

To,
Sri Justice G. Bhawani Prasad
Chairman,
Andhra Pradesh Electricity Regulatory Commission,
4th Floor, Singareni Bhavan, Red Hills,
Hyderabad-50004

31st January, 2018

Respected Sir,

1. Representation submitted under Electricity Act 2003, Section 86 (i) and 86 (2) (i) seeking directions to Transmission companies including APTRANSCO, to follow works of Licensee Rules 3(1)(a) 3(2) in carrying out works .
2. Petition seeking directions by the Honourable Commission to all the District Collectors, to follow Andhra Pradesh Works of Licensee Rules 2007 , Rule 3 (4) in awarding compensation to the land owners, whose lands are damaged due to construction of High Tension Towers and lines .

(A) PETITIONER

1. The petitioner is an Advocate by profession and has been a farmers activist for over 30 years on agriculture policies and welfare to farmers .He participated in Planning Commission conferences, pre-Budget consultation by Union Finance Minister attended intentional conferences and member of ICAR and other committees. He is the founder Secretary General of CIFA. Now he is the Chief Adviser, Consortium of Indian Farmers associations (C.I.F.A) New Delhi and also Honorary President, Federation of Farmers Associations, Andhra Pradesh.

2. The Petition is submitted to the Commission, as the issues herein violates Constitutional provisions and violation provisions of Electricity Act 2003 and Rules 2007. As is has many legal implications the petitioner seeks directions /orders from the Honourable Commission .Transmission companies in the State of Andhra Pradesh are not following Works of Licences Rules 2007 while carrying out works in famers lands. Due to TOWERS-LINES (works) farmers landed property value is totally eroded /damaged and huge losses are occurring to land owners. After works the ownership of the land remains in the name of owner. But The illusionary title deed has no value at all to the owner as it has no futuristic development opportunities as it cannot be mortgaged or converted as an asset for ever. Due to lines and towers the land value is totally eroded . Land as property is declared as a Human Right. The Right to property cannot be deprived without due process of law including following procedure and payment of compensation. The extent of damage to property has to be assessed based on logistical importance so as to fix compensation. The Honourable Supreme Court of India has defined “SALIENT FEATURE OF PROPERTY “what “CONSTITUTES DEPRIVASTION / DAMAGE TO PROPERTY” and “PROCEDURE/ METHODOLOGY FOR FIXING COMPENSETION”.
3. For carrying out works the Licensee has to follow procedure 3(1)(a) which is prescribed in 2007 Rules. In case of dispute the Licensee under Rule 3(3) has to get written permission from under Rule 3(3) the District Collector & Magistrate are authorised under Rule 3(4) to fix compensation or rent or both. The petitioner submits that the licensees and Collectors are not following Rules 2007, there by causing losses to the land owner farmers .
4. The petitioner is familiar with problems confronted by farmers on issue of lines and towers. A note circulated by the petitioner on issue in 2014 is enclosed (Annexure 1) Petitioner has made representations to Transmission companies, Governments, Collectors requesting to follow rules and pay compensation.

(B) DAMAGES TO FARMERS PROPERTIES DUE TO TOWERS & LINES.

5. The petition is submitted on behalf of affected farmers in State of A.P. to the Honourable Chairmen ,detailing violations by Transmission licensees of The Works of Licensee Rules 2007, issued vide G.O.Ms.No. 24 dated 27-02-2007, including APTRANSCO, specially in regard to Rule 3 “LICENCEE TO CARRY OUT WORKS”. Due to non observance of Rules 2007 , Rule 3 provisions large number of Farmers are deprived of their legally entitled compensation.
- 6). Land under towers loses entire value, as each of 400 KV Tower is a massive structure occupying 600 Sq Meters Land (Average). The foundations are huge with concrete foundation so as to sustain weight of 15 Tonnes tower Structure .The tower has to with stand wind velocity . No activity is allowed or can be done under towers.
- 7) Under 400 KV lines an area of 148 Sq feet underneath the land cannot be used for any permanent structure. Garden/ trees are not allowed due to electro-magnetic Fields. The damage to land , deprivation of land value is total as seen from the enclosed Photos (Annexure 3 and 4)
- 8). APTRANSCO and other transmission companies are constructing many transmission lines of 400 KV , 220 KV 110,KV, 66 KV in all districts of the state . These lines and towers are mostly located in the villages and passing through farm lands .Farmers are doing agriculture, horticulture of mango gardens, Citrus , plantation of teak, red sanders , sandal wood , bamboo, etc. Farmers have installed tube wells, constricted shed for poultry, dairy, godowns etc .These lands are now developed for the purpose of construction of Industries , educational institutions , new townships , Governments are establishing special economic zones and also encouraging pooling up lands for development purpose . The farm lands across the state have huge development opportunities.

