

(2015) 09 KAR CK 0287

In the Karnataka High Court

Case No : Civil Revision Pettion Nos. 1055, 1049, 1057, 1052, 1009, 1058,
1051, 1050, 1056 and 1054 of 2011 [I.O.]

Power Grid Corporation of India Ltd.

APPELLANT

Vs

Devendrappa and Others

RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33, 151
Constitution of India, 1950 — Article 12, 21, 39A, 41
Penal Code, 1860 (IPC) — Section 188
Telegraph Act, 1885 — Section 10, 10(b), 10(d), 11, 12

Citation : (2015) 09 KAR CK 0287

Hon'ble Judges : B. Veerappa, J

Bench : Single Bench

Advocate : Ravi Hegde, for the Appellant; Ravi V. Hosamani, Amicus Curiae,
Advocates for the Respondent

Final Decision : Allowed

Judgement

B. Veerappa, J—The above Civil Revision Petitions filed by Power Grid Corporation of India against the common order dated 20.10.2010 made in Misc. Petition Nos. 52/2008 to 62/2008 on the file of the Principal District Judge, Dharwad, allowing the petitions in part under Section 16(3) of the Indian Telegraph Act, 1885, holding that the petitioners - claimants shall be entitled for compensation of Rs. 1,000/- per gunta towards diminution value of the lands with 10% interest per annum from the date of petitions till realization and also directed the Corporation to calculate the extent of the lands used for erecting tower and electric line in the lands of the petitioners - claimants and pay compensation accordingly.

2. For the sake of convenience, the parties shall be referred to as per their status before the District Court.

3. Since all these cases are arising out of common order, out of common issues involved and common applications filed for compensation against the sole

respondent, therefore, all these cases are clubbed together and disposed of by this common order.

4. The petitioners - claimants filed applications under Section 16(3) of the Indian Telegraph Act, 1885 read with Section 151 of the Code of Civil Procedure, 1908 for compensation for use of their lands for erecting electrical tower and transmission line contending that the petitioners' lands are situated at Ramapur and Kambarganavi Villages and the respondent - Corporation situated at Kaiga Narendra transmission line and erected the tower transmission line by issuing notices under the Indian Telegraph Act, 1885. They also enquired about the consent of the petitioners and the petitioners have given the consent for erecting the tower transmission line in their lands, subject to condition that the respondent - Corporation must pay compensation to the petitioners adequately for which the respondent - Corporation agreed along with officials and completed the work and thereafter, they have paid meager compensation towards cutting and causing damages to sugar cane, maize and cotton and they have not paid any compensation for the loss of their lands and they cannot use the said lands for cultivation and raise crops and also contended that the compensation towards the lands of the petitioners, extent of the lands used, number of trees or crops situated at the lands, transmission line or transmission tower erected in respect of the lands mentioned are as follows:

5. The petitioners further contended that the respondent - Corporation has paid compensation only towards cutting and causing damages to the crops and trees, but they have not paid any compensation for loss of the lands of the petitioners for the respective guntas used. Due to erecting the tower, the petitioners cannot cultivate the lands and raise the crops. Even there is no safety to the bullocks and plowing articles, equipment, which should be kept away from shock. The entire value of the land is diminished. If the petitioners want to sell their lands, the purchaser will decrease the land value and there will be loss in the sale price. Therefore, all the petitioners made representation before the respondent - Corporation for proper compensation, but the respondent - Corporation flatly refused the same. Petitioners have taken steps to spend amount for improving their lands and their lands got commercial value. Due to the utilization of the lands by the respondent - Corporation for erecting tower and transmission line, the value of the lands has come down. The valuation made by the various Departments for crops and trees was not correct. Due to acquiring the portion of the lands, the remaining lands become useless and therefore, the petitioners prayed for compensation.

6. The respondent - Corporation filed objections and contended that the petitioners had not exhausted the remedy as contemplated and as per the provisions of Section 10(b) of the Indian Telegraph Act, 1885, the Central Government shall not acquire any right other than that of user only in the property under, over, along, across, in or upon, which the telegraph authority places any telegraph line or post and moreover, the respondent is a Central

Government undertaking. As such, this Court has no jurisdiction and the application is not maintainable. The contention of the petitioners that the value of their lands was diminished, the value of the land per gunta was Rs. 1,00,000/-, was denied as false and baseless and petitioners have been put to strict proof of the same and also contended that putting of one or two towers in the lands is not going to affect the value of the land and the Forest Department had given valuation report of the existing trees. Accordingly, payment has been made to the respective parties. All the relevant factors have been considered for making payment of existing trees. The petitioners have accepted the compensation. Therefore, they are estopped from taking contrary view and construction of tower in the suit lands had already been completed long back and the petitioners have in no way affected in respect of the lands etc., and prayed for dismissal of the petitions.

7. Based on the pleadings, the District Court framed the following points for consideration:

"i. Whether the respondent proves that this court has no jurisdiction to entertain the petition?

ii. Whether the petitioners made out sufficient grounds that the compensation granted by the respondent is meager and inadequate for the lands acquired by the respondent?

iii. Whether the petitioners are entitled for compensation as claimed by them? If so to what extent?

iv. What order?"

