

Gujarat High Court

Unknown vs Gujarat Urja Vikas Nigam on 29 August, 2013 Bench:

Jayant Patel Z.K.Saiyed, Z.K.Saiyed

DILIP SINGH CHAUHANV/SGUJARAT URJA VIKAS NIGAM LTD

C/SCA/18334/2011

CAV JUDGEMNT

IN

THE HIGH COURT OF GUJARAT AT AHMEDABAD SPECIAL
CIVIL

APPLICATION NO. 18334 of 2011

With

SPECIAL CIVIL

APPLICATION NO. 3768 of 2012

TO

SPECIAL CIVIL
APPLICATION NO. 3776 of 2012

With

SPECIAL CIVIL
APPLICATION NO. 6221 of 2011

With

SPECIAL CIVIL
APPLICATION NO. 2744 of 2012

With

SPECIAL CIVIL
APPLICATION NO. 871 of 2012 With

SPECIAL CIVIL
APPLICATION NO. 3131 of 2012

FOR APPROVAL AND
SIGNATURE :

HONOURABLE MR. JUSTICE
JAYANT PATEL

and

HONOURABLE
MR. JUSTICE Z. K. SAIYED

=====

Whether Reporters of Local Papers may be allowed to see the judgment ?

To be referred to the Reporter or not ?

Whether their Lordships wish to see the fair copy of the judgment ?

Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

Whether it is to be circulated to the civil judge ? Yes but to all P.D.J. and A.D.J., of the State

===== DILIP SINGH
CHAUHAN &

7....Petitioner(s) Versus GUJARAT URJA VIKAS NIGAM LTD & 3....Respondent(s)

Appearance:

MR HASIT DILIP DAVE, ADVOCATE for the Petitioner(s) No. 1 8 MR NIRAV MISHRA WITH RK MISHRA, ADVOCATES for the Petitioner(s) MR KK TRIVEDI, ADVOCATE for the Petitioner(s) MR AJ YAGNIK, ADVOCATE for the Petitioner(s) MR VIRAL K SHAH, ADVOCATE for the Petitioner(s) MR DIGANT POPAT, ADVOCATE for the Petitioner(s) MR MIHIR THAKORE, LD. SR. ADVOCATE WITH MR SP HASURKAR, ADVOCATE for the MR MIHIR JOSHI, LD. SR. ADVOCATE WITH MR SUNIL JOSHI, ADVOCATE for the Respondent(s) MR BS RAJU, ADVOCATE for the Respondent(s) MR KAMAL TRIVEDI, LD. SR. ADVOCATE WITH MR KB PUJARA, ADVOCATE for the Respondent(s) MR JAYSWAL, AGP for the State NOTICE
===== CORAM:

HONOURABLE MR.JUSTICE JAYANT PATEL and HONOURABLE MR.JUSTICE Z.K.SAIYED Date : 29/08/2013 CAV JUDGEMNT (PER : HONOURABLE MR.JUSTICE JAYANT PATEL) As in all the petitions, common questions arise for consideration, they are being considered simultaneously.

Special Civil Application No.18334 of 2011:-

This petition has been preferred by the petitioners seeking appropriate writ to direct respondent No.1 to adopt and accept viable mode and method for laying down of 400 KV line (hereinafter referred to as Transmission Line for the sake of convenience) and it is further prayed by the petitioners to direct the respondents to follow due process of law in carrying out the works of proposed Mundra Hadala Transmission Line at Village Susvav and to award the prescribed compensation as per the legal provisions.

The short facts of the case of the petitioners is that they are agriculturists having their farms and the respondent Electricity Company is proposing to lay down heavy voltage lines through their farms.

As per the petitioners when it was proposed, the villagers had pointed out the difficulties in the proposed route of lines and had suggested alternative better route. However, the respondents did not agree and it is the case of the petitioners that the respondents issued crop damage notice and the respondents are proposing to acquire the user s right of the petitioners for laying down of the lines and when the petitioners resisted by showing alternative routes, an evasive reply was given by the officers of the respondents, stating that everything will be done as per the Rules and the Indian Electricity Act and as per the petitioners, the respondents have offered very less compensation and no user s compensation and it is under these circumstances, the petitioners are constrained to approach before this Court.

The defence of the respondent Electricity Company is that it is a State Transmission Utility Corporation Limited under Section 39 of the Electricity Act, 2003 (hereinafter referred to as the Act). It has been further stated that the power has been conferred by the State Government Notification dated 5.1.2007 upon the respondents under Section 164 of the Act for exercising the power under Telegraph Act. It is prayed that the transmission line in question is for strong inter-connection between Kutch and Saurashtra area for carrying bulk power. It has been submitted that no right of the petitioner, much less any fundamental right is violated when the respondent is

carrying out the activities of laying down the aforesaid lines through the land belonging to the petitioners. It has been stated that appropriate distance is maintained for laying down the lines and the same is correct according to the statutory requirement. It is prayed that the petition be dismissed.

Special Civil Application No.3768 of 2012 to 3776 of 2012:-These petitioners are agriculturists of different villages where their farms are located and they have prayed for appropriate writ to direct respondent No.1 to follow the due process of law as prescribed including payment of appropriate compensation.

The case of the petitioners is that respondent No.1 has merely issued a crop damage notice, that too, not to all farmers, but only to a few farmers and there is no action taken to acquire the user's right of the farms. The petitioners have alleged that the officers of the respondent Electricity Company have laid down several foundations and structures at several places and have trampled upon the lands of the villagers without any consent or written intimation. The applications were filed by the respondent before the District Magistrate, Rajkot, which was replied by the petitioners, but in spite of the same, the officers of the respondents are threatening them of police action if the villagers do not allow them to work. However, none of the villagers is obstructing such work, in any manner. As per the petitioners, they have filed objections, but no response is given and the petitioners are offered very less crop damage compensation and no user's compensation. Under these circumstances, the present petitions.

The respondents, in the affidavit-in-reply, have reiterated more or less the same stand as made in the earlier petition and it is prayed that as per the decision of this Court in the case of Himmatbhai Vallabhbhai Patel Vs. Chief Engineer (Project) Gujarat Energy Transmission and Ors., reported at 2011(2) GLH, 781 the consent is not required and it has been stated that the power under Section 164 of the Act has been conferred. It is also prayed that the laying down of the poles would not render the land useless, since the foundations are laid for erection of tower and no other land of the owner or occupier is required, the agricultural activity under the tower remains uninterrupted and unaffected, since tractor can also pass through the tower and agricultural operations can be continued beneath the tower without any difficulty and hence, the petitions be dismissed.

Special Civil Application No.6221 of 2011:-

This petition has been preferred for the relief, inter alia, to quash and set aside the action of the respondents of laying down infrastructure to run overhead High Tension 220 KV electrical ropes/wires from the land of the petitioners being Survey No.1244 of Village Kondh, Taluka Valia, District Bharuch and it is prayed to direct the respondent authorities to accept the offer of the petitioners of giving strip of land of 35 mtrs., length from Survey No.1244 for the purpose of installing tower of the authorities from South to East and then to North without any cost and compensation to the petitioners.

The facts as stated by the petitioners appear to be that the land in question was originally agricultural land and thereafter on 27.8.1996 permission has been granted for non-agricultural use. The petitioners have purchased the land on 20.1.2009 and it has been submitted that if the line is installed the land of the petitioners shall be divided into two parts and the land would be rendered unsuitable for construction purpose. As per the petitioners, they have approached the authorities by showing alternative way, but no response and hence, for challenging the action of laying down the line, the present petition.

The respondents No.2 and 3, in the affidavit-in-reply, have mainly contended that they are justified in laying down the electricity lines through the land belonging to the petitioners. It is also prayed that the change of the whole alignment of the route is technically not feasible as suggested by the petitioners and it is prayed that this Court may dismiss the petition.

Special Civil Application No.2744 of 2012:-

This petition has been preferred by the petitioners for the relief, inter alia, to declare the action of the respondent Corporation of laying down transmission route, thereby putting a transmission grid tower on the lands of the petitioner having Survey Nos.344, 367 and as illegal.

The allegation of the petitioners in the petition is that at the instance of certain builders and farmers, the respondent Corporation is pressurized to change the original route, though there is no justification to change the route. As per the new line of the respondent Corporation, the petitioners would be the sufferers. The notice was given by the respondent No.2 to petitioner No.1, but no petitioners were served with the notice well in time before the actual work could start. The persons, who were served notice, have also replied, but the respondent Corporation has not responded. It is alleged that after service of notice no action was taken and in the meantime, the land is converted into non-agricultural use. It is submitted that the Grid Towers of respondent No.1 Corporation would completely destroy the fertility of the agricultural land and, therefore, under these circumstances, the present petitions.

The respondent No.1, in the affidavit-in-reply, has mainly contended that there is conferment of power under Section 164 of the Act and the project is of national importance. The attempts are made to minimize the damage to the lines and petitioner No.1 had agreed for the same. The present petition is nothing but an attempt to put obstruction in the project, which is of the national importance and, therefore, the petition be dismissed.

