IN THE COURT OF THE ADDL. DISTRICT JUDGE- IV,
THIRUVANANTHAPURAM.

PRESENT : **Smt. Aaj Sudarsan, Additional District Judge-IV**,
Thursday the 27th day of June, 2024/ 6th Ashadha, 1946

OP(Elcty) No. 26/2018

Petitioners:-

1 Lola N.Chandran, aged 58 years, D/o Indira Bhai Krishna Vihar,Forest Office Lane,Vazhuthacaud, Thycaud P.O, Thiruvananthapuram

2 Latha Padmakumar, aged 64 years, D/o K Indira Bai Amma, PTP Nagar, Plot No. 77, Thiruvananthapuram (East Aruya Street, Thiruvazhanthoor, Nagapattanm, Tamilnadu)

3 Manmohan M.V, aged 61 years, D/o K. Indira Bai, Chandra Dara, Thaliyal, Manacaud, Thiruvananthapuram

4 Suresh M U, aged 65 years, S/o K Indira Bai, No.4, East Mada Street, Sri nagar colony, Chennai, Tamilnadu
(Addl. Petitioners are impleaded as per order in IA 2/2021 dated 11/01/2022)

(By Adv. V.S.Manikandan)

Respondents:-

1. Kerala State Electricity Board rep by its Secretary, Vaidhuthi Bhavan, Pattom,P.O Thiruvananthapuram-695004.
2. The Assistant Executive Engineer, Line Construction Sub Division, KSEB, Balaramapuram, Thiruvananthapuram

(By Adv. Vithura K. Gopakumar for R1 and R2)

This petition have been finally heard on **13.06.2024** and the Court on **27.06.2024** passed the following: -

ORDER

1. This is an application filed under Section 16(3) and 10(d) of the Indian Telegraph Act, and Section 42 of the Electricity Supply Act and Section 51 of the Electricity Act.

2. Brief averments in the petition are as follows:

   Petitioner and additional petitioner Nos. 2 to 4 are the children of late Indira Bai who owned of 15.50 ares of property in Re-Sy No. 76/9 of Maranallor Village. The respondents have after issuing notice had cut down high yielding trees from the property of the petitioners in order to draw 220 KV line over the property of the petitioners. The respondents have paid Rs. 1,74,162/- as compensation for the loss of trees to the petitioners. They received it under protest. The respondents have cut down 15 yielding coconut trees. The coconut trees would have given yield for another 5 more years. Thus, the petitioner is entitled to get Rs. 2,00,000/- as compensation from the respondents. The drawing of electric lines over the property of the petitioner and erection of 1 leg of the tower in their property has caused diminution to the entire 15.50 ares of land and depreciation of land value. Petitioner is entitled to get Rs. 23,00,000/- as compensation for the diminution of land value. The respondents are legally bound to compensate the petitioner for the diminution and depreciation of land value and displacement allowance caused on the property of the petitioner on account of the drawing of the 220 KV line over it.

   Cause of action for the petition arose on 22/06/2015 the date on which the petitioner received the notice and on 20/12/2016 the date of receipt of the cheque and thereafter at Maranellor Village wherein the property is situated and which is within the jurisdiction of this Court. Hence, the petition.

3. The respondent entered appearance and filed objection raising the following contentions:

The respondent is a statutory body constituted under Section 5 of the Electricity (Supply) Act, 1948 which continues as a distribution licence and state transmission utility under the provisions of Section 172 of the Electricity Act, 2003. The KSEB has the statutory duty to generate, transmit and distribute electricity. KSEB launched the construction of 220 KV multi-circuit line from Kattakada to Vizhinjam via Balaramapuram by drawing 23 km long line for Rs. 59.97 crores. The project aims at providing electricity to power deficient southern District and also to supply power to the nation's prestigious Vizhinjam International Seaport Limited (VISL). For the purpose of this project, KSEB had to construct electric lines through private properties also. The Board is given powers to draw lines through private holdings under Section 42 of the Electricity (Supply) Act, Section 164 of the Electricity Act, 2003 read with Section 10 of the Indian Telegraph Act, 1885. In order to facilitate the drawing of line, trees along the proposed right of way were cut down and removed. The land continues to be under the possession and ownership of the owner. For the damages caused to the trees compensation of Rs. 1,74,162/- by cheque dated 08/12/2016 as damages to crops cut down by the respondents on 28/06/2015 on the basis of the guidelines namely 'Land Acquisition and Trees Cutting Compensation Manual of Instructions' with amendments from time to time. The right of way required for 220 KV line is 35m. One leg of the tower is erected in the property of the petitioners. It has taken nearly 2 cents of property of the petitioners. It is not correct to say that the right of way has in any way affected the utility of the property. The petitioners can cultivate seasonal crops like plantain, tapioca, vegetables etc. Hence, the question of diminishing of land value does not arise. The compensation and market value of property claimed by the petitioners is exaggerated. The respondents have adequately compensated the petitioners for the trees cut down from their property. Considering all these facts this petition may be dismissed with costs.

