IN THE COURT OF THE ADDL. DISTRICT JUDGE - VII THIRUVANANTHAPURAM

PRESENT : SRI. PRASUN MOHAN, ADDL. DISTRICT JUDGE - VII

Tuesday, 28th February, 2023 / 09th Phalguna, 1944

OP(ELECTRICITY) No. 37/2018

PETITIONERS :

1. Asokan. M., aged 53 years,
   S/o. Madhavan Nadar, Pularkunnu Veedu,
   Ithiyoor, Balaramapuram. P.O., Thiruvananthapuram.
2. Salini. S., aged 42 years, W/o. Asokan. M.,
   Pularkunnu Veedu, Ithiyoor, Balaramapuram. P.O.,
   Thiruvananthapuram.

By Adv. V.S. Manikandan.

RESPONDENTS :

1. Kerala State Electricity Board,
   represented by its Secretary, Vydyuthi Bhavan,
   Pattom, Thiruvananthapuram - 695004.
2. The Assistant Executive Engineer,
   Line Construction, Sub Division,
   Balaramapuram, Thiruvananthapuram.

By Adv. Aniyoor. K. Venugopalan Nair.

This OP having been finally heard on 28-02-2023 and the court on the same day passed the following :-

ORDER

1. This is an original petition filed by the applicant u/s.16 of the Indian Telegraph Act r/w S. 51 of the Indian Electricity Act for claiming compensation against the respondents for drawing a 220 KV electric line through the petition schedule property.

2. **<u>Gist of the averments in the original petition is as follows</u> :-** The petitioners are the absolute owners having title and possession upon 12.2 Ares of property comprised in resurvey No.623/15 of Pallichal Village in Neyyattinkara Taluk. While so, the respondents issued a notice on 3.11.2015 calling upon the petitioners about the intention of the respondents to cut and remove several trees narrated in the notice for the purpose of drawal of a 220 KV electric line to connect Balaramapuram with Vizhinjam. In consequence, the respondents severed those trees in the property of the petitioner and a compensation of Rs.64,280/- was paid by the respondents to the petitioner. However, the petitioners received the above amount under protest on the reason that the respondents didn’t award a fair and reasonable compensation. Respondents prepared a mahazar and valuation statement on guess works and without following the law relating to calculation of compensation in such cases. Since the valuation done by the respondent is incorrect and unsustainable under law, the petitioners are legally entitled to receive an enhanced compensation under the head of diminution of land value and for cutting and removing trees. Respondent cut and removed jack fruit trees (2 Numbers), coconut trees (6 Nos.), Anjili (1 No.), Accassia (1 No.) and arecanut trees (2 Nos.). According to the estimation of the petitioners, an annual income of Rs.50,000/- per year was received from those cut and removed trees and therefore, they were capable of providing a yield for

the next 15 years. Thus, the petitioner estimates a compensation of tree value to the tune of Rs.2,00,000/-. Due to the compulsory nature of drawal of an electric line, the petitioner is entitled to receive a compensation for diminution of land value to the tune of Rs.12,00,000/- ie., @ Rs.3,00,000/- per cent. Hence, the original petition for compensation.

3. **An objection is filed by respondents 1 and 2** interalia contending that the OP is not maintainable either in law or on facts. KSEB conducted a proper valuation for paying compensation by relying upon the manual of instructions and a detailed valuation statement prepared by the Directorate of Economics and Statistics, Thiruvananthapuram. As per mahazar, the age, yield, girth and height of the standing trees in the petition schedule property stands included in the said document and a total amount of Rs.64,280/- was paid to the petitioner as compensation for tree value. Drawal of 220KV electric line through the petition schedule property is actually an upgradation of the existing 66KV line. Moreover, the affected area is only a small area. Due to the drawal of an electric line, any part of the petition schedule property is not rendered useless. The petition schedule property continues to be under the possession of the applicant and he can cultivate seasonal crops like tapioca, plantains, vegetables etc,. A fair, reasonable and adequate compensation was paid by the respondents to the petitioner and allegations to the contrary are denied. An exaggerated compensation is claimed in the original petition and that is not allowable. Hence, the application is not maintainable and it may be dismissed.

4. On the side of the petitioner, PW1 was examined and Exts.A1 to A7 were marked. On the side of respondent, Exts.B1 to B4 were marked and the evidence of the petitioner as well as respondent was closed. Ext.X1 is marked as an independent exhibit. Fair value notification marked on 12-12-2022 will be treated and assigned as Ext.A7.

