

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31<sup>ST</sup> DAY OF JULY 2017

BEFORE

THE HON'BLE MR. JUSTICE ASHOK B. HINCHIGERI

WRIT PETITION No.40344/2012 (GM-TEL)  
C/W WRIT PETITION No.40343/2012

**W.P.No.40344/2012:**

BETWEEN:

D.K. Thimmanna,  
S/o late Karibasappa,  
Aged about 82 years,  
Agriculturist,  
R/o Hosadadagur Village,  
Hosadadagur Post,  
Molkalmuru Taluk,  
Chitradurga District.

...Petitioner

(By Sri R. Shashidhara, Advocate)

AND:

1. Executive Engineer,  
Bruhath Kamagari Vibhaga,  
KPTCL, R. Hanumanthappa Building,  
P.B. Road, Davanagere.
2. Assistant Executive Engineer,  
Bruhath Kamagari Vibhaga,  
Sub-Division-1, KSRTC,

Depot Road,  
Karnataka Power Transmission,  
Chitradurga.

... Respondents

(By Sri H.V. Devaraj, Advocate for  
Sri N. Krishnananda Gupta, Advocate)

This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to modify the judgment and award passed by the Additional District and Sessions Judge, Chitradurga in Misc.No.57/2010 dated 3.3.2011 vide Annexure-C.

**W.P.No.40343/2012:**

BETWEEN:

D.T. Thimmareddy,  
S/o Thimmappa,  
Aged about 65 years,  
Agriculturist,  
R/o Hosadadagur Village,  
Hosadadagur Post,  
Molkalmuru Taluk,  
Chitradurga District – 577 535.

...Petitioner

(By Sri R. Shashidhara, Advocate)

AND:

1. Executive Engineer,  
Bruhath Kamagari Vibhaga,  
KPTCL, R. Hanumanthappa Building,  
P.B. Road, Davanagere – 577 002.
2. Assistant Executive Engineer,  
Bruhath Kamagari Vibhaga,  
Sub-Division-1, KSRTC,

Depot Road,  
Karnataka Power Transmission,  
Chitradurga – 577 501.

... Respondents

(By Sri H.V. Devaraj, Advocate for  
Sri N. Krishnananda Gupta, Advocate)

This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to modify the judgment and award passed by the Additional District and Sessions Judge, Chitradurga in Misc.No.56/2010 dated 3.3.2011 vide Annexure-C.

These writ petitions coming on for hearing this day, the Court made the following:

### **ORDER**

Both these petitions arise from the common judgment, dated 3.3.2011 passed by the Court of the Additional District and Sessions Judge, Chitradurga in Misc.Nos.56/2010 and 57/2010.

2. The facts of the case in brief are that the electricity towers were installed on the lands in question and high tension transmission lines were drawn on the petitioners' land. The petitioners complained that they suffered diminution in the value of their lands due to the said developments. The respondents paid compensation of ₹19,333/- in respect of the land at R.S.No.67/1B and ₹12,767/- in respect of the land at R.S.No.54 of Dadagur

Village. Not satisfied with the said compensation amount, the petitioners filed Misc.Nos.56/2010 and 57/2010 invoking Section 16(3) of the Indian Telegraphic Act, 1885 before the District Court. The Court of the Additional District and Sessions Judge, Chitradurga by his common judgment, dated 3.3.2011 awarded ₹6,000/- towards the land on which the tower is erected and ₹32,000/- towards the aerial space used, in Misc.No.56/2010 and awarded ₹6,000/- in respect of the land on which the tower is erected and ₹8,500/- towards the aerial space used, in Misc.No.57/2010. The Additional District Court has taken the market value of the land as ₹85,000/- per acre and allowed the diminution at the rate of 50%.

