advocates appearing for the respective parties, following emerge:

A. The respondent no.7- Power Grid Corporation of India for one of its transmission line project, had incorporated M/s. Power Grid Khavda ER Transmission System Ltd. - respondent no.6 herein, a wholly owned subsidiary of POWERGRID as a special purpose vehicle for Transmission Network Expansion in Gujarat association with in integration of RE projects from Khavda being potential RE zone and connecting it to the rest parts of the country.



B. On 21.12.2022, the Central Electricity Authority (CEA) had issued approval letter under Section 68 of the Electricity Act to the respondent no.6 for ‘Transmission Network Expansion in Gujarat associated with integration of RE projects from Khavda potential RE zone on build, own, operate and transfer basis’ (for short ‘the said transmission network’), which included laying down of said transmission line. The said approval is duly produced at Annexure-R-4.

C. The Ministry of Power through ‘Central Electricity Authority’ (CEA), pursuant to Section 164 of the Electricity Act, 2003, had conferred powers of Telegraph Authority to the respondent no.6 for the purpose of the said project, vide gazette notification dated 20.11.2023 (Annexure-R-1). Upon conferring the powers of telegraph authority, the transmission licensee gets ‘Right of Way’ (ROW) to enter the land / property for laying of transmission line. Under ROW, the transmission licensee does not acquire any right other than that of USER ONLY in the property under, over, along, across, in or upon which it can place any Electric Transmission Lines / Posts / Towers. Under ROW, no



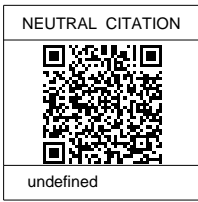
acquisition of land is involved in the process. During the process of construction activities, if any damage is caused to the trees / crops / structures, then the transmission licensee is liable to pay actual compensation as per the assessment done by the revenue department.

D. The project is to be completed in 24 months by 09.03.2025 at an initial estimated project cost of Rs.815.12 crores (approx.). The whole process of transmission line construction is for public purposes.

E. The respondent no.6 started the work of constructing lines, pursuant to Section 68 of the Electricity Act, 2003 r/w. Section 10 of the Indian Telegraph Act, 1885.

F. Section 10(d) of the Indian Telegraph Act, 1885, provides that the respondent no.6 is required to cause as little damage as possible and is required to pay compensation of the damages for the same.

G. In case of dispute with regard to insufficient compensation, the remedy lies under Section 16(3) of the Indian

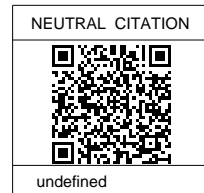


Telegraph Act, 1885 to approach the Court of District Judge as regards to insufficiency of compensation.

H. Prior to the initiation of work for laying down the said transmission network, the respondent no.6 issued public notice in The Indian Express (in English) on 09.06.2023 and in Rajasthan Patrika (in Hindi) on 08.06.2023 and in Divya Bhaskar (in Gujarati) on 08.06.2023 and in weekly official gazette on 15.07.2023 to intimate the prospective affected farmers about the laying of the transmission line across the fields of respective villages, newspaper publications are duly produced at Annexure-R-5.

I. The respondent no.6 in the process of laying down the transmission line as referred above, when the transmission line reached Tal.: Chanasma, Tal.: Saraswati and Tal.: Patan of Dist.: Patan, the affected land owners have initiated agitation, as a result of which, the project has come to a standstill.

J. The respondent no.6 vide letters dated 26.06.2023, 06.07.2023, 24.07.2023, 19.08.2023, 29.08.2023, 20.10.2023 and

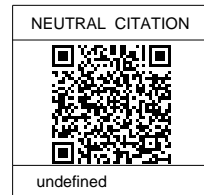


23.12.2023 requested the respondent no.1 – District Magistrate, Patan to intervene in the matter and to fix the rate of compensation under Section 16(1) of the Act, 1885, the said letters / communications are duly produced at Annexure -R-6.

