

# SUPREME COURT OF INDIA

Kerala State Electricity Board

Vs.

Chinamma Antony

C.A.No.....of 2008

(Dr. Arijit Pasayat and H.S. Bedi JJ.)

15.07.2008

## JUDGMENT

**Dr.Arijit Pasayat, J**

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Kerala High Court dismissing the Civil Revision Petition filed by the appellant-the Kerala State Electricity Board (in short the `Board'). Challenge in the Civil Revision was to the order passed by Learned Additional District Judge, Thodupuzha, granting the enhanced compensation for alleged loss suffered by the respondent (hereinafter referred to as the `claimant') on account of drawal of electricity line over her property. The dispute related to the compensation awarded for diminution in land value and the grant of interest. Relying on a full Bench decision on a Kerala High Court in *Kumba Amma v. K.S.E.B.*<sup>1</sup>, the High Court dismissed the Civil Revision Petition.

3. 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 in *Kamba Amma's* case (supra) was set aside by this court in *The Kerala State Electricity Board v. Livisha etc.*<sup>2</sup> 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 is 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*<sup>3</sup> 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*<sup>4</sup>, *State of Haryana v. Gurcharan Singh*<sup>5</sup>, para 4 and *Airports Authority of India v. Satyagopal Roy*<sup>6</sup>. In Airports Authority's case (supra) 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's case(supra) and determine the compensation payable to the respondents on the basis of the yield from the trees by applying 8 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."

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 case, there shall be no order as to costs."

4. There is no appearance on behalf of the respondent though notice has been served.
5. Following the view expressed by this Court in the decision referred to above, and in *The Kerala State Electricity Board v. B. Sreekumari*<sup>7</sup>, we set aside the impugned order of the High Court and remit the matter to it for fresh consideration keeping in view the principles set out in the decisions referred to above.
6. The appeal is allowed without any order as to costs.

<sup>1</sup>[2002 (1) KLT 542]      <sup>2</sup>[2007(6) SCC 792]      <sup>3</sup>(2007(3) SCC 526)      <sup>4</sup>(1995 Supp(2) SCC 635)  
<sup>5</sup>(1995 Supp(2) SCC 637)      <sup>6</sup>(2002(3) SCC 527)      <sup>7</sup>(2008 (5) SCC 398)