

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO.1407/2024 (F)**

1. Mr. Yeshwant Hari Gawas,
Son of late Shri. Hari Gawas,
70 years of age, R/o. H no. 99,
Pimpal Wada, Amona,
Bicholim – Goa.
2. Shri Sadanand Krishna Gawas,
S/o. late Krishna Gawas,
66 years R/o, H.No: 48/2,
Ambeshiwada, Amona, Bicholim Goa.
3. Shri Milind Anant Gawas
S/o. Anant Gawas, 50 years
in age R/o, H.No: 68-A & B,
Ambeshiwada, Amona, Bicholim Goa,
4. Shri Vijaykumar Vinayak
Parab S/o, Vinayak Yashwant Parab,
33 years in age R/o. H.No: 80/2,
Ambeshiwada, Amona, Bicholim Goa.
5. Shri Tulshidas Mahadev
Gawas S/o Mahadev Gawas,
74 years in age R/o.H.No: 466,
Kalamwada, Amona, Bicholim Goa.
6. Shri Atchut Ravalu Gawas,
S/o Ravalu Gawas, 52 years
in age R/o. H.No: 173,
Kalamwada, Amona, Bicholim Goa.
7. Shri Sandesh Anant Sinari,
S/o Anant Sinari, 43 years age,
R/o H.No: 155/6, Kalam wada,
Amona, Bicholim Goa.
8. Mr. Ajit Laxman Parab,
Son of late Laxman Parab,
54 years of age, R/o.
H no. 524, Kalam Wada
Amona, Bicholim – Goa.

9. Mr. Keshav Sukdo Gawas,
Son of late Sukdo Gawas,
69 years of age, Indian National,
R/o. H no. 64, Kalam Wada,
Amona, Bicholim – Goa.

10. Mr. Santosh Navaso Gawas,
Son of late Shri. Navaso Gawas,
64 years of age, R/o. H. no. 38,
Ambeshi Wada, Amona,
Bicholim – Goa.

11. Shri Navaso Jaganath Gawas,
S/o Jaganath Gawas, 65 years
in age R/o. H.No: 38,
Ambeshiwada, Amona,
Bicholim Goa.

12. Shri Vasant Krishna Sinari,
S/o Krishna Sinari, 72 age
R/o. H.No: 36, Ambeshiwada,
Amona, Bicholim Goa.

13. Shri Narayan Pundalik Sinari,
S/o Pundalik Sinari, 68 years in age
R/o. H.No: 157, Ambeshiwada,
Amona Bicholim Goa.

14. Shri Bhiva Rama Sinari
S/o Rama Sinari, 75 years in age
R/o Ambeshiwada, Amona,
Bicholim Goa.

15. Shri Chandrakant Betu Gawas
S/o late Betu Gawas, 74 years in age
R/o. H.No: 92, Ambeshiwada,
Amona, Bicholim Goa.

16. Shri Pritesh Pundalik Gawas
S/o, Pundalik Narayan Gawas,
54 years in Age,
R/o. H.No: 73, Ambeshiwada,
Amona Bicholim Goa.

17. Shri Yeshwant Datta Parab
S/o, Datta Parab, 73 years in age
R/o. H.No: 555/A-1, Ambeshiwada,
Amona, Bicholim Goa.

18. Shri Kantha Krishna Gawas,
S/o, late Krishna Gawas,
74 years in age, R/o. H.No: 53,
Ambeshiwada, Amona,
Bicholim Goa.

19. Shri Deepak Vasant Parab
S/o. Vasant Parab, 59 years
in age R/o, H.No: 113,
Ambeshiwada, Amona,
Bicholim Goa.

20. Shri Dnyaneshwar Harichandra
Sinari S/o, Harichandra Sinari,
59 years in age R/o. H.No 21
Ambeshiwada, Amona,
Bicholim Goa.

21. Shri Anil Mahadev Sinari,
S/o Mahadev Sinari, 59 years
in age R/o. H.No: 403,
Ambeshiwada, Amona,
Bicholim Goa.

22. Shri Anant Murgo Sinari,
S/o Murgo Sinari, 70 years
in age, R/o. H.No:94,
Ambeshiwada, Amona
Bicholim Goa.

23. Shri Puti Jivaba Sinari,
S/o Jivaba Sinari 68 years in age,
R/o. H.No: 126, Ambeshiwada,
Amona, Bicholim Goa.

24. Shri Rama Baglo Gawas,
S/o Balgo Gawas 64 years
in age, R/o. H.No:49-A,
Ambeshiwada, Amona,
Bicholim Goa.

25. Shri Shambha Tukaram
Gawas, S/o Tukaram Gawas
52 years in age, R/o. H.No: 32,
Ambeshiwada, Amona,
Bicholim Goa.

26. Shri Laxmikant Narayan
Gawas, S/o. Narayan Gawas,

44 years in age R/o.H.No:173,
Pimpalwada, Amona,
Bicholim Goa.

27. Shri Harichandra Pundalik
Sinari S/o. Pundalik Sinari,
74 years in age R/o. H.No:423/1,
Kalamwada, Amona, Bicholim Goa.

28. Shri Amesh Yeshwant Parab,
S/o. Yeshwant Parab, 57 years in age,
R/o. Pimpalwada, Amona,
Bicholim Goa.

29. Shri Devanand Sugun Sinari,
S/o. Sugun Sinari, 58 years in age,
R/o. Pimpalwada, Amona,
Bicholim Goa.

30. Mr. Deepak Shiva Sinari,
Son of late Shri Shiva Sinari,
68 years of age, R/o. Kalam Wada,
Amona, Bicholim – Goa.

... PETITIONERS

Versus

1) Union of India Through
Chief Secretary New Delhi

2) Central Electricity Authority,
Ministry of Power, New Delhi.

3) The State of Goa, Through
its Chief Secretary, having
Office at Secretariat, Porvorim-Goa.

4) The Collector of North Goa
Collectorate Building, Panjim,
Tiswadi- Goa

5) The Deputy Collector of
Bicholim Bicholim-Goa.

6) M/S Goa TAMNAR Transmission
Project Ltd, Through its Manager
Office at F1 Mira Corporate Suite,
Main Mathura Road, Ishwar Nagar,
New Delhi.

7) The Secretary, Village Panchayat
of Amona, Amona, Bicholim Goa.

8) The Main Mamlatdar, Taluka
Bicholim, Bicholim- Goa

... RESPONDENTS

Mr S. D. Padiyar, Senior Advocate with Mr Gaurish Agni, Mr P. Shirodkar, Mr Pavithran A. V., Ms Akshata Rane and Mr Prasad Kholkar, Advocates for the Petitioners.

Mr Raviraj Chodankar, Central Government Standing Counsel for Respondents No.1 and 2.

Mr D. Pangam, Advocate General with Mr S. Priolkar, AGA for Respondent Nos.3, 4, 5 and 8.

Mr Ashwin Bhobe with Ms A. Fernandes, Advocates for Respondent No.6.

**CORAM: M. S. KARNIK &
VALMIKI MENEZES, JJ.**

DATE: 27th SEPTEMBER 2024

JUDGMENT: (Per M. S. KARNIK)

1. Rule. The rule is made returnable forthwith at the request of and with the consent of the learned counsel for the parties.

2. The petitioner, invoking the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India prays for a declaration that the Respondent no. 6 i.e. M/s. Goa Tamnar Transmission Project Limited (GTTPL for short) shall be entitled to carry out the work of establishment of a Transmission system for "Additional 400 KV feed to the State of Goa and Additional system for power evacuation from generation projects pooled at Raigarh (Tamnar) pool strictly along the existing 220 KV corridor line in Goa State after establishing 400 KV corridor connectivity between Mapusa and Sangod and 220 KV line between Sangod and

Xeldem as per the directions contained in the Order dated 07.04.2022 passed by the Hon'ble Supreme Court. Further, a declaration is sought that the present work carried out by the GTTPL is contrary to the Order dated 07.04.2022 of the Hon'ble Supreme Court, recommendations of Central Empowered Committee (CEC) and in the absence of approved alignment lines is per se illegal, null and void and unlawful. A further declaration is sought that the GTTPL has no right and is not entitled to enter into any part of the Petitioners' properties at Amona Village other than the existing 220 KV corridor and a further declaration that they are not entitled to carry out any activity in or interfere with the Petitioners' properties other than along the existing 220 KV corridor. The petitioners have prayed for other consequential reliefs.

3. Before we advert to the petitioners' case, it would be profitable to right away refer to the observations of the Hon'ble Supreme Court in *T. N. Godavarman Thirumulpad v/s. Union of India and Ors. - Writ Petition(s) (Civil) No.202/1995 dated 07.04.2022* having a material bearing on the controversy, which reads thus:-

“ *The GTTPL is a transmission licensee selected through a tariff based competitive bidding (TBCB) process to establish Transmission system for a "Additional 400 Kv feed to the State of Goa and Additional System for power evacuation from generation projects pooled at Raigarh (Tamnar) Pool on Build, Own, Operate and Maintain (Boom) basis" ('Project' for short).*

One of the key transmission elements forming part of the Project is the loop-in loop-out (LILO) of one circuit of the Narendra (Existing) Narendra (New) 400 Kv D/C quad line at Xeldem (NN

Line for short). The NN Line passes through the States of Karnataka and Goa.

The Project connects the southern region (Sangod/Xeldem) with the Northern Goa region (Mapusa) through the NN Line.

By report No.6 of 2021, the CEC has made certain observations and recommendations relating to the Goa Tamnar Transmission project for laying of electric lines under the transmission scheme. CEC was of the opinion that the project proposed by the GTTPL would be detrimental to the fragile ecosystem of the Western Ghats.

