

The K.S.E.B Vs. C.Bhargavan

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Court : Kerala

Decided On : Jun-16-2014

Judge : Honourable Mr.Justice K.Harilal

Appellant : The K.S.E.B

Respondent : C.Bhargavan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL MONDAY, THE 16TH DAY OF JUNE 2014 26TH JYAISHTA, 1936 CRP.No. 541 of 2011 () ----- AGAINST THE AWARD IN OP332008 (ELECTRICITY) OF THE DISTRICT COURT, KASARAGOD. REVISION PETITIONER(S)/RESPONDENT: ----- THE KERALA STATE ELECTRICITY BOARD, VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM-695004, REPRESENTED BY ITS SECRETARY. BY ADV. SRI.K.M.SATHYANATHA MENON,SC,KSEB RESPONDENT(S)/PETITIONER: ----- C.BHARGAVAN, S/O.MANI AMMA, RESIDING IN ADKA, KARADKA VILLAGE AND POST, KASARAGOD TALUK AND DISTRICT, P.O.KARADKA, REPRESENTED BY POWER OF ATTORNEY HOLDER YAMUNA, W/O.BHARGAVAN.C, RESIDING IN ADKA, KARADKA VILLAGE AND POST, KASARAGOD TALUK AND DISTRICT, P.O.KARADKA, PIN671542. R1 BY ADV. SRI.S.JIJI THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16-06-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: K.

HARILAL, J.

----- C.R.P. No.541 of 2011-A
----- Dated this the 16th day of June, 2014

ORDER

The petitioner is the respondent in O.P.No.33/08 (Electricity) on the files of the District Court, Kasaragod. The above petition was filed by the respondent under Sec.16 of the Indian Telegraphs Act and Sec.51 of the Indian Electricity Act read with Sec.42 of the Indian Electricity Supply Act, seeking compensation for the loss suffered by the respondent by cutting and removal of trees and diminution of the land value caused by the drawing of 110 KVDC line over the respondent's property, for the purpose of setting up a sub station at Mulleria. At the first instance, the petitioner has passed an award granting C.R.P. No.541 of 2011 -:

2. :- an amount of 4,287/- as compensation for the cutting of trees; but no amount had been awarded for the diminution of the land value. Feeling aggrieved, the respondent preferred the above O.P. The respondent was examined as P.W.1 and Ext.A1 was marked. Ext.B1 was marked for the petitioner. The report and plan submitted by the Advocate Commissioner were marked as Exts.C1 and C2 respectively. After considering the evidence on record, the learned District Judge passed an award granting `1,11,000/- with interest at the rate of 6% per annum from the date of cutting of trees till the date of actual payment.

2. This revision petition is filed by the Kerala State Electricity Board on the ground that the additional compensation given to the respondent is excessive and disproportionate with the actual loss suffered by the respondent. The learned counsel for the petitioner advanced arguments in support of various grounds raised in the Memorandum of Civil Revision Petition. According to him, the court below went wrong by granting `1,06,000/- for C.R.P. No.541 of 2011 -:

3. :- diminution of the land value. The market value was fixed without any basis. Similarly, the percentage of diminution fixed by the court below is excessive and disproportionate with the actual area injuriously affected.

3. The short question that arises for consideration is whether there is any illegality or impropriety in the determination of additional compensation granted by the court below? Going by the impugned award, it could be seen that 110 KVDC lines were drawn through the property of the respondent dividing the same into two and the line passes at a distance of 2 Mtrs. from the residential house. The total extent of the property is 3.53 Acres and coconut trees aged more than 30 years, cashew trees and other valuable trees were cut and removed for the drawing of the lines. The respondent claimed that the property is situated in a potential area and would fetch more than `20,000/- per cent as market value. Though the respondent claimed `17,20,830/-, the court below had granted `1,11,000/- only. To a certain extent the court below had relied on Ext.C1 C.R.P. No.541 of 2011 -:

4. :- report and Ext.C2 plan. But to the contrary, no evidence had been adduced by the respondent. The court below has not given any additional compensation towards the tree value; but `1,11,000/- has been given for diminution of the land value.

4. As per Ext.C1 report and Ext.C2 plan, it is seen that the affected area would come to 53 cents and no serious objection was raised by the respondent against that finding of the Commissioner. More over, no evidence had been adduced by the respondent to the contrary. If the affected area was lesser than 53 cents, certainly the respondent could have produced the sketch prepared by the concerned officials of the respondent showing the nature and lie of the lines. Therefore, I find that the court below can be justified in taking 53 cents as affected area.

5. Coming to the market value, it is true that no documentary evidence had been produced by the respondent to show the current market value. But injurious affection by drawing of electric lines is a reality which is C.R.P. No.541 of 2011 -:

5. :- approved by the Apex Court in K.S.E. B. v. Livisha [2007 (3) KLT1(SC)]. In the above decision, the Apex Court held as follows: "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 view of the proposition laid down by the Apex Court, in my view, even in the absence of documentary evidence to C.R.P. No.541 of 2011 -:

6. :- show the current market value of the property, it can be determined, on the basis of the evidence available on record.

6. The Commissioner had reported that the present value would come at `15,000/- per cent. But it was the market value prevailing in the year 2009 in that locality. Admittedly, the respondent's property lies adjacent to a public road and the Commissioner has reported that the property has some commercial importance. Considering all these aspects, the court below fixed the market value at `5,000/- per cent as 1/3rd of the market value fixed by the Commissioner. I find that in view of the available evidence on record, the market value fixed by the court below is just and proper.

7. Coming to the percentage of diminution of the land value, the court below found that the value of the property is reduced by 40%. Certainly, the drawing of High Tension lines would reduce the utility of the property for residential purposes and seasonal crops alone can be cultivated in the clearing area. In the above view, I find that the diminution C.R.P. No.541 of 2011 -:

7. :- of the land value fixed at 40% is also just and proper. Thus, I find no reason to interfere with the impugned award under challenge. The additional compensation granted by the court below is just and proper. This revision petition is devoid of merits and dismissed accordingly. Sd/- (K. HARILAL, JUDGE) Nan/ //true copy//
P.S. to Judge