8. In order to establish the case of the petitioners, petitioners examined as P.Ws. 1 to 11 and marked documents as Exs. P-1 to P-23. On behalf of the Corporation, Junior Engineer was examined as R.W. 1 and marked the documents as Exs. D-1 to D-124.

9. After considering the entire material on record, the learned District Judge has held that the respondent - Corporation failed to prove that the District Court has no jurisdiction to entertain the petitions and the petitioners partly made out sufficient grounds that the compensation granted by the respondent - Corporation is meager and inadequate for the lands acquired by the petitioners and the petitioners are entitled for compensation of Rs. 1,000/- per gunta for diminution of value of the lands. Accordingly, the District Court has granted Rs. 1,000/- per gunta towards the diminution value of the lands with 10% per annum interest. Aggrieved by the said order, the present Civil Revision Petitions are filed by the respondent -Corporation.

10. I have heard the learned counsel for the parties to the lis.

11. Shri Ravi Hegde, learned counsel for the petitioners has contended that in terms of the provisions of Sections 10(b), 10(d), 16(1) and 16(3) of the Indian

Telegraph Act, 1885 payment of compensation towards trees were paid and no particulars were available before the Court with regard to line, pillars and the land property damaged and the types of the trees grown and the diminution value as recorded by the District Court is not correct and Section 10(d) and Section 16 of the Indian Telegraph Act, 1885 includes the loss of the crops and trees, if any and also contended that the petitioners are not entitled for diminution value of the lands and all along the petitioners are doing their agricultural operations without any disturbance. In support of his contention, he sought reliance of the dictum of this Court in the case of P.K. Sudhakar Vs. Karnataka Power Transmission Corpn. Ltd. and The Executive Engineer (Electrical), (2013) 4 KarLJ 307 . Therefore, he sought to set aside the impugned order.

12. Per contra, Shn Ravi V. Hosamani, learned Amicus Curiae has contended that under the provisions of Section 10(d) of the Indian Telegraph Act, 1885, the words used:

"when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all the persons interested for "any damage" sustained by them by reason of the exercise of those powers"

(emphasis supplied by me)

which includes the diminution of value of the lands and also contended that in view of the dictum of the Hon"ble Supreme Court in the case of The Kerala State Electricity Board Vs. Livisha etc. etc., (2007) 8 SCALE 235 : (2007) 6 SCC 792 : (2007) 7 SCR 356 that the diminution value of the land has to be paid to the farmers and further contended that it is a case where this Court can exercise powers under Order 41 Rule 33 of the Code of Civil Procedure, 1908 and enhance the compensation relying on the dictum of the Hon"ble Supreme Court in the case of Mahadev Govind Gharge and Others Vs. The Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka, AIR 2011 SC 2439 : (2012) 113 CLT 414 : (2011) 6 JT 100 : (2011) 8 SCR 829 : (2011) 5 UJ 2835 : (2011) AIRSCW 3220 : (2011) 3 Supreme 665 to the effect that the scope of the powers vested in the Court in terms of Order 41 Rule 33 of the Code of Civil Procedure, 1908 empowers the Appellate Court to pass any decree or make such further decree as the case may be required.

13. The learned Amicus Curiae also contended that the documents and pleadings of the petitioners clearly indicate that there is an aerial encroachment of drawing high tension tower lines over the petitioners" agricultural lands and 10% of the value of the lands has to be awarded to the petitioners for aerial encroachment and diminution of the lands value on account of drawing high tension tower lines upon the lands of the petitioners. He also sought the reliance on the dictums of this Court in the case of Pejavar Chitananda Rao and Others Vs. Karnataka Electricity Board and Another, (2004) ILR (Kar) 627 : (2002) 3 KCCR 1926 , in the case of The Great Eastern Shipping Co. Ltd. Vs. S. Mohammed Samiullah

Saheb and Co. and Another, AIR 1959 Mad 367 : (1959) 72 LW 129 : (1959) 1 MLJ 149 and also in the case of P.K. Sudhakar Vs. Karnataka Power Transmission Corpn. Ltd. and The Executive Engineer (Electrical), (2013) 4 KarLJ 307 that diminishing value of the lands ought to have been taken into consideration by the learned District Judge and determined the diminution value of the lands of the petitioners by adopting multiplier method. The learned District Judge has granted only Rs. 1,000/- per gunta without applying any method of calculation, therefore, which requires reconsideration afresh.

14. Shn Shivaraj C. Bellakki, learned counsel representing one of the respondents in the Civil Revision Petitions has adopted the argument of the learned Amicus Curiae.

