



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 17570/2022

1. Mangi Lal S/o Shri Kishna Ram, Aged About 47 Years, Village Jambheswar Nagar-Ii, Gram Panchayat Badi Sidd, Tehsil Bap, District Jodhpur, Rajasthan.
2. Bhoja Ram S/o Shri Kistura Ram, Aged About 55 Years, R/o Village Jambheswar Nagar - Ii , Gram Panchayat Badi Sidd , Tehsil Bap , District Jodhpur , Rajasthan .
3. Neta Ram S/o Shri Khema Ram, Aged About 35 Years, R/o Village Jambheswar Nagar - Ii , Gram Panchayat Badi Sidd , Tehsil Bap , District Jodhpur , Rajasthan .
4. Fusa Ram S/o Shri Gordhan Ram, Aged About 60 Years, R/o Village Jambheswar Nagar - Ii , Gram Panchayat Badi Sidd , Tehsil Bap , District Jodhpur , Rajasthan .
5. Rewant Ram S/o Shri Kishna Ram, Aged About 56 Years, R/o Village Jambheswar Nagar - Ii , Gram Panchayat Badi Sidd , Tehsil Bap , District Jodhpur , Rajasthan .
6. Puna Ram S/o Shri Gordhan Ram, Aged About 58 Years, R/o Village Jambheswar Nagar - Ii , Gram Panchayat Badi Sidd , Tehsil Bap , District Jodhpur , Rajasthan .
7. Khiya Ram S/o Shri Gordhan Ram, Aged About 52 Years, R/o Village Jambheswar Nagar - Ii , Gram Panchayat Badi Sidd , Tehsil Bap , District Jodhpur , Rajasthan .
8. Luna Ram S/o Shri Kishna Ram, Aged About 51 Years, R/o Village Jambheswar Nagar - Ii , Gram Panchayat Badi Sidd , Tehsil Bap , District Jodhpur , Rajasthan .
9. Prema Ram S/o Shri Khema Ram, Aged About 34 Years, R/o Village Ranjeet Nagar , Gram Panchayat Badi Sidd , Tehsil Bap , District Jodhpur , Rajasthan .
10. Rugnath Ram S/o Shri Khema Ram, Aged About 36 Years, R/o Village Jambheswar Nagar - Ii , Gram Panchayat Badi Sidd , Tehsil Bap , District Jodhpur , Rajasthan .
11. Mohani Devi W/o Shri Bhagu Ram, Aged About 50 Years, R/o Village Jambheswar Nagar - Ii , Gram Panchayat Badi Sidd , Tehsil Bap , District Jodhpur , Rajasthan .
12. Bhagu Ram S/o Aalaniram, Aged About 52 Years, R/o Village Jambheswar Nagar - Ii , Gram Panchayat Badi Sidd , Tehsil Bap , - District Jodhpur , Rajasthan .



13. Jeevan Ram S/o Shri Durjaram, Aged About 59 Years, R/o Village Jambheswar Nagar - Ii , Gram Panchayat Badi Sidd , Tehsil Bap , District Jodhpur , Rajasthan .
14. Lachho Devi W/o Shri Jeevan Ram, Aged About 55 Years, R/o Village Jambheswar Nagar - Ii , Gram Panchayat Badi Sidd , Tehsil Bap , District Jodhpur , Rajasthan .
15. Ram Chandra Ram S/o Shri Baga Ram, Aged About 49 Years, R/o Village Jambheswar Nagar - Ii , Gram Panchayat Badi Sidd , Tehsil Bap , District Jodhpur , Rajasthan .
16. Baghta Ram S/o Shri Baga Ram, Aged About 51 Years, R/o Village Jambheswar Nagar - Ii , Gram Panchayat Badi Sidd , Tehsil Bap , District Jodhpur , Rajasthan .
17. Bhoma Ram S/o Baga Ram, Aged About 45 Years, R/o Village Jambheswar Nagar - Ii , Gram Panchayat Badi Sidd , Tehsil Bap , District Jodhpur , Rajasthan .
18. Binja Ram S/o Shri Phusa Ram, Aged About 55 Years, R/o Village Jambheswar Nagar - Ii , Gram Panchayat Badi Sidd , Tehsil Bap , District Jodhpur , Rajasthan .
19. Suva Devi W/o Shri Binja Ram, Aged About 50 Years, R/o Village Jambheswar Nagar - Ii , Gram Panchayat Badi Sidd , Tehsil Bap , District Jodhpur , Rajasthan .

