IN THE COURT OF THE DISTRICT JUDGE, KALPETTA , WAYANAD

Present : Sri. P.D.Dharmaraj, B.A., LL.B., District Judge

Saturday, the 30th day of June , 2012
9th day of Ashadha, 1934

ORIGINAL PETITION (ELECTRICITY) : 45/2005 and OP(E) 99/2006

OP (E) 45/2005

Thomas, S/o Kuriakose, Aged 49 years, Puliyorath House, Pallikkunnu.P.O., Kaniyambetta Village, Vythiri Taluk, Wayanad District.	Petitioner

Vs.

Kerala State Electricity Board, Represented by its Secretary at Thiruvananthapuram.	Respondent

OP(E) 99/2006

Thomas, S/o Kuriakose, Aged 49 years, Puliyorath House, Pallikkunnu.P.O., Kaniyambetta Village, Vythiri Taluk, Wayanad District.	Petitioner

Vs.

Kerala State Electricity Board, Represented by its Secretary at Thiruvananthapuram.	Respondent

This Original Petitions filed U/s 51 of Indian Electricity Act r/w Section 42 of the Electricity Supply Act and Section 10 and 16 of the Indian Telegraph Act 1985 to direct the respondent to pay an amount as balance compensation from the date of payment.

These Original Petitions coming on this day for hearing before me in the presence of Sri. E.S. Johny Scaria and Joy Joseph, Counsels in OP(E)45/05 and Sri. E.S. Johny Scaria in OP (E) 99/2006 for the petitioners and of Sri. Abhilash Joseph, Counsel for the respondent in both cases and upon hearing both sides and perusing the documents, the Court passed the following.

COMMON ORDER

These petitions are filed by the petitioner under Sec.51 of the Electricity Act r/w Sec.42 of Electricity Supply Act and Sec. 10 and 16 of the Indian Telegraph Act, 1985 for enhancing compensation. These petitions are jointly tried as per order in IA 371/2007 in OP(E) 45/2005.

OP(E) 45/2005 :

2. The petitioner's case is that as per the Assistant Engineer's Appendix II Notice No.14/01 dated 10.07.2001, the respondent caused the cut and removal of the improvements therein the property of the petitioner for the purpose of drawing a 33 KV electric line from Kaniyambetta to Padinharathara. The cut and removal was done during November 2003. 128 fruit bearing tress including coconut trees, areacanut trees, jack fruit trees, mango trees, teak trees, silver oak trees, Adoratissima (vaka), Gliricidia (Seemakonna), guava tree, Cashew tree, Ailanthus Excelsus (Pongallyam), Mangiyam, pepper vines etc. and many other type of trees were therein the property of the petitioner and more than 100 of those trees were having pepper vines. The property of the petitioner situates at Kaniyambetta Village which is one of the most fertile area in Wayanad. Average yield of pepper from each pepper vine which carries from 5 to 10 kgs., which have been cut by the respondent. The present price of

areacanuts is more than ₹ 60 per kilograms in the market. The coconuts was getting more than ₹ 18 per kilograms in the market. The total amount of compensation awarded by the respondent Board is only ₹ 35,680. The valuation of the improvements cut and removed by the respondent Board is baseless, incorrect, not legal, inadequate and unacceptable. All the items have been grossly undervalued. The age, measurement, annual yield, future yield and the value noted in the valuation statement are highly incorrect and not based on any principles or data. The method adopted for assessing the 'Kuzhikoors' and the compensation arrived at the total value of the improvements as per the statement is not legal, irregular, improper and inadequate. The petitioner estimates a sum of not less than ₹ 3,00,000 as compensation for the cut of pepper vines and other fruit bearing trees and other items of improvements by calculating the loss at the minimum rate after deducting the cultivation and crop taking expense.