15. The learned District Judge, considering the entire material on record, has recorded a finding that except taking bare contention in the objection statement and the affidavit of evidence by respondent -Corporation, they have not produced any authority before the Court to show that this Court has no jurisdiction. On the other hand, on perusal of Ex. D-108, the award passed by the Permanent Lok Adalat on 31.03.2008 goes to show that the permanent Lok Adalat raised an issue whether the petition is maintainable before the Lok Adalat or not and come to the conclusion that the petition was not maintainable before the Lok Adalat and held that a competent court is the District Court, as per the provisions of Section 16(3) of the Telegraph Act, 1885. Therefore, the contention of the respondent could not be accepted that this Court has no jurisdiction. In view of the provisions of Section 16(3) of the Indian Telegraph Act, 1885, this Court has jurisdiction to determine the compensation. Therefore, the arguments advanced by the respondent-Corporation cannot be accepted. Accordingly, issue No. 1 was held in negative, holding that the Court can determine the compensation under Section 16(3) of the Indian Telegraph Act, 1885 and also held that in view of Exs. D-1 to 54 and cross of PWs-1 to 11, the petitioners have received compensation in respect of crops and there is no dispute with regard to the ownership of the lands. RW-1--a Junior Engineer of the Corporation, in his cross-examination has admitted to the effect that the respondent/Corporation has not paid any compensation for the lands on which towers are erected and also admitted the towers are erected adjacent to the road; he has further stated that the valuation of the trees was done by the Forest Department and Horticulture Department; but, no material document was produced before the Court to prove that the Valuation Certificate was issued by the Forest Officer. All the material documents produced were considered only with regard to the damages towards the standing crops and trees; the learned District Judge has also recorded a finding that, due to erection of towers and passing of wires, there may be a diminution in the value of the lands of the petitioners. Admittedly, there was no compensation assessed or paid by the respondent to any of the petitioners, either for erecting the tower or drawing of wires in the lands of the petitioners and held that due to drawing of high-tension wires in the lands of the petitioners and erecting of towers, there will be diminution of value of the lands,

as such, the petitioners are entitled for damages. Relying upon the dictums of the Kerala High Court in the case of *Arya Antherjanam Vs. Kerala State Electricity Board*, Trivandrum, AIR 1996 Ker 309 : (1996) 2 ILR (Ker) 225 and in the case of *K.S.E.B. Vs. Cheriyan Varghese and Others*, AIR 1989 Ker 198 : (1989) 2 ILR (Ker) 596 , the learned District Judge, ultimately, has come to the conclusion that the petitioners are entitled to compensation towards diminution value of the lands at Rs. 1,000/- per gunta, along with 10% interest per annum.

16. It is not in dispute that the erecting of towers and high-tension wires on the petitioners' lands by the respondent-Corporation and that they have not paid any single paise towards the diminution value of the lands, except paying some compensation to the crops and trees at the time of erecting towers and high-tension wires. It is an unfortunate case, where the lands of the farmers were utilized by the respondent-Corporation to erect towers and high-tension wires, and fixed the tariff on various heads, namely, residential, semi-commercial, commercial and they are getting the rate of commercial value and therefore, a presumption has to be drawn that the lands of all the farmers/petitioners where the towers and high-tension wires were erected would be of non-agricultural potential values i.e., commercial value and once the towers and high-tension wires were fixed on the lands of the petitioners, forever the value of the lands of the petitioners will be diminished, thereby the right to life, which is guaranteed by Article 21 of the Constitution of India, includes right to livelihood, will be affected, since, they will be deprived of their livelihood in view of the erection of towers and high-tension wires over the lands of the petitioners and without paying any compensation for diminishing value of the lands. The sweep of the right to life conferred by Article 21 of the Constitution of India to the petitioners is wide and far-reaching. It does not mean merely that, life cannot be extinguished or taken away and an equally important facet of that right is right to livelihood, because no person can live without the means of livelihood, that is, the means of livelihood. If the right to livelihood is not treated as a part of constitutional right to life, the easiest way of depriving a person of his right to life would be depriving him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but, it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. Article 39A of the Constitution of India, which is a Directive Principle of State Policy, provides that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Article 41 of the Constitution of India, which is another Directive Principle, provides, inter alia, that the State shall, within the limits of the economic capacity and development, make an effective provision for securing the right to work in cases of unemployment. The principles contained in Article 39A and Article 41 of the Constitution of India must be regarded as equally fundamental in the understanding and interpretation of the meaning and

content of the fundamental rights. If there is an obligation upon the State to secure to citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the contents of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood, or work to citizens. But, any person, who is deprived of his right to livelihood, except according to the just and fair procedure established by law, can challenge the deprivations as offending the right to life conferred under Article 21 of the Constitution of India.

17. In the present case, the action of the respondent-Corporation erecting towers and high-tension wires over the petitioners' lands without paying compensation for diminished value of the lands, amounts to violation of Articles 21, 39A and 41 of the Constitution of India.

18. The District Court has not framed proper issues with reference to the pleadings of the parties to the lis; when the petitioners specifically pleaded and adduced evidence with regard to the diminishing value of their lands, there is no issue framed by the District/Trial Court in this regard. On that ground alone, the impugned order passed by the District Court cannot be sustained.

