



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 25TH DAY OF FEBRUARY 2020 / 6TH PHALGUNA, 1941

WP(C).No.19446 OF 2019(E)

PETITIONERS:

- 1 RAJAN D. ,
AGED 54 YEARS,
S/O.DANAM, A.R.BHAVAN, KALLUVETTANKUZHI,
VENGANOOR P.O., THIRUVANANTHAPURAM - 695 523.
- 2 YESUDAS F. ,
THANAL COTTAGE, KALLUVETTANKUZHI, VENGANOOR P.O.
- 3 KRISHNAKUMAR V. ,
AGED 42 YEARS,
S/O.VIVEKANANDAN V.P., MEENA BHAVAN,
KALLUVETTANKUZHI, VENGANOOR P.O., THIRUVANANTHAPURAM
- 695 523.
- 4 P.VAHAB,
AGED 59 YEARS,
S/O.PEERUKANNU, V.S.MANZIL, KALLUVETTANKUZHI,
VENGANOOR P.O., THIRUVANANTHAPURAM - 695 523.
- 5 KANNAN ACHARI T. ,
AGED 51 YEARS,
S/O.THANUVAN ACHARI, KAILAS, KUZHIVILA,
KALLUVETTANKUZHI, VENGANOOR P.O., THIRUVANANTHAPURAM
- 695 523.
- 6 FREDDY L AND SHERLY,
KAIRALI NIVAS, KALLUVETTANKUZHI, VIZHINJAM P.O.,
THIRUVANANTHAPURAM - 695 523.
- 7 KUMARESAN P. ,
AGED 62 YEARS,
S/O.PADMANABHAN ACHARI, SOUPARNIKA, KUZHIVILA,
KALLUVETTANKUZHI, VIZHINJAM P.O.
- 8 K.M.ROBERT,
AGED 82 YEARS,
S/O.KESAVAN MANUEL, BETHEL MANDIRAM, KUZHIVILA,
KALLUVETTANKUZHI, VENGANOOR P.O., THIRUVANANTHAPURAM
- 695 523.



- 9 K.SUDHAKARAN NADAR,
AGED 62 YEARS
S/O.KOCHIKRISHNAN NADAR, SOORYA BHAVAN,
VALIYAVEETUVILAKAM, KALLUVETTANKUZHI, VENGANOOR
P.O., THIRUVANANTHAPURAM - 695 523.
- 10 SHIBU TITUS,
AGED 48 YEARS,
S/O.TITUS, KUZHIVILA, KALLUVETTANKUZHI,
VENGANOOR P.O., THIRUVANANTHAPURAM - 695 523.
- 11 BINU MAHESH M.S.,
AGED 48 YEARS,
S/O.MADHAVAN, ROHINI, DHARBHAVILA, VIZHINJAM P.O.,
THIRUVANANTHAPURAM - 695 523.
- 12 KABEER SHA A.,
AGED 41 YEARS,
S/O.AHAMED KANNU, ASUMA MANZIL, KALLUVETTANKUZHI,
VENGANOOR P.O., THIRUVANANTHAPURAM - 695 523.
- 13 CHELLAPPAN NADAR,
AGED 70 YEARS,
S/O.KOCHUKRISHNAN NADAR, K.C.V.BHAVAN,
KALLUVETTANKUZHI, VENGANOOR P.O.,
THIRUVANANTHAPURAM - 695 523.
- 14 K.ANIL KUMAR,
AGED 46 YEARS,
S/O.S.KRISHNAN NADAR, K.S.BHAVAN, PALAPPORU,
VELLAYANI P.O., THIRUVANANTHAPURAM - 695 523.
- 15 KUMAR P.,
AGED 53 YEARS,
S/O.PARAMESWARAN ACHARI, PRANAVAM, KUZHIVILA,
KALLUVETTANKUZHI, VENGANOOR P.O.,
THIRUVANANTHAPURAM - 695 523.
- 16 PATRIK R.,
AGED 52 YEARS
S/O.ROSARIO, KUMAR BHAVAN, KOTTAPURAM P.O.,
VIZHINJAM P.O., THIRUVANANTHAPURAM - 695 523.
- 17 SOORYA R.S.,
AGED 28 YEARS,
D/O.K.SUDHAKARAN NADAR, SOORYA BHAVAN,
VALIYAVEETUVILAKAM, VENGANOOR P.O.,



THIRUVANANTHAPURAM - 695 523.

