

(2002) 06 KAR CK 0077

In the Karnataka High Court

Case No : Civil Revision Petition No's. 1942-44 of 2000

Pejavar Chitananda Rao and Others

APPELLANT

Vs

Karnataka Electricity Board and Another

RESPONDENT

Date of Decision : 28-06-2002

Acts Referred:

Telegraph Act, 1885 — Section 10, 16 (3)

Citation : (2004) ILR (Kar) 627 : (2002) 3 KCCR 1926 : (2003) 2 RCR(Civil) 135

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : G. Balakrishna Shastry, for the Appellant; B. Rudragowda, Stg. Counsel for R1, A.G. Holla, for P.D. Vishwanath, for R2, for the Respondent

Final Decision : Allowed

Judgement

Gopala Gowda, J.—Petitioners who are land-holders have filed these Revision Petitions questioning the correctness of the orders passed in Misc. Case Nos. 8,9 and 10/96 dated 10.3.2000 passed by the District Judge, Mangalore, in dismissing the petitioners. The petitioners have further prayed for setting aside the impugned orders and prayed to allow their claim by enhancing the compensation amount u/s 16(3) of the Indian Telegraph Act, 1885 (in short "the Act of 1885), urging various legal contentions.

3. Aggrieved of the award of compensation awarded by the erstwhile Karnataka Electricity Board now replaced by the Karnataka Power Transmission Corporation Ltd., (herein after in short called as "Corporation"), petitioners land-holders filed petitions before the District Judge, Mangalore claiming enhanced compensation amount by way of damages under the provision of Section 10 of the Act against the respondents for having sustained diminution of the land value on account of drawing HT power lines upon their lands by the first respondent for the benefit of second respondent. They contended that the value of their lands has been diminished on account of drawing of HT lines and therefore they are entitled for the damages and the first respondent has not exercised its power u/s 10 of the

Act properly keeping in view the relevant aspects namely the diminution the value of the land and other related factors and therefore they claimed enhanced compensation in respect of the lands in question. In support of their claim, one witness PW1 was examined and on behalf of respondents RW. 1 was examined, produced and marked documents Ex.P1 to P5 and D1 to D7 respectively.

4. The learned Counsel for petitioners-land holders produced the deposition of RW.1 and report of the Commissioner who had executed the commission warrant and submitted a report on 25.9.1999 along with sketch of the lands in question upon which the HT lines have been drawn by the first respondent for supply of power to the second respondent who is the beneficiary drawing HT Lines by Corporation upon the lands of the petitioners. On the basis of pleadings of the parties, three points were formulated by the District Judge for his consideration and answered the same in the Award which read thus:

"1. Have the petitioners proved that there has been diminution in the value of their land on account of the drawing of power transmission lines by the respondents.

2. Are the present petitions maintainable?

3. Are the petitioners entitled for compensation in excess of Amount already determined by the first respondent?"

5. All the said three points were answered in the negative against the petitioners by the learned Judge after referring to the facts and evidence on record and also considered the Judgment of the Allahabad High Court and other High Courts. The point No. 2 regarding maintainability of the petitions is considered and negated the same holding that the petitions filed by petitioners for enhancement of compensation by way of damages are not maintainable by recording its reasons at paragraph-12. Further at paragraph-13 of the impugned Award, the District Judge after referring to Section 51 of the Indian Electricity Act has recorded his findings holding that merely because the power transmission lines pass over the lands of the petitioners, they are not prevented from utilizing the lands for their agriculture use. Further it is stated that no material is produced by the petitioners to show that there has been diminution of their land value on account of passing of power lines upon the lands in question. RW. 1 has given evidence stating that KEB has fixed 200 meter length of Corridor and that in respect of land acquired for the MRPL Authority, compensation was granted at the rate of Rs. 85,000/- per acre and that compensation at the rate of 10% at the value of those lands will be reasonable for the aerial encroachment upon the lands of the petitioners. He has further stated with reference to determination of compensation by referring to Ex.D6 and D7 acknowledgments and held that the compensation awarded in favour of petitioners is adequate, fair and reasonable and consequently dismissed the petitions.

6. The correctness of the said findings are questioned in these petitions by the petitioners contending that the findings recorded on the contentious points in the

impugned Award are contrary to the material evidence on record. The learned Counsel appearing for the petitioners Mr. G. Balakrishna Shastry has relied on Full Bench Judgment of Kerala High Court reported in Arya Antherjanam Vs. Kerala State Electricity Board, Trivandrum, in support of his submission, wherein the Kerala High Court, after referring to the Judgment of the Supreme Court, House of Lords and the Judgments of various High Courts has interpreted the provision Section 79A of the Electricity Supply Act, 1948, and the provisions Sections 42 and 51 of the State Act and also Section 114 of the Evidence Act has extensively considered and the law is laid down at paragraphs 11,20,22 and 23 of the above referred judgment.

7. Sri A.G. Holla, Sr. Advocate appearing for second respondent has sought to justify the findings recorded by the learned District Judge of the points formulated by him in the impugned Award placing reliance upon paragraph-7 of the Judgment referred to supra. He further contended that, the learned District Judge has passed the impugned order after proper appreciation of evidence on record and this Court need not interfere with the said findings as the petitioners have not chosen to produce evidence in support of their claim to show that by drawing HT lines on their lands, the value of their lands has been diminished and therefore they are entitled for enhanced compensation as claimed in their claim petitions before the District Judge.