5. Both sides were heard.

6. Points that arise for consideration are as follows :-

1. *Did the petitioner receive a reasonable and fair compensation from the respondent?*
2. *Whether the petitioner is entitled to get an enhanced compensation under the head of tree value?*
3. *Whether the petitioner is entitled to get compensation for diminution of land value and depreciation in the utility of petition schedule property?*
4. *Did the respondent upgrade the existing 66KV electric line to draw a 220KV line through petitioners property?*
5. *Reliefs and costs?*

7. **Point Nos.1 to 4 :-** All these points are inter-related and therefore, considered together for the sake of convenience.

8. I have considered the submissions and perused the materials on record. It is the specific case of the petitioner that the respondents failed to grant a fair and reasonable compensation to the petitioner under the head of tree value and diminution of land value. According to the petitioner, the petition schedule property having an extent of 12.2 Ares of property comprised in survey No.623/15 belongs to the 1st petitioner by virtue of Ext.A3 and A4 documents and this fact is remaining unchallenged.

9. No commissioner is taken out by the applicant to the petition schedule property for ascertaining the exact coverage area of the right of way of the 220 KV electric line drawn through the sky of petition schedule property. Apart from the fact, the petitioner didn’t seek assistance of a commissioner to do a comparison of the property in Ext.A5 with the petition schedule property to find out the similarly and comparable features, if any for considering whether the property in Ext.A5 is similar and comparable to the petition schedule property. In the absence of any materials to prove that the petition schedule property is similar and comparable to the lie, nature and mode of enjoyment of the property in Ext.A5 deed, I do hold that the property in Ext.A5 cannot be treated as a comparable property of the petition schedule property and therefore, the land value narrated therein cannot be taken into consideration for determining the market value of the petition schedule property.

10. In this context, it would be appropriate to refer to the dictum of the Hon’ble Supreme Court with respect to the calculation of compensation in a case of above nature. In ***KSEB V. TTP Kayyu 1996(1) KLT 432***, it is held that the claimants are entitled to get compensation for the future income to be derived from the severed trees and also entitled to receive compensation for the diminution of land value.

11. No compensation was paid by the respondents to the petitioner under the head of diminution of land value. While drawing a 220 KV electric line, the entire land of the petitioner cannot be acquired; but the effect thereof would be diminution of land value of the property over which such line is drawn. The owner of the land furthermore, in a given situation of drawal of electric line may lose his substantive right to use the property for the purpose for which the same was meant to be used.

12. In ***Union of India and Another v. Shanti Devi and Ors. [- 1983 (4) SCC 542]***, wherein, the Hon’ble Apex Court held as under:-"The number of years' purchase has gradually decreased as the prevailing rate of interest realizable from safe investments has gradually increased--the higher the rate of interest, the lower the number of years' purchase. This method of valuation involves capitalizing the net income that the property can fairly be expected to produce and the rate of capitalization is the percentage of return on his investment that a willing buyer would expect from the property during the relevant period. ………………………….. A return of 10 per cent per annum on such safe investments is almost assured. Today nobody thinks of investing on land which would yield a net income of just 5 per cent to 6 per cent per annum. A higher return of the order of 10 per cent is usually anticipated. Even in the years 1962 and 1963, an investor in agricultural land expected annual net return of at least 8 per cent. It means that if the land yielded a net annual income of Rs. 8, a willing buyer of land would have paid for it Rs. 100 i.e., a little more than 12 times the annual net income. The multiplier for purposes of capitalisation would be about thirteen."

13. In **Airport Authority of India V. Satya Gopal Roy, 2002 (3) SCC, 527,** wherein, it was held by the Hon'ble Apex Court as "14. Hence, in our view, there was no reason for the High Court not to follow the decision rendered by this Court in Gurucharan Singh's case and determine the compensation payable to the respondents on the basis of the yield from the trees by applying 8 years' multiplier. In this view of the matter, in our view, the High Court committed error apparent in awarding compensation adopting the multiplier of 18."

14. That capitalization method of a multiplier of 8 years should be used as a criteria for fixing compensation payable on account of severance of fruit bearing trees. It is observed in ***Airport Authority of India V. Satya Gopal Roy, 2002 (3) SCC, 527*** that the maximum multiplier to be applied for similar cases in future shall not exceed 10.

15. In ***KSEB V. Livisha, 2007 (3) KLT 1*****,** it was held by Hon’ble Supreme court as “10. The situs of the land, the distance between the high voltage electricity lines laid there-over, 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.”

