

HIGH COURT OF KERALA**Bench: Justice V.G. Arun****Date of Decision: 5th April 2024**

CRP Nos. 317 of 2021 and 338 of 2021

Against Order/Judgment in OPELE No. 354 of 2013 of VI Additional District Court, Ernakulam

Power Grid Corporation of India.Petitioner**Versus****P.T. Francis****Special Tahsildar (LA), Power Grid Corporation of India Ltd.****State of Kerala****Kerala State Electricity Board.Respondents****Subject:**

Challenging the order of compensation towards damage and loss due to the installation of 400 KV lines by the Power Grid Corporation of India across the claimant's property.

Headnotes:

Compensation for Property Damage - Compensation for Land Diminution due to Power Lines – Civil Revision Petition – Landowner's Claim for Enhanced Compensation – 400 KV Lines Drawn by Power Grid Corporation of India Ltd Across Claimant's Property – Original Compensation Deemed Insufficient – Analysis of Land Value and Loss – Court Modifies Compensation. [Paras 1-9]

Claim for Enhanced Compensation – Justification – Landowner's Property Affected by High Tension Power Lines – Initial Compensation for Trees Cut but not for Land Value Diminution – Court Finds Justified Enhancement after Careful Scrutiny – 40% Land Value for Central Corridor, 20% for Outer Corridors, 5% for Remaining Property – Factors Considered Include Land's Nature, Cultivation, Commercial Importance, and Effect of Power Lines. [Paras 5, 7-8]

Revision Petition by Power Grid Corporation – Contention of Exorbitant Compensation – Court Dismisses Corporation's Petition – Upholds Enhanced Compensation as Just and Proper – Court Corrects Order to Exclude Deduction of Initially Paid Compensation from Enhanced Amount. [Paras 6, 9]

Decision – Enhanced Compensation for Landowner – Directions for Payment – Correction of Initial Order Misinterpretation – Immediate Release of Deposited Amount to Claimant – Dismissal of Corporation's Revision Petition. [Para 9]

Referred Cases:

- KSEB v. Livisha [(2007) 6 SCC 792]

Representing Advocates:

Petitioner: Adv Anjana Kannath

Respondent: Advs. P.T. Jose, S. Ashitha

ORDER

1. These revision petitions are filed challenging the order passed by the Additional District Judge-VI, Ernakulam in O.P.(Electricity) No.354 of 2013. The original petition was filed by the revision petitioner in CRP No.338 of 2021 (hereinafter called 'the claimant'), being dissatisfied with the compensation awarded towards the damage and loss sustained due to the drawing of 400 KV lines across her property by the Power Grid Corporation of India Ltd (hereinafter called 'the Corporation'). The essential facts are as under;

The claimant is in ownership and possession of landed property having a total extent of 23.09 Ares made up of 11.37 Ares in Sy.No.593/2-1 and 11.72 Ares in Sy.No.593/3-3 in Block No.20 of Manjapra Village in Aluva Taluk. The land was cultivated with various yielding and non-yielding trees. According to the claimant, to facilitate drawing of the lines and smooth transmission of power, large number of trees were cut from his property. The drawing of high tension lines rendered the land underneath and adjacent to the lines useless, resulting in diminution of the value of the property. In spite of the huge loss suffered by the claimant, only an amount of Rs.1,80,790/- was paid as compensation towards the value of yielding and non-yielding trees cut. Surprisingly, no compensation was granted for diminution in land value.

Hence, the original petition was filed, seeking enhanced compensation towards the value of trees cut and diminution in land value.

2. The court below rejected the claim for enhanced compensation for the value of trees cut since no evidence in support of the claim was produced. As far as the claim for enhanced compensation towards diminution in land value is concerned, the court below relied on Ext.A13 document as well as Exts.C2 and C2(a) commission report and sketch. The Advocate Commissioner reported that the Patricks Academy, Primary Health Centre, Government Homeo Dispensary, Government Hospital, Government High School and Jyothis Central School etc are situated within close proximity to the claimant's property. The court took note of the fact that while the property in Ext.A13 document is having public road access, the petition schedule property has no direct public road access. Based on these factors, the court below fixed the land value of the claimant's property by deducting 10% of the land value shown in Ext.A13 document. The court below also took note of the fact that the electric line has been drawn across the centre of the petition schedule property. Relying on Ext.C2(a) plan, the extent of central corridor was held to be 10.328 cents and that of the outer corridors, 13.169 cents (6.547 + 6.622). The court below also took note of the fact that the remaining portion of land admeasuring 61.653 cents is also affected due to the drawing of electric lines. For the central corridor, 40% of the land value was granted as compensation and for the outer corridors, 20% of the land value. The compensation for remaining property was granted at the rate of 5% of the land value fixed by the court. Accordingly, the claimant was found entitled to compensation of Rs.19,94,837/-. Dissatisfied with the quantum of enhancement, the claimant has filed CRP No.338 of 2021, whereas the Corporation has filed CRP No.317 of 2021 contending that the enhancement ordered is far in excess of the actual damage sustained.

