

(2000) 02 KAR CK 0077

In the Karnataka High Court

Case No : Civil Revision Petition No. 2149 of 1998

Karnataka Electricity Board, Bangalore and another

APPELLANT

Vs

M.B. Boraiah

RESPONDENT

Date of Decision : 11-02-2000

Acts Referred:

Electricity Act, 1910 — Section 51
Telegraph Act, 1885 — Section 10, 16 (3)

Citation : AIR 2000 Kar 222 : (2000) 3 KarLJ 465

Hon'ble Judges : T.N. Vallinayagam, J

Bench : Single Bench

Advocate : Sri B. Rudregowda, for the Appellant;

Judgement

1. The Karnataka Electricity Board, by its Chairman and Executive Engineer, major works, K.E.B., Mysore have preferred the above C.R.P. against the Miscellaneous No. 17 of 1988, under which an order was passed by the District Judge, Mandya u/s 16(3) and Section 10 of the Indian Telegraph Act read with Section 51 of the Indian Electricity Act granting for award of compensation of Rs. 90,000/- in respect of the claim made by the respondent herein.

2. The admitted facts are that the respondent was the owner in possession of the residential house at Shankarnagar, Mandya City measuring 60" x 40" including the vacant site. He purchased the vacant site under registered sale deed dated 10-12-1975. When he purchased the site, there was 66 KVS electric line passing over the property which was otherwise known as Simsha-Mandya line. At the time of construction, he approached the petitioner-authority and represented that the line was passing on the residential area and it was dangerous to the public health and safety. On such representation they expressed their intention to shift the line from that place and accordingly, no objection is granted in favour of the petitioner to construct the house after getting the approval and constructed the house by spending Rs. 2,45,000/-. The 2nd petitioner herein removed the said line and also the electric iron poles installed on the south-

western corner of the house. Thereafter, the petitioner converted the portion out of the western portion as a kitchen garden and also put up cowshed in the remaining area. But, it appears that the 2nd petitioner herein made an unlawful and illegal attempt to occupy the whole vacant portion of the property including the cowshed. They wanted to occupy the whole area to draw and to put up electric tower and to draw double circuit line. When the objection was raised by the respondent herein and such objection was not heeded to, the respondent filed a suit in O.S. No. 299 of 1987 and obtained an interim order of injunction. Injunction was granted by the Trial Court. Thereafter, the 2nd respondent approached the District Judge in M.A. No. 29 of 1987. Thereafter, the 2nd respondent herein again approached the District Magistrate u/s 16 of the Indian Telegraph Act for removal of construction raised by the petitioner herein. The said appeal came to be allowed on 18-12-1987 and that was even confirmed by this Court in W.P. No. 19139 of 1987 confirming the order of the District Judge. However, while disposing of the writ petition, this Court ordered that the respondent is entitled to get adequate compensation for his house and other properties. On the basis of such direction from this Court, the petitioner claimed total sum of Rs. 3 lakhs as compensation with interest.

3. Petitioner herein contended that they were in occupation of the entire area and consequently they are not liable to pay any compensation.

4. The Trial Court considering the order passed by this Court and holding that the petitioner is entitled to compensation and upholding the petition, granted a sum of Rs. 90,000/- as compensation.

5. The objections now raised in the present C.R.P. by way of grounds is that the Electric Tower in question is only by 6" x 6" and therefore, the question of awarding the compensation for the site measuring 40" x 33" does not arise and the award sanctioned by the Court below is not correct. It is further submitted that the respondent herein has purchased the site knowing fully well that the electricity line was existing when he was purchased the property and therefore, the grant of compensation of Rs. [40,000/-] is not proper.

6. Heard the respective Counsel.

7. The first contention, namely that the electric tower is occupying only the area of 6" x 6" and paying compensation only in respect of that portion cannot be entertained, as the running of electricity line over the entire site measuring 40" x 60" has made the entire site useless or unuseful to the petitioner who had put up a cowshed and a residential house. Once the use of the site for the purpose of construction and the house is lost to the respondent herein, certainly, the respondent herein is entitled to a reasonable compensation.

8. It is seen that earlier, the department itself had given no objection certificate and only on that basis, the construction was made by the respondent by constructing house as well as the other construction over the vacant site. It is certainly not fair for the Electricity Authorities to go back and now claim that the

respondent herein ought not have been made the construction on the site either for the cowshed or otherwise.