Special Civil Application No.871/2012:-

The present petition has been preferred by the petitioners, who are farmers of village Balesh, Taluka Palsara, District Surat, seeking to declare the action of the respondents of laying down the transmission route and thereby to put transmission/Grid Towers from the respective farms of the petitioners as illegal and unconstitutional.

The allegations of the petitioners are that at the instance of politicians and powerful local farmers and most importantly the builders, the notice issued pursuant to the original route is not acted upon and new route has been chartered out, which adversely affected the petitioner farmers, who are small and marginal farmers. It is submitted that no prior mandatory, statutory notices are given, nor there is any observance of any principles of natural justice. It is also stated that the Grid Towers of the Torrent Power Limited and Gujarat Electricity Board are already passing from the farms of couple of petitioners and if any further Grid Powers are located, the land of the petitioners would be completely destroyed and they would not be able to utilize the land for cultivation. It is submitted that the action is in violation of the Act and Rules of 2005 read with Section 164 of the Act. The action is also in violation of the Indian Telegraph Act. The procedure prescribed under the Act and the Rules has not been followed.

The respondent Corporation has reiterated the same stand as taken by the respondent Electricity Company and the others have reiterated the same stand as taken in the above referred matter and have mainly relied upon the decision of this Court in the case of Himmatbhai Vallabhbhai Patel Vs. Chief Engineer (Project) Gujarat Energy Transmission and Ors. (supra).

It is further submitted that there is no sudden change in the direction or the route as alleged and baseless allegations are made. It is prayed that the petition be dismissed.

Special Civil Application No.3131 of 2012:-

This petition has been preferred by the petitioner for the appropriate directions to respondents not to lay down 400 KV Double Multi-circuit Power Generation transmission overhead Lines through the middle of the lands of the petitioner.

The allegations in the petition are that the respondents are trying to install the electric lines through the private properties of the petitioners without any semblance or procedure or without giving any opportunity to the owners of the properties either to object such installation or to make alternative suggestion. It is submitted that the land in question is a non-agricultural land and on 14.10.2011, the permission was granted. Therefore, the petitioner has submitted that the lay-out plan for approval has been submitted before the T.P. Authority and the petitioner is aggrieved by the action of the respondent electricity company for laying down the transmission line through the whole of the land of the petitioner and under these circumstances, the present petition.

The respondents have raised preliminary contention that the present petition under Article 226 of the Constitution of India is not maintainable, since the respondent is a private sector Company registered under the Companies Act. It has been submitted that the Scheme for installation of 400 KV Overhead Lines for transmission of electricity has been approved by the competent authority under Section 68 read with Section 64 of the Act and the powers are conferred as that of the Telegraph Authority under the Indian Telegraph Act. There is no illegality or arbitrariness in the action. It is stated the public notice has been given in the newspapers as well as in the Gazette for the transmission line project and the representation/objections were also invited within 60 days from the date of publication of the notice. However, no objections were received within stipulated time period. It is also stated that the work is being conducted in a manner which will cause minimum detrimental and inconvenience to the concerned owners and the respondent will make full compensation for the detrimental and inconvenience caused to them. If there is any difference or dispute, including for the amount of compensation, the affected persons, including the petitioner have alternative remedy of approaching before the concerned authorities under the Act. As regards the permission for non-agricultural use is concerned, it is stated that the permission is subject to the permission to be granted by the Town Planner, Surat. Condition No.12 provides that if electricity high tension lines are passing above or nearby from the land, then the petitioner has to implement the applicable rules for the same and accordingly the construction work shall be carried out. Hence, the petitioners cannot object the laying down of Overhead Lines as proposed through the land. It is submitted that the respondent is authorized and empowered to instal the lines over the land and the respondent is not required to apply to the District Magistrate under Section 16 of the Indian Telegraph Act as the Government of India has conferred all powers of the Telegraph Authority under the Indian Telegraph Act. However, the petitioners may approach the concerned authority with regard to the decision of this Court in the case of

Himmatbhai Vallabhbhai Patel Vs. Chief Engineer (Project) Gujarat Energy Transmission and Ors.(supra) and it has been prayed that the petition be dismissed.

We have heard Mr.Hasit Dilip Dave, Mr.Nirav Mishra for Mr.R.K. Mishra, Mr.K.K. Trivedi, Mr.A.J. Yagnik, Mr.Viral K. Shah, Mr.Digant Popat, learned Advocates for the petitioners in the respective petitions and Mr.Mihir Thakore, Sr. Advocate with Mr.S.P. Hasurkar,, Mr.Mihir Joshi, learned Sr. Advocate with Mr. Sunil Joshi, Mr.B.S. Raju, Mr.Kamal Trivedi, learned Sr. Advocate with Mr.K.B. Pujara, learned Advocates for the respective respondents and Mr.Jayswal, learned AGP for the respondent State.

We may first deal with the primary contention raised on behalf of the respondent Electricity Company and/or the Transmission Company about the maintainability of the petition under Article 226 of the Constitution of India. It may be recorded that in each case, as per the respondent Electricity Company, they are exercising power under the Indian Telegraph Act (hereinafter referred to as the Telegraph Act) for laying down the transmission lines or electricity lines on account of the conferment of the power to the Company and its officers under Section 164 of the Act. Section 10 onwards of the Telegraph Act provides for the powers of the Telegraph Authority. If the provisions of Section 164 of the Act read with Part-III of the Telegraph Act are considered, it is apparent that the powers so exercised are in discharge of the statutory power. Be it noted that as per the Telegraph Act, the authority exercising power under Telegraph Act in normal course would be the officers of the Central Government. However, but for the fact that such powers as that of the officers of the Central Government under Telegraph Act vests to the respondent Electricity Company and its officers, they step into the shoes of the Telegraph Authority. The petition under Article 226 of the Constitution of India can be maintained against the Telegraph Authority exercising the power under Telegraph Act, since they are officers of the Central Government and, therefore, if one has stepped into the shoes of Telegraph Authority, it is in exercise of the statutory power, the Electricity Company and its Officers are functioning and, therefore, when the action is in discharge of the statutory power so vested, may be by a private person as the statutory authority, writ under Article 226 of the Constitution can be maintained. Of course, the aspect of exercise of power whether is permissible or not or whether the delegation of such power could be made or not or what type of power may be available to the Electricity Company and its Officers under the Act may be examined at a later stage, but when as per the respondent Electricity Company and its Officers, the statutory powers are being exercised as that of Telegraph Authority under the Telegraph Act, it cannot be said that the petition under Article 226 of the Constitution of India by the person affected on account of the exercise of such power, for invoking the jurisdiction of this Court under Article 226 of the Constitution of India cannot be maintained. Under these circumstances, the said preliminary contention of the respondents would fail.

In order to appreciate the contention of the petitioners as well as the respondents, it would be appropriate to refer to the relevant provisions of the Act and the Rules made thereunder. Prior to the enactment of the Electricity Act, 2003, the Indian Electricity Act, 1910 (hereinafter referred to as the Act of 1910) was in force. Sections 12, 18 and 19 of the Act of 1910 read as under:-

12. Provision as to the opening and breaking up of streets, railways and tramways.

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Any licensee may, from time to time but subject always to the terms and conditions of his license, within the area of supply, or, when permitted by the terms of his license to lay down or place electric supply-lines without the area of supply, without that area-

- (a) Open and break up the soil and pavement of any street, railway or tramway;
- (b) Open and break up any sewer, drain or tunnel in or under any street, railway or tramway;
- (c) Lay down and place electric supply-lines and other works; (d) Repair, alter or remove the same; and
- (e) Do all other acts necessary for the due supply of energy.

Nothing contained in sub-section (1) shall be deemed to authorise or empower a licensee, without the consent of the local authority or of the owner or occupier concerned, as the case may be, 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, wherever or whereunder any electric supplyline work has not already been lawfully laid down or placed by such licensee:

Provided that any support of an overhead line or any stay or strut required for the sole purpose of securing in position any support of an overhead line may be fixed on any building or land or, having been so fixed, may be altered, notwithstanding the objection of owner or occupier of such building or land, if the District Magistrate or, in a Presidency town, the Commissioner of Police by order in writing so directs:

Provided also, that, if at any time the owner or occupier of any building or land on which any such support, stay or strut has been fixed shows sufficient cause, the District Magistrate or, in a Presidency-town the Commissioner of Police may by order in writing direct any such support, stay or strut to be removed or altered.

When making an order under sub-section (2), the District Magistrate or the Commissioner of Police, as the case may be, shall 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.

Every order made by a District Magistrate or a Commissioner of Police under sub-section (2) shall be subject to revision by the State Government.

Nothing contained in sub-section (1) shall be deemed to authorise or empower any licensee to open or break up any street not repairable by the Central Government or the State Government or a local authority, or any railway or tramway, except such streets, railways or tramways (if any), or such parts thereof, as he is specially authorised to break up by his license, without the written consent of the person by whom the street is repairable or of the person for the time being entitled to work the railway or tramway, unless with the written consent of the State Government:

Provided that the State Government shall not give any such consent as aforesaid, until the licensee has given notice by advertisement or otherwise as the State Government may direct, and within such period as the State

Government may fix in this behalf. to the person above referred to, and until all representations or objections received in accordance with the notice have been considered by the State Government.

