

F.A.Q. Damages to Farmers Lands-by Transmission Towers and lines.

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Question:1-Do the transmission companies have right to enter into Farmers Land for construction of TOWERS AND DRAW LINES without FARMERS (OWNERS) prior intimation and taking of consent and payment of compensation?

Answer:-NO. (i) Farmers land is a PROPERTY. Under Article 300. A, PROPERTY is a Constitutional Right. Land can be taken for public purpose but only by following procedure and payment of compensation. (ii) In 2011 Supreme Court of India has declared PROPERTY as a HUMAN RIGHT. (iii) Under Electricity Act 2003 Works of Licensee Rules 2006 are provided to Power Grid Corporation of India to follow procedure for constructing Towers and Lines. Under Rule 3(1)(a), Power Grid has to take consent of the land owner farmer. If the Farmers refuses to give consent under Rule 3 (1) (b) The Power Grid has to approach the District Collector & Magistrate seeking permission. The Collector under Rule 3 (2) is authorised to give permission after seeking views from the farmers. The Collector is authorised to FIX RENT OR COMPENSETION OR BOTH, WHICH SHOULD IN HIS OPENION BE PAID BY THE LICENSEE TO RHE OWNER". In case the farmers is not satisfied with compensation fixed by the Collector, under Rule 3 (3) the farmer can be filed for revision before the Electricity Regulatory Commission. The Commission under Rule 13 (1) and 13 (2) can revise the Compensation. Further there is provision for appeal for increasing the compensation before the Applegate Tribunal for Electricity (A T E).Electricity Act 2003 is highly progressive Act so as to develop ENERGY SECTOR as growth engine.

Q.2. How is it, as of now (From 2003 to November 24th 2018) Power Grid and other Transmission Companies are forcibly entering into farmers lands and constructing Towers and Lines ?

Ans:- Power Grid and State Transmission Companies have adopted misleading, illegal, criminal and unconstitutional methods to construct Towers and Lines (i) They CIRCUMVENTED Works of Licensee Rules 2006, by invoking Section 164 of Electricity Act.2003. Section 164 reads as follows. "EXERCISES OF POWERS OF TELEGRAPH AUTHORITY IN CERTAIN CASES". Under Telegraph Act 1885 Telegraph Poles (Weight 150

Kg) and lines (Wing span 10 to 12 Feet) can be constructed without seeking permission of land owner. The 1885 Act is made for constructing communication net work for Railways and Telephones. The Section 164 Authority is to be used in- IN CERTAIN CASES". However taking advantage of section 164 immediately after passing Act 2003 Ministry of Power Government of India issued a GO==empowering Power Grid Corporation with Telegraph Act 1885 Powers to enter into any land without consent. The Transmission companies were asked to apply for exemption in profarma. The company has to publish the SCHME DETAILS in a news paper give 2months time and asking for objections from public. There after Power Grid is given Telegraph Authority to construct towers/ lines without seeking consent of the land owner or payment of compensation.

From passing of Electricity Act 2003 till 2018 Power Grid constructed 1, 28,000 Km Lines . The land used @ 15 acers per Km works out to 3.5 Million Acers. This has caused losses to 4 Million farmers. In 15 years Power Grid did not pay even iRs.1/- (Rupees one only) as compensation famers for damaging their land value . During the past 15 years Power Grid has been declaring huge profits but not paying compensation top farmers. (ii) Power Grid was smart and highly successful in making mockery of powers conferred on District Magistrates/ Collectors. If Land is DAMAGED under Telegraph Poles-lines OR Transmission towers- lines, compensation must be paid under Telegraph Act 1885 Section 10(d). So also Electricity Act 2003 , Works of Licensee Rules 2006 Rule 3(2) When making an order---MAGISTRATE/COLLECTOR- "SHALL FIX, AFTER CONSIDARING THE REPRESENTATION OF THE CONCRNED PERSONS, IF ANY, THE AMOUNT OF COMPENSETION OR OF ANNUAL RENT, OR BOTH, WHICH SHOULD IN HIS OPENION ". These Acts, Rules are never studied by the Collectors. Collectors based on discussions or letter from Transmission Companies issued proceedings giving nominal compensation for crop damage.

None of the Collectors has made efforts to study the DAMAGE TO LAND UNDER TOWERS AND LINES so as to award compensation for LOSS OF LAND VALUE. These glorified Collectors /Administrators of our Nation did use a iota of commonsense as to assess DAMAGE or EVALUTE DIFFARENCE BETWEEN Telegraph POLE and Transmission TOWER. They should have questioned Transmission Companies about the QUANTAM of DAMAGE TO FARMERS LANDS DUE TO TRANSMISSION TOWERS AND LINES and direct payment of compensation? Collectors are aware that 86% farmers are small & marginal and that Tower/lines will damage value of land /property totally value less and permanently and that famers be paid compensation. But then the Collectors being what they are went about issuing PROCEEDINGS WITHOUT ANY RULE OR LAW? For 15 years Transmission companies made Collectors as accessories to CRIMINAL TRESSPASS BY THE COMANIES by providing --WILL FULLY - MISLEADING -WRONG - ILLEGAL - MISGUIDING -FALSE

--INFORMATION. The Police likewise are misled to extend support to Transmission Companies for illegal construction.

Q.3. Why were these RULES - FACTS - IRREGULARITIES - ILLEGALITY - SUPREME COURT JUDGMENTS not highlighted?

Ans. Firstly 99% of farmers whose land are damaged are small, marginal, lavani (DKT) Pattadars and many absentee land owners. Most of them are illiterate, belongs to socially under privileged sections and have financial capacity to take legal action. They are totally unaware of the Acts and entitlement of compensation. Towers and lines damage A PART OF LAND (Survey number). For example 400 KV Lines passing over 1 Hector land damages 51 Meters land as Right of Way. In 1 hector 4850x2: 9,000 Meters a 100meters stretch of line will damage (diminishes) 5,100 Meters as right of way. Underneath permanent structures cannot be built. Electricity Act 1910 Prohibits planting of Trees / crops beyond 10 Feet(3 Meters), Further land will be cut into 3 pieces. The value as 1 (One Hector) Land cut into 3 pieces will have no saleability, cannot be mortgaged , or even common cropping. Each farmers land damage has to assess based on its location, facilities, etc (SC. Kerala Electricity Board vs Levisha. Ref----) The land value has to be based on its futuristic development opportunity (SC=====)

Further the Act 2003 and the Section 164 are totally misused by the Transmission companies . The Ministry Of Power Government of India as well as State Energy Department have colluded in complicating PROCEDURE - GETTING CONSENT - FIXING-PAYMENT OF COMPENSATION. Details are provided in Paras -----of the enclosed note .

The mischief of Governments are evident as detailed below (a) In Andhra Pradesh State Government issued Works of Licensee Rules 2007 Dt-----. The Secretary, Energy Department, Chairman's of APTRANSCO have kept made the Gazette in their possession for 9 years. A copy of the GAZETTEE was made available to the Andhra Pradesh Electricity Regulatory Commission on =====(Ref=====). The Government of Telangana is yet to releases it .

State Governments have DELIBATERLY DELAYED issuing Works of Licensee Rules for over 10 to 12 years. Why the Rules are delayed and at whose instance, is a matter to be investigated. During the period Power Grid and State Transmission companies went about constructing Tower and Lines without payment of compensation. The only exception is Kerala where in the State Government as well as High Court have directed transmission companies to pay damages for land damaged under Towers and Lines ,.

Q.4. Is Power Grid providing free services?

Ans.No. Power Grid is a registered under companies act. It is paid wheeling (Service) charges for transmitting ELECTRICITY. During 5 years period of 2013-13 to 2017-18 it has declared net profit of Rs.31,184.2 Crores.(2017-18 Profit 8238.96 Crores), It has declared dividend of Rs.7,851.36 Crores. Tax paid is Rs.8337.29 Crores. Tax on dividend is Rs.1531.08 crores. During 5 years the length of lines drawn is 48,390 KM. Towers constructed 120975. Farmers land damaged under Towers & Lines 6,15,792 Acers (2,49,975 hectars). Compensation for land damage (ROW) NIL. (Reference Power Grid Annual Report 2017-18 at Page 30 and 32). The salary of sweeper is Rs. 1,47,722/- per month. Ref. Eastern Power distribution (APEPDCL) Rajahmundry No. 01019612 for 01-08-2018 -31-08-2018.

Q.5. Is Telegraph Act 1885 has any provision for compensation for damaging land/property?

Ans :- YES. There is ample provision under Act 1885 , Rule 10 (d) as follows:-

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 REPECT OF ANY PROPERTY OTHER THAN THAT REFERRED TO IN THE CLAUSE (c) SHALL PAY FULL COMPENSETIONM TO ALL PERSONS INTRESTED FOR ANY "DAMAGE" SUSTAINED BY THEM BY REASON OF THE EXERCISE OF THOSE POWERS"

Q.6. Why were these Act.1885, Section 10 (d), Act 2003 Rules 2006 , Supreme Court Judgments, and decision by States /Central Electricity Regulatory Commission (CERC) and (Appellate Tribunal for Electricity (ATE) were not implemented by Collectors while issuing proceedings?