9. While considering the maintainability of the application before the District Judge, a reliance was placed upon the decision in *Deva Raj Vs. U.P. State Electricity Board, Lucknow and Others*, , has been considered for the following proposition:--

"Neither Section 51 of the Electricity Act of 1910 nor Section 10 of the Telegraph Act provide any procedure under which compensation shall be determined. It is thus not necessary for the owner of the land to make any formal application for determination of compensation for loss, if any suffered by him on account of the action of the Electricity Board".

It is seen that in the light of the principles of law laid down, no formal application is necessary by the owner of the property to the concerned authorities for payment of compensation.

10. In the dictum of Calcutta High Court in *Binapani Basu Vs. Union of India (UOI) and Others*, , wherein it was held:--

"On the terms of Section 16(3), the dispute must necessarily relate to compensation payable u/s 10(d). It is now well settled that total denial of liability comes within the scope of a dispute as to sufficiency. The point for consideration is whether the compensation contemplated by Section 10(d) is limited only for the acts done in exercise of powers u/s 10 or for damages of any kind suffered in course of execution of such an act. On a careful view of the aforesaid two provisions, we are unable to support the limited interpretation adopted by the learned District Judge. Section 10 no doubt gives legal sanction for committing trespass which the Telegraphic Authority would not have been entitled to commit, but for such sanction. Such trespass again may result in some damages. But, clause (d) of Section 10 does not limit the compensation to such damage only. It speaks of any damage sustained by reason of exercise of such powers. The legislature intentionally rendered the scope wider to include compensation for any damages sustained either by the act authorised or in course of its execution. This clause clearly indicates that in doing any act within the sanction of Section 10, the Telegraph Authorities must take the caution of causing as little damage as possible. The provision goes further on to say that when such an act is done, the authorities shall pay full compensation for any damages sustained by reason of exercise of such powers. Such damages in our view covers, not only the damage for the trespass itself but any damage that may be sustained, due to any tortious action on the part of the Telegraphic Authority while exercising their powers u/s 10. The tortious act is not an independent act; it arises from negligent exercise of powers u/s 10 involving the immovable property in respect of which such power is being exercised .

The above dictum clearly apply to the facts of the case. It is not in dispute that the Electricity Authorities have drawn the double circuit line over the property of

the petitioner and also done installation of tower over the property of the petitioner. Consequently, the landowner is entitled to compensation. There is also no dispute that the petitioner herein while converting the single circuit line into double circuit line, had drawn the double circuit line over the property of the petitioner only after the purchase was made by the respondent herein and not before the said purchase. The big electric tower put up just adjacent to the western wall of the property of the respondent herein has resulted destruction to the kitchen garden and cowshed put up in that vacant site and also made the entire vacant space unusable by the petitioner and so also the building.

11. It is seen that u/s 10(d) of the Indian Telegraph Act, 1885 the authorities can do as little damage as possible while making use of any immovable property for drawing the electric lines and shall have to pay full compensation to all persons interested for any damages sustained by them by reason of exercise of the powers by the authorities for making use of such immovable property of the persons interested. The fact that the house in question was constructed in the year 1984-85 and only after three years, K.E.B. dismantled the lines and wanted to put up double circuit line in place of single circuit line was spoken to by the petitioner in his evidence. In fact, the petitioner has obtained the injunction order from the competent Civil Court against which, the respondent herein went to the District Magistrate, Mandya under the provisions of the Indian Telegraph Act. Therefore, it is not fair on the part of the Electricity Board to deny the payment of compensation to the respondent. While it is admitted by P.W. 1, Executive Engineer, Mysore Division that big tower was installed and double circuit line was drawn on the property of the respondent herein in the year 1987 goes to show that the said tower was installed only after the purchase of the said property by the respondent herein. It is further seen in the evidence of P.W. 1 that he was making use of the 15' x 15' for raising vegetables and the Electricity Board has put up a big tower for drawing the double circuit line abutting the western wall of the residential house of the petitioner. It is also seen in the evidence that the respondent and members of his family cannot make use of the vacant space lying to the west of the western wall of the residential building. A 66 KVS circuit line definitely damages the adjacent property and it is dangerous. Even according to the contention of the K.E.B., that the area and surrounding the said 66 KVS circuit line can be utilised by the respondent for any purpose or domestic purpose, which the respondent can chose.

12. Having considered the submission made by the petitioner and also the finding rendered by the Court below, I am convinced that the respondent is entitled to a reasonable compensation of Rs. 90,000/- as against the claim of Rs. three lakhs. There is absolutely no reason to exercise the revision jurisdiction in the circumstances of the case.

Consequently, the C.R.P. is dismissed. No costs.