

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.63 of 2023

Sri Bhupendra Bhowmik

..... Petitioner(s);

Versus

NER-II Transmission Limited

.....Respondent(s)

For Petitioner(s) : Mr. Kundan Pandey, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

22/12/2023

Heard Mr. Kundan Pandey, learned counsel for the petitioner.

Petitioner has approached this Court under Article 227 of the Constitution of India against the judgment dated 21.03.2023 passed by learned District Judge, Unakoti District, Kailashahar in Civil Misc. (Telegraph) No.05 of 2019. The application was preferred under Section 8 of the Indian Telegraph Act, 1885 for compensation for causing damage to the property of the petitioner while laying down 400 KV/132KV/MCMV Transmission Line over the land of the petitioner.

Petitioner is the owner of the land under Khatian No.398, R.S. Plot Nos.3373, 3401, 3402 of mouja- Masauli, under Sub-Division- Kumarghat. The laying down of the transmission lines over the petitioner's land is not in dispute. The payment of Rs.77,000/- as compensation by the Revenue Department to the petitioner is also not in dispute. Petitioner accepted the payment without protest that is also not disputed. However, petitioner approached the Court on the plea that the opposite parties cut 18 numbers of jack fruit trees, 03 nos. of shimul trees, 03 nos. of mani, 03 nos. of black berry

tree, 04 nos. of chaitan tree, 01 no. of awal tree, 01 no. of gamai tree, 05 nos. of mango tree, 03 nos. of rangi tree, 15 nos. of teak tree, 7 nos. of ordinary fire wood tree, 2130 nos. of battle plants, 04 nos. of bamboo clunchs without any assessment and inquiry conducted by the Revenue Department, State of Tripura. According to the petitioner, the cost of the trees was not less than Rs.12 lakhs and the cost of damage to the 1.3 acres of land amounted to Rs.13 lakhs, but a meager sum of Rs.77,000/- only was paid in the first phase of compensation.

The plea was resisted by the opposite party by filing written statement. It contended that the suit is not maintainable, barred by estoppel, waiver and acquiescence and law of limitation and also mis-joinder and non-joinder of parties. It also denied the measurement of land claimed by the petitioner and also denied the story of cutting of trees mentioned by the petitioner in the plaint and the consequent loss claimed by him. It contended that the compensation was assessed by the Revenue Authority and paid to the petitioner. The opposite parties never acquired any land from any person for the purpose of laying transmission line including the petitioner. The compensation is for surface damage during execution of the project as per the provisions of Indian Telegraph Act, 1885. The learned Trial Court framed the following issues for determination:

“4. In order to decide the case my predecessor framed 04(four) nos. of issues, which are as follows:

1. Whether the suit is maintainable or not?
2. Is there any cause of action for the suit?
3. Whether the claimants are entitled to get compensation for damages of their trees/garden standing on case lands for construction of the electric line?
4. Any other relief/relieves are entitled by the parties.”

The petitioner himself adduced evidence by way of examination-in-chief on affidavit and introduced Exhibit-P/1 i.e. Khatian No.398 and a

notice under the Indian Telegraph Act [Exhibit-P/2]. He, during cross-examination, could not say the number of towers which were installed in his land. He contended that no staff of Revenue Department made any survey in his land. He admitted that he had no tea garden of his own, though he claimed the assessing cost of the trees as Rs.12 lakhs, as there were 300 trees on the land. One Survey Commissioner namely Sri Anupam Talukdar was produced by the petitioner who exhibited his report at Exhibit-3. He was also cross-examined. He stated that he had inspected the land of the petitioner as per request of the learned counsel and submitted a report. Learned Trial Court, after consideration of the evidence on record and the pleadings and upon hearing the counsel for the parties, dismissed the claim *inter alia* holding that the petitioner could not state as to how many trees were there in his land. Petitioner failed to submit any document as to the existence of the trees in his land in the absence of which no conclusion can be arrived at on the factual claim of the petitioner regarding felling of his trees. It also observed that for executing such a project under the Telegraph Act, land is not required to be acquired. Petitioner received the compensation with satisfaction and without any protest. The petition also suffered from non-joinder of the parties since the Revenue Department which was a necessary party has not been impleaded. The Survey Commissioner at the instance of the petitioner though submitted his report, but he did not feel it necessary to ensure the presence of independent witnesses and as such, his report cannot be termed as authentic and genuine. For all these reasons, the learned Trial Court held that the petitioner had not been able to prove his claim and consequently claimed higher compensation.

Learned counsel for the petitioner has reiterated the grounds urged before the Trial Court and further submitted that if the matter is remanded, petitioner may be able to adduce evidence as to the actual number of felling of trees and prove that he is entitled to enhanced compensation.

However, upon consideration of the materials on record and upon going through the impugned judgment, this Court is of the view that it was for the claimant to establish the material foundational facts through cogent evidence for sustaining a plea of enhancement of compensation on account of laying down of high transmission lines by the opposite party. On perusal of the reasons recorded by the learned Trial Court as referred to above, this Court finds that neither has the petitioner been able to show the number of trees that were felled, nor did he protest while accepting the compensation of Rs.77,000/- paid on assessment by the Revenue Authority neither the Revenue Department, the necessary party was impleaded in the claim petition. The Survey Commissioner was also appointed at his instance and his report was prepared without the presence of independent witness. As such, this Court does not find any error in the impugned judgment to interfere the exercise of power under Article 227 of the Constitution of India.

The instant revision petition is accordingly dismissed. Pending application(s), if any shall stand disposed of.

(APARESH KUMAR SINGH), CJ