3. Sri R. Shashidhara, the learned counsel for the petitioners submits that in W.P.No.40343/2012 (which arise from Misc.No.56/2010), the land utilized for laying the high tension wire measures 3 acres 20 guntas. He submits that the compensation is awarded only for 30 guntas of land. He complains that no amounts whatsoever are awarded towards the loss of crop and the loss of

trees. He submits that in W.P.No.40344/2012 (which arise from Misc.No.57/2010) compensation is awarded only in respect of 8 guntas, though the total extent utilized is 1 acre 10 guntas.

4. Sri H.V. Devaraj, the learned counsel for the respondents submits that this Court has actually allowed only 30% diminution value. In support of his submissions he read paragraph No.24 of this Court's decision in the case of **EXECUTIVE ENGINEER, KPTCL AND ANOTHER v. DODDAKKA** reported in (2014) 6 K.L.J. 185. Paragraph No.24 of the said decision reads as follows:

*“24. As regards the diminution value of the land falling within the corridor, the learned District Judge having determined the market value of the land has awarded 50% of the same as diminution value. It cannot be disputed that though the farmer is not capable of growing trees underneath the corridor, he is not totally deprived of utilizing the land for carrying out other agricultural operations. He is entitled to grow other crops, which may not affect the high voltage transmission line. Though the farmer is deprived of the opportunity to utilize the land to its full potential and grow horticulture crops, particularly consisting of trees and other luxurious shrubs, he is capable of utilizing the land. The title of the land continues to vest in him. It is, no doubt, true that*

*his access to the land and use of the same by erecting any pole, shed or any other installation will be restricted. In a case like this where high voltage transmission line is drawn across the land, utilization of the other portion of the land is also affected. Therefore, all these factors have to be taken into consideration before determining the diminution in the land value on account of drawing of high voltage electrical line. If these relevant factors are borne in mind, particularly having regard to the photographs produced and the evidence adduced by the claimant - land owner, I find that 30% of the market value of the area affected shall have to be paid as diminution value of the land to the farmer.”*

5. On being asked as to what is the exact extent of the land utilized for setting up the towers, he submits that it may be 14 ft. x 14 ft.

6. The submissions of the learned counsel have received my thoughtful consideration. For more than one reason, the matter requires reconsideration:

- (i) The respondents have not produced the mahazar drawn at the time of erecting the tower and laying the

overhead high tension electricity lines. The forum, which has to determine the compensation has to first ascertain the extent of the land utilized for such putting up of tower.

- (ii) The mahazar is to be produced for establishing as to what crop was grown and how many standing trees were to be cut and at what height they were cut for the purpose of laying the high tension electricity lines.
- (iii) The respondents have not entered the witness box to show to the Additional District Court as to what is the approximate market value of the land. Merely taking the market value at ₹85,000/- per acre based on the sale statistics provided by the Sub-Registrar is not warranted in such cases. The comparable sale statistics is definitely one of the known methods to determine the market value, but the same cannot be employed to

the exclusion of all other methods and more particularly, the capitalization method.

- (iv) It is also not known why the interest is paid only at the rate of 6% per annum. In the absence of any other applicable statutes and evolved guidelines, it may be safer for the Additional District Court to follow the factors, which are to be taken into account and the factors which are to be neglected, as prescribed in Sections 23 and 24 of the Land Acquisition Act, 1894.

7. For all the aforesaid reasons, I set aside the impugned orders and remand the matter to the Additional District Court for fresh enquiry in accordance with law and for the just determination of the compensation payable. It is made clear that the petitioners' claim that they are entitled to compensation for the entire extent of land 3 acres 20 guntas in Misc.No.56/2010 and 1 acre 10 guntas in Misc.No.57/2010 is unequivocally negated, in the wake of this Court's decision in the case of **Doddakka (supra)**. They are



entitled to compensation towards the diminution of market-value, loss of standing crop, cutting of the standing trees, land actually utilized for erecting the tower, etc.

8. These petitions are accordingly disposed of. No order as to costs.

**Sd/-  
JUDGE**

MD/VGR