Ans:- This is a difficult question to answer by me! It will be inappropriate for me to write that Collectors (IAS) are irresponsible or dumb or arrogant! But the fact remains for 15 years 5 Million farmers lands are TOTALLY DAMAGED leaving them economically insecure and socially out casts. They are deprived of LEGALLY AND CONSTITUTANALLY ELIGABLE COMPENSETION, by a large profit making company. This deprivation of compensation to 5 Million small and marginal farmers is done with the KNOWLEDGE and CONNIOVENCE of large number of Indian Administrative Services officials. The mute question is whether these IAS , who are responsible will be held enquired into and punished is beyond my limits .

Q.7. Has Supreme Court given any judgments in regard to problems faced by farmers due to Electricity Act 2003?

Ans:-In 2006 in S.C. Kerala Electricity Board Vs Livisha, In sc 650 (18th May 2007). Made following pronouncement .Para.10. The sites of the land, THE DISTENCE BETWEEN THE HIGH VOLTAGE ELECTRICITY line laid there over, the extent of the line thereon as also the fact whether the high voltage line possess over the small track of land or through middle of the land and other similar relevant factors in our opinion would be determinative. The value of the land would be a relevant factor. The owner of the land in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used “

Q.8. What are the other important issues helpful to farmers to get compensation?

Ans:- The Honourable Supreme Court of India has passed many judgments upholding the rights of farmers so as to enable them to get full compensation for loss property under Towers ,Lines, crops/ trees , structures (Sheds , Tube wells etc). Details of Judgments and rules are provided in the web.www.indianfarmers.org (i) Land is Human Right .It cannot be deprived with out due process of Law and compensation (ii) Definition of property (iii)Damage due to towers and lines is SUBSTETIAL. (iv) Small & Marginal farmers are eligible for compensation for the entire land (survey) number (iv) The Collectors must fix compensation based on each land location ,proximity to towns, roads ,industry , institutions and facilities of water , electricity etc. If the farmers are not satisfied with compensation fixed by Collector farmers can file REVISION BEFORE REGULATORY COMMISSION.

Details Acts-Rules -Illegal Activities by Companies- Legal issues.

S.No.	Date	Description of the Event	Page No's in affidavit	Para No's in affidavit
1		Clarification on Supreme Court Judgment -No.10953 of 2016 Dt.14-12-2016 On issues of -Consent of Land Owner and fixing compensation by District Judge .		
2		Cause of action for filing the P. I. L.		
3		Substantial damage of land under High Tension Transmission Towers and Lines.		
4		Definition of "Diminution of Land Value under Towers & lines - Supreme Court. Kerala Electricity Board vs Levisha Appeal (Civil)289 of 2006 Dt.18-05-2007		
5		Definition of Property'. Jilu Bhai Nan Bhai vs State of Gujarat Supreme Court.(Civil) 2111-15-1984.Dated . 20-07-1994		
6		Declaration of "Right to Property as a Human Right" S.C. SLP.(Civil) 28034/2011.State of Haryana vs Mukesh Kumar		
7		Deprivation of Property Right.S.C.1953.Stae of West Bengal vs Subodh Gopal Bose.17-12-1953.SC1954,AIR92-1954,SCR.587		
8		Definition of Substantial Deprivation -S.C.SCR, 1954.674. Dwaraka Das vs Sholapur Spinning Mills		
9		Illegality of notices by Transmission Companies		
10		Judicial Powers of Regulatory Commissions.Appelate Tribunal Foe Electricity .(A.T.E) Appeal No.83 of 2010 Dt.07-09-2011		
11		APTRANSCO not releasing Works of Licensee Rules 2007.		
12		Special features of Electricity Act 2003.		
13		Comparison between 21st century High Tension Towers and 19th Telegraph Poles		
14		Misuse of section 164 by Power Grid Corporation		
15		Illegal & misleading notices by transmission companies.		
16		Illegality of G.O.I. Gazette 2003 exempting companies under section 164		
17		Failure of District Collector to protect famers property rights		
18		Act 2003 ,Section 164 encroaching on Judicial Powers of Regulatory Commissions.		

19		Unconstitutional provisions of Telegraph Act .1885.		
20		Discrimination of section 164. Governments and citizens.		
21		Violation of act 2003 provisions by Transmission Companies.		
22		Deliberate plan to deny payment of compensation to farmers.		
23		Profit making Transmission Companies and their illegal activities.		
24		Unauthorized Guidelines by Ministry of Power in 2015.		
25		Illegal and unauthorized proceedings by Collectors since 2003.		
26		Misguiding High Court by filing illegal affidavits.		
27		Power grid corporation misleading affidavits before World Bank.		
28		Guidelines for Fixing Compensation.SC.Ref.No.3148-3157/2000. Dt.07-01-2007		
29		Importance of Following Procedure in Democracy. S.C. Ranjit Thakur vs Union of India. S.C.AIR.1987. S.C.2386. .		
30		Right to Resist Prior Intimation is Essential. Dilip Singh Chouhan vs Gujartat Vajra Nigam (Transmission company) Gujarat High Court. Civil/SCA/1834/2011. Dt.29-08-2013		
31		Distinction -between 19th Century Telegraph act. 1885 and 21st Century Electricity Act. Gujarat High Court. Civil/SCA/1834/2011. Dt.29-08-2011		
32		Development of society- 19th century & 21st century. Gujarat High Court. Civil/SCA/1834/2011.Dt.29-08-2011.		
33		Telegraph Authority Cannot be Conferred with Powers under Electricity Act. 1970:11-09-1966-S.C. A.I.R.1970 sc 491 (1970)3 SC 851.		
34		Applicability of the provisions of the Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013.		
35		Prayer		

PLACE: (FOR FILING CASES)

Petitioner.

DATE: -----

CHRONOLOGICAL / RUNNING INDEX.

S.NO	Exhibit	Description of Document	Date of Document	Date of filing of Document	Page No.
1		Service Certificate			
2		Court Fee			
3		Writ Fee			
4		Annexure			
5		Written Submission			
6		List of Events			
7		<u>Material Papers</u>			
8		A - 1. Photo of 400 KV High Tension Tower			
9		A - 2. Power Grid Notice 2013			
10		A - 3. Power Grid Notice 2017			
11		A - 4. Rules by Government of A.P in 2007.			
12		A - 5. G.O. No.6 - 6.03.2017 Authorizing Collectors by Government of A.P.			
13		A -6. G.O. No.83 -20.06.2017 Fixing compensation by Government of A.P.			
14		A -7. Guidelines by GOI, Dated. 15.10.2015 Fixing compensation			
15		A -8. Common Model proforma for getting exemption Under Section . 164, Issued by GOI,			
16		A -9. Line details Advertisement in News Papers.			
17		A -10. Highlights of Agriculture Census 2010-11.			
18		A -11. Statement of details of Power Grid profit dividend Tax with operative results.			
19		A -12. Power Grid Annual Report.			
20		A -13. Collectors Illegal orders.			
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23		A -16. Land Acquisition Act.2013/15.			

Place:

Petitioner

1. Clarification on Supreme Court JUDGMENT OF 2016 ON CONSENT OF LAND OWNER AND FIXING OF COMPENSATION BY DISTRICT JUDGE.

The issue of that the Honorable Supreme Court of India in respect that the decision rendered on 14-12-2016 in Civil Appeal No.10953 of 2016 & batch in the case of Power Grid corporation of India Ltd, vs Century Textiles & Industries Ltd, held that there is **no need for consent of land owner and that that aggrieved has to approach District Judges for compensation.** The decision in the above case **is not relevant to PIL filed by the petitioner.** The Power Grid Corporation of India as well as other transmission companies are placing much reliance upon the decision rendered on 14.12.2016 in the above case .

Para. 21. Supreme Court had held as hereunder in regard to the applicability of Rule 3(1) of The Licensees Rules, 2006. Section 10 of the Indian Telegraph Act, 1885 empowers the Telegraph Authority to place and maintain a telegraph line under, over, along or across and posts in or upon any immovable property. The provision of Section 10 (b) of the Indian Telegraph Act, 1885 makes it abundantly clear that while acquiring the power to lay down telegraph lines, the Central Government does not acquire any right other than that of user in the property. Further, Section 10 (d) of the Indian Telegraph Act, 1885 obliges the Telegraph Authority to ensure that it causes as little damage as possible and that the Telegraph Authority shall also be obliged to pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.As Power Grid is given the powers of Telegraph Authority, Rule 3(l) of the Rules, 2006 ceases to apply in the case of Power Grid by virtue of execution clause contained in sub-rule (4) of Rule 3 which reads as under:

Para. "3 (4). - Nothing contained in this rule shall effect the 'powers conferred upon any licensee under Section of the Act."

We, thus, have no hesitation in rejecting the argument of the writ petitioner that the impugned action of the Power Grid was contrary, to the provisions of the Electricity Act, 2003. "

A perusal of the aforesaid observations of the Hon'ble Supreme Court would clearly reveal that as Power Grid is treated as an authority under the Indian. Telegraph Act, 1885 and that it acquires all such powers which are vested in a Telegraph authority, under the provisions of the Indian Telegraph Act, 1885 including the power to eliminate any obstruction in the laying of power

transmission lines and that legislature had not permitted any kind of impediment / obstruction in achieving this objective through the scheme of the Indian Telegraph Act.