19. In view of the rival contentions urged by the learned counsel for the parties to the lis, especially, the learned Amicus Curiae, taking judicial notice of the facts of the case, though this Court was inclined to enhance the compensation exercising the powers conferred under Order XLI Rule 33 of the Code of Civil Procedure, 1908, but desists from the same for want of proper issue, on the basis of the available pleadings and evidence with regard to the diminution value of the lands and the contention of the Power Grid Corporation, throughout the proceedings, that there is no diminution value of the lands. Unfortunately, the District Court has not considered the evidence of PWs-1 to 11 with regard to the diminution value of the lands and absolutely, no reference is made in the impugned order.

20. The respondent-Corporation, being an authority within the meaning of the "the State" under Article 12 of the Constitution of India, bound to maintain the particulars of the lands of the petitioners, what is the extent of the towers erected and what is the loss that would affect the rights of the landholders; but in the present case, no particulars are given by the respondent-Corporation. The 73rd and 74th amendments were inserted in the Constitution of India with the avowed object and intention of strengthening the local self-governance both at the village and District level. Sir Charles Metcalfe, the Acting Governor General of India from 1835 - 1836, on the functioning of the Village Panchayats made during the 19th century recorded that "the village communities are little republics, having nearly everything they can want within themselves and most independent of any foreign relations. They seem to last where nothing else lasts. Dynasty after dynasty tumbles down; revolution succeeds after revolution; but the village community remains the same. It is common knowledge that, generations to generations, governments after governments, inspite of the

protection given in the Constitution of India to protect the farmers' interest, the farmers are neglected even after the lapse of 68 years of post independence.

21. It is relevant to mention here that all the petitioners who have been examined as PWs-1 to 11 categorically stated on oath Re. diminution of their lands and PW-1 has stated on oath as under:

"...I am the owner of Sy. No. 14 measuring 6 acres situated at Ramapur Village and in possession. The defendant has erected the tower in my land and also transmission line passes through my land.....The respondents have paid cutting causing damages to sugarcane crops, but have not paid any compensation for diminution value of land.....The transmission line and tower erected in the land to the extent of 5 guntas. The measurement of tower is $1115 \times 4 = 4460$ sq.ft., totally the tower is covered by putting fence. Hence, the total land where the tower has been erected cannot be used by me. In the said land, tower and transmission lines passes through my land; there is high-tension electricity supply over the land. Hence, surrounding my land, I cannot cultivate, raise the crops.....I cannot utilise my land as per my will and wish and the value of the entire land is diminished and the tower erected in my land is exactly in centre. Hence, I cannot utilise the total land. Due to this erection and passing of the transmission line, if I wanted to sell my land, the purchaser will degrade the value of the land and there is a loss of price and therefore, the respondent may be directed to pay the compensation of Rs. 5,00,000/- towards the diminution of the land and Rs. 2,00,000/- towards the compensation of trees...."

Nothing has been elicited in the cross-examination of PW-1 with regard to diminution value of his lands, as stated by him.

22. PWs-2 to 11 have also deposed their evidence in the same line as that of PW-1 and stated that an extent of 5 guntas of area was covered by towers and transmission lines and they cannot utilise their lands nor they can sell; the purchaser will degrade the value of the lands and there is loss of price of their lands. In almost all the petitioners' lands, the towers and transmission lines were erected in the centre and they cannot utilise the remaining lands and therefore, they sought for the value of the trees and diminution of land value at Rs. 2,00,000/- for crops and Rs. 5,00,000/- for diminution of lands and in some cases, Rs. 2,00,000/- for diminution value of the lands and Rs. 2,00,000/- compensation for trees and they have specifically stated on oath that they cannot use their lands and they have lost the diminution value of their lands.

23. In the cross-examination of all PWs-1 to 11, nothing has been elicited by the respondent-Corporation in respect of diminution value of the lands, stated by them and the respondent-Corporation has not produced any material documents to disprove the evidence made on oath by PWs-1 to 11. In fact, a Junior Engineer of the respondent-Corporation, examined as RW-1, has categorically admitted that if the trees grow above the height of eight meters, they chop-off the additional growth and that the mango and teak trees grow above the height of

eight meters; that the fields wherein they had drawn the high-tension wires, there were mango and teak trees and whenever these trees grow above eight meters, they chop off the additional growth. He has admitted that they have not paid any compensation for the lands on which the towers are erected, which situate adjacent to the road. It is also admitted by him in the cross-examination that the tower is located at the center of the property held by the petitioner in Misc. No. 52/2008. He has also admitted that they chop-off any tree branches touching the high-tension wires. The distance from one tower to another is 400 meters. One tower has four legs; the gap between the legs is about 30 feet. The high-tension wires are spread to a width of 8 meters all throughout. The valuation for the general trees is done by the Horticulture Department. The said valuation was done in their presence as well as in the presence of parties/landholders herein. But, he has not produced any panchanama to this effect before the Court. The statement of the landholders were not recorded at the time of the said valuation. He also admitted that a retaining wall is seen in Ex. P-6(a) in Misc. No. 54/2008 and he cannot say the length and height of the wall and he cannot say whether the length of the said wall is 50 feet as suggested and also admitted that they have not given any compensation for the area of the land where the said wall is built; that the coconut and teak trees yield more income than other agricultural crops and he does not know whether the wires are drawn in an area of about 20 guntas in the lands of petitioner in Misc. No. 52/2008.

