

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
UDUPI DISTRICT, UDUPI

Present: **Sri T. Venkatesh Naik, B.A.L., LL.M.,**
Principal District Judge, Udupi.

Dated this the **20th day of April, 2017**

MISCELLANEOUS CASE No.12 of 2011

- 1.Vasudeva Adiga,
aged about 51 years,
S/o late H. Srinivas Adiga.
- 2.Ganesh Adiga,
aged about 49 years,
S/o late H. Srinivas Adiga.
- 3.Dinesha Adiga,
aged about 47 years,
S/o late H. Srinivas Adiga.
- 4.Lata G. Rao,
aged about 45 years,
D/o late H. Srinivas Adiga.
- 5.Geetha R. Thunga,
aged about 43 years,
D/o late H. Srinivas Adiga.
- 6.Girish Adiga,
aged about 40 years,
S/o late H. Srinivas Adiga.

All are residing at Heroor Village,
Udupi Taluk and District. .. PETITIONERS

(By: Sri Sanjay K. Nilavar & Kiran S. Bhat, Advocates)

Vs.

The Executive Engineer (Electrical),
Major Works Division,
The Karnataka Power Transmission
Corporation Ltd., Kavoov,
Mangalore.

.. RESPONDENT

(By: Sri K. Shrinivasa Hegde, Advocate)

ORDERS

This Miscellaneous Case has been filed by the petitioners under Section 16(3) of the Indian Telegraph Act, 1855 praying the Court to determine the compensation amount of Rs.30,00,000/- along with interest at the rate of 12% p.a. and to direct the respondent to pay the said amount to the petitioners.

2. It is the case of the petitioners that they are the absolute owners in possession and enjoyment of the immovable properties bearing Sy.No.46/10P1 measuring 62 cents, Sy.No.46/11 measuring 11 cents, Sy.No.46-1 measuring 38 cents and Sy.No.46/17 measuring 35 cents situated at 52 Heroor Village of Udupi Taluk, i.e., the petition 'A' schedule properties. The petition 'A' schedule properties came into their possession on inheritance. According to the

petitioners, petition 'A' schedule properties consist of paddy fields and hadi growth. They have also been cultivating paddy crop in the petition schedule properties twice in a year. Further, there is also scope for converting the said petition schedule properties into non-agricultural purpose as it is just 50 meters away from National Highway No.17 (now N.H.66) and large residential plots can be formed and it would fetch handsome money to the petitioners. The present market rate in the surrounding area of the petition 'A' schedule property is Rs.50,000/- per cent. Further, the petition 'A' schedule properties consist valuable standing trees. The respondent has not properly valued the said standing trees and the net worth of those cut down trees was Rs.15,000/-. The respondent has erected a huge tower over the petition 'A' schedule properties, which covers huge areas and the high tension wire is drawn through the said tower from South-West to North-East. The electric high tension wire lines were drawn through the huge tower erected at the middle of the petition 'A' schedule properties. The entire Heroor Village is fast developing area due to the nearby widening of N.H.17., but the market value of the petition 'A' schedule properties has diminished and the whole petition 'A' schedule properties has become worthless for the petitioners.

Heroor Village is just 2½ kilometers away from Brahmavar Town. In this regard, the petitioners got issued a legal notice dated 9-3-2009 calling upon the respondent to pay Rs.,30,00,000/- as damages. But instead of complying the just demands of the petitioners, the respondent has straight away rejected the lawful claim of the petitioners. Hence the present petition.

3. The respondent has appeared before the Court through his Counsel and filed objections to the petition denying the claim of the petitioners as sought in the petition and contending that the present petition is not maintainable either in law or on facts. According to the respondent, there are no justifiable grounds for grant of compensation. The respondent admitted the drawing up of 110 KV electric line over the petitioners' properties by erecting a tower, but does not admit the total extent covered as stated by the petitioners. The respondent submits that the Deputy Commissioner has overruled the objections of the petitioners in the public interest. Further, the legal notice sent by the petitioners has been suitably replied. The respondent does not admit the allegation that drawing and transmission of lines by erecting tower has caused danger to the property and that loss

in business has been caused to the petitioners. Therefore, question of paying compensation to the petitioners would not be arisen. On these grounds, the respondent prays to dismiss the petition.

4. On the basis of the rival contentions of the parties, the following points that arise for my consideration are:

1. Whether the petitioners prove that the respondent is liable to pay any compensation for having installed electric tower and drawn electric line on the property of the petitioners?

