

(2014) 08 KAR CK 0104

In the Karnataka High Court

Case No : Writ Petition No. 6318 of 2014 (GM-KEB)

The Executive Engineer, Karnataka Power Transmission
Corporation Limited (BESCOM)

APPELLANT

Vs

Thippeswamy

RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Electricity Act, 2003 — Section 68
Telegraph Act, 1885 — Section 16(3)

Citation : (2015) 1 AKR 512 : (2014) 6 KarLJ 440 : (2015) 1 KCCR 147

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : B. Rudragowda, Advocate for the Appellant; M.T. Jagan Mohan, Advocate for the Respondent

Judgement

B.S. Patil, J.—Order dated 28-8-2013 passed in Misc. No. 451 of 2012 by the learned Additional District and Sessions Judge, Chitradurga, determining the compensation payable to the landowner-respondent herein for the damage sustained by him to the land and trees on account of 400 K.V. High Tension circuit electricity line drawn by the 1st petitioner-Karnataka Power Transmission Corporation Limited (for short, "the KPTCL") is challenged in this writ petition by the KPTCL and its officials. Facts leading to this case, stated in nutshell, are that the respondent is the owner of land bearing Sy. No. 137/2 situated at Beerenahally Village, Hiriya Taluk, Chitradurga District, measuring 3 acres. The KPTCL has drawn high tension electricity line over the land of the respondent. They have cut 58 coconut plants/trees. The KPTCL paid meager amount as compensation for the damage caused due to the cutting of trees and other damages to the land. Being aggrieved by the same, the respondent-landowner has approached the learned District Judge, Chitradurga, by filing a petition under Section 16(3) of the Indian Telegraph Act, 1885 (for short, "the Act") claiming compensation.

2. The learned District Judge has awarded compensation for an extent of 15.18

guntas of land coming within the corridor area. The market value of the land per acre has been taken at Rs. 2,00,000/- based on the certificate issued by the concerned Sub-Registrar. As regards diminution in the value of the land, learned District Judge has taken 50% of the market value and calculated the same as under:

(Rs. 5000/- per gunta X 15.18 guntas X 50/100 = Rs. 37,950/- rounded off to Rs. 38,000/-)

3. So far as the trees that were cut by the KPTCL, out of 58 coconut plants/trees, 10 coconut plants were six months old. Compensation at the rate of Rs. 500/- for each coconut sapling has been awarded, which amounts to Rs. 5,000/- for 10 saplings. For 48 coconut trees which were three years old, learned District Judge has calculated the yield per tree at 100 coconuts per annum. The market price has been taken at Rs. 7/- per coconut. Deducting 50% towards cost of cultivation, the net income for 1 coconut has been arrived at Rs. 350/- per tree. Therefore, the total amount awarded for 48 trees have been worked out to Rs. 16,800/- per year (Rs. 350/- X 48). Applying the multiplier of 20, compensation of Rs. 3,36,000/- (Rs. 16,800/- X 20) has been awarded. Therefore, for 58 coconut plants/trees, a sum of Rs. 3,41,000/- (Rs. 3,36,000 + Rs. 10,000 = Rs. 3,41,000/-) has been awarded. Out of this amount, a sum of Rs. 26,958/- has been deducted as the same has already been paid. Thus, a sum of Rs. 3,14,042/- rounded off to Rs. 3,15,000/- has been awarded towards cutting of 58 coconut plants/trees.

4. Thus, the landowner has been held entitled for compensation in a sum of Rs. 3,53,000/- along with interest at 6% per annum. Aggrieved by the method adopted by the learned District Judge and the compensation awarded, petitioner-KPTCL has filed this writ petition.

5. I have heard the learned Counsel for both parties.

6. By a detailed judgment rendered in The Executive Engineer Vs. Doddakka, , this Court has considered the legal questions that arise for consideration for grant of compensation for the damage sustained by the landowner on account of the high voltage electrical lines drawn across the agricultural lands.

7. Insofar as the diminution value of the land granted by the learned District Judge, in the facts of the present case, I do not find any justification to award any compensation under this head. The entire land which is utilised as corridor for drawing transmission line was covered by the coconut plants for which compensation has been determined. Therefore, separate compensation for the land even as against the so-called diminution value is not permissible in the facts of the present case.