(C) VIOLATION OF RULES 2007 BY LICENCEES-APTRANSCO

- 9). Department of Energy , Government of AP , has issued Rules 2007 G.O.Ms.No. 24. Dt.27-02-2007 . They have prescribed procedure to be adopted by licensees in regard to works under Rule 3 to be monitored by Andhra Pradesh Regulatory Commission .Under Rule 3(1)(a) licensee has to obtain consent from the land owner. Under Rule 3 (2) if the owner raises objection the licensee shall obtain permission in writing from the District Magistrate. Under Rule 3(4) the District Magistrate is authorised to fix compensation after considering the representation of the concerned person. Under Rule 3(5) land owner can seek revision by the APERC .
- 10) It is to noted that the Andhra Pradesh Works of Licensee Rules 2007 GO.M.S.No.24 dated 27.02.2007 were issued by the Govt. of A.P. based on the letter (reference 2 in the GO.) From the Chairperson and the Managing Director of APTRANSCO, Hyderabad, Letter No. C.E. (RAC REFORM) AAO/E Act-03/d No.286 /2006 dated 25.11.2006.
- 11). APTRANSCO while carrying out works in various districts has not issued notices Rules 3(1)(a) seeking consent of land owner . They have issued notices under Telegraph Act 1885, informing about works .(Annexure 1,2,3). It needs to considered by the Commission whether APTRANSCO, a licensee under APERC can issue Notice under Telegraph Act 1885 more so , after issuing Rules 2007 . The Act 2003 makes all Electricity Boards and State Transmission companies as “LICENCEES COMPANIES “.Rules 2007 are made for specific purposes to be executed under “REGULATORY” powers of the ANDHRA PRADESH ELECTRICITY REGULATORY COMMMSSION. Rule 3 (1)(a) has provisions to seek consent of Land / building owners . Rule 3(2) has made provision for Licensee to approach Collector to get written permission. The Rule 3 (4) empowers the District Collector to fix compensation or rent or both and give authorisation in writing to licensee to carry out works .

- 12) Further Rule 3(5) has enabling provision for appeal for revision by the REGULATORY COMMISSION . The provisions of Rule .13(1) "DETERMINATION OF AND PAYMENT OF COMPENSETION TO AFFECTED PERSONS". Rule 13 (2) WHARE ANY DIFFARENCE AND / OR DISPUTE ARISES THE AMOUNT OF COMPEMSETION DETERMINED UNDER SUB-RULE (1) , THE MATTER SHALL BE DETERMINED BY THE COMMISSION.
- 13) The Works of Licensee Rules 2007 , Rule. 2. Definitions: - (1) In these Rules unless the context otherwise requires :- (a) Act means the Electricity Act 2003; (b) Occupier of any building or land means person in lawful occupation of that building or land (c) The State government means Government of Andhra Pradesh (d) "The Commission means Andhra Pradesh Electricity Regulatory Commission. It is obvious that the definition of 2 (b) rule is made for the purpose of OCCUPIER OF ANY BUILDING or LAND. So also Rule 2 (d) indicative of APERC .
- 14) If a difference or dispute arises on compensation fixed by the Collector , Rule 3 (5) has empowered the Commission under sub-rule "(1) shall be subject to REVESION BY THE COMMMSSION . Rule 13 (1) "Where the Licensee makes DEFAULT IN COMPLYING WITH ANY OF THE PROVISIONS OF THESE RULES,HE SHALL MAKE FULL COMPENSETION FOR ANY "LOSS" OR "DAMAGE" incurred by the REASON THERFOFF to the PERSON affected , as may be determined by the District Magistrate or any other person authorised by the state Government in their behalf , if not AGREED MUTUALLY BETWEEN THE PARTIES . 13 (2) "Where any "DIFFARENCE" and /or "DISPUTE " arises as to amount of "COMPENSETION" determined under sub rule (1), the matter shall be determined by the "COMMMISSION. A reading of these provisions of 2 (b), 3 (1)(a), 3(3) 3(5) 13 (1) and 13 (2) are to enable "OCCUPIER OF ANY BUILDING OR LAND" to get "FULL COMPENSETION FOR ANY LOSS OR DAMAGE"
- 15) APTRANSCO, a licensee under Rule 2007 has filed affidavits in High Court claiming to be a authority under Telegraph Act 1885. APTRANSCO in A.P.HIGH COURT, case in W.P.M.P.NO 35258 of 2012 --W.P.M.P.No. .44797 /2012 (**Annexure**) (Para. 3) claims to be empowered under Section 164 and that land owner is not entitled for compensation to land

