

Executive Engineer Kptcl. Vs. Ashok Parimoo.

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Court : Karnataka

Decided On : Jun-07-2011

Judge : Mohan Shantanagoudar , J.

Acts : [Indian Telegraph Act 1885](#) - Section 16(3)

Appeal No. : WRIT PETITION NO.9157 OF 2010 [GM-RES]

Appellant : Executive Engineer Kptcl

Respondent : Ashok Parimoo

Advocate for Pet/Ap. : Sri B. Rudragowda, Adv.

Judgement :

1. The order passed by the District Judge, Udupi, in Misc.Case No.10/2004 passed under Section 16(3) of Indian Telegraph Act is called in question in this writ petition. By the said order, the District Judge has granted compensation to the tune of ₹15,85,000/- to the claimant-resDondent herein with interest at the rate of b% p.a. from 7.10.2003 till payment as the respondent has lose certain portion of his land because of erection of electrical towers and drawing of 110 KV high tension electrical lines.

2. The records reveal that the respondent is the owner of the immovable property bearing No.61/12-P14, measuring 1.98 acres, situated at Shivalli village, Lakshmindra Nagar, Udupi Manipal road, Udupi. He is running a Bar & Restaurant

under the name and style of "Bacchus Inn" and a mini-video theatre in the said property. The petitioner-KPTCL erected two huge electrical towers on the said property for the purpose of drawing high tension electrical lines. One tower is erected on the southern portion of the property and another tower is erected on the northern portion of the property. Both the towers are almost lying on the western side. According to the petitioner, the area covered by the two towers is 21 cents of land. The claimant-respondent made a petition under Section 16(3) of the Indian Telegraph Act, 1885, seeking determination of the compensation at the rate of Rs.26,00,000/- (Rupees One Crore Twenty Six Lakhs), with interest at the rate of 10% p.a. The petitioner, after erecting the two towers, has drawn 110 KV electrical lines. According to the respondent, the property covered by the two towers and the area beneath the high tension electrical lines plus 11 meters on either side of the towers, is rendered useless and that the business of the respondent has also suffered inasmuch as the people apprehend danger.

3. In order to prove his case, the respondent (Claimant) has examined himself and got marked exhibits. On behalf of the petitioner herein, the Assistant Executive Engineer was examined. No documents are marked on behalf of the petitioner. During the pendency of the matter, learned District Judge appointed a Commissioner for spot inspection and for valuation of the property. The Commissioner has submitted his report on 5.1.2005. Along with his report, he has given a sketch drawn by him with regard to the property in question. The District Judge based on the material on record, quantified the compensation at the rate of Rs.25,000/- per cent and awarded total compensation of Rs.15,85,000/-, inclusive of the compensation in respect of the trees which are cut at the time of erection of the towers and drawing the electrical lines.

4. Sri B.Rudragowda, learned counsel appearing on behalf of the petitioner argues that the compensation awarded by the Court below is on the higher side, inasmuch as, the District Judge has proceeded merely on assumptions, conjectures and surmises. He further submits that the actual area lost by the respondent herein is about four or five cents, whereas, the compensation is determined for an extent of 63.4 cents that the valuation at Rs.25,000/- per cent is unreasonable. Per contra, the writ petition is opposed by Sri K.Vyasa Rao, learned

counsel appearing on behalf of the respondent by contending that the compensation awarded is just and proper. also not in dispute that 110 KV electricity is being transmitted through the lines. Based on these admitted.