- 18 BIJU D.S.,
AGED 50 YEARS,
S/O.A.DAMODARAN NADAR, VENGANOOR P.O.,
THIRUVANANTHAPURAM - 695 523.
- 19 FRANCIS XAVIER S.R.,
AGED 63 YEARS,
S/O.SERLING, GRACE BHAVAN, KALLUVETTANKUZHI,
VIZHINJAM P.O., THIRUVANANTHAPURAM - 695 523.
- 20 SYAM KUMAR,
AGED 46 YEARS,
S/O.STEPHANOSE K., PEACE COTTAGE,
KALLUVETTANKUZHI, VENGANOOR P.O.
- 21 SHAJI R.,
AGED 50 YEARS,
S/O.RAJARETHANAM, KUZHIVILA, ROADARIKATHU VEEDU,
KALLUVETTANKUZHI, VENGANOOR P.O.,
THIRUVANANTHAPURAM - 695 523.
- 22 GEETHA O.,
AGED 57 YEARS,
D/O.APPUKUTTAN, GREESHMA BHAVAN, KALLUVETTANKUZHI,
VENGANOOR P.O., THIRUVANANTHAPURAM - 695 523.
- 23 RESHMA SREEKUMAR,
AGED 29 YEARS,
D/O.GEETHA, GREESHMA BHAVAN, KALLUVETTANKUZHI,
VENGANOOR P.O., THIRUVANANTHAPURAM - 695 523.
- 24 BALAKRISHNAN,
AGED 72 YEARS,
S/O.M.GOVINDAN NADAR, VALIYA VEETUVILAKAM,
VENGANOOR P.O., THIRUVANANTHAPURAM - 695 523.
- 25 T.VAIRAVAN ACHARI,
AGED 33 YEARS
S/O.THANUVAN ACHARI, THIRUVONAM, KUZHUVILA,
KALLUVETTANKUZHI, VENGANOOR P.O.,
THIRUVANANTHAPURAM - 695 523.
- 26 ARYA S.,
AGED 24 YEARS,
D/O.K.SUDHAKARAN NADAR, SOORYA BHAVAN,



VALIYAVEETUVILAKAM, KALLUVETTANKUZHI, VENGANOOR
P.O., THIRUVANANTHAPURAM - 695 523.

- 27 DOMINIC V. ,
 AGED 56 YEARS ,
 S/O.VINCENT S. , SWEET HOME, THENNOORKONAM,
 KOTTAPURAM P.O. , VENGANOOR P.O. ,
 THIRUVANANTHAPURAM - 695 523.
- 28 VICTOR LEEN ,
 AGED 47 YEARS
 S/O.LEEN, ANGEL HOUSE, KALLUVETTANKUZHI, VENGANOOR
 P.O. , THIRUVANANTHAPURAM - 695 523.
- 29 JAMES LEEN ,
 AGED 50 YEARS ,
 S/O.LEEN, JERUSALEM BHAVAN, KALLUVETTANKUZHI ,
 VENGANOOR P.O. , THIRUVANANTHAPURAM - 695 523.
- 30 SMITHA RANI ,
 D/O.THANKAMANI NADAR, ACHU NIVAS, NELLIVILA,
 MULLOOR P.O. , THIRUVANANTHAPURAM - 695 523.
- 31 MUHAMMED SHERIEF ,
 AGED 46 YEARS ,
 S/O.PEERUKANNU, AL-NOOR, KALLUVETTANKUZHI ,
 VENGANOOR P.O. , THIRUVANANTHAPURAM - 695 523.
- 32 DHARMARAJ J. ,
 AGED 55 YEARS ,
 S/O.JOHNSON, KALLUKUTHIYAVILA VEEDU ,
 KALLUVETTANKUZHI, VENGANOOR P.O. ,
 THIRUVANANTHAPURAM - 695 523.
- 33 K.S.ANIL KUMAR ,
 AGED 50 YEARS ,
 S/O.SADASIVAN NADAR, RAMA MANDIRAM ,
 KALLUVETTANKUZHI, VENGANOOR P.O. ,
 THIRUVANANTHAPURAM - 695 523.
- 34 M.SWARNAPPAN ,
 AGED 82 YEARS ,
 S/O.MADAPILLA ACHARI, KARUMANIKKA VILAKOM ,
 VIZHINJAM STREET, VIZHINJAM P.O. ,
 THIRUVANANTHAPURAM - 695 523.
- 35 DR.R.L.RAG ,



AGED 41 YEARS,
S/O.S.S.RAJAN, R L NIVAS, KALLUVETTANKUZHI,
VENGANOOR P.O., THIRUVANANTHAPURAM - 695 523.

