

**IN THE COURT OF THE II ADDL. DISTRICT & SESSIONS
JUDGE AT TUMAKURU**

Dated: 30th day of November, 2018

PRESENT:

Sri.TARAKESHWARGOUDA PATIL, B.A., LLB.,(Hons.) LLM.,
II Addl. Dist. & Sessions Judge, Tumakuru.

Civil Misc. No: 161/2013

PETITIONER : Byatarangaiah,
S/o. Nanjaiah,
Aged about 55 years,
R/o. Lakkenahalli village,
Kasaba Hobli,
Gubbi Taluk,

(By Sri. B.V.V Adv)

-V/s-

- RESPONDENTS:** 1. The Executive Engineer (Electrical),
No.2, Major Works Department,
KPTCL, Office at :
Old Zilla Panchayath office Building,
Kothithopu Road,
Tumakuru Town.
2. The Assistant Executive Engineer (Elect.),
No.2, Major Works Department,
KPTCL, Office at :
Old Zilla Panchayath office Building,
Kothithopu Road,
Tumakuru Town.

(R1 & R2: By Sri. M.S.S. Adv)

JUDGMENT

That, the petitioner has filed the present petition U/Sec.164 (3) of the Indian Electricity Act 2003 and Sec.16 & 10 (D) of Indian Telegraphic Act r/w. Sec. 23 of the Land Acquisition Act against the respondents, seeking enhancement of compensation in respect of trees, and diminished value of the land underneath the newly laid electricity line, with interest @ 12 % p.a.

2. That, the brief and relevant facts leading to filing of this petition are as follows :-

Petitioner is an owner of an agricultural land bearing Sy.No.202, Situated at Lakkenahalli village, Kasaba Hobli, Gubbi Taluk, Tumakuru District. It is the case of petitioner that there were horticultural crops like mango, neem, banian and teak wood trees etc in the said land. In addition to that, the petitioner had also dug a borewell for

the purpose of irrigation to the fruit bearing trees. It is the further specific case of the petitioner that, the respondents have drawn high tension electric line over the land of the petitioner, cut and removed the trees in the said portion, and thereby, awarded the meager compensation amount of Rs. 3,45,795/- only. It is the further specific case of the petitioner that the respondents have not adopted the capitalization method while determining the value of the trees. And the approach of the respondents is totally unscientific, and without considering the present value of the trees properly. And the compensation so paid is not in accordance with the market value of the relevant year. It is the further specific case of the petitioner that due to drawing up of high tension wire by the respondents, the value of petitioner's land has drastically diminished. Therefore, the petitioner prays for the grant of global compensation, under the various heads, totaling to Rs. 38,54,205/- with interest at 12% p.a.

3. That, in response to notice, the respondents have appeared through the counsel, and resisted the claim petition by filing the detailed written objections. Respondents have denied the entire petition averments *at the 1st instance* and *inter-alia* contended that : the petition filed by the petitioner seeking higher compensation is not maintainable either in law or on facts. And the provision of law mentioned are also incorrect and hence, the petition is liable to be rejected. But however, it is admitted that the respondents have drawn 110/11 K.V. electric transmission line to Bidare Sub-Station through the petitioner's land, and notice dated: 27/09/2012 was issued to the petitioner requesting him to remove the standing trees. It is further contended that as per the directions of the respondents, the petitioner has cut down and removed the trees from his land and requested to pay compensation. It is further contended that the respondents have not acquired a single bit of land. It is further contended that the respondents have assessed

the value of the said trees as per the report of Senior Assistant Director of Horticulture and paid suitable compensation to the petitioner, which is just, fair and reasonable. And the petitioner has received the compensation amount, even, without any protest, and he has not filed any objections before the Horticulture Department regarding assessment of valuation of the trees. It is further stoutly contended that the compensation claimed by the petitioner is highly exorbitant, excessive and without any basis. Therefore, the respondents strongly pray for dismissal of petition, among the various other grounds morefully taken up in their objection statement.

4. That, in order to establish the case of petitioner, the petitioner has got himself examined as P.W.1 and got marked 11 documents as per Ex.P1 to P.11 and closed his side. Per contra, the respondents have not adduced any oral or documentary evidence.