It is submitted, with respect, that the aforesaid decision rendered by Hon'ble Supreme Court of India is clearly distinguishable on facts. Various facets of law were neither argued nor brought to the kind notice of the Hon'ble Supreme Court of India and the decision was rendered in the particular facts of that case without proper argument. It is well recognized that a decision should be treated as given per incur-am when it is given in ignorance of the terms of a (statute or of a rule having the force of a statute. So far as the aforesaid judgment shows, no argument was addressed to Hon'ble Judges on the question of the applicability of provisions of the special Statute viz., The Electricity Act, 2003 which can be summarized as hereunder:-

The Electricity Act, 2003 is a special statute dealing with subject matter of electricity. Section 174 of the Electricity Act 2003 contains a non-obstante clause which provides that if there is any express conflict with any other Act, the provisions of the 2003 Act would prevail. The Telegraph Act 1885 does not contain any such non-obstante clause. Hence, if there is any inconsistency between 2003 Act and the 1885 Act, the provisions of the 2003 Act shall prevail.

Provisions Sections.67 and 68 of 2003 Act would be applicable to all the licensees irrespective of whether they are empowered to exercise powers. of the Telegraph Authority under section 164 of 2003 Act or not. In terms of sub-section (2) of Section 67, the appropriate Government has been authorized to frame rules in relation to cases and circumstances in which the consent in writing, inter alia, of the owner or occupier of the land shall be required for carrying out works, the nature and period of notice to be given by the licensee before carrying out works, the procedure and manner of consideration of objection and suggestions received in accordance with such notice, the authority which may grant permission in the circumstances where the owner or occupier objects to carrying out of works and determination and payment of compensation to persons affected by works under Section 67.

Power Grid Corporation despite being conferred with powers of the Telegraph Authority under 1885 Act by the Appropriate Government, have been granted permission to establish over head lines as per mandatory requirement under Section 68 of the 2003 Act. Thus it is clear that

provisions of Sections 67 & 68 are binding also on the Respondents notwithstanding the notification under Section 164 of 2003 Act.

It cannot be debated that non-obstante clause contained in Section 51 of the 1910 Act has been purposely omitted in Section 164 of 2003 Act. This would indicate that the primacy has been given to the Rules which may be framed by the Government. As a matter of fact, in the 'Works of Licensee Rules 2006', the Central Government introduced Rule 3 (4) with a specific purpose of bringing back the effect of non -obstante clause occurring in Section 51 in order to override the effect of sub-rules (1) to (3) of Rule 3 which provides for consent of land owners.

Thus, the Central Government by framing the rules has expressly chosen to give overriding effect of notification under Sec.164 over the requirement of the consent of the land owners. Under Sec. 164 of the 2003 Act, the Government may accept the powers of the Telegraph Authority under the Telegraph Act subject to the modifications and limitations that may be thought fit. Therefore, it is for the Government to decide as to what rules are to be framed and to what extent the powers of the Telegraph Authority were "to be extended. Thus, it can be conclude that Sec. 164 as it stands does not have any overriding effect on any part of Sec.67 of the 2003 Act.

If the intention of law makers was to provide Section 164 with power to override other sections and to have same powers as Section 51 of the Indian Electricity Act 1910, the section would have been worded differently and would have started as "Notwithstanding anything contained in Section 67(2) or rules framed there under..."

The provisions of the Sections 12 to 18 of the 1910 Act are applicable in terms of Section 185 (2) (b) of the 2003 Act. Therefore, by virtue of Section 174 of the 2003 Act, Sections 12 to 18 of the 1910 Act would have the precedence over any other legislation. This would make it clear that even assuming that there was a conflict between the provisions of the Telegraph Act, 1885 and the provisions of the 1910 Act, the latter Act would prevail.

Merely because certain powers of the Telegraph Act had been conferred on a Licensee, it does not mean that the Licensee has become a Telegraph Authority as defined in the Telegraph Act.

Simply because certain powers 'of Telegraph Authority are available to a Licensee, it does not mean that all the rights and liabilities of the Licensee would be governed by the Telegraph Act. After enactment of 2003 Act, Indian Power Sector is governed by this Act. Section 67(4) confers power upon the Appropriate Commission to resolve disputes between land owner and the licensee. This power is untrammelled and is not impaired by the rules framed under Section 67(2). Rules framed under section 67(2) would govern the working of licensee and not the Commission "

Pronouncements of law, which are not part of the ratio decided are classed as obiter dicta and are not authoritative. With all due respect to the Hon'ble Judges who passed the aforesaid judgment, it is submitted that the said judgment is not binding upon this Hon'ble Court in view of the particular facts and circumstances of the case and as the same was delivered without proper argument and without reference to the relevant provisions of the Act conferring express power in overriding Sec. 164 of the Act.

In the case of Municipal Corporation of Delhi vs Gurnam Kaur reported in AIR 1989 SC 38, Hon'ble Supreme Court of India referring to precedential value of a decision rendered by it in a writ petition filed under Article 32 of the Constitution of India, held as follows :-

" A decision should be treated as given per incur-am when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the Court on the question or not whether any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter.

Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th edn. explains the concept of sub silentio at p. 153 in these words: "A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The Court may consciously decide in favors of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favors of the particular party unless it also decided point B in his favors; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

In *Gerard v. Worth of Paris Ltd. (k)*, [1936] 2 All E.R. 905 (C.A.), the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the Court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in *Lancaster Motor Co. (London) Ltd. v. Bremith, Ltd.*, (1941] 1 KB 675. The Court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. We went on to say that the point had to be decided by the earlier 'court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial 'words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority. "

It is therefore submitted, with respect that the decision rendered in the case of the Power Grid Corp. of India Ltd., vs. Century Textiles & Industries Ltd., is clearly distinguishable and has no application either to the facts or the issues of the law that arise for consideration in these proceedings before this Honorable High Court, In W.P. (PIL) 180 of 2017.

2. CAUSE OF ACTION FOR FILING THE P. I. L.

The main cause of action in the PIL (i) "is agriculture land owned by a farmer is considered as a property right under constitution of India? (ii) can the farmers landed property (agriculture land) right be substantially damaged/ value totally reduced / diminution without due process of law? (iii)Can a profit making company deprive CITIZENS OF THEIR PROPERTY WITH FOLLOWING DUE PROCESS OF LAW BY INFORMING THE LAND OWNER OF HIS ENTITLEMENT AND PAYMENT OF COMPENSETION? (iv) IS TELEGRAPH ACT 1885 and rules of not getting consent owner for construction of Telegraph Poles and wires be made applicable to Electric Towers and lines in 21st century? (v) Can damage to land under Telegraph Poles and Lines Is Comparable to High Tension

Electric lines and Towers? Can property of citizens be damaged without assessing the damage and payment under any Act of Parliament ?

3. SUBSTANTIAL DAMAGE OF LAND UNDER HIGH TENSION TRANSMISSION TOWERS AND LINES.

Each 400 KV Tower weighs 15 MT, requires 1000. Sq meters land for foundation. Under 400 KV lines 46 + 5.5 Meters land is required for Right of Way and Minimum clearance (Total 51. 5 meters / 154.5.feet) between conductor and trees. **each km line permanently Diminishes / Damages. 5.5 Hectors land (14/15 Acers). (ANNUXURE -1)**

4. DEFINITION OF "DIMENSION OF LAND VALUE." - SUPREME COURT DECISION.

Supreme Court of India has given guidelines for fixing dimension of land under towers and lines (SC in Case. Appeal (Civil) 289 of 2006, Kerala Electricity Board vs Levisha, Judgment, Dt.18-05-2007) as follows:-

"the sites of land , the distance between the high voltage electricity line laid over, the extent of line there on, 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 the determinative. the value of it would also be a relevant factor. the owner of the land further more , in a given situation may loose his sustentative right to use the property for the purpose for which the same was meant to be used ".based on the S.C. Judgment, the Kerala High Court CRP no. 432 of 2010 dated .26.05.2014 passed orders directing transmission company to pay . however the power grid or APTRANSCO or TSTRANSCO did not follow the supreme court directions since 2007.

5. DEFINITION OF PROPERTY - SUPREME COURT DECISION.

The Supreme Court has defined property as following - property in legal sense-guaranteed and protected. sc 1994:- Jilu Bhai Nan Bhai Vs State of Gujarat, 20-07-1994-s.c.civil.2111-15-1984."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 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 Connotes Every Thing Which Is Subject Of Ownership, Corporal Or Incorporeal, Tangible Or Intangible ,Visible Or Invisible , Real Or Personal, Every Thing That Has An Exchangeable Value Or Which Goes To Make Up – Wealth –Estate – Status “.**

6. DECLARATION OF RIGHT TO PROPERTY AS A HUMAN RIGHT – SUPREME COURT DECISION.

S.C. 2011 :-SC.SLP.(Civil) 28034/2011 State of Haryana vs Mukesh Kumar. Held that “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.

7. DEPRIVATION OF PROPERTY RIGHT” - SC 1953:-State of West Bengal vs Subodh Gopal

Bose.17-12-1953-SC.1954.AIR.92.1954, SCR.587. It held that “ 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. DEFINITION OF SUBSTANTIAL DEPRIVATION :- SUPREME COURT DECISION.

