

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

CRP.No. 1050 of 2007 ()

AGAINST THE ORDER IN O.P.(ELE.) NO. 242/2002 of ADDITIONAL DISTRICT COURT-
I,MAVELIKKARA DATED 13-12-2006

REVISION PETITIONER(S)/PETITIONER:

ABDUL KHADER, PUTHEN NIKATHIL,
KARUKATHAKIDIYIL, VEEYAPURAM VILLAGE.

BY ADV. SRI.RASHEED C.NOORANAD

RESPONDENT(S)/RESPONDENT:

POWER GRID CORPORATION OF INDIA LTD.,
REP. BY ITS GENERAL MANAGER, KAYAMKULAM
TRANSMISSION SYSTEM OFFICE, NANGIARKULANGARA, HARIPAD.

BY ADV. SRI.M.A.SHAFIK

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16-01-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

A.HARIPRASAD, J.

C.R.P. No.1050 of 2007

Dated this the 16th day of January, 2015

ORDER

Revision petitioner challenges the order passed by the learned Additional District Judge, Mavelikkara in O.P.(Ele.) No.242 of 1992 filed under Section 16 of the Indian Telegraph Act and Section 51 of the Indian Electricity Act claiming compensation for the trees cut and removed for drawal of 220 KV electric line over the petitioner's property.

2. Short facts are as follows: Petitioner owns 12.45 Ares of garden land described in the petition. Even though the petitioner has not mentioned anything about the ownership and possession of an adjoining paddy field, at the time of evidence, petitioner had stated that he owns 40 cents of paddy field too. It is the case of the petitioner that drawal of 220 KV electric line by the respondent caused great inconvenience and injury to the petitioner as the value and utility of the property has been very much reduced. Valuable trees were cut and removed from the property. The respondent did not pay any compensation for the injurious affection due to drawal of electric line.

3. Petitioner approached the District Court seeking compensation. Learned District Judge, after considering the evidence on

record, granted an amount of ₹11,396/- as enhanced compensation with 6% interest from the date of petition till realisation.

4. Dissatisfied with the compensation, the petitioner has filed this revision. It is pertinent to note that the respondent herein had filed C.R.P.No.1089 of 2007 challenging the order passed by the learned District Judge granting compensation to the petitioner. It is seen that the said petition was dismissed. Now this matter only survives for consideration.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

6. Learned counsel for the petitioner submitted that the amount of compensation awarded by the learned District Judge is too meagre and without any basis. According to her, the learned District Judge failed to consider properly the evidence on record. The learned District Judge should have considered that the property is very badly affected by drawal of electric line, reducing its value and utility. Learned District Judge found that by drawal of electric line, 20% of the market value could be presumed to be diminished in the case of garden land and 10% in the case of paddy field. On a careful examination of the entire records, I am of the view that there is no material to find out what exactly is the extent of the property affected by drawal of electric line. Learned counsel for the petitioner drew my attention to the deposition of the petitioner. Even though he has stated

that electric lines are placed above his paddy field also, there is no foundation in the pleading for the deposition. In the propriety of things, it would have been better to find out the actual area affected by drawal of electric line. A Commission should have been issued to prepare a plan of the petitioner's property showing the location and extent through which the line is passing through. In the absence of any evidence in that regard the calculation of compensation will be only a guess work based on insufficient data. Learned counsel for the petitioner would submit that she is prepared to take out a Commission to bring forth details regarding the nature of property, lie of property and the area affected by drawal of line.

7. Learned counsel for the respondent objected that no purpose will be served by remitting the matter and at any rate, the petitioner shall not be allowed to make a claim for compensation for the affected area on the basis of the present worth of the land in that area. Learned counsel for the respondent submitted that the petitioner is not entitled to get any enhanced compensation than that is given by the learned District Judge. However, in case the matter is remitted, this Court should make it clear that the petitioner shall not claim compensation on the basis of the price of the land prevailing in the area at present. What is the date relevant for the determination of compensation is the date of cutting of trees and probably the date of drawal of lines. There cannot be a dispute to that proposition.

Hence, considering the lack of evidence and the request of the learned counsel for the petitioner to give an opportunity to adduce evidence relating to the basis of the claim for enhanced compensation and also on the basis of the principles laid down by the Supreme Court in **K.S.E.B. v. Livisha (2007 (3) KLT 1)**, I find that in the interest of justice the matter can be remitted to the Additional District court for re-assessing the compensation on the basis of proper evidence.

In the result, the revision petition is allowed. The impugned order is set aside. The matter is remitted to the court of learned Additional District Judge-I, Mavelikkara. The parties shall appear before the court below on 09.02.2015. Petitioner is free to take out a commission to identify the area affected by the drawal of electric line and other factors which are relevant for determination of compensation. The parties shall be permitted to adduce evidence if required in the matter. The learned Additional District shall dispose of the matter as expeditiously as possible, at any rate within a period of three months from the date of receipt of records.

A. HARIPRASAD, JUDGE.

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