**IN THE COURT OF THE ADDL. DISTRICT JUDGE -V, KOLLAM**

Present: Smt. Bindu Sudhakaran, Addl. District Judge -V, Kollam.

On Tuesday the 12th day of November, 2024/ (17th day of Karthika, 1946)

**OP(Ele) No: 157/2018**

Between

**Petitioners:-**

1. Mr. Abu Baker, aged 69 years, S/o. Maitheenkannu, Kulatharamannil Padinjattankara, Punnala Village, Pathanapuram, Kollam. (Died)

Addl.P2. Sainaba, aged 67 years, W/o. Late Abu Baker, Kulatharamannil Padinjattankara, Punnala Village, Kollam.

Addl.P3. Sheeja, aged 50 years, D/o. Late Abu Baker, Kulatharamannil Padinjattankara, Punnala Village, Kollam.

Addl.P4. Nadhirsha, aged 46 years, S/o. Late Abu Baker, Kulatharamannil Padinjattankara, Punnala Village, Kollam.

Addl.P5. Shyju, aged 43 years, S/o. Late Abu Baker, Kulatharamannil Padinjattankara, Punnala Village, Kollam.

Addl.P6. Badusha, aged 41 years, S/o. Late Abu Baker, Kulatharamannil Padinjattankara, Punnala Village, Kollam.

By **Adv. Smt. K. Radhamani**

And

**Respondent :-**

The Power Grid Corporation of India Ltd., 400/200 KV Sub Station, 400/200 KV Station, Kumarapuram P.O, Pallikkara, Kochi-683565, represented by its Chief Manager.

By **Adv. Smt.B. Ajimole**

Addl. Petitioner no.2 to Addl. Petitioner no.6 are impleaded as per order in IA 4/22 dated 15.11.2022

This OP(Ele) is coming on for final hearing before me on 05.11.2024 and 12.11.2024 the court passed the following.

**ORDER**

The above original petition has been filed by the petitioner u/s 16 (3) of the Indian Telegraph Act r/w Sec. 51 of the Indian Electricity Act for compensation.

2. The following case has been pleaded in the original petition:

The petitioner is the owner of 25.88 ares of property in Punnala village. The respondent as part of construction of Edamon – Kochi 400 KV electric line cut and removed high yielding trees which were standing in the property of the petitioner. An amount of ₹ 2,62,638/- was paid to the petitioner as compensation. The petitioner received the amount under protest. The electric line was drawn over entire property of the petitioner. The property was having market value of ₹ 3,00,000/- per cent. Due to the drawing of the electric line, the market value of the property has been diminished. The respondent and its officials assessed compensation without any basis. After drawing the electric lines through the property, the petitioner tried to cultivate the property. But, the income derived from the cultivation was very meager compared to the earlier income. The petitioner had sustained huge loss due to the drawing of electric line through the property. On the above grounds, the petitioner sought for compensation for diminution in the value and utility of the property and enhanced compensation for the trees that were cut and removed.

3. After filing the original petition, the petitioner died. As per order in IA 4/2022, the legal heirs of the deceased petitioner was impleaded as additional petitioners 2 to 6.

4. The respondent who is Power Grid Corporation of India Ltd. represented by the authorised officer filed objection with the following contentions:

The original petition is not maintainable. A part of the property of the petitioner was earmarked for drawing 400 KV electric transmission line. The revenue officials assessed an amount of ₹ 2,62,638/- towards tree crop compensation. The allegation that the property is having market value of ₹ 3,00,000/- per cent is false. An amount of ₹ 1,18,454/- assessed as corridor compensation and ₹ 2,34,000/- assessed as compensation for tower footing area was credited in the account of the petitioner. The petition schedule property is situated in a remote area. The drawing of electric line through the property is not affecting the market value of the property. The petitioner has claimed exorbitant amount as compensation. Government of India after considering the request for additional compensation had passed three government orders during the year 2015-2016. The petitioner was paid sufficient compensation for the trees cut down by the respondent. The averments in the original petition that the property of the petitioner is having commercial and other importance are false. The details of the trees cut and removed are narrated in the valuation statement prepared by the officials. On the above grounds, the respondent prayed for dismissal of the original petition.

5. On the side of the petitioner, Ext. A1 to A12 were marked.

6. On the side of the respondent, Ext. B1 to B20 were marked.

7. Subsequently, the respondent reported that Ext. B7 to Ext. B9 and Ext. B12 to Ext.B14 do not relate to this case and the said documents have to be excluded from the sphere of consideration.

