

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.3420 of 2017 (O&M)

Date of Decision: 19.08.2019

Jhajjar KT Transko P.Ltd.

... Petitioner

VS.

Rati Ram & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Samir Rathaur, Advocate for
Mr. Sumeet Goel, Advocate for the petitioner

Mr. Harkesh Manuja, Advocate for respondent No.1

Ms. Vibha Tewari, AAG Haryana

Mr. SK Mahajan, Advocate for respondent No.3

G.S. SANDHAWALIA, J. (Oral)

The present Civil Revision Petition filed by the petitioner-Company under Article 227 of the Constitution of India seeks quashing of the order dated 07.11.2016 (P1) passed by Additional District Judge, Jhajjar. The petitioner-company is aggrieved against the compensation granted of Rs.30 lakhs along with interest @ 18% from April, 2011 till its realization which has been granted by the Reference Court under the Indian Telegraph Act, 1885 read with Electricity Act, 2003. The amount has been assessed for the purpose of foundation which has been raised in the fields of the petitioner. The extent is of 120 feet length and 120 feet wide and in the depth of 10 feet with concrete and cement for raising four legs of the tower over the land of Killa No.102/10 which was completed in the month of December, 2011 in village Sasroli Tehsil Matanhail, District Jhajjar. The usage as such was for the construction of foundation of tower for laying down Extra High Voltage Over Head Line of 400 KV from Generating

such for compensation has been dismissed by the District Magistrate-cum-Collector, Jhajjar on 13.12.2011 (P2) and thereafter the reference was filed before the District Judge under Section 16 of the 1885 Act read with Electricity Act, 2003 (P3) claiming a sum of Rs.3,08,47,000/- due to laying down of extra high voltage transmission over head line.

The petitioner (respondent No.3 before the Additional District Judge) in its reply averred that 4 kanals of land falls underneath the tower and remaining 36 kanal land was not effected for prohibited from using. There was no tree on the land of the Rati Ram and the land was quite vacant at the time of construction of tower and laying down the wire works. A perusal of the impugned order as such would show that the Reference Court under Issue No.2 has granted the said amount as noticed while taking into account the statement of Rati Ram and Jogender Singh. Reliance has been placed upon the judgment of the Apex Court in **Kerala State Electricity Board vs. Livisha 2007 (6) SCC 792** and other judgments. Unfortunately, the Court has failed to take into consideration the provisions of Section 10(b) which provide that the Central Government shall not acquire any right other than that of user only in the property under, over, along, across in or upon which the telegraph authority places any telegraph line or post and that compensation is to be paid to all persons interested for the damage sustained by reasons of the exercise of those powers. Section 10 of the 1885 Act read as under:-

10. Power for telegraph authority to place and maintain telegraph lines and posts.—The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along, or across, and posts in or upon any immovable property: Provided that—

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the [Central Government], or to be so established or maintained;

(b) the [Central Government] shall not acquire any right other than that of user only in the property under, over, along, across in or upon which the telegraph authority places any telegraph line or post; and

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

(d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

Similarly, Section 16 of the 1885 Act provides for exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority which is to be done by the District Judge. Section 16 reads as under:-

16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.

—(1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under sub section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for this being

exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code 1860.

(3) 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.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same.

Thus it is apparent that the compensation is in proportion to the damages sustained by reasons of the exercise of powers for the land put to use. No finding as such has been recorded as to the area of the land which is being used for erection of the tower and the fact that how much of land of the landowner would come under the high tension wires and how much of damage as such has been caused to the landowners. The judgment relied upon in Livisha rather was in similar circumstances where the Apex Court

had remanded the matter to the High Court on account of the valuation being done in absence of any reasons. The relevant portions reads as under:-

“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.”

The impugned order also suffers from the same ailment.

Keeping in above the above, this Court is of the opinion that the order as such is not sustainable and the matter will have to be remanded to the Reference Court for afresh decision keeping in view the relevant provisions as reproduced above. It is settled principle that reasons form the backbone of the order which unfortunately in the present case are missing. In such circumstances this Court has no option but to set aside and remand the matter in the peculiar facts and circumstances. The judgment of **Livisha** was followed in similar circumstances in the **Kerala State Electricity Board vs. Chinamma Antony 2008 (11) SCC 476**, wherein the matters were also remanded.

Accordingly, the revision petition is allowed and order 07.11.2016 (P1) is set aside and the matter is remanded to the District Judge, Jhajjar for fresh decision. The matter being of 2011, needless to say that it would be appropriate if the matter is decided within three months from the date the parties put in appearance.

Parties are directed to appear before the District Judge, Jhajjar
on 30.09.2019.

19.08.2019

vvishal

(G.S. Sandhawalia)
Judge

- 1. Whether speaking/reasoned?*
- 2. Whether reportable?*

Yes/No
Yes/No