

(2010) 03 KL CK 0099
In the High Court Of Kerala
Case No : CRP. No. 1153 of 2005

K.P. Kuriakose and Others

APPELLANT

Vs

The Kerala State Electricity Board

RESPONDENT

Date of Decision : 01-03-2010

Acts Referred:

Electricity Act, 1910 — Section 51

Telegraph Act, 1885 — Section 10, 16

Citation : (2010) 03 KL CK 0099

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : Abraham Vakkanal, for the Appellant; K.S. Anil, SC, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Satheesachandran, J.—Revision is directed against the order dated 15/03/2005 in O.P(Ele.) No. 61 of 2001 on the file of Additional District Judge, Ernakulam. Revision petitioner is the claimant in the above petition which has been filed seeking enhanced compensation for the trees cut and removed and towards diminution of land value suffered on account of the drawing of overhead lines through his property by the respondent Kerala State Electricity Board hereinafter referred to as the Board. The Board, for the purpose of drawing 11KV feeder line to Edakkattuvayal from Kakkadu Substation, cut and removed some trees from the property of the petitioner. Towards the damages sustained to the petitioner, claimant, the Board assessed and paid a sum of Rs. 6,988/-. Not being satisfied with the compensation adjudged and paid by the Board, the above petition was filed by the claimant u/s 10 and 16 of the Indian Telegraph Act and Section 51 of the Indian Electricity Act claiming enhanced compensation. The Board resisted the claim contending that just and reasonable compensation had been paid.

2. In the enquiry on the claim petition, claimant examined himself as PW1 and

got marked Exts.A1 to A10. On the side of the Board, the file relating to the case involved was produced and exhibited as Ext.R1. An advocate commissioner deputed by the court after conducting a local inspection filed a report and plan which is marked as Ext.C1. The Additional District Judge after hearing the counsel on both sides and examining the materials produced passed the impugned order awarding enhanced compensation of Rs. 36,838/- to the claimant allowing its recovery with 6% interest from the date of cutting of trees till realisation and also the cost of the proceedings. Challenging the enhanced compensation assessed by the court as inadequate the claimant has filed this revision.

3. I heard the counsel on both sides. The grievance espoused by the claimant was that in addition to the trees cut and removed branches of some more trees, which are made mentioned in Ext.A2 Mahazar, had also been cut and thereby he had suffered damages. Such damages were not taken into account by the Board in adjudging the compensation was pressed before me by the learned Counsel contending that the revised statement filed by the claimant before the court below deserved implicit acceptance. The claimant in his revised statement had shown three tables, the first one with reference to the trees cut and removed as claimed by the Board, the second table with reference to Ext.A2 Mahazar prepared and the third one on the basis of the complaint purported to have been made by the claimant to the Board. Perusing the impugned order, it is seen, the learned Additional District Judge found that the revised calculation with respect to Ext.R1(a) alone that is first table, is acceptable as there was dearth of material to substantiate the case of the claimant to show that branches of some more trees mentioned in Ext.A2 Mahazar too had been cut and removed. However, taking note that the Board had assessed annuity return at 10% only, following the guidelines given in "Kumba Amma v. Kerala State Electricity Board" 2000(1) KLT 542, the learned Additional District Judge redetermined the compensation with reference to annuity return at 5% and accordingly an enhanced compensation of Rs. 14,488/- was awarded. The only challenge canvassed in the revision with respect to the tree cutting awarded compensation relate to the nonacceptance of the claim made by the claimant that he was entitled to get compensation for the trees from which branches are alleged to have been cut and removed. Other than the self serving evidence of the claimant, there was nothing more before the court to accept his case that branches of the trees made mentioned in Ext.A2 Mahazar had been cut by the Board to facilitate the drawing of line. In exercise of the revisional jurisdiction, I find it is not proper and appropriate for this Court to reappraise the materials when there is apparently no reason to hold that the view formed by the District Judge on the materials placed that the Board had cut and removed only the trees as covered by Ext.R1 (a) is incorrect. The learned Counsel for the claimant had raised a grievance against the area of land determined as injuriously affected by the drawing of line and also the value fixed over that land by the court below. It is submitted by the counsel that copies of registered sale deeds have been

produced to substantiate his claim that property in that locality is worth more than Rs. 15,000/- per cent. The advocate commissioner has also reported that the centage value of the property varied from Rs. 10,000/- to Rs. 15,000/-. But the district Judge fixed the centage value at Rs. 7,500/- per cent is the grievance espoused to challenge the compensation awarded towards diminution of land value as inadequate. The District Judge on the materials placed has fixed the value of the land at Rs. 7,500/- taking note of the materials produced in the case. Production and marking of certified copies of sale deeds, without anything more, is not sufficient for acceptance of the land value shown in such deeds. Advocate commissioner in opining the land value has not furnished any data to support it, nor the nature of enquiry conducted to give such opinion. In such circumstances I do not find any impropriety or illegality in the order of the court below in fixing the centage value at Rs. 7,500/-. The claimant had a grievance a mistake was committed by the advocate commissioner in assessing the area over which the line passed through his property. Other than filing objections to the commission report, neither the commissioner was examined nor the objection so canvassed was substantiated before the court. The court below has accepted the injuriously affected area as determined by the commissioner to fix the compensation payable towards diminution of land value. It is also noticed, a higher percentage, 40% was taken by the court though the line drawn was only 11KV line. The higher percentage fixed to determine the injurious affection of the land in fact has benefited the claimant when compensation was adjudged on that ground. On consideration of the entire facts and circumstances presented with reference to the impugned order passed by the court below, I find no interference with the order is called for in exercise of the revisional jurisdiction. Revision is dismissed.