36 D.S.PADMAKUMARI,
AGED 54 YEARS,
SANGA HOUSE, KALLUVETTANKUZHI, VENGANOOR P.O.,
THIRUVANANTHAPURAM - 695 523.

37 JUSTIN RAJ S.R.,
AGED 52 YEARS,
S/O.Y.SUANNY, RAJ COTTAGE, HOSPITAL ROAD, VIZHINJAM
P.O., THIRUVANANTHAPURAM - 695 523.

38 PRIYADARSHINI L.,
AGED 35 YEARS,
D/O.LATE VAIRAVAN, T.C.NO.38/2940, RAJESH BHAVAN,
CHALAI P.O., KILLIPALAM, THIRUVANANTHAPURAM - 695
523.

39 KRIPA S.,
AGED 13 YEARS
D/O.SHEELA L., PEACE COTTAGE, KALLUVETTANKUZHI,
VENGANOOR P.O., THIRUVANANTHAPURAM - 695 523.

40 M.GANESAN ACHARI,
AGED 81 YEARS,
S/O.MANIKKAM ACHARI, GANESH BHAVAN,
KALLUVETTANKUZHI, VENGANOOR P.O.,
THIRUVANANTHAPURAM- 695 523.

BY ADVS.
SRI.T.R.S.KUMAR
SRI.K.V.SABU
SRI.T.K.SHAJITH
SRI.PRINCE J PANANAL
SMT.DEENA JOSEPH
SMT.DEEPA R MENON
SRI.K.RAJAN (MUHAMMA)

RESPONDENTS :

1 STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

2 THE CHIEF ENGINEER VYDHYUTHI BHAVAN,



THIRUVANANTHAPURAM, K.S.E.B., PIN - 695 004.

- 3 THE DISTRICT COLLECTOR,
COLLECTORATE, CIVIL STATION, KUDAPPANAKUNNU,
THIRUVANANTHAPURAM - 695 004.
- 4 ADDITIONAL DISTRICT MAGISTRATE,
KUDAPPANAKUNNU, THIRUVANANTHAPURAM - 695 004.
- 5 ASSISTANT EXECUTIVE ENGINEER,
LINE CONSTRUCTION, SUB DIVISION, K.S.E.B.,
BALARAMAPURAM - 695501.
- 6 THE MANAGING DIRECTOR,
VIZHINJAM INTERNATIONAL SEAPORT, VIPANCHIKA TOWER,
THYKADU, THIRUVANANTHAPURAM - 695 014.

R2, R5 BY SRI.K.M.SATHYANATHA MENON,SC,KSEB
R2, R5 BY ADV. SMT.KAVERY S THAMPI
R6 BY ADV. SRI.V.J.MATHEW (SR.)
R6 BY ADV. SRI.VIPIN P.VARGHESE, SC
R6 BY ADV. SMT.ATHIRA ANTONY A.
BY ADV. SRI.RON BASTIAN, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
25.02.2020, ALONG WITH WP(C).27378/2019(V), THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 25TH DAY OF FEBRUARY 2020 / 6TH PHALGUNA, 1941

WP(C).No.27378 OF 2019(V)

PETITIONERS:

- 1 LEO L.K.
AGED 50 YEARS
S/O LUKA, KUNNOTH HOUSE, EEZHAKODU,
MALAYINKEEZHU.P.O, THIRUVANANTHAPURAM-695523.
- 2 V.P.DEEPAKUMARI,
AGED 42 YEARS,
D/O VALSALA, SIVADAM CHARUVILA, VENGANOOR.P.O,
THIRUVANANTHAPURAM-695523.
- 3 SHEEJA,
AGED 43 YEARS
D/O THANKAM, NELLIYARATHALA VEEDU,
VENGANOOR.P.O, THIRUVANANTHAPURAM-695523.
- 4 RIAZ.M.K,
AGED 51 YEARS,
S/O MOOSA, KAIRALI NIVAS, PAZHANJIRA ROAD,
THIRUVANANTHAPURAM-695523.
- 5 ANEESH.S,
AGED 35 YEARS,
S/O OMANA,
DEEPALAYAM, CHARUVILA, VENGANOOR.P.O,
THIRUVANANTHAPURAM-695523.
- 6 V.RAJAGOPALAN,
AGED 73 YEARS,
S/O VELAYUDHAN, VAISHNAVAM, KALLUVETTNKUZHI,
VENGANOOR.P.O, THIRUVANANTHAPURAM-695523.
- 7 JAYASREE,
AGED 46 YEARS,
D/O OMANA, AISWARYA BHAVAN, CHARUVILA,



VENGANNOOR.P.O, THIRUVANANTHAPURAM-695523.