24. By a reading of the entire evidence of RW-1, both examination-in-chief and cross-examination, it is evident that he has categorically admitted that the respondent-Corporation has not paid any single paise for diminishing of value of lands of the petitioners. The documents produced by the respondent-Corporation with regard to the valuation statement/valuation report for trees are produced from themselves and not from any independent authority, which clearly indicates that the respondent-Corporation has produced the same valuation report of the crops and trees damages, and paid some amount. That was not the correct value, as no independent valuator was allowed to value the trees and crops. Thereby, the respondent-Corporation has deprived the petitioners from getting the correct value of the crops and trees.

25. The provisions of Section 10(d) of the Indian Telegraph Act, 1885 makes manifestly clear that when the Corporation exercises the powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

26. Section 10 of the Indian Telegraph Act, 1885 reads as under:-

10. Power for the telegraph authority to place and maintain telegraph lines and posts.--The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along, or across, and posts in or upon, any immovable property: Provided that--

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the Central Government, or to be so established or maintained;

(b) the Central Government shall not acquire any right other than that of user only in the property under, over, along, across in or upon which the telegraph authority places any telegraph line or post; and

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

(d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers."

27. Section 16 of the Indian Telegraph Act, 1885 deals with exercise of powers conferred by Section 10, and disputes as to compensation, in case of property other than that of a local authority, which reads as under:

"16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.--(1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for this being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code, 1860 (45 of 1860).

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3), or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same."

28. In view of the provisions of Section 16(3) of the Indian Telegraph Act, 1885 and Rules 77, 78, 79 and 80 of the Indian Electricity Rules, 1956, 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 Indian Telegraph Act provides for the manner in which the amount of compensation is to be computed therefor. Section 10 of the Indian Telegraph Act empowers the authority to place and maintain telegraph lines under, over, along or across and posts in or upon, any immovable property. Section 11 of the Indian Telegraph Act empowers the officers to enter on the property in order to repair or remove the telegraph lines or posts. Section 12 of the Indian Telegraph Act 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 Section 10 of the Indian Telegraph Act, subject to reasonable conditions as the authority may think fit. Section 16 of the Indian Telegraph Act is regarding the exercise of powers conferred by Section 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 Section 10(d) of the Indian Telegraph Act, on an application being made by either of the disputed parties.

29. The factors which have to be kept in view while determining the compensation are:

- (i) The situs of land,
- (ii) The distance between high voltage electricity line laid therefor,
- (iii) The extent of the line thereon, and
- (iv) 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.

30. 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 Indian Telegraph 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.

31. The learned District Judge, has not considered the evidence elicited in the

cross-examination of RW-1, who stated on oath and admitted in the cross-examination that:

"We have not paid any compensation for the lands on which towers are erected...."

32. The said admission itself is sufficient for this Court to consider the claim and award enhanced compensation of the diminution value of the lands in question. Non-consideration of material evidence on record in favour of the petitioners, by recording a finding, renders the finding of the learned District Judge erroneous in law. It requires reconsideration.

33. The Hon'ble Supreme Court in the case of *The Kerala State Electricity Board Vs. Chinamma Antony*, AIR 2008 SC 3265 : (2008) ELR 524 : (2008) 10 SCALE 170 : (2008) 11 SCC 476 : (2008) 2 UJ 909 : (2008) AIRSCW 5523 while considering the provisions of the Electricity Act and the Telegraph Act, for determination of compensation for loss of diminution in land value on account of drawal of electricity lines over property, has held that the situs of the land, distance between the high-voltage electricity lines laid there-over, the extent of the line thereon, as also the fact as to whether the high voltage line passes over a small tract of land or through the middle of the land and other similar relevant factors. The owner of the land, furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used. Therefore, the Hon'ble Supreme Court has held that the diminishing value of the land has to be determined.

34. The Hon'ble Supreme Court while considering the provisions of Section 10 of the Indian Telegraph Act, in the case of *The Kerala State Electricity Board Vs. Livisha etc. etc.*, (2007) 8 SCALE 235 : (2007) 6 SCC 792 : (2007) 7 SCR 356 , has held as under:

"6. The question again came up for consideration before the High Court in *Kerala State Electricity Board Vs. Marthoma Rubber Company Ltd.*, AIR 1981 Ker 223 , wherein a Full Bench of the said Court opined that it would be safe to adopt the means of return on a fixed deposit for the usual period of 5 years or 63 months whichever is held reasonable and anticipated return for long term basis. The usual bank rate of interest at the relevant point of time was 10% for long term deposits, i.e., over 5 years. The said rate of interest was adopted by the Board to be a fair return and the amount of annuity was being calculated on the said basis. However, in *Komath Kumba Amma and Others Vs. Kerala State Electricity Board*, AIR 2000 Ker 215 : (2000) 2 ILR (Ker) 1 , a 5-Judge Bench of the High Court opined that inflation was a relevant factor which should be taken into consideration while computing the amount of compensation for destruction of trees.