5. That, I have heard both the side counsels and perused the material on record including the authorities relied upon by both sides.
6. That, having heard and perused the material on record, the following points would arise for my consideration:-
 1. Whether the petition for enhancement of compensation is maintainable, in view of receipt of compensation by the petitioner, without protest ?
 2. Whether the compensation determined by the respondents, in respect of trees and right of user over land in question is improper and inadequate ?
 3. Whether the petitioner is entitled for enhancement of compensation? If yes, at what rate?
 4. What order?

7. My answers to the above points are as follows:-

Point No.1 : In the affirmative.

Point No.2 : In the affirmative.

Point No.3: In the affirmative.

Point No.4 : As per the final order,
for the following :-

REASONS

8. **POINT NO.1 :** That, the first and foremost contention of the contesting respondents is that the petitioner in the instant petition has received compensation, in respect of trees in question, without any protest, as a final payment as per the document marked at Ex. P.6 : Receipt, and therefore, the petition is not maintainable for further enhancement of compensation or higher compensation.

9. That, as regards the said contention of the respondents is concerned : this Court has placed its reliance upon the decision rendered by the Hon'ble Supreme Court of India reported in : 1969 (1) SCWR P-645, wherein, it has been held that there is no need to file the written protest about inadequacy of compensation at the time of receiving compensation. And further held that merely because no such protest petition is filed, it cannot be treated that the petitioner has lost his right to claim the just, fair and reasonable compensation, under the similar set of circumstances. Therefore, on the conspicuous application of mind to the facts and circumstances of the instant case and the dictum laid down as a binding precedent by the Hon'ble Supreme Court in the above referred decision, I do not find any force in the contention raised by the respondents as to maintainability of the petition. Accordingly, I am inclined to answer the Point No.1 in

the affirmative, by holding that the petition in the present form is very much maintainable.

10. **Points No.2 and 3** : That, since these two points are inter-connected with each other, they are taken up together for common discussion to avoid repetition and to maintain the brevity of judgement.
11. That, the claim of the petitioner is based under the provisions of Indian Telegraphic Act, 1985. Sec. 10(d) of the Act makes it obligatory on the part of respondents to pay the full compensation to all persons interested for any damage, sustained by them, by reason of the exercise of those powers. This provision *per-se* indicates that no person should be made to suffer loss on account of act of the State and, the owner of land is to be compensated to the full extent to mitigate the loss. Therefore, the law mandates that in case of damage caused in exercise of power under S.10 of the Act, with respect to any property

other than one referred to in clause (c), the Telegraph Authority shall pay the full compensation to all persons affected thereby.

12. That, in order to substantiate the claim, the petitioner has got himself examined as P.W.1 and sworn to an affidavit in lieu of chief-examination by *reiterating* the petition averments, and also got marked the various documents at Ex.P1 to P11. Ex.P1 is the notice issued by the respondents. Ex.P2 is the copy of the mahazar. Ex.P3 is the requisition letter of the petitioner addressed to the respondents. Ex.P4 is the certificate pertaining to the land of the petitioner. Ex.P5 is the RTC extract. Ex.P6 is the acknowledgement and copy of cheque. Ex.P7 is sketch. Ex. P8 is the certified copy of the letter issued by the Senior Assistant Direct of Horticulture regarding the approximate yield. Ex.P9 is the price list. Ex.P10 is the pricelist pertaining to wooden trees. Ex.P11 is the endorsement of Village accountant. In the cross-

examination, the P. W. 1 admits the factum of issuance of notice by the respondents while laying 110 K.V. electricity line over his land. He further admits that he has not intimated in writing to the respondents about his receipt of compensation under protest. But however, he denies the suggestion that he has accepted the compensation towards the full and final payment. And even an attempt is also made to establish that the compensation paid to him is adequate and as per the value fixed by the Horticulture Department, but, nothing worth is elicited from his mouth to discard his testimony as to inadequate compensation paid by the respondents.

