KATK010016582019

IN THE COURT OF VI ADDL. DISTRICT AND SESSIONS JUDGE AT TUMAKURU

PRESENT : Smt.Shilpa K.S
BA.L., LL.M.,

VI Addl. District and Sessions Judge,
Tumakuru

Dated this the 25th day of July 2025

Civil Mis.222/2019

Petitioner : Kenchanna

V/s

Respondents: KPTCL & 2 others

I.A.No.VII

Applicants:

1. Karnataka Power Transmission Corporation Limited (KPTCL) Bengaluru, Represented by its Managing Director, KPTCL, Corporate Office, Kaveri Bhavan, Bengaluru-560009.

2. The Executive Engineer, Major Works Division, KPTCL, No.2954/139, Koti Thopu Road, Ashok Nagar, Tumkauru-572 103.

3. Assistant Executive Engineer, No.3, Major Works Sub-Division, KPTCL, Kothithopu, Tumkur-572102.

(R1 by Sri. B.A.G.R., Advocate

R2 & R3 by Sri.B.A.V., Advocate)

V/s

Opponent : Kenchanna, S/o. Late Sanna Kanumayya
A/a. 68 years, R/at Chikkanakote Village,
Bandakunte post, Kasaba Hobli,
Sira Taluk, Tumkur District-572 137.

(By Sri. J.P./M.B., Advocate)

Orders on application filed under order 7 rule 11(a), (b), (d) r/w sec.151 of CPC, r/w sec.21 amd 16 of KCF & SV Act 1958 r/w article 137 of Limitation Act 1963

The respondents have filed this application against the petitioner to reject the petition in the interest of justice and equity.

2. Brief Facts : It is submitted that the respondents have executed the duty of construction of towers, stringing of transmission lines pertaining to 66 KV Sira-Pattanayakanahalli lines involves larger public interest. The construction work was completed in the year 2007. Hence respondents were not bound to pay any corridor or tower base compensation in the said year as there was no guidelines to pay such compensation. Since the work execution was done in the year 2007 this petition was filed on 21.03.2019 and hence as the petition is filed beyond three years it is not maintainable one. In this context the full compensation is awarded to the petitioner. The petitioner has filed this petition for enhanced compensation of Rs.3.82,00,000/- which is only the matter in issue and there is no other matter in issue except money to be decided. Hence the petition is nothing but suit for recovery of money that falls within the purview of section 21 of KCF & SV Act and the advalorem court fee is to be payable upon the amount of compensation claimed. But nowhere the above suit is either valued or any valuation slip is filed showing the payment of any court fee by the petitioner. Therefore the petition is not maintainable and liable to be rejected. The petition is not exhaustive and cause of action is not stated in the petition. Hence this application.

3. The petitioner has not filed objections.

4. Heard the counsel for respondents. It is pertinent to note that inspite of providing several opportunity to the counsel for petitioner they have not argued their side and hence their side argument is taken as not addressed.

5. The following points would arise for my consideration:

1. Whether the respondents proves that the petition is barred by time and the petition is liable to be rejected for non payment of court fees ?
2. What order ?

6. My findings on the above points are hereunder:

Point No.1: In negative
Point No.2: As per final orders for the following:

REASONS

7. **Point No.1:** It is the grievance of the respondents that this petition is filed after time and hence barred by law of limitation. The petitioner has not filed objections.

8. The O.7 R.11 of CPC says that the plaint shall be rejected in following cases

a. Where it does not disclose cause of action.

b. Where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so.

c. Where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so.

d. Where the suit appears from the statement in the plaint to be barred by any law.

e. Where it is not filed in duplicate.

f. Where the plaintiff fails to comply with the provisions of rule 9.