Supreme Court. SCR (1954).674. Dwarka Das vs Sholapur Spinning mills held,
The SC held that “by substantial deprivation is meant the sort of deprivation that substantially robs a man of those attributes of enjoyment which normally accompany rights to or an interest in property. The form is unessential. It is the substance that one must seek.” Herein the land underneath after construction of Towers and lines will remain in the name of owner farmer. The learned Judges FURTHER “Made Observation Of -- Deprivation – Illusionary Phantom Title –Leaving The Mere Husk Of Title : As of 2018 property is declared as Human Right .Herein due to towers and lines a farmers land is Mutilated. But compensation is denied on various flimsy grounds of “ Land Will Remain In The Name Of

Farmers—Farmers Land Is Not Acquired “- It is because most of the farmers are small holders and illiterate, have no economic capacity to pursue the issues legally or through administration For over 15 (2003-2018) years the exploitation by companies is happening unchecked.

9. ILLEGALITY OF NOTICES BY TRANSMISSION COMPANIES.

Notices issued by Transmission Companies are contrary to Electricity Act 2003 and Rules 2006. Further they illegal and violation Constitutional Right to property. In fact they are criminal trespassers into farmers (private) land. Transmission companies even though licensed Under Act 2003 by Regulatory Commission are not following procedure as stipulated under Rules 2006. They claim that after empowerment under Section 164 of Telegraph act 1885, they need not follow any Rules 2006 of seeking consent or seek Collector's permission Under Rue 3 (2). This is denying land owner/farmers of right /provision for filing revision under Rule 13 (1)13 before the Commission. It is also encroaching on the powers conferred on the Regulatory Commission.

10. JUDICIAL POWERS OF REGULATORY COMMISSIONS.

Appellate Tribunal For Electricity (Ate) Upholding Right Of Commissions. In case No. 2011, Appeal. NO.83 OF 2010, DT.07-09-2011, held that The Regulatory Commissions have power to decide compensation.(Para 93). Any dispute arising in regard to compensation would have to be resolved by the STATE COMMISSION. **What is confusing to farmers is , if the Collector issues compensation proceedings under Telegraph Act, 1885, how can a land owner farmers file revision under Works of Licensee Rules 2006, Rule 3 (3). Herein Companies issued notices under Telegraph Act 1885. The Collector also issued proceedings only under Telegraph Act. The Works of Licensee Rules 2006 are not referred to in the notice given to land owner farmers by the companies. The transmission companies letters have not informed the Collector about the provisions of Rules 2006. The proceedings by the Collectors do not refer to Rules 2006. Not referring to Rules 2006 in the NOTICE OR COLLECTORS PROCEEDINGS will deny the land owner famers of HIS RIGHT TO FILE REVISION.**

11. APTRANSCO NOT RELEASING WORKS OF LICENSEE RULES 2007.

I submit for 9 years officials of APTRANSCO/ TSTRANSCO kept, Rules 2007 away from Collectors, farmers and even Regulatory Commissions. Govt. of Andhra Pradesh, vide G.O.Ms.No.24 Dated 27-02-2007 issued Works of Licensee Rules, 2007 (Annexure-4) as guidelines for APTRANSCO. However the GO. 24 of 2007 was not made available to the Collectors or to the Andhra Pradesh Electricity Regulatory Commission and to public. A copy of the orders issued by the Department of Energy shows that it is kept with APTRANSCO for 9 years. The G.O. MS. No.6 dated 06.03.2017 (Annexure.5) was made available to the Collectors by the, Principal Secretary, Energy Department, Govt of A.P. Further vide G.O. RT. No. 83. Dated 20-06-2017 (Annexure-6) The Principal Secretary informed the Collectors, to pay compensation for towers and lines and also R o W details. Shockingly similar directions are not taken by Government of Telangana till now.

GO.No.6 of 2017 was issued based on a letter dated 05-11-2017 from the Secretary, A.P. Electricity Regulatory Commission. (Ref.2 of G.O.6 of 2017). The Principal Secretary, Energy informed the District Collectors, about the existence of his Departments issuing of Works of License Rules on 27-02-2007 and that as of 06-03-2017 ,after careful examination of the matter, the Collectors are empowered to exercise the powers bestowed on them vide Rules 2007.

G.O.RT. No.83 Dated 20-06-2017, the Principal Secretary, Energy Govt. of A.P. directed the District Collectors of Andhra Pradesh, informing them about Government of India Guidelines Date.3/7/2015,(Annexure.7) fixing compensation for loss of land value under towers and lines . Surprisingly GOI recommended payment of compensation @ 85% of land value under towers, which is increased to 100 % by Govt of AP, and GOI, compensation under lines from 15% reduced to 10%. The Guide lines by Ministry of Power GOI of 2015 and order of Secretary, Energy of AP, indicates that the compensation by Power Grid Corporation of India, a Government of India company and APTRANSCO a Government of Andhra Pradesh company did not pay compensation for loss of land value under Towers and lines from Act 2003 and Rules 2006 /2007. The Electricity Act 2003 claims that Governments have completely distanced from interfering in power/ electricity affairs. But in reality both GOI and State Government got exemption under Section 164 from following Rules and misused the Power Of Telegraph Authority to cheat and deprive famers of their legally entitled compensation. It is to be noted that Senior government administrators have been working as CEO of Generation,

transmission and distribution companies. They have used all their manipulative skills of Act 2003, section 164 provision to avoid compensation to millions of helpless small farmers in the remote villages across the country. Indecently these CEO have been bestowed many honours for their outstanding and successful management of companies.

12. SPECIAL FEATURES OF ELECTRICITY ACT 2003.

The Act 2003 is made with outstanding features, so as make POWER SECTOR independent and efficient. Rules 2006 makes it obligatory for the licensee transmission company to seek consent Under Rule 3 (1)(a). Legally seeking consent , makes it obligatory on the part of licensee to provide land owner following details :- (1)The purpose (2) Details of damage to the land/ property due to towers and lines(3) Offer of compensation (4) Name & address of the person to be contacted in the company (5) Duration of the offer (6) Payment duration. The works of licensee rules 2006, make the company obligatory to issue offer to every individual land owner separately.

I submit that if the land owner refuses consent, the licensee has to get written permission from the District Collector. The Collectors has to issue proceedings only under rule 2006 rule 3(2) after hearing the representation. The compensation fixation has to be done for each farmer. The company has to make payment after which the Collector will give permission in writing to the company to implement works. The Collectors proceedings must be under rule 3(2). Under rule 3 (3) every order made by Collector under sub rule (1) shall be subject to revision by the Commission. As per Act 2003, the orders of the Commission can be appealed before the Appellate Tribunal for Electricity. (A.T.E.).

Act 2003, has made ample provision under Section 67 for framing Works of Licensee Rules to be made by APPROPRIATE GOVERNMENTS. "This part deals with works required to be carried out by licensees (For laying down or placing electricity supply lines etc), procedural requirement for placing overhead lines etc. This part has precedent in the Indian electricity act 1910. (in Section 12 to 19). Section 67 (1) It has provision for opening up of streets, railways etc. Section 67 (1)(a) deals with open and break any street, railway or tramways. 67 (1) (b)sewers , tunnels , pipes Section 67 (c)(d)(e)(f) gives guidelines in dealing with institutions of Governments, roads, railways, municipalities, local boards etc.

Section 67 (2) Authorizes Appropriate Governments May, by rules made in this behalf. Section 67 (2)(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; Section 67 (2)(b) the authority which may grant permission in the circumstances where owner or occupier objects to the carrying out of works; Section 67 (2)(c) nature and period of notice to be given by the licensee; Section 67 (2)(d) prescribes procedure for raising objections 67 (2)(e) Determination And Payment Of Compensation Or Rent To The Affected Persons By Works Under This Section. Section 67 (2) (f) Section 67 (2) (p) procedures for various issues to be followed by licensee.

Section 67 (3) A Licensee Shall, In Exercise Of Any Of The Powers Conferred By Or Under This Section And The Rules Made There Under, 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”

The paper publication (Annexure - 9) seeking objection from public to be sent to Chief Engineer of the transmission company is illegal. But the Act 2003 and Rules 2006 have conferred power to receive objection only by the District Collector and Regulatory Commissions.”

Electricity Act 2003 Key Features (Ref. S.K. Chatterjee, 3rd edition .page 13) are as follows :-
The Act 2003 is made to develop competition with regulatory oversight in the frame work around the electricity act 2003, to encourage efficiency in performance and regulatory oversight, to safe guard consumer's interest and at the same time ensure recovery of costs for the investor.--**Power is intoxicating. Shedding of power therefore needs courage and conviction. The Government has envisaged these virtues through new law. There is complete distancing of Government from Regulations and commercial activities in the new scenario of the law-----the act distances from all forms of Regulations -----the State Electricity Boards down the decades =====.-----it has bred inefficiency that has CORRADED THE SYSTEM FROM WITHIN .-----the new law strikes at very root of ---- this malaise by putting an end to the monopoly -----competition is the hall mark of the new legislation-----Regulatory**

Commissions are Envisaged as Watch Dogs---the provision for Appellate Tribunal for Electricity meets the need for a specialized court to deal only with electricity related cases.

The Parliament considered Electricity Act 2003 as a progressive legislation in true sense". Act has many specific provision of Section 2. Limiting role of Governments have National Electricity Policy to be reviewed regularly, Sec.4. national policy for rural area & non-conventional energy, S. 12 to 24 -Licensing procedure 67. Works of licensees Rules to provide guidance to licensees, S. 76 to 109 constituting of Regulatory Commissions, 110 to 125 powers of Appellate tribunal for Electricity and also. 126 to 130 and 135 to 152 for Investigation, enforcement offences and penalties.

