

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

CRP.No. 612 of 2010 ()

O.P.(ELE) 83/1999 of II ADDL.D.C., KOLLAM.

REVISION PETITIONER(S)/RESPONDENT:

POWER GRID CORPORATION OF INDIA LTD.,
LOCAL OFFICE, NANGIARKULANGARA, KAYAMKULAM,
REP. BY ITS MANAGER.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENT(S)/PETITIONER:

ABDUL SALEEM, CHARUVILA VEEDU,
MALOOR, P.O.PATTAZHI VADAKKEKARA VILLAGE,
PATHANAPURAM TALUK, KOLLAM DISTRICT,
REP. BY P/A.HOLDER NASEEMA SALIM, CHARUVILA VEEDU,
MALOOR, P.O.PATTAZHI VADAKKEKARA VILLAGE,
PATHANAPURAM TALUK, KOLLAM DISTRICT - 691 522.

R,R1 BY ADV. SRI.C.K.PAVITHRAN

R,R1 BY ADV. SRI.M.VIVEK

THIS CIVIL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 28-05-2015 ALONG WITH R.P.244/2015 IN
C.R.P. 542/2014, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

P. BHAVADASAN, J.

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C.R.P.. No. 612 of 2010 &
R.P. No. 244 of 2015 in
C.R.P. No. 542 of 2014
- - - - -

Dated this the 28th day of May, 2015.

ORDER

These two matters arise out of O.P. (Ele.) No. 83 of 1999 disposed of by order dated 31.3.2010 by the District Court, Kollam.

2. The undisputed facts are that the petitioner in C.R.P. 612 of 2010 utilized a portion of the property belonging to the respondent for the purpose of drawing a 220 KV line. Several trees were cut and removed including 94 rubber trees and 7 coconut trees. The Power Grid Corporation (for short the Corporation) granted Rs.96,316/-as compensation towards the loss suffered by the owner of the land. Dissatisfied with the said amount, the owner of the property approached the District Court, Kollam by way of O.P.(Ele.) 83 of 1999 seeking additional compensation to the tune of Rs.26,32,850/- with interest at 18% per annum.

3. The claim was objected to by the Corporation who drew the line through the property and they contended that the amount awarded by them is just, reasonable and adequate compensation and no further enhancement is warranted.

4. The court below raised necessary issues for consideration and the evidence consists of the testimony of P.W.1 and documents marked as Exts. A1 to A8 from the side of the petitioner before the court below and the commission report is marked as Ext.C1. The respondents before the court below did not choose to adduce any evidence. The court below felt that the compensation granted towards the rubber trees cut and removed was inadequate so also the coconut trees. After taking note of the commission report, the court below thought it proper to take the yield per rubber tree as 10 Kgs. per annum, i.e. total 940 Kgs., and fixed Rs.50/- per Kg. and calculated the value at Rs.2,25,600/- applying 8 as the multiplier. As regards the

coconut trees which were cut and removed, the yield was taken as 100 coconuts per tree per annum and the price of one coconut was fixed as Rs.4/-. As in the case of rubber trees, compensation was awarded at Rs.16,800/-. For the rest of the trees, compensation of Rs.5,000/- was granted.

5. The court below relying on the commission report came to the conclusion that 12 cents of property was affected by the drawing of the line and granted a sum of Rs.2,000/- per cent and granted a total sum of Rs.24,000/- as diminution in land value. The total compensation available to the petitioner was determined as Rs.2,71,400/-. After deducting the amount already paid by the Corporation, the petitioner was allowed to realise a sum of Rs.1,78,084/- from the Corporation with 7.5% interest per annum.

6. In C.R.P.612 of 2010 the Corporation assails the compensation given for the rubber trees and also coconut trees.

7. The petitioner before the court below, long after the passing of the order and long after they had received notice of the revision filed by the Corporation, thought it proper to file C.R.P. 542 of 2014 with a delay of 1498 days.

8. This Court found on evaluation of the materials that there was no justification for the inordinate delay in filing C.R.P. 542 of 2014 and the reasons given were not acceptable. This Court found that the condonation of delay is not a matter of course and the delay has to be properly explained. This Court noticed that the petitioner before the court below had engaged a power of attorney to conduct the case on his behalf and there is no explanation as to why the said power of attorney could not take further proceedings after the disposal of the case by the court below. Whatever that be, this Court found that the reasons given by the petitioner was not sufficient and dismissed the delay petition and the Revision also.

9. The review petition is directed against the said order.

10. Learned counsel appearing for the review petitioner pointed out that this Court was not justified in dismissing the delay condonation petition so also the Civil Revision Petition seeking further enhancement. Relying on Annexure 1, it is contended that the petitioner was abroad and that had precluded him from taking timely action against the order passed by the court below. He says that there is no willful laches on his part and also that this Court ought to have condoned the delay.

11. It is further pointed out that it can be easily seen from the order of the court below that the amount given towards diminution in land value is inadequate and fixation of Rs.2000/- per cent is too meagre. Referring to the commission report, it is pointed out that the Commissioner has submitted a report in which it is stated that the

whole property of the petitioner has almost become useless and he is entitled to compensation for the entire property.

12. Shri. Millu Dandapani, learned counsel appearing for the Corporation apart from arguing that the award is exorbitant as far as the review petitioner is concerned, also contended that there is no merit in the review petition. Learned counsel also contended that it is not as if the claimant was unaware of the proceedings. It is evident, according to the learned counsel that it is only as a counter blast to the revision petition filed by the Corporation that the claimant has come forward with a revision petition with a delay condonation petition. It could not be assumed, according to the learned counsel, that the review petitioner who had given a power of attorney and who had engaged a counsel for conducting proceedings before the court below had not properly advised the petitioner. The mere fact that the

petitioner was abroad is not a ground to condone the delay.

13. After having heard counsel on both sides, there seems to be considerable force in the submission made by the learned counsel for the Corporation. The learned counsel is justified in his submission that no grounds are made out for condoning the delay of 1498 days in filing the C.R.P. This Court, after elaborately considering the matter, found that the reasons urged for condoning the delay are untenable and dismissed the petition by order dated 29.10.2014. The mere fact that the petitioner was abroad, as rightly pointed out by the learned counsel for the Corporation, even assuming it to be true, is not a ground to condone the delay. The petitioner had appointed a power of attorney and the power of attorney was conducting the proceedings throughout. One fails to understand as to why the power of attorney could not continue the proceedings and

take the matter before the appropriate forum. It is felt that there is some substance in the contention of the learned counsel for the Corporation that the petitioner filed the C.R.P. as a counter blast to the petition filed by the Corporation. This Court, after considering the reasons, dismissed the delay condonation petition and **there is no merit in the review petition and it is accordingly dismissed.**

14. The grievance of the petitioner in C.R.P. 612 of 2010 is that the amount awarded as compensation for rubber trees cut and removed and so also coconut trees is on the high side. But the court below has relied on the commission report and there is no objection filed by the Corporation to the said report. The price of the rubber trees adopted by the court below cannot be said to be too exorbitant. The yield taken also appears to be reasonable.

15. The court below was therefore justified in granting the enhanced compensation for the trees cut and removed. The court below has also taken note of the fact that only 12 cents of property was affected and in the absence of any evidence regarding the value of the property in the locality was inclined to adopt Rs.2000/- per cent as land value. No grounds are made out to interfere with the order of the court below.

The result is that C.R.P. 612 of 2010 is without merits and it is accordingly dismissed.

sb.

P. BHAVADASAN,
JUDGE