

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

CRP.No. 142 of 2012 ()

**(AGAINST THE ORDER IN OP(ELE).NO. 11/2012 OF ADDL.DISTRICT COURT,
NORTH PARAVUR DATED 02-09-2011)**

REVISION PETITIONER/RESPONDENT :

**THE KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY,
THIRUVANANTHAPURAM-695 004.**

BY ADV. SRI.K.M.SATHYANATHA MENON,SC,KSEB

RESPONDENT(S)/ADDITIONAL PETITIONERS 2 TO 5:

- 1. NABEES, W/O. ALIKUNJU,
MADEPPADY HOUSE, MUDIKKAL KARA,
MARAMPILLY VILLAGE, MUDIKKAL P.O.,
KUNNATHUNADU TALUK, ERNAKULAM DISTRICT-683 547.**
- 2. NIYAS, S/O. ALIKUNJU,
MADEPPADY HOUSE, MUDIKKAL KARA,MARAMPILLY VILLAGE,
MUDIKKAL P.O., KUNNATHUNADU TALUK,
ERNAKULAM DISTRICT-683 547.**
- 3. HARIS, S/O. ALIKUNJU,
MADEPPADY HOUSE, MUDIKKAL KARA,MARAMPILLY VILLAGE,
MUDIKKAL P.O., KUNNATHUNADU TALUK,
ERNAKULAM DISTRICT-683 547.**
- 4. MEENAS, D/O. ALIKUNJU,
MADEPPADY HOUSE, MUDIKKAL KARA,MARAMPILLY VILLAGE,
MUDIKKAL P.O., KUNNATHUNADU TALUK,
ERNAKULAM DISTRICT-683 547.**

R1 TO R4 BY ADV. SRI.P.C.HARIDAS

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 07-01-2015, ALONG WITH CRP.NO. 144/2012, THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:**

sts

P.BHAVADASAN, J.

C.R.P. Nos. 142 & 144 of 2012

Dated this the 07th day of January, 2015

ORDER

These revision petitions arise out O.P.(Electricity) Nos. 11/2002 and 129/2002 respectively before the Additional District Court, North Paravur.

2. It is not in dispute that the properties involved in these proceedings were made use of by the Board for drawing 110KV electric line. As regards the property involved in O.P.(Electricity) No. 11/2002, it is an admitted fact that number of trees had been cut and removed for which compensation was given by the Board.

3. Aggrieved by the inadequacy of compensation given in respect of both the quantum of compensation for trees cut and also due to the fact that no amount whatsoever was given for diminution in land value, the petitioner in these petitions approached the District Court for enhanced compensation. To be more precise, in O.P.

(Electricity) No. 11/2002 the amount given was only ₹ 31,362/-. The contention of the Board that the property with respect to O.P.(Electricity) No. 129/2002 was that it was a paddy land.

4. The petitioners before the court below adduced evidence in support of their case. The evidence consists the testimony of PWs 1 to 4 and documents marked as Exts. A1 to A7 from the side of the petitioners. Exts. C1, C1(a) and C1(b) are the Commissioner's report and plan. Exts. B1 and B2 were marked from the side of the respondent who is the petitioner before this Court. It may be mentioned here that O.P.(Electricity) No. 11/2002 was treated as a leading case.

5. There is no dispute regarding the number of trees cut and removed from the property involved in O.P. (Electricity) No. 11/2002. But the court below found that the amount of compensation granted is quite inadequate and recalculated it on the basis of principles laid down in Livisha's case. After calculating on the basis of principles

laid down in those decisions, the court came to the conclusion that the additional compensation for trees cut and removed will come to ₹17,778/-. To be more clear, the value of trees cut and removed was found by the court below as ₹ 49,140/- and deducting the amount paid by the Board i.e. ₹ 31,362/-, the balance additional amount was payable towards the trees cut and removed from the property.

6. As regards the diminution in land value, the court below placed considerable reliance on the Commissioner's report and Ext.A1 document and came to the conclusion that the property is lying in a prime locality and has road frontage. It was also found that the line has almost been drawn through the middle of the property rendering a good portion of the property useless as far as the petitioner is concerned. Based on the document produced by the petitioner, the land value is assessed as ₹ 20,000/- per cent. The diminution in land value was assessed at 35%. Since

there was a tower in the property, the area covered by the tower was granted in full and for the balance extent of 43.025 cents of land affected by drawing of line, the amount was calculated at $43.025 \times 20,000 \times 35/100$ which comes to ₹ 3,01,175/-. The petitioner therefore was granted a total enhanced compensation of ₹ 3,43,453/-.

