

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

CRP.No. 276 of 2008 (A)

AGAINST THE ORDER IN OP(ELE) NO.107/1999 ON THE FILE OF THE
COURT OF THE DISTRICT JUDGE, ALAPPUZHA DATED 17-08-2006

REVISION PETITIONERS/ORIGINAL PETITIONER:

V.V.JAYARAM, SEETHABHAVAN,
MADACKAL, CMC-27, CHERTHALA. (DIED - LRS. IMPEADED)

ADDL.PETITIONERS 2 TO 5:

2. SUNIL JAYARAM, S/O.LATE V.V.JAYARAM,
BUSINESSMAN, AGED 55, RESIDING AT
VAISHNAVAM, KURUPPUMKUNGARA P.O.,
CHERTHALA - 688 539.
3. SEETHA SASIRAJ, D/O.LATE V.V.JAYARAM,
HOUSEHOLD AFFAIRS, AGED 53, SEETHA BHAVAN,
MADAKKAL, CHERTHALA P.O., 688 524.
4. ANITHA BAIJU, D/O.LATE V.V.JAYARAM,
HOUSEHOLD AFFAIRS, AGED 51, SEETHA BHAVAN,
MADAKKAL, CHERTHALA P.O., 688 524.
5. SURESH JAYARAM, S/O.LATE V.V.JAYARAM,
BUSINESSMAN, AGED 49, SEETHA BHAVAN,
MADAKKAL, CHERTHALA P.O., 688 524.

LEGAL REPRESENTATIVES OF THE DECEASED PETITIONER ARE
IMPEADED AS ADDITIONAL PETITIONERS 2 TO 5 AS PER THE ORDER DATED
24.11.2014 IN I.A.NO.2856 OF 2014.

BY ADV. SRI.R.AZAD BABU

RESPONDENT/CR. PETITIONER::

KERALA STATE ELECTRICITY BOARD
REPRESENTED BY THE SECRETARY, KSEB
THIRUVANANTHAPURAM.

BY ADV. SRI..PULIKOOL ABUBACKER, SC, KSEB

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
30.03.2015, THE COURT ON 11.06.2015 PASSED THE FOLLOWING:

K.T.SANKARAN, J.

C.R.P. NO. 276 OF 2008 A

Dated this the 11th day of June, 2015

ORDER

The question of law involved in this Revision is whether the report submitted by the Commissioner appointed in an Original Petition (Electricity) can be accepted in evidence without examining the Commissioner.

2. For drawing a 11 KV electricity line, the property of the petitioner was crossed and trees were cut from the property. (The petitioner died pending Revision and his legal representatives were impleaded as additional revision petitioners.) The total extent of the property belonging to the petitioner is 72 cents. The Kerala State Electricity Board granted a compensation of ₹12,330/- to the petitioner. Dissatisfied with the same, the petitioner filed O.P.(Ele.) No.107 of 1999 before the District Court, Alappuzha. The petitioner/claimant claimed a sum of ₹4,42,500/- as additional compensation.

3. The court below, as per the order dated 30.3.2004, granted an enhanced compensation of ₹39,878/-, comprising of enhanced compensation for the trees cut and as compensation for diminution of land value. The court below granted a sum of ₹36,000/- as compensation for diminution of land value. The Board had not granted any compensation to the petitioner on account of diminution of land value.

4. The order dated 30.3.2004 was challenged by the Board in C.R.P.No.1342 of 2004. A learned single Judge of this Court, by the order dated 17.3.2006, allowed the Revision and set aside the order passed by the learned District Judge and remanded the case for fresh disposal.

5. After remand, the court below passed an order dated 17.8.2006 granting an amount of ₹9,414/- as enhanced compensation for the trees cut in addition to the compensation awarded by the Board. The learned District Judge did not grant any amount as compensation for diminution of land value. In this

Revision, the petitioner/claimant challenges the order passed by the learned District Judge, in so far as it relates to the refusal to grant any compensation for diminution of land value.

6. A Commissioner was appointed to inspect the property in question, who filed Ext.C1 report. The petitioner/claimant was examined as PW1 before the court below and Exts.A1 to A4 were marked on his side. After remand, the Commissioner inspected the property again and filed a report. No oral evidence was adduced by the Board, either before or after remand.

7. The Commissioner reported that an extent of 9.55 cents of land is affected by the drawal of the line. The electricity line passes through the entire southern and western sides of the property of the petitioner. It is not disputed that no construction is possible within four metres of the place where the line passes. The Commissioner noticed that on the southern side of the property, the electricity line occupies an area of 45.6 metres length and four metres width, the extent of which comes to 4.55 cents. On the western side, the line was drawn to a length of 50 metres and taking four metres width as

the area affected, the affected extent of land was found to be five cents. Thus the total extent of 9.55 cents was shown as the affected area as per the Commissioner's report.

8. The petitioner/claimant produced Exts.A2 to A4 title deeds to show that his property was having a land value of ₹50,000/- per cent at the relevant time. The trees were cut for drawing the line on 22.2.1995. As per Ext.A2 sale deed dated 6.11.1995, an extent of nine cents of land was sold for Rupees five lakhs. Ext.A2 property lies about two kilometers away from the property of the petitioner. As per Ext.A3 sale deed executed in the year 1999, the property situated three kilometers away from the petitioner's property was sold for a sum of Rupees four lakhs. Ext.A3 property is having an extent of 7 cents 620 sq. links. Ext.A4 property, situated 1.25 kilometers away from the property in question, was sold for a sum of ₹3,81,000/-, the extent being 7 cents 620 Sq.links. Based on Exts.A2 to A4, the learned counsel for the petitioner contended that the value of those properties would be more than ₹50,000/- per cent of land. Even if deductions are made taking into account the distance between the land in question and the land covered by Exts.A2 to A4

and also taking into account the nature and lie of the property, it is contended that the value of the land in question would not be less than ₹25,000/- per cent of land. According to the petitioner, an extent of 14 cents of land has become practically useless.