13. That, it is not in dispute that the petitioner is an owner of the land in Sy.No.202, situated at Lakkenahalli village, Kasaba Hobli, Gubbi Taluk, Tumakuru District. It is also an admitted fact that the respondents have laid 110 K.V. electricity line passing through the land of the petitioner. It is also an admitted fact that 30 mango trees of 12 years

age, 5 neem trees of 10 years age, 1 banian tree of 10 years age, 2 teak trees of 10 years age, 1 forest tree of 10 years age were cut and removed from the land of the petitioner for the purpose of carrying out the electric work *as could be seen from the Mahazar marked at Ex. P.2*. It is also an admitted fact that the respondents have awarded the total compensation of Rs. 3,45,795/- to the petitioner. And thus, the only dispute lingering in between the parties is with regard to the quantum of compensation determined by the respondents.

14. That, in a decision reported in : **AIR 1999 KARNATAKA 32** In between : **T. Giri Thimmaiah Vs. Karnataka Electricity Board, Bengaluru and others**, it has been held as under :

Telegraph Act (13 of 1885), Ss.10, 16 – Electric transmission lines – Laying of – Compensation – Computation – Authorities cutting coconut, tamarind and neem trees from land – Assessment of compensation on basis of price of trees – Not proper – Net annual

yield multiplied by relevant multiplier should be considered.

15. That, in a decision reported in **I.L.R 2014 Kar 284 In between : KPTCL Bengaluru & others Vs. A.P. Manoharachar**, the Hon'ble High Court of Karnataka has held as under :-

(A) ELECTRICITY ACT, 2003, Secs.164 and 165 – Indian Telegraph Act, 1885, Secs. 10(d), 16(3) and 16(5) – Electricity transmission line put up by transmission licensee over private land – Compensation payable to landowner for causing diminution in the value of land - Determination of land coming under corridor area, i.e., area consisting of totally 19 metres (9 metres on either side of transmission line calculated from center of transmission line) in respect which landowner has been deprived of his right to grow tall trees, like coconut, areca, etc., trees and luxuriant shrubs – As landowner can use corridor area for growing crops which may not affect transmission line and as title to land coming within corridor area continues to be vesting in him, it cannot be said that he is totally deprived of his right to utilize corridor area – It is, therefore, held, just and proper to award 30% of the market value of land

forming corridor area as compensation for diminution in value of land – When market value of land as ascertained from Sub-Registrar is Rs.5,000/- for gunta, compensation payable for diminution in value of 35.57 guntas of land determined as corridor area works out to Rs.53,355/- - Award passed by District Judge granting 50% of market price as compensation, stands modified.

HELD : The award of compensation towards diminution value of the land on account of the electrical lines drawn across the land towards deprivation of usage and utility of the land has to be calculated at 30% of the market value of the land falling under the corridor area. Therefore, if 30% of the market value is taken, the diminution value of the land is Rs.53,355/-.

(B) ELECTRICITY ACT, 2003 Secs.164 an 165 – Indian Telegraph Act, 1885, Secs. 10(d), 16(3) and 16(5) – Overhead electricity transmission line put up by transmission licensee over private land – Compensation payable for cutting down fruit and nut bearing trees in connection with – Multiplier to be applied for capitalization of compensation, held, cannot be commensurate with economic life span of trees, as has been done by District Judge, in instant case – Multiplier applicable, held, cannot exceed 10, which is multiplier

adopted for determining compensation for fruit/nut bearing trees standing on land acquired under the Land Acquisition Act, 1894 – Hence, value of 10 years yield from two coconut trees cut down, works out to Rs.10,300/, which constitute compensation payable.

HELD : In case of fruit bearing coconut trees, multiplier 10 has to be adopted. Annual yield per coconut tree has been taken at 103 coconut for the land coming within Hiriyr Taluk of Chitradurga District and the price of each coconut tree has been taken as Rs.5/-..... Thus, following the said principles laid down in W.P.No.39979 of 2013, if the compensation is worked out for 2 coconut trees, it will come Rs.10,300/- (2 coconut x 103 coconut per year x 10 years x 5/- = Rs.10,300/).

(C) ELECTRICITY ACT, 2003, Secs. 164 and 165 – Indian Telegraph Act, 1885, Secs. 10(d), 16(3) and 16(5) – Overhead transmission line drawn over private land – Compensation payable for cutting down trees other than fruit/nut bearing trees – Compensation payable, held, is limited to timber value of such trees, viz., Honge and Neem trees.

HELD : As regards Honge and Neem trees, they do not call for any interference because they are not fruit bearing trees and only the timber value has to be assessed. The learned District Judge has undertaken that exercise. Therefore, the amount of Rs.15,000/- for 5 Honge trees and Rs.20,000/- for 4 Neem trees deserves to be retained as awarded by the learned District Judge.

