

(2014) 08 KAR CK 0108

In the Karnataka High Court

Case No : Writ Petition No. 52781 of 2013 (GM-RES)

Karnataka Power Transmission Corporation Limited

APPELLANT

Vs

A.P. Manoharachar

RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Electricity Act, 2003 — Section 68
Telegraph Act, 1885 — Section 16(3)

Citation : (2015) 2 AKR 594 : (2014) 6 KarLJ 284 : (2015) 1 KCCR 245

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : B. Rudragowda, Advocate for the Appellant; Spoorthy Hegde Nagaraja, Advocate for the Respondent

Judgement

B.S. Patil, J.—Order dated 29-5-2013 passed in Misc. No. 170 of 2011 by the learned Additional District and Sessions Judge, Chitradurga, determining the compensation payable to the landowner-respondent herein for the damage sustained by him to the land and trees on account of 66 K.V. High Tension circuit electricity line drawn by the 1st petitioner-Karnataka Power Transmission Corporation Limited (for short, "the KPTCL") is challenged in this writ petition by the KPTCL and its officials. Facts leading to this case stated in nutshell are that the respondent is the owner of land bearing R.S. No. 61 situated at Yelanadu Village, Hiriyur Taluk, Chitradurga District, measuring 1 acre 12 guntas. The KPTCL has drawn high tension electricity line over the land of the respondent. They have cut 2 coconut trees, 4 Neem trees and 5 Honge trees. They have installed a tower in the land of the petitioner. The KPTCL paid meager amount as compensation for the damage caused due to the cutting of trees and other damages. Being aggrieved by the same, the respondent-landowner has approached the learned District Judge, Chitradurga, by filing a petition under Section 16(3) of the Indian Telegraph Act, 1885 (for short, "the Act") claiming compensation.

2. The learned District Judge has awarded compensation for an extent of 35.57 guntas of land coming within the corridor area. The corridor area has been determined taking into consideration 9 meters on either side of the electrical lines calculating it from the centre of the line. The market value of the land per acre has been taken at Rs. 2,00,000/- based on the certificate issued by the concerned Sub-Registrar. As regards diminution in the value of the land, learned District Judge has taken 50% of the market value and calculated the same as under:

(Rs. 5000/- per gunta X 35.57 guntas X 50/100 = Rs. 88,925/-)

3. So far as the trees that were cut by the KPTCL, for 2 coconut trees, average annual yield has been taken as 80 coconuts per tree. The net income has been taken at Rs. 4/- per coconut. The economic life span of the coconut tree is taken as 35 years for capitalising the income. The said economic life span of 35 years has been used as multiplier. Thus, a sum of Rs. 28,400/- has been awarded for the 2 coconut trees by adopting the following formula:

(2 trees x 80 x 35 years x Rs. 4/- per coconut = Rs. 22,400/-)

4. So far as 5 Honge trees are concerned, each tree has been valued at Rs. 3,000/- and a sum of Rs. 15,000/- has been paid. As regards 4 neem trees, valuing them at Rs. 5,000/- each a sum of Rs. 20,000/- has been paid. As regards installation of tower, the damage caused and the utility of the land lost has been assessed at Rs. 10,000/-. Thus, a total sum of Rs. 1,56,325/- has been awarded, out of which a sum of Rs. 21,128/- has been deducted as the same had already been paid. The landowner was held entitled for compensation in a sum of Rs. 1,35,197/- along with interest at 6% per annum. Aggrieved by the method adopted by the learned District Judge and the compensation awarded, petitioner-KPTCL has filed this writ petition.

5. I have heard the learned Counsel for both parties.

6. By a detailed judgment rendered in W.P. No. 39979 of 2013 (GM-KEB) on 6-8-2014 (The Executive Engineer, Karnataka Power Transmission Corporation Limited, Chitradurga and Another v. Doddakka 2014(6) Kar. L.J. 185), this Court has considered the legal questions that arise for consideration for grant of compensation for the damage sustained by the landowner on account of the high voltage electrical lines drawn across the agricultural lands.

7. In paragraph 24 of the order passed in W.P. No. 39979 of 2013, as regards diminution value, this Court has laid down as under:

"As regards the diminution value of the land falling within the corridor, the learned District Judge having determined the market value of the land has awarded 50% of the same as diminution value. It cannot be disputed that though the farmer is not capable of growing trees underneath the corridor, he is not totally deprived of utilising the land for carrying out other agricultural operations. He is entitled to grow other crops, which may not affect the high voltage

transmission line. Though the farmer is deprived of the opportunity to utilise the land to its full potential and grow horticulture crops, particularly consisting of trees and other luxurious shrubs, he is capable of utilising the land. The title of the land continues to vest in him. It is no doubt true that his access to the land and use of the same by erecting any pole, shed or any other installation will be restricted. In a case like this where high voltage transmission line is drawn across the land, utilisation of the other portion of the land is also affected. Therefore, all these factors have to be taken into consideration before determining the diminution in the land value on account of drawing of high voltage electrical line. If these relevant factors are borne in mind, particularly having regard to the photographs produced and the evidence adduced by the claimant-landowner, I find that 30% of the market value of the area affected shall have to be paid as diminution value of the land to the farmer.

The market value of the land has been determined at Rs. 2,00,000/- per acre based on the evidence on record, particularly the sale certificate issued by the Sub-Registrar. There is no scope to interfere with the valuation of the market value made by the learned District Judge. Therefore, the only modification that can be made in awarding the diminution value is that instead of 50% of the market value awarded by the learned District Judge, it has to be calculated at 30%. If so done, the diminution value of the land comes to Rs. 42,705/- (Rs. 5,000/- per gunta X 28.47 guntas X 30/100 = Rs. 42,705/-)".

8. Thus, the award of compensation towards diminution value of the land on account of the electrical lines drawn across the land towards deprivation of usage and utility of the land has to be calculated at 30% of the market value of the land falling under the corridor area. Therefore, if 30% of the market value is taken, the diminution value of the land works out as under:

(Rs. 5,000/- per gunta x 30/100 x 35.57 guntas = Rs. 53,355/-)

9. In paragraphs 16 to 22 of the said order, this Court with regard to the multiplier to be adopted in respect of fruit bearing trees has laid down as under:

"16. Now coming to the method to be adopted for valuing fruit bearing tree, the learned District Judge has taken the economic life span of the tree as 35 years and has multiplied the net amount derived as income from the tree by capitalising the income using 35 as multiplier. The Apex Court in the case of Kerala State Electricity Board Vs. C.P. Sivasankara Menon, , while referring to the earlier decision in The Kerala State Electricity Board Vs. Livisha etc. etc., has held that compensation payable to the landowners based on the yield from the tree ought to have been worked out by applying appropriate multiplier as was done in the case of State of Haryana Vs. Gurcharan Singh and another etc., and therefore remitted the matter for fresh consideration to the Competent Court in respect of a similar matter arising from the State of Kerala.

17. In Livisha's case, the Apex Court while considering the determination of compensation made based on the judgment of five-Judges Bench of Kerala High

Court in the matter of Komath Kumba Amma and Others Vs. Kerala State Electricity Board, , wherein it was held that the annuity thereof shall be calculated on the basis of 5% return and fixing the rate of diminution in the market value of the land at 50%, after referring to various judgments rendered by the High Court of Kerala at different points of time taking different view in the matter, has observed in paragraph 7 that the amount of compensation payable has to be determined keeping in view the purpose and object of the statute and there cannot be any fixed formula. The Apex Court has pointed out that a fixed formula for determining the amount of compensation although may make the task of the Land Acquisition Officer or the Reference Court easier but each case has to be decided on its own merit keeping in mind the purpose and object of the Act and the methodology laid down as guiding factor. In paragraphs 10 to 12 of the judgment in Livisha's case, the Apex Court has observed 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.

11. 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. We may, incidentally, refer to a recent decision of this Court in Land Acquisition Officer, A.P. Vs. Kamadana Ramakrishna Rao and Another, , wherein claim on yield basis has been held to be relevant for determining the amount of compensation payable under the Land Acquisition Act, 1894; same principle has been reiterated in Kapur Singh Mistri v. Financial Commissioner and Revenue Secretary to Government of Punjab, 1995 Supp. (2) SCC 635 , para 4 and Airports Authority of India Vs. Satyagopal Roy and Others, . In Airports Authority's case, it was held: (SCC p. 533, para 14)".

18. It is thus evident that multiplier to be adopted will have to be same as multiplier adopted under the provisions of the Land Acquisition Act for determining the value of the trees. As regards the nature and quantum of compensation to which the farmer is entitled, measurement of the land, distance between high voltage electrical line laid over the same, extent of the line and also where only a small tract of land is used or the line is drawn right through the middle of the land and such other similar factors would be determinative for deciding the quantum of compensation to be awarded. Yet another important observation made by the Apex Court in paragraph 10 is that, the value of the land would also become relevant factor and in a given case, the owner of land may be deprived of using the land for the purpose for which the same was meant to be used.

19. If the principles laid down in the above judgments are made applicable to the

facts of the present case, it will emerge that the land in question, was used for growing coconut trees and the land is capable of being put to intensive cultivation for growing horticulture crops including for growing toll fruit bearing trees. Thus the best use for which the land can be put to is radically restricted thereby depriving the landowner from utilizing his land to its full potential to realize the maximum income and generate more profit. As is evident from the photographs produced by the respondent-farmer, the high voltage electrical line has been drawn across the land damaging not only the 14 coconut trees grown at the edge of the land, but also the land on either side of the corridor. Therefore, the corridor consisting of totally 18 meters, 9 meters on either side has to be treated as an area severely affected depriving the landowner of his right to grow trees or luxuriant shrubs. In fact, petitioners have treated this area only as affected area for the purpose of determining the compensation and also for assessing the value of the trees cut and removed. Even as per the Electricity Act, 2003, Section 68 provides for removal of shrubs, trees and other such growth if they are likely to affect overhead power lines. Therefore, the landowners are not entitled to grow any trees under the corridor area as the same will affect the transmission lines. Apart from this, having regard to the fact that the electrical transmission line has been drawn across the land, it will cause damage depriving the farmer of his efficient use of the other portion of the land. Therefore the said factor also cannot be lost sight of. In the instant case, the learned District Judge has confined the amount of compensation to be awarded to the actual corridor area. Therefore, even proceeding on the said premise if the compensation were to be calculated, as rightly submitted by the Counsel for the respondent, the best price payable for the coconut grown and the best yield which can be derived and the resultant income generated from the land ought to be taken for the purpose of determining the compensation.

20. The learned Counsel for the petitioners have relied on two judgments of the Apex Court, wherein it has been observed that multiplier of 8 has to be used while capitalizing the income to arrive at the capital value. But, the learned Counsel for the respondent has placed reliance on the judgment of the Apex Court in the case of Shaik Imambi Vs. Special Deputy Collector (Land Acquisition), Telegu Ganga Project, , disposed of on 2-2-2011 to contend that multiplier of 10 has been used for the purpose of capitalising the net income to arrive at the market value. It is further pointed out by the learned Counsel for the respondent that in the two judgments relied upon by the learned Counsel for the petitioners, the Apex Court has remitted the matter leaving open the question for determination by the Court below and has not expressed any final opinion with regard to the multiplier to be adopted.

21. One thing is certain that the multiplier to be adopted cannot be commensurate with the economic life span of the tree as has been done by the learned District Judge. He has used multiplier of 35 and has capitalized the net income to arrive at the amount of compensation payable. This approach is impermissible. In land acquisition cases, the value of the acquired land wherein

fruit bearing trees are grown has been determined normally by applying 10 multiplier. The Apex Court in the matter of Gurcharan Singh, has held that when the market value of agricultural land is determined on the basis of the yield, then necessarily suitable multiplier deserved to be applied to award reasonable compensation. But under no circumstances, the Court should allow the compensation on the basis of the nature of land and as well as fruit bearing tree. In other words, the market value of the land cannot be determined twice over, once on the basis of the value of the land and again on the basis of the yield secured from the fruit bearing tree, which is impermissible. It is further laid down that once the compensation is determined on the basis of the value of the land, as distinct from the income, applying suitable multiplier, then the trees would be valued and necessary compensation should be given. In the said case, the Apex Court has ruled that when the market value is determined on the basis of the yield from the tree or a plantation, 8 years multiplier shall be appropriate multiplier. For agricultural land, 12 years multiplier has been held to be suitable multiplier.

22. From a recent decision of the Apex Court in the case of Shaik Imambi, it is clear that the multiplier of 10 has been applied for determining the market value of the agricultural land including fruit bearing tree. Therefore, the multiplier to be adopted in a case like this cannot be more than 10. The learned District Judge has made a mistake in applying multiplier of 35 in arriving at the value of the fruit bearing tree for the purpose of awarding compensation".

10. This Court has further ruled in W.P. No. 39979 of 2013 that in case of fruit bearing coconut trees, multiplier 10 has to be adopted. Annual yield per coconut tree has been taken at 103 coconuts for the lands coming within Hiriyur Taluk of Chitradurga District and the price of each coconut tree has been taken at Rs. 5/-.

11. Thus, following the said principles laid down in W.P. No. 39979 of 2013, if the compensation is worked out for 2 coconut trees, it will come Rs. 10,300/- (2 coconuts X 103 coconuts per year X 10 years X Rs. 5/- = Rs. 10,300).

12. As regards Honge and Neem trees, they do not call for any interference because they are not fruit bearing trees and only the timber value has to be assessed. The learned District Judge has undertaken that exercise. Therefore, the amount of Rs. 15,000/- for 5 Honge trees and Rs. 20,000/- for 4 Neem trees deserves to be retained as awarded by the learned District Judge. In addition, a sum of Rs. 10,000/- has been awarded towards the area utilised for installation of the tower. The same is also just and legal.

13. In the result, the respondent-landowner will be entitled for total compensation as under:

14. Accordingly, Rs. 1,08,655/- is awarded as compensation instead of Rs. 1,56,325/- awarded by the learned District Judge. It is made clear that the respondent will be entitled for payment of the said compensation amount after deducting the amount that has been already paid. The respondent will also be

entitled for interest on the said amount at the rate of 8% per annum instead of 6% per annum from the date of drawing of the line till the date of payment having regard to the commercial nature of the venture and the nature of loss that the farmer has been put to snatching away the income from the fruit bearing trees. Writ petition is accordingly disposed of. The amount in deposit before this Court shall be permitted to be withdrawn by the landowner to the extent of his entitlement. If the amount deposited is less than the entitlement of the landowner, the balance shall be deposited by the KPTCL. If the amount deposited is more than the entitlement of the landowner, the balance shall be refunded to the KPTCL.