

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDHAN

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

WP(C).No.7254 of 2011 (F)

PETITIONER :

KOLAPPARAMBATH KRISHNANKUTTY,
S/O.APPUTTY, BUS CONDUCTOR, PADINJATTUMURI,
KAKKODI.P.O, KOZHIKODE.

BY ADVS.SRI.R.BINDU (SASTHAMANGALAM)
SRI.PRASANTH M.P

RESPONDENTS :

1. KOLAPPARAMBATH UNNEERI,
S/O.CHECKUTTY,
PADINJATTUMURI, KAKKODI.P.O, KOZHIKODE-673001.
2. THE ASSISTANT ENGINEER,
ELECTRICAL SECTION, K.S.E.B, KAKKODI,
KOZHIKODE-673001.
3. THE ASSISTANT EXECUTIVE ENGINEER,
ELECTRICAL SUB DIVISION, KARAPARAMBA,
KOZHIKODE-673001.
4. THE ADDITIONAL DISTRICT MAGISTRATE,
KOZHIKODE-673001.

ADDITIONAL 5th RESPONDENT:- KOLAPPARAMBATH PURUSHOTHAMAN,
S/O.KOLAPPARAMBATH UNNEERI,
PADINJATTUMURI,
KAKKODI.P.O.,
KOZHIKODE, PIN - 673611.

(ADDL.R5 IS IMPEADED AS PER ORDER DATED 17.7.2012 IN I.A.No.8977/2012.)

R2 & R3 BY SRI.SAJEEV KUMAR K.GOPAL, SC, KSEB

BY SRI.P.P.THAJUDEEN, SC, K.S.E.B

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 : COPY OF THE ORDER DATED 16.6.2007 PASSED BY THE DEPUTY CHIEF ENGINEER, CONSUMER GRIEVANCE REDRESSAL FORUM.
- EXT.P2 : COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P.(C) No.22164/2007.
- EXT.P3 : COPY OF THE REPRESENTATION GIVEN BY THE PETITIONER AND THE SITE PLAN.
- EXT.P4 : COPY OF THE PETITION DTD.29.10.2007 FILED BEFORE THE 4th RESPONDENT.
- EXT.P5 : COPY OF THE LETTER DTD.5.11.2007 SENT FROM THE OFFICE OF THE 2nd RESPONDENT.
- EXT.P6 : COPY OF THE ORDER PASSED BY THE 4th RESPONDENT DTD.12.1.2011.
- EXT.P7 : COPY OF THE SKETCH SHOWING THE LIE OF THE PROPERTY AND THE ROUTE SUGGESTED BY THE PETITIONER.

RESPONDENTS' EXHIBITS:-

- EXT.R2(a) : COPY OF THE NOTICE TO THE PETITIONER DTD.15.10.2007.
- EXT.R2(b) : COPY OF THE DETAILED REPORT SUBMITTED BY THE BOARD BEFORE THE 4th RESPONDENT DTD.15.10.2009.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C)No.7254 of 2011

Dated this the 27th day of February, 2015

JUDGMENT

The petitioner has filed the above Writ Petition seeking a writ of certiorari to quash Ext.P6 order passed by the 4th respondent and seeking a writ of mandamus or any other appropriate writ, order or direction commanding respondents 2 and 3 to shift the electric line drawn through his property for giving electric connection to the residential building of the first respondent to the alternate route suggested by him in Ext.P7 sketch produced before this Court.

2. The petitioner is stated to be the absolute owner in possession of 85 cents of land comprised in Re.Sy.No.3/4A of Kakkodi Village in Kozhikode Taluk. The first respondent is the owner in possession of a property having residential building on the southern side of the property owned by the petitioner. In order to give electric connection to the residential building of the first respondent an electric line was drawn through the property of the petitioner. In Ext.P1 order passed by the Consumers Grievance Redressal Forum, Kozhikode it was found that the line was drawn

without the consent of the petitioner and therefore the same should be shifted and compensation should be given for the trees already cut. The said order was under challenge in W.P.(C)No.22164/2007 filed by the first respondent. The said writ petition was disposed of by Ext.P2 judgment dated 20.8.2007 whereby this Court has directed that the line should be drawn through a route which is lesser inconvenient to the land owners concerned and that the petitioner herein should suggest the shortest and least inconvenient line for shifting the line. In Ext.P2 judgment this Court made it clear that, if any dispute arises, the same shall be resolved by the 4th respondent, the Additional District Magistrate, Kozhikode, after hearing the parties.