7. We may, however, notice that in one of the impugned judgments, a learned Single Judge of the High Court held:-

"The court below has fixed the land value at Rs. 20,000/- per cent and the rate of diminution at 40%. Taking Exhibits A-1 and A-2 produced, the lower court is correct infixing the land value at Rs. 20,000/- per cent (sic which) cannot be the reasonable land value in this case. Hence I fix the land value in this case at Rs. 30,000/- per cent. So also the rate of diminution in land value is fixed at 50% instead of 40% fixed by the court below. The order passed by the court below is modified accordingly."

No reason has been assigned in support of the above view. The materials placed on record were not analysed. Why such a view was taken also does not appear from the records of the case. The amount of compensation is required to be determined keeping in view the purpose and object of the statute. There cannot be any fixed formula therefor or the other. Although, undoubtedly one formula laid down, may assist the Board and/or the Reference Court to apply the same, but there cannot be hard-and-fast rule in this behalf. A fixed formula for determining the amount of compensation although may make the task of the Land Acquisition Officer or the Reference Court easier but in our opinion each case is required to be taken on its own merit. We may hasten to add that the purpose and object of the Act and the methodology laid down therein for the purpose thereof should be the guiding factor. The 5-Judge Bench of the Kerala High Court referred to a large number of decisions which are applicable in the cases of death or fatal accident. It is from that point of view that the 5-Judge Bench proceeded to consider as to what is meant by "real rate of interest". Ultimately opining that 5% return as held in the case of Kerala State Electricity Board and Others Vs. Varghese Thomas and Others, AIR 1961 Ker 237 and not a higher rate of interest as observed in Kerala SEB v. Marthoma Rubber Co. Ltd. should be the guiding factor, it was held (Kumba Amma Case) KLT P. 563 Para 44):-

"The dispute in this case arose when trees standing on petitioners' property were cut down on 9.9.1980. The respondents have not made available before us any material to show that the real rate of interest in 1980 was something different from 5%. Their only contention based on Kerala SEB Kerala State Electricity Board Vs. Marthoma Rubber Company Ltd., AIR 1981 Ker 223 is that what is relevant is the prevalent rate of interest which was 10%. This contention we have already rejected, as such rate does not take into account the factor of inflation. Under these circumstances, we hold that the rate of interest to be applied in the present case is 5%. We hasten to add that we should not be understood as having laid down 5% as the real rate of interest for subsequent period. The rate of interest applicable in India has been held as 4% by Jagannadha Rao, J. in Bhagwandas Vs. Mohd. Arif, (1987) ACJ 1052 : AIR 1988 AP 99 : (1987) 2 ALT 137 . 11 years have lapsed after the above judgment. Whether it should be the same rate of return that has to be applied for the period before and after the above judgment or whether a higher or lower rate, is a matter to be decided in appropriate cases where relevant data is available. Till such time, the Board will adopt 5% as rate of return. But, we make it clear that

cases finally concluded by decisions of the Court will not be reopened."

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9. Both telegraph lines and electrical lines are required to be drawn over the agricultural lands and/or other properties belonging to third parties. In drawing such lines, the entire land cannot be acquired but the effect thereof would be diminution of value of the property over which such line is drawn. The Telegraph Act, 1885 provides for the manner in which the amount of compensation is to be computed therefor. Section 10 of the Act empowers the authority to place and maintain a telegraph line under, over, along or across, or posts in or upon any immovable property. Section 11 empowers the officers to enter on property in order to repair or remove telegraph lines or posts. Section 12 empowers the authority to grant permission for laying down such lines to a local authority in terms of clauses (c) & (d) of the proviso to Section 10 of the Act subject to reasonable conditions as it may think fit. Section 16 of the said Act reads as under:-

"16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.-

(1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code, 1860 (45 of 1860).

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3), or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the persons who has received the same."

10. The situs of the land, the distance between the high voltage electricity line laid there over, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small track of land or through the middle of the land and other similar relevant factors in our opinion would be determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used. "

Ultimately, the Hon"ble Supreme Court remanded the matter to the High Court for fresh consideration.

35. This Court while considering the provisions of Sections 10 and 16 of the Indian Telegraph Act, 1885 in the case of Pejavar Chitananda Rao and Others Vs. Karnataka Electricity Board and Another, (2004) ILR (Kar) 627 : (2002) 3 KCCR 1926 has held that Electricity Board drew high tension power lines over petitioners" agricultural lands for the benefit of 2nd respondent company - Compensation at 10% of value of land was awarded to the petitioners for aerial encroachment is reasonable.

