

(2013) 06 KAR CK 0017

In the Karnataka High Court

Case No : Writ Petition No. 47981 of 2012 (GM-KEB)

P.K. Sudhakar

APPELLANT

Vs

Karnataka Power Transmission Corpn. Ltd. and The Executive
Engineer (Electrical)

RESPONDENT

Date of Decision : 11-06-2013

Acts Referred:

Telegraph Act, 1885 — Section 10, 11, 16(3)

Citation : (2013) 4 KarLJ 307

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : D.S. Hosmath, for the Appellant; N. Krishnananda Gupta, for R1 and R2, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—Petitioner is the owner of 2 acres of land in Sy. No. 627 of Maraliga village in Maddur Taluk of Mandya District. The Assistant Commissioner, Mandya, accorded permission on 6.3.1999 for conversion of the said property for non-agricultural use. The Competent Authority of KPTCL took a decision to draw transmission line in a portion of the said property. The respondents have made use of a portion of the said property for the said purpose. W.P. No. 5018/2008 filed by the petitioner against the respondents to consider a representation dated 10.1.2008 and pass appropriate order was disposed of on 28.3.2008, with a direction to the 2nd respondent to consider the said representation in accordance with law. The respondents paid compensation of Rs. 80,704/- to the petitioner and disposed of the said representation. Feeling aggrieved, the petitioner filed a petition under S. 16(3) of the Indian Telegraphs Act, 1885 ("the Act" for short), before the District Judge, Mandya, seeking compensation of Rs. 25,00,000/- with interest from the respondents. The petition having been contested by filing statement of objections, during enquiry, the petitioner got himself examined as PW. 1 and marked Exs. P1 to P9. The

Court Commissioners having been appointed, have deposed as CWs. 1 and 2, though whom Exs. C1 to C4 were marked. For the respondents, RW. 1 deposed. Learned District Judge, by a Judgment dated 13.9.2012, having regard to the facts of the case, has directed payment of lump sum amount of Rs. 15,000/- in the form of solatium, in addition to the amount, already paid by the respondents. The said amount was directed to be paid with interest at 6% p.a. from the date of petition till the date of deposit/payment. Assailing the said Judgment, this writ petition has been filed. Sri. D.S. Hosmath, learned counsel appearing for the petitioner, firstly contended that the learned District Judge has failed to notice that on account of drawing of the electric wire on the property of the petitioner, the value of the petitioner's property has diminished and hence, the petitioner is entitled for payment of just compensation by way of damages. Secondly, on account of drawing of electric wire on the property of the petitioner, the petitioner is unable to carry on his business in poultry, dairy and fishery farming, for which purpose, the land was got converted and licenses were also obtained. Thirdly, the sum which has been ordered to be paid is meager and there being no correct assessment of the loss suffered by the petitioner, the impugned Judgment warrants interference.

2. Sri. N.K. Gupta, learned counsel appearing for the respondents, on the other hand, made submissions in support of the finding recorded by the learned District Judge and sought dismissal of the petition.

3. Perused the writ record.

4. Learned District Judge has not considered the matter in accordance with law. The reason for reproducing the (notes) of Indian Telegraphs Act, in para 15 of the impugned Judgment is not clear. Indisputably, electric line has been drawn in the property of the petitioner. Being a converted land, question of growing sugarcane crop, to which a reference has been made in para 17 of the judgment, has no relevance. It is apparent that there is a misdirection adopted while considering the claim of the petitioner and in passing the impugned Judgment.

5. Both telegraph and electrical lines, are required to be drawn over the agricultural lands/or other properties belonging to third parties. In drawing such lines, the entire land need not be acquired, but the effect thereof would be, diminishing of value of the property over which such line is drawn. The Act provides for the manner in which the amount of compensation is to be computed there for. S. 10 of the Act empowers the authority to place and maintain telegraph lines under, over, along or across and posts in or upon, any immovable property. S. 11 of the Act empowers the officers to enter on the property in order to repair or remove the telegraph lines or posts. S. 12 empowers the authority to grant permission for laying down such lines to a local authority in terms of clauses (c) and (d) of the proviso to S. 10 of the Act, subject to reasonable conditions as the authority may think fit. S. 16 of the Act is regarding the exercise of powers conferred by S. 10 and dispute as to compensation, in case of property other than that of a local authority. Sub-section (3) therein confers

jurisdiction on the District Judge to determine in case a dispute arises, concerning the sufficiency of compensation to be paid under S. 10(d), on an application being made by either of the disputed parties. The District Judge in terms of the jurisdiction conferred under sub-section (4) of S. 16 of the Act, after giving notice to the parties and hearing such of them as may desire to be heard, is required to determine the persons entitled to receive the compensation or the persons interested or entitled to share it. The determination of a dispute by the District Judge under subsections (3) and (4) shall be final, subject to the proviso thereof i.e., under sub-section (5) of S. 16.

