(2012) 01 KL CK 0011

In the High Court Of Kerala

Case No : C.R.P. No. 82 of 2009

Petronet CCK Ltd. APPELLANT

Vs

Thresiamma and Another RESPONDENT

Date of Decision : 11-01-2012

Acts Referred:

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

Citation : (2012) 2 KarLJ 5 : (2012) 2 KLJ 5

Hon'ble Judges : K. T. Sankaran, J

Bench : Single Bench

Advocate : Pathrose Mathai Sr, Saji Varghese and Mariam Mathai, for the Appellant;

Final Decision : Allowed

Judgement

K. T. Sankaran, J.—Petroleum pipeline was drawn through the land belonging to the first respondent, which has an extent of 2.46 Acres. An extent of 10.82 Ares of land was actually used for laying pipeline underneath the soil. Compensation was awarded by the competent authority under The Petroleum and Minerals, Pipelines (Acquisition of Right of User in Land) Act, 1962 (Act No. 50 of 1962) (hereinafter referred to as ''the Act''). Dissatisfied with the award, the first respondent filed O.P.No. 152 of 2000 before the Court of the District Judge, Palakkad. The court below enhanced the compensation. Petronet C.C.K. Co. Ltd., the requisitioning authority, is aggrieved by the order passed by the learned District Judge. Out of the total extent of 10.82 Ares used for laying pipeline, an extent of 6.16 Ares is a dry land and an extent of 4.66 Ares is part of a rubber plantation. For laying pipeline, 54 rubber trees and three teak trees were cut and removed. The competent authority held that the first respondent was entitled to land value taking into account the value at.27,272/- per Are for dry land and.12,360/- per Are for the rubber plantation. The competent authority arrived at the total value of 10.82 Ares at.2,25,600/- and a sum of.22,560/- was awarded, the amount being 10% of the market value, as provided under sub-section (4) of Section 10 of the Act. The court below did not interfere with the total value of the land as fixed by the competent authority. However, the court below held that apart from the land value payable u/s 10(4) of the Act, the first respondent was entitled to 30% of the total value of the land as compensation for diminution of land value. A sum of.67,680/- was awarded by the court below on this count. As regards the value of trees cut, the competent authority awarded a sum of.58,444/- for the rubber trees. For arriving at that figure, the competent authority took into account 60% of the income as the expenses for maintaining the rubber plantation. The court below, relying on the decision of the Division Bench in A.S.No. 299 of 1973 (1977 KLT SN 24 Case No. 63), held that deduction of one-third amount as the expenses in the case of rubber trees was to be made. Accordingly, the compensation payable for cutting and removing 54 rubber trees was worked out at.97,416/- as against the compensation of.58,444/- granted by the competent authority.

2. There was no dispute regarding the price of rubber fixed by the competent authority. The method of computing the capitalization value of the trees was also not disputed by the claimant, except the expenditure. The court below also did not interfere with the compensation paid on account of cutting of non-yielding rubber trees, coconut trees and other miscellaneous trees.

3. The court below awarded an enhanced compensation of.1,06,652/-, the amount being the total of.38,972/- as enhancement of the compensation for tree cutting and.67,680/- as compensation for diminution of land value.

4. The learned counsel for the petitioner submitted that the finding of the court below that the claimant would be entitled to compensation on account of diminution of land value over and above 10% of the land value as provided in Section 10(4) of the Act, is illegal and unsustainable. The counsel submitted that as per the Scheme of the Act, which is quite distinct and different from the provisions of the Land Acquisition Act, there was no justification for the court below to take the view that over and above the heads under which the compensation could be awarded under the Act, compensation could be awarded under the head "diminution of land value" as well.

5. The Petroleum and Minerals, Pipelines (Acquisition of Right of User in Land) Act, 1962 (Act No. 50 of 1962) is an Act to provide for the acquisition of right of user in land for laying pipelines for the transport of petroleum and minerals and for matters connected their with. Section 3 of the Act provides for the publication of a notification for acquisition. Sections 4 to 8 provide for measures for entering upon and surveying the land, hearing of objections, publication of declaration of acquisition of right of user, entering upon the land to lay pipelines and entering upon the land for maintaining, examining, repairing, altering, removing etc. of the pipelines. Section 9 of the Act provides for restrictions regarding the use of land. Sub-sections (1) and (2) of Section 9 of the Act read thus:

9. Restrictions regarding the use of land.-- (1) The owner or occupier of the land

with respect to which a declaration has been made under sub-section (1) of Sec.6, shall be entitled to use the land for the purpose for which such land was put to use immediately before the date of the notification under sub-section (1) of Sec.3:

Provided that, such owner or occupier shall not after the declaration under sub-section (1)of Sec.6-

(i) construct any building or any other structure;

(ii) construct or excavate any tank, well, reservoir or dam; or

(iii) plant any tree, on that land.