3. By the act of installing 33 KV electric line through the property of the petitioner, the property has been rendered wholly valueless and useless and thereby caused heavy loss and damage to the petitioner. In awarding compensation, the respondent has not considered the diminishing value and the diminishing utility of the land upon which the line is drawn. The land has become unfit for cultivation or construction of any building. The property of the petitioner has been divided into two pieces due to the installation of 33 KV electric line through his property. Hence the land value is highly diminished. Moreover, the property of the petitioner having a boundary of public road would have got higher consideration, if it was sold for residential purpose. Due to the drawing of the 33 KV electric line, the land value is highly diminished. The petitioner estimates ₹ 1,00,000 as diminished value of the property. By the installation of 33 KV electric line through the property of the petitioner, he lost 65 cents of his property useless for his purpose. Hence he is entitled to get at

least ₹ 3,00,000 on this account alone. The respondent has not considered or paid solatium of 30% to the petitioner which he is entitled to get. The respondent is entitled for a total compensation of ₹ 6,00,000. But the amount awarded by the respondent Board is only ₹ 35,680. The cause of action for the petition arose on 20.11.2003 when the trees and pepper vines has been cut and on 14.02.2005 when the compensation fixed by the respondent was given to the petitioner within the jurisdiction of this Court. It is therefore prayed to pass an order directing the respondent to pay a sum of ₹ 5,64,320 to the petitioner with interest @ 12% per annum from the date of payment as balance compensation.

4. The respondent filed counter statement and contented that the petition is not maintainable. The respondent admitted that the officials of the K.S.E.B. had cut and removed some trees and improvement standing in the property of the petitioner for drawing an electric line from 220 KV Substation, Kaniyambetta to 33 KV Substation Padinharathara. Drawing an electrical line to strengthen the power supply to a region is the fundamental duty of the KSEB. In the above matter also, the petitioner was paid a compensation of ₹ 35,680. The said amount was paid after calculating the actual loss sustained by the petitioner according to the market rate published by the revenue authority for each quarter. the petitioner who claims exorbitant compensation for trees cut and removed from his properties and towards that diminutions of value and utility of his property had never raised any objections to the mahazar prepared by the officials of the Board specifying the age, girth and yield of the trees and improvements to be cut and removed from his property for drawing the electric line and there was no protest from the part of the petitioner while or after the service of notice of cutting of trees and copy of the mahazar and failure of the petitioner to take steps for the issuance of a commission to inspect the properties in dispute would expose the falsity of his pleas as regards the yield of the trees

cut and removed from his properties as well as the alleged diminution of value and utility of his land occasioned due to the drawing of the line. The compensation claimed by the petitioner towards the value of improvements cut and removed from his property besides being exorbitant is assessed in wholly unscientific manner. The property being an agricultural land, the petitioner can conveniently raise crops under those portion of proposed overhead line is to be drawn. No inconvenience whatsoever would be caused to the petitioner in any manner in the event of drawing the proposed transmission line over and along a portion of his property.

<u>OP(E) 99/2006</u> :

5. As per the Assistant Engineer's Appendix II Notice No.AD-12A dated nil, the respondent causes the cut and removal of the improvements therein the property of the petitioner for the purpose of drawing a 33 KV electric line from Kaniyambetta to Padinharathara. The cut and removal was done during April 2005. 7 fruit bearing trees including areacanut trees, rubber, jack fruit tree, pepper vines etc. and many other type of trees were therein the property of the petitioner and those trees were having pepper vines. The property of the petitioner situates at Kaniyambetta Village which is one of the most fertile area in Wayanad. Average yield of pepper from each pepper vine which carries from 5 to 8 kgs. which have been cut by the respondent. The present price of areacanuts is more than ₹ 60 per kilograms in the market. The present price of rubber in the market is more than ₹ 100 per kilogram. By the cutting of the pepper vines, rubber trees and areacanut trees, the petitioner sustained heavy loss. The total amount of compensation awarded by the respondent Board is only ₹ 1,647.

6. The petitioner submits that the valuation of the improvements cut and removed by the respondent Board is baseless, incorrect, not legal, inadequate and unacceptable. All the items have been grossly undervalued. The age, measurement, annual yield, future yield and the value noted in the valuation statement are highly incorrect and not based on any principles or data. The method adopted for assessing the 'Kuzhikoors' and the compensation arrived at the total value of the improvements as per the statement is not legal. The statement of the respondent does not reveal how the price and loss has been calculated. The total compensation calculated is very low. The petitioner estimates a sum of not less than ₹ 50,000 as compensation for the cut of pepper vines and other fruit bearing trees and other items of improvements by calculating the loss at the minimum rate after deducting the cultivation and crop taking expense.

