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

PRESENT : **Smt. Aaj Sudarsan, Additional District Judge-IV**,
Thursday the 17th day of August, 2023/ 26th Sravana 1945

OP(Elcty) No. 189/2017

Petitioners:-

1 Anilkumar. V, aged 50 years, S/o Vasudevan,
VJ Nivas, Anappadu, Koovalasseri P.O, Thiruvananthapuram.

2 Sindhumol T.K, aged 41 years, W/o Anilkumar V,
VJ Nivas, Anappadu, Koovalasseri P.O, Thiruvananthapuram.

(By Adv. V.S.Manikandan)

Respondents:-

1. Kerala State Electricity Board, Represented by its Secretary
Vydyuthi Bhavan, Pattom, Thiruvananthapuram.

2. The Assistant Executive Engineer, Line Construction,
Sub Division, KSEB, Balaramapuram P.O, Thiruvananthapuram

(By Adv. Vithura K Gopakumar)

This petition have been finally heard on **04.08.2023** and the Court on **17.08.2023** passed the following: -

O R D E R

1. This is an application filed under Section 16(3) of the Indian Telegraph, Act, 1986 for enhancement of compensation.

2. Brief averments in the petition are as follows:

The petitioners are the absolute owner of the 10.60 Ares of property comprised in Re. Sy. No. 73/11 of Malayinkeezhu Village, Kattakada Taluk. The respondents into draw 220 KV Kattakada-Balaramapuram electric line had cut down many valuable and high yielding trees belonging to the petitioners. The respondents paid an amount of Rs. 84,494/- as compensation to the petitioners. However, the method of calculating the compensation is unscientific. With development in science, the trees have become more yielding and there has been a decrease in the dropping and maintenance cost. The respondents had cut down 7 coconut trees of 15 years age, 2 arecanut trees with 12 years age. The petitioners used to draw an average income of Rs. 25,000/- from these trees. Further, these trees had yielding age of another 15 years. Therefore, the petitioners are entitled to get Rs. 2,00,000/- as compensation for these trees. The preparation of the mahazar valuation statement is against facts, truth and evidence and is objectionable on various grounds. The officer has not correctly calculated the yield and the yielding life of the trees cut. The assessment of yield by officers is only guesswork. The high power line is passing above the building. The manual of instruction followed by the respondents in assessing compensation for tree cutting is obsolete and outdated. It has no legal or statutory validity. By drawing of the electric lines, the entire land having an extent of

10.60 ares was rendered useless. Petitioners are unable to do any cultivation. The petitioners are entitled to get compensation for the loss of their land according to the present market value, that is Rs. 1,50,000/- per cent. Thus, the petitioners are entitled to get an amount of Rs. 8,00,000/- for the affected land.

Cause of action for the petition arose on 27/04/2015 the date of notice and on 25/08/2016 the date of receipt of cheque under protest and thereafter at Malayankeezhu Village where the property is situated and which is within the jurisdiction of this court. Hence, the petition.

3. The respondents 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 and eastern regions of Thiruvanathapuram 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 respondents have paid a compensation of Rs. 84,494/- to the petitioner by way of Cheque No. 129934 dated 19/08/2016 towards the damages caused to crops such as 7 coconut trees, 2 arecanut trees. The required right of way for the 220 KV line is 35 m. The respondents have not acquired any portion of land of the petitioner or have rendered any portion of the land useless by way of drawing of electric lines. The respondents have complied with all the case laws prevailing in the country regarding payment of just compensation. The claim for enhanced compensation is hypothetical and hence denied. The existence of the electric line has not diminished the property of the petitioner. The petitioners can carry out cultivation of seasonal crops in their property. Considering all these aspects, this petition may be dismissed with costs.

4. Points that arise for consideration are as follows:

(1) Whether the petitioners are entitled to get enhanced compensation for the trees cut down and removed from their property by the respondents? If so, what shall be the amount?

(2) Whether the petitioners are entitled to get diminution of land value from the respondents? If so, how much?

(3) Order

5. PW1 and PW2 were examined and Exts A1 to A5 were marked from the side of the petitioner. Ext C1 and C1(a) were marked as court exhibits. Exts B1 to B6 were marked from the side of the respondents. Heard both sides.