In this section, occupier of any building or land means a person in lawful occupation of that building or land.

18. Overhead lines.

Save as provided in Section 13, sub-section (3), nothing in this Part shall be deemed to authorise or empower a licensee to place any overhead line along or across any street, railway, tramway, canal or waterway unless and until the State Government has communicated to him a general approval in writing of the methods of construction which he proposes to adopt:

Provided that the communication of such approval shall in no way relieve the licensee of his obligations with respect to any other consent required by or under this Act.

Where any overhead line has been placed or maintained by a licensee in breach of the provisions of sub-section (1), the State Government may require the licensee forthwith to remove the same, or may cause the same to be removed, and recover from the licensee the expenses incurred in such removal.

Where any tree standing or laying near an overhead line or where any structure or other object which has been placed or has fallen near all overhead line subsequently to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of energy or the accessibility of any works a Magistrate of the first class or, in a presidency-town [the Commissioner of Police, may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he thinks fit.

When disposing of an application under subsection (3), the Magistrate or Commissioner of Police, as the case may be, shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

Explanation.

-For the purposes of this section, the expression tree shall be deemed to include any shrub, hedge, jungle-growth or other plant.

19. Compensation for damage.-

A licensee shall, in exercise of any of the powers conferred by or under this Act, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

Save in the case provided for in Section 12, subsection (3), where any difference or dispute arises as to the amount or the application of such compensation the matter shall be determined by arbitration Supply 19A.

Point where supply is delivered. -For the purposes of this Act, the point at which the supply of energy by a licensee to a consumer shall be deemed to commence shall be determined in such manner as may be prescribed.

The aforesaid shows that as per Section 12 any licensee may lay down electricity supply lines as per Sub-section (1) of Section 12, but such was not permitted without consent of the local authority or the owner or occupier concerned in view of Section 12(2) of the Act. However, it was also provided that if there is any objection by the owner or the occupier of such building of the land, the District Magistrate or the Commissioner of Police in the residential town may pass the order in writing, but before the District Magistrate passes such order under proviso to Section 12(2), as provided under Section 12(3), he has to fix the amount of compensation or annual rent or both. It also provided that the order of the District Magistrate or Commissioner of Police was subject to the revision by the State Government. As per the above referred Section 18 for putting up Overhead Line, approval of the State Government was required, but with the further proviso that such approval would not relieve the licensee of his obligation to get the consent required by or under the Act of the owner or occupier, as the case may be.

The aforesaid Section 19 provides that the licensee shall exercise the power in a particular manner and should make full compensation for any damage or detriment or inconvenience caused to the owner or the occupier, as the case may be. It also provides for the adjudication of the further dispute in respect of compensation through the arbitration, but subject to the power under Section 12(3) of the Act of the District Magistrate to pass the order authorizing the licensee to undertake the work and fixing of compensation by the District Magistrate to be paid to the owner or occupier by the licensee.

Section 51 of the Act of 1910 reads as under:-

51. Notwithstanding anything contained in sections 12 to 16 (both inclusive) and sections 18 and 19, the Central Government in the case of intra- State transmission system and the State Government in the case of intra- State transmission system, as the case may be, may by order in writing, for placing of electric supply- lines, appliances and apparatus for the transmission of energy or for the purpose of telephonic or telegraphic communication necessary for the proper co-ordination of works, confer upon any public officer, Central Transmission Utility, State Transmission Utility, transmission licensee, licensee or any other person engaged in the business of transmission or supplying energy to the public under this Act, subject to such conditions and restrictions (if any) as the Central Government or the State Government, as the case may be, may think fit to impose, and to the provisions of the Indian Telegraph Act, 1885, any of the powers which the telegraph- authority possesses under the 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.] As per the aforesaid section, notwithstanding anything contained in Sections 12 to 16 (both inclusive), 18 and 19, the Central Government in the case of inter-State transmission system and the State Government in the case of intra-State transmission system, as the case may be, may, by order in writing, for placing of electric supply-lines, appliances and apparatus for the transmission of energy, etc., confer power of the Telegraph Authority under the Telegraph Act for laying down the Telegraph lines.

At this stage, reference to Telegraph Act for laying down Telegraph Lines would be relevant. Sections 10 and 16 of the Telegraph Act reads as under:-

10. Power for telegraph authority to place and maintain telegraph lines and posts. The telegraph authority may, from time to time, place 27 Inserted by the Indian Telegraph (Amendment) Act, 2003. Act No. 8 of 2004, received the assent of the President on the 9 January, 2004, with retrospective effect from 1.4.2002 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.

11. Power to enter on property in order to repair or remove telegraph lines or posts. The telegraph authority may, at any time, for the purpose of examining, repairing, altering or removing any telegraph line or post, enter on the property under, over, along, across, in or upon which the line or post has been placed.

PROVISIONS APPLICABLE TO PROPERTY VESTED IN OR UNDER THE CONTROL OR MANAGEMENT OF LOCAL AUTHORITIES

12. Power for local authority to give permission under section 10, clause

(c), subject to conditions. Any permission given by a local authority under section 10, clause (c), may be given subject to such reasonable conditions as that authority thinks fit to impose, as to the payment of any expenses to which the authority will necessarily be put in consequence of the exercise of the powers conferred by that section, or as to the time or mode of execution of any work, or as to any other thing connected with or relative to any work undertaken by the telegraph authority under those powers.

13. Power for local authority to require removal or alteration of telegraph line or post. When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property vested in or under the control or management of a local authority, and the local authority, having regard to circumstances which have arisen since the telegraph line or post was so placed, considers it expedient that it should be removed or that its position should be altered, the local authority may require the telegraph authority to remove it or alter its position, as the case may be.

14. Power to alter position of gas or water pipes or drains. The telegraph authority may, for the purpose of exercising the powers conferred upon it by this Act in respect of any property vested in or under the control

or management of a local authority, alter the position thereunder of any pipe (not being a main) for the supply of gas or water, or of any drain (not being a main drain):

Provided that

(a) when the telegraph authority desires to alter the position of any such pipe or drain it shall give reasonable notice of its intention to do so, specifying the time at which it will begin to do so, to the local authority, and, when the pipe or drain is not under the control of the local authority, to the person under whose control the pipe or drain is;

(b) a local authority or person receiving notice under clause (a) may send a person to superintend the work, and the telegraph authority shall execute the work to the reasonable satisfaction of the person so sent.

15. Disputes between telegraph authority and local authority. (1) If any dispute arises between the telegraph authority and a local authority in consequence of the local authority refusing the permission referred to in section 10, clause (c), or prescribing any condition under section 12, or in consequence of the telegraph authority omitting to comply with a requisition made under section 13, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by such officer as the [Central Government] may appoint either generally or specially in this behalf.

An appeal from the determination of the officer so appointed shall lie to the [Central Government]; and the order of the [Central Government] shall be final.

PROVISIONS APPLICABLE TO OTHER PROPERTY

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.

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 this being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code (45 of 1860).

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.

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.

Every determination of a dispute by a District Judge under subsection (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.

The aforesaid shows that the Telegraph Authority may place and maintain the Telegraph Line over, along and across, in or upon any immovable property. However, the requirement as per Clause (d) of Section 10 is that the authority shall do as little damage as possible and when it has to exercise the power in respect of the property other than that of the local authority, it shall pay full compensation to all persons interested for any damage sustained by them by the reasons of exercise of those powers.

Section 16 of the Telegraph Act provides that if the exercise of power under Section 10 is resisted or obstructed, the District Magistrate may order the authority to permit such exercise. After passing of such order, if any person resists the exercise of those powers by the authority, such would be an offence under Section 188 of IPC. Section 16(3) provides that if there is any dispute concerning to sufficiency of compensation to be paid under Section 10(d), an application may be made to the District Judge within whose jurisdiction the property is situated and such dispute is to be finalized by the District Judge as per Section 16(4).

The conjoint reading of Section 10 read with Section 16 shows that the Telegraph Authority or the authority so clothed with the power of the Telegraph authority under the Act will lay down the lines with the following mandate of the statute; (1) Do as little damage as possible; (2) Pay full compensation to all persons interested for the damage sustained by them by the reason of exercise of power; (3) owner or occupier will have right to resist or obstruct the exercise of power under Section 10(d); (4) In case of resistance or obstruction by the owner or occupier, the authority has to approach before the District Magistrate for order under Section 16(1); (5) The District Magistrate while exercising power under Section 16(1) has to exercise discretion for passing the order permitting the exercise of power; (6) If there is any dispute arises for sufficiency of compensation, either party has right to make application before the District Judge; (7) The District Judge has to finalize the amount of compensation payable by the authority to the owner or occupier.