- 8 AISWARYA,
AGED 26 YEARS,
D/O JAYASREE, AISWARYA BHAVAN, VENGANOOR.P.O,
THIRUVANANTHAPURAM-695523.
- 9 SHINE,
AGED 37 YEARS
S/O SUKUMARAN, NELLIYARATHALAVEEDU,
VENGANNOOR.P.O, THIRUVANANTHAPURAM-695523.
- 10 LIGI,
AGED 32 YEARS,
D/O LEELA, NELLIYATHARAVEEDU, VENGANOOR.P.O,
THIRUVANANTHAPURAM-695523.
- 11 NANDAKUMAR.A.J,
AGED 27 YEARS,
S/O JAYALEKSHMI, HARIHARAVILASAM, VENGANOOR.P.O,
THIRUVANANTHAPURAM-695523.
- 12 AMBIKA DEVI.D,
AGED 46 YEARS,
D/O SEKCHARAPILLA, HARIHARAVILASAM,
VENGANNOOR.P.O, THIRUVANANTHAPURAM-695523.
- 13 UNNIKRISHNAN,
AGED 53 YEARS,
S/O SELHARAPILLA, KRISHNASREE, CHAMAVILAKAM,
MULLOOR.P.O, THIRUVANANTHAPURAM-695521.
- 14 SINDHU.S,
AGED 45 YEARS
D/O SUBHADRA, MADATHI MELE VEEDU, CHARUVILA,
PEECHOTTUKONAM, VENGANOOR.P.O,
THIRUVANANTHAPURAM-695523.
- 15 GOPI,
AGED 74 YEARS,
S/O.VELUKUTTY, CHARUVILA PUTHENVEEDU,
VENGANNOOR.P.O, THIRUVANANTHAPURAM-695523.
- 16 PANIYAMMA,
AGED 36 YEARS
D/O MARIAMARY, NELLIYATHALAVEEDU, LILLY LAND,
VENGANNOOR.P.O, THIRUVANANTHAPURAM-695523.



- 17 SANTHA.P,
 AGED 58 YEARS,
 W/O SURENDRAN, NELLIYATHALAMELETHIL VEEDU,
 VENGANOOR.P.O, THIRUVANANTHAPURAM-695523.
- 18 AJITHKUMAR.S,
 AGED 49 YEARS,
 S/O SADASIVAN, ABHIJITH NIVAS, KALLUVETTANKUZHI,
 VENGANOOR.P.O,
 THIRUVANANTHAPURAM-695523.
- 19 RINI GEORGE,
 AGED 46 YEARS,
 D/O ALEYKUTTY GEORGE, KANNOOTHU HOUSE,
 EEZHAKKODU, MALAYINKEEZHU.P.O,
 THIRUVANANTHAPURAM-695571.
- 20 LEELA,
 AGED 58 YEARS,
 W/O SREEDHARAN, NELLIYARATHALAVEEDU,
 VENGANOOR.P.O, THIRUVANANTHAPURAM-695523.
- 21 MANJU.V,
 AGED 44 YEARS,
 D/O VALSALA, PRANAVAM, ADMABHODHINI, KALLIYOOR,
 THIRUVANANTHAPURAM.
- 22 HARIKUMAR.R,
 AGED 48 YEARS,
 S/O RAJAPPAN NAIR, SIVADAM, CHARUVILA,
 VENGANOOR.P.O, THIRUVANANTHAPURAM-695523.
- 23 KRISHNA.D.H,
 AGED 16 YEARS,
 D/O DEEPAKUMARY, REP.BY HER MOTHER DEEPA KUMARI,
 SIVADAM, CHARUVILA, VENGANOOR.P.O,
 THIRUVANANTHAPURAM-695523.
- 24 APPU,
 AGED 51 YEARS,
 S/O MADHAVAN NAIR, NELLIYARATHALAVEEDU,
 VENGANOOR.P.O, THIRUVANANTHAPURAM-695523.
- 25 SHIBU.T.I,
 AGED 41 YEARS,
 S/O THANKAMANI, POONKAVANAM, MULLOOR.P.O,



THIRUVANANTHAPURAM.