2. If so, what is the quantum of compensation that the petitioners are entitled for?

3. What order?

5. My answers to the above points are as under:

Point No.1:- In the affirmative.

Point No.2:- The petitioners are together entitled to global compensation of Rs.15,00,000/- with interest at 6% p.a. from 9-3-2009 till payment.

Point No.3:- As per the final order.

for the following:

REASONS

6. Point No.1:- It is an admitted fact that a high-tension electric line is drawn after erecting tower in the petition 'A' schedule properties. On perusal of the objection statement of the respondent, there is no denial regarding the ownership of the properties by the petitioners. The respondent admits the drawing of 110 K.V. lines over the petition 'A' schedule properties by erecting a tower. There is no dispute about the area covered by the same. So, the petitioners have made an application for grant of compensation in the instant case. In support of the petitioners' case, petitioner No.6 Girish Adiga has been examined as P.W.1 on oath and he has deposed to the fact that himself and other petitioners are the absolute owners in possession and enjoyment of the petition schedule properties bearing Sy.No.46/14 measuring 5-79 acres, Sy.No.46/16 measuring 74 cents, Sy.No.46/10P1 measuring 62 cents, Sy.No.46/11 measuring 11 cents, Sy.No.46/1 measuring 38 cents and Sy.No.46/17 measuring 35 cents and the said properties came into their possession on inheritance. According to P.W.1, the petition 'A' schedule properties consist of paddy fields and hadi growth and they have been growing two crops in a year in petition 'A' schedule properties. Further, there is also scope for converting petition 'A'

schedule properties into non-agricultural purpose as it is just 500 meters away from National Highway No.17 (now N.H.66) and large residential plots can be formed. According to P.W.1, the present market rate in the surrounding area of petition 'A' schedule properties is Rs.50,000/- per cent. P.W.1 has undergone intensive cross-examination by the learned Counsel for the respondent. In the cross-examination, P.W.1 has admitted to the fact that the petition 'A' schedule properties are the joint properties of petitioner Nos.1 to 6 and they have received Rs.30,000/- from the respondent as compensation for cutting of cashew trees. The respondent has got valued the cashew trees, which were cut from Horticulture Department. The petitioners have no objection for the valuation arrived by the Horticulture Department. According to P.W.1, only one tower has been installed in the petition 'A' schedule properties. The length of electric line laid in the petition 'A' schedule properties is about 150 to 200 meters. P.W.1 has further admitted that the land bearing Sy.No.46/14 is a dry land consisting of cashew plantation, wherein 25 cashew trees were cut in that land and there are 100 cashew trees existing in the said land. Further, there are many other trees including cashew trees in the remaining portion of Sy.No.46/14 after laying electric lines over

it. Now the petitioners are getting income of Rs.10,000/- per year from cashew trees situated in Sy.No.46/14. According to P.W.1, they would get income by another Rs.5,000/- if they protect the cashew trees from thieves. The petitioners have admitted the Commissioner's report regarding the location of the electric line drawn in the petition 'A' schedule properties. The petition 'A' schedule properties are not the converted lands. Though P.W.1 admitted in his evidence that he can produce the document to substantiate the value of the land claimed by them, but P.W.1 does not know whether there are any sale of properties situated near petition schedule properties. Further, P.W.1 has produced Ex.P10 the certified copy of the guidelines of the value of Sub-Registrar, Brahmavar. The petition schedule properties are poonja lands. The value of poonja land in Heroor Village in the year 2008 was Rs.5,600/- per cent. In support of the oral testimony of P.W.1, he has relied upon 6 R.T.C. extracts in respect of Sy.Nos.46/14, 46/14, 46/11, 46/1, 46/17 and 46/20 as per Exs.P1 to P6. Ex.P7 is the certified copy of the order passed by the Deputy Commissioner dated 3-11-2008. Ex.P8 is the office copy of the legal notice dated 9-3-2009. Ex.P9 is the certificate of posting.

7. On the other hand, the respondent got examined one Thukaram, in charge Assistant Executive Engineer (Electrical), KPTCL, Manipal as R.W.1. R.W.1 in his evidence has deposed to the fact that the respondent has valued the forest trees through Forest Department at Rs.7,193/- and also made valuation of fruit bearing trees through Horticulture Department and they have valued the value of the cut trees at Rs.31,168/- and the petitioners have accepted the said amount as fair and reasonable. According to R.W.1, petitioners are not entitled for the value of the land as claimed by them, as the respondent has not acquired any property of the petitioners. In fact, the petitioners can grow paddy crop in the fields over which high tension electric wire has drawn. Further, the existence of tower and the line over the properties of the petitioners will not affect the user of the properties. According to R.W.1, the claim made by the petitioners is without any basis.

