



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

SATURDAY, THE SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND NINETEEN

:Present:

Justice G. Bhavani Prasad, Chairman
Dr. P. Raghu, Member
Sri P. Rama Mohan, Member

O.P.No. 38 of 2019 & O.P.No. 39 of 2019

O.P.No.38 of 2019

Between:

G. Vijayabhaskar Reddy

... **Petitioner**

A N D

1. Asst. Executive Engineer, AP Transco, Tirupathi
2. The District Collector, Chittoor

... **Respondents**

O.P.No.39 of 2019

Between:

M. Sambasiva Reddy

... **Petitioner**

A N D

1. Asst. Executive Engineer, AP Transco, Tirupathi
2. The District Collector, Chittoor

... **Respondents**

Both the Original Petitions have come up for hearing finally on 31-08-2019, in the presence of Sri P. Shiva Rao, learned Standing Counsel for the utilities. After carefully considering the material available on record and after hearing the arguments of the learned Standing Counsel for the utilities (none appeared for the petitioner), the Commission passed the following:

COMMON ORDER

O.P.No.38 of 2019 is a petition under Rules 3 (5) and 13 (2) of the Works of Licensees Rules, 2007 to fix a reasonable compensation for the damage caused to the land of the petitioner by construction of two towers and lines and removal of 12 Mango trees and other trees as per the prevailing market rate.

2. The petitioner's case in O.P.No.38 of 2019 is that he has land in Survey No.461/2B of Tadiguntapalli revenue village and in Survey No.1139/2 of Gandaboyanapalli revenue village, Vayalpad Mandal, Chittoor District, in which, the Power Grid Corporation / AP Transco constructed two towers and laid the lines as part of 220 KV DC line from 400 KV SS Kalikiri to 220 KV SS Madanapalli, due to which, the land got damaged and 15 Mango trees and Neem trees were removed. The notices by the 1st respondent about the proposed construction did not give the value of the land and the trees and a very low compensation was fixed without considering the annual income of Rs.5 lakhs derived from the land, the damage to the drip connection, pipelines and fencing, the market value of the land, the location of the land very near to the National Highway and APIIC lands, the commercial nature of the land, the division of the Mango garden of 10 acres into two parts, the land under the lines worth Rs.2 crores becoming useless, the damage to human health by the electromagnetic fields, the prohibition against construction and cultivation under the towers and the lines etc. The petitioner was not consulted and his consent was not obtained. The relevant principles and Government Orders were not followed and hence, the petitioner sought for compensation as per the 2003 Land Acquisition Act.

3. The documents enclosed to the petition show that the petitioner was entered in the revenue records as owner and possessor of the land in question and the signature of the petitioner in the Valuation Statements prepared by the 1st respondent were specifically endorsed to be on protest.

4. The order of the Joint Collector, Chittoor in the name of the District Collector, Chittoor dated 10-04-2018 in Roc.No.G3/49063/2017 only referred to the communication from the 1st respondent, on which, rates were fixed for payment of

land value for tower base area, diminution of the land value in the Right of Way corridor and value of tress / crop by the order *suo motu* but not with any notice to or consent of the petitioner.

5. The 1st respondent filed a counter contending that two 220 KV towers were erected in the land of the petitioner and for the tower at Location No.3, 8 Mango trees were removed and for the tower at Location No.4, 4 Mango trees were removed for which, compensation was paid as per G.O.Ms.No.268 Revenue (LA) Department, dated 14-07-2015. A compensation of Rs.1,00,000/- per each tower was paid towards the land diminution value, as per the Collector's Proceedings dated 10-04-2018, apart from Rs.6,936/- per Mango tree. The land value was fixed based on the basic values and potential of the lands and the existing land values. Acquisition of land or consent of the owner or occupier are not necessary under the Electricity Act, 2003 and the AP Transco possesses the powers of a Telegraph Authority under the Indian Telegraph Act, 1885 by virtue of G.O.Ms.No.115 dated 07-10-2003 and Section 164 of the Electricity Act, 2003. No damage to human health or animals occurred, as the transmission lines are more than 50 feet height above the ground. Hence, the 1st respondent desired the petition to be dismissed with costs.

6. The District Collector, in whose name, the order dated 10-04-2018 was passed, impleaded as 2nd respondent herein, did not enter appearance and did not file any counter.

7. The petitioner filed a rejoinder contending that the compensation of 10% towards diminution of the land value in the width of Right of Way corridor was not paid to him and the photographs showing physical features of the Mango garden evidence the damage claimed by the petitioner. The order dated 10-04-2018 did not

follow basic principles in fixing the compensation and the principles of the statutory rules. Hence, the petitioner prayed for the award of reasonable compensation.