(Para 6). Further APTRANSCO contends that if the land owner is not satisfied with compensation may approach DISTRICT COURT with whose jurisdiction the property situated for determining compensation (Para.5 and 7).

- 16) APTRANSCO in the same case of land owner petition filed before the APERC in Case No. OP No.11 of 2017 (Annexure) has given a totally different version. In Para (2) APTRANSCO claims to have done the works with prior intimation to petitioner and that claims to have followed Rules 2007 , Rule 3 (1)(a)3 (3&4) and Rule 13 (1).In (Para 3) APTRANSCO claims to have powers to have right to lay lines EVEN WHEN THE LAND OWNER REFUSES TO GIVE CONSENT “. In (Para. 9) APTRANSCO claims to have paid compensation as per District Collectors orders Rc.D3.2959/2011 Dt. 24-08-2013. Further, vide (Para 11) “As such, as per the Indian electricity act 2003 , APTRANSCO has paid compensation to the farmers / land owners for damage caused to the crops /trees during construction activities of 400 kv lines. NO LAND IS ACQUIRED BY THE LICENCEE (APTRANSCO) FOR PAYING COMPENSETION TO THR LAND VALUE”
- 17). The Collector, Nellore , proceedings (Annexure) referred to by APTRANSCO in regard to the above are not in accordance with Rules 2007. The APTRANSCO has to approach the Collector under Rule 3(4) seeking written consent as and when the land owner refuses consent . The Collector proceedings did not speak of Rule 3(4). They are of general nature which cannot be enforced by APTRANSCO.

The proceedings are arbitrary and are not in conformity with any Rules of 2007 or 2006 or any law of the land:-

=====TABLE =====5 and 6====7
(Last Para) Therefore, an amount of Rs.3,50,000/-(Three Lakh fifty thousand) is hereby.

“FIXED PER TOWER LOCATION TOWARDS PAYMENT OF COMPENSETION TO THE FARMERS /LAND OWNERS FOR ALL ONGOING ANF FORTH COMING PROJECTS 400/765 KV TRANSMISSION LINES POTTI SRIRAMULU

NELLORE DISTRICT". The proceedings are not in conformity with Rules 2007 as detailed below :-

- 18.1. The Collector proceedings are in response to letters from E.E, APTRANSCO, Chief General Manager , POWER GRID and Secretary General Consortium of Indian Farmers Associations New Delhi.
- 18.2. The Collector has no LEGAL AUTHORITY or any Constitutional Powers to issue proceedings applicable to entire district and for 400 /765 kv and for existing and forthcoming projects .
- 18.3. Collector has to issue separate proceedings for cases of Power Grid Under Rules 2006 and to APTRANSCO under Rules 2007.
- 18.4. The Collector under Rules 2007 Rule 3(4) has to fix amount of compensation or annual rent or both after considering representation of concerned person.
- 18.5. Compensation must be fixed for each land owner based on losses and damage to his property .
- 18.6. The Collector did not fix compensation for ROW (Right of Way) dimensions of lands value under lines. The directions by the Supreme Court case of Kerala Electricity Board vs Levisha in 2007 are submitted to the Collector by the CIFA. The Collector referred S.C case in the proceedings .However The Collector did not record as to why Supreme Court of India direction are not considered in the proceedings.
- 18.7. The Collector, Nellore proceedings of 24.08.2013 are violation of Rules 2007, procedural impropriety and violation of Right to Property. The proceedings by the Collector are issued based on the insufficient and misleading submissions made by the LICENCEE , APTRANSCO with out reference to Rules 2007. They are quashed by the Commission and proceedings be issued under Rules 2007.