36. The Apex Court considering the procedure to be followed for determination of compensation in respect of trees in the case of K.G. Padmanabha Prabhu Vs. Kerala State Electricity Board and Others, AIR 1998 SC 410 : (1997) 6 JT 406 : (1997) 5 SCALE 9 : (1997) 6 SCC 505 : (1997) 1 SCR 447 Supp at para 5 held as follows:

"The Board has vide Resolution dated July 1, 1992 decided to follow the procedure provided in the Land Acquisition Act and the Land Acquisition Manual for determination of the compensation for trees. It postulates the notice to the owner and powers of entry, marking of the trees as provided in paragraph 13 and then preparation of the valuation statement as provided in paragraph 17 of the Manual and the diminution of the land value on account of the installation of electric lines over private properties as provided in paragraph 30 of the Manual. Accordingly, the award is required to be passed under paragraph 33 of the Manual in that behalf has to be followed."

Admittedly, in the present case, no such procedure is adopted by the learned District Judge. On that ground also, the matter is liable to be remanded for fresh consideration.

37. It is worth mentioning here an article published by one Sri. Kunal Mahajan on 22.06.2013, with regard to "Effects of high voltage transmission lines on humans and plants", wherein it is concluded that according to research and publications put out by the World Health Organisation (WHO), Electro-Magnetic Field such as those from power lines, can also cause short-term health problems, namely:

- (i) Headaches,
- (ii) Fatigue,
- (iii) Anxiety;
- (iv) Insomnia;
- (v) Prickling and/or burning skin;
- (vi) Rashes;
- (vii) Muscle pain.

Long-term health problems include, following serious health problems due to electro-magnetic field effects on human body:

- (i) Risk of damaging DNA;
- (ii) Risk of cancer;
- (iii) Risk of Leukemia;
- (iv) Risk of Neuro-degenerative disease;
- (v) Risk of Miscarriage;
- (vi) EMF effects on animals;

The results of the experiments are shocking as animals (are kept below high electrostatic field, their body acquires a charge and when they try to drink water, a spark usually jumps from their nose to the grounded pipe) like hens are unable to pick up gram because of chattering of their beaks which also affects their growth.

- (vii) EMF effects on plant life;

Most of the areas in agricultural and forest lands where high power transmission lines pass, the voltage level of high power transmission lines are 400 KV, 230 KV, 110 KV, 66 KV etc. the electromagnetic field from high power transmission lines affects the growth of plants.

38. The computation of compensation for determination of market value may be carried out on yield basis and multiplier assessing the value of the land by applying the annual yield, so to say, multiplier method is permissible in view of the dictum of the Hon"ble Supreme Court in the case of State of Haryana Vs. Gurcharan Singh and another etc., AIR 1996 SC 106 : AIR 1995 SC 106 : (1995) 2 JT 345 : (1995) 110 PLR 694 : (1995) 1 SCALE 530 : (1995) 2 SCC 637 Supp : (1995) 1 SCR 408 : (1995) 1 UJ 510 at para 3 held as under:

"3. Ms. Surichi Agarwal, learned counsel for the State, contended that the High Court has committed grave error of law in upholding the determination of the compensation both to the land as well as fruit bearing trees and has also further

committed error in enhancing the market value to the fruit bearing trees in addition to the confirmation of the compensation separately awarded for the land and the fruit bearing trees. It is against the settled principle of law as laid down by this court in catena of decisions. We find force in the contention. Sri Bagga, learned counsel for the respondents, contended that in the year 1966 the price index was at 144 points whereas in 1970 the index was found to be at - 213 points. The High Court, therefore, was right in increasing the compensation for the fruit bearing trees by 60%. We find no force in the contention. It is settled law that the Collector or the court who determines the compensation for the land as well as fruit bearing trees cannot determine them separately. The compensation is to the value of the acquired land. The market value is determined on the basis of the yield. Then necessarily applying suitable multiplier, the compensation needs to be awarded. Under no circumstances the court should allow the compensation on the basis of the nature of the land as well as fruit bearing trees. In other words, market value of the land is determined twice over; once on the basis of the value of the land and again on the basis of the yield got from the fruit bearing trees. The definition of the land includes the benefits which accrue from the land as defined in Section 3(a) of the Act. After compensation is determined on the basis of the value of the land as distinct from the income applying suitable multiplier, then the trees would be valued only as fire-wood and necessary compensation would be given. In this case, the High Court did not adopt this procedure. We have looked into the figures furnished in the judgment of the High Court of the amount awarded by the Officer himself. He too, while determining the compensation at the rate of Rs. 12,240/- per acre on the basis of the yield, applied a multiplier of more than 8 years. Under no circumstances, the multiplier should be more than an 8 years" multiplier, as it is settled law of this court in a catena of decisions that when the market value is determined on the basis of the yield from the trees or a plantation, 8 years" multiplier shall be the appropriate multiplier. For agricultural land 12 years" multiplier shall be a suitable multiplier."

39. The various methods of calculation are contemplated. Accordingly, applying the multiplier method is one of the methods for assessing the land value as held by the Hon"ble Supreme Court in the case of Special Land Acquisition Officer Vs. Karigowda and Others, AIR 2010 SC 2322 : (2010) 4 JT 421 : (2010) 4 SCALE 406 : (2010) 5 SCC 708 : (2010) 4 UJ 2045 at paras 71, 90 and 91 read as under:

"70. To examine what method could be adopted for determining the market value of land and criticism of the method adopted by the Land Acquisition Collector, by the courts, that the same is not in accordance with law, we must notice various methods which are normally adopted by the Courts for determining the fair market value of the land and which of the method can be more properly applied in the facts and circumstances of this case.