- 26 SUMITHAKUMARI.V,
AGED 35 YEARS,
W/O SHIBU, POONKAVANAM, MULLOOR.P.O,
THIRUVANANTHAPURAM.
- 27 AJITH.R,
AGED 63 YEARS,
S/O RAGHAVAN, AMJITH BHAVAN,VENGANOOR.P.O,
THIRUVANANTHAPURAM.
- 28 MURUKAN.A,
AGED 48 YEARS
S/O.M.APPU, SUNDHARAMANGALATH VEEDU,
NEELAKESHI TRANSFORMER ROAD,
VENGANOOR.P.O, THIRUVANANTHAPURAM.
- 29 PREETHA.S,
AGED 37 YEARS,
W/O MURUKAN, SUNDHARAMANGALATH VEEDU,
NEELAKESHI TRANSFORMER ROAD, VENGANOOR.P.O,
THIRUVANANTHAPURAM.

BY ADVS.
SRI.T.R.S.KUMAR
SMT.DEENA JOSEPH
SHRI.ABHILASH AUGUSTINE M.

RESPONDENTS :

- 1 STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 2 THE CHIEF ENGINEER,
VYDHYUTHI BHAVAN, KERALA STATE ELECTRICITY
BOARD, THIRUVANANTHAPURAM-695004.
- 3 THE DISTRICT COLLECTOR,
COLLECTORATE, CIVIL STATION,
KUDAPPANAKUNNU, THIRUVANANTHAPURAM-695004.
- 4 THE ADDITIONAL DISTRICT MAGISTRATE,
CIVIL STATION, KUDAPPANAKUNNU,
THIRUVANANTHAPURAM-695004.



5 THE ASSISTANT EXECUTIVE ENGINEER,
KERALA STATE ELECTRICITY BOARD,
LINE CONSTRUCTION,SUB DIVISION,
BALARAMAPURAM-695501.

6 THE MANAGING DIRECTOR,
VIZHINJAM INTERNATIONAL SEAPORT,
VIPANCHIKA TOWER,THYKADU,
THIRUVANANTHAPURAM-695014.

R2, R5 BY ADV. SRI.K.M.SATHYANATHA MENON

R2, R5 BY ADV. SMT.KAVERY S THAMPI

R6 BY ADV. SRI.VIPIN P.VARGHESE, SC

SRI RON BASTIAN GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
25.02.2020, ALONG WITH WP(C).19446/2019(E), THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

The writ petitioners herein are residents of Vizhinjam and Venganoor Village within the limits of Neyyattinkara Taluk, Thiruvananthapuram District. They are the owners of certain tracts of land in the said village. They have approached this Court with these petitions seeking the following relief.

i) Issue a writ of mandamus or any other writ or direction and directing the respondents to grant compensation, rehabilitation and resettlement package in accordance with Right to Fair Compensation and Transparency in Land Acquisition, rehabilitation and Resettlement Act 2013 for the land owners in the interests of justice;

2. Since identical reliefs are sought for in these petitions, they are taken up and disposed of by a common judgment.

3. The petitioners contend that the Kerala State Electricity Board Limited (KSEBL) has launched the construction of a 220 KV Multi Circuit Lines from Kattakada to Balaramapuram to supply power to the Vizhinjam International Sea Port Limited. Though the petitioners are also elated with the project as it would generate all round development and employment,



they are aggrieved by the fact that the compensation to the persons affected are not being calculated and disbursed as per the provisions of the prevailing laws. It is contended that for the purpose of drawing the line, the right of way required is in excess of 35m. According to the petitioners, the property likely to be affected by the drawing of line is more than 5 Acres. The affected properties are lying in a place with high potential and the market value of land in the area is very high. They contend that even in cases of drawing of lines in tune with the provisions of the Electricity Act, 2003 and the Indian Telegraph Act, 1885 ('Act 13 of 1885' for short) , the compensation for determining the market value of the property has to be in tune with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('Act 30 of 2013' for short). Placing reliance on Ext.P1 decision dated 28.8.2015 and Ext.P2 order of the same date of the Ministry of Rural Development, which have been produced in W.P.(C) No.19446/2019, it is contended that the provisions of Act 30 of 2013 relating to determination of compensation in accordance with the I schedule, rehabilitation and resettlement in accordance with the II schedule and infrastructure amenities in accordance with the III schedule shall apply to all cases of land acquisitions under the enactments specified in the IV schedule to the said Act. It is further contended that after the coming into force of Act 30



