



**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW**

Petition No. 2070 of 2024

QUORUM

Hon'ble Shri Arvind Kumar, Chairman

Hon'ble Shri Sanjay Kumar Singh, Member

IN THE MATTER OF

Revision under Rule 3 (3) of the Works of Licensees Rules, 2006 read with Section 67(4) of the Electricity Act, 2003.

AND

IN THE MATTER OF

Ram Narayan Upadhyay, son of: Late Shri Nath Upadhyay, resident of Village-Ranipur, Post Office- Noorpur, P.S.- Nonahara, District- Ghazipur, at present: 239/6, Village and Post- Saha urf Pipal Gaon, District- Prayagraj.

..... Revisionist

VERSUS

1. District Magistrate, Ghazipur.
2. Managing Director, U.P. Power Transmission Corporation Ltd., 7th Floor, Shakti Bhawan, 14-Ashok Marg, Lucknow.
3. Executive Engineer, Electricity Transmission Division, UPPTCL, Ghazipur.

..... Respondents

THE FOLLOWING WAS PRESENT

1. Sh. Jashwant Rai, Advocate, Petitioner
2. Sh. Mukesh Kumar Singh, AE, UPPTCL

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ORDER

(DATE OF HEARING: 27.08.2024)

1. The instant Revision Petition has been filed under Rule 3 (3) of the Works of Licensees Rules, 2006. The Revisionist has prayed for the following:
 - a) Quash the impugned order dated 01.12.2022 passed by the District Magistrate, Ghazipur.
 - b) Further grant reasonable compensation to the Revisionist according to the according to Rule 3 (2) of Works of Licensees Rules, 2006.
 - c) And/ Or pass such other and further order which this Hon'ble Court may deem fit and proper under the circumstances of the case.

Brief of the Petition

2. The revisionist/petitioner has valid title of the land i.e. Khata No. 00056, Khasra No. 77. The area of said land is 2.6760 hectare, which is situated at Village Khanpur Umar, Pargana and Tehsil Ghazipur, District- Ghazipur.
3. The electrification project of Indian Railway, a 132 kV Ghazipur – Ghazipur Ghat TSS line is being laid by the UPPTCL. In this regard, tower no. 87-B has been constructed in violation of the rules on the land of the revisionist/petitioner.
4. The revisionist had filed a Writ Petition Writ C 28933 of 2021 before the Hon'ble High Court, Allahabad and Hon'ble High Court vide order dated 12.11.2021 and corrected order dated 29.07.2022 directed the District Magistrate, Ghazipur to consider the grievances of the petitioner/revisionist and take a decision in accordance with the Works of Licensees Rules, 2006.
5. In compliance of the order dated 12.11.2021 and 29.07.2022, revisionist filed his objection/representation before the District Magistrate, Ghazipur on 16.08.2022.
6. District Magistrate vide his order dated 01.12.2022 rejected the representation/objection filed by the revisionist. However, the impugned order dated 01.12.2022 has been passed without giving any opportunity of hearing to the revisionist. No



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date was fixed by the District Magistrate for hearing the representation/objection filed by the revisionist.

