
(2017) 02 KL CK 0038
In the High Court Of Kerala
Case No : C.R.P. No. 353 of 2016

V.J. Joseph

APPELLANT

Vs

Power Grid Corporation of India Ltd.

RESPONDENT

Date of Decision : 03-02-2017

Acts Referred:

Telegraph Act, 1885 — Section 16(3)

Citation : (2017) 1 ILRKerala 827

Hon'ble Judges : Mr. A. Muhamed Mustaque, J.

Bench : Single Bench

Advocate : Sri. P.M. Mohammed Shiraz, Advocate, for the Revision Petitioner; Sri. Millu Dandapani, SC, for the Respondent No. 1; Sri. S. Justus and Sri. N.D. Joseph Antony, Advocates, for the Respondent No. 2

Final Decision : Disposed Off

Judgement

Mr. A. Muhamed Mustaque, J.—The revision petitioner is the petitioner in OP (Ele.) No. 41/2012 on the file of Additional District Court-I, Kalpetta, claiming compensation, which has been dismissed, holding that no trees were removed from his property and he cannot approach the court directly claiming compensation. It is challenging this, the revision petitioner has approached this Court.

2. It is urged before this Court that the petitioner had filed an application for appointing a commissioner, but, that was not considered by the court below.

3. The question arose as to the nature of the power, that could be exercised by the District Judge under Section 16(3) of the Indian Telegraph Act, 1885 (for short, "the Act"). In this context, it is appropriate to refer to the above provision, which reads as follows;

"(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. Learned Standing Counsel for the 1st respondent would submit that the petitioner will have to move the authority for claiming compensation at first instance and in the event of denial alone, he can approach the District Judge, alleging insufficiency of compensation.

5. Learned counsel for the petitioner would submit that he has already approached the authority, but, they turned down his request.

6. The question now arises is whether the petitioner is entitled to move the District Judge, claiming compensation, which has not been granted at all. As seen from the above statutory provision, a dispute concerning sufficiency of compensation shall be determined by the District Judge. According to me, sufficiency itself would take in even if he has not been awarded any compensation. It is not a prerequisite that some compensation should be awarded before raising a dispute in terms of Section 16(3) of the Act. If the authority takes a stand that no compensation is liable to be paid, that itself would give cause of action to move the District Judge in terms of Section 16(3) of the Act. The term, "sufficiency", has to be understood as the real compensation payable to the land owner, whether disputing inadequacy of compensation or claiming the entire compensation for the loss suffered by the land owner. Insufficiency is only in the nature of proof to be made before the court as to the claim of compensation, which a land owner is entitled to. The forum for any dispute regarding compensation is, certainly, with the District Judge. I need not disbelieve the claim of the petitioner that his request has been dismissed by the primary authority. In that scenario, cause of action arises, that would entitle the land owner to approach the District Judge.

7. Accordingly, the impugned order is set aside. The matter is remitted back for fresh consideration. If an application for appointment of commissioner has been filed, the same shall be considered by the court below in accordance with law. Parties shall appear before the court below on 01.03.2017.

8. The CRP is disposed of, as above.