CEC has examined the permission granted by the Standing Committee of National Board for wildlife granting approval for the Project. CEC was of the view that instead of clearing canopy of virgin forest cover along 10.50 km long corridor with 46 m ROW in Goa State, the proposed 400 Kv line should be drawn along the existing 220 Kv corridor line in Goa State after establishing 400 Kv corridor connectivity between Mapusa and Sangod and 220 Kv line between Sangod and Xeldem. According to CEC, this course of action would ensure adequate supply of power to southern Goa region 100 MW of power now being received from ramagundam through 220 Kv line is temporarily disrupted during the construction phase of 400 Kv line between Narendra and Sangod.

CEC further recommended that the project proposal in respect of Karnataka part should also be suitably amended so as to make use of 110/220 Kv line corridor which will ensure that the commitment given by Power Grid and CEA to the Karnataka Government that no further transmission line shall be laid in the area is not violated. The

modification that has been proposed by the CEC would be in the interest of forest and wildlife in the ecologically fragile and biodiversity in these parts. Finally, CEC recommended that direction should be given to the Ministry of Power, Government of India, Goa State Electricity Department and GTTPL to redraw and modify the alignment of additional 400 Kv line corridor between Narendra (existing) Sangad (new) in the State of Goa and Karnataka in the light of the observations and recommendations made in Report 6 of 2021.

I.A. Nos. 9110 of 2022 and 9113 of 2022:

These Interlocutory applications have been filed by GTTPL seeking appropriate orders regarding the recommendations made CEC in Report No. 6 of 2021 by requiring realignment of the loop-in loop-out (LILO) of one circuit of the Narendra (Existing) Narendra (New) 400 Kv D/c quad line at Xeldem (NN Line) including whether they are binding and must be implemented by the Applicant.

In the alternative, GTTPL also said that the original route envisaged for the loop-in loop-out (LILO) of one circuit of the Narendra (Existing) Narendra (New) 400 Kv D/c quad line at Xeldem (NN Line) without any realignment as recommended in the Central Empowered Committee's Report No.6 of 2021 dated 23.04.2021.

Mr. C. U. Singh, learned senior counsel appearing for the GTTPL submitted that there would be no objection for compliance of the recommendations made by CEC in its report No.6 of 2021.

Mr. Prashant Bhushan, learned counsel appearing for the Goa Foundation also submitted that there can be objection no for the implementation of the recommendations made by the CEC in respect of realignment of the transmission line.

After examining the report No.6 and hearing the learned counsel for the parties, we approve the recommendations made by CEC in Report No.6 and direct suitable steps to be taken in accordance with the recommendations made therein. Consequent to acceptance of the report submitted by CEC, the the recommendation made by National Board for wildlife dated 07.04.2020 is set aside.

Ms. Srishti Agnihotri, learned counsel appearing for the Goa Foundation vehemently submitted that hearing of this matter should not have a bearing on the contempt petition filed by Goa Foundation in respect of felling of trees by GTTPL for constructing a sub station. It is made clear that the said contempt petition and the applications filed by GTTPL shall be decided on their own merits.

I.As and Pending application(s), if any, shall stand disposed of accordingly.”

4. The facts of the petitioners' case are as under.
5. The Ministry of Power, Central Electricity Authority by order dated 28.11.2018 conferred powers under Section 164 of the Electricity Act, 2003 ('Electricity Act' for short) on the GTTPL for laying overhead lines, which the Telegraph Authority possess under the Indian Telegraph Act, 1885 ('Telegraph Act' for short) subject to the conditions as enumerated in the said Order dated 28.11.2018. The office of the Chief Electrical

Engineer on 14.02.2019 and 30.04.2019 submitted its note as regards laying of the 400 KV line and the farmers/land owners who would be affected due to the construction of the proposed transmission line. The note records that the towers which would now be erected would occupy considerable space on the ground and causing inconvenience to the people and limiting the access for use of adjacent land. Similarly, farmers choice of crop/tree plantation would be restricted for the farms falling below the conductors (wires) of the transmission lines. The note further records that in view of scarcity of land in Goa and escalation of land value there was strong objection from the land owners. It was further recorded that a suitable solution should be arrived at for paying compensation to the farmers/land owners who are severely affected due to laying of the 400 KV line by the Respondent no 6-GTTPL.

6. The Village Panchayat of Thivim by letter dated 29.03.2019 addressed to the Secretary, Ministry of Power informed the said department that the request to issue permission by the Panchayat had been rejected in view of the resolution dated 28.01.2019 taken by the Panchayat thereby calling upon the department to obtain permission from the concerned land owners to take further necessary action in the matter. The villagers of Gavoi Thivim by their objections dated 07.06.2019 addressed to the Collector, North Goa had also lodged strong objections to the alignment of the 400 KV line. The objections set out as to how the proposed transmission line would have adverse impact on the land owners, ecology, environment, flora and fauna and called upon the authorities to identify alternate alignment for the transmission line.

7. The Village Panchayat of Surla by its objections dated 26.06.2019 submitted to the Executive Engineer, Electricity Department also objected to the laying of the 400 KV line through various properties forming part of

Village Panchayat Surla. It was requested that the existing line of alignment be altered as the land owners were fully dependent on agricultural activities from the said lands and they had no other source of income. Objections were raised by various individuals that they would be deprived of their livelihood apart from health hazards as a result of the said project.

8. The District Collector, North Goa by order dated 09.09.2020 constituted a Committee for inquiring into the request, inspection and submission of detailed report for compensation payable to the affected land owners. Thus the villagers, land owners/agriculturists strongly objected for starting any survey and tree enumeration activities in the Panchayat area of village Amona since the villagers were not supporting the said project.

9. By communications dated 05.05.2021, 09.08.2021 and dated 21.06.2022 addressed to the concerned Village Panchayats, the GTTPL informed the Panchayat that they were vested with powers under Section 164 of the Electricity Act and had powers to lay towers and transmission lines over private land without the consent of the owner or occupier of the land. The Deputy Conservator of Forest issued an order dated 22.09.2021 permitting felling of Six Hundred and Sixty-Three (663) trees for construction of the 400KV line by Respondent no 6-GTTPL. Twenty-two (22) trees from the jurisdiction of Village Panchayat of Amona were to be cut for the purpose of laying of the said lines. Objections were raised by the villagers for felling of the trees and it was again emphasized that the said project is detrimental to the interest of the villagers and therefore should not proceed. Under the Right to Information Act (RTI Act for short) the Collector, North Goa informed that the office of the Collector had not received any proposal for acquisition of land from the GTTPL.

10. The Central Empowered Committee (CEC) by report no.6/2021 made certain observations relating to the projects for laying of 400 KV electric lines under the said transmission scheme to the state of Goa. According to the petitioners the CEC conducted a study and was of the opinion that the project proposed would not be in the best interest of the of the Ecology and in fact would be detrimental to the fragile eco-system of the western ghats having regard to the manner in which the scheme was proposed to be executed.

11. Mr Padiyar, learned Senior Advocate for the petitioners submitted that the present alignment of the project is contrary to the observations of the Supreme Court in *T. N. Godavarman Thirumulpad (supra)* and the CEC report. He submitted that the project contravenes the provisions of the Electricity Act and the Telegraph Act. Learned Senior Advocate also submitted that the petitioners would be deprived of their source of livelihood as apart from losing valuable parcels of land for setting up of towers, there would be a serious impediment in the user of the land along the corridor over which the transmission lines are to pass. It is submitted that there is no proper survey or plans prepared and the corridor as well as the site at which the towers are to be located is identified in an arbitrary manner.

12. Mr Padiyar, learned Senior Advocate for the petitioners heavily relied upon the CEC report and laid emphasis on paragraphs 46, 47, 48, 49, 50, 53, 59, 60, 64, 65, 66, 67 and 74 of the report.

13. It is further submitted that no fresh alignment plan/layout has been drawn pursuant to the order of Supreme Court and no fresh approvals are obtained from concerned authorities including Central Electric Authority. The New KV line is following an alignment in complete deviation and

contrary to the alignment as directed by the Supreme Court. Petitioner's properties are not along the corridor of the existing 220 KV line, while now the petitioner's properties are subject to the new proposed lines. The petitioners' objections are not considered in the proper perspective and all steps are in violation of principles of natural justice and fair play.

14. According to the learned Senior Advocate the District Magistrate was required to inquire whether the works proposed were in accordance with the alignment plan drawn/layout in accordance with the Supreme Court order before granting any permissions. The power under Section 164 of the Electricity Act is required to be read only as to a "power of user" as conferred on the authorities under Telegraph Act. Respondent no.4 i.e. the Collector North Goa in exercise of its powers under Section 16(4) of the Telegraph Act directed the GTTPL to exercise powers under Section 10(d) and pay full compensation with respect to the properties mentioned in the said order. The construction of the project is allowed without paying compensation to the owners of the properties. The petitioners have not been notified as regards assessment of damage and payment of compensation. On the contrary the GTTPL has started construction. The GTTPL being the user of the property under Section 10(b) of the Telegraph Act cannot commence construction of the project without paying compensation to the petitioners as contemplated under section 10(d). The act of GTTPL entering into the petitioners' land is an act of trespass in violation of statutory provisions and in complete breach of Supreme Court's order.

15. Learned Senior Advocate Mr Padiyar was at pains to submit that the report of the CEC makes it clear that the same is in respect of the entire project. No plans/layout as contemplated under the Supreme Court's order are put forth and that the works are being carried out in violation of

the approved plans in deviation thereof. The NOC issued by the Goa Coastal Zone Management Authority (GCZMA) mandates that in the event of change in project profile a fresh reference shall be made to GCZMA as the GTTPL has deviated from the plans. Without any revised plans/approvals from the Forest Department and the GCZMA, works could not have proceeded. The location of towers has been changed which is in complete breach of the conditions of NOC from CRZ.

16. Mr Padiyar, learned Senior Advocate for the petitioners relied upon the following judicial pronouncements in support of his submissions:

1. Gujrat State Energy Transmission Corporation Limited V/s Ratilal Maganji Brahmabhatt (Barot) - 2021 AIR CC 1044 (GUJ);
2. Power Grid Corporation of India Ltd. V/s Century Textiles and Industries Limited and Others - 2017 (5) SCC 143;
3. Dilip Singh Chauhan and Others V/s Gujrat Urja Vikas Nigam Limited and Others - 2013 (34) GHJ 496, High Court of Gujrat.