7. The revisionist being aggrieved by the order dated 01.12.2022 passed by District Magistrate Ghazipur, filed Writ Petition no. 12547 of 2023 before the Hon'ble High Court, Allahabad. Further, Hon'ble High Court vide its order dated 24.04.2023 and corrected order dated 23.02.2024 directed revisionist/petitioner to approach the appropriate authority i.e. the Commission.
8. Rule 10 of the Works of License^{es} Rules, 2006 provides for avoidance of public nuisance, environmental damage and unnecessary damage to public and private property by such works.
9. The revisionist never stopped UPPTCL from laying the transmission line but, only requested that line to be laid from one side of the land so that there is minimum damage caused to his fertile agricultural land.
10. The revisionist is a retired person from PAC force and had been planning to do something on his land along with his son. However, his entire land has become useless because of laying of this 132 kV line. Agricultural activities cannot be carried on this tract of land nor any construction like school and college / other commercial activities can be carried out over his plot according to the guideline.
11. It is a settled principal of law that for any public purpose, if the State Administration desires to take possession of a piece of land, they are required to adopt due course of law by seeking acquisition of such land after addressing the objection of land holders, but in this case the same has not been followed.
12. According to guideline dated 15.10.2015 issued by Ministry of Power, Government of India, it is necessary to pay compensation not only for tower base but also for right of way width.
13. Respondents have not even considered the modalities of compensation being determined for land of the revisionist and revisionist is deprived of his land without consideration of payment of suitable compensation.
14. The deprivation of the revisionist's land by respondents without adopting due process of law is, therefore, violative of Article 300-A of the Constitution of India.

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Executive Engineer ETD UPPTCL Ghazipur Reply dated 09.07.2024

15. Under the important electrification scheme of Ministry of Railways, a 132 kV Ghazipur - Ghazipur Ghat TSS line is being constructed by the UPPTCL under deposit scheme.
16. As per Section 164 of the Electricity Act 2003 and Section 10 of the Indian Telegraph Act 1885, the licensee has the right to construct towers on any person's land and there is no requirement of consent of concerned person or acquisition of land for the same. The concerned person retains ownership rights over his land.
17. The construction of 132 kV Ghazipur - Ghazipur Ghat TSS line work has been done by UPPTCL under deposit work and the line was energized on 17.05.2018.
18. The revisionist has been given crop compensation. However, compensation of construction of tower base was not applicable on this case as the Government Order was issued on 06.09.2018, which was prospectively applicable whereas, the line was energized on 17.05.2018.
19. The crop compensation amounting to Rs 53,109/- only has been paid to the land owner as follows.
 - (a) During the foundation of the tower, crop compensation of Rs.26,109/- through cheque no. 034333 dated 18.12.2017,
 - (b) During tower erection and stringing, crop compensation of Rs.27,000/- through cheque no. 034387 dated 18.12.2017.
20. Further, Government of India guidelines dated 15.10.2018 is not applicable as Orders of Government of Uttar Pradesh are applicable in this case.

Hearing dated 27.08.2024

21. Sh. Jashwant Rai appearing on behalf of revisionist filed its reply during the hearing and handed over the same to Respondent No. 3. He further argued the matter and submitted that the District Magistrate Ghazipur has not looked into the issues and has decided the matter against the spirit of the Works of Licensees Rules 2006. The Licensee has not given the land compensation to the revisionist.

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He further reproduced Rule 3(2) of Works of Licensees Rules 2006 which provides that "when making an order under sub-rule (1), the District Magistrate or the Commissioner of Police or the officer so authorised, as the case may be, shall fix, after considering the representations of the concerned persons, if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier."

He further submitted that the licensee is liable to pay land compensation as per the provisions of the Electricity Act 2003.

22. Sh. Mukesh Kumar Singh, AE, UPPTCL submitted that the crop compensation has been paid to the revisionist and there was no provision for land compensation before the issue^{ance} of Government of Uttar Pradesh Order dated 06.09.2018.

Revisionist reply dated 27.08.2024

23. As per Section 67 (3) of the Electricity Act 2003, the land owner has a right to receive full compensation for use of its land and as per Rule 3 (2) of the Works of Licensees Rules 2006, and that the District Magistrate should fix, the amount of compensation or of annual rent, or of both, which should, in his opinion, be paid by the licensee to the owner or occupier.
24. The Opposite Party has not paid any price for acquired land of the revisionist. Thus, Government of Uttar Pradesh Order No. 2003/24-P-3-2018 dated 06.09.2018 mentioned by the Licensee is Ultra vires to Article 300(A) of the Indian Constitution and is against the natural justice. Hence the same is not acceptable.

