

KERALA STATE ELECTRICITY BOARD

v.

C.P. SIVASANKARA MENON
(Civil Appeal No.4702 of 2008)

JULY 29, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]

Compensation:

*Compensation for fruit bearing trees – Computation of –
Matter remitted to High Court for fresh consideration keeping
in view the principles set out by Supreme Court.*

The instant appeals relate to compensation for valuation of yield of fruit bearing trees cut by the appellants State Electricity Board. It was contended for the appellants that the relevant position in law was not kept in view by the High Court.

Allowing the appeals, the Court

HELD: Following the view expressed by this Court in Livisha's case* the order of the High Court is set aside and the matter is remitted to it for fresh consideration keeping in view the principles set out in the said decision. [Para 6] [434-D]

Case Law Reference

The Kerala State Electricity Board v. Livisha etc. etc. (2007) 7 SCR 356 = 2007(6) SCC 792 followed. [Para 4]

Kumba Amma v. K.S.E.B. 2000 (1) KLT 542 cited. [Para 4]

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 4702 of 2008

From the final Judgment and Order dated 6/1/2006 of the High Court of Kerala at Eranakulam in CRP No. 434 of 2001

A

WITH

C.A. No. 4703/2008

M.T. George for the Appellant.

B

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J.

S.L.P.(C) No.12436 and S.L.P. (C) No. 12438 of 2006

1. Leave granted.

C

2. Challenge in these appeals in each case is to the judgment of a learned Single Judge of the Kerala High Court dismissing the Civil Revision Petition filed by the appellant. In the civil revision petition, challenge was to the order passed by learned Additional District Judge, North Paravur, in O.P. (Electricity) No.40/1996 and 43/96. Several revision petitions were disposed of on the basis of an earlier decision of the High Court in CRP No.507 of 2001 by order dated 03.12.2004.

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3. It is submitted by learned counsel for the appellant that the view of the High Court is not correct. The appellant-Board cut down certain yielding rubber trees, 19 coconut trees, pepper vines, areca nut trees and mango trees for the purpose of laying down 220 KV electric line. The respondents were not satisfied with the awarded amount as determined for payment as compensation. O.P. No.40/1996 in one case and 43/1996 in the other case were filed before the Trial Court claiming additional compensation, which was allowed. The stand of the appellant in this case is that the relevant position in law was not kept in view by the High Court. The dispute related to the compensation awarded for valuation of the yield of the trees and also for the future age of the same and the grant of interest.

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4. In support of the appeal, learned counsel for the appellant-Board submitted that the High Court's judgment is clearly unsustainable as the Full Bench decision of Kerala High Court in *Kumba Amma v. K.S.E.B.* (2000 (1) KLT 542) was set aside

by this Court in *The Kerala State Electricity Board v. Livisha etc. etc.* [2007(6) SCC 792] by the common judgment in Civil Appeal No. 289 of 2006 and other Civil Appeals. This Court set aside the impugned order in each case and remitted the matter back to the High Court for a fresh consideration. It was, inter-alia, observed as follows:

“10. The situs of the land, the distance between the high voltage electricity line laid thereover, 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 v. Kamadana Ramakrishna Rao* (2007 (3) SCC 526) wherein claim on yield basis has been held to be relevant for determining the amount of compensation payable under the Land Acquisition Act; same principle has been reiterated in *Kapur Singh Mistri v. Financial Commr. & Revenue Secy. to Govt. of Punjab* (1995 Supp. (2) SCC 635), *State of Haryana v. Gurcharan Singh* (1995 Supp. (2) SCC 637), para 4 and *Airports Authority of India v. Satyagopal Roy* (2002 (3) SCC 527). In *Airports Authority* it was held: (SCC p. 533, para 14)

“14. Hence, in our view, there was no reason for the High Court not to follow the decision rendered by this Court in *Gurcharan Singh* case and determine the compensation payable to the respondents on the basis of the yield from the trees by applying 8

A years' multiplier. In this view of the matter, in our view,
the High Court committed error apparent in awarding
compensation adopting the multiplier of 18."

B 12. We are, therefore, of the opinion that the High Court
should consider the matter afresh on the merit of each
matter having regard to the fact situation obtaining therein.
The impugned judgments, therefore, cannot be sustained.
These are set aside accordingly. The matters are remitted
to the High Court for consideration thereon afresh. The
appeals are allowed. In the facts and circumstances of the
C case, there shall be no order as to costs."

5. There is no appearance on behalf of the respondents in
each case though notice has been served.

D 6. Following the view expressed by this Court in the deci-
sions referred to above, we set aside the impugned order of
the High Court in each case and remit the matter to it for fresh
consideration keeping in view the principles set out in the deci-
sion referred to above.

E 6. The appeals are allowed without any order as to costs.

R.P.

Appeals allowed.