8. The report and plan submitted by the Advocate Commissioner were marked as Ext. C1 and Ext. C1(a) respectively.

9. Both sides were heard.

10. According to me, the following points arise for consideration in the case:

(1) Whether the petitioners are entitled to recover any amount as compensation on account of diminution in the value and utility of the property of the petitioner? If so, what is the quantum?

(2) Whether the petitioners are entitled to recover any amount as enhanced compensation on account of cutting down of trees and other cultivations ? If so, what is the quantum?

(3) Reliefs and costs ?

11. **<u>Point no. 1</u>:**

As per the original petition, the petitioners have 25.88 ares of property in Punnala village which has been described as the petition schedule property. The respondent who is the Power Grid Corporation Ltd. drew electric line over the property. The petitioners claim compensation on account of diminution in the value and utility of the property.

12. In order to appreciate the merit of the above claim, it will be relevant to refer to the evidence on record.

13. Ext. A1 to Ext. A12 constitute the documentary evidence of the petitioners. Ext. A1 is copy of notice. Ext. A2 is copy of valuation statement. Ext. A3 is copy of tax receipt showing that the petitioners paid land tax for the property. Ext. A4 is copy of certificate for compensation for tree clearance. Ext. A5 is copy of detailed valuation statement. Ext. A6 and Ext.A8 are copies of depositions of PW2 and PW3 in OP (Ele.) 197/2006. Ext. A7 is copy of order of the Hon’ble High Court of Kerala in CRP no. 451/2012. Ext. A9 is copy of mahazar prepared by KSEB with

respect to cultivations made in the property of one Anandam R.Nair. Ext. A10 is copy of detailed valuation statement prepared by the officials with respect to the property in Punnala village (belongs to Thangal Bava). Ext. A11 is copy of sale deed no.63/2018 of SRO, Pathanapuram. Ext. A12 series are copies of Government orders.

14. Ext. B1 to Ext. B20 constitute the documentary evidence of the respondent. Ext. B1 is copy of notice. Ext. B2 is copy of mahazar prepared by Special Tahsildar (LA), Kollam. Ext.B3 is copy of valuation statement. Ext. B4 is copy of certificate for compensation for tree clearance. Ext.B5 is copy of detailed valuation statement. Ext.B6 is copy of details of trees. Ext. B7 is copy of sketch of land. Ext. B8 is copy of detailed valuation statement of land corridor. Ext. B9 is copy of compensation of corridor fixed by the District Collector. Ext. B10 is copy of a voucher. Ext. B11 is copy of valuation statement of the land in the tower footing area. Ext. B12 is copy of mahazar dated 09/05/2018. Ext. B13 is copy of application for receiving cheque. Ext. B14 is copy of award enquiry note. Ext. B15 is copy of receipt of cheque. Ext. B16, Ext. B17, Ext. B18 and Ext. B19 are copies of Government orders. Ext. B20 is copy of fair value statement.

15. Ext. C1 report and C1(a) plan were filed by the Advocate Commissioner after measurement of the property.

16. The case of the petitioners to the effect that the value and utility of the property got diminished due to drawing of electric line gets support from Ext.C1 series. In Ext.C1, the Advocate Commissioner after effecting measurement of the property with the assistance of a surveyor calculated the extent of the affected land as 22.448 cents. Nothing was brought out to discredit the measurement of the property done by the Advocate Commissioner.

17. What is shown is that the Advocate Commissioner calculated the extent of the affected area by taking into consideration the relevant factors such as alignment of electric lines, corridor of electric lines and the possible area of transmission of electric lines. In the above situation, I fix the extent of the affected land as 22.448 cents by accepting Ext. C1 and Ext.C1(a).

18. The percentage of diminution in the value and utility of the affected land has to be fixed. It will not be possible to make permanent constructions in the property and to plant permanent cultivations. But, it will be possible to plant seasonal cultivations. In the facts and

circumstance of the case, I fix the percentage of diminution in the value and utility of the affected land at 50%.

19. Then, the market value of the property has to be fixed. The petitioners rely upon Ext. A11 to fix the market value of the property. It is pointed out that as per Ext.A11, 5.28 ares of property in Punnala village was sold for ₹ 30,00,000/-. The case of the petitioners is that the market value of their property has to be fixed on the basis of Ext.A11.