8. O.P.No.39 of 2019 is a petition under Rules 3 (5) and 13 (2) of the Works of Licensees Rules, 2007 for fixing a reasonable compensation for the damage caused to the land of the petitioner, due to construction of two towers and the lines and damage to 12 Mango trees and other trees as per the prevailing market rate.

9. The case of the petitioner in O.P.No.39 of 2019 also relates to the construction of the same line covered by O.P.No.38 of 2019 with one tower and lines having been constructed in patta land in Survey No.509 of Gandaboyanapalli revenue village, Vayalpad Mandal, Chittoor District belonging to the petitioner. 3 Mango trees and 18 Coconut trees aged about 20 years with good yield were removed for construction of the tower and the lines. In the notice prior to the construction, the value of compensation was not stated and the land giving an income of Rs.4 lakhs per annum was damaged. Due to the construction of the tower and line, the drip connection, water pipelines and fencing of the Mango garden were damaged. The existing market rate of the land adjoining APIIC lands and the National Highway was not considered, though such lands cost Rs.9 lakhs to Rs.20 lakhs per acre being commercial lands. The 5 acres Mango garden became divided into two parts, making it as valueless and for the reasons stated in O.P.No.38 of 2019 also, the same impugned order of the District Collector, Chittoor is unsustainable and hence, the petition. The documents attached to the petition are similar to those filed in O.P.No.38 of 2019.

10. The 1st respondent in its counter similar to the counter in O.P.No.38 of 2019 further contended that the tower at Location No.5 was laid in the petitioner's land by removing 18 Coconut trees and 3 Mango trees for which compensation was paid as

per G.O.Ms.No.268 Revenue (LA) Department, dated 14-07-2015 and the land diminution value was paid at Rs.1,70,000/- per tower and Rs.6,936/- per Mango tree and Rs.3,840/- per Coconut tree were paid. There was no damage to the drip pipes, water pipelines and the fencing. The land value was fixed based on the basic values and potential of the lands and the existing land values. The compensation was paid as per the orders of the District Collector, Chittoor. The other contentions of the 1st respondent are similar to those raised in O.P.No.38 of 2019.

11. The 2nd respondent / District Collector, Chittoor did not enter appearance in this petition also. The petitioner in his rejoinder claimed that the compensation for the diminution of the land value in the width of the Right of Way was not paid to him and the basic statutory principles were not followed by the Collector, Chittoor in fixing the compensation. Hence, the petitioner desired the compensation to be awarded as prayed for.

12. The point for consideration is as to the reliefs to which the petitioners are entitled herein.

13. The 1st respondent relied on the interim order passed by the Hon'ble High Court of Andhra Pradesh in I.A.No.1 of 2019 in W.P.No.7359 of 2019 wherein the Writ Petition was filed against the orders of this Commission in O.P.No.51 of 2017. While it is true that it is also a matter relating to compensation, the stay of the operation of a similar order by the Hon'ble High Court is *inter-partes* and not in *rem*. It is true that the decision of the A.P. High Court in Devisetty Ramaswamy Vs The Chief Engineer dated **02-04-2013** in W.P.No.16017 of 2012 was referred to by the Hon'ble High Court, as *prima facie* satisfying the disentitlement of the respondent therein to any compensation. In Devisetty Ramaswamy, the question involved was of an owner / occupier of a premises affected by the laying of lines or posts on being

put on notice demanding an opportunity of hearing before the grounding of the scheme and the Hon'ble High Court held, following the earlier decisions that the AP Transco would not be required either to initiate acquisition of land or obtain consent from the owner and made it clear that the issue of the entitlement of the owner / occupier to compensation would arise only at a later date under Section 67 of the Electricity Act, 2003 and the Works of Licensees Rules framed thereunder. The absence of any right to prior notice before the grounding of the scheme is independent of the entitlement of an owner / occupier to compensation under Section 67 (2) and the Works of Licensees Rules, 2007. Therefore, the petitioners, who are claiming compensation after the towers and the lines were laid and constructed are not legally or factually disabled from claiming compensation under the statutory rules under Section 67 (2).