Commission's View

25. The Revisionist has challenged the order dated 01.12.2022 passed by District Magistrate, Ghazipur wherein Revisionist representation dated 26.09.2022 was rejected/disposed of. The Revisionist has argued that he is entitled to receive land compensation for use of its land by the transmission licensee. The Commission has perused the order dated 01.12.2022 passed by the District Magistrate, Ghazipur. The relevant extract of the same is below:

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उक्त के अनुक्रम में श्री राम नारायण उपाध्याय द्वारा दिनांक 26.09.2022 को जिलाधिकारी जनपद- गाजीपुर को प्रत्यावेदन प्रस्तुत किया गया। उपरोक्त प्रकरण के सम्बन्ध में आवेदक के प्रत्यावेदन एवं अधिशासी अभियन्ता विद्युत प्रेषण गाजीपुर द्वारा प्राप्त आख्या दिनांक 21.10.2022 का परिक्षण/अध्ययन किया गया। परीक्षणोपरान्त निम्न तथ्य परिलक्षित हुए हैं।

1. रेल मंत्रालय भारत सरकार के महत्वपूर्ण विद्युतीकरण योजना के अन्तर्गत जनहित में गाजीपुर से बलिया एवं इससे जुड़े अन्य सेक्शन में इलेक्ट्रीफिकेशन कार्य को कराने हेतु रेल विकास निगम लि० द्वारा गाजीपुर घाट में नव निर्मित ट्रेक्शन उपकेन्द्र को फीड करने हेतु 132 के०वी० गाजीपुर-गाजीपुर घाट टी०एस०एस० लाइन का निर्माण उ०प्र०पा०टा०का०लि० द्वारा भारतीय टेलीग्राफ अधिनियम 1885 की धारा 10 एवं भारतीय विद्युत अधिनियम 2003 की धारा 164 के तहत कराया गया है।
2. भारतीय टेलीग्राफ अधिनियम 1885 की धारा 10 एवं भारतीय विद्युत अधिनियम 2003 की धारा 164 के तहत विभाग को किसी भी व्यक्ति के भूमि पर टावर निर्माण कार्य का अधिकार प्राप्त है तथा इस कार्य हेतु सम्बन्धित व्यक्ति की सहमति अथवा भूमि के अधिग्रहण की आवश्यकता नहीं है तथा सम्बन्धित व्यक्ति का अपनी भूमि पर मालिकाना हक बना रहता है।
3. उक्त लाइन के निर्माण के उपरान्त लाइन का उर्जिकरण दिनांक 17.05.2018 को किया जा चुका है।
4. भारतीय टेलीग्राफ अधिनियम 1885 की धारा 10 एवं भारतीय विद्युत अधिनियम 2003 की धारा 164 के तहत विभाग को किसी भी व्यक्ति के भूमि पर टावर निर्माण कार्य का अधिकार प्राप्त है तथा इस कार्य हेतु भूमि के अधिग्रहण की आवश्यकता नहीं है तथा सम्बन्धित व्यक्ति का अपनी भूमि पर मालिकाना हक बना रहता है।
5. तत्समय लागू प्राविधानानुसार केवल फसल या क्षतिग्रस्त हुए निर्माण की क्षतिपूर्ति, देय रही है एवं टावर निर्माण में भूमि की क्षतिपूर्ति का कोई प्रविधान नहीं था।
6. भूमि मुआवजा के मद में टावर बेस के नीचे 85 प्रतिशत क्षे० की भूमि लागत के रूप में अतिरिक्त क्षतिपूर्ति शासनादेश सं० 2023/चौबीस-पी-3-2018 दिनांक 06.09.2018 के द्वारा अनुमत्य की गई है। उक्त शासनादेश तत्कालिक प्रभाव अर्थात् दिनांक 06.09.2018 से लागू है।
7. 132 के०वी० गाजीपुर (220 के०वी० गाजीपुर) गाजीपुर घाट टी०एस०एस० पारेषण लाइन के निर्माण में उक्त लाइन के टावर सं० 87 बी० का निर्माण श्री राम नारायण उपाध्याय पुत्र स्व० श्रीनाथ उपाध्याय, निवासी - ग्राम रानीपुर, पोस्ट नूरपुर, थाना नोनहरा, जनपद गाजीपुर के कृषि भूमि गाटा सं० 77 रकबा 2.6760 मौजा, खानपुर उमर तहसील सदर, जनपद गाजीपुर में किया गया है।
8. तत्समय लागू व्यवस्थानुसार भूमि स्वागी को निम्नानुसार कुल धनराशि रू० 53,109.00 मात्र का फसल क्षतिपूर्ति का भुगतान किया गया है।
(क) टावर के फाउण्डेशन के दौरान फसल क्षतिपूर्ति रू० 26,109.00 मात्र चेक सं० 034333 दिनांक 18.12.2017 के द्वारा।
(ख) टावर इरेक्शन तथा स्ट्रिंगिंग के दौरान फसल क्षतिपूर्ति रू० 27,000.00 मात्र चेक सं० 034387 दिनांक 18.12.2017 के द्वारा।
9. चूंकि विषयगत लाइन 132 के०वी० गाजीपुर (220 के०वी० गाजीपुर) गाजीपुर घाट टी०एस०एस० पारेषण लाइन का निर्माण एवं भू-स्वामी की भूमि में टावर सं० 87 बी० का निर्माण दिनांक 06.09.2018 से पूर्व किया गया है। अतः भूमि मुआवजा के मद में टावर बेस के नीचे 85 प्रतिशत क्षेत्रफल की भूमि की लागत के रूप में अतिरिक्त क्षतिपूर्ति सम्बन्धित शासनादेश सं० 2023/चौबीस-पी-3-2018 दिनांक 06.09.2018 के अन्तर्गत श्री राम नारायण उपाध्याय अर्ह नहीं होने के दृष्टिगत भूमि क्षतिपूर्ति प्रदान नहीं किया गया है एवं उनका माँग स्वीकार योग्य नहीं है।