20. I am of view that no reliance can be placed upon Ext. A11, since the petition schedule property and Ext. A11 property are not proved to be similarly situated. The fact that both properties situate within the same village cannot lead to an inference that the properties are similarly situated. Significantly, the petitioners did not take step to get Ext. A11 property inspected by the Advocate Commissioner. Therefore, Ext. A11 has to be excluded, while fixing the market value of the property.

21. As per Ext.A11, the property is having access from a PWD road on the northern side. Ext. C1 brings out that the property of the petitioners situates on the eastern side of a road which starts from Pathanapuram – Punnala road at a place known as Chachippunna. It is not shown that

Ext. A11 property and the property of the petitioners are having same potentiality in the context of road access.

22. The petitioners did not produce any other document including notification to bring out the fair value of the property. Therefore, the market value has to be notionally fixed.

23. Ext.C1 series brings out the general features of the property. I have already referred to the road access to the property. The property is reported to be situated at a distance of 300 meters from Pathanapuram – Punnala road. The existence of business and commercial establishments within the distance of 1.5 Km is reported.

24. Ext. C1 reports that the market value of the property is approximately ₹ 2,25,000/- per cent. The said assessment based upon hear-say knowledge cannot be relied upon.

25. At the same time, after taking into consideration the general features of the property, I notionally fix the market value of the property at the relevant time at ₹ 1,00,000/- per cent.

26. Based upon the above calculations, compensation due on account of the diminution in the value and utility of the affected land will come to **₹ 11,22,400/-.**

27. The petitioners are entitled to interest on the amount of compensation. In ***K.S.E.B v. Kalyani Amma (2008 (1) KLT 1038)***, the Hon'ble High Court of Kerala held that interest payable on compensation for trees cut and removed for electric lines is from the date of cutting of trees. I am of the view that the same principle can be applied in the case of compensation on account of diminution in the value and utility of property. The date shown in Ext. A4 which is 21/12/2017 can be taken as the date of cutting of trees.

28. In ***Jayaram v. K.S.E.B (2015 (3) KLT 275),*** the Hon'ble High Court of Kerala was dealing with original petition filed during 1999. It is shown that in the said case, the trees were cut on 22/02/1995. The Hon'ble High Court confirmed the order passed by the trial court in the said case as per which interest was granted at the rate of 9% per annum. Following the said decision, I fix the rate of interest in this case at 9% per annum.

29. In the light of the above discussion, I hold that the petitioners are entitled to recover an amount of **₹ 11,22,400/- (Eleven Lakhs Twenty Two Thousand and Four Hundred only)** as compensation from the respondent on account of diminution in the value and utility of the property of the petitioner with interest at the rate of 9% per annum from 21/12/2017 till realization.

Point no. 1 is answered in favour of the petitioners to the above extent.

30. **<u>Point no. 2</u>**:

The petitioners claim enhanced compensation on account of improvements cut and removed from the property.

31. In the above context, I rely upon the decision of the Hon'ble Supreme Court in ***K.S.E.B v. Livisha (2007 (3) KLT 1)*** in which it was held that there cannot be a hard and fast rule or a fixed formula for determination of compensation and with respect to compensation in relation to fruit bearing trees, the same will depend upon the facts and circumstances of each case.

32. The learned counsel for the petitioners relied upon the decision of the Hon'ble Supreme Court in **Land Acquisition Officer v. Ramakrishna Rao** ***[AIR 2007 SC 1142]*** in which it was held that no amount towards expenses for cultivation need be deducted. Reliance was also placed upon the decision of the Hon'ble Supreme Court in ***Shaik Imambi V. Special Deputy Collector (Land Acquisition), Telegu Ganga Project (2011 (11) SCC 639)*** in which it was held that multiplier of 10 can be applied.

33. The petitioners rely upon Ext. A6 and A8 depositions, Ext. A9 mahazar and Ext. A10 valuation statement to contend that the said documents have to be relied upon to fix the yield and value of improvements. The said contentions cannot be accepted. The oral and documentary evidence adduced in other cases with respect to income and value of cultivations with respect to other properties involved in the said cases cannot be relied upon to fix the income from cultivations involved in this case.

34. The petitioners also rely upon Ext. A12 series documents which are certified copies of Government orders declaring special compensation package towards diminution of value of land due to the drawing of 400 KV Edamon – Kochi line. The present case is not shown to be covered by the said special package and no reliance can be placed upon the same.

35. The claim for enhanced compensation for improvements have to be adjudicated by following the principles laid down in **KSEB V. Livisha** referred to above.