17. Learned Advocate General Mr Pangam and Mr Bhobe, learned counsel for the GTTPL submitted that the order passed by the Hon'ble Supreme Court and the report of the CEC makes it clear that the observations therein are in the context of the transmission line which was to pass through the forest area and does not cover the 440 KV line which is the subject matter of the present petition. Mr Pangam and Mr Bhobe relied upon the following judicial pronouncements in support of their submissions:

1. Vivek Brajendra Singh V/s State Government Of Maharashtra [2012(4) MH.L.J 625]

2. Power Grid Corpn. Of India Lid. V/s Century Textiles & Industries Ltd. [(2017) 5 Supreme Court Cases 143]
3. Century Rayon Ltd.V/s. Iyp Ltd - [(2021) 20 Supreme Court Cases 758]
4. Bharat Singh And Others V/s. State Of Haryana - [(1988) 4 Supreme Court Cases 534]
5. State Of Madhya Pradesh V/s. Narmada Bachao Andolan [(2011) 7 Supreme Court Cases 639]
6. Ajay Munjal Memorial Trust And Ors. V/s. Power Grid Corporation Of India Ltd. And Ors. [2007 SCC OnLine Jhar 479]

18. We have heard learned counsel for the parties. We have perused the memo of petition, affidavit in reply and documents on record.

19. The rival contentions now fall for our determination. A careful perusal of the averments in the petition and reliefs prayed for by the petitioners reveal that the entire case of the petitioners is based on the premise that the work of the project is carried out by the GTTPL contrary to the Supreme Court's order in *T. N. Godavarman Thirumulpad* (supra) and recommendations of the Central Empowered Committee.

20. The properties of the petitioners affected as a result of the project are situated in Village Amona. The Notification dated 28.11.2018 issued by the Central Electric Authority, Ministry of Power, Government of India in exercise of powers conferred by Section 164 of the Electricity Act specifies 'Xeldem-Mapusa 400 KV D/c (Quad) line' as a part of the scope of the work. The Notification mentions the overhead lines which will pass through over, around and between various villages, towns and cities also

includes Village 'Amona'. The Notification further mentions that GTTPL applied to the Ministry of Power for authorization under Section 164 of the Electricity Act for the scheme. The Central Electricity Authority under Section 164 of the Electricity Act conferred all powers to GTTPL for laying the overhead lines, which the telegraph authority possess under the Indian Telegraph Act, with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained by Government or to be so established or maintained subject to the following among other terms and conditions viz., the applicant shall have to seek the consent of the concerned authorities i.e. local bodies, railways, national highways, State highways etc. before erection of proposed lines and, the approval is subject to compliance of the requirement of the provisions of the Electricity Act and rules made thereunder. A careful perusal of the recommendations of the CEC reveals that the meeting held on 30.11.2015 considered and deliberated on several alternatives all of which involved crossing of western Ghats (forest area). The relevant Paras of the report of the CEC dated 23.04.2021 have a material bearing in this case and are extracted as under:

“46. The Goa-Tamnar Transmission Project (GTTP) is part of National Grid Development and is proposed to be implemented through the Special Purpose Vehicle Goa-Tamnar Transmission Project Private Limited, (GTTPL), New Delhi (hereinafter referred to as GTTPL). The Project involves the laying of Additional 400 Kv feed to Goa and Additional System for Power Evacuation from Generation Projects pooled at Raigarh (Tamnar) Pool so as to supply the projected power requirement of Goa with reliability. Presently demand of Goa is mainly catered through Mapusa 3X315 Double Circuit (D/c) line 400/220 Kv substation which gets feed from Kolhapur 400 Kv substation through a 400 Kv D/c line. Goa system is also connected with Maharashtra and Karnataka through 220 Kv lines.

47. The 38th Meeting of Standing Committee on Power System Planning in Western Region held on 17.07.2015 at New Delhi discussed the provision for a new 400 Kv substation in Goa at Xeldem along with its inter connections with the Inter-State Transmission System and agreed to the same. The 39th Meeting of Standing Committee on Power System Planning in Western Region held on 30.11.2015 considered and deliberated on several alternatives all of which involved crossing of Western Ghats (forest area). The following transmission system was discussed and recommended in the 39th and 40th SCM of Western Region held on 30.11.2015 and 01.06.2016 respectively and 39th and 40th SCM of Southern Region held on 28-29.12.2015 and 19.11.2016 respectively:

i. LILO of one ckt of Narendra (existing) – Narendra (New) 400 Kv D/c (Quadline) at Xeldem. Approximately 10 Km length passes through Dandeli Wildlife Sanctuary;

ii. Xeldem-Mapusa 400 Kv D/c (Quadline);

iii. Xeldem (New) – Xeldem (existing) 220 Kv HT LS D/c line; and

iv. Dharamjayagarh Pool Sections “B” – Raigarh (Tamnar) pool 765 Kv D/c line.

The Scheme has been recommended for implementation in the 36th Meeting of the Empowered Committee on Transmission held on 26.07.2016.

48. The GTTP is part of the 400 Kv D/C Narendra (Karnataka) – Xeldem (Goa) Transmission Line which starts at Narendra Village in Dharwad District, Karnataka and Terminates at Xeldem in Goa. The overhead lines covered under the GTTP will pass through over, around and between various villages, towns and cities as listed in Gazette Notification dated 28.11.2018 of Ministry of Power, Central Electricity Authority (Annexure R-6 of Affidavit dated 02.08.2020 filed by Respondent M/s Goa-Tamnar Transmission Project Private Limited). The estimated cost of the Project is Rs.58.2 lakhs. A copy of

the Notification dated 28.11.2018 of the Ministry of Power is enclosed as ANNEXURE-R-10 to this Report.

49. The Respondent GTTPL was granted approval under section 68 (1) of the Electricity Act, 2003 for the Transmission Project. The Central Electricity Regulatory Commission granted GTTPL the Transmission licence for the Project on Build, Own, Operate and Maintain (BOOM) basis. Thereafter on 28.11.2018 the GTTPL was granted authorization by the Central Electricity Authority (CEA) under section 164 of the Electricity Act, 2003 for laying of electric lines under the Project. The Project, apart from enhancing the current power transmission capacity and reliability will also ensure power security to the State of Goa with provision for future expansion to meet the growing energy needs and projected power requirements of the State. Since Goa is already well connected with the Western Region grid at 400 Kv (through Kolhapur – Mapusa 400 Kv D/c lines and 220 Kv lines) and since Goa has got share of 100 MW in the Ramagundam STPS which is located in Southern Region it was found advantageous to have the second 400 Kv connection from Southern Region side.

50. According to the project proponents (GTTPL) out of the total 93.931 km length of the Transmission Project 16.331 kms involving 75.122 ha of land is in the State of Goa. Out of 16 kms, a stretch of 2.51 km falls in Bhagwan Mahaveer Wildlife Sanctuary (BMWLS). Further out of 75.122 ha of land an extent of 48.3 ha is forest land and remaining 26.822 ha is non-forest land. Out of 48.3 ha of forest land having 15772 trees an extent of 11.54 ha falls in Protected Area BMWLS, 19.61 ha is Reserve Forest, 2.38ha is unclassified forest and 14.77 ha is private forest. In the State of Goa there are a total of 41 transmission towers out of which 16 towers are in Private Land, 6 towers are in BMWLS, 13 towers are in notified government forests and 6 towers are in private forests. The entire length of 16.331 km corridor in Goa State has been proposed along new alignment.

51. In addition in the State of Karnataka a total length of 77.67 km of the Transmission line is to be drawn under

this project. Out of 77.67 kms a stretch of 6.64 km falls in Dandeli Wildlife Sanctuary (DWLS), 29.272 Kms. passes through Government Forest and 2.614 kms. passes through Private/Deemed Forests (total 38.497 kms). Total extent of forest land involved along this 38.497 kms. is 177.09 ha. Out of 177.091 ha. of forest land an extent of 30.412 ha falls in Protected Area of DWLS. 134.655 ha is government forest land and 12.024 ha is Private forest / deemed forest land. An estimated 62289 trees are required to be felled in the 46m wide ROW along 38.497 km forest area in Karnataka State. The Karnataka Forest Department is yet to seek clearance under FC Act 1980 from MOEF&CC for diversion of forest land for this project of laying the 400 Kv D/c line passing through the State Forests. Similarly the State Wildlife Board and the Standing Committee of National Board for Wildlife is yet to make its recommendations under Wild Life (Protection) Act, 1972 in respect of the Karnataka portion of the proposal submitted by GTTPL. A copy of the statement showing the division wise details of forest area and trees with number of towers is enclosed as ANNEXURE R-11 to this Report.

52. The Transmission Project intends to lay over head cables with about 400 metres in span between two towers inside the BMWLS. The height of the towers inside the sanctuary will vary from 45 m (150 feet) to 54m (177 feet). The clearance between the ground and the sag portion of the 400Kv high voltage line prescribed under the Electricity Act is 29.44 feet.

53. Land measuring a maximum of 20 metres by 20 metres is required for the construction of foundation tower footing of each tower. Therefore a total of about 0.25 ha of land will be required for the construction of tower footing of all the towers. Since the felling will take place mainly at the location of tower footing and considering that maximum density of 35 to 40 trees will be cut at each of the tower locations where the towers are proposed to be located a total of about 250 trees will require to be felled for constructing the 6 towers in Goa. Further, to maintain the ground clearance about 1000 trees (revised from original 4146 trees) will be required to

be cut. This includes the 250 trees to be felled for tower footing. Since trees falling in the corridor of the transmission line mostly fall below transmission line they may be required to be trimmed or lopped from time to time and not felled since the height of the towers inside the BMWLS will vary from 45 meters (150 feet) to 54 meters (177 feet) and under the statute a minimum ground clearance of 29.49 feet is mandatory for 400 Kv transmission line. The transmission line when constructed will not be affecting the movement of wildlife. Also because of long span (400 meters) between two towers the natural regeneration will be allowed to come up after the stringing work on the towers is completed excepting in the 0.25 ha. area required for the 6 tower footings. The Transmission Project being an overhead transmission line does not bifurcate the forest into different parts except for arboreal animals. Respondent GTTPL has denied that a large number of trees have intentionally been excluded from enumeration so as to minimize perception of environmental damage. The transmission line projects are environmentally friendly and are excluded from environment impact assessment studies.