4. Points that arise for consideration are as follows:
    1. Whether the petitioner is entitled to get enhanced compensation on account of the cutting and removal of trees? If so, what shall be the quantum?
    2. Whether the petitioner is entitled to get compensation for the value of land wherein the respondents have erected tower? If so, how much?
    3. Is the petitioner entitled to get compensation for diminution of land value? If so, what shall be the quantum?
    4. Costs

5. After filing of this petition for enhancement of compensation, the petitioner filed IA 2/2021 to implead the co-owners of the property. They were impleaded as additional petitioner Nos. 2 to 4 in this petition.

6. PW1 was examined and Exts A1 to A6 were marked from the side of the petitioner. Ext C1, C1 (a) were marked as court exhibits. The

respondents did not adduce any oral evidence. Exts B1 to B6 were marked from the side of the respondents. Heard both sides.

7. **Point No. 1:** Petitioners are the co-owners of property having an extent of 15.50 ares of property in Re-Sy No. 76/9 of Maranallor Village. They are paying tax for the same which is understood from Ext A3 tax receipt. In pursuance of Ext A1 notice 15 yielding coconut trees were cut down from property of the petitioners. The respondents awarded an amount of Rs. 1,74,162/- towards the value of the trees cut down and removed by them. The petitioners accepted the cheque under protest. The trees cut down and removed were high yielding. The drawing of electric lines over the property of the petitioner has rendered the property of the petitioner useless. Likewise, PW1 has lost the market value of her entire 15.50 ares of property.

8. The respondents have contended that adequate compensation was granted to the petitioner and there is no room for further enhancement. So, the petitioners are not entitled for getting enhancement of compensation.

9. The respondent has produced Ext B2 Detailed Valuation Statement (DVS) to show the calculation relied on by them for giving compensation to PW1. It is seen that the petitioners were given Rs. 1,74,162/- as compensation for 15 yielding coconut trees.

10. In assessing an enhanced rate of compensation, the multiplier to be adopted in respect of the trees is 10 as laid down in **Shaik Imambi v.**

Special Deputy Collector (Land Acquisition) Telugu Ganga Project (2011 (11) KHC 4183). In the instant case, a perusal of Ext B2 DVS shows that the multiplier applied by the Board is 8, which is clear from Col. No. 11.

11. The evidence given by PW1 shows that she along with the additional petitioner Nos. 2 to 4 obtained 15.50 ares of property on the death of their mother. PW1 has deposed that they are entitled to get an enhanced rate of compensation for the yielding tree as it had a long life expectancy and yield. There is no evidence coming from the side of PW1 to show the market value of the tree or its yield at the relevant period. Therefore, the number of annual yields fixed by the KSEB for determination of compensation is accepted as they have relied on the Manual of Instructions (KSEB, Land Acquisition and Payment of Compensation for Trees). As per the Manual of Instructions, the Board has fixed the average market value of the commodities for the previous 4 quarters, notified by the District Collector for every quarter under the Kerala Land Reforms Act. In assessing the net yield of coconut trees, the Board has deducted $1/4^{th}$ of the gross produce towards droppings and $1/4^{th}$ towards the cost of cultivation and tax and balance was taken as the net income.

12. The Hon'ble Supreme Court in **Kerala State Electricity Board v. Livisha and Others (2007(3) KHC 53**) held that there cannot be a hard and fast rule or a fixed formula for determination of compensation in respect of tree cut and removed by KSEB and that the purpose and object of the Act and the methodology laid down therein for the purpose thereof should be the guiding factor.