8. R.W.1 has undergone intensive cross-examination by the learned Counsel for the petitioners. R.W.1 has clearly admitted that building cannot be constructed under the high tension electric line for a distance of 8 meters on both sides from centre of lines. Further, the conversion of the land

will not be granted in the corridor area measuring 16 meters. The area in which the tower has been erected is about 2 cents and the commercial activities cannot be done for a distance of 8 meters on both sides from centre of tower. The voltage passes in the high tension electric lines is 110 KV and the radiation of 110 KV voltage is about 3.5 meters around the electric lines. R.W.1 further admitted that Supreme Feeds, Krishna Milk Production Unit and Agriculture Research Centre are situated at a distance of 600 – 700 meters from the properties of the petitioners. Little Rock School is situated at a distance of 2½ KMs from the properties of the petitioners. Due to the electric high tension lines, the petitioners cannot convert their lands. Later during pendency of the petition, a Court Commissioner has been appointed and the Court Commissioner has submitted his report. According to the Court Commissioner, the petitioner 'A' schedule property is situated about a Kilometer away from NH 66 towards right side from Udupi – Brahmavar Road. There are 2 parallel approach roads to the said property. One road is from taking right near Supreme Feeds, Heroor Village by passing through the manufacturing unit of Shri Krishna Dairy Milk Private Ltd. and the other road is through taking right of road to Little Rock Indian Priority School, Chanthar. According to the

Court Commissioner, one High-tension electric tower has been erected in Sy.No.46/14 towards eastern portion and is about 25 to 30 ft towards boundry of Sy.Nos.46/14 and 46/17. According to the Court Commissioner, no paddy fields, house are existing in the petition 'A' schedule property and petition 'A' schedule property consists of hadi growth consisting of Kiral bogi (Karmara) and Casurina Trees (Gali mara) and jungle wood shrubs and trees. To the eastern side of petition 'A' schedule property as per sketch provided by petitioner No.6, S.Nos.46/16 and 46/17 are situated. The Commissioner also noted the existence of houses owned by Smt. Kaveri Marakalthy, Girija Poojarthy and Annappa Poojary towards the western side of petition 'A' schedule property. The Commissioner has noted the drawing of high-tension electric line over the petition schedule property. According to the Court Commissioner, on account of the drawing of high-tension line thereof, it would be very difficult for making any developments in the petition 'A' schedule properties. Further, no developments can be done under the high-tension wire line existing there in the petition 'A' schedule property. The Commissioner has noted that no paddy fields were grown in Sy.Nos.46/16, 46/10, 46/12 and 46/11 and they were kept uncultivated. The house of the

petitioners is situated in SY.No.46/15 bearing Door No.2/283. The Commissioner has produced 10 photographs and rough sketch prepared by him.

9. On perusal of the oral and documentary evidence on record, it clearly indicate that the petitioners are the owners of the petition 'A' schedule properties and have objected the respondent for erecting the tower in their properties and drawing of high-tension electric wire line and the Deputy Commissioner in the interest of public has overruled the objections of the petitioners and has permitted the respondent to install the tower and lay high-tension electric wire line in the lands of the petitioners. On perusal of the report of the Court Commissioner and the photographs produced by him, it clearly depicts that high-tension electric wire line has been drawn in the lands of the petitioners. So, all the documentary evidence clearly indicates that the petitioners allotted the petition 'A' schedule properties under partition deed and they are in possession of the same right from 1997. It is not disputed that subsequent to the order of the Deputy Commissioner, Udupi, the respondent has installed tower and drawn high-tension electric wire line over the properties of the petitioners. The petitioners got issued legal notice dated 9-3-2009

calling upon the respondent to pay the loss of Rs.30,00,000/- due to the erection of huge terminal tower over the entire land of the petitioners. So, it is clear that the respondent has installed a tower and drawn high-tension electric line over the properties of the petitioners and the respondent has not paid any amount to the petitioners. Hence the petitioners have preferred this petition to determine the compensation.

10. In **“K.G. PADMANABHA PRABHU Vs. KERALA STATE ELECTRICITY BOARD AND OTHERS”** reported in A.I.R.1998 S.C., 410 the Hon’ble Apex Court has held that the procedure for determination of compensation, when the erection of electric lines across the land of the petitioners, is prescribed under Manual of Land Acquisition adopted by the electricity Board. So, it is clear that the respondent has to pay compensation for use of the said properties of the petitioners. Thus, it is just and necessary for the Court to determine the compensation to be paid by the respondent to the petitioners.

11. According to the petitioners, the market value of the adjacent land of the petition ‘A’ schedule properties is Rs.50,000/- per cent and due to the erection of huge tower and drawing of high-tension

electric line, the properties of the petitioners have become useless. In this regard, the Court Commissioner was appointed and he submitted his report to that effect. In his report, the Commissioner has stated he inspected the properties of the petitioners and according to him, a tower is situated in the properties of the petitioners and he noted the drawing of high-tension electric wire line over the petition 'A' schedule properties. The Commissioner has also given a report that the respondent erected a tower in the land bearing Sy.No.46/14 towards eastern portion of the said sub-division and the said tower is about 25 – 30 ft. towards boundary of Sy.Nos.s46/14 and 46/17. As per the information provided by petitioner No.6, the trees were cut down in the month of June, 2009 worth about Rs.50,000/-. He has stated that the damaged portion of the petition 'A' schedule properties is of no use to the petitioners. The Commissioner has also given a diagram, which shown the line drawn in the properties of the petitioners. Admittedly, the erection of tower and drawing of electric line is in the middle of the properties of the petitioners and the contention of the petitioners before the Court that the petition 'A' schedule properties have become useless cannot be accepted. Further, there is no construction near the tower erected. On perusal of

the documents of the petitioners themselves, they clearly stated that during 2008, the value of the poonja land in Heroor Village was Rs.5,600/- per cent. Admittedly, the petition has been filed in the year 2011. By that time, the value of the land would fetch double the amount. Admittedly, neither the respondent nor the petitioners have produced the latest guidelines to assess the market value of the lands of the petitioners. Admittedly, the lands in question are situated within the distance of one Kilometer from N.H.66. Therefore, value of the lands between Udupi and Brahmavar has been increased by manifold. It is not in dispute that in the remaining portion of the petition 'A' schedule properties the petitioners are growing paddy. The Court can take judicial note about the potentiality of the land. In the absence of the latest guideline, by considering the report of the Commissioner, photographs of the locality and the properties of the petitioners and also taking into consideration of the value of the land as on the date of erection of the tower and also diminishing of the value of the remaining portion of the petition 'A' schedule properties, I am of the opinion that it is just and necessary to award global compensation of Rs.15,00,000/- to the petitioners with interest at 9% p.a. from 9.3.2009, which is the date of legal notice.

Hence I answer point Nos.1 and 2 in the affirmative holding that the petitioners are together entitled for global compensation of Rs.15,00,000/- with interest at the rate of 6% p.a. from 9-3-2009 till payment.

12. Point No.3:- In view of my findings on point Nos.1 and 2, I proceed to pass the following:

ORDER

The petition filed by the petitioners under Section 16(3) of the Indian Telegraph Act is hereby partly allowed.

Consequently, the petitioners are together entitled to a global compensation of Rs.15,00,000/- and the respondent shall pay the same to the petitioners within 2 months from the date of this order along with interest at the rate of 6% p.a. from 9-3-2009 till payment.

(Dictated to the Judgment Writer, transcribed by him, corrected and then pronounced by me in the open Court, this the **20th** day of **April, 2017.**)

(T. VENKATESH NAIK)
PRINCIPAL DISTRICT JUDGE,
UDUPI

AnnexureList of the witnesses examined for thePETITIONERS:

P.W.1 - Girish Adiga

RESPONDENT:

R.W.1 - Tukaram

List of the documents exhibite for thePETITIONERS:

Exs.P1toP6- R.T.Cs. – 6
Ex.P7 - Certified copy of the order passed
by the D.C. dated 3-11-2008
Ex.P8 - Office copy of the legal notice
dated 9-3-2009
Ex.P9 - Certificate of posting
Ex.P10 - Certified copy of the guideline value
of Sub-Registrar.
Ex.P10(a) - Sl.No.42 in Ex.P10

RESPONDENT:

- Nil -

(T. VENKATESH NAIK)
PRINCIPAL DISTRICT JUDGE,
UDUPI