K. The respondent no.1 through Additional District Magistrate, issued notices on 30.11.2023 (pg.45 to 49 of the petition) to all the affected farmers including petitioners for calling them for personal hearing on 14.12.2023, 15.12.2023 and 15.01.2024.

L. The petitioners raised objections by their letters dated 23.11.2023, 26.11.2023 and 30.12.2023 (pg.49A to 49F of the petition). The petitioners were also represented through their legal representative, on perusal of the record.

M. Upon granting sufficient opportunity of hearing and considering the objections raised by the stakeholders, the respondent no.1 passed the impugned order dated 05.02.2024 (pg.34 of the petition), recording all the objections of the stakeholders with respect to compensation and duly confirming



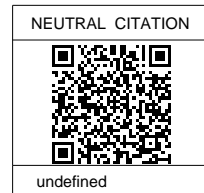
with the respondent no.6 for complying with all the government resolutions for compensation in terms of ROW. On satisfying the objections of the petitioners, the respondent no.1 had passed the impugned order, permitting the respondent no.6 to proceed to lay said transmission line / network.

N. The aforesaid facts are undisputed, no rejoinder, having been filed by the present petitioners herein to the affidavit in reply filed by the respondents.

7. In line of the aforesaid, it is apposite to refer to the relevant part of impugned order dated 05.02.2024 (pg.34), wherein, the respondent – District Magistrate, incorporating the objections raised by the farmers, who were present passed the order, which reads thus:

“.....The farmers, who remained present in the hearing have made following representation.

- The farmers account holders have demanded to pay more compensation and make payment of compensation in line with the compensation made in other districts.
- The farmers account holders have represented that the officials of Electricity company come to the farms and carry out the work of digging the pits for installing the electricity poles without giving any notice or without any prior information. Therefore, the farmers have represented that prior notice should be given and the farmers



should be informed.

- If the electricity line passes through non-agricultural land, the same should be explained in detail to the farmers as to how much area is to be covered under construction and how much area will be left.
- The farmers have further made representation regarding the chance of electrocution to the people working in the farm and to the animals and expressed their concern for their safety.
- The farmers having lesser lands have represented that if there is a Government waste land or any open waste land besides their land, the electricity poles should be installed or shifted in the said land.
- As resurvey promulgation is done in several survey numbers, the farmers other than actual the land owners have received notice of hearing meaning thereby that the possession has been changed due to resurvey promulgation. Therefore, as there are discrepancies in the names and places of the account holders as per village form number 7/12, the said discrepancies should be removed first, records should be corrected and then only the compensation should be paid to the actual owner of the land.
- They have also represented that they should be explained as to whether farming can be done below the electricity line or around the electricity poles due to installation of electricity lines.

*Taking into consideration the above representation of the farmer account holders, the officers and representatives of the Power Grid company, who remained present, gave detailed explanation regarding the system of paying compensation for the loss of land and crops. They also explained the farmers account holders in detail that farming can also be done near and around the electricity line and electricity poles. As the electricity line is located at the adequate height from the land, the farmers were explained that there is no possibility of any accident. The officers and representatives of the Power Grid company, who remained present, informed all the farmers account holders that the concerned farmers will be informed before carrying out work of installing electric poles or any other work and no work will be carried out without informing them.*

*As the said project is very important and is in the public interest and as the same is to be completed within stipulated time period prescribed by the Government, it appears necessary*





*to complete the electricity line work in time. As the applicant company agrees to speed up the work of payment of compensation as per Government norms on priority basis to the obstructed farmers as per Indian Electricity Act-2003 and section 68, for the loss of crop/trees caused to them at the time of installation of the above electricity line: and without acquiring land as per the Resolution No.GET-11-2015-GOI-199-K dated 03/12/2021 of the Energy and Petro Chemicals Department of the Government of Gujarat, the company agrees to pay the compensation of the land as per 85 % of interior area of the tower and 15 % area below the wires to the affected farmers in accordance with prevalent jantri rates as per Resolution No.STP-122023-20-H.1 dated 04/02/2023, following order is passed in exercise of power under section 16 (1) of the Indian Telegraph Act-1885 considering the entire facts, representation of the parties and papers produced in this case*