13. It is further held in **Shaik Imambi v. Special Deputy Collector (Land Acquisition) Telugu Ganga Project (2011 (11) KHC 4183)** that while calculating the compensation, deduction towards the cost of cultivation and other expenses are to be made. A reading of Ext B2 DVS shows that the respondents have deducted amounts towards cultivation and other expenses.

14. The formula adopted by the respondents for deducting the cultivation expenses for coconut tree is Approximate yield x cost factor x cost of value received from Economics and Statistics Department x annuity factor. Same formula can be accepted by the court for deducting the cultivation expenses of coconut tree. See the tabular column for detailed calculation.

SL. No	Name of Trees	Age	No. of trees	Total approx. Gross yield per annum	Net return (yield) after deducting cropping expenses by applying the 9/16 for mango trees and jackfruit tree	Price /Value (Average rate for last 10 years)	Annual Income (₹)	Compensation payable on annual income - Multiplier 10 (₹)
1	2	3	4	5	6	7	8	9
	Coconut tree	15	2	500 (2 x 250)	Rs. 281.25 (500 x 9/16)	13.19	Rs. 3,709.68 (281.25 x 13.19)	Rs. 37,096.8/- (rounded to Rs. 37,097/-) (3,709.68/- x 10)
	Coconut tree	15	13	3,900 (13 x 300)	Rs. 2,193.75/- (3,900 x 9/16)	13.19	Rs.28,935.5/- (2,193.75 x 13.19)	Rs.2,89,355.6/- Rounded to RS. 2,89,356/- (28,935.5/- x 10)

15.Ext B2 DVS shows that the respondents have given an amount of Rs. 1,74,162/- as compensation for the loss of 15 yielding coconut trees (See Col. No. 20 of Ext B2 DVS). That calculation was made by applying multiplier 8. The calculation shown in the tabular column above is made by applying the multiplier 10. The total amount derived by the calculation in the tabular column comes to Rs. 3,26,453/-. So, after deducting the compensation already received in respect of 15 yielding coconut trees, the balance amount is Rs. 1,52,291/-.

16.In **KSEB v. Maranchi Matha and Others (2008 KHC 6128),** it is held that the petitioner is entitled to get interest from the date of cutting of trees. Hence, a reasonable interest at the rate of 8% per annum on Rs. 1,52,291/- (Rupees One Lakh Fifty Two Thousand Two Hundred and Ninety One Only) from 28/06/2015 the date of cutting trees till the date of realization of the enhanced amount. Thus, this point is found in favour of the petitioner.

17.**<u>Point No. 2:</u>** PW1 has claimed that 1 leg of the electric tower has been erected in her property. The respondents have admitted this fact. Ext C1 report and C1 (a) plan shows that the area taken up for erecting 1 leg of the tower is 1.235 cents of land. Ext C1 report and C1 (a) plan prepared by the commissioner and surveyor appointed by the court who have been to the place and have conducted surveying physically is taken into account for assessing the value of the land lost due to erection of 1 leg of the tower.

18. The market value of a property depends on various factors like, its accessibility to various places of social importance, road access, nature

of land etc. In the instant case, PW1 relies on Ext A 5 sale deed to consider the market value of the property. The commissioner has reported in Ext C1 report that Ext A5 sale deed was put to her at the time of inspection. There is no evidence to show that the property covered by Ext A5 sale deed and the property of PW1 are similar and similarly situated. Ext C1 report is also devoid of the similarities between these two properties. There is no other evidence to show that the property of PW1 and the property in A5 sale deed are similar and are similarly situated. Therefore, Ext A5 sale deed cannot be of any help to the petitioners to ascertain the market value of their property. Therefore, the geographical and social importance of the property is to be looked into to fix the market value. Ext C1 report shows that the property of PW1 is situated 500 m from Anapad Junction. After about 300 m from Anapad junction, the only access to the property of PW1 is through a 200 m long ridge. Socially important places like bus stop, Bhajanamadom bus stop, Malayankeezhu Govt High School, Christ Nagar College and School, Malayankeezhu Block Office, Malayankeezhu Panchayat Office and Village Office and Maniyaravila Govt Hospital are situated within a radius of 3.5 km from the property of PW1. Considering all these aspects an amount of Rs.70,000/- per cent can be fixed as the market value of his land for the purpose of computing the loss suffered by her due to erection of tower by the respondents on the western side of her property. Thus, the petitioner is entitled to get Rs. 86,450/- (Rs. 70,000/- x 1.235 cents) with 8% interest from 04/01/2028, the date of this petition till its realization from the 1st respondent and its assets. So, this point is found in favour of the petitioner.

