

The Assistant Executive Engineer vs B. Gangappa S/O Bommaiah

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Court : Karnataka Dharwad

Decided On : Apr-25-2025

Judge : Sachin Shankar Magadum

Appeal No. : WP/102350/2024

Appellant : The Assistant Executive Engineer

Respondent : B. Gangappa S/O Bommaiah

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH DATED THIS THE 25TH DAY OF APRIL 2025 PRESENT THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM WRIT PETITION NO.102350 OF 2024 (GM-RES) BETWEEN: THE ASSISTANT EXECUTIVE ENGINEER KARNATAKA POWER TRANSMISSION CORPORATION LTD., MAJOR WORKS DIVISION, 3RD CROSS, JCR EXTENSION, CHITRADURGA-577501. ...PETITIONER (BY SRI. B.S.KAMATE, ADVOCATE) AND: B. GANGAPPA S/O. BOMMAIAH AGE: 81 YEARS, OCC: AGRICULTURE, R/O. LAKKALAHALLI VILLAGE, METRIKI, TQ: SANDUR, DIST: BALLARI-583101. RESPONDENT (BY SRI. B.C.JNANAYYA SWAMI, ADVOCATE) THIS WRIT PETITION IS FILED

UNDER ARTICLES 226 AND 227

ASHPAK OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE KASHIMSA MALAGALADINNI NATURE OF CERTIORARI OR ANY OTHER WRIT OR ORDER OR Digitally signed by ASHPAK KASHIMSA MALAGALADINNI DIRECTION, QUASHING THE IMPUGNED ORDER DATED 17/08/2023 Location: HIGH COURT OF KARNATAKA DHARWAD BENCH Date: 2025.04.29 16:25:24 +0530 PASSED BY THE II ADDL. DIST JUDGE, BALLARI IN MISC. PETITION NO.193/2020 AT ANNEXURE-E AND TO DISMISS THE MISC. PETITION NO. 193/2020 AT ANNEXURE-A AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 16.04.2025, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, ORDER WAS MADE THEREIN AS UNDER: CORAM: THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM -2-

CAV ORDER

The KPTCL has filed the captioned petition assailing

the order dated 17.08.2023 passed by the learned II Additional District Ballari in Misc.P.No.193/2020, thereby allowing the petition filed under Section 16(3) of the Indian Telegraph Act, 1885 (hereinafter referred to as the Act for short) and directed the Corporation to pay compensation of Rs.52,640/- with interest at the rate of 8% p.a. from the date of petition till its realization.

2. The brief facts leading to the case are as under: The petitioner/Corporation has drawn 400 KV High

Tension Power Line with tower over the respondents land. This factual matrix is admitted by the Corporation. Respondent/claimant filed petition under Section 16(3) of the Act claiming compensation against the petitioner/Corporation for having utilized the land of the respondent bearing R.S.No.46/A of Hanumanahalli village. This petition is filed by the respondent/claimant alleging loss of land and crop and diminution of the land value. -3-

3. The present petitioner/Corporation on receipt of notice filed objections and seriously disputed the claim made by the respondent. The petitioner/Corporation also

contended that the claim made by the respondent/claimant is barred by limitation since the petition is filed after lapse of seven years, and there is no cause of action.

4. The respondent/claimant and the

petitioner/Corporation to substantiate their respective claim let in oral and documentary evidence. The learned District Judge while answering point No.1 held that the respondent/land owner is entitled to claim compensation. Though the learned District Judge refers to an application filed under Section 5 of Limitation Act, the court was of the view that petitioner/Corporation did not issue any notice to respondent and therefore, respondent was not aware of his rights and damages. The learned District Judge has further held that the cause of action accrued to the respondent/land owner is not disclosed by the action of the petitioner/Corporation since no notices were issued to

-4- respondent and therefore, performance certificate marked at Ex.R2 indicating the date of accomplishment of installation and construction of 400KV DC line on 12.04.2012 cannot be accepted. This finding is perverse. The very installation of 400 KV DC line amount to constructive notice and therefore respondent/land owner ought to have taken to recourse through law as provided under Indian Telegraph Act.

5. This Court has carefully heard the submissions

of the learned counsel for the petitioner/Corporation as well as the learned counsel for the respondent/claimant. It has also given anxious consideration to the legal principles laid down by the Honble Apex Court in KERALA STATE ELECTRICITY BOARD, TRIVANDRUM V. T.P. KUNHALIUMMA, reported in (1976) 4 SCC 634. The said decision has been followed by a Coordinate Bench of this Court in W.P.No.22208/2019 and further affirmed by the Division Bench in

W.A.No.100366/2022 and connected matters. This Court has also given due consideration to the judgments relied upon by the learned counsel for the

-5- respondent/claimant. The following point would arise for consideration. Whether the order impugned granting compensation invoking Section 16(3) of the Telegraph Act, 1885 is perverse and contrary to Ex.R2 and therefore contravenes the law declared by the Honble Apex Court in the case of the Kerala Electricity Board, Trivandrum vs T.P.Kunhaliumma? Finding on the point:

6. Before this Honble Court proceeds to delve into

the substantive issue arising for consideration in the present case, it is essential to first outline the relevant factual backdrop and foundational aspects which are not in dispute. The petitioner-Corporation, pursuant to a contract for supply and erection, successfully undertook and completed the construction of a 400KV Double Circuit (DC) transmission line. As per the admitted factual matrix, a portion of this high-tension line traverses the land belonging to the respondent-landowner. It is further evident from the records that the said 400KV DC line, -6- running from the proposed Kuditini Station to the proposed Hiriur Station, was fully commissioned and made operational on 12.04.2012.