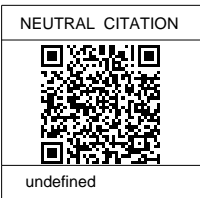
***-:ORDER:-***

*The application filed by the applicant is granted. Taking into consideration the representation for giving permission for installing electric poles and electric lines under the project for linking the 765 KV Banaskantha Sub Station (Power Grid) with 765 KV Ahmedabad (new) Power Grid sub station as well as representation of the affected farmer account holders, the company is ordered to pay the compensation as per rules under the provisions of the government for the loss of land to be caused due to work of tower base and corridor and the compensation for loss caused to the standing crops shall be paid as prescribed by the concerned Mamlatdar.*

*Furthermore, in case of mutation in possession due the resurvey, the measurement of land be conducted and it be ensured that compensation is paid to the affected farmers after measurement is carried out, correction is made in record and implementation is made accordingly.*

*The person not complying this order will be liable to be punished under section 188 of the Indian Penal Code. All the parties be informed of this order.*

*Put my signature under seal of this office today on 05/02/2024.”*



8.1. It is apposite to refer to Section 10 of the Indian Telegraph Act, 1885 reads thus:

***“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.”*

8.2. Section 16 of the Indian Telegraph Act, 1885 reads thus:



***“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.”*

8.3. Section 164 of the Electricity Act, 2003 reads thus:



***“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 (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.”*

**9. POSITION OF LAW:**

9.1. In the case of ***Himmatbhai Vallabhbhai Patel v/s. Chief Engineer (Project) Gujarat Energy Transmission & Ors.*** reported in ***2011 (2) GLH 781***, relevant Paras-29 & 52 reads thus:

*“29. For the aforesaid reasons, we are of the opinion that Section 164 of the Electricity Act, 2003 read with Section 10 of the Indian Telegraph Act, 1885 recognized the absolute power of the Gujarat Energy Transmission Corporation Limited to proceed with placing of electric supply lines or electric polls for the transmission of electricity on or over the private lands subject to the right of the owner/occupier to claim compensation if any damage is sustained by him by reason of placing of such electric supply lines. In other words, neither the acquisition of the lands is necessary nor there is any need for consent of the owner or occupier.*

*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.”*

9.2. In the case of ***Gujarat State Energy Transmission Corporation Limited v/s. Ratilal Maganji Brahmhatt (Barot)*** reported in **2021 (4) GLR 2642**, relevant paras- 54, 57 and 58 read thus:

*“54. In Himmatbhai Vallabhbhai Patel (supra), the objection of the petitioner therein was that the poles were sought to be erected on his agricultural land and that no consent was obtained, under Rule 3 of the Works of Licencee's Rules, 2006, framed in accordance with Section 67 of the Act. The Writ Petition was rejected. The contentions raised in the appeal, as formulated by the Division Bench, are as follows:*

*(a) that the action of the respondents in proposing to erect polls for laying 66 K.V. overhead electricity lines passing through the agricultural land of the appellant is arbitrary, illegal and in violation of the provisions of the Electricity Act, 2003. The main bone of contention in this regard was to the effect that the respondents are bound to initiate appropriate proceedings for acquisition of the lands and the consent of the owners ought to have been obtained with prior notice before entering into their property;*

*(b) the second contention was to the effect that public notice dated 29th July 2010 published by the respondents in this regard*



*makes reference of the provisions of Repeal Act and that names of the villages where lands are situated and/or their survey numbers are not mentioned therein and, therefore, the notice is of no consequence. The contention was that the area where the land of the appellant herein is situated is not mentioned in the notification. To put it more elaborately, the respondents cannot undertake works in that area which are not included, mentioned in the notice dated 29th July 2010.*