54. Biodiversity study is required when proposed diversion of protected area is above 50 ha. Since in the instant case only 11.54 ha falls in the Protected area there was no requirement of conducting any Bio-Diversity Impact Assessment (BIA) and drawing up Biodiversity Management Plan (BMP) yet the Respondent GTTPS got the BIA and BMP studies conducted by an international agency Environmental Resource Management (ERM). This agency prepared the BIA Report and drew up BMP highlighting mitigation measures to be implemented by Respondent GTTPS so as to minimize the environmental impact. It was observed that the proposed Project did not have much of impact on the wildlife habitat and biodiversity loss. The impact of the Transmission Project on the environment is temporary and minor. Further, changes, if any, in the land use during the construction period will be localised and recoverable. The Report of the ERM was duly submitted to the Wildlife Warden, North Goa and subsequently to the State Wildlife Board.

55. *The proposed transmission line passes through North Goa Forest Division and Bhagwan Mahaveer Wildlife Sanctuary and forest and wildlife area involved is said to be the minimal and unavoidable.*

56. *According to Goa State Officials while finalising the route, Respondent GTTPL had also explored the possibility of avoiding protected areas. However, no better corridor with minimum impact on wildlife could be found because on the one side there is the Mollem National Park while on the other side there is the Mhadei Wildlife Sanctuary. The present route was ultimately agreed upon and finalised after assessment of the three possible routes by the State Forest Department and after ensuring minimal impact on environment. The Statement showing the alternate routes examined by GTTPL is enclosed as ANNEXURE R-12 to this Report.*

57. *At the meeting of State Board for Wildlife held on 2.12.2019 the State Board recommended the proposal relating to the Transmission Project to the National Board for Wildlife with the direction to the Respondent GTTPL to minimize and restrict cutting of trees within the protected area from the initially enumerated 4146 trees and 985 cane clumps to below 1000 trees in the entire 46 meter wide corridor of the transmission line and which was agreed to by the Respondent GTTPL. The State Board further directed the GTTPL to deposit 3% of the Project cost to the Goa State Forest Department for utilizing this money for eco-restoration, prey augmentation, reducing public dependence on forests and promoting traditional livelihood in and around the Protect area.*

58. *The Standing Committee of National Board for Wildlife (SC NBWL), at its meeting held on 07.04.2020, recommended the proposal in respect of Goa State subject to Respondent GTTPL complying with all the conditions imposed by the State Chief Wildlife Warden. The SC NBWL further recommended that the Respondent GTTPL should submit annual compliance certificate on the stipulated conditions to the State Chief Wildlife*

Warden who in turn shall submit an annual compliance certificate to the Government of India.

59. Under the Forest (Conservation) Act, 1980 approval of MoEF&CC will have to be taken for diversion of forest land for non-forest use before construction of transmission line commences in forest area. The Regional Empowered Committee of the Regional Office (SZ) of the MOEF&CC, Bangalore has examined the proposal for diversion of 48-30 ha. of forest land for construction of LILO of one CKF of Narendra (existing) to Narendra (New) 400 Kv D/C quad at Xeldem Transmission Line (North Division 36.76 ha. Wildlife & Eco Tourism (North) 11.54 ha.) in favour of M/s. Goa Tanmar Transmission Project Ltd. in its meeting held on 23.2.2021 and recommended that

“REC examined the proposal and heard the presentation made by the User Agency. REC noted that there is an already existing 110KV defunct line to Narendra and therefore desired that State Government should explore the possibility of alignment of the proposed 400 KV D/C line in the same corridor. REC also noted that the User Agency has also submitted a proposal for diversion of 177.091 ha. of forest land in Dharwad, Haliyal, Dandeli Wildlife (Kali Tiger Reserve) and Belagavi Divisions for laying of Goa-Tanmar 400 KV D/C Quad Transmission Line (LILO Project) in the State of Karnataka, which is under process at the State Government level for Forest and Wildlife Clearance. As per the guidelines issued under FC Act, any proposal for linear project such as roads, railway line, transmission line etc. needs to be processed in their entirety for comprehensive assessment of requirement of forest land and consequences if approval of any forest land is not granted. Therefore, REC decided to consider both the proposals together after receipt of proposal for Karnataka portion.”

A copy of the minutes of the meeting of the REC, Bangalore held on 23.2.2021 is enclosed as ANNEXURE R-13 to this Report.

60. However it is seen that the Regional Office of MOEF&CC vide letter dated 19.11.2020 has given concurrence for diversion of 69.41 ha. forest land in North Goa forest division for construction of 400 KV D/C Xeldem –Mapusa Transmission Line in favour of M/s. GTTPL. Also concurrence of MOEF&CC was issued vide letter dated 1.1.2021 for additional 28.24 ha. of forest land for construction of Xeldem to Xeldem (existing) 220 KV HTLS/C transmission line under North and South Goa Divisions in favour of M/s. GTTPL. It is to be noted that these two proposals for which concurrence was given by MOEF&CC are also part of the same project of Additional 400 KV feed to GOA approved by CEA. A copy each of the letter dated 19.11.2020 and 1.1.2021 of MoEF&CC, Regional Office, Bangalore is enclosed as ANNEXURE R-14 (Colly.) to this Report.”

21. The observation and recommendations of the CEC’s report are as follows:-

“64. Additional 400 KV Feed to Goa has been approved vide notification dated 28.11.2018 by Central Electricity Authority with the following scope of work;

i. LILO of one ckt of Narendra (existing) – Narendra (new) 400 Kv D/c quadline at Xeldem. Approximately 10 km length passes through Dandeli Wildlife Sanctuary.

ii. Xeldem – Mapusa 400 Kv D/c quadline

iii. Xeldem (New) – Xeldem (existing) 220 Kv HTLS D/c line

iv. Dharamjaygarh Pool Section B – Raigarh (Tamnar) pool 765 Kv D/c line.

65. There is an inbuilt provision in the approved scheme to connect southern region (Sangod / Xeldem) with Northern Goa region (Mapusa) with a 400 Kv D/c quadline. This 400 Kv line has the capacity to carry 1200 MW of power from Mapusa to Sangod as claimed in the cost benefit analysis presented by the project proponents

in the Forest Clearance proposal. Further distribution of power in the southern region are planned from Sangod 400 Kv and 220 Kv substation. A copy of the map of Goa state showing the spatial distribution of project elements is enclosed as ANNEXURE R-15 of this Report.

66. It is seen from the minutes of the 39th meeting of the Standing committee on power system planning in Western region held on 30.11.2015 that while considering the option of additional feed to Goa through the Kolhapur (PG) – Mapusa – Xeldem (Sangod) 400 Kv D/c Quad Line without going for a new corridor from Narendra (existing) to Sangod / Xeldem the Chief Engineer, Goa Electricity Department (GED) in the said meeting stated that Goa is already well connected with the Western region Grid at 400 Kv D/c line and 220 Kv lines. It is desirable to have the second 400 Kv connectivity through southern side. Further, Goa has got share of 100 MW in the Ramagundan, STPS which is located in Southern Region. Therefore Narendra (existing) Xeldem 400 Kv D/c Quad Line may be agreed as second 400 Kv feed to Goa. He further stated that the existing Supa – Ponda 110 Kv D/c line at present is not in use and the line corridor could be released for implementation of Narendra (existing) - Xeldem 400 Kv D/c line in their territory state, if required.

67. It has also been stated in the Minutes that with the implementation of the planned WR-SR interconnections, the existing issue of limited ATC (Available Transmission Capacity) between WR-SR corridors may not be a limiting factor for export of power from WR to SR.

From the above the following is clear and becomes possible:

- i) Flow of 1200 MW power from WR (Mapusa) to SR (Sangod / Xeldem) and vice versa.*
- ii) One of the consideration for approving the present Southern Region Corridor is that 100 MW power is also to be carried by the new 400 Kv line from Karnataka.*

iii) In the event of 100 MW power from Ramagundam is carried by 400 Kv line the existing 220 Kv line between Ambevadi (Karnataka) and Ponda (Goa) will become defunct and the same line corridor is available for drawing 400 Kv line in which case the 220 Kv line has to be dismantled on commissioning of new 400 Kv corridor.

68. In the above context the following recordings in the Minutes of the 39th meeting of the Standing Committee on Power System Planning in Western Region held on 30.11.2015 is significant:

“Narendra (existing) – Xeldem 400 Kv D/c line would pass through forest area of Western Ghats. In the past also during forest clearance process of Kaiga–Narendra 400 Kv D/c line a lot of resistance from various activists and NGO’s was faced. The forest clearance was recommended by Karnataka Government in 2002 only after joint confirmation from Power Grid and CEA that no further transmission line shall be laid in the area. Therefore laying of Narendra (existing) – Xeldem 400 Kv D/c line may be resisted by activist / NGO’s and obtaining forest clearance and actual implementation of the line may be delayed as in case of Mysore – Kozhikode – 400 Kv D/c line.”

69. The Member, CEA has suggested that amongst the alternatives suggested, the alternative involving minimum forest clearance problems may be finalised as second 400 Kv feed to Goa.