(D) ELECTRICITY ACT, 2003 Secs. 164 and 165 – Indian Telegraph Act, 1885, Secs. 10(d), 16(3) and 16(5) – Overhead transmission line drawn over private land – Compensation payable for area entitled for installation of tower – Market value of land has to be allowed as compensation.

HELD : In addition, a sum of Rs.10,000/- has been awarded towards the area utilized for installation of the tower. The same is also just and legal.

(E) CIVIL PROCEDURE CODE, 1908, Secs.34, proviso – Electricity Act, 2003, Secs. 164 and 165 – Indian Telegraph Act, 1885, Secs. 10(d), 16(3) and 16(5) – Overhead transmission line drawn across private land – Interest payable on compensation awarded for causing diminution in value of land and loss

of income from cutting down fruit bearing and other kind of trees – Interest awarded by District Judge, at 6%, is on lower side having regard to nature of commercial use that transmission licensee is making and also having due regard to nature of deprivation of landowner – Interest at rate of 8% has to be paid on compensation amount.

HELD : The respondent will also be entitled for interest on the said amount at the rate of 8% p.a. instead of 6% p.a. from the date of drawing of the line till the date of payment having regard to the commercial nature of the venture and the nature of loss that the farmer has been put to snatching away the income from the fruit bearing trees. Writ Petition is accordingly disposed of.

16. That, in view of the principles enunciated in the above referred decisions, it can be safely inferred that the multiplier applicable to determine the value of fruit bearing trees is 10, and timber value to be taken for non-fruit bearing trees, and interest payable would be 8% p.a.

17. That, in a decision reported in **ILR 2003 KAR 2336** In between: **State of Karnataka by SLAO & others Vs. Mallappa & others**, it is held as under :-

LAND ACQUISITION ACT, - 1984 (CENTRAL ACT NO.1 OF 1894) – SECTION 54 (2) – Enhancement of compensation made by the First Appellate Court is sought to be challenged by the State – Enhancement was made on the basis of the judgment and award made by the Court in similar other cases – wherein, the similar nature of lands of adjoining villages acquired under the same notification and for the same purpose – held on facts – **Uniform rate of compensation for all the acquired lands which are similarly situated to the adjoining villages cannot be faulted, liable to be confirmed.**

18. That, in the instant case, the petitioner has also relied upon the judgement rendered by the Hon'ble I Addl. District and Session's Judge, Tumakur in Civil Misc. No: 155/2013, wherein, it has been held that the petitioner is entitled for compensation in respect of mango trees, with

an age of 10 years and more, at the rate of Rs. 44,300/- per tree and, compensation in respect of teak tree at the rate of Rs. 5,000/- per tree.

19. That, keeping in mind the principles of law laid down in above referred decisions under the similar set of facts and circumstances, and also by taking into consideration the determination of compensation by the Hon'ble 1st Addl. District and Session's Judge, Tumakur in Civil Misc No: 155/2013, this Court is of the considered opinion that the petitioner in the instant petition would also be entitled for the enhancement of compensation in respect of mango trees and teak trees, at the same rate, on the ground of parity and as a matter of judicial uniformity, by adopting the very capitation method.
20. That, as regards, the value of neem, banyan and beeta trees concerned : the petitioner has not produced any oral and documentary evidence on record. But however,

taking into consideration that the said trees were not fruit bearing trees, looking into the age of the said trees, and in view of admission on the part of petitioner that he himself has cut and removed the said trees as per the notice issued by the respondents, this Court is of the considered opinion that the petitioner would be entitled for compensation at the rate of Rs. 3,000/- per tree as he has planted and grown the same with a fond hope of getting higher income, which one, pre-poned due to the act of respondents. Same appears to be just and proper.

21. Therefore, in view of the above findings, the petitioner would be entitled for enhancement as under :-

Sl.No.	Name of Trees	Number of trees	Value per tree (Rs.)	Total Value (Rs.)
1.	Mango (12 Years)	30	44,300/-	13,29,000/-
2.	Neem (10 Years)	5	3,000/-	15,000/-

3.	Baniyan (10 Years)	1	3,000/-	3,000/-
4.	Beeta (10 Years)	2	3,000/-	6,000/-
Total Rs.				13,53,000/-

22. Thus, the petitioner is entitled for value of the trees, affected by the acts of respondents, at Rs.13,53,000/- only.