16. In ***State of Haryana Vs. Gurcharan Singh, 1995 Suppl (2) SCC 637***, it was held by Hon’ble Supreme Court as "It is settled law that the Collector or the Court who determines the compensation for the land as well as fruit-bearing trees cannot determine them separately. The compensation is to the value of the acquired land. The market value is determined on the basis of the yield. Then necessarily applying suitable multiplier, the compensation needs to be awarded. Under no circumstances the court should allow the compensation on the basis of the nature of the land as well as fruit-bearing trees. In other words, market value of the land is determined twice over; once on the basis of the value of the land and again on the basis of the yield got from the fruit-bearing trees... **Under no circumstances, the multiplier should be more than an 8 years' multiplier, as it is a settled law of this Court in a catena of decisions that when the market value is determined on the basis of the yield from the trees or a plantation, 8 years' multiplier shall be the appropriate multiplier. For agricultural land 12 years' multiplier shall be a suitable multiplier**."

17. In ***AIR 1984 SC 774, Special land acquisition officer Vs. Davangere***, it was held by Hon'ble Apex Court as "8. It is axiomatic that the best evidence to prove what a willing purchaser would pay for the land under acquisition would be the evidence of sales of comparable properties, proximate in time to the date of acquisition, similarly situate, and possessing the same or similar advantages and subject to the same or similar disadvantages. Market value is the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under S.4(1) or otherwise, the Court has no other alternative but to fall back on the method of valuation by capitalization. ………………The main features are: (1) Security of the income: (2) fluctuation: (3) chances of increase: (4) cost of collection etc. The most difficult and yet the most important and crucial part of the whole exercise is the determination of the reasonable rate of return in respect of investment in various types of properties. Once this rate of return and accordingly the rate of capitalization are determined, there is no problem in valuation of the property."

18. No materials are placed before this court by the petitioner for proving the exact annual yield or income derived from a single fruit bearing coconut tree or other fruit bearing trees in the property. Due to the lack of any materials to challenge the valuation statement prepared by the respondent KSEB as Ext.B2, I do hold that the annual yield calculated by the respondent in Column No.16 with specific reference to several materials placed therein can be accepted.

19. However, the multiplier to be used for calculating compensation for tree value needs an increase in the facts and circumstances of the case in accordance with the decisions in Airport Authority and Livisha cases (Supra). The multiplier to be used for calculating the tree value compensation of the trees which were severed from the petitioner's property is fixed at 8.

20. According to Ext.A7 fair value certificate, the fair value of an immovable property comprised in resurvey No.623/14 is Rs.1,65,000/- per Are. Ext.X1 is the report of the Village Officer, Pallichal to report that the fair value of the property in survey No.623/15 is not recorded in notification and therefore, the fair value of the property in survey No.623/15 pertains to the fair value of the property in original survey No.623/9. Accordingly, the property in survey No.623/9 stands mutated and subdivided to form the property in survey No.623/15. According to the fair value of the property in survey No.623/15 and 623/9, the same will fetch a fair value of Rs.33,000/- per Are. In view of the report marked as Ext.X1, the fair value of the petition schedule property is Rs.33,000/- per Are for a wet land.

21. It is contended by the respondent that the petition schedule property is a wet land in revenue records. However, Ext.A1 and A2 documents suffices to show that the respondents themselves issued a notice calling upon the petitioner to sever 12 trees standing in the petition schedule property. Exts.A1 and A2 are respectively .... dated 3.11.2015 and by virtue of the contents in the said document r/w., the available oral evidence of PW1, I do conclude that the petition schedule property is a reclaimed land or otherwise, there is no possibility for such large trees to grow upon a paddy field. The mere noting of an entry as wet land in revenue records will not convert a reclaimed land was a paddy field. In the light of above discussions, the contention of the respondent that the petition schedule property is a wet land as per revenue records cannot be taken into account for granting compensation for a reclaimed land which is at presently lying as a garden land. Hence, the fair value in Ext.X1 for a paddy field or a wet land cannot ipso facto apply to a reclaimed garden land. In such circumstance, the fair value of the petition schedule property has to be re-fixed by treating it as a reclaimed land or garden land.

22. According to Ext.X1 certificate of Village Officer, Pallichal, the fair value of petition schedule property is Rs.33,000/- per Are and the same is the fair value of a wet land. However, the evidence on record proves that the petition schedule property is a garden land. In no manner of imagination, the fair value of a wet land and garden land can be considered in a similar manner and therefore, the fair value of the garden land is required to be enhanced by giving due regard to the hard work and labour involved in converting a wet land into a garden land.

23. **PW1**, the 1st petitioner gave evidence in tune with the contents in the application.

