
(2014) 09 KL CK 0037
In the High Court Of Kerala
Case No : CRP. No. 83 of 2009

Petronet CCK Ltd.

APPELLANT

Vs

K.V. Varghese

RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Petroleum and Minerals Pipelines (Acquisition of Right of User in land) Act, 1962 —
Section 10, 10(1), 10(2), 10(3), 10(4)

Citation : (2014) 4 KHC 236 : (2014) 4 KLJ 273 : (2014) 4 KLT 344

Hon'ble Judges : B. Kemal Pasha, J

Bench : Single Bench

Advocate : M. Pathrose Matthai, Sr. Adv., Saji Varghese and Mariam Mathai,
Advocate for the Appellant

Judgement

B. Kemal Pasha, J.—The 1st respondent in O.P. 13/2001 on the file of the District Court, Palakkad has come up in revision challenging order dated 30.09.2008 passed by the learned District Judge in the said O.P. awarding an enhanced compensation of 75,598/- with interest at 6% per annum from the date of petition till the date of payment to the petitioner in the O.P. under Petroleum and Minerals Pipe Lines (Acquisition of right of user in land) Act, 1962 (hereinafter referred to as "Act 52 of 1962).

2. The petitioner before the court below is the owner in possession of 2 acres of dry land in Sy. Nos. 317/2 and 317/6. It has been averred that the property was planted with high yielding variety of rubber and other valuable trees. Out of the said property, the petitioner herein had acquired 0.1195 hectares of land which is scheduled as "B" in the O.P., for the purpose of laying pipe lines and for other connected activities. 65 yielding rubber trees, one teak tree, three cashew trees and other valuable trees of different varieties were cut and removed from the "B" schedule property. Though the petitioner in the O.P. had submitted a claim form for compensation, the competent authority, who is the 2nd respondent, had awarded an amount of 83,211/- only as compensation, which according to the

petitioner in the O.P. is too low. According to the petitioner in the O.P., an amount of 50,000/- ought to have been granted towards diminution in land value and further a higher amount ought to have been awarded towards the loss sustained on account of cutting and removing of the valuable trees. As the petitioner in the O.P. was dissatisfied with the compensation awarded by the competent authority under Section 10(1) of Act 52 of 1962, he approached the learned District Judge through the O.P. under Section 10(2) of Act 52 of 1962. The learned District Judge through the impugned order awarded enhanced compensation of 49,023/- payable in respect of yielding rubber trees cut and removed. Over and above it, the learned District Judge has granted an amount of 26,575/- being diminution in land value.

3. Heard the learned counsel for the petitioner. There is no representation for the respondents. According to the learned counsel for the petitioner, the learned District Judge was erred in awarding diminution in land value in this case as such an item of compensation does not find a place in Section 10 of Act 52 of 1962. Any such award of compensation under the head of diminution in land value is not called for as per any of the provisions of the said Act, it is argued. Over and above it, it has been pointed out that the learned District Judge has considered the net yield of the rubber trees cut and removed from the property as 2/3rd of the gross yield. According to the learned counsel for the petitioner, only 40% of the gross yield could have been considered as net yield by the learned District Judge.

4. Section 10 of Act 52 of 1962 says:

"Compensation-(1) Where in the exercise of the powers conferred by Sec. 4, Sec. 7, or Sec. 8 by any person, any damage, loss or injury is sustained by any person interested in the land under which the pipeline is proposed to be, or is being, or has been laid, the Central Government, the State Government or the Corporation, as the case may be, shall be liable to pay compensation to such person for such damage, loss or injury, the amount of which shall be determined by the competent authority in the first instance."

5. It seems that compensation is payable as per Section 10(1) for such "damage, loss or injury" to the person interested in the land. The said compensation has to be arrived at by the competent authority. If there is any dispute with regard to the said compensation arrived at by the competent authority, the aggrieved party can have recourse to the provisions of Section 10(2) of the Act, by applying before the District Judge within the limits of whose jurisdiction the land or any part thereof, is situated, and in such case, the compensation has to be determined by the District Judge.

6. As per Section 10(3), it seems that the competent authority or the District Judge shall give due regard in fixing the compensation on account of damage or loss, by taking into consideration:-

"(i) the removal of trees or standing crops, if any,

(ii) the temporary severance of the land and

(iii) any injury to any other property, whether movable or immovable or the earnings of such persons caused in any other manner".

As per the scheme of Section 10, it seems that guidelines for fixing the compensation on account of damage or loss sustained to any person interested in the land are noted in sub-section (3) to Section 10. At the same time, Section 10(3) does not show the manner in which the compensation on account of "injury" as mentioned in Section 10(1) has to be determined. It does not give any guidelines for fixing the compensation with regard to the "injury" part contained in Section 10(1) of the Act. As far as compensation on account of damage or loss is concerned, specific guidelines are given in Section 10(3).