6. The factors which have to be kept in view while determining the compensation are: the situs of land, the distance between high voltage electricity line laid there for, the extent of the line thereon, as also the fact as to whether high voltage line passes over a small track of land or through the middle of the land and other relevant factors. No doubt the value of the land is also a relevant factor. There cannot be any hard and fast rule in determination of the compensation payable. The purpose and object of the Act and the methodology laid down therein, for the purpose thereon, should be a guiding factor in determining the compensation payable. Each case is required to be determined on its own merit as the situs of the land/property, the additions etc., will have to be kept in view.

7. The respondent while drawing the over head lines, under ground cables and generating stations, shall have to mandatorily follow the provisions made in the Indian Electricity Rules, 1956. Rule 77 is with regard to clearance above ground of the lowest conductor. It stipulates the height which should not be less than the height indicated therein when erected across a street. Rule 78 stipulates the clearance between the conductors and trolley wires. Rule 79 is with regard to clearance from the building of low and medium voltage lines and service lines. The same reads as follows:

79. Clearance from buildings of low and medium voltage lines and service lines.-
(1) Where a low or medium voltage over-head line passes above or adjacent to or terminates on any building the following minimum clearances from any accessible point, on the basis of maximum sag, shall be observed:-

(a) for any flat roof, open balcony, verandah roof and lean-to-roof-

(i) when the line passes above the building a vertical clearance of 2.5 metres from the highest point, and

(ii) when the line passes adjacent to the building a horizontal clearance of 1.2 metres from the nearest point, and

(b) for pitched roof-

(i) when the line passes above the building a vertical clearance of 2.5 metres immediately under the lines, and

(ii) when the line passes adjacent to the building a horizontal clearance of 1.2

metres.

(2) Any conductor so situated as to have a clearance less than that specified in sub-rule (1) shall be adequately insulated and shall be attached Words "by means of metal clips" omitted by GSR 523, dated 28.3.1966 (w.e.f. 9.4.1966) at suitable intervals to a bare earthed bearer wire having a breaking strength of not less than 350 kg.

(3) The horizontal clearance shall be measured when the line is at a maximum deflection from the vertical due to wind pressure.

Rule 80, is with regard to the clearance from buildings of high and extra-high voltage lines. The same reads as follows:

80. Clearance from buildings of high and extra-high voltage lines.-(1) Where a high or extra-high voltage over-head line passes above or adjacent to any building or part of a building it shall have on the basis of maximum sag a vertical clearance above the highest part of the building immediately under such line, of not less than-

(2) The horizontal clearance between the nearest conductor and any part of such building shall on the basis of maximum deflection due to wind pressure, be not less than-

8. Undeniably, respondents have not taken over any portion of the land of the petitioner. They have drawn a transmission line by way of ariel arrangement over the property of the petitioner. Hence, there is damage to a portion of the property of the petitioner and for the resultant loss, the petitioner has to be compensated, but not in the form of an award for acquisition of the land. The right of the petitioner to make use of his property even below the ariel line i.e., to the permitted extent has not been taken away and the petitioner is entitled to make use of the property even under the transmission line i.e., subject to the provisions made by the respondents and the Rules notice supra. The learned District Judge though has ordered for payment of damages, but the Judgment shows that there is non-consideration of the evidence brought on record by the parties. On account of misdirection adopted in the matter of assessment of damages, the impugned Judgment is vitiated and hence, is unsustainable. The learned District Judge is required to consider the matter in accordance with law, also by keeping in view the statement of law in the cases of The Kerala State Electricity Board Vs. Livisha etc. etc., and The Kerala State Electricity Board Vs. Chinamma Antony,

In the result, the writ petition is allowed and the impugned Judgment is quashed. Misc. No. 20/2009 on the file of the Additional District Judge at Mandya, is restored for disposal in the light of the observations made supra.

In order to expedite the disposal of the case, parties are directed to appear before the Court below on 15.7.2013, without waiting for a Court notice for being issued to them and receive further orders. The learned District Judge is hereby

directed to decide the claim expeditiously and before 30.9.2013.

Contentions of both parties are kept open for consideration and decision.

No costs.