(2) The owner or occupier of the land under which any pipeline has been laid shall not do any act or permit any act to be done which will or is likely to cause any damage in any manner whatsoever to the pipeline.

6. Section 10 of the Act provides for compensation. For the sake of convenience, Section 10 of the Act is extracted below:

10. 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.

(2) If the amount of compensation determined by the competent authority under sub-section (1) is not acceptable to either of the parties, the amount of compensation shall, on application by either of the parties to the District Judge within the limits of whose jurisdiction the land or any part thereof is situated, be determined by that District Judge.

(3) The competent authority, or the District Judge while determining the compensation under sub-section (1) or sub-section (2), as the case may be, shall have due regard to the damage or loss sustained by any person interested in the land by reason of-

(i) the removal of trees or standing crops, if any, on the land while exercising the powers under Sec.4, Sec.7 or Sec.8;

(ii) the temporary severance of the land under which the pipeline has been laid from other lands belonging to, or in the occupation of, such person; or

(iii) any injury to any other property, whether moveable or immoveable or the earnings of such persons caused in any other manner:

Provided that in determining the compensation no account shall be taken of any structure or other improvement made in the land after the date of the notification under sub-section (1) of Sec. 3.

(4) Where the right of user of any land has vested in the Central Government, the State Government or the Corporation, as the case may be, shall, in addition to the compensation, if any, payable under sub-section (1), be liable to pay to the owner and to any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such vesting, compensation calculated at ten per cent of the market - value of that land on the date of the notification under sub-section (1)of Sec. 3.

(5) The market-value of the land on the said date shall be determined by the competent authority and if the value so determined by that authority is not acceptable to either of the parties, it shall, on application by either of the parties to the District Judge referred to in sub-section (2), be determined by that District Judge.

(6) The decision of the District Judge under sub- section (2) of sub-section (5) shall be final.

7. Sub-section (1) of Section 10 provides that the Central Government, State Government or the Corporation, as the case may be, shall be liable to pay compensation to the person interested in the land for the damage, loss or injury sustained by him. The competent authority has to fix the compensation payable to the person interested in the land. If the amount of compensation determined by the competent authority is not acceptable to any party, he can approach the District Judge claiming enhancement and the District Judge shall determine the compensation payable. Sub- section (3) of Section 10 provides as to how the competent authority has to fix the compensation on account of the damage or loss or injury sustained by the person interested in the land in respect of the matters mentioned in clauses (i) to (iii) therein. Sub-section (4) provides for payment of compensation calculated at 10% of the market value of the land on the date of notification, if the right of user of the land has vested in the Central Government, State Government or the Corporation, as the case may be. The compensation at 10% of the market value of the land shall be in addition to the compensation, if any, payable under sub-section (1). Sub-section (1) speaks of the compensation for the damage, loss or injury sustained by a person, where such damage, loss or injury was sustained due to the exercise of powers conferred by Sections 4, 7 and 8.

8. Section 18 of the Act provides that the provisions of the Act shall be in addition to, and not in derogation of, any other law for the time being in force relating to acquisition of land. This is a provision enabling the Government or the Corporation to acquire the land, if it becomes necessary. If such acquisition is made, the compensation payable to the owner of the land shall be computed in accordance with the provisions of the Land Acquisition Act. In such a situation, the owner of the land will be entitled to the market value of the land and all other items of compensation including compensation for diminution of land value.

However, in the case of acquisition of the right of user of the land under the Act, there is no divestiture of the right or title of the land owner in respect of the whole of the land used for the purpose of laying pipelines. The land owner has to suffer only the restrictions imposed under the Act. For that purpose, he is paid compensation in accordance with the Scheme of Section 10 of the Act. There is no scope for importing into Section 10 of the Act, the provisions of the Land Acquisition Act and the principles governing the award of compensation under the Land Acquisition Act, so long as the land has not been acquired invoking Section 18 of the Act and only the right of user of the land has vested in the Central Government, State Government or the Corporation under the Act.