7. In O.P.(Electricity) No. 129/2002, the substantial contention of the Board that it was a paddy land was found against. The court below was formed the opinion that on going through Ext.A5 that the claim of the Board cannot be countenanced because as going by the description of the property in Ext.A5 partition deed by which the petitioner obtained the property, it appears to be a dry land. The court below also placed reliance on the Commissioner's report and found that the property involved in this proceedings i.e in O.P.(Electricity) No. 129/2002 lies quite adjacent to the property involved in O.P.(Electricity) No. 11/2002 and has similar features as regards the nature of the property. There

too the court below found that line has been drawn almost through the middle of the property and it adversely affected the plot. It is significant to notice that the Board paid no amount as compensation in this case even though it could not have avoided paying compensation for diminution in land value. In the said case it was found based on the Commissioner's report that 22.100 cents of land was affected and adopting the same price for land as in the case of O.P.(Electricity) No. 11/2002, the diminution in land value was calculated as $22.100 \text{ cents} \times 20,000 \times 35/100 = ₹ 1,54,700/-$. The petitioners were given interest at the rate of 9% from the date of original petition till realization.

8. Even though the learned counsel appearing for the petitioner in these petitions contended that it cannot be said that the line drawn in O.P.(Electricity) No. 11/2002 through the middle of the property that cannot stand scrutiny in the light of the Commissioner's report which is marked in the case as Exts.C1(a) and C1(b). The sketch as well as the

report clearly shows that apart from the fact that there is a tower installed in the property involved in O.P.(Electricity) No. 11/2002, the line cuts through the middle of the property affecting almost 43 and odd cents. No serious objection is seen to have been taken by the Board with regard to these datas mentioned in the Commissioner's report and accepted by the court below.

9. Apart from the above facts, it is to be noticed that the court below has given cogent and convincing reasons as to how it arrived at the market price of the land value, it was mainly based on Ext.A1 document. No serious objection is seen taken to that also. The Commissioner has given a detailed report showing that 49 Sq.Mtrs of property has been affected by the installation of a tower and the property to the extent of 43.025 cents has been affected adversely.

10. It could not be said that the mode of calculation for arriving at the enhanced value for trees cut and removed is erroneous. The court below has adopted the principle laid

down in Livisha's case and has made the correct approach. The court has taken the quantum of the income from trees as assessed by the Board and has only applied to the multiplier as contained in Livisha's case and then arrived at the enhanced compensation. Therefore, there can be no serious objections to the mode of calculation in O.P. (Electricity) No. 11/2002. No infirmity could be pointed out in the decision arrived at by the court below.

11. The learned counsel appearing for the petitioner was very vehemently as regards the O.P.(Electricity) No. 129/2002 in which his main contention was that the property was only a paddy land and the finding of the court below that it is a dry land based on presumption and assumption and not on any data or materials available on record.

12. The above claim does not appear to be true. The court below has considered the Commissioner's report in considerable details and has come to the conclusion that the properties are lying adjacent to each other and both have

road frontage of the same nature. Of course, in O.P. (Electricity) No. 129/2002, a major portion of the land is lying as waste land but in a portion of the property, the commissioner has reported that there are cultivation made by the petitioner in the said case. It is significant to notice that no amount whatsoever was paid in that case to the claimants. Even the petitioner does not have a case in O.P. (Electricity) No. 129/2002 that any trees were cut and removed from his property. So the court below has not called upon to consider that aspect at all. The court below was mainly concerned with the diminution in land value.

13. As already noticed, the claim of the Board that it was a paddy land could not be substantiated and does not stand scrutiny in the light of the evidence available on record. It is also to be noticed that the petitioners had adduced evidence in support of their case but the Board did not feel like adducing evidence in support of the case that the property involved in O.P.(Electricity) No. 129/2002 was a

paddy land. Here too the court below mainly relied on the Commissioner's report which as already noticed, does not suffer from any infirmity and found that 22.100 cents of land is affected by drawing of the line. Being an adjacent property as could be seen from the sketch and the report, the court below was therefore justified in adopting the price of ₹ 20,000/- per cent for the property in question also and the court below has rightly adopted 35% as the diminution in land value. Based on that data, the amount arrived at is ₹ 1,54,700/-.

14. Once it is found that the claim of the Board that the property involved in O.P.(Electricity) No. 129/2002 is not a paddy land, no serious infirmity can be found with regard to the decisions arrived at by the lower court. It has already been noticed that the claim that it is paddy land is not substantiated and the evidence is to the contra.

15. The result is that there is no irregularity, illegality or impropriety in any of the two orders passed by the court

below granting enhanced compensation. If that be so, interference under the revisional jurisdiction is not warranted.

These petitions are without merits and they are accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

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P.A. to Judge