

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

CRP.No. 21 of 2015 ()

AGAINST THE ORDER IN OP(ELECTRICITY) NO. 176/2006 of I ADDITIONAL DISTRICT
COURT,KOLLAM DATED 18.09.2014

REVISION PETITIONER(S)/PETITIONER:

MARRY SUDHA, AGED 38 YEARS
W/O.UBAID, NISHA BHAVANAM, PERAYAM
MULAVANA VILLAGE, KOLLAM.

BY ADVS.SRI.SHERRY J. THOMAS
SRI.ARUN ALEX
SMT.THAMANA BAI
SRI.M.MANOJKUMAR

RESPONDENT(S)/RESPONDENT:

THE KERALA STATE ELECTRICITY BOARD
REPRESENTED BY ITS SECRETARY, K.S.E.B. BOARD
VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM.

BY ADV. SRI.K.M.SATHYANATHA MENON,STANDING COUNSEL,KSEB

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 01-06-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRP NO.21/2015

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A1 THE TRUE COPY OF THE SALE DEED NO.2782/2007 OF KUNDARA SRO

ANNEXURE A2 THE CERTIFIED COPY OF THE CHIEF AFFIDAVIT OF THE PETITIONER

ANNEXURE A2A THE CERTIFIED COPY OF THE CROSS EXAMINATION OF THE
PETITIONER

ANNEXURE A3 THE CERTIFIED COPY OF THE CROSS EXAMINATION OF THE PETITIONER

ANNEXURE A4 TAX RECEIPT OF THE PROPERTY DATED 12.11.2014

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

A.HARIPRASAD, J.

C.R.P. No.21 of 2015

Dated this the 1st day of June, 2015

ORDER

Revision petition is filed by challenging the order passed by the learned Additional District Judge, Kollam in O.P. (Electricity) No.176 of 2006 wherein his claim for compensation under Section 16(3) of the Indian Telegraph Act read with Section 51 of the Electricity Act was allowed only in part.

2. Heard the learned counsel for the petitioner.

3. It is the case of the petitioner that he owns ten cents of land through which the Kerala State Electricity Board had drawn a 220 KVA high tension line. According to the petitioner, the utility of the land has been completely destroyed by drawal of line. Besides, a tower is also erected in his property, thereby the property has been rendered useless. The court below granted compensation for the land occupied by the tower, calculating ₹10,000/- per cent as land value. Grievance of the petitioner is two fold. Firstly, the court below did not calculate the actual land value, which caused prejudice to the petitioner. Secondly, the court below failed to give compensation for the diminution in land value on an erroneous assumption that the petitioner is not the title holder in possession of the property.

4. Learned counsel for the petitioner contended that the respondent has no case in its pleading that the petitioner is not the owner of the property. That apart, the respondent itself has paid compensation to the petitioner in tune with the provisions in the above mentioned enactments. Only a half-hearted contention that the petitioner had sold out the property was raised by the respondent at the time of trial. Annexure-A4 basic tax receipt is produced by the petitioner to show that she retains possession and title over the property even in the year 2014. Learned counsel brought to my notice an answer given by the Assistant Executive Engineer, Transmission Sub Division, Kundara under the Right to Information Act that the area occupied by the tower in the petitioner's property is more than 1.48 cents shown in the impugned order.

5. Court below fixed the land value merely on surmises. Even though a commission was taken out, the petitioner did not take steps to establish her contention that her land is similar to the lands covered in the documents produced before the court below. Although, it can be stated to be an omission on the part of the petitioner, from the grave errors seen in the order, I am of the view that the petitioner is to be given an opportunity to establish her case properly. Observation by the court below that the petitioner is not entitled to claim any compensation for diminution in land value on account of drawal of line is legally unsustainable in view of the fact that the court below had already paid compensation for the land on

which the tower was erected. The logic for granting compensation for the space occupied by the tower should have been applied in the case of diminution in land value also. There must be definite evidence in respect of the land value. Learned counsel further contended that value of the trees cut and removed were also not worked out. In this proceedings, it may not be proper to consider evidence which is not properly brought to the record. Therefore, I am of the view that the matter requires a remission for proper adjudication.

In the result, petition is allowed. Impugned order is set aside. The matter is remitted back to the trial court for fresh consideration. The petitioner shall be given an opportunity to adduce evidence. The matter shall be disposed of on merit within a period of six months from the date of receipt of a copy of this order.

All pending interlocutory applications will stand closed.

A. HARIPRASAD, JUDGE.

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