7. By the act of installing 33 KV electric line through the property of the petitioner, the property has been rendered wholly valueless and useless and thereby caused heavy loss and damage to the petitioner. In awarding compensation, the respondent has not considered the diminishing value and the diminishing utility of the land upon which the line is drawn. The land has become unfit for cultivation or construction of any building. The property of the petitioner has been divided into two pieces due to the installation of 33 KV electric line through his property. Hence the land value is highly diminished. By the installation of 33 KV electric line through the property of the petitioner, he lost 25 cents of his property useless for his purpose. Hence he is entitled to get at least ₹ 25,000 on this account alone. The respondent has not considered or paid solatium of 30% to the petitioner which he is entitled to get. In the above circumstances, the petitioner is entitled for a total compensation of ₹ 6 lakhs. A total compensation of ₹ 1,15,000 is claimed towards the trees and

pepper vines which are cut and removed by the respondent, compensation for the diminishing value and utility of the land, compensation for the damage and loss sustained to the remaining property and compensation for the diminishing value of 25 cents of land. The amount awarded by the respondent Board is only ₹ 1,647 to the petitioner. The petitioner is therefor entitled for ₹ 1,13,353 as enhanced compensation from the respondent. It is therefore prayed to pass an order directing the respondent to pay a sum of ₹ 1,13,353 to the petitioner with interest @ 12% per annum from the date of payment as balance compensation.

8. The respondent filed counter statement and contented that the trees standing in the property of the petitioner cut and removed for the purpose of drawing electric line from 220 KV Substation at Kaniyambetta to 33 KV Substation at Padinharathara. After inspecting the property, the officials of the respondent had prepared a mahazar specifying the age, girth and yield of the trees proposed to be cut and removed and a copy of the same was served on the petitioner to which he has not raised any objection. The actual yield of the improvements which were cut and the compensation was assessed on the market rates based on the revenue authorities for each quarter. The averments in the petition as regards the age and yield of the trees cut and removed from the petitioner's property are false and therefore hereby denied. The property being an agricultural land, the petitioner can conveniently raise crops over those portions of his property along which the proposed overhead line is to be drawn. The petitioner is not entitled to get any of the relief prayed for by him.

9. The evidence in the above two petitions consisting the depositions of PW1, PW2, RW1 and CW1 and Exts.A1 to A7 and C1 to C3.

10. The common points for consideration in the above two cases are :

1. Whether the petitioner is entitled for an enhanced compensation as prayed for in the petition ?

2. What relief and costs ?

11. **<u>The common points</u>** : The case of petitioner is that the respondent as per Exts.A3 and A4 notices, cut and removed the improvement in his property for the purpose of drawing a 33 KV electric line. By the cutting of pepper vines, rubber trees, areacanut trees and many other trees, the petitioner sustained heavy loss. The valuation of the improvements cut and removed by the respondent board is baseless, incorrect, inadequate and unacceptable. All the items have been grossly undervalued. The petitioner estimates a sum not less than ₹ 3,00,000 as compensation for the cut of pepper vines and other fruit bearing trees claimed in OP(E) 45/2005 and ₹ 1,13,353 as compensation for the cut of pepper vines and other fruit bearing trees claimed in OP(E) 96/2006. The respondent contented that the petition is not maintainable. The question of maintainability was preliminary heard and found that this court has jurisdiction.

12. PW1 deposed that the compensation awarded by the respondent was very meager. The respondent prepared Ext.A1 mahazar on 20.08.2001 for the trees cut and removed as claimed in OP(E) 45/2005 and Ext.A2 mahazar for the trees cut and removed as claimed in OP(E) 96/2006. In Exts.A1 and A2 mahazars, the details of trees including items of trees cut and removed form the property of the petitioner, their height, diameter, yielding and non-yielding are stated. The respondent passed Ext.A5 award for ₹ 1,647 for the trees cut and removed for the property of the petitioner as stated in the petition in OP(E) 99/2006. The Advocate Commissioner has filed Exts.C1 and C2 reports and Ext.C3 sketch. It is stated in the finding that the properties with average 5-8 kgs of pepper from the pepper vines cut and removed. The market value of

the pepper is ₹ 150 per kg. The market value of areacanut is ₹ 60 per kg and market of rubber is ₹ 100 per kg. It is further stated that the property situated in the most fertile are in Wayanad District and he would get more than 100 jack fruits from the jack fruit trees, an average of 10 kgs of areacanut. The property become two piece due to the installation of 33 KV electric line through the property of the petitioner and its potentiality has been decreased. The evidence of PW2 is that the market value per cent is ₹ 14,000 for the property comprised under Ext.A6 document which was purchased for Pallikunnu Ksheerolpadaka Co-operative Society. The property comprised under Ext.A6 document lies approximately 100 meters away from the property of the petitioner in these cases and both properties are having equal importance.