D) COLLECTORS- PROCEEDINGS -- VIOLATION OF RULES 2007

19. Rules 2007 are not followed in the proceedings by Collector Krishna , Rc. H2/278/2014 dated 10-06-2014 (Annexure) In 220 KV Gunadala – Nunna line , where in one time compensation of Rs. 3.5 Lakhs was fixed

per location. .However payment of compensation for Right of Way is not sectioned. Farmers are deprived of compensation entitlement for R.o.W . The Collector has deprived farmers of their legally entitled compensation. While issuing proceedings the Collector has not referred to the provision Rules 2007 rule 3(4). It the proceedings did not refer to the above Rules the provision for utilising Rule 3 (5)and provisions under Rule 13 (1)(2) by the land owner cannot be used .This procedural irregularity by the Collector makes the proceedings null and void.

20. In the proceedings by the Collector, Anantapur, Rc. No. FTS/G1/1065/2014, dt 08-04-2015, (Annexure) convened meeting by the joint Collector with RDO, JD agriculture and tahasildors and S.E. APTRNASCO and fixed compensation of Rs.1,60,000/- for the entire project area covering all Mandals. Farmers referred to directions FOR SUITABLE COMPENSETION TOWARDS DIMINUTION OF LAND VALUE AFTER ERECTION OF TOWERS AND LINES IN PRIVATE LANDS ' as per the Honourable Supreme Court of India in case of Kerala Electricity Board

Even though SC direction is referred in the proceedings the Collector, he did not clarify his stand on the SC ruling. It is illegal on the part of Collector , Anantapur not to have considered Apex Court directions . The Collector is bound by law and duty to obey the SC directions. If the Collector differs with S.C. proper reasons have to be given in the proceedings . The Proceedings of The Collector, Anantapur, has not given reasons for rejecting the proposal by the farmers claim for payment of Rs. 3.50 lakhs. Nor did the Collector give justification for fixing 1,60,000/-per tower for entire project. The proceedings by the Collector ,Anantapur are against Rules 2007 , illegal and violation of principals of natural justice . The Collector, Anantapur orders Dated 08-04-2015 are to be cancelled and compensation for all losses suffered by the land owners as per Rules 2007 , Rule 3 (2)and 3(4),and in accordance law.

- 21) Rules 2007 are not followed in regard to Collector Krishna vide Proceedings Rc.No.H2-1984/2014 dt.01-05-2015, (Annexure) in 132 double circuit line has issued proceedings has increased tower (132 KV) compensation from 20 Lakhs to 40 Lakhs . and for locations adjoining National High

Way increased from 27 lakhs to 54 Lakhs. He was generous to arrange for Bore well shifting compensation . The proceedings refers to earlier proceedings of the Collector Krishna . Rc. H2.1984/2014 dt.21.08.2014 for fixing compensation by increasing 100%.

At the same time Collector refused compensation for ROW ,corridor claiming as there are NO GUIDELINES. In the proceedings there is no reference to Rules 2007 or any Act or court directions.

- 22). Similarly Rules 2007 are not followed by the Collector , Krishna District in the proceedings RC.No. H7/1767/2015 dated 05-08-2015 (Annexure), fixing compensation for crops/trees and land for works carried out by APTRANSCO in the 400 kv QMDC line from 400/220 kv sub-station to at Kamavarapukota to Chinna korukondi are not in accordance with Rules 2007 and law.

Herein the Krishna Collector refers to proceedings of the other District Collectors .The proceedings refer to (1)Collector, West Godavari . ROC. No.4617/2013/G1.dt.13-05-2015, (2) East Godavari, ROC, No.G. 4/1450/2015 dt.23-05-2015 , fixing Rs. 1,28000/-per tower.