7. This crucial date of commissioning is evidenced by a document marked as Ex.R2, which is a performance

certificate issued and maintained by the petitioner- Corporation in the ordinary course of its official functions. This certificate categorically records the date on which the erection and installation of the transmission infrastructure was completed and energized. The petitioner has relied on this documentary evidence to substantiate its specific defence that the claim petition filed by the respondent under Section 16(3) of the Act is ex-facie barred by limitation, being governed by Article 137 of the Limitation Act, 1963. On perusal of Annexure R2, this court opines that the very act of installation and commissioning of the 400KV DC line on the respondents land constitutes constructive notice to the respondent/landowner. The law imputes knowledge of such overt and physical acts which are visible and continuing in nature. Therefore, the

respondent ought to have taken timely legal recourse under the provisions of the Act, for claiming compensation or damages, if any. The finding of the learned District Judge overlooking this aspect and condoning the delay in filing the claim on the ground of lack of notice is legally unsustainable and liable to be set aside.

8. It is significant to note that the respondent has

not produced any material to dispute or discredit the authenticity or correctness of Ex.R2. In the absence of any rebuttal evidence, the said performance certificate stands as unimpeached and credible proof of the date of completion of the work.

9. The petitioner-Corporation has, through the production of cogent and reliable documentary evidence, conclusively established the date of commissioning of the

high-tension line in 2012. This evidence not only substantiates the Corporations assertion regarding the accrual of cause of action but also forecloses any doubt as to the limitation period applicable to the present claim. In light of the clear evidentiary record, there remains no -8- ambiguity with respect to the timeline of events relevant to the determination of limitation.

10. Against the backdrop of these established facts,

the central question that arises for consideration is whether the learned District Judge was legally justified in entertaining and adjudicating a petition filed under Section 16(3) of the Act nearly seven years after the commissioning of the project. Specifically, this Court is called upon to determine whether the learned District Judge erred in failing to properly address and adjudicate the plea of limitation raised by the petitioner while granting compensation to the respondent.

11. In this context, it is instructive to refer to the authoritative pronouncement of the Honble Supreme

Court in Kerala State Electricity Board (supra), wherein it was unequivocally held that applications filed under special statutes before civil courts, in the absence of any specific period of limitation provided under the governing statute, would fall

within the ambit of Article 137 of the Limitation Act, 1963. Consequently, any

-9- petition filed under Section 16(3) of the Act is to be construed as an application made to a civil court, thereby attracting the three-year period of limitation as prescribed under Article 137.

12. The above-referred judgment clearly enunciates

the legal position that the District Judge, while exercising jurisdiction under Section 16(3) of the Act for the purpose of determining compensation, functions as a civil court and performs a judicial function. As such, the limitation provisions under the Limitation Act squarely apply. Hence, an application under Section 16(3) must necessarily be instituted within three years from the date when the right to apply first accrues.

13. However, in the present case, despite the

existence of this binding precedent, the learned District Judge, while deciding Point No.1, committed a grave error in recording a finding in favour of the respondents entitlement to compensation without appropriately considering or adjudicating upon the plea of limitation raised by the petitioner. This omission to address a - 10 - foundational legal objection renders the impugned finding not only erroneous but also contrary to established principles of law. The failure to apply the binding precedent laid down by the Honble Supreme Court has resulted in a decision that is legally unsustainable and vitiated by perversity.

14. It is pertinent to underscore that the present claim petition was instituted in the year 2020, which is seven years after the commissioning of the 400KV transmission line on 12.04.2012. This time gap, by itself,

exceeds the limitation period of three years as contemplated under Article 137 of the Limitation Act. Therefore, on the face of the record, the petition is hopelessly barred by limitation and ought to have been dismissed on that ground alone.

15. It is also relevant to note that a Coordinate Bench of this Honble Court, when faced with an identical

factual and legal scenario, has already applied the aforementioned decision of the Honble Supreme Court and categorically held that Article 137 governs applications - 11 - under Section 16(3) of the Telegraph Act. In light of such a well-settled legal position, this Court is bound by the doctrine of judicial discipline and cannot take a contrary or divergent view.

16. Accordingly, there is no doubt that the law laid

down by the Honble Supreme Court squarely applies to the facts of the present case. The impugned order passed by the learned District Judge, by overlooking the bar of limitation and entertaining a petition filed well beyond the prescribed period, suffers from gross illegality and patent perversity. If Article 137 is rightly held to be applicable,

then the learned District Judge clearly lacked the jurisdiction to entertain and decide a time-barred petition. In view of the foregoing, the question under consideration is answered in the affirmative. It is held that the petition filed under Section 16(3) of the Act in the year 2020 is ex- facie barred by limitation and is liable to be dismissed on that ground alone.

17. For the forging reasons, this court proceed to pass the following: - 12 -

ORDER

i) The writ petition is allowed. ii) The order dated 17.08.2023 passed by the learned II Additional District Judge, Ballari in Misc.P.No.193/2020 is hereby set aside. Sd/- (SACHIN SHANKAR MAGADUM) JUDGE MBS Ct:vh

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