of 2013, Act 13 of 1885 and its provision will have no application for the purpose of determination of compensation in case of drawing of lines. The petitioners would also rely on Section 105 of the Electricity Act, 2003 and it was argued that the KSEBL is liable to determine the compensation as per Act 30 of 2013. It is further contended that the residents of the area caused obstructions and hence the 5th respondent referred the matter to the 4th respondent under Section 16 (1) of Act 13 of 1885. However, the 4th respondent without considering the facts and circumstances granted permission to the 5th respondent by Exhibit P5 order in W.P.(C)No.27378 of 2019 to draw 220 KV lines through the property owned and possessed by the landowners in the locality. Exhibit P5 order suffers from lack of application of mind and arbitrariness and the same is liable to be set aside, is the contention.

4. The respondents 2 and 5 has filed a counter affidavit as directed by this Court. It is contended that the project of drawing 220 KV Multi Circuit Line from Kattakada to Balaramapuram and a Double Circuit Line from Balaramapuram to Vizhinjam for a total distance of 23 kms was envisaged to cater to the power deficient Southern and the Eastern regions of Thiruvananthapuram District by upgrading the existing 66 KV Sub station to 220 KV and also to supply power to the Vizhinjam International Sea Port



Ltd. It is contended that the notification was published in the gazette as early as on 22.12.2009 and an extensive survey was carried out. The KSEBL gave preference to vacant lands, the existing 66 KV Line and the least populated areas. The route chosen is the most economical and feasible one and which causes least inconvenience to the public at large. It is further contended that the Board has exercised the powers of drawing the line under Section 164 of the Electricity Act, 2003 read with Section 10 of Act 13 of 1885. When dispute was raised, the matter was referred to the 4th respondent under Section 16(1) of the Telegraph Act and the authority had permitted the licensees to draw the line. It is further contended that in order to facilitate the construction of line, the trees along the right of way of the proposed line are to be cut and removed and compensation for the trees which are to be cut and removed will be provided to the affected parties in accordance with the guidelines regulating payment of compensation. It is further contended that there is no acquisition of land as envisaged under the Land Acquisition Act and the land continues to be under the possession and ownership of the owners itself. The respondents have denied that they are acquiring any private properties for constructing the transmission lines as contended by the petitioners. They urge that the provisions of Act 30 of 2013 would apply only if land acquisition is carried out and not in cases which is covered



under Section 164 of the Electricity Act r/w. Section 10 and 16 of the Telegraph Act. They urge that the existence of a line will not affect the utility of the land and the only restriction placed is that the agricultural activity under the line shall be restricted. The respondents deny that the drawal of the line would make that portion of the land useless and asserts that the petitioners can carry out construction in the right of way after maintaining statutory clearance. It is further contended that the line which is being drawn is only an upgradation from the old 66KV line to 220 KV line with comparatively small deviation due to the construction of the new Highway by the National Highway Authority of India. According to the respondents, since the prayer sought for is one for compensation, the parties be relegated to the appropriate authority and if they are unsatisfied with the amount of compensation, they can always approach the District Court and can file petition seeking enhanced compensation.

5. Heard Sri.T.R.S.Kumar, the learned counsel appearing for the petitioners and Sri. Satyanatha Menon, the learned standing counsel appearing for the KSEB.

6. The main contention advanced by the petitioners is that the provisions of Act 30 of 2013 should be followed even in cases where lines are drawn by the licensee on the strength of provisions under Section 164



of the Electricity Act, 2003 and S.10 & S.16 (1) of the Act 13 of 1885.

7. Act 30 of 2013 was enacted to ensure a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and also to provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition. The provisions of the Act are intended to make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition, social and economic status and for matters connected therewith or incidental thereto.