The Collectors awarded compensation as “LUMPSUM” for all . The land value has to be assessed separately to each land owners based on **DAMAGE TO PROPERTY /LAND. It has to be individual specific. Lump sum compensation** has no legal sanctity as each property value depends on its location ,use , facilities availability and other factors as referred in Supreme Court of India Judgment .

In Krishna District most of the lands have irrigation facilities from river Krishna , Nagarjuna Canal, and huge ground water . They are very fertile, and have highly valuable. The development opportunities in the district are many due its location to State capital , Vijayawada city ,Airport , National High way , Railway, educational institutions and industries. The proceedings are illegal , contrary to Rules 2007 and also arbitrary.The Collector has to issue proceedings based on Rules 2007.

23) Rules 2007 are not followed by the Chief Engineer APTRANSCO, in issuing orders vide Memo. No. CE/Const/4400 kv ?se? PM/D-2 –A3/ F/ .JMD-UKD./D.No. 344/15. Dt.26-05-2015. The C.E. decided based on

proceedings of Collectors of Anantapur and West Godavari (Annexure.) His orders are for ,works of 400 kv QMD lines from Jammala madugu to Uravakonda , Yemmiganur to Uravakonda in kadapa and Kunnool districts. He fixed Per Tower 1,60,000/ Compensation and for Rayalaseema to Pedda Panjani and Pedddapnajni to Chittoor 400 KV , Rs. 1,28,000/ per tower.

The CE empowered himself to fix compensation as per the field staff request. This order by the CE, Hyderabad , APTRANSCO issued on 26-05-2015 is totally against Rules 2007 and are illegal.The order by the Chief Engineers orders amounts to committing criminal trespass , as the order is unauthorised and illegal. Compensation has to be fixed by the Collector as per Rules 2007

- 24) Herein the Commission is prayed to enquire as to how the above orders dated 26-05-2015 are issued by Chief Engineer in the above issue without legal authority?
- 25) Even in 2017 Rules 2007 are not followed as seen in the Collector, Chittoor , Proceedings RoC. No. G3/49063/2017 dated 18-11-2017 , fixed compensation @ Rs. 1,70,000/-per tower up to 2-7 Cents and Rs.15,000/- for additional tower base.(Annexure)For Right of Way (ROW) ha fixed 10% of the Stamp Act Value and gave additional 10% to lands abutting National High way.

The Collector, Chittoor issues common proceedings to Power Grid Corporation of India and ATRANSCO . The Collector refers to the proceedings issued by G.O. 83. Dt. 20-06-2017 in fixing compensation which gives guidelines. But Collector has not followed Rules 2007 , Rule 3 (4) of seeking representation of the land owners thereby depriving the land owners right for revision under Rule 3 (5) and Rule 13 (1) and 13 (2). The proceedings are to be quashed & Collector be directed to issue compensation as per Rules and laws as decided by the Supreme Court of India

- 26). While fixing compensation for crop and trees the Collectors have failed to make individual assessment of value of trees and crops.
- 27). The proceedings of the Collectors, detailed above and also

proceedings by other Collectors issued from issuing of WORKS OF LICENCEE RULES 2007 are illegal ,unauthorised and are not speaking orders . The Collectors have not followed procedure under Works of Licensee Rules 2007 therefore illegal.

28). APTRANSCO is provided wheeling charges by APERC and declares profit every year and it is a business activity, and cannot damage property of private land owners without paying full compensation.

29). Collectors proceedings are commonly given to both APTRANSCO and also Power Grid Corporation of India which is against Rules and are illegal.

30). Collectors have to evaluate damages to PROPERTY separately for 400 KV and 765 KV lines as the land area damaged differs from each person , location ,area .infrastructure availability and develop[metal opportunities

E) LEGAL ISSUES REFARENCES:-

a) ==heading (Annexure No)

PRAYER:-

We submit that the Honourable Commission to give directions to District Collectors to follow Rules 2007, for fixing compensation.

We submit the Commission to direct to APTRANSCO and other Transmission companies licensees under APERC to follow Rules 2007 in carrying out works.