*(c) the third contention before the learned Single Judge was to the effect that respondent no.3 Company is a transmission company and is not engaged in the business of supply of electricity under the Electricity Act, 2003 , and that, therefore, cannot undertake the process of laying overhead electricity lines, without obtaining consent from the owner of the property, in view of the provisions contained under Rule 3 of "Works of Licensees Rules, 2006" framed in exercise of powers conferred by Section 67 of the Act, which, inter alia, provides that the licensee may carry out works with the prior consent of the owner for occupation of any particular building or land, however, any prior consent of the owner has not been taken by the respondent Company. -*

*After extracting the public notice issued under Section 29 and 42 of the Electricity Act, 1948, at Paragraphs 10 and 11, the Hon'ble Division Bench, discussed the scope of Section 12 of the Indian Electricity Act, 1910 and Section 28 of the Electricity (Supply) Act, 1948, as hereunder,*

*10. As per Section 12 of the Indian Electricity Act, 1910, the consent of the local authority or of the concerned owner or occupier is necessary to enable the licensee to lay down or place any electric supply line or other work in, through or against any building or on, over or under any land not dedicated to public use whereon any electric supply line or work has not already been lawfully laid down by such licensee. Under Section 51 of the Electricity Act, 1910, it was permissible for the Government to confer upon any public officer, Transmission Utility, Transmission Licensee or any other person engaged in the business of transmission or supplying energy to the public, any of the powers which the telegraph authorities possess under the Indian Telegraph Act, 1885 for the placing of electric supply lines.*



11. That apart, Section 28 of the Electricity (Supply) Act, 1948, provided for preparation of a sanctioned scheme relating to the laying of transmission lines by a generating company and under Section 29 every such scheme estimated to involve a capital expenditure exceeding such sum as may be fixed by Central Government shall be submitted to the Central Electricity Authority constituted under the said Act for its concurrence. That apart, Section (2) of Section 29 mandated that the generating company shall cause such scheme to be published in the Official Gazette of the State and in local news papers granting not less than two months time to the persons interested to make representations on such scheme. Section 42 of the Electricity (Supply) Act, 1948, further provided that where a provision is made in a sanctioned scheme for placing electric supply lines, notwithstanding anything contained in Sections 12 to 16, 18 and 19 of the Indian Electricity Act, 1910, the State Electricity Board shall have all the powers which the telegraph authority possesses under Part-III of the Indian Telegraph Act, 1885 with regard to a telegraph established by the Government for placing of any wires, poles and etc., for the transmission of electricity. The proviso to Section 42 (1) further made it clear that where a sanctioned scheme does not make a provision as aforesaid, all the provisions of Sections 12 to 19 of the Indian Electricity Act, 1910 shall apply.-

After considering the judgment in *Bharat Plywood and Timber Products Private Ltd., v. Kerala State Electricity Board, Trivandrum and others* reported in AIR 1972 Ker. 47 (FB), *Bhaskara Housing (P) Ltd., Hyderabad Vs. APSEB, Hyderabad* [1998 (6) ALT 436 = 1998 (6) ALD 781 and *B.Krishna Mandadi Vs. Power Grid Corporation of India Limited, Hyderabad* [2002 (1) LS 332], at Paragraphs 15 and 16, in *Himmatbhai Vallbhbhai Patel's* (cited supra), the Court observed as follows:

“15. From the ratio laid down in the above decisions, with which we are in complete agreement, it is clear that prior to the enactment of Electricity Act, 2003, consent of the owner or occupier was necessary where there was no authorization under Section 51 of the Indian Electricity Act, 1910. Similarly, where a sanctioned scheme is published as required under Section 28 read with Section 42 of the Electricity (Supply) Act, 1948, transmission towers or lines can be laid on any private land without giving any notice and without causing damage to the property. However, if any damage is caused, compensation shall



*be paid for the damage sustained as provided under Section 10 of the Indian Telegraph Act, 1885.*

