

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

CRP.No. 451 of 2012 ()

AGAINST THE ORDER/JUDGMENT IN OP(ELECTRICITY)50/2004 of II
ADDL. DISTRICT JUDGE, KOLLAM DATED 30-11-2011

REVISION PETITIONER(S)/PETITIONER:

SUDEVAN, AGED 51, S/O.PRABHAKARAN,
THUNDIL VEEDU, KARIM THOTTUVA MURI
SASTHAMCOTTAH VILLAGE, KOLLAM.

BY ADVS.SRI.R.KISHORE
SRI.ARUN BABU
SRI.G.HARIPRASAD

RESPONDENT(S)/COUNTER PETITIONER:

KERALA STATE ELECTRICITY BOARD
VAIDYUTHI BHAVAN
THIRUVANANTHAPURAM - 695 004.,
REPRESENTED BY ITS SECRETARY.

R1 BY ADV. SRI.K.M.SATHYANATHA MENON,SC,KSEB

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 16-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN, J.

CRP No.451 of 2012

Dated this the 16th day of September, 2015

O R D E R

- 1.This revision is by a claimant in an original petition filed for enhancement of compensation on account of drawal of high voltage electric line over his property.
- 2.Heard the learned counsel for the petitioner and the learned standing counsel for the respondent Kerala State Electricity Board.
- 3.Two issues are raised in this revision petition. The first relates to the compensation fixed for eight rubber trees. The second issue deals with the amount fixed as diminution in land value. The other claim regarding compensation for two coconut trees did not further arise for consideration in the light of the findings and submissions made, essentially, giving up any such plea.

4. As far as the rubber trees are concerned, the material evidence on record includes the deposition of PW2, the Deputy Rubber Production Commissioner attached to the Regional Office of the Rubber Board, Kottarakkara. He deposed that it is possible to get 100 gs. of dry rubber from a tree, obviously meaning that such yield would be derived on every tapping day. Rubber is usually tapped on every alternate day. This means that it can be safely concluded that the yield can be reckoned for 180 days. Taking the yield per tapping as 100 gs., the annual yield would be 18 kgs. per tree. While fixing compensation, the expenditure towards maintenance, upkeep and tapping expenses will have to be appropriately reduced, and it would be just and reasonable to fix 15 kgs. as the annual yield from a rubber tree on the basis of the facts and materials of the case in hand. There is no dispute as to the value of rubber, which was taken by the court below at ₹45 per kgs. The annuity has to be determined by applying a standard multiplier. Taking into consideration the ratio of the judgments of the Honourable Supreme Court of India in KSEB v. Livisha [2007 (3) KLT 1 (SC)]

and Shaik Imambi v. Special Deputy Collector (LA), Telungu Ganga Project [2011(11) SCC 639], it would be just and reasonable to fix the multiplier at 10, instead of 5 as done by the court below. So much so, the compensation payable for the aged rubber trees would be 8×15 (net yield per tree) $\times 45 \times 10 = 54,000/-$. Deducting therefrom the amount of ₹18,597.60 granted by the court below, the claimant is entitled to enhancement of ₹35,402.40 towards the rubber trees.

5. Onto the question of diminution in land value, it has to be noted that the affected area is 1.07 Ares out of 12.70 Ares. Ext.C3 plan evidenced that the diminution is affected at the extreme western aspect of the property. The court below has determined the diminution in land value at 20% by taking the market value as ₹24,000/-, which was determined by applying the multiplier 8 to the income of ₹3,000/- derivable from that area. Though the petitioner tried to project a case that his land is better than the one covered by Ext.A5 and that Ext.A5 sale was taken with a land value of ₹7,000/- per cent, I am of the

view that the court below was justified in determining the diminution value at ₹4,800/-, taking the projected yield from the area at ₹3,000/-. This is all the more so because, the loss of income referable to the yield of rubber trees and the two coconut trees felled from the very same area has been granted, either by the court below or through this order. While the learned counsel for the petitioner may be justified in saying that in terms of the statutory provisions contained in the Indian Electricity Act, Rules etc., the court below ought to have addressed on the issue as to whether there was any land that would be left as uncultivable, there is no material evidence on record in this line from the side of the claimant. Such a specific attack as to the availability of an exclusive uncultivable corridor contemporaneous with the alignment of the electric line is always a mixed question of facts and law and cannot be raised or considered for the first time in a revision under Section 115 CPC. Hence, the claim for further enhancement in the diminution in value of land is repelled.

In the result, this revision is allowed in part modifying the impugned order and directing that the claimant will be entitled to a further amount of ₹35,402.40 (Rupees thirty five thousand four hundred & two and paise forty only) as compensation in addition to what has been granted by the court below. No costs.

(THOTTATHIL B. RADHAKRISHNAN, JUDGE)

jg-16/9