70. The Committee was aware of the importance attached to forest clearances in the Western Ghat region. However it missed to examine the best alternative of replacement of the existing 220 Kv line with 400 Kv line, which is an existing line and is passing through the already cleared forest cover in the National Park and Wildlife Sanctuaries, to avoid fresh clearing of forest canopy for drawing the proposed 400 Kv line. The Chief Engineer (GED) Goa in the meeting had infact made out a case for the 400 Kv line from southern side since 100 MW is already being carried from the Southern Region. A copy of the Minutes of the 39th Meeting of the Standing Committee on Power

System Planning in Western Region held on 30.11.2015 is enclosed as ANNEXURE R-16 to this Report.

71. The alignment of the second 400 Kv line to Goa, even if it is taken along the new corridor as proposed in the application for forest and wildlife clearance passing through virgin forest areas, on its commissioning the existing 110 Kv (defunct) and 220 Kv lines drawn between Karnataka and Goa will require to be dismantled as the 100 MW power can be carried through the new 400 Kv line having 1200 MW capacity. Taking into account the total available power supply lines and the peak power demand of Goa State (presently 670 MW) in the foreseeable future there will be no justification to continue with 110 Kv and 220 Kv lines between Karnataka and Goa.

72. The proposed route along 110 Kv line has not been recommended by DCF (Wildlife & ECO Tourism) because it passes through dense evergreen forest patch of Sanctuary and National Park. Also it is an ideal habitat for Gaur with lush grasses growing on rocky escarpments. These two statements are somewhat contradictory because if it is dense evergreen forest then in that case there cannot be open spaces and grass on ground. The fact however is that this alignment has secondary growth of vegetation along the defunct line and not dense virgin forest. Also Herbivore density is always higher in open forest. The openings created for laying the 400 Kv line will not take away the rocky escarpment and grassy patches. Instead it may create more grassy habitat underneath the 400 Kv line with 46 meter wider corridor. The higher tower heights and higher minimum clearance available will have lesser impact on wildlife. On the other hand if we were to go along the new proposed corridor through virgin forest it is certain to imbalance the equilibrium of the existing climax forest ecosystem. Further while discarding the 110 Kv line the Dy. Conservator of Forest has not considered the scope of replacement of 220 Kv Line which line runs almost parallel to the defunct 110 Kv line and which has 35 meter wide corridor and the corridor is free of tree growth. Copy of the letter dated 10.07.2018 of Dy. Conservator of Forest, Wildlife and ECO – Tourism (N) is enclosed as ANNEXURE R-17 to this Report. A copy of the line overview of 220 / 110 Kv line presented by

GTTPL and photographs of the existing 110/220 Kv line and the proposed site for 400/220 Kv substation at Sangod are enclosed as ANNEXURE R-18 (Colly.) to this Report.

73. It is important to note that a stretch of 2.5 Km length of the defunct 110 Kv corridor in Karnataka starting from Goa – Karnataka inter State border is proposed to be used for drawing new 400 Kv line and existing 8 towers of 110 Kv line will be replaced by equal number of towers of 400 Kv in this stretch of 2.5 Kms. The remaining corridor of the proposed 400 Kv line will pass through virgin forest land in Karnataka also. The SC NBWL has recommended the project proposal of GTTPL in respect of Goa State even before receiving the proposal from the State of Karnataka which is a clear violation of the guidelines issued by MOEF&CC in this regard. The SC NBWL does not seem to have examined the alternative available in its entirety within the State of Goa so as to ensure that there is judicious use of the available power transmission lines passing across the fragile and bio diversity rich ecosystem of the Western Ghats.”

22. In Para 74, the CEC recommended thus:-

“74. Keeping in view the detailed discussion above CEC is of the considered view that instead of clearing canopy of virgin forest cover along 10.50 km long corridor with 46m ROW in Goa State the proposed 400 Kv line should be drawn along the existing 220 Kv corridor line in Goa State after establishing 400 Kv corridor connectivity between Mapusa and Sangod and 220 Kv line between Sangod and Xeldem. This activity in fact is also part of the present project approved by CEA. This course of action will ensure adequate supply of power to the Southern Goa Region when the 100 MW of power now being received from Ramagundam through 220 Kv line is temporarily disrupted during the construction phase of 400 Kv line between Narendra and Sangod. Accordingly the project proposal in respect of Karnataka part will require to be suitably amended so as to make use of the existing 110 / 220 Kv line Corridor. This will also ensure that the commitment given by Power Grid and CEA to the Karnataka Government that no further transmission line

shall be laid in the area is not violated. Most important of all this modification in the proposal will help in saving the precious forest cover and wildlife in the ecologically fragile and biodiversity rich Western Ghats.”

23. A careful perusal of the order passed by the Supreme Court in *T. N. Godavarman Thirumulpad* (supra) and recommendations and observations of the CEC will reveal that these recommendations are in the context of forest area and cover forest and wildlife in the ecologically fragile and biodiversity rich western Ghats of Goa. In light of the observations and recommendations of the CEC, we do not find any merit in the contentions of learned Senior Advocate for the petitioners that the proposed 400 KV line should be drawn along the existing 220 KV corridor line between Mapusa and Sangod stretch and 220 KV line between Sangod and Xeldem stretch. This course of action was adopted to ensure adequate supply of power to the southern Goa region when the 100 MW of power now being received from Ramagundam through 220 KV line is temporarily disrupted during the construction phase of 400 KV line between Narendra and Sangod. The observations are thus made for protecting forest cover and wildlife in the ecologically fragile and biodiversity rich western Ghats.

24. A perusal of the order of the Hon’ble Supreme Court reveals that the aforesaid report of the CEC and the observations and recommendations made therein are referred to. In the context of such observations and recommendations, Their Lordships observed :

“ CEC was of the opinion that the project proposed by the GTTPL would be detrimental to the fragile ecosystem of the Western Ghats.

CEC has examined the permission granted by the Standing Committee of National Board for wildlife granting approval for the

Project. CEC was of the view that instead of clearing canopy of virgin forest cover along 10.50 km long corridor with 46 m ROW in Goa State, the proposed 400 Kv line should be drawn along the existing 220 Kv corridor line in Goa State after establishing 400 Kv corridor connectivity between Mapusa and Sangod and 220 Kv line between Sangod and Xeldem.”

25. This observation was made by Their Lordships as according to the CEC, this course of action would ensure adequate supply of power to southern Goa region 100 MW of power now being received from Ramagundam through 220 KV line is temporarily disrupted during the construction phase of 400 KV line between Narendra and Sangod. Thus the Supreme Court’s order in our humble opinion is in the context of safeguarding the interest of forest and wild life in the ecologically fragile and biodiversity in these parts.

26. Finally, CEC recommended that direction should be given to the Ministry of Power, Government of India, Goa State Electricity Department and GTTPL to redraw and modify the alignment of additional 400 KV line corridor between Narendra (existing) and Sangad (new) in the State of Goa and Karnataka in the light of the observations and recommendations made in the report of the CEC. Accordingly, after examining the report of the CEC, the Hon’ble Supreme Court approved the recommendations made by the CEC and directed that suitable steps be taken in accordance with the recommendations made therein. It is in this context that the recommendations made by the National Board for Wildlife dated 07.04.2020 was set aside. The order passed by the Hon’ble Supreme Court and the report of the CEC therefore is not in the context of 400 KV line that is passing through Village Amona which is the subject

matter of the present petition or in the context of the 400 KV line which was proposed between Xeldem to Mapusa.

27. The contention of the learned Senior Advocate for the petitioners that in view of the order of the Hon'ble Supreme Court and the report of the CEC, the alignment of the 400 KV line between Xeldem to Mapusa has to be along the 200 KV line which is existing is without any merit. The petition as filed proceeds on the footing that the proposed alignment of the 400 KV line between Xeldem to Mapusa is contrary to the order passed by the Hon'ble Supreme Court and the recommendations of the CEC deserves to be rejected. In this view of the matter we need not have proceeded any further for there are no specific pleadings raised in respect of the other contentions raised by the learned Senior Advocate for the petitioners during the course of arguments and by way of a rejoinder. It is pertinent to note that the petitioners' properties are not falling in the forest areas. As such no permission from the MoEF is required for drawing lines over the said properties.

28. Nevertheless, let us deal with the contention of the learned Senior Advocate for the petitioners that the GTTPL is entering into the petitioners' properties without following due process of law and in breach of principles of natural justice. Similar contentions in the context of the provisions of Telegraph Act and the objections about the need for re-alignment was subject matter for consideration before the High Court of Gujarat in *Gujarat State Energy Transmission Corporation Limited v/s. Ratilal Maganji Brahmabhatt (Barot) – AIR Online 2020 Guj 1911*. Their Lordships referred to a Division Bench judgment of this Court in *Vivek Bajendra Singh v/s. State Government of Maharashtra – 22012 (4) Mh.L.J. 625* and in paragraph 56 observed thus:-

“56. A Division Bench of the Bombay High Court, speaking through Hon’ble Justice S. A. Bobde (as His Lordship then was) negated all the contentions, referred to above, and held as under;

“ The land of the petitioners, which is largely agricultural, fall within the meaning of the term “estate”. ”

The term "rights" has been defined to include any rights vesting in a proprietor, sub- proprietor etc. vide Clause (b) of Sub-Article (2). Under the provisions of the Electricity Act, 2003 and the Indian Telegraph Act, 1885 in question, the authorities, under directions of the Government, acquire several rights in estates. Those rights are in the nature of opening up and breaking up of the soil and pavement of any street, railway or tramway upon certain conditions, the power to lay overhead lines and for that purpose do all things necessary, including the removal of trees, structures and objects, vide Sections 67 and 68 of the Electricity Act, 2003 or the old Act of 1910. The authorities also acquire the rights over estates, such as the user of property under, over, along, across, in or upon which the telegraph authority places any line or post vide 10(b), the right to enter the property in order to repair or remove lines vide 11, the power to alter position of gas or water pipes or drains vide 14 and further to apply for an order for removing resistance or obstruction to the exercise of such a right by a District Magistrate. The effect of Clause (b) to the proviso to Section 10 of the Telegraph Act is that though the authority may place etc. a line upon any immovable property, the Central Government thereby does not acquire any right other than that of user only in the property. Thus, the provisions in question must be construed as law providing for the acquisition of rights in any estate within the meaning of Article 31A and, therefore, cannot be deemed to be void on the ground that they are inconsistent with or take away or breach any of the fundamental right conferred by Articles 14 or 19 of the Constitution. An executive act performed under the law in question, namely, of deciding to enter upon and entering the property of owners, is also not vitiated on the ground that the initial attempt to enter the property for the purpose of placing lines was not preceded by notice or hearing. As observed earlier, the scheme of the law is that the person offering resistance or obstruction is entitled to be heard when

the transmission company applies for removal of such resistance and obstruction under Section 16(1). In our view, though not expressly provided for, the requirement of hearing must be read into Section 16 (i). We are informed that as a practice land owners are always heard when applications are made by a transmission company for removal of obstruction and resistance. The requirement to hear the owners or occupiers at this stage is, in our view, sufficient compliance with the rules of natural justice and, admittedly, in the present case all the petitioners have been heard by the District Magistrate.

