

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA No. 235/2024

Pronounced on :06.06.2026

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**Whether the full or part of judgment is
pronounced : FULL**

Ghulam Mohi Uddin Sheikh

.... Petitioner/Appellant(s)

Through:- Mr. M.S. Reshi, Advocate.

V/s

UT of J&K and others

.....Respondent(s)

Through:- Mr. Faheem Shah, G.A.

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AJEEM, JUDGE

JUDGMENT

Per: Sindhu Sharma-J

01. This Letters Patent Appeal is directed against the judgment dated 06.06.2024 passed by this Court in WP(C) No. 1531/2020 titled *Ghulam Mohi Uddin Sheikh vs Union Territory of J&K and others*, whereby the writ petition filed by the petitioner has been dismissed.

02. Briefly stated the facts relevant in the present appeal are that, the respondents started the process for laying of transmission lines for 220 KV D/C Zainakote-Amargarh line. The appellant was among one of the land owners whose land was acquired by the respondents for construction of tower structure of 220 KV D/C Zainakote-Amargarh Transmission line. The land measuring 20 marlas 02 Sarsai and 04 feet was required for construction of tower structure which was to be carried out in execution of

original project report, route profile and sanctioned scheme after obtaining due sanction from the competent authority i.e., Techno Economic Committee as well as respondents.

03. The land of the appellant measuring 05 Marlas falling under Khasra No. 372 Min was required for construction of transmission tower. The appellant made an application to the respondents for shifting of the tower foundation subsequently but the same was not considered due to technical feasibility as the transmission route stood approved through the Central Electricity Authority, Government of India. The land was already notified for acquisition along with other locations for construction of the tower.

04. The payment of 05 marlas of the land was made in favour of the appellant on negotiated rates fixed during private negotiation committee in 2008 under the Chairmanship of Deputy Commissioner, Budgam.

05. The appellant, aggrieved of the fact that compensation awarded to the appellant on account of laying of the transmission line in which power transmission towers were erected as also with respect to the land on which overhead transmission lines, approached this Court by way of OWP No. 1472/2015 titled "*Ghulam Mohi-Ud-Din Sheikh vs. State of J&K and others*". This petition was disposed of vide order dated 21.08.2015 by holding as under:

"In view of the short controversy involved, this petition is disposed of with a direction to respondents to accord consideration to petitioner's claim as set out in petition, in light of averments made in petition, annexures appended thereto and rules occupying the field. Let such decision be taken within four weeks from the date of receipt of copy of order."

06. The aforesaid order dated 21.08.2015 was not implemented and, as such, contempt petition bearing CPOWP No. 316/2016 was filed for implementation of the said order. The respondents, in compliance to the order dated 21.08.2015, considered the case of the appellant and placed on record consideration order No. 09 of 2015 dated 12.10.2015. The respondents in the consideration order decided the claim of the petitioner by holding as under:

“In view of the above given facts and in light of the Court order dated 21.08.2015, the claim of the petitioner for compensation of the land has been thoroughly been examined and considered on the touchstone of rules and the same has been found not tenable under rules and, as such, is accordingly rejected.”

07. The aforesaid consideration order dated 12.10.2015 has been assailed by the appellant by way of WP(C) No. 1531/2020. In the writ petition, the appellant prayed for quashing of consideration order No. 09 of 2015 dated 12.10.2015 whereby the claim of the appellant was rejected and sought further direction to the respondents to assess and pay compensation for acquisition of land situated at Akilpora, Razwan, Tehsil Beerwah, District Budgam, over which the power transmission towers have been erected as well as the land over which the overhead transmission lines have been laid by the department. A direction was also sought for payment of compensation with respect to fruit bearing and non-fruit bearing trees of the appellant.

08. The learned Writ Court, after considering the issue, vide order dated 06.06.2024 dismissed the writ petition being without any merit on

the ground that a land owner cannot assert any legal, fundamental or constitutional right *qua* transmission line and the aerial right of way in respect of the transmission line continues to vest with the State. Accordingly, the individual land owner cannot claim compensation in respect thereof.