36. As per Ext. B5 valuation statement, 50 yielding rubber trees aged 8 years were cut and removed. The value of the rubber assessed to be ₹ 124/ per Kg which is not rebutted by any evidence is accepted.

37. The learned counsel for the petitioners rely upon the unreported decision of the Hon'ble High Court of Kerala in **Sudevan V KSEB (CRP No. 451/2012) (Ext. A7)** as per which the Hon'ble High Court fixed the net annual yield from rubber tree after deducting expenses at 15 Kg.

38. Following the above said decision, I fix the net annual yield from 27 rubber_cultivations in this case at 15 Kg per tree. Following the decision of the Hon'ble Supreme Court in **Shaik Imambi V. Special Dy. Collector (Land Acquisition), Telugu Ganga Project [2011 (11) SCC 639],** multiplier of 10 has to be applied.

39. Based upon the above calculations, the total compensation with respect to each rubber tree will come to ₹ 18,600/- and that of 50 rubber trees will come to **₹ 9,30,000/- (Rupees Nine Lakhs and Thirty Thousand only).**

40. As per Ext. B5, 14 arecanut trees including 5 arecanut saplings aged 4 years were cut and removed. The saplings would have grown up into yielding trees within a few years. Therefore, I propose to value the saplings also as yielding trees. Thus, the total number of arecanut trees is fixed as 14.

41. The annual yield of arecanut trees assessed to be 100 is on the lower side. Considering the possible yield from the arecanut trees, I fix the annual yield from the arecanut trees at 500 per tree. I deduct 25 per tree out of the annual yield towards expenses. The net annual yield will come to 475 per tree. The net retail value of arecanut assessed to be ₹ 1.40/- is reasonable and is accepted. Multiplier of 10 has to be applied.

42. Based upon the above calculations, the compensation with respect to each arecanut tree will come to ₹ 6,650/- and that of 14 arecanut trees will come to **₹ 93,100/- (Rupees Ninety Three Thousand and One Hundred only)**.

43. 6 anjili trees aged 8 years were cut and removed. The value assessed is on the lower side. I grant enhancement by 200%. The total re-assessed compensation will come to **₹ 14,400/- (Rupees Fourteen Thousand and Four Hundred only)**.

44. 4 papaya trees aged 3 years were cut and removed. I grant hike in compensation by 200%, since the value of ₹ 3750/- per tree assessed is on the lower side. The total re-assessed compensation will come to **₹ 45,000/- (Rupees Fourty Five Thousand only)**.

45. 3 yielding coconut trees aged 14 years were cut and removed. The annual yield assessed is on the lower side. Considering the possible yield from the trees, I fix the yield from each tree at 250 per year. Considering the possible expenses, I deduct 20% towards expenses. The net annual yield per tree will come to 200. The value of coconut assessed to be ₹ 20/- looks reasonable and is accepted. Multiplier of 10 is applied.

46. Based upon the above calculations, the compensation due on account of 1 yielding coconut tree will come to ₹ 40,000/- and that of 3 coconut trees will come to **₹ 1,20,000/- (Rupees One Lakh and Twenty Thousand only)**.

47. The total re-assessed compensation on account of cutting of the improvements will come to **₹ 12,02,500/-**. After deducting **₹ 2,62,638/-** already awarded, the additional compensation will come to **₹ 9,39,862/- (Rupees Nine Lakhs Thirty Nine Thousand Eight Hundred and Sixty Two only)**. The said amount will carry interest at the rate and for the period granted with respect to compensation on account of diminution in the value and utility of the affected land.

48. In the light of the above discussion, I hold that the petitioners are entitled to recover an amount of **₹ 9,39,862/- (Rupees Nine Lakhs Thirty Nine Thousand Eight Hundred and Sixty Two only)** as enhanced compensation for the improvements cut and removed from the property of the petitioners with interest at the rate and for the period specified above.

Point no. 2 is answered in favour of the petitioners to the above extent.

49. **<u>Point no. 3</u>**:

I have already referred to the reliefs liable to be granted to the petitioners. With regard to costs, no circumstance has been brought out to depart from the normal rule that costs shall follow the event. Therefore, I hold that the petitioners are entitled to recover proportional costs of the proceedings from the respondent.

Point no. 3 is answered in favour of the petitioners to the above extent.

