

K.G. PADMANABHA PRABHU

A

v.

KERALA STATE ELECTRICITY BOARD AND ORS.

JULY 7, 1997

[K. RAMASWAMY AND D.P. WADHWA, JJ.]

B

*Land Acquisition Act, 1894:*

*Compensation—Award of—Quantum—District Court minutely gone into the question—High Court also looked into the matter—Finding of fact—No interference called for—Diminution of the extent of the land—Trial Court recorded finding and High Court confirming it—No contra finding recorded by the High Court as regards extent of land—Only diminution of the value in issue—Hence no opinion expressed—District Judge to go into the question.*

C

*Constitution of India—Art. 136—Special Leave jurisdiction—Finding of fact—Not interfered with.*

D

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4429-30 of 1997.

E

From the Judgment and Order dated 19.4.96 of the Kerala High Court in C.R.P. Nos. 832 and 834 of 1993.

T.L.V. Iyer, and S. Prasad for the Appellant.

G. Vishwanatha Iyer, T.G.N. Nair, and K.M.K. Nair for the Respondents.

F

The following Order of the court was delivered :

Leave granted. We have heard learned counsel on both sides.

These appeals by special leave arise from the judgment and order of the learned Single judge of the High Court, made on 19.4.1996 in C.R.P. Nos. 832 and 834 of 1993.

G

The admitted facts are that the appellant is having the land (with trees standing thereon) admeasuring 6 acres and 21 cents in Survey No.

H

A 560/2 and 60-1/2 cents in Survey No. 563/1 and 5 acres and 42 cents in Survey No. 634/2 of polluttu village. The respondents invoked by notification dated 21.6.1969, the provisions of Section 51 of the Indian Electricity Act, 1910 and Sections 10 to 18 of the Indian Telegraph Act, 1885 for acquiring the land of the appellant for laying electric lines by cutting the trees standing thereon. The appellant laid the claim before the District Court under Sections 10(2) to 16(3) of the Indian Telegraph Act and Section 51 of the Indian Electricity Act, 1910 for compensation. The District Judge determined the compensation. Dissatisfied therewith, the appellant filed revisions in the High Court. The High Court in the impugned order confirmed the compensation paid for the trees, but set aside the determination of the compensation with regard to the diminution of the value of the land on account of laying of the electric lines across the land of the appellant. Thus, these appeals by special leave.

D Since we were not familiar with the nature of the procedure followed in this behalf, we directed Mr. G. Vishwanatha Iyer, learned senior counsel for the respondent-Electricity Board, to place before us the procedure adopted by the Electricity Board in acquiring the trees for erection of the electric lines across the land of the appellant. An affidavit by the competent officer together with the proceedings has been filed in that behalf. Notification dated June 21, 1969 does indicate as under:

E  
 F  
 G "S.R.O. No, 270/69,— In exercise of the powers conferred by section 51 of the Indian Electricity Act, 1910 (Act 9 of 1910), and in supersession of Notification No. ELI-193/60- I/PW dated 6th January 1960, published on page 50 of Part I of the Gazette dated 12.1.1960, the Government of Kerala hereby confer upon the Engineers of the Kerala State Electricity Board of and above the rank of Assistant Engineers to exercise, for the purpose of placing of appliances and apparatus, for the survey and construction of lines etc. of or the transmission distribution or use of electrical energy within their respective jurisdictions, all the powers which the Telegraph Act, 1885 (Act 13 of 1885) with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained by Government or to be established or maintained."

H In furtherance thereof, sanction has been accorded for acquisition of

the trees as mentioned in the sanction order which reads as under:

"Sanction is hereby accorded for an estimate amounting to Rs.95,000 (Rupees ninety five thousand only) for constructing 2.2 kms. of 11 kv. Kodwagallur - parur feeder outgoing feeder from Kodungallu sub-station under Electrical Division Irinjalakuda Sub-Divn. Iringalakuda Expenditure to the extent of Rs. 95,000 may be met from the budget provision for 76-77 Electrical Division Irinjalakuda under voltage improvement basis."

The Board has vide Resolution dated July 1, 1972 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 instalation 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.

Pursuant thereto, notice in this behalf was given to the appellant and on the basis thereof, the appellant filed the claim in O.P. Nos. 20/87 and 202 of 1986 before the District Court for determination of the compensation. Thus, it could be seen that the claim has been made by the appellant under Section 51 of the Electricity Act, 1910 and Sections 10 to 16(3), Section 16(3) of the Indian Telegraph Act reads as under :

"16(3) If any dispute arise concerning the sufficiency of 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."

It would clearly indicate that if any dispute arises between the parties concerning the sufficiency of compensation, they are entitled to lay the claim before the District Court and the District Court is required to determine the compensation since the procedure prescribed under the Manual of the Land Acquisition was adopted by the Electricity Board. The appellant has rightly availed of the procedure as indicated in the petition itself. Thus, the appellant has perfectly followed the procedure prescribed

**A** by law and needs no interference.

The question then is : whether the courts below have committed any error in determining the compensation? With regard to the quantum, we are of the view that the District Court has minutely gone into the question. The High Court has also addressed itself in this behalf. It being a finding of fact, we do not like to interfere with the findings. With regard to the diminution of the extent of the land, the trial Court has recorded a finding and it was confirmed by the High Court. We feel that since no contra finding was recorded by the High Court as regards the extent of the land and only diminution of the value is in issue, we do not express any opinion in this behalf. The District Judge should go into the question and decide it in accordance with law.

**B**

**C**

The appeals are accordingly dismissed. No costs.

G.N.

Appeals dismissed.