*It was contended by Mr. R.P. Joshi, the learned counsel for the petitioners that to the extent the fundamental rights are part of the basic structure of the Constitution, even the validity of laws placed in the Ninth Schedule can be tested against the basic structure of the Constitution as held by the Supreme Court in **I.R. Coelho (Dead) By L.Rs. v. State of T.N.** (2007) 2 SCC 1: (AIR 2007 SC 861). No question of any immunity on the ground that the laws are placed in the Ninth Schedule arises here. In fact, we find that in Coelho's case the Supreme Court distinguished between the scheme of immunity provided by Article 31A and Article 31B. It observed in relation to Article 31 A that,*

“.....Article 31-A does not exclude uncatalogued number of laws from challenge on the basis of Part III. It provides for a standard by which laws stand excluded from judicial review.....”

Thus the reliance on the observations of the Supreme Court in Coelho's case for the proposition that it is not permissible to override the entire Part III of the Constitution by invoking Article 31-A are misplaced.

*Mr. Manohar relied on the judgment of the Supreme Court in **K.T. Plantation Private Limited and Anr. v. State of Karnataka** (2011) 9 SCC 1: (AIR 2011 SC 3430) and submitted that the Supreme Court has reiterated that a law is immune from challenge on the ground of arbitrariness, unreasonableness under Article 14 of the Constitution of India. In the context of a law made by the Legislature of a State, the Supreme Court observed as follows:-*

"208. We have already found, on facts as well as on law, that the impugned Act has got the assent of the President as required under the proviso to Article 31-A(1), hence, immune from challenge on the ground of arbitrariness, unreasonableness under Article 14 of the Constitution of India.

209. Statutes are many which though deprive a person of his property, have the protection of Article 30(1-A), Articles 31-A, 31-B, 31-C and hence are immune from challenge under Article 19 or Article 14, the basic structure and the rule of law, apart from the ground of legislative competence. In I.R. Coelho case the basic structure was defined in terms of fundamental rights as reflected under Articles 14, 15, 19, 20, 21 and 32. In that case the Court held that statutes mentioned in Schedule IX are immune from challenge on the ground of violation of fundamental rights, but if such laws violate the basic structure, they no longer enjoy the immunity offered by Schedule IX."

*19. Mr. Joshi, the learned counsel for the petitioners relied on the observations of the Supreme Court in the case of K.T. Plantation Pvt. Ltd. to the effect that a law, though protected by Article 31-A, may still be attacked on the ground that it violates the rule of law or basic structure of the Constitution. However, there is nothing in the present provisions which can be shown to have violated the rule of law or the basic structure of the Constitution. Mr. Joshi also relied on certain observations of the Supreme Court in **Sahara India (Firm), Lucknow v. Commissioner of Income Tax, Central-I and Anr. (2008) 14 SCC 151: (AIR 2008 SC (Supp) 308)** and submitted that a hearing is an essential requirement before an administrative action is taken. In Sahara India, however, the Supreme Court was considering, whether a hearing before an order under Section 142(2-A) of the Income Tax Act requiring special audit was necessary. The Supreme Court observed that, an order under the said provisions of the Income Tax Act leads to serious civil consequences and though the provision does not either provide or bar a pre- decision hearing, the principle of audi alteram partem will have to be read in such a provision.*

20. Mr. Joshi also relied on the decisions of the Supreme Court in *Raghubir Singh Sehrawat v. State of Haryana and Ors.* (2012) 1 SCC 792: (AIR 2012 SC 468) and *Darshanlal Nagpal (Dead) By L.Rs. v. Government of NCT of Delhi and Ors.*, where the Supreme Court discussed the importance of natural justice enshrined in Section 5A of the Land Acquisition Act before any person is deprived of his land by way of compulsory acquisition. The Supreme Court held that such a person must have an opportunity to oppose the decision of the State Government to acquire the particular parcel of land, particularly since he may also point out that the land proposed to be acquired is not suitable for the purpose specified in the notification issued under Section 4(1). The present case does not involve the acquisition of land but only the user by the State for a limited purpose, for which there is provision for payment of compensation. Moreover, it seems unreasonable to confer on the owners or occupiers of land a choice about what should be the route of the electric line and where it should be placed, since such a decision must yield to the dictates of technical knowledge, expertise and viability. There is no doubt that if all owners and occupiers of land over hundreds of kilometers are allowed to have a say and object to the routes and if the validity of the orders passed under objection is allowed to be contested, the route may not get finalized for years. Having regard to the importance of electricity to the life of citizen, particularly to essential services and industry, such a procedure would be detrimental to public interest. Similarly, the observations in *Darshanlal Nagpal's* case, emphasizing the importance of the rules of natural justice cannot be applied to the present case. Apart from the fact that challenge on the ground of Article 14 is excluded by virtue of Article 31A, we are of the view that the present case calls for a situational exception and of necessity, the authorities may not be compelled to hear owners and occupiers before deciding on the route over which an electric line should be placed. Therefore, the contention that the legislative scheme, which does not require the authorities to hear the owners and occupiers of the land while planning the route of an electric line is unconstitutional, is rejected. So also the contention that Section 164 of the Electricity Act, 2003 and Section 10 of the Indian Telegraph Act, 1885 are void being violative of Article 14 is rejected.

We do not see any merit in the contention that the provisions are violative of Article 21 on the ground that they adversely affect the health of persons living in or around high tension lines. In the first place, the electric line in question, which is high tension 400 KV line is to be placed over agricultural fields and not over a residential area. Secondly, no proof is placed before the court to enable it to draw an inference that the placing of electric line causes cancer as alleged. We are unable to draw this inference on the basis of a report from Australia placed on record.

It was next contended on behalf of the petitioners that the action of the transmission company in placing the electrical line over the lands of the petitioners without obtaining the consent of the owner or occupier is violative of Section 12 (2) of the Electricity Act, 1910. Section 12(2) of the said Act reads as follows:-

12. Provisions as to the opening and breaking of streets, railways and tramways. - (1)..... (2) Nothing contained in sub-section (1) shall be deemed to authorise or empower a licensee, without the consent of the local authority or of the owner or occupier concerned, as the case may be, lay down or place any electric supply-line, or other work in, through or against any building, or on, over or under any land not dedicated to public use whereon, wherever or whereunder any electric supply line or work has not already been lawfully laid down or placed by such licensee:

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

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

writing direct any such support, stay or strut to be removed or altered.

This contention is misplaced in view of the provisions of the Electricity Act, 2003. This Act was enacted for consolidating the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry. The Statement of Objects and Reasons specifically referred to the need of harmonising and rationalising the provisions of the Indian Electricity Act, 1910 and the necessity to enact new legislation for regulating the electricity supply industry in the country which would replace the existing laws. Section 185 of the Electricity Act, 2003 repealed the Indian Electricity Act, 1910 containing Section 12 relied upon by the petitioners. Section 185 reads as follows:-

185. Repeal and saving.- (1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910 (9 of 1910), the Electricity (Supply) Act, 1948 (54 of 1948) and the Electricity Regulatory Commissions Act, 1998 (14 of 1998) are hereby repealed.

(2) Notwithstanding such repeal, - (a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 (9 of 1910), and rules made thereunder shall have effect until the rules under sections 67 to 69 of this Act are made;

(c) the Indian Electricity Rules, 1956 made under section 37 of the Indian Electricity Act, 1910 (9 of 1910) as it stood before such

repeal shall continue to be in force till the regulations under section 53 of this Act are made.

(d) all rules made under sub-section (1) of section 69 of the Electricity (Supply) Act, 1948 (54 of 1948) shall continue to have effect until such rules are rescinded or modified, as the case may be;

(e) all directives issued, before the commencement of this Act, by a State Government under the enactments specified in the Schedule shall continue to apply for the period for which such directions were issued by the State Government.

(3) The provisions of the enactments specified in the Schedule, not inconsistent with the provisions of this Act, shall apply to the States in which such enactments are applicable.

(4) The Central Government may, as and when considered necessary, by notification, amend the Schedule.

(5) Save as otherwise provided in sub-section (2), the mention of particular matters in that section, shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals.