9. The property belonging to the petitioner is situated near Madakkal Junction at Cherthala. The property is situated on the southern side of the Cherthala - Arthunkal Road and on the eastern side of Madakkal-Ottapunna Road. The Commissioner's report would also indicate that Arthunkal Church and Kanichukulangara Devi Temple are situated within a radius of four kilometers of the property in question. There are other important institutions, temples, churches etc. near the property.

10. The court below denied compensation for diminution of land value on two grounds: “(1) It is not specifically pointed out by the Commissioner that the utility of the property is in any way affected due to any other reason.” This sentence occurs after the following sentences in the judgment:

“According to the Commissioner the extent of the property cleared for the drawing of the electric line would come to 9.55 cents. It is noted by the Commissioner that building can be constructed only after leaving a space having a width of 4 meters from the road.”

(2) The Commissioner who prepared Ext.C1 report was not examined in the case.

11. As regards the first reason stated by the Court, the learned counsel for the petitioner brought to my notice that the Commissioner stated the following facts in the report. The Commissioner noted that no cultivation was made in the land over which the electricity line was drawn. In the rest of the land, the Commissioner could see yielding and non-yielding coconut trees and miscellaneous trees. The Commissioner stated in the report that drawing of the line has seriously affected the normal user of the land and the value of the land also would be diminished.

12. The court below did not properly advert to the Commissioner's report and the oral evidence in the case. The

categoric statements in the Commissioner's report were ignored by the court below. The very lie of the electricity line all through out the southern and western sides of the petitioner's property, by itself is sufficient to arrive at the conclusion that the normal user of the property would be affected by the drawal of the line. I am of the view that the court below was not justified in denying compensation on account of diminution of land value on the aforesaid ground.

13. The finding of the court below that the Commissioner should have been examined in the case to rely on the report, is also unsustainable. Section 16(3) of the Indian Telegraph Act, 1885 provides that if any dispute arises concerning the sufficiency of the compensation to be paid under Section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him. Sub-section (5) of Section 16 states that every determination of a dispute by a District Judge under sub-section (3) shall be final. The District Judge exercising powers under Section 16 is a Court and not persona designata. The order passed under Section 16(3) of the Telegraph Act by the District Judge in the

context of the provisions of the Act is by the District Court. The District Court, while dealing with an application under Section 16 of the Act, acts as a civil court. (See **KSEB vs. Cheriyann Varghese (1989 (1) KLT 451)**). Section 141 of the Code of Civil Procedure states that the procedure provided in the Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction. The proceedings before the District Judge under Section 16 of the Indian Telegraph Act is a civil proceeding. If so, the procedure provided under the Code of Civil Procedure applies to the proceedings under Section 16(3) of the Indian Telegraph Act as well. The court dealing with an application under Section 16(3) of the Indian Telegraph Act is empowered to take evidence, appoint commissioners, call for documents etc. even without any specific provision therefor in the Indian Telegraph Act. Under sub-rule (2) of Rule 10 of Order XXVI of the Code of Civil Procedure, the report of the Commissioner shall be evidence in the suit and shall form part of the record. The Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to the

manner in which he has made the investigation. It is well settled that it is not necessary to examine the Commissioner in order to rely on the report submitted by him in a suit where the inspection of the property was made after notice to both parties. In a proceeding before the District Judge under Section 16 of the Indian Telegraph Act also, the same procedure and the same principles would apply. Therefore, I am of the view that the court below was not right in holding that the Commissioner should have been examined in the case, to enable the Court to rely upon the report.

14. In **K.S.E.B. v. Livisha** ((2007) 6 SCC 792 = 2007(3) KLT 1 (SC)), the Supreme Court held thus:

“10. 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.”

15. In the facts and circumstances of the case, the petitioner is entitled to compensation for diminution of land value. The Original Petition was filed in the year 1999. The case was remanded to the trial court once. At this distance of time, I do not think it proper to remand the case to the trial court for disposal of the matter afresh. I think it would be most appropriate to fix the compensation by this Court, taking into account the materials on record.

16. The fact that an extent of 9.55 cents of land was affected by the drawal of the line is not in dispute. According to the petitioner, an extent of 14 cents of land including 9.55 cents has become useless. I am of the view that for fixing the diminution of land value, it is sufficient to take 9.55 cents as the area affected, taking into account the total extent of land and also the fact that only a 11 KV line was drawn. The Commissioner has reported that the land value at the relevant time was above ₹25,000/- per cent of land. As per Exts.A2 to A4 registered documents executed in 1995, 1999 and 1996 respectively, the value of the land is shown at a rate above

₹50,000/-. In these circumstances, it would be safe to fix the land value in the present case at ₹25,000/- per cent of land. Since only a 11 KV electricity line was drawn, I think 10% of the land value would be sufficient to be paid as compensation for diminution of land value. Accordingly, the petitioner would be entitled to a sum of ₹23,875/- as compensation for diminution of land value ($25,000 \times 9.55 \times 10/100$). For the enhancement of compensation on account of cutting of trees, the court below granted interest at 9% per annum. The order passed by the court below is not challenged by the Board. Therefore, the petitioner would be entitled to interest at 9% per annum on the compensation for diminution of land value as well from the date of drawal of the line to the date of realisation.

The Civil Revision Petition is allowed as indicated above.

(K.T.SANKARAN)
Judge

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