19. **Point No. 3:** Evidence shows that PW1 and the additional petitioners obtained 15.50 ares of land as co-owners on the death of their mother. There is no residential building in the said property. Commissioner has reported that there is cultivation in the said property. The commissioner advocated noted125 plantains, 9 coconut trees and a pond for rearing tilapia fishes are there in the property. The access to the property of PW1 is through a 200 m long ridge. There is a distance of 500 m from his property to the nearby junction. The market value of the property is already fixed in Point No. 2 as Rs. 70,000/-.

20. It is to be borne in mind that compensation granted in cases under the Indian Telegraph Act cannot be considered in par with the compensation granted in acquisition of land. In case of acquisition of land, the owner loses his entire ownership, possession and usage of the same. In cases like the one in hand, the land is still with the owner and he possesses all rights over the said property as such owner. So, this principle has to be kept in mind while awarding compensation for diminution of land value.

21. The respondents have not compensated the petitioner with respect to the diminution of the land value which resulted due to the drawing of the said electric line. The affected area as seen in Ext C1 (a) plan, that is, plot CDEFJ has an extent of 7.561 cents. So, Rs. 70,000/- per cent can be fixed as market value of the said property. The diminution of land can be found to be 30%. Thus, for computing the diminution in land value, the following calculation method is adopted, 7.561 cents x Rs. 70,000 x 30/100 = Rs.1,58,781/-. It is just and reasonable to order 8% interest on the amount to be payable from the date of filing of this petition till the

date of its realization from the 1st respondent. Thus, this point is found in favour of the petitioner.

22. **Point No. 4:** From the discussions made in the aforesaid points, it is found that this petition is liable to be allowed with costs.

In the result, the Original Petition is allowed as follows:

(1) The petitioner is allowed to realize an amount of **Rs. 1,52,291/- (Rupees One Lakh Fifty Two Thousand Two Hundred and Ninety One Only)** from 28/06/2015 the date of cutting trees till the date of realization of the enhanced amount from the 1st respondent and its assets.

(2) The petitioner is allowed to realize an amount of **Rs. 2,45,231/- (Rupees Two Lakhs Forty Five Thousand Two Hundred and Thirty One Only)** as diminution of land value with 8% interest from the date of petition, that is, 04/01/2018 from the1st respondent and its assets.

(3) The petitioner is allowed to realize the cost of the proceedings from the 1st respondent and its assets.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in the open court on this the 27th day of June, 2024)

Sd/-

AAJ SUDARSAN
ADDL.DISTRICT JUDGE-IV

APPENDIX

Exhibits for the Petitioner :-

A1	22.06.2015	Notice No. EB/KTDA-BLPM/721
A2	28.06.2015	Mahazar copy
A3	24.09.2012	Tax receipt from Maranalloor Village
A4	05.06.1957	Certified copy of Partition Deed No1974
A5	01.08.2018	Copy of Sale Deed No. 823/2018
A6	16.11.2021	Power of Attorney

Exhibits for the Respondents:-

B1	28.06.2015	Mahazar
B2		Valuation statement
B3		Copy of sketch of affected area
B4	02.04.2016	Karyavivara pathrika
B5		Coy of notification showing fair value of land
B6	22.06.2015	Duplicate notice by KSEB (Appendix II)

Court Exhibits:-

C1	14.12.2023	Commission report filed by Adv.Commissioner Pournami Devan. D
C1(a)		Sketch in the above commission report

<u>Witness for the Petitioner</u>

PW1	13.06.2024	Lola N.Chandran

Sd/-

AAJ SUDARSAN
ADDL. DISTRICT JUDGE-IV

//True Copy// (By Order)

SHERISTADAR

Typed by : Sreeja

Comp. By : Suja

Copy of Order in

OP(Elcty) No. 26/2018
Dated: 27.06.2024.