

IN THE COURT OF I ADDL. DISTRICT & SESSIONS JUDGE,
MANDYA

Dated this the 14th day of August 2023

PRESENT

**Smt. N. Sheela. B.Sc., LL.B
I Addl. District & Sessions Judge, Mandya.**

Miscellaneous Petition 80/2021

Petitioner: Siddegowda .C

V/s

Respondent: Executive Engineer, KPTCL

IA No.1

Applicant: Siddegowda .C

V/s

Opponent: Executive Engineer, KPTCL

**ORDERS ON APPLICATION UNDER ORDER 26 RULE 9 OF
R/W/S 151 OF CPC**

The petitioner filed present application under Order 26 Rule 9 r/w 151 C.P.C. seeking to appoint Court Commissioner to measure and demarcate the length of the electricity line and details of towers erected by the respondent authority in the petition suit schedule property.

2. The petitioner counsel in the memorandum of facts has stated that, the petitioner has filed the present petition against the respondent for grant of compensation for drawing of the 220 KV High Tension Power Line. The respondent has drawn 220 High Tension Line over the petitioner's land, but nowhere in the notification or in the award the respondent authorities have not at all mentioned the particulars regarding the length of the line and also how much towers have been erected in the land of the petitioner. The petitioner further stated that, the respondent authorities have also not at all disclosed the fact that how much land of the petitioner is not usable under the line followed. Even after filing of the petition and representation made by the petitioner, the respondent authority have failed to comply the demands of the petitioner with respect to length of the line and also other particulars, even though they have duty bound to comply the demands of the petitioner. The petitioner further stated that, it is essential to produce the measurement of the length of the high tension wire

and how much land has been occupied for the purpose of using the land for erecting the tower and how much and is not usable after erecting the high tension wire. The petitioner being a rustic villager is not capable of assessing the said facts in clear measurement and hence it is necessary to appoint a technical competent person to measure the above said particulars and to submit his report, to come to the fair conclusion in the above petition. Hence the petitioner filed the application for seeking the approval of this Court to appoint the Court commissioner for the purpose of carrying out survey as to assess how much land has been used as length of the line by the respondent in the petitioner's schedule land. It is submitted that, appointment is very much necessary to prove the case of the petitioner. Hence the application is made with bonafide intension. Under the above said circumstances, it is just and necessary to appoint the court commissioner and call for the report from him to come to the fair conclusion. Hence, this application is filed. If the application is allowed no

prejudice or inconvenience will be caused to the others, otherwise the petitioner will be put to much hardship and great injustice. Hence, prays to allow the IA No.1.

3. The respondent counsel has filed objection contended that, the description of the properties given in the petition and in application as the same are lacking clarity, preciseness, accuracy and also not supported by any sketch or actual photograph to carry out any measurement or assessment of damage task/works. It is further contended that, the petitioner ought to furnish the minimum length of line or distance of passing of the Electric Line Traction and presence of towers if any, which would be suffice to ascertain the actual damage if any, since actual damage is the only point for consideration and not any other things. Moreover the application is not supported by any affidavit of the petitioner and the same amounts to violation of Rule 18 of Karnataka Civil Rules of Practice 1967 and hence the application is not maintainable. No technical person is required to put I the actual length linear distance passed through their lands if any transaction is in straight line and the presence of the tower if any could be physically

measured and submitted with the petition or by way of amendment. The same will suffice to determine the actual damage and amount to be paid or compared with amount already paid. The particulars of entire transaction if notified in all the news paper and in gazette of the relevant time and furnished earlier and the same are in public domain and specific and individual extents to be furnished separately by the petitioner on their own to show the damage if any. In the absence of the said particulars, no purpose will be served in the present application is considered at the stage and same is liable to be dismissed.

4. Heard both side. Perused the materials available on record.

5.The following points are arise for my consideration:-

POINTS

1. Whether the IA.No.1 filed by the petitioner deserves to be allowed?
2. What order?

6. I answer the above points as follows:-

Point No.1: In the Affirmative

Point No.2: As per final order for the following:-

REASONS

7. Point No.1:- The petitioner has filed the present petition against the respondent for grant of compensation for drawing of the 220 KV High Tension Power Line. Further the petitioner counsel has stated that, the respondent authority has not mentioned the particulars regarding the length of the line and how much towers have been erected in the petition schedule property, either in the notification or in the award and also not stated disclosed how much land of the petition is not usable under the line followed. It is further stated that, the respondent has failed to comply the demands of the petitioner.

8. The respondent in his objection has not mentioned the length of the power line drawn over the petition schedule property and also not furnished any documents to this effect.

9. Hence under the above circumstances, it deems to this court that, a local investigation is required for the

purpose of elucidating the matter in dispute, to ascertain the damages caused in the petition schedule property. Hence, it is just and necessary to appoint court commissioner for the above said purpose. Hence, I **answer point No.1 in the affirmative.**

10. POINT NO.2: - In view of the above discussion and answering the above Point, this court proceed to pass the following ;

ORDER

I.A. No.1 filed by the petitioner under Order 26 Rule 9 r/w 151 of C.P.C. is hereby allowed.

No order as to costs.

Consequently, the ADLR, Maddur Taluk, Mandya District is appointed as Court Commissioner to measure and demarcate the length of the electricity line and details of towers erected by the respondent authority in Sy.No.174/4 measuring 10 guntas situated at Kudaragundi village, Kasaba 1st Valaya Hobli, Maddur Taluk, Mandya District.

The Court Commissioner's fee is tentatively fixed at Rs.3000/- payable by the petitioner.

Issue Commission Warrant if Commissioner fee is deposited and if P.F. paid.

Both parties are hereby directed to co-operate with the court commissioner for carrying out local inspection.

Both counsels are directed to file memo of instructions.

Office is hereby directed to send the copy of order with memo of instruction to the Commissioner.

(Dictated to the Stenographer directly on the computer, print out taken out by her, and corrected and then pronounced by me in the open Court on this the **14th day of August, 2023**)

(N. Sheela)

I Addl. Dist. & Sessions Judge,
Mandya.