According to the petitioners since Rules have not been made under Sections 67 to 69 of the new Act of 2003, the provisions contained in Sections 12 to 18 continue to have effect as provided by Clause (b) above and, therefore, the respondents were bound to obtain the consent of the owners and occupiers of the land under Section 12. This submission is based on an erroneous assumption that the act of placing an electric line is being performed by the Transmission Company under Section 12 of the Electricity Act, 1910 which is temporarily saved as a transitory provision till the enactments of rules. On the other hand, the State of Maharashtra has issued a notification under Section 164 of the new Act of 2003 conferring powers with respect to the placing of telegraph lines and posts, which the Telegraph Authority possesses under the Indian Telegraph Act, 1885 for the purpose of placing of electric line for transmission of electricity on the Transmission Company. When

such a notification is issued under the Electricity Act, 2003 in terms, the person authorized exercises powers of a Telegraph Authority under the provisions of the Indian Telegraph Act, 1885 and not powers under Sections 12 to 18 of the old Act, 1910 which are temporarily saved. It is obvious that after such authorization under Section 164 of the new Act 2003, the Transmission Company is bound to exercise the powers of a Telegraph Authority with respect of placing of telegraph lines and posts for the purpose of placing of an electric line for the transmission of electricity. These powers are found in Part-III of the Indian Telegraph Act, 1885 vide Sections 10 to 16. None of these provisions provide for obtaining consent of an owner or occupier of the land. The legislative scheme in regard to the electric lines is that after the repeal of the Indian Electricity Act, 1910, the work of placing of electrical lines must be done under Sections 12 to 18 of the old Act 1910 till rules are framed under Sections 67 and 68 of the new Electricity Act, 2003. If there is any such notification under Section 164 of the new Act 2003, conferring powers of the Telegraph Authority for the purpose of placing electric lines, during the transitory period when rules are not framed under Sections 67 and 68 of the new Act 2003, they did not and cannot act under Sections 12 to 18 of the old Act, 1910. The contention on behalf of the petitioners is, therefore, rejected."

29. Their Lordships in *Gujarat State Energy Transmission Corporation Limited (supra)*, took notice of the fact that in the above referred judgment of the Bombay High Court, the judgment of Gujarat High Court in the case of *Himmatbhai Vallabhbbhai Patel v/s. Chief Engineer (Project) Gujarat Energy Transmission and Ors. - AIR 2011 (NOC) 405 (Guj)* has been relied upon and quoted with approval in paragraph 25. The final conclusions in paragraph 58 are extremely significant reading thus:-

“ 58. The final conclusions are as under:-

58.1 The Part III of the Telegraph Act, 1885, deals with the Power to place "Telegraph Lines and Posts" and there are other provisions in the said Act, applicable to all the properties. As seen

from the plethora of cases, the powers conferred on the telegraph authority to place and maintain telegraph lines and towers, are traceable to Sections 10, 11 and 14 of the Act, 1885 and by virtue of Section 164 of the Electricity Act, 2003, it is conferred on any public officer, licensee or any other person engaged in the business of supplying electricity.

58.2 As per Clause (c) to Section 10, the authority can exercise its powers in respect of the property of a local authority only, by obtaining permission of that authority, whereas, no such permission is required in relation to the property of others. Section 10 does not contemplate notice to an owner or occupier of land to show cause against laying of a line and it authorizes the telegraph authority, to place a telegraph line under, over, along or across any immovable property. The proviso makes it clear that the licensee or any other authorised person does not acquire any right, other than that of user of the property. The right conferred on the land owner is only to seek for payment of compensation for any damage sustained by him, by reason of exercise of the powers.

58.3 Section 10 of the Indian Telegraph Act, 1885, confers a legal sanction to a telegraph authority to enter into any private property, subject to the condition that, while entering into the property and during the course of execution of any work, the telegraph authority is under an obligation to cause as little damage, as possible, and shall pay full compensation to all the persons interested for any damage sustained by them, while exercising the powers conferred under Section 10 of the Act.

58.4. When power of the telegraph authority to enter into any private property, is subject to the conditions to cause as little damage as possible, and when there is a provision for payment of compensation, the question as to whether, the said authority should seek for consent from the owner of the property, or provide him an opportunity of hearing before entering into the property, does not arise. However, the land owner may be informed of the work to be executed.

58.5 Since the powers under Section 10 of the Indian Telegraph Act, 1885, can be exercised without acquiring the land in question, once an order is passed by the appropriate government under Section 164 of the Electricity Act, 2003, the public officer, licensee or any other person engaged in the business of supplying electricity shall be entitled to proceed with the works of placing the electric lines without acquiring the land in question. Usage of the land by the licensee or the authorised person, does not amount to acquisition.

58.6 Section 164 of the Electricity Act, 2003, empowers the State Government to confer, by an order in writing, powers which the telegraph authority possesses under the Indian Telegraph Act, 1885, with respect to placing of the telegraph lines and posts, on any public officer, licensee or any other person engaged in the business of supplying electricity under that Act, for placing of electrical plants and electric lines, in terms of Section 2(20), which defines "electric line", as any line which is used for carrying electricity for any purpose and includes--

"(a) any support for any such line, that is to say, any structure, tower, pole or other thing in, on, by or from which any such line is, or may be, supported, carried or suspended; and

(b) any apparatus connected to any such line for the purpose of carrying electricity; "

58.7 The power conferred on any public officer, licensee or any other person engaged in the business of supplying electricity under the Electricity Act, for the abovesaid purpose, may be subject to such conditions, if any, the Government may deem fit to impose and also subject to the provisions of the Indian Telegraph Act, 1885.

58.8 The authorisation, in terms of Section 164 of the Electricity Act, 2003, read with Section 10 of the Indian Telegraph Act, 1885, authorising the public officer or licensee or any other person engaged in supplying electricity, all the powers of the Telegraph Authority, which includes the power to enter into any private property, subject to the condition that while entering into the property and the public officer or licensee or any other person, authorised under the Act, is

under an obligation to cause as little damage as possible, with a guarantee for payment of compensation for the owner of the land or the persons interested.

58.9 Sections 16 and 17 respectively of the Indian Telegraph Act, 1885, do not limit the absolute powers of the telegraph authority to enter into any property for the purpose of enforcement of Section 10 of the Indian Telegraph Act, 1885, read with Section 164 of the Electricity Act, 2003, by which, the public officer or licensee or any other person engaged in the business of supplying electricity under this Act, is empowered to exercise all the powers, for the purpose of placing electrical plant, line, erection of towers, conductors, poles, etc. 58.10 The intention of the Legislature, is to provide electricity, in terms of Section 43 of the Electricity Act, 2003. When the purpose of the Act, is to provide the basic amenity of electricity to the public at large, and if every objection/resistance has to be entertained under Section 16(1) of the Indian Telegraph Act, 1885, then it would render Section 10 of the Indian Telegraph Act, 1885 and Section 164 of the Electricity Act, 2003, meaningless, thereby, the power conferred on the telegraph authority to enter into any property, subject to causing, as little damage as possible, with an assurance of payment of compensation to the damage, if any, would be redundant.

58.11 If Section 16(1) of the Act, has to be construed, conferring a right on the landowner to seek for an opportunity of prior notice or consent, then the very purpose of Section 10 of the Indian Telegraph Act, 1885 and Section 164 of the Electricity Act, 2003, would be defeated.

58.12 Vis-a-vis Section 185 (2) (b) of the Electricity Act, 2003 and Section 12 (2) of the repealed Indian Electricity Act, 1910, under which the consent of the owner or occupier is essential and on the issue, as to the enforceability of Section 12 of the Act, until the Rules are made under Section 67 of the Electricity Act, 2003, consent of the owner or occupier is necessary, only in the absence of any order, passed under Section 164 of the Electricity Act, 2003.

58.13 Having taken into consideration the relevant provisions of the Indian Telegraph Act, 1885 and Electricity Act, 2003 and analysis of Section 67 and section 164 of the Electricity Act, 2003, the legal position is that, whenever an order is passed by the appropriate Government, in exercise of powers under Section 164 of the Electricity Act, 2003, for placing of electric lines for the transmission of electricity, conferring upon any public officer, licensee or any other person engaged in the business of supplying electricity any of the powers which the telegraph authority possesses under the Indian Telegraph Act, 1885, with respect to the placing of telegraphic lines and posts for the purposes of a telegraph established by the Government, such public officer, licensee or any other person engaged in the business of supplying electricity, exercises all the powers, as that of the telegraph authority, under the Indian Telegraph act, 1885.

58.14 However, in the absence of such an order under Section 164 of the Electricity act, 2003, if a licensee i.e., a person who has been granted a licence to transmit electricity or to distribute electricity under the Act, proposes to place electric lines, electric plant or other works necessary for transmission or supply of electricity, Section 67 of the Electricity Act, 2003 comes into operation and consequently, prior consent of the concerned owner or occupier, may be required, under Section 12 (2) of the Indian Electricity Act, 1910.

58.15 The provisions of the Works of Licensees Rules, 2006 made under Section 67 (2) of the Electricity Act, 2003 are in pari materia to Section 12 of the repealed Indian Electricity Act, 1910. The Works of Licensees Rules, 2006 are applicable, only in a case, where the works have been taken up by the licensee, under Section 67 (1) of the Electricity Act, 2003. But Section 67 (1) of the Electricity Act, 2003, as well as the rules made under Section 67 (2) would govern the field, only in the absence of an order, under Section 164 of the Electricity Act, 2003.

58.16 Section 16 states that if there is any resistance or obstruction, the District Magistrate may in his discretion, order that the telegraph authority shall be permitted to exercise all the powers. Further, after such an order, a person offering any further resistance is deemed to

have committed offence under Section 188 of the Indian Penal Code. Once the technical feasibility of the project, has been approved by the appropriate Government, by issuing an order under Section 164 of the Electricity Act, 2003, no land owner or person interested can seek for shifting or re-aligning of the route, on the premise that the District Collector-cum-District Magistrate, has the powers to do so. The District Collector has no powers to alter any route or alignment, except to remove the difficulties faced by the licensee or the person authorised, pursuant to the orders issued under Section 164 of the Act.

58.17 If the intention of the Legislature was to seek for consent or permission from every owner and if the right of such owner has to be recognised, in terms of Section 16(1) of the Telegraph Act, due to resistance/obstruction, then the execution of any work or project, would be stopped at every stage. Needless to state that the execution of works, involving erection of towers and connection of overhead lines, is done, only after a detailed field study, by identifying a feasible route of the proposed transmission line, and while selecting suitable corridors, residential areas to be avoided, span length, the angle of deviation, extent of damage, likely to be caused, while erecting towers, maintenance cost of electric lines and towers and other factors, have to be considered. Public interest, in providing electricity to a large section of people and industrial establishments, etc., has to be given weightage over private interest.