24. Exts.A4 is the title deed by which, the petitioners obtained title upon the petition schedule property in the year 1994. Ext.A3 is a copy of land tax receipt showing the tax paid for petition schedule properties.

25. No comparison report is before this court to show the comparable land value of any other similarly placed plot. In the absence of any documents to the contrary, the fair value in Ext.X1 fair value particulars is Rs.33,000/- per Are in the year 2022. Having gone through Ext.X1, it is revealed that 10% hike is made to the fair value every year to enhance the land value upto the year 2020. Thereafter a sharp hike is made to the fair value to the tune of 120% to arrive at the present figures in Ext.X1. Fair value of a land, vide Ext.X1 will never be an equivalent to the actual market value of the land. If the fair value of petitioner property in the year 2017 is assessed with the aid of Ext.X1, the same would be 70% above the rate of 2010 and 50% lesser than the one of 2022. Having analyzed and evaluated the fair value of the land in 2017, I do hold that a 50% hike ought to be given to the same in 2017 to fix the land value for granting compensation for diminution of land value. Accordingly, the value of petition scheduled property in the year 2017 is fixed at Rs.33,000/- per Are for calculation of compensation by relying upon the principles in the dictum referred above read with the % hike in Ext.X1 notification.

26. Even as per the Kerala government order, G.O(M.S) No-29/2015/PD dt 30/07/2015 for granting compensation for Koodamkulam Package, the government suo motto granted 5 times above the fair value for calculating the market value of the property for drawing an electric line for Koodamkulam power project, vide clause no-15 of that order.

27. Although, the petition schedule property is classified in the fair value record as a wetland, the nature of land as ascertained by the available evidence ought to prove that the same is a garden land. Thus, the petition schedule property is a garden land, which will fetch much higher land value than the land value narrated in fair value particulars of the petition schedule property. In short, a 100% hike is given to the fair value of the petition schedule property on the reason that the same is a garden land on the date of drawal of electric line.

28. In the light of above discussions, it is already concluded that the petition schedule property is a garden land and therefore, 100% hike is ordered above the existing fair value of Rs.33,000/- per Are of a wetland to increase the same to Rs.66,000/- per Are to make it in par with that of a garden land. Thus, the value of petition schedule property is increased to Rs.66,000/-per Are by taking into account of the fact that the same is a garden land in tune with X1 and evidence on record.

29. Ext.B3 was tendered by the respondents to contend that the drawal of 220 KV line through the property of petitioner is only an upgradation work of the existing 66KV line. However, the petitioner opposed this contention to plead that a 66 KV line was never drawn through the sky of petition scheduled property in the past. Any documents to prove the existence of a 66 KV line through the property of petitioner in the past is not proved by the respondents. Neither the route of alignment of the 66 KV line nor any documents showing the alignment of that 66 KV line in the sy.no of the property of the petitioner is not tendered in evidence to substantiate the contentions in the objection. In short, the production of Ext.B3, a self-styled document of the respondent cannot prove the existence of a 66 KV line in the property of the petitioner. Accordingly, no credence can be given to the contention of the respondents about the past existence of a 66 KV line in the petition scheduled property and that contention is devoid of any merits.

30. Even as per the Kerala government order, G.O(M.S) No-29/2015/PD dt 30/07/2015 for granting compensation for Koodamkulam Package, the government suo motto granted 5 times above the fair value for calculating the market value of the property for drawing an electric line for Koodamkulam power project, vide clause no-15 of that order. Clause No.15 of G.O(M.S) No-29/2015/PD dt 30/07/2015 reads as follows:- “Government held discussions with the stakeholders and in partial modification of the GO read as 10th paper above, the special compensation package was revised by fixing market value of the land @ 5 times the fair value as per GO read as 11th above”.

31. Anyhow, the provisions in the Kudamkulam Package, vide Government order read above is taken into account to enhance the land value of Rs.66,000/- by providing a hike of 5 times above the land value in the fair value particulars of a garden land. In the light of above discussions, the land value of petition schedule property is fixed at Rs.66000x5 = Rs.3,30,000/- per Are.

32. No document is produced by the petitioner to prove the exact right of coverage area in the petition schedule property. However, the respondent produced Ext.B4 to contend that the right of coverage area or right of way in the petition schedule property is 8.560 Ares.

33. Based on above discussions, the right of coverage area in the petition schedule property is fixed at 8.560 Ares and accordingly, 30% of diminution of land value can be granted to the petitioner. Hence, the land value of Rs.3,30,000/- will be multiplied by 8.560 (right of coverage area (ROW) x 30/100) = Rs.8,47,440/- and this will be the compensation payable for diminution of land value upon the petition schedule property.

