

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

OWP No. 1104/2016

Pronounced on: 09.05.2025

Farooq Ahmad Lodhi

.... Petitioner/Appellant(s)

Through:- Mr. M.M. Khan, Advocate.

V/s

Union of India and others

.....Respondent(s)

Through:- Mr. M.A. Beigh, Advocate.

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
JUDGMENT

01. The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India, seeking following reliefs:

“(i) Writ of Mandamus, commanding the respondents to assess and pay compensation of Rs. 20.00 lacs for the residential house of the petitioner located in Village Gingal, which has been rendered uninhabitable due to the installation of a High-Tension Transmission Line at Uri, Wagoora.

(ii) Writ of Mandamus, the respondents be directed to pay damages of Rs. 5.00 lacs to the petitioner for mental distress, agony and torture at the hands of respondents.

(iii) Writ of Mandamus, the respondent be further directed to pay compensation along with interest @ 12% per annum to the petitioner for the wrongful retention of compensation since 1996 till date.”

02. The petitioner claims to be the owner of landed property in Khasra No. 603, situated in Village Gingal, Tehsil Uri, measuring 5 Marlas, where a residential house over a small portion of land, has been constructed by him.

03. The respondents started constructing a tower to lay high-tension transmission lines over the roof of the petitioner's residential house. This compelled the petitioner to file a civil suit before the learned District Judge,

Baramulla, seeking to restrain the respondents from constructing the said tower and laying transmission lines over his house.

04. Despite the notice issued by the civil court, the respondents continued with the construction and completed the same, however, they extended assurance to the petitioner that he would be compensated for the damage caused to his residential house and the fruit-bearing trees affected during the construction and laying of the high-tension wires.

05. It is submitted that the petitioner did not pursue his suit further in light of the assurance and promise made by the respondents regarding payment of compensation. The petitioner has time and again represented to the respondents seeking compensation for his residential house, which has become unsafe for habitation due to the overhead high-tension transmission lines. Copies of these representations have been enclosed along with the report of the concerned Patwari.

06. The petitioner also approached the Chairman, District Legal Services Authority, Baramulla, seeking compensation, however, no concrete action was taken, therefore, the petitioner now seeks the indulgence of this Court for the award of compensation of Rs. 20 lacs for his residential house, which, he submits, has become uninhabitable, and Rs. 5 lacs for mental stress.

07. It is further submitted that the respondents have acted in a discriminatory manner and adopted a pick-and-choose policy. The petitioner contends that other similarly situated persons affected by the same transmission line have been duly compensated, whereas he has been denied the same. He has placed on record information obtained through RTI application, showing that compensation was paid to individuals listed at Serial No. 1 to 2 for residential houses irrespective of the distance from the

high-tension line of 400 KV. Similarly, those falling under Serial Nos. 3 to 11, having a distance of 13 to 15 meters from the line, were also compensated. The petitioner submits that the respondents have not acted on their assurance and have put the life of the petitioner and his family members at risk which has caused distress to him, as such, he should be compensated.

08. In their objections, the respondents have submitted that the work on the transmission line in question was completed in 2010-2011, and the line itself was charged in the year 2011. They have disputed the claim of the petitioner for damages on the ground that the same is not based on correct facts. It is further submitted that they only constructed Tower No. 35 at a hilltop location approximately half a kilometre away from the house of the petitioner. They submit that the house of the petitioner is located at the bottom of the hill and that a concrete road also passes by it. While the petitioner alleges that damages were caused to his house during construction, the same is denied by the respondents.

09. The respondents submit that in terms of communication dated 25.10.1996 wherein the petitioner was advised not to cause disturbance in the execution of the line and stringing work. They submit that their assurance before the civil court was limited to the extent that, if the petitioner was found entitled to any compensation, the same would be provided. The petitioner has also placed on record documents showing that his residential house along with a playground was rented out to the Education Department in 1991, indicating that the house existed on Khasra No. 603 at that time. All the averments made in the writ petition have been denied by the respondents.