8. The Electricity Act, 2003 and Act 13 of 1885 are the relevant statutes which are applicable when it is required to place electrical lines or electrical plants for transmission of the electricity in public interest. Section 164 of the Electricity Act, 2003 provides for the exercise of powers of Telegraph authority on any public officer, licensee or any other person engaged in the business of supplying electricity under the provisions of the Act subject to certain conditions. While conferring powers as aforesaid, the



appropriate Government may impose the provisions of Act 13 of 1885, any of the powers which the Telegraph authority possesses under that Act with respect to placing of telegraph lines and posts for the purpose of a telegraph established or maintained by the Government or to be so established or so maintained. Section 10 of the Telegraph Act grants power to the Telegraph authority to place and maintain telegraph lines. The said provision provides that the authority may from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immovable property. When resistance or obstruction is offered and when disputes are raised with regard to the quantum of compensation in case of property other than of a local authority, one may have to fall back to Section 16 of Act 13 of 1885. Section 16 provides that if in the exercise of powers mentioned in S.10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them. Section 16(3) of Act 13 of 1885 provides that if any dispute arises concerning the sufficiency of the compensation to be paid under Section 10, it shall on application for that purpose by either of the disputing party to the District Judge having jurisdiction over the local area shall determine the question. Sub clause (4) of Section 16 provides that even disputes as to the persons entitled to receive compensation or as to the



proportions in which the persons interested are entitled to share are all to be determined by the District Judge on an application made by the telegraph authority. Sub clause (5) provides that the determination of such a dispute by a District Judge shall be final.

9. In the case on hand, obstruction was caused by some of the residents and the additional District Magistrate, Thiruvananthapuram has considered the issue in all perspectives and has issued an order permitting the licensee to draw the transmission line through the sanctioned route.

10. There is no dispute that no property of the petitioners are being acquired for the purpose of drawal of the transmission line as contemplated under the provisions of Act 30 of 2013. Much reliance is placed by the learned counsel on Section 105 and Section 113 of the Act and also the IV Schedule of the Act to substantiate his contention that compensation will have to be assessed in tune with Act 30 of 2013. In my considered opinion, the argument raised by the petitioners have no basis.

11. It would be apposite at this juncture to refer to the said provisions

105. Provisions of this Act not to apply in certain cases or to apply with certain modifications.-(1) Subject to sub-section (3),



the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

(2) Subject to sub-section (2) of section 106, the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.

113. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Part, the Central Government may, by order, make such provisions or give such directions not inconsistent with the provisions of this Act as may



appear to it to be necessary or expedient for the removal of the difficulty:

Provided that no such power shall be exercised after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

12. Section 105 of Act 30 of 2013 provides that the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the IV Schedule and enables the Central Government to omit or add to any of the enactments specified in the IV Schedule in accordance with Section 106 of the Act. It also enables the Central Government to direct by issuing a notification that any of the provisions of this Act relating to the determination of compensation in accordance with the I Schedule and rehabilitation and resettlement specified in the II and III Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the IV Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.



13. The IV schedule contains a list of enactments as mentioned in Section 105 of the Act.

"LIST OF ENACTMENTS REGULATING LAND ACQUISITION
AND REHABILITATION AND RESETTLEMENT

1. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958).
2. The Atomic Energy Act, 1962 (33 of 1962).
3. The Damodar Valley Corporation Act, 1948 (14 of 1948).
4. The Indian Tramways Act, 1886 (11 of 1886)
5. The Land Acquisition (Mines) Act, 1885 (18 of 1885).
6. The Metro Railways (Construction of Works) Act, 1978 (33 of 1978).
7. The National Highways Act, 1956 (48 of 1956).
8. The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962).
9. The Requisitioning and Acquisition of Immovable Property Act, 1952 (30 of 1952).
10. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (60 of 1948).
11. The Coal Bearing Areas Acquisition and Development Act, 1957 (20 of 1957).
12. The Electricity Act, 2003 (36 of 2003).
13. The Railways Act, 1989 (24 of 1989)"

14. The Electricity Act, 2003 has been included as item No. 12 in



the IV Schedule. Section 113 enables the Central Government, in case any difficulty arises in giving effect to the provisions, to give directions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for the removal of the difficulty and it further provides such power shall not be exercised after the expiry of a period of two years. The said provision also provides that every order made under the said Section shall be laid before each House of Parliament.

15. From Ext.P1 and P2 produced in W.P.(C) No.19446/2019, [Exts.P2 and P3 in W.P.(C) No.27378/2019], it is apparent that those orders have been issued under Section 113 of Act 30 of 2013. It states that the provisions of Act 30 of 2013 relating to determination of compensation in accordance with the I Schedule, rehabilitation and resettlement in accordance with the II Schedule and infrastructure amenities in accordance with the III Schedule shall apply to all cases of land acquisition under the enactments specified in the IV schedule of the Act. Though there are no materials to show that the order which is relied on by the petitioners have been laid before each House of the Parliament, the fact remains that there is no land acquisition in the instant case. If there is no acquisition of land, there cannot be any application of the provisions of Act 30 of 2013.