अतः उपरोक्तानुसार श्री राम नारायण उपाध्याय की भूमि क्षतिपूर्ति की माँग स्वीकार योग्य नहीं पाये जाने के दृष्टिगत उनका प्रत्यावेदन एतद द्वारा निस्तारित किया जाता है।

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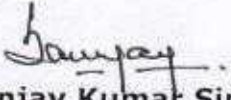




As per above, it is observed that the construction work of transmission line on Revisionist's land was complete before 06.09.2018 and the line was energized on 17.05.2018. It is pertinent to mention that the Commission vide Order dated 08.03.2019 in Petition No. 1131/2016 has held that "*the compensation for the land under the tower base shall be @ 85% of the land value as determined by District Magistrate from the date of issue of Govt. Order i.e. 06.09.2018 in addition to the crop compensation and no compensation shall be paid towards diminution of land value in the width of Right of Way (RoW) Corridor due to laying of transmission line. This Govt. Order shall have prospective effect and no retrospective effect. Therefore, no land compensation shall be paid for the transmission line / towers constructed before 06.09.2018.*"

Considering above, the Commission finds that the Revisionist is not entitled for land compensation as the transmission line/tower was constructed before 06.09.2018 on the land of the Revisionist. Thus, there is no infirmity or perversity in the order of District Magistrate, Ghazipur dated 01.12.2022 and the Commission is of the considered view that no interference is warranted in the order dated 01.12.2022. Further, it is a matter of record that the Revisionist has received crop compensation from UPPTCL, which is also acknowledged by the Revisionist. Hence, the present revision Petition is rejected being devoid of merit.

26. Accordingly, the Petition is disposed of.


(Sanjay Kumar Singh)
Member


(Arvind Kumar)
Chairman

Place: Lucknow

Dated: 06 .11.2024