We may now consider the relevant provisions of the Act for laying down the electricity or transmission lines. Sections 67 and 68, which are relevant read as under:-

67. Provision as to opening up of streets, railways, etc.- (1) A licensee may, from time to time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works such as -

(a) to open and break up the soil and pavement of any street, railway or tramway;

(b) to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;

- (c) to alter the position of any line or works or pipes, other than a main sewer pipe;
- (d) to lay down and place electric lines, electrical plant and other works;
- (e) to repair, alter or remove the same;
- (f) to do all other acts necessary for transmission or supply of electricity.

The Appropriate Government may, by rules made by it in this behalf, specify, -

- (a) the cases and circumstances in which the consent in writing of the Appropriate Government, local authority, owner or occupier, as the case may be, shall be required for carrying out works;
 - (b) the authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works;
 - (c) the nature and period of notice to be given by the licensee before carrying out works;
 - (d) the procedure and manner of consideration of objections and suggestion received in accordance with the notice referred to in clause (c);
 - (e) the determination and payment of compensation or rent to the persons affected by works under this section;
 - (f) the repairs and works to be carried out when emergency exists;
 - (g) the right of the owner or occupier to carry out certain works under this section and the payment of expenses therefor;
 - (h) the procedure for carrying out other works near sewers, pipes or other electric lines or works;
 - (i) the procedure for alteration of the position of pipes, electric lines, electrical plant, telegraph lines, sewer lines, tunnels, drains, etc.;
 - (j) the procedure for fencing, guarding, lighting and other safety measures relating to works on streets, railways, tramways, sewers, drains or tunnels and immediate reinstatement thereof;
 - (k) the avoidance of public nuisance, environmental damage and unnecessary damage to the public and private property by such works;
- the procedure for undertaking works which are not reparable by the Appropriate Government, licensee or local authority;
- (m) the manner of deposit of amount required for restoration of any railways, tramways, waterways, etc.;

- (n) the manner of restoration of property affected by such works and maintenance thereof;
- (o) the procedure for deposit of compensation payable by the licensee and furnishing of security; and
- (p) such other matters as are incidental or consequential to the construction and maintenance of works under this section.

A licensee shall, in exercise of any of the powers conferred by or under this section and the rules made thereunder, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

Where any difference or dispute [including amount of compensation under sub-section (3)] arises under this section, the matter shall be determined by the Appropriate Commission.

The Appropriate Commission, while determining any difference or dispute arising under this section in addition to any compensation under sub-section (3), may impose a penalty not exceeding the amount of compensation payable under that sub-section.

68. Overhead lines.

An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).

The provisions contained in sub-section (1) shall not apply-

- (a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;
- (b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or
- (c) in such other cases as may be prescribed.

The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary. The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.

Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive

Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.

When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

Explanation.

- For purposes of this section, the expression tree shall be deemed to include any shrub, hedge, jungle growth or other plant.

Section 67 of the Act provides that the electricity supply lines may be laid by the licensee, but as per Section 67(2), appropriate Government may make rules in this behalf, for the case and circumstance, in writing, appropriate Government or local authority or owner or occupier may be required for carrying out the work and the Rules may also provide for authority, which may grant permission in the circumstance, where such carrying out of the work is objected by the owner or occupier. The nature and the period of notice before carrying out the works may also be prescribed by the Rules, including the consideration of the objections and the suggestions determination and the payment of compensation or the rent, etc. Section 68 specifically deals with the installation or continuation of the installed overhead lines, but after the approval so granted by the appropriate Government.

Section 176 of the Act provides the power with the Central Government to make Rules and as per Section 176(2)(e) and (f), the Rules may be framed for the works of licensee effecting the property of the owner or the occupiers under Section 67(2). Section 176(1) and (2)(e) and

(f), for ready reference, read as under:-

176. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -

(a) xxx

(b) xxx

(c) xxx

(d) xxx

(e) the works of licensees affecting the property of owner or occupier under sub-section (2) of section 67;

(f) such other works which may be prescribed under clause (c) of sub-section (2) of Section 68;

As per Section 180 of the Act, the State Government is also authorized to make Rules for carrying out the provisions of the Act and Sub-section (2) of Section 180 (Clause B and C) for ready reference as under:-

180. (1) The State Government may, by notification, make rules for carrying out the provisions of this Act.

In particular and without prejudice to the generality of foregoing power, such rules may provide for all or any of the following matters, namely: -

(a) xxx

(b) the works of licensees affecting the property of other persons under sub- section(2) of section 67;

(c) such other matters which may be prescribed under clause (c) of subsection (2) of section 68;

As per the above provisions, Rules may be framed for the works of the licensee effecting the properties of other persons under Section 67(2) and it may also be framed for other matters, as may be prescribed under Clause(c) of Section 68(2).

If the language of Section 176(2)(e) is compared with the language under Section 180(2)(b), it appears that for the property of the owner or occupier , the power to make Rules vests to the Central Government, whereas the property of other persons , power to make Rules vests to the State Government and the reason being that Section 67(2)(a) provides for the consent in writing of :(1) appropriate Government; (2) local authority; and (3) owner or occupier. As observed earlier, language used under Section 176(2)(e), the words used are the property of owner or occupier , whereas under Section 180(2)(b), the words used are property of other persons . Therefore, the aforesaid such distinction is required to be considered hereinafter.

The works of licensees Rules 2006 have been framed by the Central Government in exercise of the power under Section 176(2) (Clause e) read with Section 67(2) of the Act and such Rules have come into force from 18.4.2006. Rule 3, which is relevant read as under:-

3. Licensee to carry out works.-

(1) A licensee may

(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;

(b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support:

Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government in this behalf, for carrying out the works:

Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorised may by order in writing direct for any such works, support, stay or strut to be removed or altered.

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.

Every order made by a District Magistrate or a Commissioner of Police or an authorised officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.

Nothing contained in this rule shall effect the powers conferred upon any licensee under section 164 of the Act.

The aforesaid Rules show that the licensee may carry out the works with the prior consent of the owner or occupier of any building or land, but if any objection is raised by the owner or occupier of the building or land, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police, or any officer as may be authorized by the State Government in this behalf. It also provides that the owner or occupier of the building can also make application to the District Magistrate or the police Commissioner or the Officer, as the case may be, for removal of the work already undertaken.

Sub-Rule (2) of Rule 3 provides that the District Magistrate or the Commissioner of Police or the officer so authorized, shall also fix the amount of compensation or annual rent or both to be paid by the licensee to the owner or the occupier. The power of the District Magistrate or the Commissioner of Police or the authorized officer, as the case may be, is subject to revision by appropriate commission. Sub-Rule (4) provides that nothing in this Rule shall affect the power conferred upon any licensee under Section 164 of the Act.

Section 164 of the Act reads as under:-

164. 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.

The aforesaid section is more or less akin to Section 51 of the Act of 1910, but the distinction is that the non-abstain clause as found in Section 51 of the Act of 1910 is missing or not provided under Section 164 of the Act.

Therefore, when the matters were before the learned Single Judge, it was observed by the learned Single Judge that in view of the judgement of the Division Bench of this Court in the case of Himmatbhai Vallabhbhai Patel Vs. Chief Engineer (Project) Gujarat Energy Transmission and Ors.(supra), all the matters be referred to the Larger Bench consisting of more than two judges for deciding the controversy once and for all.

At this stage, we may also mention that thereafter the matters were placed before the Larger Bench of this Court and the Larger Bench of this Court, vide order dated 3.4.2013, after interpreting Rule 5 of Gujarat High Court Rules found that the matters were required to be referred to a Division Bench by the learned Single Judge, since there was already an earlier decision of the Division Bench, in the case of Himmatbhai Vallabhbhai Patel Vs. Chief Engineer (Project) Gujarat Energy Transmission and Ors.(supra) and thereafter, if another Division Bench so finds, then only the matter may be referred to the Larger Bench. Under these circumstances, all the matters are placed before the present Division Bench of this Court.

We shall address upon the question as to whether the matters are now required to be referred to a Larger Bench or not, while considering the legal position hereinafter.

Again the consideration of the other provisions of the Act is required. Section 185 of the Act reads as under:-

By Section 185(1) of the Act of 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commission Act, 1998 are repealed. However, as per Section 185(2) notwithstanding such repeal under Sub-section (1) of Section 185, as per Section 185(2)(b), the provisions contained in Sections 12 to 18 of the Act of 1910 and the Rules made therein would have the effect until the Rules under Sections 67 to 69 of the Act are made. As observed earlier, the Rules of 2006 are already framed by the Central Government, which has come into force from 18.4.2006, but of course such Rules are for the property of owner or occupier and if considered, in contra-distinction to the property of appropriate Government or local Authority, for which the State Government has to frame the Rules and the statement has been made at the bar that the State Government has so far as not framed the Rules. Under these circumstances, it can be said that effect of Sections 12 to 18 of the Act of 1910 by virtue of Section 185 has ceased from 18.4.2006 after the Rules of 2006 have come into force, but such will be only qua properties of the owner or occupier. The effect of such Sections of Act of 1910 shall not cease qua the property of the appropriate Government or local Authority until the Rules are so framed by the State Government in exercise of power under Section 180(2)(b) and (c).