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90. In the present cases, the claimants have not only lost their agricultural land but they have also been deprived of seasonal income that was available to them as a result of sale of mulberry leaves. Deprivation of livelihood is a serious consideration. The Court is entitled to apply some kind of reasonable guess work to balance the equities and fix just and fair market value in terms of the parameters specified under Section 23 of the Act. The SLAO has ignored both these aspects firstly providing of annual increase, and secondly, giving some weightage to the special agricultural purpose and the purpose for which the mulberry crop had to be utilized. The claimants have not proved and produced on record sale instances. They have also not produced on record any specific evidence to justify the compensation awarded to them by the Reference Court and/or the High Court. In fact, there is hardly any evidence, much less a cogent and impeccable evidence to support the increase on the basis of net income capitalization method.

91. It is a settled rudiment of law that the Court, in given facts and circumstances of the case and keeping in mind the potentiality and utility of the land acquired, can award higher compensation to ensure that injustice is not done to the claimants and they are not deprived of their property without grant of fair compensation. Reference, in this regard, can be made to the judgment of this Court in the case of Land Acquisition Officer, A.P. Vs. Kamadana Ramakrishna Rao and Another, AIR 2007 SC 1142 : (2007) 8 JT 544 : (2007) 2 SCALE 554 : (2007) 3 SCC 526 : (2007) 2 SCR 327 : (2007) AIRSCW 1145 : (2007) 4 Supreme 728 . While adopting the average sale method as the formula for awarding compensation to the claimants, we are also of the considered view that in the peculiar facts and circumstances of the case and the fact that the land is being compulsorily acquired, the claimants should be awarded a higher compensation. The compensation at the rate of Rs. 2,30,000/- per acre for the wet land and at the rate of Rs. 1,53,400/- per acre for the dry land would be just and fair compensation and would do complete justice between the parties. This element of increase had not been added by the SLAO which ought to have been done."

40. In view of the provisions of Sections 10 and 16 of the Indian Telegraph Act, 1885 and in view of the dictums of this Court and the Hon"ble Supreme Court, stated above, the learned District Judge has not considered both the oral and documentary evidence on record i.e., evidence of P.Ws. 1 to 11 and evidence of R.W. 1 with regard to diminution value of lands and granted only Rs. 1,000/- per gunta which is inadequate without any method of calculation and further directed the respondent - Corporation to calculate the extent of land used for erecting the tower and electric lines in the lands of the petitioners and pay compensation which clearly indicates that the learned District Judge has no clarity with regard to the lands, erected towers and high voltage wires in the lands of the petitioners and what is the extent lines drawn is not forth-coming and it is not the case of the respondent - Corporation that they have all the details of the extent of the petitioners" lands in which they have erected the tower or high voltage wires, in

the absence of any material document and in the absence of fixing the diminishing value of the lands and extent determined by the learned District Judge, the impugned order cannot be sustained in view of the scope and the provisions of Sections 10 and 16(3) of Indian Telegraph Act, 1885 and in view of the dictums of this Court and Hon''ble Supreme Court, stated supra. Wherefore, it is appropriate to remand the matter to the District Judge for reconsideration afresh in accordance with law.

41. Accordingly, all the Civil Revision Petitions are ALLOWED The impugned order passed by the District Judge dated 20.10.2010 is set aside. The matter is remanded to the Principal District Judge, Dharwad, for fresh consideration in accordance with law, to determine the compensation towards the value of the trees and diminution value of the lands of the petitioners, after permitting both the parties to the lis to produce fresh materials or adduce fresh evidence in order to determine the correct extent of the lands in which the electric lines and towers are drawn by the respondent - Corporation and determine the correct value of the trees, crops and diminution value of the lands in accordance with law.

42. Before parting with the matter, it is worthwhile to mention that the sincere service rendered by the learned counsel for the petitioners, claimant and Amicus Curiae appointed by this Court on 29.07.2015, who has taken pains and inspected the spot, produced so many material documents including the photographs to assist the Court effectively. His dedicated service is laudable and the same is placed on record as appreciation.

43. The matter was heard on several dates of hearing and the services rendered by the learned Amicus Curiae is appreciated by the Court. Therefore, the High Court Legal Services Committee, High Court of Karnataka, Dharwad Bench, Dharwad, shall pay a sum of Rs. 10,000/- (Rupees Ten Thousand only), as good gesture of his service.

44. The learned District Judge is directed to issue notice to all the parties to the lis and after giving sufficient opportunity to both the parties and decide the case in accordance with law, keeping in view the dictums of this Court and Hon''ble Supreme Court stated in various cases during the course of the order with regard to value of the trees and the diminution value of the lands and decide the case on merits in accordance with law as expeditiously as possible and not later than one year from the date of receipt of a copy of this order, since the matter is of the year 2008.

Ordered accordingly.