13. Comparison Between 21st Century High Tension Towers And 19th Telegraph Poles:-

The consequence of constructing Transmission towers and line (WORKS) will permanently damage the landed property of a Land owner. It is necessary to evaluate "difference between a 19th century Telegraph Pole/ line and a 21st century High Tension Transmission Towers and lines. A Telegraph Pole Weighs mere, 200 kg and occupies 10 to 15 SFT. They are mostly by side of Railway Tracks or adjoining roads and are not harmful to HUMANS OR ANIMALS. In comparison, the massive and awesome **Transmission Tower of 400 kv weighs 15 Metric Tons with huge and wide foundations to with stand weight of the towers and wind velocity. Each 400 KV tower occupies 1000 sq. Meters and needs 46 meters (150 feet) Right of Way and another 10 feet margin from lines. For one kilometre of 400 KV transmission line 4/ 5 hectors (15 acres) land will be wasted permanently .** It is dangerous to humans and animals while passing under lines, especially during rains. In legal and economics terminology the land is permanently damaged and its value will be eternally diminished. (process of reduction - New -website). Further electricity Act 1910 prohibits land owners under towers and lines, from construction of permanent structure of houses or factories or schools or commercial complexes. Even Tress /crops which grow higher than 10 feet, are not allowed underneath transmission lines. The high tension transmission lines have electromagnetic radiation effect. It is Scientifically approved that exposure of radiation is likely to cause cancer or tumour or genetic disorders to Humans and Animals.

14. MISUSE OF SECTION 164 BY POWER GRID.

Details of misuse Section 164 by Power Grid corporation of India Ltd in connivance with Officials in Ministry Of power In Government of India.

The Section 164 has a provision "Exercise Of Powers Of Telegraph Authority" – " **In Certain Cases**" Electricity act 2003 was passed on 26-05-2003. The Act had incorporated sections as stated above including Rules for Licensees and Regulatory Commissions. **However on 24-12-2003 , Ministry of Power GOI, under Section 164 , issued a gazette No. 1148 ,S .O, 1463(E) Dt.24-12-2003 "Where Power Grid Corporation Of India(PGCIL) -----A Government Company ----- For Proper Coordination Of Works Vested For Exercising Power Of The Telegraph Act -1885-----The Above Authorization Is Subject To The Requirement Provisions Of Electricity Act 2003 And Rules Made There Under "**

15. ILLEGAL & MISLEADING NOTICES BY TRANSMISSION COMPANIES.

From 24-12-2003 onwards PGCIL issued "Notice under Indian Telegraph Act Of 1885. The notice informs the land owner stating that it is a Government Company empowerment under Act 1885, and likely damage to crop/ trees and compensation as per revenue department assessment. The notice did not speak of damage to owners land value under towers and lines. It has not given details of Rules under section 67. The notice did give no offer for loss of land value under towers and lines. Nor it informed the land owner of his rights under works of licensee Rules 2006/2007 to raise objection. The owner is not informed about his right to file objection before the Collector and revision before the Regulatory Commission.

Under Telegraph Authority under Telegraph Act 1885 enables Telegraph department to construct Telegraph Poles & Lines in any private land without consent of the land owner. Utilizing the provisions of 164, the same thumb rules of Telegraph Act 1885, Section 10 is adopted by PGCIL and others. The land owners are denied compensation on the pretext that, even after Transmission lines and Towers pass over the lands, the ownership remains in the name of land owner and that the farmers, can continue his cultivation. Further PGCIL argues that the famers lands are not acquired therefore need not pay compensation. **The fact that "Due to Huge Towers and Lines with Electromagnetic Field, entire land value Diminishes" is not taken into consideration since 2003, by the Transmission companies or District Magistrates and also High Courts.**

16. ILLEGALITY OF G.O.I. GAZETTE 2003 EXEMPTING COMPANIES UNDER SECTION 164 -

The Ministry of Power, Government of India, New Delhi, has deliberately conspired and connived with Government Transmission Companies to bypass provisions of Act 2003 and Rules 2006, and Rules 2007 in AP .It is done due to the fact that Electricity Boards and the Power Grid Corporation of India and State Transmission Companies are managed by administrative services of governments. The Ministry of Power in order to bypass the Works of Licensee under, Section 67 and also Works of Licensee Rules 2006, GSR. 217 (E) Dated 18-04-2006, Ministry of Power GOI prescribed a Common Model Pro-Forma (**Annexure -8**) To Get Exemption By All Transmission Companies. The procedure prescribed will enable Transmission companies get exemption from Works of licensees Rules. The Ministry of Power made functioning of Government companies comfortable and simple. What the Government Companies needs to do Is Fill up The Pro-forma - Publish Scheme In 2 News Papers - Wait For 2 Months - Send Letter And Exemption, Under 164 Is Granted.

“The Pro-forma issued by Under Secretary, Ministry of Power, G.O.I , to give powers of Telegraph Authority under section 164 to Transmission companies” is illegal and Unconstitutional . Act 2003, Sections 164 is as Follows Exercise of Powers of Telegraph Authority - “In Certain Cases”. Act 2003 wording “IN CERTAIN CASES” is indicative of special or emergency situations faced by a individual transmission company /licensee, where in the licensee cannot adopt procedure of Act 2003, Section 67, or works of licensee rules 2006. The words are indicative of giving telegraph authority powers only sparingly - each project, based on specific situation. The applicant must give reasoning and circumstances to obtain authority. Instead, Ministry of Power prescribes a common application to be adopted for all transmission companies to claim Telegraph Authority and there by exemption to follow Rules. By providing Exemption from Works of Licensee Rules” The Objective Of Special Act 2003 is bypassed and invalidated. The reasons for misuse and abuse of Section 164 By Ministry of Power GOI, could be to deny legally entitled compensation to illiterate farmers who are ignorant and incapable of understanding the complication of Act 2003 and Act 1885. Another reason could be declaring huge profits as shown by the PGCIL and State Transmission companies which will directly benefit the administrators of PGCIL, and State Transmission companies.

PGCIL or any State Transmission Company do not require exemption under Section 164. Companies have provision for getting licensee from Regulatory Commission. For PGCIL / APTRANSCO/TSTRANSCO, a project proposal and a detailed feasibility reports including survey route map (Giving details of survey number, village name etc) will be conducted. The project will peg mark location of Towers and lines which enables to assess damage to the land and can prepare estimates of land compensation. It has to get clearances from Environment Ministry and Financial Approvals. As PGCIL/APTRANSCO /TSTRANSCO, lines passes over Railways, National High ways, Irrigation canals. They have to follow Rules 2006 and must get by written permission from these institutions as there is no exemption under Act 2003 (Rule 4 to Rule 12) and Section 164. The process for PGCIL and for other companies implementing project work through contractor by tendering and agreements will also require time. From the day, the project is envisaged, till completion will take 5/6 years. In these circumstances there is no need for Ministry of Power GOI and State Governments confer Section 164 powers of Telegraph Authority on Government Transmission Companies. The exemption of rules, 2006 and 2007 are only for farmers (private) lands? It is assumed that the misuse and abuse of Telegraph Act 1885 provisions are only to avoid paying compensation to Farmers.

The POWER GRID and STATE Companies have sufficient time to follow procedure as per Rules 2006/2007. They have sufficient time to seek consent and initiate negotiation for payment of compensation to land owner depending upon damage, location, land area requirement.. The land owner can be persuaded to get consent by following procedure under Works of Licensee Rules 2006, Rules 3 (1) to give notice to land owners for consent. If the owner refuses PGCIL offer of compensation, PGCIL has provision under Rules 3(2) to get permission in writing from District Collector. Collector proceedings under rules 2006 will enable land owners to file revision for enhanced compensation before the appropriate Commission. But PGCIL from date of passing the Act 2003, has not showed inclination to follow Rules Or Any Procedure or any State in regard to Private Land owner Farmers.

GOI and State Governments has no provision under Act 2003 to prescribe profarma to Companies / licensees. Special Act 2003 has declared to keep Government away from the sector. Governments in order to use section 164 must declare the conditions for utilising Section 164.

Herein only a press notification. 2 months time and a letter, to get exemption under Telegraph Authority. This is a violation of Electricity Act 2003 provisions. In fact it is for this purpose that Rules 2006 are prescribed. The land owners who are mostly small and marginal farmers cannot understand the implication of lines and towers on their land and loss of its value. Since 2003 millions of farmers denied compensation under the false pretext of Telegraph Authority.

17. FAILURE OF DISTRICT COLLECTOR TO PROTECT FARMERS PROPERTY RIGHTS.

The District Collector across the country have failed to protect the interest of farmers. The Collectors while passing orders or issuing proceedings under Telegraph Act 1885 have failed to assess the damage to land due to towers and lines. Section 10 (d) of Act 1885 reads as follows: "in the exercise of the powers conferred by this section, the Telegraph Authority – "SHALL DO AS LITTLE DAMAGE AS POSSIBLE ", and, when it has exercise 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. Since 2003 the Collectors were unable to assess the consequence of constructing High Tension Transmission Towers and Lines on a small piece farm land? Whether the Land owner, be it a farmers or residential land or industrial land will be damaged and that the owner will sustain LOSSESS and that he should be compensated. This ground reality has evaded the attention of Parliament while passing that act 2003 and Administrators while implementing the Act Provisions, and High Courts while concurring with Telegraph Authority (Act 1885 provisions) Perhaps because the Farm lands are not as valuable as city /urban properties. The word URBAN PROPERTY visa - vis Farmers Lands/ Property was never given equal importance or preference by policy makers since independence.