As we are not required to examine in the present group of matters for any property of the appropriate Government or local authority and subject matter of all the petitions is the property of various citizens, which would fall in the category of owner or occupier and as the cause for the petitioners has, in any case, accrued, after the Rules of 2006 came into operation, all the matters would be required to be considered on the premise that the Act of 1910 has been fully repealed and the application of Sections 12 to 18 of the Act of 1910 would not be required to be made for examining the controversy raised in the petitions, save and except for the purpose of appreciating the historical background and the change in the law by distinguishing the mechanism provided for laying down of the electric lines over the properties of the owner or occupier, as the case may be.

We may first dealing with the aspect of the effect of non-availability of non-abstain clause under Section 164 of the Act as was earlier under Section 51 in the Act of 1910. We may record that the constitutional validity of Section 164 of the Act is not under challenge in any of the petitions and, therefore, we have to proceed on the basis that Section 164 remains on the statute book in the Act, but the effect thereof or the interpretation thereof is to be considered by us.

In the Act of 1910, Section 51 expressly provided for non-abstain clause, but the language used under Section 51 provided for the additional mode of conferment of the power of the Telegraph Authority by appropriate Government upon any public officer or Central Transmission Utility or State Transmission Utility or licensee or Transmission Licensee or any person engaged in the business of transmission or supply of energy to the public. To say in other words, if one had to exercise the power under the Act of 1910 Sections 12 to 16 read with Sections 18 to 19 provided for a particular mode or mechanism for laying down of any electricity line, which required; (1) consent of the owner or occupier; (2) paying of compensation; (3) in case of objection raised by the owner or occupier, for making of an application to the District Magistrate; (4) order by the District Magistrate for permitting such work, but simultaneously with the fixation of the amount of compensation, subject to the revisional power of the State Government. However, if the Central Government in case of inter-State transmission system or the State Government in case of intra-State transmission system finds it proper, the other mode of laying down of the line by the electricity company or its officers may be permitted by conferment of the power as that of the Telegraph Authority under the Telegraph Act. If the powers under the Telegraph Act are so conferred by the Central Government or the State Government, as the case may be, electricity company or its officers, who step into the shoes of the Telegraph Authority would be required to follow a particular mechanism; (1) of laying down the lines with the least damage and to pay full compensation; (2) the owner or the occupier will have right to resist or obstruct; (3) in case of resistance or obstruction by the owner or occupier, application is to be made to the District Magistrate, who may permit laying down of the lines; (4) the owner or the occupier disputing the sufficiency of compensation may approach before the District Judge for appropriate compensation, who shall finalize the amount of compensation. Therefore, it appears to us that a separate mode and mechanism for laying down the electricity line either on the land or overhead is made available, if the appropriate Government so confers the powers upon the electricity company or its officers. The additional mode provided under one statute for undertaking a particular work is not unknown to law and further when there is no conflict in exercise of power, such can be provided by the Legislature or Parliament even in absence of non-abstain clause. Therefore, it appears to us that a non-abstain clause as mentioned under Section 51 of the Act of 1910 could be termed as a clarificatory in nature and not for giving an overriding effect. If the power is not so conferred upon the electricity company or its officers, they would be required to follow the provisions of Sections 12 to 18 of the Act of 1910, whereas if the power is so conferred under Section 51 to any Electricity Company or its officers, they would be required to follow the procedure as per the provisions of Indian Telegraph Act for laying down the Telegraph lines. The powers so conferred with the Central Government or the State Government under Section 51 are discretionary and not mandatory. Therefore, it appears to us that merely because non-abstain clause is not mentioned under Section 164 of the Act unlike Section 51 of the Act of 1910, would not result into non-availability of the power with appropriate Government under Section 164 of the Act. Hence, in our view, non-availability of non-abstain clause in Section 164 of the Act would not nullify the effect of Section 164 of the Act as otherwise available. As per the language of Section 164 of the Act, additional mode to be followed would be as per the Indian Telegraph Act. Under these circumstances, we cannot accept the contention of the learned Counsel appearing for the petitioners that in

absence of non-abstain clause in Section 164 of the Act, appropriate Government cannot exercise the power under Section 164 of the Act. Therefore, the said contention fails.

The aforesaid aspect would lead us to examine the difference and distinction in the mode of exercise of the power under Section 67 of the Act read with the Rules of 2006 and the exercise of power under the Telegraph Act when it is so conferred by the Notification under Section 164 of the Act by the appropriate Government.

The distinction can be carved out as under:-

(1) If the power is to be exercised under Section 67 of the Act read with the Rules of 2006 at the first instance consent of the owner or the occupier is the requirement for exercise of power, whereas if the Telegraph Authority has to exercise the power the consent of the owner or occupier is not required for exercise of power, but with the clarification that the owner or occupier of the property has right to resist or obstruct when the work is to be undertaken by the licensee. There is a thin line of distinction between getting consent of the owner or occupier and enabling power of the owner or occupier to resist or obstruct any work. Consent would presuppose an action after meeting of two minds and arriving at an unanimous decision, whereas in a case where the owner or the occupier has a right to resist or obstruct would mean that one (licensee) may proceed to undertake the work by intimation to the owner or occupier and if there is no resistance or obstruction, the work may be started or proceeded with until the same is resisted or obstructed. The moment there is resistance or obstruction by the owner or occupier, the authority of licensee to undertake the work would end.

(2) The second distinction is that in exercise of power under Section 67(2) of the Act read with the Rules of 2006 when no consent is given by the owner or occupier, the licensee has to make application to the District Magistrate or the Commissioner of Police or the Officer so authorized for such purpose for getting order permitting to undertake the work and the District Magistrate or the Commissioner of Police or the Officer so authorized has to simultaneously fix the amount of compensation or annual rent or both to be paid by the licensee to the owner or occupier, whereas in case of exercise of power under Telegraph Act, if there is any resistance or obstruction by the owner or occupier, the licensee has to get the order of District Magistrate, but there is no obligation upon him to fix the amount of compensation and the reason being that as per the Telegraph Act the obligation is upon the licensee to pay full compensation when the power is exercised for undertaking any work.

Such would mean that the owner or occupier under Section 67(2) of the Act read with the Rules of 2008 may not give consent until he is paid appropriate compensation, but if the licensee has moved before the District Magistrate under the Telegraph Act, there is no obligation upon the District Magistrate to fix the compensation. The right is given to the owner or occupier to make application to the District Judge in the event he finds that the amount of compensation is not sufficient.

The third distinction is that the order of the District Magistrate or the Police Commissioner or the Officer, as the case may be, under Section 67(2) of the Act read with the Rules of 2006 is subject to revision by appropriate Commission, whereas under the Telegraph Act after the compensation is fixed and paid by the licensee to the owner or occupier, one has to approach before the District Judge for the dispute concerning to sufficiency of compensation, and the District Judge's decision is to be treated as final, of course, subject to the remedy available to the aggrieved party under Article 226 of the Constitution of India.

The aforesaid could be termed as the basic difference in the mechanism provided for exercise of the work by the licensee under Section 67 of the Act read with the Rules of 2006 and Telegraph Act.

It was submitted by the learned Counsel for the petitioners that even if the order under Section 164 of the Act has been issued by the appropriate Government, it is obligatory on the part of the Electricity Company and its Officers to follow the procedure required as per Section 67(2) of the Act read with Rules of 2006 and, therefore, non-following of the procedure as required under Section 67(2) of the Act read with the Rules of 2006 would render the action without following the mandatory procedure and, therefore, the same would be bad in law.

Whereas, the learned Counsel appearing for the respondent Electricity Company contended that it is only in absence of the order under Section 164 of the Act, the licensee or the Electricity Company holding the valid licence is required to follow the procedure under Section 67(2) of the Act read with the Rules of 2006. In a case where order under Section 164 of the Act has been issued, the licensee has to follow the procedure as required under the Telegraph Act and not under Section 67(2) of the Act read with Rules of 2006. It was submitted that, therefore, the action cannot be said as without following the mandatory procedure.

In our view, as observed by us herein above the Act itself provides two separate mode and mechanism for laying down the line by the licensee on the property of the owner or occupier. One mode is the procedure provided under Section 67(2) of the Act read with Rules of 2006. The later mode is available only if the power is so conferred by the appropriate Government under Section 164 of the Act and order is issued for such purpose. If the order is issued under Section 164 of the Act for conferring the power upon a particular licensee Electricity Company, it will be for the concerned Electricity Company and its officers to follow the mode and mechanism as provided under Telegraph Act and not under Section 67 of the Act read with the Rules of 2006. It is only in absence of order under Section 164 of the Act, any licensee for laying down the land would be required to follow the procedure under Section 67(2) of the Act read with the Rules of 2006. Under these circumstances, it cannot be said that even if the order under Section 164 of the Act is issued by the appropriate Government conferring power upon the licensee as that of the Telegraph Authority under the Telegraph Act, the licensee would be required to follow the procedure under Section 67(2) of the Act read with the Rules 2006. Therefore, the contention cannot be accepted.