-----Petitioners

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Energy (Electricity And Power Supply), Rajasthan, Jaipur.
2. The District Collector, Jodhpur , Collector Office , Jodhpur , Rajasthan .
3. The Sub - Divisional Magistrate Bap, Sub Divisional Office , Bap , District Jodhpur , Rajasthan .
4. The Tehsildar (Revenue/record) Bap, Tehsil Office Bap , District Jodhpur , Rajasthan .
5. The Director, Rajasthan Renewable A Limited (Rrecl) Corporation Yudhistir Marg , C - Scheme , Ashok Jaipur , Rajasthan .
6. The Gram Panchayat Badi Sidd, Through Its Sarpanch Gram Panchayat Badi Sidd, Tehsil Bap District Jodhpur.





----Respondents

For Petitioner(s) : Mr. Dheerendra Singh Sodha
For Respondent(s) : Mr. M.S. Singhvi, Senior Advocate &
Advocate General on VC, assisted by
Mr. K.S. Lodha
Mr. C.P. Soni
Mr. Param Veer Singh Champawat



HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Judgment

Reportable

Reserved on 20/04/2023

Pronounced on 24/04/2023

1. This writ petition under Article 226 of the Constitution of India has been preferred claiming the following reliefs:

"It is therefore, respectfully prayed that this writ petition may kindly be allowed and, by an appropriate writ order or direction:-

- i. The record of the case may kindly be called for;*
- ii. The impugned action of the authorities of respondent No.5 by way of changing the route of transmission line and establishment/installment of towers upon the petitioners' land situated in village Ranjeet Nagar and Jambheshwar Nagar-II deserves to be quashed and set aside;*
- iii. The respondents may kindly be directed to install the transmission line as per the sanctioned route (district/tehsil/town/villages) published in the gazette notification dated 26.10.2021 (Annex.3) as well as in the General/public notice dated 23.09.2021 (Annex.2);*
- iv. Any other writ, order or direction which this Hon'ble court deems just and proper in the facts and circumstances of the case may kindly be allowed to petitioner;*
- v. Costs of the petition may be awarded to the petitioner."*

2. Brief facts of the case, as placed before this Court by learned counsel for the petitioners, are that the petitioners are



agriculturists and *khatedar* tenants of the lands in question situated in Village Jambheswar Nagar-II, Tehsil Bap, District Jodhpur. The respondent-Company, a government undertaking, is undergoing a project for establishment of towers and transmission line for providing connectivity system of Rajasthan Solar Park Development Company Limited for 925 MW Solar Park in Village Nokh, Tehsil Pokaran, District Jaisalmer, which would be connected connect to – 765/400/220 KV Bhadla-II, Kan Singh Ki Sidd, Tehsil Bap, Distt. Jodhpur.

2.1. The respondent-Company came out with a public notice, publishing the name of the villages through which the line would be passing, and tower would be installed thereat; the objections were also invited from the general public. The information contained in the said public notice was also published in the Gazette Notification on 26.10.2021.

2.2. Subsequently, the respondent-Company changed the route of transmission line in question and intimated to the petitioners that the said transmission line would be passing through the petitioners' lands i.e. Village Ranjeet Nagar and Jambheswar Nagar-II. The petitioners filed a detailed representation before the Sub-Divisional Officer (SDO), Bap, District Jodhpur against the changed route of the transmission line in question. The SDO conducted a joint meeting on 24.10.2021 with the petitioners, the concerned authorities as well as representatives of the respondent-Company. After completion of the said meeting, the SDO recommended that the transmission line should not be installed on the lands in question. However, the respondent-Company was bent upon the forcibly establish the 220 KV





transmission line and electricity towers on the petitioners' lands, without following the process of law and without undertaking the proceedings of acquisition.

2.3. Thus, being aggrieved by the impugned action of the respondents, the present petition has been preferred claiming the aforequoted reliefs.

3. Learned counsel for the petitioners submitted that before changing the route of the transmission line in question, the respondents did not give any prior notice, nor such an information was ever published in any of the daily newspaper having wide circular in the area concerned, which was a mandatory pre-requisite under the law. Therefore, as per learned counsel, the respondents did not follow the due procedure before taking the impugned decision.