3. Pursuant to Ext.P2 judgment the petitioner suggested an alternate route in Ext.P3 representation which was submitted before the second respondent along with a site plan prepared by the Village Officer. Since the second respondent failed to act on Ext.P3 representation the petitioner has approached the fourth respondent by submitting Ext.P4 representation. In the meantime the petitioner was served with Ext.P5 letter of the second respondent stating that

a decision has already been taken for shifting the line in question and that the first respondent has already been directed to remit an amount of ₹12,670/- for shifting the line. However, the fourth respondent, on the basis of the statement of the first respondent and on the basis of the site inspection conducted, came to the conclusion in Ext.P6 order dated 12.1.2011 that the existing line drawn through the petitioner's property is the most feasible one and therefore the same has to be retained. It is aggrieved by Ext.P6 order of the fourth respondent, the petitioner has approached this Court in this Writ Petition seeking various reliefs. Along with the Writ Petition the petitioner has also produced Ext.P7 sketch showing the lie of the property and suggested that the line can be shifted through a public pathway as suggested in the said sketch, without causing much inconvenience to the neighbouring owners.

4. A counter affidavit has been filed on behalf of respondents 2 and 3 supporting the reasoning of the fourth respondent in Ext.P6 order. It was contended among other things that the alternate route suggested by the petitioner in Ext.P3 representation for shifting the line was found to be not feasible as the route is very narrow.

However, the first respondent was given Ext.R2(a) notice asking him to remit the deposit amount, but he failed to do so. According to respondents 2 and 3 the alternate route requires 169 meters overhead line and 26 meters weather proof line along the boundary of the petitioner's property on the opposite side of the existing disputed line. Further the property of the petitioner is about 5 meter deeper than the adjacent property and hence it is very difficult to maintain the statutory clearance. Ext.R2(b) report submitted by the third respondent before the fourth respondent would show that the second alternate route suggested by the petitioner during the course of hearing was also found not feasible.

5. Heard the arguments of the learned counsel for the petitioner, the learned Standing Counsel for the KSEB and the learned Government Pleader appearing for the fourth respondent. Though notice is served on the additional fifth respondent, who is the legal heir of deceased first respondent, there is no appearance for him. I have considered the rival submissions made at the Bar.

6. In Ext.P6 order the fourth respondent came to the conclusion that the existing line drawn through the petitioner's

property for giving electric connection to the residential building of the first respondent is the most feasible route and that the line cannot be shifted as requested by the petitioner. The materials on record indicate that, electric connection to the residential building of the first respondent was given on 24.6.2004 after drawing 19 meters of overhead line and 18 meters of weather proof line, through the property of the petitioner. Another electric connection was also given for one Bapputty, whose residential building is on the southern line of that of the first respondent, from the very same post from which electric connection was drawn to the residential building of the first respondent. But the petitioner has not raised any objection in giving electric connection to the aforesaid Bapputty.

7. In Ext.P1 order the Consumers Grievance Redressal Forum, Kozhikode directed the petitioner to move an application before the second respondent for shifting the line from his property and if the said authority omits to shift the line he may move application to the District Magistrate for appropriate orders. Ext.P1 was under challenge before this Court in W.P.(C)No.22164 of 2007 and this Court by Ext.P2 judgment directed the second respondent

herein to draw up a proposal for shifting of line and if the present route is least inconvenience, he will recommend retention of the line or otherwise draw up a suitable proposal and forward the report to the District Magistrate who will hear the parties and any other land owner affected by such shifting and pass appropriate orders under Section 16(1) of the Indian Telegraph Act, 1885. It was pursuant to that direction the fourth respondent passed Ext.P6 order.

8. The materials on record prima facie show that, the route through which the electric line in question is drawn is a technically feasible route causing least inconvenience to the neighbouring owners. Though the petitioner suggested two alternate routes, those routes were found not technically feasible based on the site inspection conducted by the board and also by the fourth respondent. It was found that, the first alternate route suggested by the petitioner requires 169 meters of overhead line and 26 meters of weather proof line. Due to the lie of the property, it was very difficult to maintain statutory clearance if the line is drawn through the said route suggested by the petitioner. As far as the second alternate route suggested by the petitioner is concerned, it was

found that it requires 152 meters of overhead line and 10 meters of weather proof line. Further the consent from 6 persons is required for drawing electric line through the said route, which involves tree cutting as well. It was in such circumstances the fourth respondent in Ext.P6 concluded that the route through which the electric line has already been drawn is the most feasible one causing least inconvenience to the neighbouring owners. The finding of the fourth respondent in this regard made in Ext.P6 is neither perverse nor arbitrary, warranting any interference of this Court under Article 226 of the Constitution of India.

In the result, the Writ Petition fails and the same is dismissed.
No order as to costs.

ANIL K.NARENDRA, JUDGE

skj