18. SECTION 164 – ENCROACHING ON POWERS OF REGULATORY COMMISSIONS.

Due to illegal usage of section 164 the powers conferred on central electricity regulatory commission (CERC) and State Regulatory Commissions are curtailed. Act 2003, Section 76, confers vast powers on the Regulatory Commissions. The transmission company has to obtain license from Central/ State Regulatory Commissions The Commissions have provided rules for carrying out works by the licensees. The Commissions are given powers of revision of Collectors proceedings /orders. As seen above, if the Collector's orders are under Telegraph Act 1885 the Commissions cannot review the orders of Collectors. Instead, District

Judge is empowered. Land owners are deprived of revision of Collectors orders. The fees in District Court has to be paid for claiming Compensation. The Commissions have decide compensation in a time bound manner. Whereas there is no such time limitation for District Judge to award compensation. The purpose of Special Act 2003 provisions are lost due to misuse of Section 164.

19. UNCONSTITUTIONAL PROVISIONS OF TELEGRAPH ACT .1885.

The provisions of Telegraph Act 1885, Visa-a-Vis Electricity Act 2003 are inconsistent and not applicable in Democratic India. They violate Indian Constitutional provisions of rule of following procedure, right to property - now declared as human right -, deprivation of property right and denial of substantive and sustentative right to property and other statues as directed by Supreme Court of India.

The 19th century Telegraph Act 1885 has following illegalities/ irregularities in comparison to Act 2003. (i) The licenses are centralized under Ministry of Telegraph, Government of India, which is not functional. Where as in Act 2003 licensing is decentralised and delegated to Commissions which are independent judicial authorities. (ii) Act 1885 has no rules, whereas Act 2003 has Rules with revision provisions. (iii) No procedure to be followed for establishing telegraph lines/poles, where as Towers and lines have specific rules and conditionality. (iv) Act 1885 has no provision to land owners to protest/ obstruct, where as Act 2003 has provided rights to land owners to refuse consent and provision for revision (v) In Telegraph, Act 1885 there is no clarity on authority to fix compensation . In Act 2003, Company can, by itself, negotiate with land owner or seek Collectors intervention. (vi) Act 1885 has no clarity as who and when and on what basis the compensation is fixed for damages, where as Act 2003 has ample provisions for it. (vii) Act 1885 do not define damage to property, except compensate for loss of crops and Trees. The fact that Telegraph poles and lines are not dangerous to humans or animals or environment is one of fact and needs no imagination. Where as Electricity Towers and lines are highly dangerous to humans, Animals and also to trees. It is for this reason that conditionality are imposed by Governments on construction of towers and lines over past 100 years. Shockingly Appropriate Governments Have Equated Telephone Poles/ Lines With That of Electricity Towers And Conductors, to Make Mockery of Right to Property of Farmers (viii) Act 1885 has no provision for revision and no scope for appeal.(ix)

The 1885 Act is out dated and is irrelevant of the people of India in 21st century . By adopting Act 1885 provisions GOI and State Governments has sabotaged the Act 2003 objectives. The Telegraph Act 1885, has to be invalidated by the Honourable High Court for the reasons stated above.

20. DISCRIMINATION OF SECTION 164. GOVERNMENTS AND CITIZENS.

Appropriate Governments, GOI and States have Discriminated In Using Section 164 Between Citizens & Government Institutions:-The Ministry of Power, GOI and State Governments, misused and abused Section 164. The provision of Telegraph Act 1885, Section 10 to 19 are invoked in regard Works of License Rules 2006 applicable to private land owners and private land owners /buildings. Rules 3 (1)(a) 3(1)(b) 3(2) and 3 (3) are applicable to only Citizens – (Farmers) –Private Land Owners. Act 1885, Section 10 to 19 are not applicable to Works of licensee Rules 4 (1 to 7) 5, 6(1 to 7) 7 (1 to 7) 8, 9, 10, 11, 12, and 14, where in Governments institutions Railways – Roads – Canals – Local Bodies etc. A reading of Act 2003, (Part VIII) Section 67 works of licensees “WORKS TO BE CARRIED OUT BY LICENSEES “has not made any discrimination between Railway/Roads/ Forest/Water ways and private Land holders (CITIZENS). However using Act 2003 Governments have discriminated between Property of Citizens And Government Properties. This is illegal and unconstitutional. Hence Section 164 has to be invalidated.

21. VIOLATION OF ACT 2003 PROVISIONS BY TRANSMISSION COMPANIES.

Transmission of Electricity is a business. It is done by companies including Government Companies who are registered under Companies Act. They get loans from financial institution including World Bank. Shares are mobilized from private individuals and are traded in stock markets. PGCIL and State Transmission companies declare profits, pay dividends, and pay income tax. Since independent demand for power was increasing due to industrialization, Agriculture, housing and other purposes, Electricity Boards were established in 1960 to improve production and distribution. However the Boards under Governments were unable to meet the increasing demand. After liberalization in 1990's Government of India enacted Electricity Act 2003 to meet the growing needs of the country. Objectives and special features of the Act 2003 was detailed in above paras. Private investments were encouraged, and independent regulatory commission were established as arbitrator and regulator companies.

But Governments continued controls over Electricity companies by avoiding to follow Rules 2006 thereby avoiding to follow procedure and payment and compensation.

22. DELIBERATE PLAN TO DENY PAYMENT OF COMPENSATION TO FARMERS.

An area, which was posing a challenge to Ministry of Power and State energy Departments officers was that of transmission lines. The lines and towers are huge and will damage the lands underneath permanently. The act 2003 has provided guidelines for resolving the problems of getting consent of land owners and fixing compensation. about 86 % of land owners are small and marginal farmers. (Annexure- 10). A tower or line passing over the farm land reduces the value substantially and permanently. After 1990's large number of farm lands value has appreciably improved due to infrastructure, industry, housing, urbanization. Herein after enactment of act 2003, damaging land and payment of compensation is seen as a financial liability by transmission companies.

The smart policy makers of Ministry of Power, GOI and State officials, who are part administrative services, working in Transmission companies as Chief Executives **utilized obscure section 164- to exercise of powers of telegraph authority "In certain cases "** and **Conveniently issued gazettes empowering PGCIL and all State Transmission Companies with Powers under Telegraph Authority.** Section 164 "In Certain Cases" Is Indicative Of Rare-And- Exceptional Circumstances. But the Power Ministry officials in GOI and Energy Department States have conveniently enabled PGCIL and State Transmission Companies to avoid Rules 2006/2007 and the condition there off. Telegraph Act 1885 used as excuse to cheat millions of gullible land owner/ farmers of compensation. It is illegal and unconstitutional to give powers under Telegraph Act 1885 empowering and **exempting Government Companies to enter into Only Private/ Citizens Lands / Properties** without following Rules 2006 but not Government properties.

Ministry of Power, GOI enabled Power Grid Corporation of India Ltd. (PGCIL) on 24-12-2003 (within 7 months of passing of act 2003, dated 26th may 2003) was given Telegraph Authority vide, Gazette Extraordinary No.1148 dated 24th December 2003. Under Telegraph Act 1885, section. 10, to place Transmission Towers and Lines without consent

of land owners or payment of damage to farmers. For 15 years PGCIL is doing works under Act 1885 provisions, so as to avoid Rules 2006.

23. PROFIT MAKING TRANSMISSION COMPANIES AND THEIR ILLEGAL ACTIVITIES.

During 2013 - 14 to 2017-18 (5 years) Power Grid has constructed 48,390 K. M. Lines. It has utilised 2,49,208 Hectors (Acers 6,15,792) affecting over 1 millions farmers /land owners. During that 5 Years period, PGCIL declared profit of Rs. 31,184.2 Crores. It has paid dividend of Rs. 7,851.36 Crores. It has made provision for Tax (Mat) and dividend Tax of Rs. 8,337.29 and 1,531.08 Crores (**Annexure -11**). But though the PGCIL, in it report of 2017-18, didn't mention (**Annexure- 12**) the compensation paid to Land owner/ farmers for damaging of lands under Towers and Lines. Compensation to farmers estimated @ Rs. 10,00,000/- (Ten Lakhs) per Hectare the is Rs. 24,679.90 Crores. The Power Grid has deliberately omitted to show the compensation entitled by farmers.

Provisions of section 164, Violates Right to Property, Article 300 A, of INDIAN Constitution. It is of common knowledge that the lands under towers and lines will get damaged /Forgo value (DIMINUTION) due to electromagnetic effects and other reasons. Electricity Act 1910 which prohibits construction all permanent structures underneath towers and lines. Even gardens or plantations which grow higher than 10 feet are prohibited. Both the Act 2003 and Act 1885 have made it obligatory to cause as little damage as possible and PAY FULL COMPENSETION. The towers and lines by PGCIL and other have caused damage to millions of land owner farmers. The companies must pay compensation starting from the day of construction to all farmers.