4. Learned counsel for the petitioners further submitted that the respondent-Company published a general notice on 23.09.2021 and the Gazette Notification, which clearly reveal that the transmission line in question will not pass through the local limits of the villages Ranjeet Nagar and Jambheshwar Nagar -II; hence, on that count also, the respondents' decision regarding changing the route of the transmission line in question is highly illegal and arbitrary.

5. Learned counsel for the petitioners also submitted that the petitioners are residing in their fields, after constructing their residential premises on the lands in question. It was also contended that the petitioners recently executed an agreement with private company to provide their lands on lease for the purpose of solar instalment project and conversion order was also





issued by the competent authority in their favour. Therefore, as per learned counsel, the impugned action of the respondents pertaining to change in the route of the transmission line and installation of the towers on the lands in question, that too, without any prior mandatory intimation and approval, is not justified in law.

6. Learned counsel for the petitioners further submitted that for the project in question, there was one proposal of the land situated on the same route, which can be used, with minor changes, for the purpose in question, more particularly, when the petitioners themselves undertake, that the owner of the said land has also given his consent so as to enable laying down of the transmission line in question and installation of the towers thereat.

7. On the other hand, Mr. M.S. Singhvi, learned Senior Counsel & Advocate General assisted by Ms. K.S. Lodha; Mr. C.P. Soni & Mr. Param Veer Singh Champawat, appearing on behalf of the respondents, while opposing the aforesaid submissions made on behalf of the petitioners, submitted that the Villages, namely, Ranjeet Nagar and Jambeshwar Nagar-II earlier were part of Village Badi Sidd. However, the State Government vide notification dated 20.08.2008 separated the areas of the said Villages and declared them as separate revenue villages; but as per the sanctioned route, the said villages are included as part of the Badi Sidd Village, and said villages are still adjoining Badi Sidd village; thus, the entire route of the transmission line is same and never changed by the respondents, as alleged on behalf of the respondents.





7.1. It was further submitted that the Rajasthan Solar Park Development Company Ltd. (R.S.D.C.L.) is a fully owned subsidiary of the respondent no.5, and had filed an application dated 16.09.2020 before the Central Electricity Authority for issuance of approval and notification of right of way under Section 68 of the Electricity Act, 2003; alongwith the application, the Great Trigonometrical Sheet (G.T. Sheet) and other relevant documents were also submitted; vide letter dated 19.01.2021, the Central Electricity Authority has granted approval under Section 68(1) of the Electricity Act in favour of the R.S.D.C.L.; on the basis of such approval, the respondents issued the public notice on 20.02.2021. It was also submitted that after expiry of the two months from the date of publication of such notice, the R.S.D.C.L. has filed an application for grant approval under Section 164 of the Electricity Act, 2003 along with the entire record of the route survey and other relevant information regarding the transmission line in question.

7.2. It was also submitted that the Central Electricity Authority vide Gazetted Notification dated 23.09.2021 approved the plan on the same route, as submitted by the respondents. Therefore, the respondents have obtained all the necessary approvals for the transmission line and installation of the towers in question, without any change in the route, as alleged on behalf of the petitioners.

7.3. It was further submitted that in compliance of the order dated 18.04.2023 passed by this Hon'ble Court, the District Collector, Jodhpur directed the Sub Divisional Officer, Bap, District Jodhpur to prepare a report in terms of the said order; public





notices inviting objections, if any, with respect to the proposed alternate route, were published in the newspapers on 19.04.2023. As per the report submitted by the Sub Divisional Officer, vide its letter dated 19.04.2023, total 44 towers would required to be installed on the alternative routes, which would pass through 19 revenue *Khatas* falling in 4 revenue villages, but during the survey, only 7 *Khatedars* have submitted their consent/acceptance. Therefore, in absence of unconditional consent of all the *khatedars* concerned, the transmission line and installation of the towers on alternative route is not possible.

7.4 It was further submitted that the entire proceedings have been undertaken by the respondents, after obtaining the necessary approvals from the concerned authority in regard to the sanctioned route; therefore, the present petition is nothing but an attempt to prolong and delay the public project in question. It was further submitted that as per Sections 20A and 41 (ha) of the Specific Relief Act, 1963, (Amended in 2018), the Court may not pass such an order, which may result in delay in undertaking the infrastructural public project.