Since in all the petitions, it is not the case of any of the respondents that they have proceeded to exercise the power under Section 67(2) read with Rules of 2006, and it is a case of the Electricity Company that they are conferred with the power under Section 164 of the Act as that of the power of the Telegraph Authority, as per the Notification issued by the Government under Section 164 of the Act, we may be required to minutely examine the requirement for the exercise of the power by the licensee under the Telegraph Act for laying down of any electricity lines.

As per Section 164 of the Act the power under the Indian Telegraph Act as that of the Telegraph Authority in respect of placing of the telegraph lines and posts for the purpose of telegraph established or maintained by the Government or to be so established or maintained, can be so conferred upon any public officer or licensee or any other person engaged in the business of supplying electricity under the Act by appropriate Government. Therefore, we need to consider the scope and ambit of the power and the obligation as that of the Telegraph Authority.

As per Section 10(d) there are two mandatory requirements; (1) Telegraph Authority shall do as little damage as possible; and (2) to pay full compensation to all persons interested for the damage sustained by them by the reasons of the exercise of those powers. The next aspect is what will be the scope of as little damage as possible and what will be the scope of full compensation . Before we address on the said aspect, it will not be out of place to mention that Indian Telegraph Act came to be enacted in the year 1885, much prior to not only Independence of our country, but could rather be said as the law enacted in 19th Century. There are far more development not only in the rights of the citizens, but also in the obligation and the way of discharge of duty by the authority and more particularly, after the Constitution has come into force in the country. Further, there are far more development of science, the method and way of enjoyment of the properties by the citizens and so is for various scientific method developed for laying down the lines. Telegraph lines are by now outdated on the date when we are to pronounce the judgement and they are to be substituted for the electricity lines. Therefore, we need to keep in mind the said aspect too. As against the same, the Act of 2003 and more particularly Section 164 of the Act are the laws of 21st Century. At the first brush we may say that by the laws of 21st Century i.e. Electricity Act, the power so conferred by the Act of 19th Century are continued. If the Act of 21st Century providing the method and mechanism under Section 67 of the Act read with the Rules of 2006 are considered, it does require the consent of the owner and also in absence of the consent, if the Police Commissioner or the Magistrate is to grant permission simultaneous assessment of the compensation and the payment thereof subject to revisional power by appropriate Commission, whereas the mechanism so provided under the Telegraph Act is different, but while interpreting the provisions of the Telegraph Act for exercise of the power by any person as that of the Telegraph Act for laying down of the lines of electricity we need to keep in mind the rights and obligations so prevailing in 21st Century and it cannot be as that of 19th Century when the position of the country, including the development in the society and the science was far behind.

We may now further proceed to examine the matter, keeping in view the aforesaid backgrounds:-

(a) The interpretation of the words authority shall do as little damage as possible .

As such the language itself is clear for showing that the obligation is cast upon the authority to do as little damage as possible. Therefore, attempt on the part of the authority shall be to minimal damage, taking into consideration the whole scheme of laying down of the line. As per the provisions of the Act when the licensee is to lay down the lines for supply or transmission or even for maintenance of electricity generating power station, approval is to be granted by the competent authority or the appropriate Government, as the case may be. Therefore, while granting approval the competent authority or the appropriate Government, as the case may be, would discharge the duty objectively, taking into consideration the larger public interest. Even after the approval is so granted, the attempt on the part of the authority would be to do least damage or as little damage as possible. Such would include that the authority shall not lay down the line over the property of owner or occupier unless it is genuinely required and the lines shall be organized in a manner, which will result into least possible damage. Further, if any change is possible in the line without disturbing, the main object of passing of electricity, the same shall also be taken into consideration. We make it clear that it would not mean that the owner or occupier will have a right for adjudication against the decision of the Electricity Company, more particularly because his suggestion is not accepted for alternative way or that non-acceptance of suggestion of the owner or occupier would give a cause in the Court of law. But the obligation so created by the statute upon the authority to do as little damage as possible should be discharged with the expertise knowledge, keeping in view the objective purpose of safety, the curtailment of the rights of the owner or occupier for the enjoyment of

the property and the necessity to lay down the line. If the laying down of the line in spite of the apparent, alternative way available on the face of it, is insisted by the authority, it may not meet with the test of as little damage as possible, but if after taking into consideration of the aforesaid aspect an objective decision is taken to lay down the line over the property of the owner or occupier such would be permissible and it can be said that the obligation to do as little damage as possible is sufficiently discharged.

(b) Authority shall pay full compensation to all interested by the reason of exercise of the power. The language itself is apparent, inasmuch as the obligation is so created for payment of full compensation. There would be various methods of assessment of the compensation, but unless it is identified that what damage is sustained, it may not be possible to assess the compensation. Therefore, the words any damage is required to be interpreted to mean all type of damage. If the land is an agricultural land, the actual occupation of the area for construction of tower is one type of damage, whereas the right curtailed of the owner or occupier to utilize the land for agriculture is another type of damage. If there is exclusive occupation for construction of tower, the damage can be said to be to the fullest extent, since no rights whatsoever remains with the owner to enjoy the property, whereas if the use is permissible in part, there may be damage to that extent to the rights of the owner or occupier for enjoyment of the property. Further, if it is an agricultural land in the peripheral area or nearby area of city it will have the potentiality for non-agricultural use and even if the towers are not constructed, but only overhead line is installed, such may result into curtailment of the rights of the owner or occupier of the property to the fullest extent. In the same manner, if on account of the construction of the tower or laying down of the lines, including overhead lines, the actual construction or utilization of the line by making any type of construction is not permissible as per the laws of the local authority, such would also result into a damage to the rights of the owner or occupier. The same principles would apply with more vigor in a case where the line is already located in the urban area or the urban agglomeration or within the area of the local authority, municipality or corporation, as the case may be.

It may be difficult for the electricity company to take out the basis of the valuation of the property, over which the lines are to be laid down or the powers are to be constructed, since the development in the respective area may vary from case to case. For example, an agricultural land in the remote village will have a different value in comparison to agricultural land in the city area for the land already used for non-agricultural purpose like residential, industries, etc., or the use of residential or industry, as may be permissible, etc. It may be that at the time when the Telegraph Act was enacted, no standard or basic yardstick for valuation of the land or the property was available, but as on today and even when the Act of 2003 came into force, the valuation is already made by the State Government of all the areas for the purpose of stamp duty, which is popularly known as jantri valuation.

It is possible that in every case Jantri Valuation may not reflect the correct market value of the land, but for the purpose of awarding of compensation at the first instance by the Electricity Company in capacity as the authority under the Telegraph Act can take the basis of the jantri valuation of the respective land. After considering the jantri valuation it may be examined as to whether there is full curtailment of the right of the owner or occupier or not. If the curtailment of the right of the owner or occupier is to the fullest extent, appropriate compensation based on jantri valuation can be fixed, whereas if the curtailment of the right of the owner or occupier over the land is lesser, a mode or mechanism may be required to be provided about the percentage of curtailment of right. The guiding factor can be by way of rental compensation for the deprivation of the property for a limited period. Further, if the deprivation is only in part, it can be considered percentage-wise namely; that if the use is permissible, may be by running with the risk of electricity in the nearby area, such may result into 30%

curtailment of the right, whereas if the overhead line is passing through agricultural land located in the remote agricultural area, it may result into damage to 10% of the property, as against the same if line is passing over an agricultural land in an urban area located in the urban or nearby urban area, the potentiality can be said as lost to the extent of 50%. Of course, the aspect of the area covered by the overhead line with the measurement would be relevant while examining the actual damage to the owner or occupier. In our view, it may not be possible for this Court to lay down any standard yardstick for assessment of the damages and consequently the compensation, but it is obligatory on the part of the Electricity Company to take into consideration the aforesaid aspect and thereafter, to quantify the amount of compensation and to simultaneously pay to the owner or occupier of the land can be considered as that of the jantri valuation and the assessment of the damage may be made based on the curtailment of the right of the owner or occupier on account of the laying down of the line. The aforesaid could be said as the basic requirement for exercise of the power by the authority for laying down of the line as per the Section 10(d) of the Act. If the mandatory requirement of causing as little damage as possible or payment of full compensation is not followed, the action may be rendered illegal.

However, the Act does not end there, but it further provides the other remedial measure as per Section 16 of the Act. Therefore, we may be now required to examine the aspect of further exercise of power under Section 10(d). If Section 10(d) is read with Section 16(1), it is clear that the owner or occupier has a right to resist or obstruct. At the same time, it is in absence of any resistance or obstruction by the owner or occupier, the licensee as the Telegraph Authority may proceed to exercise the power of laying down of the line, but as observed earlier, even in absence of resistance or obstruction by the owner or occupier, the obligation will remain upon the licensee as the Telegraph Authority to do the least damage and to pay full compensation.