13. CW1 deposed that she has assessed the loss on the property as per Ext.C1 report as ₹ 1,69,136. The loss of the improvements in OP(E) 99/2006 is assessed as ₹ 19,514.50. She stated that she has inspected the property in the presence of the respondent. She has filed Ext.C3 sketch along with Exts.C1 and C2 reports. Ext.C3 sketch shows that the property lies on the north-eastern side adjacent to the tar road and the electricity line is installed across the middle portion of the property in east-west direction. The properties lies in between two posts is show as 16 cents and in that place buildings in height cannot be constructed and high yielding trees cannot be planted in 5 cents adjacent to the 16 cents. The diminishing value of the area is assessed as ₹ 42,000.

14. The evidence of RW1 is that the trees were cut and removed from the property of petitioner for drawing an electric line from 22KV Sub Station, Kaniyambetta to 33KV Sub Station Padinjarathara after publishing Exts.A3 and A4 Appendix III Notifications and by preparing Ext.A1 mahazar and valuation

statement. The mahazar was prepared on the basis of land acquisition tree cutting manual and that Ext.A1 was prepared before cut and remove the trees. The age and yield of the trees from the schedule property stated in the petition is not true. The electric line is drawn through south-east corner of the property. A panchayat mud road lies on the eastern side of the schedule property. The schedule property is an agricultural land and it has no commercial value.

15. The respondent electricity board, based on Ext.A1 mahazar and valuation report, awarded ₹ 35,680 for the properties scheduled in OP(E) 45/2005 and ₹ 1,647 for the trees cut and removed from the property scheduled in OP(E) 99/2006. The petitioner relied on the decision reported in K.S.E.B. v. Livisha, 2007(3) KLT 1 (SC), wherein, it was held that "the situs of the land, the distance between the high voltage electricity line laid thereover, 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. So far as the compensation in relation to fruit bearing trees are concerned the same would also depend upon the facts and circumstances of each case." In K.S.E.B. v. Maranchi Matha, 2008(1) KLT 1038, it was held that "normally, the person whose trees are cut is entitled to for compensation from the date of cutting. It is as he is deprived of the benefit of the improvements from that date onwards that he is paid interest on compensation. Merely because it took a few years to quantify the amount, does not mean that the owner should be deprived of the interest from the date on which the trees were cut. For the purpose of deciding the point from which interest has to be calculated, we are of opinion that interest can be calculated

from the date of cutting which is the most definite date which can be ascertained. Therefore, we hold that the interest in all these cases are payable from the date of cutting of trees.”

16. In Ext.C1 report, it is stated that the petition schedule property is a garden land and it is situated at Kaniyambetta Village of Vythiri Taluk and is about 15km away from the court premises. The 33KV Kaniyambetta-Padinjarathara line has been drawn through the middle of the schedule property. Since the trees have been cut and removed, the commissioner assessed the yield only ascertainly the yield of the similar trees existing in the schedule property. Jack-fruit trees and other trees are having low girth. The commissioner has not stated the height, girth, type of trees, yielding, etc. in Exts.C1 and C2 reports. It is not stated on what basis the valuation was assessed. In Ext.C1 report, the commissioner has assessed the total compensation as ₹1,69,136 and in Ext.C2 report, the compensation is assessed as ₹ 19,514.50 for the trees cut down from the property scheduled in OP(E) 99/2006. The diminishing market value for 21 cents is assessed as ₹ 42,000.

17. According to the petitioner, the property, from where the trees were cut and removed as per Exts.A3 and A4 Appendix III Notifications, is having high potentialities and it is the place of commercial important. PW1, during cross-examination, deposed that the schedule property as per Exts.A3 and A4 is situated 1km away from Pallikunnu town. He is residing in the remaining portion of property after drawing electric line. The area through which electric line is drawn is not measured and the area stated as 21 cents is based upon a guess work. It is stated in the petition that schedule property is situated in commercially important place. His evidence is that there will be bills for the sale of yields from the schedule property, but it is not produced before court. No

document showing the timber value is produced. The document showing the value of agricultural produce is not produced. The property was purchased on executing document and the value of the land is there in the document. He admitted that the property shown in Exts.A3 and A4 are useful for cultivating agricultural produce and cash crops.