23. That, as regards the diminution of value of land is concerned : It is apparent from the material on record, the land in question is used for growing horticulture crops. And the best use for which the land can be put is radically restricted, thereby, depriving the land owner from utilizing his land to its full potential to realize the maximum income and generate more profit. And thus, the land owners are not at liberty to grow the trees under the electric line as the same will affect the transmission line. But however, the petitioner in the instant petition has not placed any

oral or documentary evidence before this Court to show, at least, the measurement of an extent of land over which the electrical line was drawn. Under the circumstances, the diminution value cannot be assessed without any evidence with regard to the exact area of the land affected by drawing of electric line. And at the same time, it can not be ruled out that the petitioner can certainly cultivate the land and grow the annual crops, inspite of laying of electrical wire thereon. Accordingly, this Court has not inclined to award any compensation with regard to diminution value of the land.

24. That, the petitioner has claimed compensation with interest at the rate of 12% p.a. from the date of petition till realization. Respondent has disputed the claim of interest claimed by the petitioner. Learned counsel for the petitioner has contended that when the trees were cut and no proper compensation has been paid, it is a debt. On that account, the interest has to be levied. I find

sufficient force and substance in the said argument. In a decision reported in between : **Sanjeevini Ananda Awate and others Vs. The Managing Director, Hiranyakeshi Sahakari Sakkare Karkhane and another, [2003 (1) KCCR 689 (DB)]**, the Division Bench of the Hon'ble High Court of Karnataka has held that having regard to the prevailing rate of interest in the case of bank deposits, the precise rate of interest that can be awarded is 8% p.a. Having regard to the commercial venture, commercial horticultural fruit bearing trees, and the nature of loss that the petitioner is made to suffer by snatching away the income from the fruit bearing trees, I am of the considered opinion that the petitioner is entitled to interest at the rate of 8% p.a. Accordingly, I am inclined to answer the points taken up for consideration together, as in the affirmative, and as per final Order.

25. **Point No.4:-** That, in view of the foregoing discussion and reasonings, the petition succeeds and deserves to be allowed. In the result, I proceed to pass the following:-

ORDER

The petition filed by the petitioner U/Sec.164 (3) of the Indian Electricity Act, 2003 Part XVII and U/Sec.16 & 10 (D) of Indian Telegraphic Act r/w. Sec.23 of the Land Acquisition Act is allowed, in part, with costs.

Petitioner is entitled to a total compensation of Rs. 13,53,000/- (Thirteen Lakh Fifty Three Thousand Rupees only) towards the value of 30 mango trees, 5 neem trees, 1 baniyan tree and 2 beeta trees.

Less the compensation already paid by respondents.

Petitioner is also entitled to interest, on the remaining amount unpaid, at 8% p.a. from the date of petition till realization.

Claim of the petitioner with regard to diminished value of land in question is dismissed.

Respondents shall deposit the compensation within 90 days from the date of order.

Advocate fee is fixed at Rs.500/-.

(Dictated to the judgement writer directly on the computer, and then corrected and pronounced by me, in the open Court on this the 30th day of November, 2018)

(Tarakeshwargouda Patil)
II ADDL. DISTRICT & SESSIONS JUDGE,
TUMAKURU.

ANNEXURE

List of witnesses examined for the petitioner:

P.W.1 : Byatarangaiah

List of documents marked for the petitioner:

Ex.P1	:	Copy of Notice
Ex.P2	:	Copy of mahazar
Ex.P3	:	Requisition letter
Ex.P4	:	Copy of endorsement
Ex.P5	:	Copy of RTC extract
Ex.P6	:	Copy of Acknowledgement
Ex.P7	:	Copy of sketch
Ex.P8	:	Yield certificates – 2

Ex.P9 : Copy of Pricelist
Ex.P10 : Copy of approximate yield and cost list
Ex.P11 : Certificate issued by Village accountant

List of witnesses examined for the respondents :

NIL

List of documents marked for the respondents:

NIL

***II Addl. District and Sessions Judge,
Tumakuru.***