7. Over and above the compensation payable under Section 10(1) read with sub-section (3), as per Section 10(4) an amount equal to 10% of the market value of the land acquired has also to be paid to the person interested in the land. The said payment as contemplated under Section 10(4) of the Act is in addition to the compensation payable under Section 10(1) read with sub-Section 10(3). On going through the scheme of Section 10 of the Act, it is evident that the said payment as contemplated under Section 10(4) is towards the compensation payable on account of the limited user of the land.

8. It has to be noted that any building or other structures cannot be constructed at the acquired portion of the land. Further, any trees also cannot be planted there. Of course, the person interested in the land may carry out cultivation of small crops or seasonal crops at that portion of the land. It is true that the user of that land will be limited to a great extent. At any rate, it can be said that it is inequitable to limit the compensation on account of the said limited use to a mere 10% of the land value of the affected land.

9. The learned counsel for the petitioner has invited the attention of this Court to the decision of the Division Bench of this Court in an identical matter through W.A. No. 2038/05 wherein it was held in paragraph 10 as follows:

"In our view, the compensation payable under Section 10(4) is for the diminution in value of the land on account of disabilities attached to it under Section 9(1) and (2) of the Act. The compensation provided under this provision is 10% of the market value. In our view, styling of the compensation as equivalent to solatium payable under the Land Acquisition Act by the learned single Judge does not give any new dimension to the compensation payable under Section 10(4). In this view of the matter, clause (3) of paragraph 42 of the judgment above extracted can only mean that the compensation payable under Section 10(4) is over and above the compensation payable under Section 10(1) read with sub-section (3). We therefore hold that besides the compensation provided for actual damage and injuries sustained by the land owners or the person interested in the land under Section 10(1) read with sub-section (3) thereof, the only compensation payable is 10% of the market value payable under Section 10(4) of the Act to the land

owners which is compensation payable for the restrictions in regard to use and enjoyment of land under Section 9(1) and (2) of the Act."

10. It seems that the Division Bench has taken a view that the compensation payable under Section 10(4) of the Act is nothing but the compensation aimed at diminution in land value for the acquired land. I am of the view that it will be a serious heart-burn on the part of the person interested in the land to continue with the property in his possession without any practical use of it by accepting a meagre amount equal to 10% of the land value. Of course, the owner of the property can show the property to others by saying that, "this is my property, but the concerned company will decide as to how I should use this property". This Court is of the view that there is severe injury on account of the acquisition of such portions of property from the persons interested. Such injury seems to be independent of the damage or loss as contained in Section 10(1) of the Act. In a case wherein the acquired property can be made use of for 90% of its use, it can be said that the person can be compensated by paying 10% towards that injury or diminution in land value. But acquisition of this kind does not take away mere 10% of the user, whereas it takes away more than half of its user from the person interested. This Court is of the view that the question requires reconsideration.

11. In all cases there need not be an "injury" within the meaning of Section 10(1). In some cases, like barren land not suitable for any cultivation of trees or for putting up of buildings, the additional payment being made under Section 10(4) may be just compensation for diminution of land value. In such cases, any compensation on account of injury in respect of the acquired land need not be made. In all other cases, such injury will be there, and the same has also to be quantified. In this case, no evidence has been adduced to prove such injury.

12. As this Court is bound by the decision taken by the Division Bench (supra), this Court is constrained to take the view that what is contemplated under Section 10(4) of the Act is towards diminution in land value. But, for the decision, I would not have taken such a decision. Whatever it is, when there is a binding precedent in the matter, this Court is constrained to take the view that any diminution in land value other than Section 10(4) is not possible in the matter and therefore, that part of the impugned order whereby the learned District Judge has granted an amount of 26,575/- towards diminution of land value has to be set aside.

13. Regarding the second point, it is trite law through precedents that in the case of rubber trees the net yield can be considered as 60% after deducting 40% of the gross yield towards agricultural expenses and other expenses. The learned District Judge has considered the net yield as 2/3rd instead of 60%. Therefore, the calculations made by the District Judge have to be modified by adopting 60% of the gross yield as the net yield. In the case of 55 yielding rubber trees, the learned District Judge has taken the gross yield as 7.5 kg per year and the net yield as 5 kgs. On a calculation the net yield comes to 4.5 kgs only. Therefore, in

the case of 55 rubber trees, the calculation should be $4.5 \times 32 \times 12.085 \times 55 = 95,713$. The learned District Judge has calculated the amount as 1,06,370/-.

14. Similarly, in the case of remaining 10 rubber trees on which the gross yield is 6.25 kgs. the learned District Judge has considered the net yield as 4.17 kgs. The same should have been 3.9 kgs. The calculation should be $3.9 \times 32 \times 12.085 \times 10 = 15,082$. The total amount payable is $95,713 + 15,082 = 1,10,795$. The compensation already awarded by the competent authority in the case of rubber trees is 73,477/-. The balance amount payable is $1,10,795 - 73,477 = 37,318$. Matters being so, the impugned order is liable to be modified accordingly.

In the result, this CRP is allowed in part by modifying the impugned award as follows:

The petitioner in the O.P., who is the first respondent herein, is entitled to an amount of 37,318/- with interest at the rate of 6% from the date of petition from the first respondent. The petitioner herein shall make the payment. There is no order as to costs.