

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

WP(C).No. 13569 of 2015 (U)

PETITIONER:

**ISMAILKUTTY
THOTTIYIL HOUSE, PULLIKAL, ANDIYOORKUNNU.P.O
MALAPPURAM, NOW RESIDING AT THOTTIYIL HOUSE, ATHOLI
KOZHIKODE.**

BY ADV. SRI.P.P.JACOB

RESPONDENTS:

- 1. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF POWER
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.**
- 2. THE STATE OF KERALA,
REPRESENTED BY THE DISTRICT COLLECTOR, COLLECTORATE
CIVIL STATION, MALAPPURAM-676501.**
- 3. THE KERALA STATE ELECTRICITY BOARD,
VYDYUTHI BHAVAN, PATTON, THIRUVANANTHAPURAM-695001.**
- 4. THE DEPUTY CHIEF ENGINEER,
KERALA STATE ELECTRICITY BOARD, MALAPPURAM-676501.**
- 5. THE ASSISTANT EXECUTIVE ENGINEER,
TRANSMISSION SUB DIVISION
KERALA STATE ELECTRICITY BOARD, EDAVIKODE
MALAPPURAM-676501.**
- 6. THE ADDITIONAL DISTRICT MAGISTRATE,
COLLECTORATE, CIVIL STATION, MALAPPURAM-676501.**

**R1, R2 & R6 BY GOVERNMENT PLEADER SRI. GIKKU JACOB
R3-R5 BY ADV. SRI.K.M.SATHYANATHA MENON, SC, KSEB**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
23-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 TRUE PHOTOCOPY OF THE REPRESENTATION FILED BY THE
PETITIONER BEFORE THE 5TH RESPONDENT DATED 24.2.2010**
- EXT.P2 TRUE PHOTOCOPY OF THE PLAN SHOWING THE 110KV LINE
ALREADY DRAWN SUBMITTED BY THE PETITIONER DATED NIL**
- EXT.P3 TRUE PHOTOCOPY OF THE PLAN SHOWING THE ALTERNATIVE
WAY SUBMITTED BY THE PETITIONER DATED NIL**
- EXT.P4 TRUE PHOTOCOPY OF THE PLAN SHOWING THE 110KV LINE
ALREADY DRAWN AND THE ALTERNATIVE WAY SUBMITTED BY
THE PETITIONER DATED NIL**
- EXT.P5 TRUE COPY OF THE REPRESENTATION FILED BY THE
PETITIONER BEFORE THE 5TH RESPONDENT DATED 2.4.2012**
- EXT.P6 TRUE PHOTOCOPY OF THE JUDGMENT IN WP(C)3562/2014 DATED
5.2.2014**
- EXT.P7 TRUE PHOTOCOPY OF THE ORDER ISSUED BY THE SIXTH
RESPONDENT DATED 27.11.2014**
- EXT.P8 TRUE PHOTOCOPY OF THE REPRESENTATION FILED BY THE
PETITIONER BEFORE THE MINISTER FOR ELECTRICITY DATED
13.1.2015**
- EXT.P9 TRUE PHOTOCOPY OF THE LETTER ISSUED FROM THE OFFICE
OF THE CHIEF MINISTER DATED 21.2.2015.**

RESPONDENT(S)' EXHIBITS:- NIL

COMMISSIONER'S ANNEXURES:-

- ANNEXURE -I A TRUE COPY OF THE PHOTOGRAPHS SHOWING THE
PRESENT STATE OF THE PROPERTY OF THE PETITIONER**
- ANNEXURE -II A TRUE COPY OF THE PHOTOGRAPHS OF THE TOWER**
- ANNEXURE -III A TRUE COPY OF THE PHOTOGRAPHS OF THE 4 PILLARS
ERECTED IN THE SITE**
- ANNEXURE -IV A TRUE COPY OF THE PHOTOGRAPH OF THE SITE
SUGGESTED BY THE PETITIONER**

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ANNEXURE -V	A TRUE COPY OF THE PHOTOGRAPH OF THE PATHWAY NEAR TO THE SITE SUGGESTED BY THE PETITIONER
ANNEXURE -VI	A TRUE COPY OF THE PHOTOGRAPHS OF THE SITE SHOWN FOR THE ADDITIONAL TOWER
ANNEXURE -VII	A TRUE COPY OF THE ROUGH SKETCH OF THE PROPERTY PREPARED BY THE ADVOCATE COMMISSIONER

/TRUE COPY/

P.A. TO JUDGE

DCS

V. CHITAMBARESH, J

W.P.(C). NO. 13569 OF 2015

Dated this the 23rd day of July, 2015

JUDGMENT

Ext. P7 order issued in terms of Section 16 of the Indian Telegraph Act, 1885 is impugned. Permission has been accorded therein to draw electricity supply line over the property of the petitioner. An Advocate Commissioner was deputed by this Court in the midst of hearing who has filed a detailed report dated 06.07.2015.

2. Paragraph 4 of the report of the Advocate Commissioner is as follows:-

“4. While inspecting the suggested tower site as proposed by the petitioner, I have reached on a conclusion that the shifting of the tower to a new site is possible, however with financial repercussions on the shoulders of the 3rd respondent as regards to the construction of an additional tower and the tree cutting process. Also, there might occur some delay in the materialisation of the Parapanagadi sub-station project since the altering of position

of the tower to a new location can be possible only after calling for objections from the affected parties. However, the fact cannot be downplayed that the petitioner's property's worth will diminish considerably and will be rendered useless, if the proposed tower is constructed. Therefore, considering the circumstances at hand and in the interest of justice, it will be just and proper on the part of the respondents to consider purchasing of the petitioner's property, or to sufficiently recompense the petitioner for the injurious affection due to the construction of the tower."

The Advocate Commissioner has reported that the value of the property of the petitioner will be diminished considerably and will be rendered useless by the construction of the proposed tower. The petitioner points out that the market rate of the property prevailing at present is Rs. 3,00,000/- per cent on a modest estimate. I need not emphasise the fact that the report of the Advocate Commissioner as regards the diminution in the value of the property of the petitioner has to be given due weight while assessing the compensation due to the petitioner.

3. It is reported that 57 towers out of the 64 towers have already been completed in implementation of the Parappanangadi Sub-station Project. Any alteration in the alignment involving the tracing out of a new spot for erection of the tower would consume time. It is also not technically feasible to alter the tail end of the alignment at this stage especially since the basement of the tower has already been constructed in the property of the petitioner. A change in the alignment at this stage would involve the hearing of objection of persons who would be newly affected and consume much time.

4. I should note that already an electricity line flows across the property of the petitioner. The property is burdened with the erection of another tower for drawing a new electricity line almost perpendicular to the existing line. The damage caused to the property of the petitioner particularly in relation to its beneficial enjoyment need not be emphasised. The petitioner is free to get adequate compensation in this regard without reference to the adjoining land owners. I confirm Ext. P7

order of the Additional District Magistrate leaving open the right of the petitioner to move for adequate compensation under the Indian Telegraph Act, 1885.

The writ petition is disposed of. No costs.

**V. CHITAMBARESH
JUDGE**

DCS