6. **Point No. 1:** The petitioners own 10.60 Ares of property comprised in Re. Sy. No. 73/11 of Malayinkeezhu Village, Kattakada Taluk as per Ext A4 Settlement Deed. The petitioners are paying tax for the said property. This is corroborated by Ext A3 tax receipt. In pursuance of Ext A1 notice dated 27/04/2015 trees were cut down from the property of the petitioner by the respondents. The respondents awarded an amount of Rs. 84,494/- 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 and were aged 15 years. These trees would have given normal yield for another 15 years. The drawing of electric lines over the property of the petitioner has rendered her property useless. Hence, the petitioner is entitled to get a compensation of Rs. 8,00,000/- for the loss of value of property.

7. The respondents have contended that adequate compensation was granted to the petitioner and there is no room for further enhancement.

8. A perusal of Ext B3 Detailed Valuation Statement (DVS) shows that there were 7 yielding coconut trees aged 15 years and 2 yielding arecanut trees aged 15 years which were cut down by the respondents. An amount of Rs. 79,164.73/- was given as compensation for the coconut trees and an amount of Rs. 5,329.66/- was given as compensation for the arecanut trees.

9. 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 B3 DVS show that the multiplier applied by the Board is 8, which is clear from Col. No. 11.

10. The evidence given by PW1 shows that he along with his wife obtained 10.60 Ares of property comprised in Re. Sy. No. 73/11 of Malayinkeezhu Village, Kattakada Taluk as per Ext A4 Settlement Deed. PW1 has deposed that he is entitled to get an enhanced rate of compensation for the yielding trees as they had a long life expectancy and yield. There is no evidence coming from the side of PW1 to show the market value of these trees or its yield at the relevant period. Therefore, the number of

annual yield 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 1/4th of the gross produce towards droppings and 1/4th towards the cost of cultivation and tax and balance was taken as the net income.

11. 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.

12. 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.

13. 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.

<u>Table for yielding trees</u>

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 Coconut trees and 4/10 for rubber trees	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
1.	Coconut trees	15	5	1,500 (5 x 300)	Rs. 843.75/- (1500 x 9/16)	13.19	Rs.11,129.0625/- (Rs. 843.75/- x 13.19)	Rs. 1,11,290.625/- (Rounded to Rs. 1,11,291/-) (Rs.11,129.0625/- x 10)
2.	Coconut trees	15	2	500 (2 x 250)	Rs. 281.25/- (500 x 9/16)	13.19	Rs. 3,709.6875/- (Rs. 281.25 x 13.19)	Rs. 37,096.875/- (Rounded to Rs. 37,097/-) (Rs. 3,709.6875/- x 10)
3.	Arecanut trees	15	2	1,200 (2 x 600)	675 (1200 x 9/16)	1.48	Rs. 999/- (Rs. 675/- x 1.48)	Rs. 9,990/- (Rs. 999/- x 10)

14. From the discussions made in Para. No. 8, it is seen that the respondents have given an amount of Rs. 79,164.73/- as compensation for the loss of yielding coconut trees (See Col. No. 20 of Ext B3 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. 1,48,388/-. So, after deducting the compensation already received in respect of 7 yielding coconut trees, the balance amount is Rs. 69,223.27/- rounded to Rs. 69,223/- (Rupees Sixty Nine Thousand Two Hundred and Twenty Three Only).

15. From the discussions made in Para. No. 8, it is seen that the respondents have given an amount of Rs. 5,329.66/- as compensation for the loss of yielding mango tree (See Col. No. 20 of Ext B3 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. 9,990/-/-. So, after deducting the compensation already received in respect of 2 yielding arecanut trees, the balance amount is Rs. 4,660.34/- rounded to Rs. 4,660/- (Rupees Four Thousand Six Hundred and Sixty Only).