The next aspect may be required to be considered about the method of exercising of power under Section 10(d) read with Section 16(1) by the licensee as the Telegraph Authority. If prior notice is given to the owner or occupier, such would leave the room to the owner or occupier to shift any material lying over the land or the property, where the lines are to be laid. Further, it would also leave room to the owner or occupier to decide as to whether he wants to resist or obstruct the laying down of the line or not. By now it is well settled that the power, if any, are to be exercised under the statute by the authority by observance of principles of natural justice. The minimum observance of the principles of natural justice would call for at least a reasonable time to the owner or occupier before the action is taken by the licensee as the Telegraph Authority for laying down of the line. Therefore, it appears that minimum 15 days time should be given to the owner or occupier by the licensee as Telegraph Authority before starting of the work of laying down of the line. However, such notice should expressly provide for the area over which the line is to be passed or the tower is to be constructed and the amount of compensation to be paid to the owner or occupier for the damage. After receipt of such notice, if there is no resistance by the owner or occupier, the licensee as the Electricity Company may proceed, but has to simultaneously pay the compensation at the time when the line is laid down. However, if there is any resistance or obstruction raised by the owner or occupier, the licensee as the Telegraph Authority has to withdraw from the property of the owner or occupier and as per Section 16(1), the application shall be required to be made to the District Magistrate for grant of permission. The District Magistrate at the time when the permission is to be granted shall examine as to whether requirement of Section 10(d) are satisfied. Thereafter, he may grant permission to exercise the power. After the permission is so granted by the District Magistrate, the licensee as the Telegraph Authority can proceed to lay down the line. Section 16(1) if considered and compared with Section 16(3) shows that the District Magistrate at the time when permission is to be granted under Section 16(1) has to examine the aspect of as little damage as possible, whereas on the aspect of sufficiency of

compensation, the owner or the occupier has to resort to the proceedings under Section 16(3) before the learned District Judge. If the District Magistrate is satisfied that the aspect of little damage is satisfied, he may grant permission to the licensee as Telegraph Authority for laying down of the line, but if he is not satisfied on the aspect of little damage possible to the property of the owner or the occupier he may decline to grant permission. The language used under Section 16(1) is the permission may be granted by the District Magistrate in his discretion. Since section provides for the language of the words his discretion and may , we find it proper to observe that the District Magistrate while exercising the discretion to grant permission should at least examine the aspect of little damage possible to the property of the owner or occupier, which is even otherwise also mandatory as per the requirement of Section 16(d) of the Act. We also find it proper to observe that the District Magistrate while exercising the discretion, should take into consideration the observations made by this Court in the present judgement for the requirement to satisfy the aspect of little damage possible. If the District Magistrate is satisfied on the aspect of as little damage as possible, he may grant permission. We may also state that the certain facets observed and discussed by us for considering the meaning of words little damage as possible are some of the instances and they may not be termed as exhaustive.

The next aspect is the sufficiency of compensation. As observed by us herein above, the payment of full compensation for the damage caused is a mandatory requirement. The observations made by us herein above are some of the methods and measures for assessment of the damage and consequently the compensation. The licensee as Telegraph Authority can be said as required to consider the aforesaid aspect and thereafter to fix the amount of compensation and to pay simultaneously with the laying down of the line. However, if the owner or occupier finds that the compensation paid by the licensee as Telegraph Authority is not sufficient, the owner or occupier or may be in a given case, the licensee as the Telegraph Authority may make application to the District Judge and ultimately the District Judge has to finalize the aspect of sufficiency of compensation. When the matter comes up before the learned District Judge for the aspect of sufficiency of compensation, he would finalize on the basis of evidence led before him. As per the Scheme of Section 16, the District Judge has to finally decide the aspect of sufficiency of compensation. Since the power vests to judicial authority we do not find it proper to observe further, except that the matter shall be examined in accordance with law by the learned District Judge at that stage and the aspect of sufficiency of compensation shall be finalized. Such decision of the District Judge is binding to both the sides with the further proviso that the decision shall not adversely affect the right of any person to recover by suit the whole or any part of the compensation paid by the licensee as Telegraph Authority from the person, who has received the same.

In view of the aforesaid observations and discussion, following position of law can be deduced:-

- (a) When any Electricity Company or its officers are delegated the power of the Telegraph Authority under the Telegraph Act by virtue of the notification issued by appropriate Government under Section 164 of the Act, such delegatee of the power is discharging the statutory function and, therefore, the writ petition under Article 226 of the Constitution is maintainable.
- (b) Section 164 of the Act provides for a separate mode for laying down of electric line by conferment of power of the Telegraph Authority and if such powers are conferred upon any Electricity Company or its officers by appropriate Government, the power can be exercised as that of the Telegraph Authority under the Telegraph Act for laying down the lines.

(c) In absence of any specific delegation of power under Section 164 of the Act, the course available to the Electricity Company or its officers for laying down of the line is only under Section 67 of the Act read with the Rules of 2006.

(d) Non-availability of non-abstain clause under Section 164 of the Act would not result into curtailment of the operation of Section 164 of the Act, since a separate mode for conferment of power and consequently for laying down of the line is expressly provided by the statute. However, appropriate Government has to apply its wisdom, keeping in view the larger public interest as to whether it is a fit case to impose and confer the powers as that of the Telegraph Authority upon any licensee or any other persons engaged in the business of supplying electricity or any public officer or not. While exercising such power, appropriate Government may provide for certain conditions and the restrictions to be observed.

(e) As per the Electricity Act any licensee in absence of any specific conferment of power under Section 164 of the Act as that of the Telegraph Authority for laying down of the work has to follow the procedure as provided under Section 67 read with the Rules of 2006. Such would include the consent of the owner or the occupier for laying down of the line and if the consent is not granted or the objection is raised, the licensee has to get the permission of the District Magistrate or the Commissioner of the Police or the officer so authorized, as the case may be, but while granting permission, the District Magistrate or the Commissioner of Police or the officer so authorized has to fix the amount of compensation or annual rent or both, which as per his opinion should be paid by the licensee to the owner or occupier. The order of the District Magistrate or the Commissioner of Police or the officer so authorized is subject to revisional power of appropriate Commission.

(f) In case of exercise of power under Telegraph Act on account of conferment of such power upon the licensee by appropriate Government under Section 164 of the Act, the power may be exercised by the licensee as Telegraph Authority for laying down of line. As per the provisions of Section 10(d) there is obligation upon the licensee to lay down the line, which causes the least damage and to pay appropriate compensation.

(g) While exercising the power as that of the Telegraph Authority under the Telegraph Act, on account of the notification under Section 164 of the Act consent of the owner or occupier may not be required, but some reasonable prior intimation should be given to the owner or occupier, enabling him to exercise his right to resist or obstruct, may be on the ground that the principles of least damage is not followed or may be on the ground that appropriate compensation is not paid or otherwise. The moment there is resistance or obstruction by the owner or occupier, the licensee has to stop his work, if any, or to withdraw from the property of the owner or the occupier. Thereafter, the licensee may approach before the District Magistrate for permission to lay down the line and the District Magistrate in exercise of the power may grant permission, but while granting permission, he may be required to examine the observance of the principles of little damage as possible and thereafter the permission may be granted. If permission is so granted by the District Magistrate, thereafter the owner or occupier cannot interfere in the work of laying down of the line unless the order of the District Magistrate granting permission is carried before the higher forum and any prohibitory order is passed by the competent forum or competent Court known to law. While granting permission under Section 16(1), the District Magistrate is not required to examine the aspect of sufficiency of compensation.

(h) If the compensation is paid under Section 10(d) and the owner or occupier finds that the compensation paid is not sufficient in comparison to the damage caused or otherwise, the owner or occupier has right to

approach before the District Judge under Section 16(4), who has to finalize the amount of compensation to be paid by the licensee to the owner or occupier. The decision of the District Judge is final, but subject to further order of any higher forum known to law.

At this stage, we may examine the aspect as to whether in view of the reasons recorded by us herein above the matter deserves to be referred to the Larger Bench or not, taking into consideration the earlier decision of the Division Bench of this Court in the case of Himmatbhai Vallabhbhai Patel (supra).

It is true that the Division Bench of this Court in the case of Himmatbhai Vallabhbhai Patel (supra) did observe that if the electricity supply lines are laid, neither acquisition of the land is necessary, nor is there any need for the consent of the owner or occupier of the land, but the pertinent aspect is that in the said decision in the case of Himmatbhai Vallabhbhai Patel (supra), the Division Bench of this Court had no occasion to examine the aspect of right to resist or to obstruct available to the owner or occupier in light of the provisions of Section 16(1) of the Telegraph Act. Further, we have also found that the consent of the owner or occupier as required under Section 67(2) of the Act read with the Rules of 2006 is not required when the electricity company or its officers proceed under Telegraph Act on account of the conferment of the power upon them by appropriate Government under Section 164 of the Act. Therefore, we do not find that there is any conflict in the view taken by us, but can rather be said as reiteration of the same view. In the earlier decision in the case of Himmatbhai Vallabhbhai Patel (supra) when the Division Bench of this Court had no occasion to examine the aspect of right for resistance or obstruction available to the owner or occupier under Section 16(1) of the Telegraph Act and when no view is expressed in the said decision, we do not find that the matter is further required to be referred to the Larger Bench.