9. In this regard, I would like to rely upon decision reported in **Kerala State Electricity Board v/s T.P. Kunhaliumma, (1976) 4 SCC 634 which has** held that the District Judge under the Telegraph Act act as a civil court in dealing with applications under Section 16 of the Telegraph Act and Article 137 of Limitation Act is applicable. Further it is observed that " The provisions in the Telegraph Act which contemplate determination by the District Judge of payment of compensation payable under Section 10 of the Act indicate that the District Judge acts judicially as a court. Where by

statutes matters are referred for determination by a court of record with no further provision the necessary implication is that the court will determine the matters as a court. In the present case the statute makes the reference to the District Judge as the Presiding Judge of the District Court. In many statutes reference is made to the District Judge under this particular title while the intention is to refer to the court of the District Judge. The Telegraph Act in Section 16 contains intrinsic evidence that the District Judge is mentioned there as the court of the District Judge. Section 16(4) of the Telegraph Act requires payment into the court of the District Judge such amount as the telegraph authority deems sufficient if any dispute arises as to the persons entitled to receive compensation. Again, in Section 34 of the Telegraph Act reference is made to payment of court fees and issue of processes both of which suggest that the ordinary machinery of a court of civil jurisdiction is being made available for the settlement of these disputes. Section 3(17) of the General Clauses Act states that the District Judge in any Act of the Central Legislature means the judge of a principal civil court of original jurisdiction other than the High Court in the exercise of its original civil jurisdiction, unless there is anything repugnant in the context. In the Telegraph Act there is nothing in the context to suggest that the reference to the District Judge is not intended as a reference to the District Court which seems to be the meaning implied by the definition applicable thereto. The District Judge under the Telegraph Act acts as a civil court in dealing with applications under Section 16 of the Telegraph Act.

10. Further as per the changed definition of the words “applicant” and “application” contained in Sections 2(a) and 2(b) of the 1963 Limitation Act indicates the object of the Limitation Act to include petitions, original or otherwise, under special laws. The interpretation which was given to Article 181 of the 1908 Limitation Act on the principle of ejusdem generis is not applicable with regard to Article 137 of the 1963 Limitation Act. Article 137 stands in isolation from all other articles in Part I of the third division. This Court in Nityananda Joshi case where article 137 to be referable to applications under the Civil Procedure Code. Article 137 includes petitions within the word “applications”. These petitions and applications can be under any special Act as in

the present case. The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court. It is hold that that Article 137 of limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act."

11. The time prescribed under Article 137 of Limitation Act for filling an application or petition is three years from the date when the right to apply accrues. In the present case, though notice had been issued to the petitioner as per Ex.P.2 on 23.05.2006 but no compensation was paid to the petitioner. The petitioner has made several correspondence and finally when his hope went in futile he has filed this petition on 21.03.2019. Hence, the said date is taken for the purpose of calculating the period of limitation. So, the right to apply was accrued to the petitioner when he had obtained the Ex.P.5 where no date is mentioned. Then this petition

was filed. Hence it has to be construed as the petition is filed within time.

12. Further the respondents have filed this application that the petition is liable to be rejected as the petitioner has not paid the court fees as the petition is nothing but recovery of money. This petition is filed seeking enhanced compensation from the respondents as due to the laying of electric lines. Further this petition is filed under both Electricity Act and Telegraph Act.

13. That under the Telegraph Act the payment of the court fees is not mandatory because the Act primarily deals with the regulation of telegraphs and telecommunications, including the establishment, maintenance and working of telegraphs. It does not directly address the court fees or the specific procedures for filing suit or appeals related to the telegraph related disputes. The telegraph Act does not have a specific provision for court fees. However court fees are relevant and applicable when litigation arises from disputes. It is true that when a petition is filed under

Electricity Act for enhanced compensation the court fees are generally mandatory.

14. In support of this contention the respondents have relied upon decisions reported in

a. Civil appeal No.2064/22 – It is observed that fees falling to enforce right to share, injunction, easements, accounts the plaintiff would state the amount at which he values the relief sought. In case of applicability of section 7(i) of the Act advolarem court fees would to be paid as pwer schedule 1 entry 1.

b. 2009(14) SCC 441 – Chandrashekar V/s Additional special land acquisition officer – It is observed that the enhanced compensation which has now been directed to be paid to the appellants shall deposit the requisite court fees on the aforesaid enhanced amount from the date of supply of copy of this order.

