

1962

Present : Sinnetamby, J.

THE CHAIRMAN, URBAN COUNCIL, TRINCOMALEE,
Appellant, and V. KANDASAMY, Respondent

S. C. 77/60—C. R. Trincomalee, 2634

Electricity Act—Structure erected on a land in terms of Section 15—Incapacity of the owner of the land to ask for its complete removal subsequently—Scope of Section 18.

In an action brought by the owner of a land against an Urban Council claiming damages on the ground that the Council had refused and failed to remove a stay-wire which had been fixed on his land by the Council as licensee under the provisions of the Electricity Act—

Held, that once steps have been taken by a licensee to instal lines or works on a land in terms of Section 15 of the Electricity Act, the owner of the land has no right to ask for or enforce the removal of any structure that has been erected on his land. An application under Section 18 of the Act is limited to removal of the structure to another site and does not extend to complete removal.

APPEAL from a judgment of the Court of Requests, Trincomalee.

E. B. Vannitamby, for Defendant-Appellant.

S. Rajaratnam, for Plaintiff-Respondent.

February 19, 1962. SINNETAMBY, J.—

This is an action brought by the owner of a land against the Urban Council claiming damages on the ground that the Council had refused and failed to remove a stay-wire which had been fixed on his land under the provisions of the Electricity Act, No. 19 of 1950. It would appear that the plaintiff had purchased this land from his vendor after steps had been taken under the Electricity Act to fix this stay-wire on the land. Apparently he thought that he was entitled in law to call upon the Urban Council to remove completely the stay-wire in order that he may put up a building. The learned trial Judge took the view that "the Council was wrong in refusing to grant him that relief". The question to be determined in this case is whether the Council was wrong in refusing to remove the stay-wire.

Section 15 of the Electricity Act, No. 19 of 1950, empowers a licensee, in this case the Urban Council, to enter upon any land in private ownership and fix posts and take such other action as would be necessary to render the posts safe and efficient. It is for that purpose that the stay-wire was erected. But this power is subject to the condition that the licensee shall pay compensation to the owner of the land for any damage that may be caused. There is provision for notice to be given by the licensee and for written objections to be made. These are things that happened during the ownership of the plaintiff's predecessor in title. It is not clear in point of fact whether compensation was paid. One must assume that either compensation was paid or it was waived. Once steps are taken under the provisions of Section 15 the owner has no power or right to require the removal of the stay-wire or any other structure erected on his land for the purposes of the Act. But Section 18 empowers the owner or person in possession to ask for the removal of any post or apparatus to another part of the land or to a higher or lower elevation or altered in some form. It does not empower the owner to ask for its complete removal, and it is here that the learned trial judge went wrong. He took the view that in as much as the Electricity Act does not provide for complete removal the Common Law rights come into operation and a party is entitled to ask for complete removal, and in the alternative to

claim damages. It seems to me that once steps have been taken in terms of Section 15, the owner has no right whatever to ask for or enforce the removal of any structure erected on his land. The time to object and to ask for compensation is when steps are taken under Section 15 and not thereafter. The position is very similar to that which takes place under the Land Acquisition Ordinance. If the compensation is insufficient, there is provision for the amount to be deposited in the District Court and for the Court to assess the amount of compensation. That is the only remedy that the owner has. Thereafter he cannot ask for the removal of the structure that has been erected. But he could ask for its removal to another site or to its being altered which he is entitled to do under Section 18. If he fails to take steps under Section 18, then clearly he cannot come to Court and ask for damages or any other right which but for the Electricity Act the Common Law would have given him.

The contention on behalf of the Respondent was that application must be regarded as an application under Section 18, but any application under Section 18 can only be limited to removal to another site and not to complete removal. Furthermore, if the licensee omits or fails to comply with the request, steps could be taken under sub-section 2 by an application to the Chief Electrical Inspector. The Chief Electrical Inspector is alleged to have made an order but that order is not before this Court. Indeed, even the Chief Electrical Inspector cannot order complete removal, and if he did so he would be acting beyond his powers.

Léarned counsel for the respondent wanted this Court to infer from P. 5 that the order of the Chief Electrical Inspector was that the stay-wire should be removed, but if the respondent wished that inference to be drawn his obvious duty was to have produced the order of the Chief Electrical Inspector, but that has not been done. In any event it seems to me that no cause of action has accrued to the plaintiff to sue the defendant Council for damages. His remedy was to apply by way of Section 18. The council has since removed the stay-wire and they are perfectly free to do so, and the plaintiff should have been happy that was done instead of rushing into Court on a cause of action which did not exist. In my opinion the action was ill-conceived. I accordingly set aside the judgment of the learned Commissioner and dismiss plaintiff's action with costs both here and in the court below.

Appeal allowed.