14. Section 67 of the Electricity Act, 2003 in sub-section (2) (e) provides for appropriate Government making rules for determination and payment of compensation or rent to the persons affected by the works of the licensees. Section 67 (3) of the Electricity Act, 2003 provides that a licensee shall cause as little damage, detriment and inconvenience as may be in exercise of its powers under Section 67 or the Rules made there under and shall make full compensation for any damage, detriment or inconvenience caused by him or any one employed by him. Section 68 (6) of the Electricity Act, 2003 provides for award of reasonable compensation to the person interested in any tree in existence before the placing of the overhead line, which can be recovered from the licensee. While appropriate Government may confer the powers of a Telegraph Authority under the Indian Telegraph Act, 1885 on any public officer or licensee or supplier of electricity for placing of electric lines or electrical plant for transmission of electricity, such powers

of Telegraph Authority under Section 164 of the Electricity Act, 2003 conferred by the appropriate Government shall have to be so exercised as to be in consonance with the determination and payment of compensation under Section 67 (2) (e) and Section 68 (6) of the Electricity Act, 2003 in tune with the accepted principle that all the provisions of a statute must be read together and given effect to.

15. The Government of India made Works of Licensees Rules, 2006 under Section 67 (2), while the Government of Andhra Pradesh made the Andhra Pradesh Works of Licensees Rules, 2007 under Section 67 (2) read with Section 180 (2) (b) of the Electricity Act, 2003. Both the Rules almost are verbatim replicas of each other in their content and substance. Rule 3 of the State Rules which authorizes the licensee to carryout works, states in sub-rule (4) that the District Magistrate authorized by the State Government in this behalf shall, after considering the representations of the concerned persons, fix the amount of compensation or of annual rent or both, which should in his opinion be paid by the licensee to the owner or occupier of a building or land on which any works have been carried out. Full compensation for any loss or damage by reason of carrying out any works is the underlying theme under all the Rules and Rule 13 provides for determination and payment of compensation to affected persons for any loss or damage incurred due to any such works or non-compliance with the Rules. The determination shall be by the District Magistrate authorized by the State Government in this behalf, if not mutually agreed between the parties and any difference or dispute arising as to the amount of compensation determined by the District Magistrate, shall be determined by the State Commission. The Government of Andhra Pradesh appointed the District Collector to exercise the powers and perform the functions and duties under the Andhra Pradesh Works of Licensees Rules, 2007 and directed that any works of

licensees in the State of Andhra Pradesh shall have to be taken up and executed in strict compliance of the said statutory Rules as per G.O.Ms.No.6, Energy, Infrastructure & Investment (Power-III) Department, dated 06-03-2017. The guidelines for payment of compensation towards damages in regard to Right of Way for transmission lines issued by the Ministry of Power, Government of India on 15-10-2015 were initially not accepted by the State of Andhra Pradesh regarding the compensation for the corridor while it opined that 100% land value should be paid for the tower base. However, in G.O.Rt.No.83, Energy, Infrastructure & Investment (Pr.II.A2) Department, dated 20-06-2017, the Government of Andhra Pradesh laid down the guidelines for payment of compensation towards diminution of land value in the width of the Right of Way Corridor with effect from the date of Government Orders.

16. The order of the District Collector, Chittoor in the present cases shows that the District Collector did not consider any representations of the concerned persons in fixing the amount of compensation and in fact, he did not give any notice to the petitioners of his taking up the fixation of compensation. The determination and payment of compensation to the affected persons for any loss or damage incurred due to the works of licensee shall have to be done by the District Collector, if the same is not mutually agreed between the parties and as already stated, the petitioners' signatures on the Valuation Statements were stated to be under protest. The relevant factors to be taken into account as laid down in various decisions of the superior Courts were not even referred to in the bald orders of the Collector and obviously, there was no application of mind to the relevant factors like the location of the land, distance between high voltage electricity line, the manner of passage of the line through the land, loss of the substantive right to use the property, the original

value of the land etc., and determination of reasonable compensation cannot be considered to have been done in accordance with law by the impugned order and in the absence of reasoned judicious determination on merits in accordance with law, both the matters require to be remanded to the Collector, Chittoor for retrial. The exercise of the quasi judicial jurisdiction by the Collector, Chittoor was not in accordance with the statute and the statutory rules and the Collector has to form an opinion of his own under Rules 3 and 4 and determine the full compensation under Rule 13 (1) in his own best judgment on appreciation and evaluation of the material placed before him independently and there was a clear failure of exercise of such jurisdiction in accordance with law by the Collector, Chittoor in the present case.

17. Therefore, the matters are accordingly remitted back to the District Collector, Chittoor for reconsideration of the subject matter of his proceedings in Roc.No.G3/49063/2017 dated 10-04-2018 and redetermination of the reasonable and full compensation to which the Petitioners are entitled by reason of the works of the licensee, in accordance with the Andhra Pradesh Works of Licensees Rules, 2007.

18. The Original Petitions are ordered accordingly. No costs.

This order is corrected and signed on this the **7th day of September, 2019.**

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman