
(2012) 11 KL CK 0193

In the High Court Of Kerala

Case No : C.R.P. No. 417 of 2006 and C.M. Appn. No. 27 of 2006

Kerala State Electricity Board

APPELLANT

Vs

Chandramathy

RESPONDENT

Date of Decision : 06-11-2012

Acts Referred:

Citation : (2012) 11 KL CK 0193

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : K.R. Sadasivan Nair, Sri. P. Santhalingam and Sri. S. Sharan, SC, K.S.E. Board, for the Appellant;

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—The above case came up in the defect list. However, I directed the counsel for the Electricity Board to submit on

merits. I have also perused the delay condonation application and the affidavit filed therein to condone the delay of 552 days. The Board is in

revision before this Court, against the enhanced compensation granted in O.P. (Ele) No. 486 of 1997, which was decided along with certain other

Original petitions claiming enhanced compensation with respect to the injurious effect and the value of the trees felled in the property of various

petitioners for the purpose of laying Aroor-Kalamassery 110 K.V. D.C. line. When ordering joint trial, it was also specified that evidence would

be recorded in O.P.(Ele) No. 355/1997. The evidence consisted of the testimony of PW1 and PW2 and Ext. A1, Commissioner's report and

sketch, Exts. C1 and C1A were marked on behalf of the petitioners. The respondent Board produced the file relating to the case as Exts. R1 to

R7 along with detailed valuation statement.

2. PW1, highlighted the importance of the locality, by pointing out that the properties were located > km from the Ernakula-Madura National High

way as also the Tripunithura -Ernakulam road. The hotels, Hospitals and the various showrooms of motor vehicles have been specifically deposed

to; to accentuate the importance of the locality. The market value of the land in the area according to PW1 was Rs. 30,000/-/- per cent. All the

properties were said to have road frontage also. Ext. A1, sale deed was produced to prove the value claimed at Rs. 50,000/- per cent. The

commission report showed that all the properties are lying adjacent to each other and the value of the land claimed by the petitioner has also been

affirmed by the Commissioner. With respect to the instant case, it was also noticed by the commissioner that the tower erected in the property

resulted in blockage of ingress and egress into the property of the petitioner herein. This was the only access that revision petitioner had to his

property. The commissioner hence estimated diminution of land value of the entire property to the extent of Rs. 70,000/-per cent.

3. The court below accepted the version of the petitioners/claimants that the properties are situated in a very important locality. With respect to the

value of the trees felled, the court below found that the adoption of 10% annuity is improper especially in the light of a Full Bench decision of this

Court in Kumba Amma v. Kerala State Electricity Board (2000(1) KLT 542). The decision in Kumba Amma has been over ruled by the Supreme

Court in The Kerala State Electricity Board Vs. Livisha etc. etc., . However, the Supreme Court has laid down that though the fixed percentage as

laid down by Kumba Amma is not to be taken, the facts and circumstances of each case has to be looked into while giving enhanced

compensation. Even considering the dictum laid down by the Supreme Court in Livisha, the issue of compensation has to be considered with

reference to the facts and circumstances of each case.

4. Even looking at the facts and circumstances of the case, it cannot be said that adoption of 5% annuity was not proper. It is also pertinent that

even the Manual of instructions issued by the Board adopts 5% annuity rates. The court below then proceeded to consider the petitions

independently. In the instant case, the Board had granted Rs. 7,140/- as

compensation for the value of trees felled. The enhanced compensation with respect to the value of trees felled was computed at Rs. 7,299/-. The computation so arrived at cannot be faulted with and cannot be said to be unreasonably high or excessive. With respect to the diminution of land value and compensation for injurious effect, 30% was determined as the rate and 15 cents was asserted to be the extent injuriously affected. The revision petitioner was granted an enhanced compensation of Rs. 1,80,000/-. Considering the fact that the revision petitioner's access to the property itself had been blocked and also considering the small area held by the revision petitioner, this Court is of the opinion that the enhanced compensation granted with respect to the diminution in land value, the rate of injurious effect fixed and the extent determined is not liable to be interfered with.

In the said circumstances, this Court is of the opinion that the Civil Revision Petition is without merit. There is also no satisfactory explanation for the delay. The delay petition as also the Civil Revision Petition are hence rejected.