8. Sri B. Rudragowda, learned Stg. Counsel appearing for respondent-corporation has also placed reliance on paragraph-7 of the Judgment rendered by Kerala High Court referred to supra contending that Kerala High Court has laid down the law interpreting mandatory requirements to be followed by the Corporation for awarding compensation by way of damages u/s 10 read with Section 16(3) of the Act of 1885. Therefore, he submits that this is not a fit case for interference with the impugned Award by this Court.

9. After hearing the learned Counsel for the parties, I have proceeded to examine the matter keeping in view the provisions of Section 10 and 16 of the Act and the law laid down by the Full Bench of Kerala High Court on which much reliance is placed by the parties to find out whether the impugned common Award is required to be interfered with by this Court in exercise of its Revisional jurisdiction.

10. To answer the said question, I have carefully gone through the provisions of the Act of 1885 and also the evidence of PW1 and RW1 and also the law laid down by the Full Bench of Kerala High Court. The learned District Judge except recording the finding that the petitioners have not shown that they were prevented from utilising their lands for agriculture use he has not referred to the evidence elicited in the cross-examination of RW.1 at paragraph-13 wherein he has stated that "the KEB has fixed 200 meter length of Corridor and that in respect of land acquired by the MRPL Authority to that extent of land no agricultural crops can be grown. Further, compensation amount was awarded at the rate of Rs. 85,000/- per acre and that the compensation at the rate of 10%

of the compensation awarded to those land at the value will be reasonable for the aerial encroachment" of the lands of the petitioners.

11. The above said material evidence elicited in the case is very germane for the District Judge to determine the diminution of land value of the petitioners. As could be seen from the impugned Award the learned District Judge has not considered the evidence elicited in the cross-examination of RW.1. This itself is sufficient for this Court to consider the claim and award enhanced compensation in respect of the lands in question. Non-consideration of the material evidence on record in favour of the petitioners by recording a finding in answer to Point No. 3 against the petitioners has rendered the findings of the learned District Judge erroneous in law. He has neither chosen to refer to the material evidence on record nor assigned reasons as to why the said positive and legal evidence elicited in the cross-examination of RW1 has not been considered in justification of claim of petitioners. May be the Full Bench Judgment of the Kerala High Court referred to supra was not brought to the learned District Judge's notice, the reliance placed on the Full Bench Kerala High Court upon which the learned Counsel for the petitioners has rightly placed reliance is applicable to the petitioner's case. Therefore, this Court records a finding that the findings and reasons assigned by the learned District Judge in answer to the contentious points while rejecting the claim petitions of the petitioner are erroneous in law. In my considered view, the findings recorded by the learned District Judge suffer from error in law. On this ground also, the impugned order is liable to be set aside.

12. Apart from the said fact, the learned District Judge is required to examine the relevant facts by summoning the record pertaining to HT Lines as to whether it has worked out to find out the alternative method of drawing the lines in the underground by laying the cable lines instead of laying HT lines upon the lands to mitigate hardship of small land holders who are completely depending upon the lands for agriculture use for their livelihood as they will be in a position to cultivate their lands without much diminution of their lands. This relevant important aspect of the matter is required to be gone into by the District Judge as whether the first respondent-corporation being the statutory corporation under Article 12 of the Constitution of India and therefore it has to discharge its statutory functions keeping in view the welfare and interest of small land holders who are completely depending upon the agriculture land for their livelihood. Here the beneficiary is the second respondent, who is the registered Company registered under the provisions of Companies Act. The erstwhile Board was required to examine drawing of HT lines by putting underground cables would be feasible or not to mitigate the hardship of land holders. This aspect of the matter could have been borne in mind by the Corporation at the time of assessing damages and awarding compensation amount. If the expenditure for laying underground HT Lines could have been borne by the second respondent, then the question of awarding enhanced compensation would not have arisen since that alternative method of laying HT lines in the underground procedure would

not have affected any one of the parties, except it would cost more to the beneficiary company of which it is capable to bear such costs. Admittedly, as per the evidence of RW.1, it is noticed that there is restriction imposed upon the petitioner-land holders using their for either carrying on with their regular agricultural occupation, putting up construction or growing any trees or plants beyond twenty meters from the HT lines were asked to be left. This important aspect of the matter has not been taken into consideration by the corporation and learned District Judge. Therefore, in my considered view, the petitioners must succeed and the petitions are required to be allowed. Hence, I pass the following order:

The CRPs are allowed. Impugned orders are hereby set aside. The case are remitted back to the District Judge, Mangalore with a direction to re-examine the matter in the light of the observations made in this order and also keeping in view the provisions of the Act and the law laid down by the Full Bench of Kerala High Court.

Further, the learned Counsel for the petitioners submitted that, the compensation awarded by the first respondent has not been received by the petitioners and therefore he has prayed for suitable direction in the matter. Mr. P.D. Vishwanath, learned Counsel appearing on behalf of second respondent assured that he would collect the cheques from the second respondent and the same shall be handed over to the petitioner's Counsel within two weeks from today.