

Hidden description

Act	-
Rule	-
Regulation	-
Scheme	-
Case Number	-
Case Number	CR NOS.3444 AND 3456 OF 2018
Appellant	M/S POWER GRID CORPORATION OF INDIA AND ANR
Respondent	M/S GUJARAT ENVIRO PROTECTION & INFRASTRUCTURE HARYANA(PVT.) LTD. AND ORS.
Citation	-
Judgement By	SINGLE JUDGE
Judges	Mr. Raj Mohan Singh J,
Head Note	-
Case Title	PUNJAB & HARYANA HIGH COURT
Case Description	

JUDGEMENT:

Mr. Raj Mohan Singh J,

[1]. Vide this common order Civil Revision Nos.3444 and 3456 of 2018 are being decided.

[2]. The first petition i.e. Civil Revision No.3444 of 2018 has 1 of 15 been filed against the order dated 18.05.2018 passed by the Addl. District Judge, Faridabad vide which status quo was granted with regard to installation of electricity lines till the next date of hearing i.e. 18.07.2018. Simultaneously parties were directed to place on record the scientific research and study material in support of their respective claims so that matter can be decided in an appropriate manner.

[3]. The second petition i.e. Civil Revision No.3456 of 2018 has been filed against the order dated 17.04.2018 passed by the Civil Judge (Jr. Divn.) Faridabad whereby the application filed by the petitioner under Order 7 Rule 11 read with Section 151 CPC was dismissed.

[4]. The facts involved in both the petitions are overlapping, therefore, for brevity common facts are being noticed. [5]. Respondent No.1 filed a suit for permanent injunction and mandatory injunction against the petitioners, Haryana State Pollution Control Board, Municipal Corporation, Faridabad and State of Haryana through Deputy Commissioner, Faridabad on Aparajitha knowledge centre 2 | Page www.compfielaw.compfielaw.com

the ground that Supreme Court Monitoring Committee was constituted and the said Committee has given direction to the Chairman of Punjab/Haryana/Himachal Pradesh/Chandigarh vide letter dated 20.09.2005 that treatment sewage disposal facility "TSDF" in Haryana is being set up near Faridabad. The 2 of 15 preparations are in advance stage of completion. In order to expedite completion of work for making TSDF function operational, directions were issued to the Haryana Government. Plaintiff is an enviro infrastructure company and is working for Haryana State Pollution Control Board (for short 'the HSPCB') for the purposes of managing and disposal of hazardous waste generated by the industries situated in Haryana State. Plaintiff has been authorised by the HSPCB for management, treatment and disposal of hazardous waste generating in Haryana. Plaintiff has been working over the premises in question since the year 2009 as the physical possession was handed over to the plaintiff on 22.06.2006. The HSPCB has instructed all the industries in the State of Haryana to develop a common facility for disposal of their hazardous waste. Municipal Corporation, Faridabad has allotted the land measuring 31 acres at Pali Mohabtabad, Stone Crusher Zone village Pali on leasehold to Haryana Environmental Management Society in the year 2005. The land was identified by the Environmental Department, Government of Haryana in the year 1998 vide Notification dated 27.05.1997.

[6]. Haryana Environmental Management Society entered into agreement dated 30.06.2005 with the plaintiff to build and operate the TSDF (Treatment, Storage, Disposal Facility) for 3 of 15 disposal of hazardous waste generated by its member industries. Plaintiff has asserted that the plaintiff obtained authority to build and operate the TSDF from HSPCB. The hazardous waste received from the industries contains very highly inflammable material. The waste requires treatment in proper and scientific manner in accordance with 'The Hazardous Wastes (Management & Handling) Rules 1989 as amended under Environment (Protection) Act, 1986 of Environment Ministry Govt. of India and Central Pollution Control Board. [7]. It was further asserted by the plaintiff that defendants No.1 and 2/petitioners have erected high tension transmission wires towers adjacent to the premises of the plaintiff for the purposes of transmission of high tension power transmitting lines having 1,32,000/2,40,000 Volts and for which they are bent upon to install high tension wires over the premises of the plaintiff in an illegal manner. Plaintiff asserted that radiation impact of the above said high tension wires is within the radius of 30 to 50 ft. both vertically and horizontally. During the rainy days, the diameter is enhanced upto to such area as may fatal to human life. The life of the site is stated to be of 30 years. After the landfill is filled upto the ground level, it is further filled upto the height of about 5 meters. After the period of completion of approximately 30 years, when the site will be filled, then there 4 of 15 would be capping of whole landfill premises just to protect

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the environment and after that the said premises will remain under observation for the next 30 years, to know the chemical reaction, if any. Due to the said scientific reason, high tension wires passing over the premises of the plaintiff will be of great danger to human life and environment as it may cause chemical explosion.

[8]. Along with the suit, an application under Order 39 Rules 1 and 2 CPC was filed for grant of ad interim injunction. One more application under Order 7 Rule 11 CPC was filed for rejection of plaint on the ground of jurisdiction of the civil Court. [9]. The trial Court vide order dated 19.04.2018 has observed that defendant Nos.1 and 2/petitioners have erected electric poles adjacent to the land and they have right to erect electric poles as per their schedule programme and have power under Indian Telegraph Act as they have obtained NOC from Forest Department as well as Airport Authority. The apprehension of the plaintiff with regard to radiation impact within the radius of 30 to 50 ft., with further possibility of enhancement in rainy season only an anticipation as the project has not yet fully started. The such plea would be decided as per evidence to be led by the parties at appropriate stage. The case was not found fit for issuing any direction qua maintenance of 5 of 15 status quo at the spot as defendants/petitioners are discharging functions of public interest.

[10]. The application under Order 7 Rule 11 CPC was dismissed by the trial Court vide order dated 17.04.2018 as the ground was having mixed questions of law and facts. [11]. Feeling aggrieved against the order dated 19.04.2018, the plaintiff filed misc. appeal before the lower Appellate Court. The lower Appellate Court passed the order dated 18.05.2018 on finding that the record of the trial Court was not available on that day. Hazardous waste related to chemical of various types is being filled and stored in the premises in question. Thus, till the next date of hearing the parties were directed to observe status quo with regard to installation of electric lines over the premises under the possession of the plaintiff. Order of status quo was passed till the next date of hearing i.e. 18.07.2018. Record of the trial Court was ordered to be requisitioned by the date fixed. In the meanwhile, parties were directed to place on record scientific research and study material in support of their respective claims so that matter can be decided in an appropriate manner.

[12]. Learned Senior counsel for the petitioners submitted that jurisdiction of the civil Court is barred under Section 145 of the Electricity Act. No injunction can be granted by the civil 6 of 15 Court against installation of electric poles which are being installed as per policy and programme in public interest having fixed schedule. The order of status quo would result in disaster as it may cause irreparable loss to the project of national importance. The infrastructure which has been created would come to half thereby causing irreparable loss to the petitioners/defendants No.1 and 2. Petitioners have already obtained no objection from

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