58.18 If the authorities have to recognize the right of obstruction or resistance, in terms of Section 16(1) of the Indian Telegraph Act, 1885, then the moment, any notification is published, all the landowners or interested persons, who have the knowledge of the commencement of any development work, would immediately resist or obstruct the work, and may even seek for re-location or if the towers, posts had already been erected, may seek for re-alignment or removal of towers and plants, erected by the public officer or licensee or any other person, engaged in the business of supplying electricity, authorised to carry out the works, in terms of an order passed by the appropriate Government, under Section 164 of the Electricity Act, 2003.

58.19 When a project involves huge expenditure, erection of many towers at various places and when such project involves, greater public interest, then even a single owner, under the pretext of making objections/resistance, would attempt to stall the process of execution of the project. When entry into any property is legally authorised, with payment of compensation to the land owner, no prior consent is required.

58.20 The Apex Court and other Courts in India, have categorically held that the action of the licensee or the competent authority, in erecting poles or posts, in the property or drawing lines over the property, does not amount to acquisition of lands and it amounts to only user of the property to the extent indicated and therefore, there is no requirement to initiate any land acquisition proceedings, giving opportunity to the land owners, when execution of the work, is ordered under Section 164 of the Act and accordingly, carried out by the licensee or any other competent authority.

58.21 Even if any Court issues any directions to consider the representation of any land owner or person interested, such directions are required to be considered only to the limited extent of payment of compensation, to be given by the licensee or the competent authority and the directions issued, if any, would not empower the District Collector-cum-District Magistrate, to pass any order, contrary to the orders, passed under Section 164 of the Act.

58.22. When the appropriate Government passes an order under Section 164 of the Act, the Collector is bound by the said order, and he is not superior to the Government, to hold that the Government has erred in passing an order, under Section 164 of the Act, authorising the licensee or the competent authority to carry out the work, in the route, which involves Techno-Economic Consideration.

58.23 The Act confers powers to the Telegraph Authority to determine the property over which the lines are to pass or posts to be erected. The powers of the District Magistrate under Section 16(1) of the Indian Telegraph Act, 1885, does not extent to any adjudication, as to from where and how, the line has to be drawn over any specific

item of the property or where posts have to be erected or not, in any specific item of the property.

58.24 The Power of the District Magistrate is confined only to the extent of exercising his discretion in granting permission to the Telegraph Act, to execute the work, when an application is made by the licensee or the competent authority.

58.25. Section 10 of the Indian Telegraph Act gives legal sanction to the licencing authority to enter into any property, to lay poles or posts or draw electric lines. But while doing so, the damage of the property should be less. If there is any resistance, the licensee or the authorised person may approach the District Magistrate-cum-District Collector, to grant permission.

58.26. Once the power is conferred on the licensee or any other competent authority, there can be no objection to the implementation of the scheme, on the principles of natural justice or on the ground of unauthorised use of the land.

58.27. The legislature has conferred powers on the appropriate Government to authorize a public officer or a licensee, etc., under the Electricity Act to exercise the specific powers of an authority under the Indian Telegraph Act, 1885. The authorisation may be general in favour of a transmission company or in a given case, special. The route is decided by the transmission company. The decision to mark a route for laying an electric line is a highly specialized and technical. At that time, it is unrelated to any specific land owner. The route may be for over hundreds of kilometers passing over Government lands, lands of local authorities and private lands and it may not be practicable to hear the land owners along the entire route.

58.28. Having regard to the specialized and technical nature of the task, and the fact that the lines are laid for distribution of electricity, it is the view of this Court that, the Legislature has not provided for any notice or hearing to the public at large, or to the land owners. Therefore, when the appropriate Government authorises a person or any body under the Electricity Act, to exercise the powers of the

Telegraph Authority, all the powers under the Indian Telegraph Act, 1885, are meant to be exercised.

58.29. The Electricity Act, 2003, is a progressive enactment, with a specific purpose of providing electricity to a large number of people, across the country, to promote industrial and sustainable development in all walks of life. Right of a land owner to possess and enjoy the property, though recognised as a Constitutional Right, under Article 300-A of the Constitution of India, such right has to yield to the Articles 14 and 21 respectively of the Constitution of India, which strive to achieve the Constitutional Goals, enshrined in the basic structure of the Constitution of India. [see T. Bhuvaneswari vs. The District Collector cum District Magistrate, Erode District, Erode, W.P. No.18548 of 2013, decided on 19.11.2013]

(Emphasis supplied)

30. Having carefully perused the decision of the High Court of Gujarat which relied on a decision of this Court, though the learned Senior Advocate for the petitioners submitted that the decision of the High Court of Gujarat has only a persuasive value and we take a different view, we find ourselves in respectful agreement with the view taken by Their Lordships and see no reason to take a different view.

31. Insofar as the contention of the learned Senior Advocate for the petitioners – “(a) that there are no materials indicating about the survey being conducted from where the 400 KV line will pass; (b) that the alignment is changed to favour somebody to the detriment of the petitioners; (c) that the principles of natural justice are violated”, we find that the notification of the Central Electricity Authority, Ministry of Power dated 28.11.2018 conferred powers to the GTTPL for laying overhead lines, which the Telegraph Authority possesses under the Indian Telegraph Act, 1885, which overhead lines are to pass through over, around and between the villages indicated in the notification and so far as the Xeldem-Mapusa 400 KV line is concerned, the Amona village is specifically

mentioned therein. The petitioners are not alleging any malafides nor are there any pleadings or materials to indicate that such re-alignment is contrary to any provisions of law. The GTTPL is implementing the scheme pursuant to the powers conferred on it under Section 164 of the Electricity Act. The project is in the public interest. The electric line is defined in terms of Section 2(20) as any line which is used for carrying electricity for any purpose and includes any support for any such line, that is to say, any structure, tower, pole or other thing in, on, by or from which any such line is, or may be, supported, carried or suspended. In the facts of the present case there is no question of insistence on the compliance with the principles of natural justice before erecting the towers which is used as a support to carry the electric line. Section 10 of the Indian Telegraph Act gives legal sanction to the licencing authority to enter into any property, to lay poles or posts or draw electric lines. But while doing so, the damage of the property should be less. If there is any resistance, the licensee or the authorised person may approach the District Magistrate-cum-District Collector, to grant permission. It is relevant to note that the Collector, North Goa has filed an affidavit in reply opposing the petition. In paragraph 22 to 26 it is stated thus:-

“22. I say that on 16.04.2024 the owners/occupiers of the subject immovable properties in Village Amona attended the meeting including Petitioner Nos. 1, 2, 3, 6, 14, 15, 18, 20, 23 & 29 herein. I say that all the owners/occupiers of the subject immovable properties in Amona, Village objected to the proposed alignment of the 400kV transmission line, which objections were heard by the Additional Collector - I and the owners/occupiers were explained the provision in law pertaining to the issue at hand.

Annexed hereto is a copy of the Roznama of the hearing dated 16.04.2024 marked as "Annexure D".

23. I say that pursuant to the hearing dated 16.04.2024, an order dated 13.05.2024, under Section 16 and Section 10 of the Indian Telegraph Act 1885 was issued in respect of Survey Nos. 98/4, 96/3, 91/2, 84/1, 83/2, 83/3 and 66/9 of Village Amona, Bicholim Goa.

Hereto annexed is a copy of the order dated 13.05.2024 alongwith the corrigendum dated 03.09.2024 marked as "Annexure E".

24. I say that the details of land compensation of tower foundation area of 400 kV D/c Xeldem-Mapusa Transmission line in Amona Village has been ascertained.

Annexed hereto is a copy of the details of land compensation of tower foundation area of 400 kV D/c Xeldem-Mapusa Transmission line in Village Amona marked as "Annexure F".

Annexed hereto is a plan showing position of the foundation on survey map alongwith detail area chart specifying area and survey number marked as "Annexure G".

25. I say that details of the area coming under the power transmission line corridor in Amona Village has been identified, and has been sent to the Dy. Collector, Bicholim, Goa for further action vide letter dated 12.08.2024.

Annexed hereto is a copy of the letter dated 12.08.2024 marked as "Annexure H".

26. I say that the Dy. Collector, Bicholim, Goa has issued a Memorandum dated 27.08.2024 to the Mamlatdar, Bicholim to

issue necessary directions to the Talathi of Amona, Village to identify the actual owners/interested parties in the survey numbers mentioned therein, in order to enable the Office of the Collector to take necessary steps to proceed with the identification of beneficiaries and distribution of compensation with regards to the GTTPL project.

Annexed hereto is a copy of the Memorandum dated 27.08.2024 marked as "Annexure I".

32. The said decision of the High Court of Gujarat is complete answer to the submissions made by learned Senior Advocate for the petitioners.

33. We further find that while undertaking the work the permission of the Tree Authority for felling of trees has been obtained. As indicated earlier, the properties of the petitioners do not form a part of the forest land to be covered by the judgment of the Supreme Court in *T. N. Godavarman Thirumulpad (supra)*.

34. It is not the case of the petitioners that their properties are falling within the CRZ area for which the permission of the GCZMA is necessary. The permission of the GCZMA will arise in case of a deviation in the alignment if the property falls within the CRZ area. The contention of learned Senior Advocate for the petitioners that permission of GCZMA is required before change in alignment is therefore without any substance.

35. The learned Advocate General and Mr Bhobe submitted that the claim of compensation will be looked into expeditiously and released according to law. It is further assured that due care will be taken to ensure that there will be minimum damage to the properties of the petitioners while executing the project.

36. We therefore do not find any merit in the petition and is accordingly dismissed. We make it clear that we have not made any observations on the entitlement of the petitioners to claim compensation in accordance with law and the question is kept open.

37. The Rule is discharged. The petition is dismissed with no order as to costs.

VALMIKI MENEZES, J.

M. S. KARNIK, J.