8. In paragraphs 16 to 22 of the said judgment, this Court has laid down as under:

"16. Now coming to the method to be adopted for valuing fruit bearing tree, the

learned District Judge has taken the economic lifespan of the tree as 35 years and has multiplied the net amount derived as income from the tree by capitalising the income using 35 as multiplier. The Apex Court in the case of Kerala State Electricity Board Vs. C.P. Sivasankara Menon, , while referring to the earlier decision in The Kerala State Electricity Board Vs. Livisha etc. etc., has held that compensation payable to the landowners based on the yield from the tree ought to have been worked out by applying appropriate multiplier as was done in the case of State of Haryana Vs. Gurcharan Singh and another etc., and therefore remitted the matter for fresh consideration to the Competent Court in respect of a similar matter arising from the State of Kerala.

17. In Livisha's case, the Apex Court while considering the determination of compensation made based on the judgment of five-Judges Bench of Kerala High Court in the matter of Komath Kumba Amma and Others Vs. Kerala State Electricity Board, , wherein it was held that the annuity thereof shall be calculated on the basis of 5% return and fixing the rate of diminution in the market value of the land at 50%, after referring to various judgments rendered by the High Court of Kerala at different points of time taking different view in the matter, has observed in paragraph 7 that the amount of compensation payable has to be determined keeping in view the purpose and object of the statute and there cannot be any fixed formula. The Apex Court has pointed out that 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 each case has to be decided on its own merit keeping in mind the purpose and object of the Act and the methodology laid down as guiding factor. In paragraphs 10 to 12 of the judgment in Livisha's case, the Apex Court has observed as under:

"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 tract 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.

11. So far as the compensation in relation to fruit bearing trees are concerned the same would also depend upon the facts and circumstances of each case. We may, incidentally, refer to a recent decision of this Court in Land Acquisition Officer, A.P. Vs. Kamadana Ramakrishna Rao and Another, , wherein claim on yield basis has been held to be relevant for determining the amount of compensation payable under the Land Acquisition Act, 1894; same principle has been reiterated in Kapur Singh Mistri v Financial Commissioner and Revenue Secretary to Government of Punjab, 1995 Supp. (2) SCC 637 , para 4 and Airports Authority of India Vs. Satyagopal Roy and Others, . In the case of Airports Authority of India, it was held: (SCC p. 533, para 14)".

18. It is thus evident that multiplier to be adopted will have to be same as

multiplier adopted under the provisions of the Land Acquisition Act for determining the value of the trees. As regards the nature and quantum of compensation to which the farmer is entitled, measurement of the land, distance between high voltage electrical line laid over the same, extent of the line and also whether only a small tract of land is used or the line is drawn right through the middle of the land and such other similar factors would be determinative for deciding the quantum of compensation to be awarded. Yet another important observation made by the Apex Court in paragraph 10 is that, the value of the land would also become relevant factor and in a given case, the owner of land may be deprived of using the land for the purpose for which the same was meant to be used.

19. If the principles laid down in the above judgments are made applicable to the facts of the present case, it will emerge that the land in question, was used for growing coconut trees and the land is capable of being put to intensive cultivation for growing horticulture crops including for growing toll fruit bearing trees. Thus the best use for which the land can be put to is radically restricted thereby depriving the landowner from utilising his land to its full potential to realise the maximum income and generate more profit. As is evident from the photographs produced by the respondent-farmer, the high voltage electrical line has been drawn across the land damaging not only the 14 coconut trees grown at the edge of the land, but also the land on either side of the corridor. Therefore, the corridor consisting of totally 18 meters, 9 meters on either side has to be treated as an area severely affected depriving the landowner of his right to grow trees or luxuriant shrubs. In fact, petitioners have treated this area only as affected area for the purpose of determining the compensation and also for assessing the value of the trees cut and removed. Even as per the Electricity Act, 2003, Section 68 provides for removal of shrubs, trees and other such growth if they are likely to affect overhead power lines. Therefore, the landowners are not entitled to grow any trees under the corridor area as the same will affect the transmission lines. Apart from this, having regard to the fact that the electrical transmission line has been drawn across the land, it will cause damage depriving the farmer of his efficient use of the other portion of the land. Therefore, the said factor also cannot be lost sight of. In the instant case, the learned District Judge has confined the amount of compensation to be awarded to the actual corridor area. Therefore, even proceeding on the said premise if the compensation were to be calculated, as rightly submitted by the Counsel for the respondent, the best price payable for the coconut grown and the best yield which can be derived and the resultant income generated from the land ought to be taken for the purpose of determining the compensation.

