

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE-II,
KALPETTA, WAYANAD**

Present: Sri.Jayawanth L., Additional District Judge-II, Kalpetta

Monday, the 6th day of April, 2026
16th day of Chaithram, 1948

INTERLOCUTORY APPLICATION NO 1/2026
ORIGINAL PETITION (E) 99/2006

Thomas P K, aged 68 Years, S/o Kuriakose,
Puliyorath House, Pallikunnu P.O,
Kaniyambetta Village, Vythiry Taluk, Wayanad
District

}

Applicant
Petitioners

Vs.

Kerala State Electricity Board, rep. By its
Secretary at Thiruvananthapuram 695001

}

Respondent

This petition is coming on this day for hearing before me in the presence of Sri. P.K. Dineshkumar, Counsel for the petitioner and Sri. Basheer P. A counsel for the Respondent upon perusing the records/ documents, the Court passed the following:

ORDER

This interlocutory application has been filed by the Petitioner, under Section 151 read with Order XXVI of the Code of Civil Procedure, 1908, praying for appointment of an Advocate Commissioner to: (a) inspect and report the commercial potential of the entire plot of 66.80 Ares; (b) ascertain the extent of reduction of utility of the property if 15 metres is taken as the restriction for construction; (c) report the institutions such as

schools, churches, banks and other commercial establishments within 500 to 750 metres of the land; and (d) such other matters as may be required during local inspection.

2. The Respondent has filed a counter statement opposing the application on the following grounds: (i) the existing commission reports are sufficient for the Court to assess injurious affection without appointing a fresh Commissioner; (ii) as per the CEA Notification dated 08/06/2023, for lines of voltage exceeding 11 KV and up to 33 KV, the horizontal clearance from buildings is only 2 metres, and therefore there are no restrictions for construction of buildings after maintaining 2 metres clearance; (iii) the Petitioner has wilfully concealed the existence of two earlier commission reports; and (iv) the petition is filed only to prolong the proceedings and to put the respondent to hardship.

3. Heard and examined records.

4. The following points arise for consideration in this application: -

(i) Whether the Court is justified in appointing a fresh Advocate Commissioner when commission reports are already on record?

(ii) Whether the appointment of an Advocate Commissioner for

assessment of commercial potential and injurious affection is a legitimate or necessary exercise at this stage of the trial?

- (iii) Whether the petition discloses sufficient and specific grounds to warrant a fresh local inspection and report?

5. **Points (i) to (iii):-** For the sake of brevity and convenience all these points are considered together.

6. Our Hon'ble High Court in a series of authoritative decisions, has consistently held that when a commission report is already available on record, the Court ought not to appoint a fresh Advocate Commissioner unless the existing report is shown to be defective, incomplete, or otherwise inadequate on specific and identifiable grounds.

7. In the instant case, the petitioner had filed I.A 37/2006 way back on 04.02.2006 and the Learned Advocate Commissioner had filed Ext C1 Commission report on 09.02.2007. Thereafter, the petitioner filed I.A 384/2007 on 22.11.2007 to remit back the commission report and submit a fresh report showing the loss and damages sustained to the petitioner due to the cutting of improvements in the property of the petitioner in O.P (Electricity) 45/2006 and O.P (Electricity) 99/2006 along

with DVS based on similar improvements on the adjacent property on 10% annuity and submit a rough plan of the property and mark the direction of electricity line drawn through it by the respondent. The said application was allowed by this court on 8.08.2008. Thereafter commissioner filed Ext C2 and Ext C3 on 09.07.2009.

8. The petitioner has not pointed out any specific defect, omission, or inaccuracy in these reports. The petitioner has not clearly pleaded any new developments requiring fresh inspection or material change in property condition or any error in earlier measurements. In fact, no application has been filed to set aside or remit Ext C2 and ExtC3.

9. It is a matter of serious concern that the Petitioner has filed the present application without even a whisper of reference to the two commission reports that are already on record as Ext. C1 to C3. The Respondent has specifically pointed out that the commission report filed on 09/07/2009 clearly demarcated the line drawn area. The Petitioner's application proceeds as though no commissioner has ever been appointed and no report has ever been filed in this case.

10. The present application seeks assessment of

Commercial potential and reduction in utility. These are matters of inference and adjudication, not merely factual recording. A commissioner cannot substitute the Court in determining compensation.

11. In the light of above discussions, this Court finds that the present application is vague and lacks specific grounds. Earlier commissioner reports are available and sufficient. The issues raised are matters for judicial determination based on evidence, not fresh local investigation. Allowing the application would delay disposal of a long-pending matter. All points answered against the petitioner.

12. Resultantly, this petition stands dismissed.

ADDITIONAL DISTRICT JUDGE II

APPENDIX: Nil

ADDITIONAL DISTRICT JUDGE II