Further the notices issued by PGCIL and other transmission companies under Telegraph Act 1885 are violation of Rules 2006. Such notices are is illegal and misleading. Since passing of Act 2003 and even after framing of Rules 2006, PGCIL, a LICENSEE UNDER Electricity ACT 2003, section 12, has been issuing notices for all projects only under Telegraph Act 1885. The contents of notices are as follows :-

"Power Grid corporation of India Ltd. (A Government of India Enterprise)----- (address),
Notice Under Indian Telegraph ACT 1885 To,----Dated ----- . Dear Sir / Madam in exercise of powers vested with Power Grid Corporation of India ltd.(a Government of India

enterprise, ministry of energy , department of power,) .Under Part III of the INDIAN TELEGRAPH ACT 1885, section 10 to 19 read with section 68 & 164 of Electricity Act 2003, as amended up to date, notice is hereby given that 400 kv-----line will go through your Property Noted Under. While due care will be taken to minimize the Damage to standing crops and trees , certain minimum unavoidable damage is likely to take place during construction / erection of the aforesaid Line. The trees so felled will be handed over to you .The compensation for the yield of the trees so felled and crops damaged will be paid to you as assessed by the Revenue Department or any other competent Authority as may be decided by the Revenue Department.

The notices issued by PGCIL and others accept the fact that it recognizes that LAND is a PROPERTY and that the LINES will cause damage to the property ' ----line will go through your property noted under. While due care will taken to minimize the damage to the standing trees and crops, certain minimum unavoidable damage is likely to take place during construction of the afore said line. Herein PGCIL accepts the fact that damage will be caused. But PGCIL, a Company doing works in private land cannot by itself decide "The Extent of Damage to Property nor It Can Decide the Compensation". Under Rules 2006 provisions are made for fixing and assessing damage and fixing compensation under Rules 2006, wherein Collectors and Commissions are empowered to settles compensation issues.

PGCIL cannot issue Notices under Act 1885. PGCIL is licensee under Act 2003 and provided with Rules 2006. The notice must contain provisions of Act 2003, Rules 3.(1)(a) seeking Consent of Land owner. It has to have details of time for reply, Under Rules 3 (1)(b). The Notice must provide the land owner details of damage to his property/land. The notice did not give an offer of compensation for the damage to the property /land. The notices are contrary to the provisions under Act 2003 Section 12 and 14 where in only an authorized person is given license for transmission of electricity and he has to follow rules.

24. UNAUTHORISED GUIDELINES BY MINISTRY OF POWER IN 2015.

The Ministry Power, G. O.I has constituted a committee dated: 9/10-04-2015, under Special Secretary to analyses the issues related to Right of Way for laying of transmission

lines across the country and to suggest a uniform methodology for payment of compensation on this count. The committees have provided guidelines on area damaged and fixed compensation of 85 % land value under Towers and 15% under lines (Right of Way). The Report, Dt.15-10-2015 is sent to Chief secretaries of State, CMDs of State Power Utilities. Incidentally the Power Grid Corporation of India is member of the Committee, but as per ACTS 2013-15 they have to follow the rules.

The report by the committee Ref. 3/7/2015- Trans – Ministry of Power., GOI,Dated.15th October 2015 giving guidelines to Transmission Licensees **/Companies/ is illegal and contrary to the provisions of Act 2003.** This special Act 2003 as detailed in the objectives and Reasons is Intended to Keep Government Away From all the Activities of Power Sector, except policies. **The fact that after 13 years of passing of Act 2003 and 9 years of making Rules 2006 Ministry of Power, GOI constituted a committee on 09/10 -04-2015 is indicative of deliberate attempt by Ministry of Power, GOI, and State Governments, of their continued control and interfering in the issues of Power Sector.** The issue of Gazette in -2003 giving exemption to PGCIL to evade Rules 2006 and conferring Telegraph Authority (Under Act 1885) is indicative of Governments interference in the Power sector affairs by officials. Therefore constituting Committee, by Ministry of Power for fixing compensation is also illegal, contrary to the objectives of Act 2003. The authorisation under Telegraph Authority in 2003 and giving guidelines for compensation in 2015 are illegal , and violation of Right to property Article 300 A. Therefore needs to cancelled, but as per ACTS 2013-15 they have to follow the rules.

25. ILLEGAL AND UNAUTHORISED PROCEEDINGS BY COLLECTORS SINCE 2003.

From 2003 TO 2018, proceedings fixing compensation issued by District Collectors in the State of Andhra Pradesh and Telangana are unauthorized and violation of Rules 2006 and 2007 are illegal. **(Annexure-13)The Transmission companies have claimed to work under telegraph act 1885, section 17(3) it is the District Judge who are authorised. Therefore all the proceedings /orders issued by the Collectors from 2003 till 2018 are with out due authorisation, hence invalid. In these Circumstances the Collectors be directed to re-evaluate the damages and issue fresh proceedings as per Honourable Supreme Court of India Judgment of 2007 Kerala Electricity Board vs Levisha and compensation under Land**

Acquisition Act 2013. Direction is given that each land owner property be evaluated separately based on its location and future development opportunity as directed by the Supreme Court of India.

As of now proceedings by the Collectors are issued under Telegraph Act 1885. They will deny the land owners from filing revision before Regulatory Commission under Rule 2006, Rule 13 (1) and 13 (2). Therefore the Proceedings issued By Collectors in The States of Andhra Pradesh and Telangana from 2003 be declared as illegal and violation of Works of Licensee Rules 2006/2007.

26. MISGUIDING HIGH COURT BY FILING ILLEGAL AFFIDAVITS :-

The Andhra Pradesh High Court have passed Judgments upholding right of transmission company to enter into private land and construct Towers and lines without obtaining consent of the landowner. What Their Lordships failed to perceive is land is a property. It is owned by farmers, who are citizen of India. And that land is a human right. And land can be taken only as per law, procedure and compensation. The contention of companies entering into private land without following procedure – authorization- compensation- is against principals of Natural Justice, Violation of Constitutional Rights, Act 2003, Rules 2006 and is Crime under criminal tress pass. The works of PGCIL and other transmission companies are amply compensated by Regulatory Commissions by way of WHEELING CAHRGES. Each company is declaring huge profits, dividends and taxes. PGCIL is not doing any a charitable work. The employees in companies are not doing free services. Every one is paid hefty salaries.

In dealing the issue of Telegraph Authority (Act . 1885) the Honourable High Court did not take into consideration that Electricity Act 2003 is a Special Act. Here in Governments are kept away from interfering in Electricity, Generation-Transmission-Distribution. The Act 2003 is made to curtail favouritism by Government companies, corrosion in functioning of boards/PGCIL/State transmission Companies, corruption and inefficiency of State Electricity Boards. Act 2003 provides guidelines to monitor, regulate and discipline transmission companies. Regulatory Commission are also empowered to investigate into irregularities of companies under Section 126 to 130 and, take disciplinary action under Section 135 to 152, including levy fine and also cancel licensees. Under Act 2003 and Rules 2006 a specific

procedure is prescribed to be followed by every licensee while constructing towers and lines. Under Rule 2006 Rule 3 (2) the District Collector & Magistrate alone is empowered to fix compensation/ Rent or both and give permission in writing to the licensee. The Act 2003 and Rules 2006 have made provision for revision of the Collector &Magistrate orders under Rule 3 (4) by the Commissions. Further this Special Act 2003 has constituted Appellate Tribunal for Electricity to deal with all matters of Electricity Production- Transmission and Distribution as final authority. **But appropriate governments by using section 164,have restored, the government companies, with arrogance, to violate rules and misuse the authority, so as to deprive payment of compensation for damages caused to millions of farmers.**

PGCIL and other companies filed misleading affidavits in High Courts (**Annexure-14**) claiming, that they are empowered under Telegraph Act 1885, therefore need not get prior consent from the land owner. Accordingly avoided to issue notices under Rules 2006. Even few notices issued under Act 1885, are Misleadingly Worded as if the land owners are entitled for only Crop /Trees Compensation. **The Damage Under Lines & Towers Is To Individual Land Owner/Farmers Is Not Taken Into Consideration By The Courts. The contention that under Section 164 vested with Telegraph Authority, Transmission Company can enter into private land without consent, is violation of Article 300A. Telegraph Authority has no provision getting consent and no provision for compensation assessment and payment of Compensation. Herein Appropriate Governments have violated provisions of Section 164 by illegal authorisation and also provisions of new LA ACT companies under Telegraph Authority. Therefore the companies are acting illegally. The decision by the Honourable High Courts are contrary to Act 2003 and Rules 2006 /2007. The decisions are violation of Constitutional Rights.**

Even under Telegraph Act 1885, land owners/ famers whose lands are damaged due to towers and lines are eligible for **full Compensation**. (Act 1885 Section10 (d)). The land owner/farmers are kept in dark of eligibility of compensation for land damaged by the company. The Collectors proceedings are issued only under Telegraph Act 1885. There is no provision Under Act 1885, where in the Collectors have to fix damages. It is only in Act 2003, Rule 3(2) Collector is empowered to fix compensation. That too, If The Land Owner Refuses to give Consent. That

too, on the Application by Transmission Company For Permission To Carry Out Works, by district Collectors.

Section 164 of act 2003 was misused and deliberately misinterpreted by transmission licensees. Act 2003 section 67 has made all provisions (part viii) works of licensee. Under section 67. (1) (a) to (d) gave provision to carry out works in railways and streets etc . Under section 67 (2) allowed government to make rules for carrying out works in government and private lands. --Act 2003 ,under section 67 (3) gave directions to licensee about damages and compensation as follows “ a licensee shall , in exercise of any power conferred by or under this section and the rules made there under , cause as little damage, detriment , 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 “.