3. Heard Adv.P.T.Jose for the claimant and Adv.Millu Dandapani for the Corporation.

4. Learned Counsel for the claimant contended that the court below committed gross illegality in refusing to grant enhanced compensation for the loss sustained due to the cutting of valuable trees, in spite of the Advocate Commissioner assessing and reporting the loss. It is submitted that the Patricks Academy, Primary Health Centre, Government Homeo Dispensary, Government Hospital, Government High School and Jyothis Central School etc are situated within close proximity to the claimant's property. Without considering these crucial factors, 10% deduction was made from the value of the property involved in Ext.A13 document.

5. It is further submitted that the court below grossly erred in granting only 40% of the land value as compensation for central corridor and only 20% for the outer corridors. It is submitted that the court below is not justified in granting only 5% of the land value towards the remaining property, which was rendered useless due to the drawing of electric lines. Considering the extent of damage sustained and the diminution in land value, the court below ought to have granted compensation as claimed.

6. Learned Counsel for the Corporation contended that, compensation towards diminution in land value granted is exorbitant. The court below also erred in relying on Ext.A13 for fixing the land value of the claimant's property. As the drawing of electric lines does not prohibit the landowner from conducting agricultural activities and putting up small structures, 40% of the land value granted for the central corridor and 20% for the outer corridors are exorbitant. The court below grossly erred in granting 5% of the land value as compensation towards the remaining property, which is in no way affected.

7. A careful scrutiny of the impugned order reveals that the claim for enhancement of compensation towards the value of trees cut was rightly rejected since no supporting material, other than the findings in the Advocate Commissioner's report, was made available. The court below also took note of the fact that even the Commissioner could not see any trees or stump of

the trees at the time of inspection. Therefore, the court below rightly held that the evidence let in by the claimant was not sufficient to discard the contemporaneous valuation statement prepared, by the Corporation.

8. As far as the diminution in land value is concerned, the factors to be taken into consideration, as laid down in **KSEB v. Livisha [(2007) 6 SCC 792]** are as under;

“10. 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 tract 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.” On careful scrutiny of the impugned order, it is seen that the compensation was enhanced after taking all the above factors into consideration. The nature of the land, the cultivation therein, the commercial importance of the area and the manner in which the land was affected by drawing of the lines are all seen considered in fixing the land value as well as the percentage of diminution. The court below has deducted only 10% of the land value shown in Ext.A13, which according to me, is reasonable. For the central corridor, 40% of the land value is granted as compensation and for the outer corridors, 20% is granted, which also I find to be just and proper. The discretion was properly exercised for granting 5% land value as compensation for the remaining property.

9. Having held as above, I find a patent mistake in the order, which is liable to be corrected in exercise of this Court's revisional jurisdiction. It is seen that initially the Corporation had paid Rs.1,80,790/- towards the value of trees cut alone and had refused to pay any amount towards diminution in land value. As per the impugned order, the court below rejected the claim for enhancement of compensation towards value of trees cut and awarded

compensation towards diminution in land value. Even though the court below did not grant compensation for the value of trees cut, the impugned order contains a direction to deduct the compensation already paid from the enhanced compensation awarded. This may be interpreted as a direction to deduct the compensation initially paid towards value of trees from the compensation towards diminution in land value granted by the court below. The impugned order, to that extent, need to be corrected.

For the aforementioned reasons, the civil revision petition filed by the claimant is allowed in part. The direction in the impugned order, to deduct the compensation already paid from the enhanced compensation is deleted. The enhanced compensation awarded by the court below shall be paid within three months, without any deduction. If any amount is deposited pursuant to the order of this Court or otherwise, the same shall forthwith be released to the claimant on his filing appropriate application. The civil revision petition filed by the Corporation is dismissed.

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