We submit the Commission to consider applicability of Rules 2007 with retrospective effect from 2007 and give necessary directions, so that land owner farmers be paid legally entitled compensation for lands under towers and lines.

We submit the Commission to issue directions and orders as the Honourable Commission deem for and proper.

Yours Sincerely

P. Chengal Reddy, Advocate

ANNEXURE:

(H) APERC-2-CASE LAWS SC Judgments

PAYMENT OF DIMUNISION OF LAND VALUE UNDER LINES & TOWERS.

Case Ref:- Supreme Court of India in case 650 dated 18th May, 2007 in Kerala Electricity Board Vs.Levish.

The sites of the land, the distance between the high voltage electricity line laid there over, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small track of land or through the middle of the land and other similar relevant factors in our opinion would be determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in each situation may lose his substantive right to use the property for the purpose for which the same was meant to be used.

1) PAYMENT OF DIMUNISION OF LAND VALUE -35% and 100%

(1)Case Ref: Kerala High Court Nos. 34,35, 40 & 54 of 2008 dated 19th Jan. 2012.

(2) case Ref;

The Court below was also justified in fixing the diminution of land value at 35% of the land value. The extents of properties held by the claimants are not larger extents. The lands are situated in an important area. It was held that the land has commercial importance. The lines were drawn across the property. In the facts and circumstances of the case, I am of the view that the finding of the court below that 35% of the diminution of land value should be taken as the basis, is legal and proper, particularly, in the light of the decision of the Supreme Court in K.S.E.B. vs. Livisha, 2007 (3) KLT 1 (SC). For the aforesaid reasons, I do not find any ground to interfere with the well-considered order passed by the Court below. The Civil Revision Petitions are accordingly dismissed.

1) IMPORTENCE OF FOLLOWING PROCEDURE IN DEMOCRACY

a)Case Ref: S.C. Ranjit Thakur V/s Union of India AIR 1987. S.C. 2386.

The observations made therein are to the effect that the due observance of the prescribed procedure is a guarantee against arbitrary exercise of power. The procedural safe guards should be commensurate with the sweep of the powers. The wider the power the greater the need for restraint in its exercise and correspondingly, more liberal the construction of the procedural safeguards envisaged by the statute.

“The History of liberty” said Frank Further J. the learned judge “has largely been the history of observance of procedural safeguards” (1942) 318 United States 332.

b)Ref :CWJC Number 6993 of 2010 Judgment on 9th February 2011 Patna High Court. Justice Navaneethi Prasad Singh- Between Power Grid Corporation of India Vs. Ram Naresh Singh.

Para 13: - We are mindful of the vital public interest involved in the present matter perhaps with all India ramifications. In view of the doctrine of imminent domain read with rule 3 of the rules the applicant has the power to install transmission towers on the lands of respondent numbers 1 & 2 in public interest, after following the procedure prescribed and payment. We are in this connection reminded of judgement of the Supreme Court in the case of Ranjit Thakur Vs Union of India, AIR 1987 23876 wherein the importance of following prescribed procedure has been emphasized. The observance made their in are to the effect that due observance of the prescribed procedure is guarantee against obituary exercise and correspondently more liberal the construction of the procedural safeguard envisaged by the statue”. This curiously evolved ruled administrative law is now firmly established and if I may add, rightly so he that take the procedural slot. The history of liberty judge has largely being the history of observance of procedural safeguards (1992) 318 US 332. We are afraid the non-compliance of the mandate of S-130 is an infirmity which goes to the root of the jurisdiction.

5. RIGHT TO PROPERTY IS A HUMAN RIGHT

Property is a human Right. Supreme Court of India in SLP (Civil) No.28034/2011, State of Haryana vs Mukesh Kumar.

“The right to property is now considered to be not only constitutional or statutory right but also a human right. Human rights have already been considered in realm of individual rights such as right to health, right to livelihood, right to shelter and employment etc. But now human rights are gaining a multi-faceted dimension. Right to Property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context.

6. DEFINESION AND DISCRPTION OF PROPERTY:-

(a) Case Ref: SC .Appeal (Civil) 2211-15 of 1984 Judgement dt.20-07-1994. – Jilubhai Nanbhai Khachar vs. State of Gujrat.