Act 2003, and under 67 (4) made provision for- compensation :-where any difference or dispute (including amount of compensation under sub -section(3) under this section ,the matter shall be determined by the appropriate commissions. Section 67(5) empowered commission to impose penalty.--Electricity act 2003 a, special act to make power sector efficient by establishing regulatory commissions at central and states. Empowered commissions to grant licenses to transmission -generation - distribution companies. The commission are authorized to fix charges for transmission and generation. Commissions are given quiz -judicial power to fix charges, arbitration among licensees / companies and also cancel licensees. Part x section 76 establishes regulatory commissions of central & state electricity regulatory commission. It has made provision for appellate tribunal for electricity as final authority to deal power sector issues. Under part xvi, section 158 is created to arbitrate in order to hasten settlement of issues.

27. POWER GRID CORPORATION GIVING MISLEADING INFORMATION To WORLD BANK:-

In regard to Payment of Compensation to damaged property /lands of farmers under Towers and Lines the Power Grid Corporation of India Ltd, has obtained huge loans by fraudulently, providing illegally and false information to World Bank and International finance Corporation. The World Bank conditionality of compulsory rehabilitation of all affected persons of projects, conveniently is misinterpreted and provided false

information By Power Grid .The Power Grid in their Project No.31419 Dated. 2nd March 2012 **(Annexure -15) gave following declaration”**.

(W.B. Report- 52-1) Page 5. Last Para –Typically, Power Grid Acquires About 15-40 Hectors Of Land For Sub-Stations. The company prefers to acquire of non availability of government land, the company acquires private land (resulting in involuntary settlement) and at times also purchases through willing seller-buyer transaction (i,e without in voluntary resettlement). **HOWEVER, Power Grid Does Not Acquire Right of way (R.O.W), as it is temporarily required only for Laying, Occasionally for Operating and Maintenance Of Transmission Lines.** RoW required along the route alignment is 27m, 35m,52, 46/52 and 64-85 m wide strip of land for 132kv,220kv, 500kv, 400kv,double circuit, 765 and 800 kv dc transmission lines respectively. ===add

(52-2) Herein the question arises is which act/law has given powers to Power Grid to impose usage restriction of farmers land? If it is under Electricity Act 2003 as per Rules 2006, Rule 3 (1)(a), power grid has to get consent from land owner. Or if farmer refuses consent, power grid has to get permission in writing from Collector Under Rule 3(2). Assuming that power grid is acting as per Telegraph Act 1885 Under **Section 10 (d) Power grid cannot cause substantial damage to farmers landed property.** section 10, mandates, **shall pay full Compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.**

(52-3) The power grid in the project report 31419 to IFC has provided false, misleading and illegal statement. Obtaining bank loans with false information is a criminal act. As per Constitutional provisions of India and direction by Supreme Court of India, Right of Way (R o W) causes total damage to farmers lands under.

RoW. Therefore Power Grid must pay compensation for the damages caused. Power Grid has not Provided Liability for Damages In Their Books of accounts for payment of compensation to land damage. The liability is not shown in the annual report. All banks are given false accounts by power grid with inflated profits. This has led to Share Value Increase and pay more Dividend and also Higher Income Tax. This is violation of stock exchange regulations.

(52-4) the arrogance of Power Grid Empowering itself with authority to impose **Conditanalties** on farmers lands which are substantially damaged should not and cannot be allowed to happen in democratic Indian republic, where in rule of law still prevails.

(52-5) "R o W, For- Telegraphic-Line, While ownership of Land Vests With the Land Owners, the Land owner forgo the Right to (a) build permanent structures anywhere within the safety area of RoW (b) plant trees tall trees or undertake plantation activities with in RoW, except if using short height trees and (c) divert land under tower footing from past use. Where the land within R.o.W is used for agriculture, the land owners may continue to cultivate the land after T-line been strung. However, where the land is used for tree plantation (fruiting or of timber variety), the land owners are required to plant dwarf verity or low height trees within R.o.W. In requiring R.o.W, Power Grid adheres to the host country requirements of prevalent Indian telegraph act. The act provides for payment of tree loss and crop loss compensation, which the company provides " .

28. GUIDELINES BY SUPREME COURT FOR FIXING COMPENSATION :-

The Supreme Court of India has given guidelines Methodology to Fix Compensation 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. Additional Ref-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.

29. IMPORTANCE OF FOLLOWING PROCEDURE IN DEMOCRACY. SC DIRECTIONS:-

Power Grid and other transmission companies **are not following any procedure leading to cheating of farmers by them. Importance Of Following Procedure In Democracy :** 1) .SC. AIR.1987. SC 2386. Ranjit Thakur vs Union of India. (2)United States. Supreme Court 1942 (318) United State 332.

“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 Safe Guards ” (1942) 318 United States 332.**

I submit Ref :C.W.J.C. NO. 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.

(Judgment. 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 judgment 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 therein are to the effect that due observance of the prescribed procedure is guarantee against arbitrary exercise and correspondingly more liberal the construction of the procedural safeguard envisaged by the statute”. 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.**

30. RIGHT TO RESIST PRIOR INTIMATION IS ESSENTIAL.

(i) Gujarat High Court:- Right To Resist Or Obstruct Prior Intimation Is Essential. Case :-Gujarat High Court Case No: Civil/SCA/1834/2011. Dated: 29.08.2013- Dilip Singh Chouhan Vs Gujarat Vajra Nigam (Transmission Company)

“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.

31. DISTINCTION -BETWEEN 19TH CENTURY TELEGRAPH ACT. 1885 AND 21ST CENTURY

Electricity Act. Ref. 2003.28.1. Gujarat High Court Civil./SCA/18334/2011, 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 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 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 license to undertake the work would end.**

32. DEVELOPMENT OF SOCIETY- 19th CENTURY & 21ST CENTURY: Case: Gujarat High Court No: XCIVIL/sca/18334/2011 Dated 29-08-2013:-

The High Court has observed as follows .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.**

33. A TELEGRAPH AUTHORITY CANNOT BE CONFERRED WITH POWERS UNDER ELECTRICITY ACT. 1970:11-09-1966- SC.AIR.1970 SC 491 (1970)3 SCC 851 -

S.C. has made the following observation .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.**

34. APPLICABILITY OF THE PROVISIONS OF THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013.

The changes in the provisions of the New Land Acquisition Act was intended to facilitate farmers to get better compensation, rehabilitation and resettlement benefits in lieu of land being compulsorily acquired by the appropriate Government and to remove the procedural difficulties in the acquisition of lands required for important national projects. In view of the urgency, these amendments were brought about by an Ordinance on 31.12.2014. Subsequently on 10.3.2015 Lok Sabha passed the Amendment Bill to replace this Ordinance. The Amendment Bill passed by the Lok Sabha includes some further changes to the Ordinance which are as follows:

Compensation as per Schedule extended to 13 Acts:

Compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules of the Act are extended to the thirteen Acts mentioned in the Fourth Schedule of the New Land Acquisition Act namely-

- | | |
|-------------|-----------------|
| (1) to (11) | xxx |
| (12) | The Electricity |
| Act, 2003; | |
| (13) | xxx |

Neither of the respondents could proceed blind folded in all these matters.

The Act of 2003 and more particularly Section 164 of the Act are laws of 21st Century. 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 consent, if the Police Commissioner or the Magistrate is to grant permission simultaneous assessment of the compensation and the payment thereof subject to provisional 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 it needs to be kept 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.

It ought to have been considered that, in view of the Harmonized List of Infrastructure sub-sectors notified on 27 March, 2012 by Department of Economic Affairs (Infrastructure Section), Ministry of Finance, Govt. of India, provisions of Right to Fair Compensation Act has been made applicable to Transmission works. **(Annexure - 16).**

35. PRAYER. (Petition to the High Court)

- i) It is prayed that all land owner farmers and others in The States of ----- be compensated by the Power Grid Corporation of India Ltd and -----State Transmission company and other Transmission companies for illegal and unauthorised construction of High Tension

Transmission Towers and Lines in their lands and consequent damage to their property, losses for crops and equipment from the date of passing of Electricity Act 2003.

- ii) It is prayed that the compensation be awarded with interest and solarium.
- iii) It is prayed that the compensation to be fixed as per schedule extended to Land Acquisition Act 2013.
- iv) It is prayed as of now the Honourable High Court to give directions to all the Chief Secretaries, and Power secretaries, all District Collectors and Transmission Companies in the states of -----to follow Rules 2006 issued by Ministry of Power GOI and Rules issued state Government.
- v) It is prayed that the Honourable High Court to issue directions to the Director General of Police in the State so as to give directions to Police not to support illegal activities of the transmission companies.
- vi) It is prayed that the Honourable High Court issue directions to the concerned Governments to cancel section 164 of Act 2003, as Section 164 violates property right? Human right of Indian citizens and also is unconstitutional and violates Act 2003 provisions of various Sections as stated the petition.
- vii) It is prayed that the Honourable High Court to pass such other orders as deem fit and proper.

Place:-----

Date: -----

Petitioner

NOTE:- 1. Any farmer affected by transmission companies for damage to their property/ Agriculture land may use the above details by making necessary correction.

2. Please verify the Court Judgments before using them.

3. I will appreciate to receive acknowledging using the details. E-mail. chengal.p@gamil.com