34. The next question which arises for consideration is regarding the compensation payable for tree value. According to Ext.A1 and A2 documents, 12 trees were cut and removed from the petition schedule property, vide the contents in Ext.A1 and A2 documents. Ext.B1 is similar to Ext.A2 document. Ext.B2 is the detailed valuation statement prepared by the petitioner for calculating the compensation of Rs.64,280/- paid to the petitioners and received by them under protest. Multiplier of 5.335 is applied by the petitioner for calculating the compensation in Ext.B2 document. Having gone through the contents in Ext.B2 document, it is revealed that the item No.5 Anjili and Item No.9 Alkesia are the only trees, which were not treated as fruit bearing trees. All the remaining coconut, arecanut and jack fruit coming under serial Nos.1 to 4, 6 to 8 and 10 to 12 are fruit bearing trees, for which, the respondent applied a multiplier of 5.335 and the said calculation is wholly against the provisions in the dictum of the Hon'ble Supreme Court in Airport Authority of India case and Livisha case (supra). No materials are placed before this court by the petitioner for re-calculating the annual yield calculated by the respondent in column No.16 of Ext.B2 document. In such circumstances, the only solution to be worked out for Ext.B2 is to re-calculate the compensation by applying the multiplier of 8 in accordance with the dictum referred above. In view of above discussions, the annual yield per annum for future years as calculated by the respondent for the trees in serial Nos.1 to 4, 6 to 8 and 10 to 12 in serial No.16 of Ext.B2 is taken as such as the annual yield for future to multiply the figure with a multiplier of 8.

35. Accordingly, the annual yield per annum in column No.16 of serial No.1 to 4, 6 to 8 and 10 to 12 trees coming to a total of 11,696.36/-(1525.78+ 435.94+(1830.94x5)+435.94+54+90)x8 = Rs.93,570.88/-.

36. Thus, the compensation for tree value for the trees cut and removed, vide Ext.B2, A1 and A2 documents will be refixed at Rs.93,570.88.

Sl. No.	Compensation for tree cutting	Diminution of land value	Less amount paid	Balance
1	Rs.93,570.88/-	Rs.8,47,440/-	Rs.64,280/-	Rs.8,76,730.88/-

37. Thus, the balance compensation to be paid by the respondent to the petitioner after subtracting the amount received is Rs.8,76,730.88/- and Point Nos.1 to 4 are answered in favour of the petitioner to the extent discussed above. Interest will be payable @ 8% per annum for the aforesaid amount with effect from the date of demand notice to the date of realization of the amount.

38. **<u>Point No.5</u> :-** In consequence, the original petition is allowed in part as follows :-

> ***The respondent do pay a compensation of*** **Rs.8,76,730/-** (**Rupees Eight lakhs Seventy six thousand Seven hundred and Thirty)** ***to the petitioner together with a simple interest @ 8% per annum from the date of notice (03-11-2015) to the date of realization of the said amount. The petitioner is also entitled to receive proportionate costs from the respondent and assets.***

Dictated to the Confidential Assistant, typed by her, corrected by me and pronounced in Open Court on this, the 28th day of February, 2023.

Sd/-
PRASUN MOHAN
Addl. District Judge - VII

APPENDIX :

Exhibits for Petitioners :

A1	-	03-11-2015	-	Notice from KSEB [EB/BLPM-VZM/292/Trees]
A2	-	03-11-2015	-	List of trees
A3	-	28-10-2015	-	Tax receipt
A4	-	09-02-1994	-	Copy of Sale deed No. 418/94
A5	-	30-10-2020	-	Copy of Sale deed No. 1050/20
A6	-	20-06-2018	-	Power of attorney
A7	-	12-06-2022	-	Copy of fair value of land

Exhibits for Counter petitioners :

B1	-	03-11-2015	-	Copy of list of trees
B2		-		Copy of detailed valuation statement of damages
B3		-		Abstract from KSEB
B4		-		Sketch of the property

Court Exhibits :

X1	-	30-03-2022	-	Gazette notification

Witness for Petitioners :

PW1	-	20-09-2022	-	Deposition of Salini

Witness for Counter petitioners : Nil

Court Witness : Nil

Id/-
Addl. District Judge - VII

(True Copy)

By Order

(Faircopy : 1; Copies : 4)
Typed by : Anusree Jayan
Compared by : Sreelekshmi

SHERISTADAR

Copy of Order in
OP(ELECTRICITY) No. 37/2018
Dtd : 28-02-2023