Property in legal sense means an aggregate of rights which are guaranteed and protected by law, it extends to every species of valuable right and interest, more particularly, ownership and exclusive right to a thing, the right to dispose of the thing in every legal way, to possess it, to use it and to exclude everyone else from interfering with it. The domination or indefinite right of the use or disposition which one may lawfully exercise over things or subjects is called property. The exclusive right of possessing, enjoying and disposing of a thing is property in legal parameters. Therefore, the word “Property” Connotes everything which is subject to ownership, corporeal or incorporeal, value or which goes to make up wealth or estate or status. Property, therefore, within relation to physical thing, as right to possess, use and dispose of it in accordance with law.

7. DEPRIVESION OF PROPERTY RIGHT :-

The Supreme Court of India State of West Bengal Vs Suboth Gopal Bose, dated 17th December, 1953.(Citations . 1954 AIR 92 , 1954 SCR 587) defined DEPRIVATION OF PROPERTY as follows :-

“ No cut and dried test can be formulated as to whether in a given case the owner is deprived of his property. Each case must be decided as it arises on its own facts”. “Broadly speaking it may be said an abridgement would be so substantial, as to amount to deprivation within the meaning of article, 31, in effect it with from the possession and enjoyment of the ownership or seriously Impaired use and enjoyment by him, or materially reduced its

value.”. Here in the case of petitioner the deprivation of property is huge which has totally reduced the value.

8) PROPERTY IN LEGAL SENSE-GUARENTEED AND PROTECTED:-

Supreme Court of India in Jilubhai Nanbhai Khachar Etc.... vs. State of Gujarat , 20th July, 1994, Case No: Appeal (Civil) 2111-15 of 1984 dated 20.07.1994 -

“Property in legal sense means an “AGGREGATE OF RIGHTS WHICH ARE GUARENTEED and PROTECTED BY LAW” it extends to every species of valuable right and interest, more particularly, ownership and exclusive right to a thing, the right to dispose of the thing in every legal way, to possess it, to use it and to exclude every one else from interfering with it. The dominion or in definite right of use of or disposition which one way lawfully exercise over particular things or subjects is called property. The exclusive right of possessing, enjoying, and disposing of a thing is property in legal parameters. “THEREFORE THE WORD PROPERTY CANNOTES EVERY THING WHICH IS SUBJECT OF OWNERSHIP, CORPORAL OR INCORPPOORAL , TANGIBLE OR INTANGIBLE ,VISABLE OR INVISIBLE , REAL OR PERSONAL , EVERY THING THAT HAS AN EXCHANGABLE VALUE OR WHICH GOES TO MAKE UP –WEALTH –ESTATE – STATUS “

(9) SUBSTENTIAL AND SUBSTETIAVE RIGHT OF PROPERTY-

NOT ILLSIONAREY TITLE:-

Case Ref;- 1954) SCR. 674. Dwaraks Das V.Sholapur Spinning mills.

It was argued as against this that this rule can only apply when there is a total deprivation of property and article 19(1)(f) – These articles deal with SUBSTENTIAL AND SUBSTETIATIVE RIGHTS AND NOT ILLUSEONEERY PHANTOM OF TITLE . When every form of enjoyment which normally accompanies an interest in this kind of property is taken away ‘LEAVING THE MERE HUSK OF TITLE “, article 19 is not attracted. “By substantial deprivation is meant the ‘SORT OF DEPRIVATION THAT SUSTENTIAALLY ROBS A MAN OF THOSE ATTRIBUTES OF ENJOYMENT WHICH NORMALLY ACCOMPANY RIGHTS TO OR AN INTREST IN PROPERTY. THE FORM IS UNESSENTIAL. IT IS SUBSTENCE THAT ONE MUST SEEK “.