18. PW2 deposed, during cross-examination, that he is not able to say the market value of the property at the place near the schedule property as per Exts.A3 and A4 Appendix III Notifications during 2000-2011 since no property transaction has been effected there. During that periods, the properties were agricultural land. But RW1 admitted that the value of the property of 21 cents has been diminished since the electric line drawn. The diminishing value is not stated even for a cent of property. No trees can be planted beneath the electric line drawn. By drawing the electric line, the property is divided into two plots. He stated that the statements in the counter that the electric line drawn through the boundary of the property is not correct. He admitted that 148 trees were cut and removed. CW1 stated that she has not noted the height of electric line drawn over the property. She has not seen any document for assessing the diminishing market value. She is also not aware the value of property per cent. The evidence of PW1, PW2, RW1, CW1, Exts.A1 to A5 and C1 to C3 documents shows that the trees stated in the petition have been cut and removed and the basis of assessing the value is not correctly stated. Ext.C3 plan shows that the electric line drawn through the middle of the property and it would cause diminution of the value of property and though the petitioner can cultivate agricultural crops there, he may not be able to plant trees beneath the electric line drawn over the middle of property. It also shows that the market value of land prevailed at the time of cutting trees is not stated and no document is relied on to ascertain the diminishing value of the property. The evidence that there is

road access and panchayat road on the eastern side of the property shows that the property has got some potentialities and so the petitioner is entitled for additional compensation. The petitioner has relied on the value fixed in Exts.A6 and A7 documents. In this case, only trees were cut and removed. The petitioner can cultivate that land. The petitioner has not produced any documents to show the value of yields and timber existed on the date of cutting the trees. The commissioner has not stated any documents relied on to fix the value stated in Exts.C1 and C2 reports. The respondent stated that Exts.A1 and A2 documents for assessing the value of trees prepared relied on the existing market value on the date of cutting trees. Considering the above aspects, the diminishing value of property and the potentialities of the property 60% of the value fixed by the respondent is taken to fix the additional enhanced compensation. So the additional enhanced compensation in OP(E) 45/2005 is fixed as ₹21,408. The additional enhanced compensation in OP(E) 99/2006 is fixed as ₹ 988. The petitioner is entitled for interest in view of the decision in K.S.E.B v. Maranchi Matha (2008(1) KLT 1038). Points found accordingly.

In the result, the petitioner in OP(E) 45/2005 is allowed to realize an amount of ₹ 21,408 (Rupees twenty one thousand, four hundred and eight only) and in OP(E) 99/2006 ₹ 988 as additional compensation with interest at the rate of 9% per annum from the date of cutting of trees till realization of the entire amount. No order as to costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced in open court, this the 30th day of June, 2012)

DISTRICT JUDGE

Appendix :-

PW1	-	14.01.2010	-	Thomas.P.K
PW2	-	17.12.2011	-	O.V.Appachan

Respondents Witnesses

RW1	-	18.09.2010	-	Narooda.P.M

Court Witnesses

CW1	-	15.07.2011	-	Omana Varghese

Petitioners Exhibits

A1	-	20.08.2011	-	Mahazar
A2	-	-	-	Mahazer
A3	-	18.09.2004	-	Award Notice
A4	-	31.11.2005	-	Award Notice
A5	-	27.05.2006	-	Award Notice
A6	-	12.03.2008	-	Certified copy of deed No. 576/08
A7	-	24.10.1984	-	Certified copy of deed No. 2216/84

Court Exhibits

C1	-	05.07.2007	-	Commissioners Report
C2	-	09.07.2009	-	Commissioner Report
C3	-	09.07.2009	-	Rough Sketch

DISTRICT JUDGE

Typed by : Sindhu.A.M.
Compared by : Vijayakumari. C.K.
FCS :

IN THE COURT OF THE DISTRICT JUDGE

KALPETTA , WAYANAD

COMMON ORDER

IN

OP(E) 45/2005 & 99/2006

(DATED: 30.07.2012)