c. 2008(9) SCC 552 – Sooram pratap reddy V/s District collector – It is observed that the only guiding rule for the determination of its meaning is that the proposed acquisition should tend to promote the welfare of the community as distinct from the benefit conferred upon an individual. The mere fact that the immediate use is to benefit a particular individual would not prevent the purpose being a public one.

d. 1996(5) SCC 547 – M.Govindaraju V/s The Spl.LAO – It is observed that if higher compensation is sought for necessarily he has to pay the court fees theeron. When higher amount was stated in the memo of appeal but court fee was paid at a lesser amount, it would be obvious that the appellant had valued and restricted his claim to the extent to which the court had been paid.

e. 1995(5) SCC 284 – Butasingh V/s Union of India – It is observed that when appeals were kept alive, the claimants would be entitled to the higher compensation by permitting them to pay the additional deficit court fee as their appeals were pending. The party has to pay the deficit court fee after the compensation was enhanced.

f. 2021 SCC online Delhi 2883 – Shivkumar Gupta V/s Pooja – It is observed that where specific amount of damages/compensation is being claimed, the court fee has to be paid on such amount.

g. 2020 SCC online P & H 4451 – Jai Bhagwan Goel V/s Harjeet Kaur – It is observed that the plaintiff may or may not succeed in getting the amount claimed but it is for him to establish his loss and affix court fee thereon as it is well settled that court fee has to be determined on the basis of entire reading of the plaint.

h. 2006 SCC online P & H 1095 – Ranjit Kaur V/s Punjab Electricity Board – It is observed that plaintiff may or may not succeed in getting the amount claimed but it is for him to establish his loss and affix court fee thereon as it is well settled that court fee has to be determined on the basis of entire reading of the plaint.

I. 2010 SCC online Mad 3305 – The Executive Engineer V/s Avanashi Gouder – It is observed that if any dispute arise concerning the sufficiency of the compensation to be paid it shall be decided by the District Judge. It is felt that there is diminution of value of land because of stringing of electricity lines it is open to him to seeek appropriate remedy in accordance with law.

j. 2009(5) All MR 421 – Vijaykumar V/s Maharashtra State Electricity Board – It is observed that the compensation of damages sustained was already tendered to him by the authority and its adequacy is only the dispute.

k. 1976(4) SCC 634 – Kerala State Electricity V/s T.P.Kunhaliamma – It is observed that the Telegraph Act requires payment into the court as deems sufficient if any dispute arises to the person entitled to receive compensation.

15. After perusal of the above preposition of law it is true that the court fees are payable when petition are filed under Electricity Act. Further as per settled principle of law the payment of court fees are mixed question of law and fact and it cannot be taken as an preliminary issue. In this case already the petitioner has adduced evidence. Then if at all after conclusion of the evidence it is found that the petitioner is entitled for enhanced compensation then he

may be directed to pay the required court fees on the enhanced amount. So the petition cannot be rejected merely for non payment of court fees which is a mixed question of law and fact. All other factors are to be considered after full fledged trial.

16. Hence under these circumstances the petition cannot be rejected as this court has jurisdiction to entertain the petition and further the petition cannot be rejected as it the payment of the court fees is a mixed question of law and fact. At this stage I am of opinion that the application filed by the respondents is not maintainable and I answered the **point No.1 in negative**.

17. **Point No.2** : In view of my above finding I proceed to pass the following :-

ORDERS

I.A.No.7 filed U/o.7 R.11(a) (b) (d) r/w sec.151 of CPC, r/w sec.21 and 16 of KCF & SV Act 1958 r/w article 137 of Limitation Act 1963 is hereby dismissed on without costs.

To hear on I.A.No.4 to 6 by 08.09.2025.

(Dictated to the Stenographer Grade-I directly on computer, got typed by her, then corrected and pronounced by me in open court, on this the 25th day of July 2025.)

KADALAGERE SHESHAGIRI RAO SHILPA

Digitally signed by KADALAGERE SHESHAGIRI RAO SHILPA
Date: 2025.07.31 16:11:34 +0530

(SHILPA.K.S)
VI Addl.District & Sessions Judge,
Tumakuru.