9. A Division Bench of this Court in W.A.No. 2038 of 2005 and connected cases, while dealing with the appeals filed against upholding the constitutionality of the Act, held thus:

In our view, the compensation payable u/s 10(4) is for the diminution in value of the land on account of disabilities attached to it u/s 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 u/s 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 u/s 10(4) is over and above the compensation payable u/s 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 u/s 10(1) read with sub-section (3) thereof, the only compensation payable is 10% of the market value payable u/s 10(4) of the Act to the land owners which is compensation payable for the restrictions in regard to use and enjoyment of land u/s 9(1) and (2) of the Act."

10. Clause (3) of paragraph 42 in the judgment rendered by the learned single Judge, from which the Writ Appeals arose, reads as follows:

(3) The competent authority and the District Judge while determining compensation u/s (1) or 10(2) as the case may be, shall apart from the aspects mentioned in Section 10(3)(i), 10(3)(ii) and 10 (3)(iii) also take into account the diminution in the value and utility of the acquired land inclusive of the sub-soil on account of the interdicts imposed upon the land and the land owners under the proviso to Section 9."

11. Compensation for diminution of land value also would be taken in by the compensation at ten per cent of the market value payable under sub-section (4) of Section 10 of the Act. Apart from the compensation payable under sub-section (4) of Section 10 of the Act, no other compensation is payable under the Act for diminution of land value. Section 18 of the Act would not apply, so long as the land is not acquired as contemplated under the Land Acquisition Act. The acquisition under the Act (Act 50 of 1962) is only an acquisition of right of user

in land. The title of the land remains with the owner. Only some restrictions are imposed under the Act for the user of the land by the owner thereof. For the purpose of the acquisition of such right of user, Act 50 of 1962 is self contained. Compensation payable to the owner of the land should be as provided under the Act. Over and above the compensation payable under the Act, there is no scope for granting compensation under any other head, so long as the acquisition is only for the purposes provided and in the manner provided under the Act.

12. For the aforesaid reasons, the award passed by the court below granting compensation of.67,680/- on account of diminution of land value is liable to be set aside. I do so.

13. The petitioner contended that the expenses for cultivation of rubber can be 60% as fixed by the competent authority. It is stated that the competent authority fixed the expenditure at 60% on the basis of the same standard as being adopted by the Kerala State Electricity Board in the matter of tree cutting for drawing of electric lines.

14. The court below fixed the compensation for cutting of rubber trees taking 30% of the income towards expenditure. The court below relied on the decision in 1977 KLT SN 24 Case No. 63, which reads as follows:

The number of tapping days may vary from 180 to 220 normally. But that does not mean that the same tree is tapped on all these days. Normally trees are tapped on alternate days and therefore to determine tapping days as 90 to 100 is quite proper. Interference with the estimate of 1/3rd of the gross income as the expenses was uncalled for. The data furnished by the Rubber Board may not be taken as applicable to all cases. Expenses must naturally vary depending upon the nature of the trees and the income that they would yield. The trees which yield more income may require different kind of attention and therefore expenses may be more. Therefore to adopt the figures furnished by the Rubber Board for determining the expenses would be unrealistic particularly when there is estimate by the commissioner of the expenses concerning the trees which he had inspected. Here again there was no scope of interference with the commissioner''s estimate of 1/3rd.".

15. In the aforesaid case, the expense was taken as one-third of the income on the basis of the commissioner''s report and it was held that no interference was called for. The Division Bench, however, noticed that expenses must naturally vary depending upon the nature of the trees and income that they would yield. It was also held that the figures furnished by the Rubber Board for determining the expenses would be unrealistic, in view of the materials collected in that particular case.

16. In several Land Acquisition References in respect of drawing of electric lines, while fixing compensation for trees cut, a uniform approach was taken that 40% of the income could be taken as the expenditure for rubber cultivation. That was accepted in C.R.P.No. 313 of 2008. In the facts and circumstances, I am of the

view that 40% of the income can be taken as the expenditure in the case of rubber trees. No other point is raised by the petitioner.

Accordingly, the Civil Revision Petition is allowed in part and the order passed by the court below is modified to the extent indicated above. The case is remitted to the court below for re-fixing the compensation payable on account of cutting of rubber trees, taking 40% of the income as expenditure. The parties shall appear before the court below on 21st March, 2012.