50. In the result, the original petition is allowed in part as follows:

(i) The petitioners are allowed to recover an amount of **₹ 11,22,400/- (Eleven Lakhs Twenty Two Thousand and Four Hundred only)** from the respondent on account of diminution in the value and utility of the affected land with interest @ 9% per annum from 21/12/2017 till realisation.

(ii) The petitioners are allowed to recover an amount of **₹ 9,39,862/- (Rupees Nine Lakhs Thirty Nine Thousand Eight Hundred and Sixty Two only)** from the respondent towards enhanced compensation for trees cut and removed from the property of the petitioners with interest @ 9% per annum from 21/12/2017 till realisation.

(iii) The petitioners are allowed to recover proportional costs of the proceedings from the respondent.

*(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court on this the 12th day of November 2024)*

Sd/-
Bindu Sudhakaran,
Addl. District Judge- V, Kollam.

**APPENDIX:**

Exhibits from the side of Petitioner

| | | | |
|---|---|---|---|
| A1 | : | 05.10.2017 | Copy of Notice under Indian Telegraph Act of 1885 no.7101 |
| A2 | : | 01.01.2018 | Copy of valuation statement |
| A3 | : | 24.04.2018 | Copy of Tax receipt |
| A4 | : | 21.12.2017 | Original CCTC no. 7852 |
| A5 | : | 08.12.2017 | Copy of Detailed valuation statement |
| A6 | : | 10.05.2010 | Copy of deposition of Rubber Board Officer Sri. K. Sudheer Babu |
| A7 | : | 16.09.2015 | Copy of High Court order in CRP 451/2012 |

| | | | |
|---|---|---|---|
| A8 | : | 10.05.2010 | Copy of deposition of Agricultural Officer in OP(Ele) 197/2006 Sri. Mathews Koshy |
| A9 | : | 19.06.2017 | Copy of Mahazar from KSEB |
| A10 | : | 18.12.2017 | Copy of Detailed valuation statement |
| A11 | : | 01.12.2023 | Copy of sale deed no 63/1/2018 |
| A12 | : | 30.07.2015 | Copy of Govt. orders declaring a special compensation package towards deminuation value of land for the land lords. |

<u>Witness from the side of Petitioner</u> : Nil

<u>Exhibits from the side of Respondent</u> :

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|---|---|---|---|---|
| B1 | : | 05.10.2017 | : | Sealed copy of notice under Indian Telegraph Act of 1885 no. 7101 |
| B2 | : | 20.10.2017 | : | Sealed copy of mahazar |
| B3 | : | 01.01.2017 | : | Sealed copy valuation statement no. 1090 |
| B4 | : | 21.12.2017 | : | Sealed copy of CCTC no. 7852 |
| B5 | : | 08.12.2017 | : | Sealed copy of Detailed Valuation Statement |
| B6 | : | --- | : | Sealed copy of tree list |
| B7 | : | --- | : | Sealed copy of sketch of land between tower no.29/2 and 30/0. |
| B8 | : | 14.08.2020 | : | Sealed copy of the Detailed valuation statement of land involved in the corridor between tower no.29/2 to 30/0 |

| | | | | |
|---|---|---|---|---|
| B9 | : | 25.11.2021 | : | Sealed copy of compensation to corridor fixed by District collector |
| B10 | : | --- | : | Sealed copy of voucher |
| B11 | : | --- | : | Sealed copy of valuation statement of the land in the tower footing area. |
| B12 | : | 09.05.2018 | : | Sealed copy of mahazar |
| B13 | : | 04.07.2018 | : | Sealed copy of Application for receiving cheque |
| B14 | : | 04.07.2018 | : | Sealed copy of Award enqiry note |
| B15 | : | 04.07.2018 | : | Sealed copy of cheque receipt |
| B16 | : | 30.07.2015 | : | Copy of Govt order no. 29/2015 |
| B17 | : | 31.08.2016 | : | Copy of Govt. order no. 19/16 |
| B18 | : | 05.12.2016 | : | Copy of Govt. order 25/2016 |
| B19 | : | 17.03.2018 | : | Copy of Govt. order 6/2018 |
| B20 | : | --- | : | Copy of fair value of land |

Witness from the side of Respondent : Nil
Court Exhibit :

C1, C1(a) : Commission Report

Id/-
Addl. District Judge- V, Kollam.

Typed by : Deepa.O
Compared by: Nimmy Victor

**<u>Order in</u>**
**<u>OP (Ele.) 157/2018</u>**
**<u>Dated:12.11.2024</u>**