5. It is not in dispute that the petitioner herein has erected two huge electrical towers for the purpose of drawing 110 KV electrical lines. Both the towers are erected in the land of the respondent and both are situated at two ends of the respondent's property. The Commissioner appointed by the District Judge[^] has visited the spot and prepared his report. Exs.P-9 to P-12 are the photographs. The land in question is situated adjoining Udupi-Manipal road which is a State Highway. It is in Shivalli village which is part and parcel of Udupi Town District Head Quarters. The actual area covered by one of the tower is 7.10 x 7.10 mts. and another tower is covering an area of 6.10 x 6.10 mts. There are three high tension electrical wires drawn on the tower. It is facts, Sri B.Rudragowda, learned counsel argues that the claimant is entitled to compensation in respect of only the actual area covered by the towers and not for any other area. According to him, the area beneath the lines and adjoining the towers continue to belong to the claimant and therefore, he cannot be awarded compensation. Such a submission cannot be accepted. The claimant is not only entitled to the compensation in respect of the land lost by him by actual erection of the two towers, but also is entitled to compensation in respect of the land which he cannot make use of in future consequent upon erection of towers. As per the electricity manual, the owner of the land over which the high tension wires pass through cannot use 11 meters of the land on either side of the towers over which the high tension wires are drawn. Thus, the respondent cannot use his own property not only below the high tension electrical lines, but also 11 meters on either side of the electrical lines. He can not grow trees and he cannot construct the buildings. Admittedly, the property adjoins the State Highway. The area almost comes within Udupi Town. Naturally the value of even the unacquired portion of the land also will be diminished. If the respondent wants to sell other portion of the property over which Hotel and Theatre are situated, he will have to sell that portion of the property at a lesser value, inasmuch as, the intending buyers will be apprehensive of electrical towers and the high tension electrical wires. Admittedly, the respondent is running a Bar & Restaurant, as well as a theatre in the remaining portion of the land. There

is no reason as to why the submission made on behalf of the Commissioner. respondent that he is having lesser business as compared to the earlier business cannot be accepted. The respondent cannot develop his property because high tension electrical lines are passing through his property. The Commissioner in his report has clearly stated that the buildings have come up over the adjoining the properties. Even the photographs reveal the existence of the buildings adjoining the property in question. The electricity board did not choose to file an application before the District Judge for cross-examining the Executive Engineer, no evidence is let in on behalf of the Except the evidence of an Assistant petitioner herein before the District Judge. Not even a single document is produced on behalf of the petitioner.

6. It is no doubt true that the petitioner has purchased the very property in the year 1982 for 1,65,600/-. The towers are erected in the year 2001. The Court can take judicial notice of the fact that there is lot of escalation in prices in this gap of 20 years. The prices have snot-up after 2000 in the entire State, more particularly, in the areas of agricultural purposes. Ex.1 May 2004 by which the pet Bangalore, Mangalore, Hubli-Dharwati, Mysore, Belgaum, Udupi etc., The land in question is having potentiality of a non-agricultural land, inasmuch as, all the adjoining lands are converted for non-agricultural purposes and buildings have come up. Even in the remaining portion of the very survey number and a hotel and theatre are constructed by the respondent and are being run by the respondent. This fact itself would go to show that the property in question is having full potentiality to get itself converted for non- .P-14 is the Sale Deed dated 31st petitioner has purchased 12 cents of land for ?10,80,000/-. It is no doubt true that the said property is a non-agricultural property. But, the said property is also situated in the very locality i.e., Shivalli village, which is almost merged in Udupi town.

7. Since the evidence produced on behaif of the claimant-respondent has remained unquestioned, particularly in relation to the valuation, there is no reason as to why this Court should interfere in the order passed by the District Judge who has passed the detailed order considering the material on record. The District Judge has rightly concluded that the claimant is not only entitled to the compensation for the land which is lost by him in view of erection of towers and

drawing of high tension lines, but also is entitled to the compensation in respect of the land beneath the high tension electrical lines and the mecessaries on either side of the land which are rendered useless. By virtue of erection and drawing up of high tension lines, the value of other portion of the land of the claimant over which the electrical lines do not pass through is also diminished. Having regard to the totality of facts and circumstances of the case, the District Judge is justified in concluding that the appropriate compensation will be 25,000/- per cent though Ex,P-14 reveals that the non-agricultural property was purchased in the year 2004 at the rate of about 90,000/- per cent. The District Judge on facts, has concluded that the claimant cannot use 63.4 cents of land. The same is based on the material on record and the report of the Commissioner which has remained unquestioned. Hence, this Court does not find any ground to disagree with the conclusion reached by the District Judge.

Hence, petition fails and accordingly, the same stands. The amount deposited before the trial Court shall be disbursed in favour of the claimant-respondent herein.

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