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. 73,883/- (Rupees Seventy Three Thousand Eight Hundred and Eighty Three only) from 27/04/2015, 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. **Point No. 2:** The property over which the respondents have drawn 220 KV line belongs to the petitioners as per Ext A4 Settlement Deed. 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. Ext C1 report only states that the property of the petitioner is situated 17 km from District Court, Thiruvananthapuram. PW2 commissioner advocate has deposed that the property of the petitioners is situated at a place called Cheenivila. Cheenivila Junction is situated 1.5 km from Thiruvananthapuram-Kattakada road. From Cheenivila junction, in order to reach the property of the petitioners, one has to travel 100 m towards east and then through a pathway for about 200 m. There are pathways on the western and southern sides of the property. PW2 could see 20 yielding coconut trees, 18 yielding arecanut trees, 1 seema plavu and other crops like plantains, cucumber etc. in the property of the petitioners. Katakkada Taluk Hospital and Christ Nagar College are situated at a distance of 2 km and 1 km respectively from the property of the petitioners. t is reported in Ext C1 report, that the property of PW1 is a reclaimed land.

PW2 has reported that northern 6 cents of property is the affected area. He could see the stumps of 7 coconut trees and 2 arecanuts that were removed from here. PW2 has also reported that the market value of the property is about Rs. 2,00,000/- per cent. However, in order to assess the exact affected area (RoW) the petitioners did not seek for assistance of a surveyor. Thus, Ext B5 plan produced by the respondents is taken to assess the affected area. The affected area is denoted by letters 'ABC' in Ext B5 plan. It has an extent of 0.023 ares. It is to be noted that the electric lines are passing over the property situated on the northern side of the property of PW1. PW1 has relied on Ext A5 Sale Deed from Maranellor village to assess the market value of his property. As rightly argued by the learned counsel appearing for the respondents Ext A5 Sale Deed cannot be relied on for the purpose of computing the diminution of market value of the property of PW1 as PW2 commissioner has not given any comparison of these two properties, viz., their lie, nature, importance of locality etc. Thus, Ext A5 Sale Deed cannot be used as a yardstick in the instant case. Ext B6 fair value certificate is also not relied as it is generated for fiscal purpose by the government. Considering the distance from Thiruvananthapuram-Kattakada road, the existence of public places like Taluk Hospital and Christ Nagar College, the market value of the property of PW1 can be fixed as Rs. 1,50,000/- per cent.

18. In **K.S.E.B. v. Livisha (2007 (3) KLT 1 (SC))** it is 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 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.

19. The importance of the locality where the property of PW1 situates is already discussed in Paragraph No.17. The affected area is 0.023 ares (0.05681 cents) of land. The diminution of land can be found to be 30%. Thus, for computing the diminution in land value, the following calculation method is adopted, 0.05681 cents x Rs. 1,50,000 x 30/100 = Rs. 2,556.45/- (rounded to Rs. 2,556/-). 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.

20. **Point No. 3:** From the discussions made in the aforesaid points, it is found that this petition is liable to be allowed in part with costs.

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

(1) The petitioner is allowed to realize an amount of Rs. 73,883/- (Rupees Seventy Three Thousand Eight Hundred and Eighty Three only) with 8% interest from 27/04/2015, 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. 2,556/- (Rupees Two Thousand Five Hundred and Fifty Six only) with 8% interest from the date of this petition till the date of realization of the amount from the 1st 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 17th day of August, 2023)

Sd/-
AAJ SUDARSAN
ADDL.DISTRICT JUDGE-IV

APPENDIX

Exhibits for the Petitioner :-

A1	27.04.2015	Original copy of notice issued by KSEB
A2	27.04.2015	Original Mahazar statement issued by KSEB
A3	31.07.2021	Tax receipt of Maranalloor Village
A4	17.09.2001	Certified copy of Sale deed No. 1196/2001
A5	01.08.2018	Certified copy of sale deed no. 823/2018

Exhibits for the Respondents:-

B1	27.04.2015	Duplicate copy of notice
B2	27.04.2015	Mahazar
B3		Detailed valuation statement
B4	26.09.2015	Karyavivarapathrika
B5		Sketch
B6	25.03.2023	Fair Value of Land Gazette Notification

Witness for the Petitioner:-

PW1	28.03.2022	Vasudevan
PW2	10.06.2022	R .Jerard

Witness for the Respondents:- Nil

Court Exhibit:-

C1	30.09.2021	Commission report
C1(a)	30.09.2021	Plan

Sd/-
Aaj Sudarsan
ADDL. DISTRICT JUDGE-IV

/True Copy// (By Order)

SHERISTADAR

Typed by : Sreeja
Comp. By : Dhanya

Copy of Order in
OP(Elcty) No. 189/2017
Dated: 17.08.2023.