7.5 In support of such submissions, reliance has been placed on the judgment rendered by the Hon'ble Apex Court in the case of ***M/s N.G. Projects Limited. Vs. M/s Vinod Kumar Jain & Ors.*** (***Civil Appeal No. 1846 of 2022***, decided on 11.03.2023); relevant portion of which is reproduced as hereunder:-

"19. The Specific Relief Act, 1963 was amended by Central Act 18 of 2018 when clause (ha) was inserted in Section 41 of the said Act to say:





"(ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project."

20. Such amendment was in pursuance of the report submitted on 20th June 2016 of the Expert Committee. The report is as under:-

"The Expert Committee set on examining Specific Relief Act, 1963 submits its Report to Union Law & Justice Minister Recommends modifications for ensuring ease of doing business

The Expert Committee set on examining the Specific Relief Act, 1963 today Submitted its Report To Union Law & Justice Minister Shri D.V.Sadananda Gowda here in New Delhi. In its report the committee has recommended modifications in the Specific Relief Act, 1963 for ensuring the ease of doing business.

In the context of tremendous developments which have taken place since 1963 and the present changed scenario involving contract based infrastructure developments, public private partnerships and other public projects, involving huge investments; and changes required in the present scheme of the Act so that specific performance is granted as a general rule and grant of compensation or damages for non-performance remains as an exception, the committee decided

i. To change the approach, from damages being the rule and specific performance being the exception, to specific performance being the rule, and damages being the alternate remedy.

ii. To provide guidelines for reducing the discretion granted to Courts and tribunals while granting performance and injunctive reliefs.

iii. To introduce provisions for rights of third parties (other than for Government contracts).

iv. To consider addressing unconscionable contracts, unfair contracts, reciprocity in contracts etc., and implied terms.

The committee observed that there is a need to classify diverse Public utility Contracts as a distinct class





recognising the inherent public interest/importance to be addressed in the Act. **Any public work must progress without interruption. This requires consideration whether a court's intervention in public works should be minimal. Smooth functioning of Public works projects can be effectively managed through a monitoring system and regulatory mechanism. The role of courts in this exercise is to interfere to the minimum extent so that public works projects will not be impeded or stalled."**

21. Since the construction of road is an infrastructure project and keeping in view the intent of the legislature that infrastructure projects should not be stayed, the High Court would have been well advised to hold its hand to stay the construction of the infrastructure project. Such provision should be kept in view even by the Writ Court while exercising its jurisdiction under Article 226 of the Constitution of India."

8. Heard learned counsel for the parties as well as perused the record of the case along with judgment cited at the Bar.

9. This Court observes that the proposed sanctioned route for laying down the transmission line for 925 MW Solar Park in Village Nokh, Tehsil Pokaran, District Jaisalmer, Rajasthan, to be connected to PGCIL - 765/400/220 KV, Badla-II, Kan Singh Ki Sidd, Badi Sidd, Sanwara Goan, Manchitiya - Tehsil Bap, District Jodhpur; and Villages Sevda, Nagrasar, Dadu Ka Gaon - Tehsil Bajju, District Bikaner, was approved by the Ministry of New & Renewable Energy, Government of India and other concerned authorities.

10. This Court further observes that the lands of the present petitioners, who are agriculturists are situated in Villages of Ranjeet Nagar and Jambheswar Nagar-II, Tehsil Bap, District





Jodhpur. This Court also observes that the State Government vide its notification dated 20.08.2008 separated the area of the Villages Ranjit Nagar and Jambeshwar Nagar-II from Village of Badi Sidd; but the newly formed Jambeshwar Nagar-II and Ranjit Nagar being part of Badi Sidd prior to their formation are still adjoining Badi Sidd and are therefore, around Badi Sidd. The land situated in and around the vicinity of Badi Sidd has always been part of the proposed transmission system.

10.1 This Court further observes that vide the Gazette Notification dated 23.09.2021, it was notified, amongst others, that the overhead lines (transmission line in question) included under the Scheme will pass through, over, around and between the aforementioned villages.