20. The learned Counsel for the petitioners have relied on two judgments of the Apex Court, wherein it has been observed that multiplier of 8 has to be used while capitalising the income to arrive at the capital value. But, the learned Counsel for the respondent has placed reliance on the judgment of the Apex Court in the case of Shaik Imambi Vs. Special Deputy Collector (Land

Acquisition), Telegu Ganga Project, , disposed of on 2-2-2011 to contend that multiplier of 10 has been used for the purpose of capitalising the net income to arrive at the market value. It is further pointed out by the learned Counsel for the respondent that in the two judgments relied upon by the learned Counsel for the petitioners, the Apex Court has remitted the matter leaving open the question for determination by the Court below and has not expressed any final opinion with regard to the multiplier to be adopted.

21. One thing is certain that the multiplier to be adopted cannot be commensurate with the economic lifespan of the tree as has been done by the learned District Judge. He has used multiplier of 35 and has capitalised the net income to arrive at the amount of compensation payable. This approach is impermissible. In land acquisition cases, the value of the acquired land wherein fruit bearing trees are grown has been determined normally by applying 10 multiplier. The Apex Court in the matter of Gurcharan Singh, has held that when the market value of agricultural land is determined on the basis of the yield, then necessarily suitable multiplier deserved to be applied to award reasonable compensation. But under no circumstances, the Court should allow the compensation on the basis of the nature of land and as well as fruit bearing tree. In other words, the market value of the land cannot be determined twice over, once on the basis of the value of the land and again on the basis of the yield secured from the fruit bearing tree, which is impermissible. It is further laid down that once the 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 and necessary compensation should be given. In the said case, the Apex Court has ruled that when the market value is determined on the basis of the yield from the tree or a plantation, 8 years multiplier shall be appropriate multiplier. For agricultural land, 12 years multiplier has been held to be suitable multiplier.

22. From a recent decision of the Apex Court in the case of Shaik Imambi, it is clear that multiplier of 10 has been applied for determining the market value of the agricultural land including fruit bearing tree. Therefore, the multiplier to be adopted in a case like this cannot be more than 10. The learned District Judge has made a mistake in applying multiplier of 35 in arriving at the value of the fruit bearing tree for the purpose of awarding compensation".

9. This Court has further ruled in W.P. No. 39979 of 2013 that in case of fruit bearing coconut trees, multiplier 10 has to be adopted. Annual yield per coconut tree has been taken at 103 coconuts for the lands coming within Hiriyur Taluk of Chitradurga District and the price of each coconut tree has been taken at Rs. 5/- excluding all expenses. However, in the instant case, for three years old 48 coconut trees, learned District Judge has adopted multiplier of 20. This is incorrect. In such circumstances, in my considered view, the multiplier cannot exceed 8 keeping in mind the age of the trees.

10. Thus, following the principles laid down in W.P. No. 39979 of 2013 and taking

the multiplier of 8, if the compensation is worked out for 48 coconut trees, it will come to Rs. 1,97,760/- (48 trees X 103 coconuts per year X 8 years X Rs. 5/- = Rs. 1,97,760/-).

11. The amount awarded towards 10 coconut plants which were six months old at the time when they were cut at the rate of Rs. 500/- per plant appears to be on the lower side. Having regard to the nature of labour and the period of nourishment for which the farmer has worked hard, I am of the view that for each coconut plant of six months old, a sum of Rs. 1,000/- deserves to be allowed, which will come to Rs. 10,000/- for 10 coconut plants (Rs. 1000 X 10 plants). Thus, for 58 coconut trees/plants, a sum of Rs. 2,07,760/- (Rs. 1,97,760 + Rs. 10,000 = Rs. 2,07,760/-) is awarded.

12. In the result, the respondent-landowner will be entitled for total compensation in a sum of Rs. 2,07,760/- instead of Rs. 3,53,000/-. It is made clear that the respondent will be entitled for payment of the said compensation amount after deducting the amount that has been already paid. The respondent will also be entitled for interest on the said amount at the rate of 8% per annum instead of 6% per annum from the date of drawing of the line till the date of payment having regard to the commercial nature of the venture and the nature of loss that the farmer is put to snatching away the income from the fruit bearing trees. Writ petition is accordingly disposed of. The amount in deposit before this Court shall be permitted to be withdrawn by the landowner to the extent of his entitlement. If the amount deposited is less than the entitlement of the landowner, the balance shall be deposited by the KPTCL. If the amount deposited is more than the entitlement of the landowner, the balance shall be refunded to the KPTCL.