(10) DEMOCRACY and RIGHT TO PROPERTY: By Justice Mathew “In Rajendra Prasad Memorial Lecture “ (9th Dec. 1975)

“Democracy is not mere mechanism of choosing and running the Government. The egalitarian principle of democracy requires not only one man one vote but also equal effective right of each man LIVE FULL HUMAN LIFE. Democracy must, therefore seen as whole complex of relation between individuals. An individual to live his secular life, as he may wish, would owe duties towards society and fellow citizens. Each must have an opportunity to PROVE, EXERT, DEVELOP, and ENJOY HIS HUMAN FACULTIES. Therefore, each must allow others to have equal effective access to opportunity to develop and lead full HUMAN LIFE. Lack of opportunity to exercise his capacities as means of producing utilities is an impediment, as it described as lack of access to mans liberty. IF WE TAKE LABOUR IN ITS BRODER SENSE OF HUMAN ENERGY, IT IS PROPERTY “ This theory of property assumes importance in a DEMOCRATIC SOCIETY.

11).DISTINGSION-- BETWEEN 19th CETURT TELEGRAPH ACT 1885 ans 21st CENTURY ELECTRICITY ACT 2003.

(a) Case Ref: Gujarat High Court. Civil/SCA/18334/2011 dt.29-08-2013 Dilip Singh Chouhan vs. Gujrat Ujra Nigam.

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:

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 UNDERTAKEN BY THE LICENCE “

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 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 THEIR IS RESISTENCE OR OBSTRUCTION BT THE OWNER OR OCCUPIER ,THE AUTHORITY OF LICENCE TO UNDERTAKE THE WORK WOULD END.

(B). ELECTRICITY AND TELEGRAPH- DEVELOPMENT OF SOCIETY AND SCIENCE IN 19TH CENTURY & 21ST CENTURY

Case Ref: Gujarat High Court No:XCIVIL/sca/18334/2011 Dated 29-08-2013

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 judgment and they are to be substituted for the electricity lines. Therefore, we need to 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 read with the Rules 2006 are considered, it does require the consent of the owner and also in absence of the consent, if the Police Commissioner or Magistrate is to grant

permission simultaneous assessment of the compensation and the payment thereof subject to revision 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 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.

12. RIGHT TO RESIST OR OBSTRUCT PRIOR INTIMATION IS ESSENTIAL.

Case :-

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.

13). MERE CONFERRING OF 1885 ACT POWERS ON A LICENCEE OF ELECTRICITY 2003 CANNOT MAKE HIM A TELEGRAPH AUTHORITY :-

CASE ref: SC AIR 1970 s.c.491 , (1970) 3 S.C.C. 851. Under notification No.64/Elec. Dated 11th August, 1966, the State Government conferred upon the Petitioner powers for placing electric supply lines appliances and apparatus for the transmission and distribution of the energy by it within the area of its supply which the telegraph authority possesses under Section 10 to 18 and 19A of the Indian Telegraph Act with respect to placing of telegraph lines and posts Section 51 merely empowers the State Government to confer on the

licensee certain powers which can be exercised by a telegraph authority under the Indian Telegraph Act. It does not by reference incorporate in to the Indian Electricity Act all the provisions of the Indian Telegraph Act.

Merely because some of the powers conferred under the Indian Telegraph Act on the telegraph authority could be conferred on a licensee under the Indian Telegraph Act, it does not follow that all the rights and liabilities of a licensee under the Indian Electricity Act are governed by the provisions of the Indian Telegraph Act

14). METHODOLOGY TO FIX COMPENSETION BASED ON POTENTIALITY:-

ReF:- Supreme Court of India in Case No.SC Ref. No. 3148-3157 / 2000 dated 07.1.2007 Atma Singh Vs. State of Haryana.

Para No.5: For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into a state of actuality. The question whether a land has potential value or not is primarily one of the fact depending upon its condition user to which its put or reasonably capable of being put and proximity to residential, commercial or industrial areas on institutions. The existing amenities like, water, electricity, possibility of their further extension, whether near about town is developing or prospects of development has to be taken into consideration.

Collector Raigarh vs. Hari Singh Thakur AIR 1979 472, Raghuvansh Narayan vs. State of UP AIR 1969, SC 465 and Administrator General West Bengal vs. Collector Varanasi AIR 1988 Sc. 943. It has been held in Kaushalya Devi Vs. LAO Aurangabad, AIR 1984 SC 892 Suresh Kumar Vs. B I Trust AIR 1980 SC 1222 That failing to consider potential value of the acquired land is a violation of principal natural justice.