16. In **KSEB v. Livisha and Others**¹, the Hon'ble Supreme Court

¹ [2007 (3) KLT 1]



had occasion to consider the provisions of Act 13 of 1885 and the methodology for determination of compensation. In paragraph No. 9 of the judgment, it was observed as follows:

"9. Both telegraph lines and electrical lines are required to be drawn over the agricultural lands and / or other properties belonging to third parties. In drawing such lines, the entire land cannot be acquired but the effect thereof would be diminution of value of the property over which such line is drawn. The Telegraph Act, 1885 provides for the manner in which the amount of compensation is to be computed therefor. S.10 of the Act empowers the authority to place and maintain a telegraph line under, over, along or across, or posts in or upon any immovable property. S.11 empowers the officers to enter on property in order to repair or remove telegraph lines or posts. S.12 empowers the authority to grant permission for laying down such lines to a local authority in terms of clauses (c) and (d) of the proviso to S.10 of the Act subject to reasonable conditions as it may think fit.

.....

XXXXX XXXXX

XXXXXXXXXX

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 track 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.

17. As held above, when telegraph and electrical lines are drawn, land is not necessarily acquired. However, the affected party would suffer from diminution of value of the property over which such line is drawn and also loss due to cutting down of trees. The provisions of Act 13 of 1885 provides for the manner in which the amount of compensation is to be computed therefor. The factors which are to be taken into consideration would include the market value of the land, the right of way that is likely to be affected, the extent of line, the nature of agriculture, the nature of the yielding trees situated therein etc. Various factors that are to be taken into consideration for the purpose of fixation of compensation have been detailed in **Livisha** (supra). Full compensation for the loss sustained by the affected persons will have to be paid by the concerned respondents. If the affected persons have any further grievance, they can approach the District Judge within whose jurisdiction the property is situated.

18. In that view of the matter, I am unable to accept the contention of the learned counsel that the respondents are not liable to grant



compensation, rehabilitation and resettlement package in accordance with Act 30 of 2013 simply because, there is no land acquisition in these cases. The petitioners shall be entitled to compensation as contemplated under the provisions of Section 16 of Act 13 of 1885.

These writ petitions will stand dismissed.

Sd/-

RAJA VIJAYARAGHAVAN V

JUDGE

sru



APPENDIX OF WP(C) 19446/2019

PETITIONERS' EXHIBITS:

- | | |
|------------|---|
| EXHIBIT P1 | TRUE COPY OF THE DECISION DATED 28/8/2015
ISSUED BY MINISTRY OF RURAL DEVELOPMENT. |
| EXHIBIT P2 | TRUE COPY OF THE ORDER DATED 28/8/2015 BY
MINISTRY OF RURAL DEVELOPMENT. |
| EXHIBIT P3 | TRUE COPY OF MINUTES DATED 7/6/2009
ISSUED BY THE 4TH RESPONDENT. |
| EXHIBIT P4 | TRUE COPY OF THE ORDER DATED 19/06/2019
ISSUED BY THE 4TH RESPONDENT. |

RESPONDENTS' EXHIBITS:NIL



APPENDIX OF WP(C) 27378/2019

PETITIONERS' EXHIBITS:

EXHIBIT P1	TRUE COPY OF REPLY LETTER DATED 27.9.2019 A PER THE RIGHT TO INFORMATION APPLICATION
EXHIBIT P2	TRUE COPY OF THE DECISION DATED 28.8.2015 ISSUED BY THE MINISTRY OF RURAL DEVELOPMENT
EXHIBIT P3	TRUE COPY OF THE ORDER DATED 28.8.2015 BY MINISTRY OF RURAL DEVELOPMENT
EXHIBIT P4	TRUE COPY OF MINUTES DATED 18.7.2019
EXHIBIT P5	TRUE COPY OF THE ORDER NO.S1-52873/16 AUGUST 2019
EXHIBIT P6	TRUE COPY OF THE ORDER IN O.P. (ELECTRICITY)NO.76/2010 DATED 20.12.2014 IN ADDL.DISTRICT COURT II,KALPATTA, WAYANAD.

RESPONDENTS' EXHIBITS:NIL