*16. Both the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 stood repealed under the Electricity Act, 2003 which came into force with effect from 10.06.2003. Under the new Act i.e., Electricity Act, 2003 though there is no provision with regard to preparation and sanctioning of any scheme relating to establishment of generating stations, sub-stations or transmission lines as required under Section 28 of the repealed Electricity (Supply) Act, 1948, provisions similar to Sections 12 and 51 of the Indian Electricity Act, 1910 have been incorporated under Section 67 and Section 164 respectively.-*

*After extracting Section 67 and 184 of the Electricity Act, 2003 , the Court, further observed as follows:*

*As could be seen, though Section 67 (1) of the Electricity Act, 2003 is identical to Section 12 (1) of, the Indian Electricity Act, 1910, Section 67 (2) of the Electricity Act, 2003 varies from Section 12 (2) of the repealed Indian Electricity Act, 1910. Section 67 (2) does not say that the consent of the owner or occupier is mandatory but the matters where the property of other persons is affected by the works of the licensee have been left to be provided by the appropriate Government by way of Rules in exercise of its rule making power.-*

*Taking note of the fact that no rules have been framed under Section 67 of the Act, 2003, the Court, after extracting Section 185, repeal and the saving provision, and having regard to the statutory position, as per Section 185(2) (b) of the Electricity Act, 2003 , Sections 12 to 18 of the Indian Electricity Act, 1910, would still govern the field, the Court proposed to examine the correctness of the action of the respondent in erecting the poles, in the light of Section 67 of the Electricity Act, 2003 , read with Sections 12 to 18 of the Indian Electricity Act, 1910 and Section 164 of the Electricity Act, 2003 and after extracting paragraphs 22 to 27 from G.V.S.Ramakrishna's case, the Gujarat High Court, at Paragraph 30, held as follows:*

*30. We have exhaustively dealt with this issue in the above referred paragraphs and we have explained as to why consent is not necessary. The paragraph which has been relied upon by the learned counsel of the above referred judgment itself makes it clear that principles of natural justice can be read into a statute which is silent unless a statutory provision specifically or by necessary implications dispenses with the principles of natural justice. These observations are important.*





*On the aspect, as to prior notice and consent, at Paragraph 31, the Court held as follows:*

*"31. As explained earlier that when the Electricity Board exercises power under Section 164 of the Electricity Act read with Section 10 of the Telegraphs Act, they are not acquiring any land, they are only making use of the land for the purpose of laying electric lines, for which, full compensation is given for the damage caused. It is clear therefrom that no notice is required to the owner before laying the polls or constructing any tower, nor any consent is required from them.*

*As regards the contention, as to whether, there is any need to give a detailed public notice and in the event of failure to give all the particulars in such notice, is fatal to the execution of the work, the Court at Paragraph 32, held as follows:*

*32. It is also relevant to note that since Section 28 or 42 of the Electricity (Supply) Act, 1948 are not saved under Section 185 of the Electricity Act, 2003, there is no need to publish a sanctioned scheme nor it is necessary to give any notice by publication in local news papers as required under Section 29 (2) of the Electricity (Supply) Act, 1948. In spite of the same, the notification dated 29-7-2010 was published in the Gujarat Government Gazette as well as local dailies inviting objections from the interested/aggrieved persons and no objections were received from anyone.-*

*While doing so, the Court in Himmatbhai's case (cited supra), considered a portion of the judgment in S.M.Rao v/s. State of Karnataka, reported in AIR 1999 Karnataka 475, dealing with public notice and consent, which is extracted hereunder:*

*35. We may refer to one judgment rendered by the Karnataka High Court in this regard in the matter of S.M.Rao v/s. State of Karnataka, reported in AIR 1999 Karnataka 475. In paragraphs 17 and 20, the High Court observed as under:*

*"17. The next contention is that Section 28 notification has not been duly published. As said earlier it is not an acquisition proceeding. The electrical line is being drawn for the supply of power to the consumers. It is sufficient to inform the public indicating the village through which the line is being drawn. As a matter of fact, the definite area on which the Tower etc., are to be placed can be known only after a spot inspection is made and viability is worked out. But I should certainly hasten to add, that if the Sy. Nos. in the village are also indicated, that will make the notification more precise. Such details will also inform the affected person to arrange his affairs. But, absence of these details are not fatal. When the line has to travel a long distance*



*as in this case, non- mention of the Sy. Nos. is not certainly fatal. Many a time drawing of the line depends on the soil condition and other local situation as well. If that be so they cannot in advance contemplate as to through which property the line will have to be drawn. They need only say as to the village through which the line is being drawn. That has been complied in this case, and as such there is substantial compliance of the statute.*

*20.The other contention urged, namely that consent of the owners of the land through which the line travel was not secured by respondents 4 and 5 before laying the poles and towers to draw the electric line recedes to background, when we remember that the line is being drawn in exercise of the powers conferred, under the Section 51 of the Electricity Act read with Sections 10 and 16 of the Telegraph Act. If there is an order in this behalf, then no consent is called for."*

*57. We take notice of the fact that in the above referred judgment of the Bombay High Court, the judgment of this Court in the case of Himmatbhai Vallabhbbhai Patel (supra) has been relied upon and quoted with approval in Para-25.*

*58. The final conclusions are 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.*

*58.23 The Act confers powers to the Telegraph Authority to determine the property over which the lines are to pass or posts to be erected. The powers of the District Magistrate under Section 16(1) of the Indian Telegraph Act, 1885, does not extend to any adjudication, as to from where and how, the line has to be drawn over any specific item of the property or where posts have to be erected or not, in any specific item of the property.*

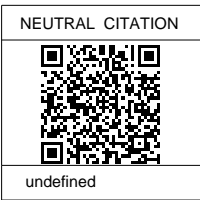
*58.24 The Power of the District Magistrate is confined only to the extent of exercising his discretion in granting permission to the Telegraph Act, to execute the work, when an application is made by the licensee or the competent authority.*

*58.25. Section 10 of the Indian Telegraph Act gives legal sanction to the licencing authority to enter into any property, to lay poles or posts or draw electric lines. But while doing so, the damage of the property should be less. If there is any resistance, the licensee or the authorised person may approach the District Magistrate-cum-District Collector, to grant permission.*

*58.26. Once the power is conferred on the licensee or any other competent authority, there can be no objection to the implementation of the scheme, on the principles of natural justice or on the ground of unauthorised use of the land.*

*58.27. The legislature has conferred powers on the appropriate Government to authorize a public officer or a licensee, etc., under the Electricity Act to exercise the specific powers of an authority under the Indian Telegraph Act, 1885. The authorisation may be general in favour of a transmission company or in a given case, special. The route is decided by the transmission company. The decision to mark a route for laying an electric line is a highly specialized and technical. At that time, it is unrelated to any specific land owner. The route may be for over hundreds of kilometers passing over Government lands, lands of local authorities and private lands and it may not be practicable to hear the land owners along the entire route.*



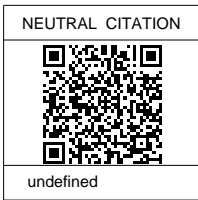


*58.28. Having regard to the specialized and technical nature of the task, and the fact that the lines are laid for distribution of electricity, it is the view of this Court that, the Legislature has not provided for any notice or hearing to the public at large, or to the land owners. Therefore, when the appropriate Government authorises a person or any body under the Electricity Act, to exercise the powers of the Telegraph Authority, all the powers under the Indian Telegraph Act, 1885, are meant to be exercised.*

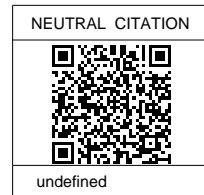
*58.29. The Electricity Act, 2003 , is a progressive enactment, with a specific purpose of providing electricity to a large number of people, across the country, to promote industrial and sustainable development in all walks of life. Right of a land owner to possess and enjoy the property, though recognised as a Constitutional Right, under Article 300-A of the Constitution of India, such right has to yield to the Articles 14 and 21 respectively of the Constitution of India, which strive to achieve the Constitutional Goals, enshrined in the basic structure of the Constitution of India. [see T. Bhuvanewari vs. The District Collector cum District Magistrate, Erode District, Erode, W.P. No.18548 of 2013, decided on 19.11.2013].”*

10.1. In the facts of the present case and the ratio as laid down by the Hon’ble Division Bench, as referred above, the respondent authorities have followed due process of law. Ample opportunity of hearing is granted to the stakeholders before passing the impugned order, the respondent no.6 having explained to the stakeholders as to how the transmission lines are being laid.

10.2. The main contention raised by Mr. Yagnik, learned

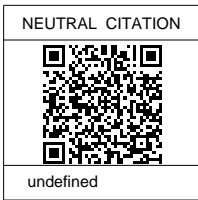


advocate appearing for the petitioners that no individual notices were issued to the petitioners herein. On perusal of the record, it appears that individual notices have been issued to the stakeholders, public notices were also issued in the newspapers as also through whats-app and through telephonic conversation were undertaken by the respondent authorities and in view thereof the reliance placed on the ratio as laid down in SCA No. 1104 of 2013, wherein, the Hon'ble Division Bench was of the view that the individual notices are required to be issued to the stakeholders, would not be applicable in the facts of the present case. The aforesaid ratio was also considered by the Hon'ble Division Bench in LPA No. 534 of 2020 in the reported case of Gujarat State Energy Transmission Corporation Ltd. v/s. Ratilal Maganji Brahmbhatt (Barot) (supra), wherein, the Hon'ble Division Bench held that the intention of 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 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 Section 10 of the Indian Telegraph Act, 1885 and



Section 164 of the Electricity Act, 2003, would be rendered meaningless, the power having 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. It is further held that 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. The ratio laid down by the Hon'ble Division Bench reported in 2021 (4) GLR 2642 (supra) was carried before the Hon'ble Apex Court, wherein, the Hon'ble Apex Court has confirmed the same in Special Leave to Appeal (C) No. 51 of 2021 by an order dated 01.02.2021, having attained finality.

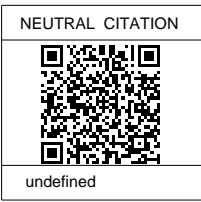
10.3. Having appeared before the competent authority in person, as also through legal representative and having not raised any objection, at the time of hearing, the petitioners are estopped from contending after the order is passed by the



respondent no.1 – District Magistrate under Section 16 of the Telegraph Act, with respect to non-supply of the application by the respondent no.6 under Section 16(1) of the Telegraph Act. The public notice is also published in vernacular language, i.e. Divya Bhaskar over and above English daily, divya Bhaskar is a leading Gujarat daily. The petitioners having appeared and in knowledge of the dispute in question, now, it is not open to contend that the rights of the petitioners are frustrated.

11. It is not in dispute that the respondent no.6 is conferred with the license to undertake laying down the transmission line and in the opinion of this Court, the aforesaid cannot be stopped on the grounds as raised in the present petition. The aforesaid exercise is undertaken for supply of the electricity to the public at large and it has to be undertaken within the stipulated time. Such objections, as referred above, cannot be a ground to stop the laying down of the transmission line.

12. Considering the aforesaid position of law and facts of the present case being undisputed as referred above, in the



opinion of this Court, no case is made out for this Court to exercise the extraordinarily jurisdiction under Article-226 of the Constitution of India in the impugned order dated 05.02.2024 passed by the District Magistrate, Patan. Accordingly, the present Petition stands dismissed. Rule is discharged.

**(VAIBHAVI D. NANAVATI,J)**

*Pradhyuman*