

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

CRP.No.537 of 2012 ()

AGAINST THE ORDER DATED 4.10.2010 IN OP(EA) NO.34/2007 OF
ADDL.DISTRICT COURT, ALAPPUZHA DATED 04-10-2010

REVISION PETITIONER(S)/RESPONDENT:

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

BY ADV. SMT.NAZEEBA.O.H., KERALA STATE ELECTRICITY BOARD

RESPONDENT(S)/PETITIONER:

ANTONY LAIJU
S/O.JOSEPH, THAIKKALA MURI, AROOR.P.O
AROOR VILLAGE, CHERTHALA. 688 534.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
29-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

C.R.P.No.537 of 2012 D

Dated this the 29th day of January, 2015

ORDER

For drawing 110 KV electric line from Aroor to Mattancherry, the property belonging to the respondent was crossed and 11 yielding coconut trees and certain other trees were cut. The total extent of the property in the possession of the respondent is 13.24 Ares. A sum of ₹13,745/- was awarded by the Kerala State Electricity Board to the respondent. Dissatisfied with the award, the respondent filed O.P.(E.A.) No.34 of 2007 before the court below claiming an additional compensation of ₹8lakhs together with interest.

2. Before the court below, the respondent was

examined as PW1. Though the respondent contended that he is entitled to compensation at the rate of ₹5,000/- each for the coconut trees and other amounts for the rest of the trees, the court below was not inclined to accept his contention on the ground that his case is not substantiated by taking out a Commission and that the amount awarded by the Board was just and reasonable.

3. The respondent claimed that he is entitled to compensation for diminution of land value. He contended that by the drawal of the line, an extent of 16 cents of land belonging to him has become practically useless. According to the respondent, the market value of the property was ₹50,000/- per cent at the relevant time. The court below fixed the diminution of land value at 30% and fixed the compensation for diminution of land value at ₹2,40,000/- together with interest at

6% per annum from the date of cutting of trees till realisation.

The Kerala State Electricity Board is aggrieved by the enhancement of compensation granted by the court below.

4. The learned counsel for the petitioner submitted that it is not established in the case that an extent of 16 cents of land has become useless as a result of the drawal of the electric line. It is also not established that the diminution of land value can be granted at 30% of the land value. It is submitted that since the respondent has not taken out a Commission, the court below was not justified in granting a compensation of ₹2,40,000/- in the absence of any proof of the claim. It is to be noted that the court below rejected the claim for enhancement of compensation in respect of the trees cut, only on the ground that the respondent failed to take out a Commission. But the court below took a different stand when

it considered the question of diminution of land value. Even without any material on record, the court below fixed the percentage of diminution of land value at 30% and thought that an extent of 16 cents of land would be affected by the drawal of the line. As regards the market value of the property, the court below, in the absence of any cross examination by the Board, held that the market value of the property would be ₹50,000/- per cent.

5. I am of the view that the court below was not justified in fixing the compensation for diminution of land value, in the manner it was done. There was no material to arrive at the conclusion that an extent of 16 cents of land was affected. There is also no material to come to the conclusion that 30% of the land value can be awarded as compensation for diminution of land value.

6. In **KSEB v. Livisha** (2007(3) KLT (1)), the Supreme Court held as follows :

“The situs of the land, the distance between the high voltage electricity line laid thereover, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small track of land or through the middle of the land and other similar relevant factors in our opinion would be determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used.”

For the aforesaid reasons, the Civil Revision Petition is allowed. The order passed by the court below is set aside and the matter is remanded for fresh disposal by the court below. Both parties would be entitled to adduce such other oral and oral and documentary evidence. If any of the parties makes an application for appointment of a Commissioner to inspect the property and submit a report, the court below shall allow the

same. It is made clear that court below would be entitled to consider all the points involved in the case afresh including the claim for enhanced compensation for the trees cut. The court below shall dispose of the matter as expeditiously as possible. The parties shall appear before the court below on 23rd February, 2015.

**K.T.SANKARAN
JUDGE**

csI