Same may be the position of the matter for non-availability of non-abstain clause under Section 164 of the Act in comparison to Section 51 of the Act of 1910.

We find that when there is no express disagreement, the reference to Larger Bench is not called for.

As submitted by the learned Counsel appearing for both the sides, since all the matters are placed before us for appropriate decision, the merits of the matters are further to be considered. Hence, we proceed to examine the facts of each case further in light of the legal position narrated herein above.

In Special Civil Application No.18334 of 2011, the prayer to adopt and accept viable mode cannot be granted, because, as observed by us herein above, it is for the competent authority to approve the plan for laying down of the line and it is for the District Magistrate, thereafter, to examine as to whether the minimum damage as far as possible is caused or not. In any case, by the present petition, the resistance is shown and, therefore, the respondent Electricity Company will have to approach before the District Magistrate under Section 16(1) of the Act. At that stage, the petitioner may raise all contentions that the principles of minimum damage are not observed or otherwise and the Electricity Company may point out that the said aspect is considered and the principles of minimum damage are maintained. The District Magistrate, in any case, would be required to examine the matter in light of the observations made by us in the present judgement and thereafter shall exercise the power for grant or refusal of permission under Section 16(1) of the Act. Such, in our view, shall be the due process of law and hence, we direct accordingly. The other relief as prayed by the petitioner does not deserve to be granted, but with the observations that if the petitioner is aggrieved by the sufficiency of compensation,

they will have remedy of raising the dispute before the learned District Judge as per Section 16(3) of the Telegraph Act.

In Special Civil Application Nos.3768 to 3776 of 2012, the petitions are to be treated as resistance by the concerned petitioners for their respective land. Consequently, the respondent Electricity Company and its officers would be required to approach before the District Magistrate under Section 16(1) of the Act. The petitioners may raise all grievance, as may be available, in light of the observations made by us in the present judgement before the District Magistrate and the District Magistrate shall decide the same in accordance with law in light of the observations made by us in the present judgement for grant or refusal of the permission under Section 16(1) of the Telegraph Act. Further, if quantum of compensation is not ascertained, the same shall be ascertained and paid by the Electricity Company to the concerned owner and/or occupier and thereafter, if the petitioners concerned have any grievance on the aspect of sufficiency of compensation, they shall be at liberty to raise the dispute before the learned District Magistrate under Section 16(3) of the Telegraph Act, which shall be decided in accordance with law, after taking into consideration the observations made by this Court in the present judgement. Hence, we order accordingly.

In Special Civil Application No.6221 of 2011, the action of the respondent Electricity Company for laying down infrastructure to run overhead high tension line from the land of the petitioner is not set aside, but it is observed and directed that the present petition shall be treated as resistance by the petitioner and if the line is not laid down pending the petition, the same shall not be laid down until the order is passed by the District Magistrate under Section 16(3) of the Telegraph Act. At the time when the application is made before the District Magistrate by the respondent Electricity Company or its officers, the petitioner may raise all contentions, as may be available in law, in light of the observations made by this Court in the present judgement and the learned District Magistrate shall decide the same in accordance with law, after taking into consideration the observations made by this Court in the present judgement. The other reliefs prayed by the petitioner are not granted, but it is observed that in the event the petitioner is aggrieved by the sufficiency of compensation, he may raise the dispute before the District Judge under Section 16(3) of the Telegraph Act. Hence, ordered accordingly.

Special Civil Application No.2744 of 2012 shall be considered as resistance by the petitioner against the proposed project of laying down of the electricity line but it appears that thereafter the District Magistrate has passed the order dated 31.5.2012, a copy of the order is also produced at Annexure R-J-B with the rejoinder affidavit dated 26.6.2012 filed on behalf of the petitioner, granting permission to lay down the lines and the said order of the District Magistrate is not under challenge in the present petition. Under these circumstances, now the petitioner will have to raise dispute for sufficiency of compensation under Section 16(3) of the Telegraph Act, which the petitioner may raise and the matter shall be decided in accordance with law, after taking into consideration the observations made by this Court in the present judgement qua the compensation to be paid by the Electricity Company and its officers to the owner or occupier of the land. Hence, ordered accordingly.

Special Civil Application No.871 of 2012 can be termed as resistance by the petitioners concerned and, therefore, the action for laying down of the electricity line shall not be proceeded further unless the order is passed by the District Magistrate under Section 16(3) of the Telegraphy Act. If any application is made to the District Magistrate by the Electricity Company or its officers, the petitioner may raise the objection, as permissible in law in light of the observations made by this Court in the present judgement and the District Magistrate shall decide the same in accordance with law. However, on the aspect of sufficiency of the

compensation, if the petitioner is aggrieved, the petitioner may raise the dispute before the learned District Judge under Section 16(3) of the Act and such application, if any, shall be decided in accordance with law, keeping in view the observations made by this Court in the present judgement. Hence, ordered accordingly.

In Special Civil Application No.3131 of 2012, it appears that pending the petition, the work is already completed as stated in the additional affidavit filed on behalf of the respondent dated 9.5.2013. Therefore, irreversible situation has arisen. Under these circumstances, we find it proper to direct the respondent Electricity Company to assess the compensation in light of the observations made by this Court in the present judgement and to pay the same to the petitioner concerned within a period of six weeks from the date of receipt of the order of this Court. Thereafter, if the petitioner is aggrieved on the aspect of sufficiency of compensation, he may raise the dispute under Section 16(3) of the Telegraph Act before the District Judge, who shall decide the same in accordance with law, taking into consideration the observations made by us in the present judgement. Hence, we order accordingly.

It is further observed and directed that, in any case, in the present group of matters, wherein the process of laying down the electricity line is not taken at all i.e., in the cases where even notice has not been issued for taking first step for giving intimation to the person concerned, the Electricity Company shall be required to strictly follow the procedure for giving advance 15 days notice to the owner or occupier by specifying the amount of compensation fixed and by specifying the area over which the line is to be laid down. After such notice all right would be available to the petitioner concerned as observed by us herein above in the present judgement and thereafter, it would be for the Electricity Company and its officers to follow the procedure prescribed and read by us in the present judgement. It is only after the order is passed by the District Magistrate and in absence of any prohibitory order of any competent forum known to law, the electricity company or its officers will be in a position to proceed with the action for laying down of the line. Further, on the aspect of sufficiency of compensation if the petitioner concerned is not satisfied about the compensation ascertained and paid to the owner or occupier, the dispute may be raised before the learned District Judge under Section 16(3) of the Telegraph Act, who shall finalize the same in accordance with law in light of the observations made by us in the present judgement.

Before parting with, we find it proper to observe that in the matter of conferment of power as that of Telegraph Authority under Section 164 of the Act, it is open to the appropriate Government to impose the conditions to be applied by the Electricity Company and its officers. It appears to us that various different methods and different yardsticks have been adopted by the Electricity Company and its officers in the matter of assessment of compensation tendered under Section 10(d) of the Telegraph Act. Since the powers as that of a Statutory Authority (Telegraph Authority) are to be exercised by the Electricity Company and its officers, it would be expected for the State to properly protect the rights of the citizens in the property by allowing the Electricity Company to lay down the lines as per the provisions of the Telegraph Act read with the Act. Therefore, if the State Government issues appropriate guidelines for the mode and manner of assessment of compensation after taking into consideration various facets observed by this Court in the present judgement, such can be incorporated as conditions while conferment of power under Section 164 of the Act to be complied with by the Electricity Company and its officers at the time when they have to pay the compensation under Section 10(d) of the Act. Thereafter, if any owner or occupier is not satisfied about the compensation, as per the view taken by us, he may raise the grievance on the aspect of sufficiency of compensation before the learned District Judge, who will examine and finalize the amount of compensation after giving opportunity to both the sides. Such

guidelines issued by the State Government would not be binding to the learned District Judge, but it can bind the Electricity Company and its officers for the payment of compensation. If such a course is adopted by the State Government, the owner or the occupier would get at least that amount of compensation at the first instance, when power is exercised under Section 10(d) of the Telegraph Act by the Electricity Company and its officers. Therefore, we find it proper to direct the State Government through Secretary, Department of Energy to consider the observations made by this Court in the present judgement on the aspect of mode and manner of assessment of compensation to be paid by the Electricity Company and its officers and then to issue the guidelines for such purpose with the further observations that the State Government, while considering the matter for conferment of power under Section 164 of the Act upon any Electricity Company and its officers, shall provide as one of the conditions to be complied with for abiding by the guidelines issued for the mode and manner of assessment of compensation. Such guidelines shall be issued within a period of three months from the date of receipt of the judgement of this Court by the Secretary, Department of Energy of the State Government and the report shall be submitted to this Court within four weeks thereafter. In the event the report is not received by the Registrar General of this Court, the matter shall be placed before the Court for appropriate orders.

All the petitions are allowed to the aforesaid extent. Considering the facts and circumstances, no order as to costs.

(JAYANT PATEL, J.) (Z.K.SAIYED, J.) vinod Page of 90