10. The law admittedly in this regard stands settled by a Division Bench of this Court in the judgment titled '**Ranvijay Chand and another Vs. State**

of J&K and others', reported in 2005 (1) JKJ (236), wherein it has been, inter alia, held that a land holder cannot assert any right, legal, fundamental or constitutional right qua transmission line; the aerial right of way in respect of transmission lines continues to be with the state and individual owners cannot claim compensation in respect thereof. The relevant paragraph of the said judgment is reproduced as under:

"...3.it cannot be interfered notwithstanding that the transmission lines are being spread over the field of the individuals, subject to their right to claim damages, if approved. However, with regard to the aerial right of way, it continues to be with the State and the individual owners cannot claim compensation in respect thereof.

12.the transmission lines are being laid as per the original alignment approved in the project report in pursuance of the sanctioned scheme and its feasibility cleared by the Techno-Economic Committee. The towers are being erected on which the transmission lines are to be laid across the land of the appellants/petitioners, in the manner provided in the project report and in such event, the appellants/petitioners cannot assert any right legal, fundamental or constitutional, violated by the respondents in doing an act within the purview of its powers recognized by the statute."

11. In view of the aforesaid facts and circumstances of the case and the law settled in *Ranvijay (supra)*, the claim of the petitioner for compensation appears to be misplaced. The law is well settled that the aerial right of way for transmission lines remains with the State, and individual landowners cannot assert legal, fundamental, or constitutional rights over the construction of transmission lines, unless there is a proven loss or damage resulting from the construction.

12. This apart, in light of the provisions of Electricity Act and the rules framed thereunder, the respondents are required to maintain appropriate distance while stringing such lines, as per the Act.

13. The issue which remains is whether the petitioner is entitled to any compensation with regard to the damages he has suffered. It is well settled that claims for damages, including those relating to a residential house and fruit-bearing trees are disputed questions of fact, which can only be proved by leading evidence.

14. In view of the aforesaid facts, the petitioner has raised disputed questions of fact which cannot be considered by this Court. This Court, in LPA(OW) No. 83/2013, titled '**Sanjay Kumar Gupta vs. State of J&K and others**', decided on 23.04.2015, has held as under:

"8. As far as the prayer for payment of compensation is concerned, the facts are in dispute. It is not known how much quantity of the minor forest produce was stored and appellant sustained how much amount due to delay in issuing the transport permission. It is a well settled proposition of law that the disputed facts cannot be decided in a writ petition and the said issue is no longer *res integra*. Whether the High Court is entitled to go into the disputed questions of fact in a writ petition filed under Article 226 of Constitution of India, is already decided by Hon'ble the Supreme Court in the following decisions:-

(a) In **(1976) 1 SCC 292 (Arya Vyasa Sabha and Others v. The Commissioner of Hindu Charitable and Religious Institutions & Endowments, Hyderabad and Others)** the view taken by the High Court that disputed questions of fact are to be left open to be decided before the Civil Court was upheld by the Supreme Court.

(c) In **(2006) 9 SCC 256 (Himmat Singh vs. State of Haryana and others)**, Hon'ble the Supreme Court held that '*the statement of the appellant or the 5th respondent was correct or not could not ordinarily be tested in writ proceedings and it is well known that in writ petition ordinarily such a disputed question of fact could not be entertained*'."

(d) In yet another decision reported in **(2006) 7 SCC 654 (Food Corporation of India vs. Harmesh Chand)**, the Supreme Court held as follows:

"Since the facts were seriously disputed by the appellant and no factual finding could be recorded without consideration of evidence

adduced by the parties, it was not an appropriate case in which the High Court ought to have exercised its writ jurisdiction. The parties could have approached a civil court of competent jurisdiction to adjudicate the matter.”

15. In view of the aforesaid facts and circumstances of the case, there is no merit in this petition and the same is, accordingly, dismissed.

(Sindhu Sharma)
Judge

Jammu:
09.05.2025
Michal Sharma/PS

Whether approved for reporting : Yes/No