09. Feeling aggrieved of the aforesaid judgment dated 06.06.2024 passed by the learned Single Judge, the appellant has preferred this appeal on the ground that while determining compensation for the land on which the tower has been constructed, the respondents were required to consider the overall repercussions of the location of the tower and the transmission lines passing through the middle of the land rendering the land unusable and uncultivable, thereby depriving the appellant of the income generated from the same.

10. According to the appellant, the respondents were duty bound to consider and pay compensation to him for the entire land on which the overhead transmission lines have been laid. The respondents have also failed to consider the repercussions and the high voltage transmission line on the crops as well as fruit bearing and non-fruit bearing trees on the land of the appellant, thereby depriving him from earning revenue from the land. It is further submitted that the acquisition of only 05 Marlas of land has diminished the value of the property over which the 220 KV transmission line is passing through. Reliance has been placed by the appellant upon the judgment rendered by the Hon'ble Apex

Court in **“Kerala State Electricity Board vs. Livisha and others, reported as (2007) 6 SCC 792.**

11. The concise case of the appellant is that the high transmission line of 220 KV is passing through the middle of his land rendering his entire land useless. This has deprived him from earnings generated from the land and though the tower has been constructed only on 05 Marlas of land, but the high voltage transmission lines have affect his entire land. Compensation of only 05 Marlas has been paid to him b the respondent, though the entire land has been affected and has become useless, therefore, compensation should have been paid for the entire land to the appellant. It is further submitted that the the respondents were under a statutory obligation to pay compensation for the entire land falling under the transmission line, but the claim was rejected by the respondents by way of a consideration order without appreciating that the entire land falling under the transmission line has become unusable and that inadequate compensation has been granted to him.

12. The respondents have refuted the claim of the appellant by stating that compensation for the land acquired for construction of tower has been released by way of private negotiation with the appellant in the year 2008. The appellant has approached this Court after a lapse of almost six years for seeking compensation for the entire land affected by the transmission lines. It is further submitted that there exists no provision for grant of compensation for land falling under the overhead transmission lines. The compensation for trees standing on the land, which were required to be cut

for providing a clear corridor for transmission line, has also been assessed by the competent authority and duly paid by the office of the Collector Land Acquisition, PDT/MHPS, Bemina.

13. The only issue which arises for consideration is whether aerial right of way can be asserted by an individual. It is well settled that aerial right of way for transmission lines continues to vest with the State and the individual land owners cannot assert any right for the same. This issue stands settled by the Hon'ble Division Bench of this Court in case titled **“Ranvijay Chand and others vs. State of J&K and others”**, reported as **2005 (1) JKJ 236**, wherein it has been, *inter alia*, held that a land holder cannot assert any right, legal, fundamental or constitutional right *qua* transmission line; the aerial right of way in respect of transmission lines continues to be with the State and individual owners cannot claim compensation in respect of transmission lines continues to be with the state and individual owners cannot claim compensation in respect thereof.

The relevant paragraph of the said judgment is reproduced as under:

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

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

constitutional, violated by the respondents in doing an act within the purview of its powers recognized by the statute.”

14. In view of the aforesaid authoritative pronouncement that aerial right of way of transmission lines remains with the State and individual land owners cannot assert any right over the same unless there is any loss or damage resulting therefrom, the appellant having received compensation of 05 Marlas of land by private negotiation, the issue with regard to payment of compensation stands settled. The contention of the appellant regarding payment of compensation for the land coming under the transmission corridor is not admissible in view of the judgment of this Court in Ranvijay Chand (supra). The compensation for trees which were cut for providing corridor to the transmission lines is also being assessed and lying in the office of the Collector, for which the appellant can approach the aforesaid office.

15. In view of the aforesaid facts and circumstances and the law laid down, we find no perversity, illegality or infirmity in the judgment impugned warranting interference. The present appeal, being without any merit, is accordingly **dismissed**.

(SHAHZAD AZEEM)
Judge

(SINDHU SHARMA)
Judge

JAMMU:
06.06.2026
RAM MURTI