11. This Court has also taken note of the submission made by learned Advocate General that as per the report submitted alongwith the additional affidavit of the respondents, total 44 towers would be required to be installed on the alternate route, which shall pass through 19 revenue *khata*s falling in four revenue villages; during the course of survey, only seven khatedars have submitted their acceptance/no-objection; it is also apparent that remaining khatedars were not present on the date of survey and thus, in view of the absence of such unconditional consent of all the khatedars concerned of the land falling on the alternate route, it would be very difficult, rather impossible, for the respondents to lay down the transmission line in question on such alternate route. Thus, as per the report, the proposal as made by the petitioners herein for laying down the transmission line in question on the alternate route does not hold good.





12. At this juncture, it is apposite to reproduce the relevant provisions i.e. Sections 20A and 41 (ha) of the Specific Relief Act, 1963 (Amended in 2018), as hereunder:



"20A. Special provisions for contract relating to infrastructure project.—(1) **No injunction shall be granted by a court in a suit under this Act involving a contract relating to an infrastructure project specified in the Schedule,** where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project.

Explanation.—For the purposes of this section, section 20B and clause (ha) of section 41, the expression "infrastructure project" means the category of projects and infrastructure Sub-Sectors specified in the Schedule.

(2) The Central Government may, depending upon the requirement for development of infrastructure projects, and if it considers necessary or expedient to do so, by notification in the Official Gazette, amend the Schedule relating to any Category of projects or Infrastructure Sub-Sectors.

(3) Every notification issued under this Act by the Central Government shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

41. Injunction when refused.—An injunction cannot be granted—



(a) to (h)

(ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.”



The relevant part of the Schedule is also reproduced as under:

THE SCHEDULE

[See sections 20A and 41 (ha)]

Category of projects and Infrastructure Sub-Sectors

2.	Energy	(a) Electricity Generation (b) Electricity Transmission (c) Electricity Distribution (d) Oil pipelines (e) Oil/Gas/Liquefied Natural Gas (LNG) storage facility(including strategic storage of crude oil) (f) Gas pipelines (including city gas distribution network)
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13. This Court, in light of the afore-quoted provisions of law and the precedent law laid down in **M/s N.G. Projects Limited (supra)**, observes that the project in question, i.e. electricity transmission, is covered under the aforementioned Schedule, and thus, in case the relief as prayed for in the present petition is passed, the same would obviously impede or delay the progress or completion of any infrastructure public project in question or interfere with the continued provision of relevant facility relating thereto or services being the subject matter of such project, which is apparently not permissible, as per the aforesaid enactment and the settled principles of law laid down by the Hon’ble Supreme Court.



14. This Court is also conscious of the precedent law laid down by the Hon'ble Apex Court in the case of **National High Speed Rail Corpn. Ltd. v. Montecarlo Ltd., 2022 SCC OnLine SC 111**, reference whereof has also been made in the judgment rendered in **M/s N.G. Projects Limited (supra)**. The relevant portion of the judgment rendered in **National High Speed Rail Corpn. Ltd. (supra)**, is reproduced as hereunder:

"95. Even while entertaining the writ petition and/or granting the stay which ultimately may delay the execution of the Mega projects, it must be remembered that it may seriously impede the execution of the projects of public importance and disables the State and/or its agencies/instrumentalities from discharging the constitutional and legal obligation towards the citizens. Therefore, the High Courts should be extremely careful and circumspect in exercise of its discretion while entertaining such petitions and/or while granting stay in such matters. Even in a case where the High Court is of the prima facie opinion that the decision is as such perverse and/or arbitrary and/or suffers from mala fides and/or favouritism, while entertaining such writ petition and/or pass any appropriate interim order, High Court may put to the writ petitioner's notice that in case the petitioner loses and there is a delay in execution of the project due to such proceedings initiated by him/it, he/they may be saddled with the damages caused for delay in execution of such projects, which may be due to such frivolous litigations initiated by him/it. With these words of caution and advise, we rest the matter there and leave it to the wisdom of the concerned Court(s), which ultimately may look to the larger public interest and the national interest involved."





15. As observed by this Court in the earlier order dated 18.04.2023, there is a loss of electricity of about 13 lakhs units per day, and that, it is a national public project, which has to be completed in the larger interest of the public.

16. Thus, in view of the above-mentioned provisions of law, as also in light of the aforementioned precedent laws laid down by the Hon'ble Supreme Court, this Court does not find it a fit case so as to grant any relief to the petitioners in the present petition.

17. Consequently, the present petition is dismissed. All pending applications stand disposed of.

(DR.PUSHPENDRA SINGH BHATI), J.

SKant/-

