

Naresh Jain, Advocate with Amit Kumar, Advocate, *for the petitioner* in CR-3502-2017; CR-1280-2020, CR-3503-2017 and CR-3830-2017 and for respondent No.1 CWP-21878-2017, CR-2873-2021, for respondent No.5 in CWP-26406-2017, for respondent No.16 in CWP-28570-2017 and for respondent No.4 in CWP-9495-2017.

Govind Goel, Advocate & Amit Kashyap, Advocate, *for the petitioner* in CWP-21878-2017.

Raghav Goel, Advocate & Satpal Bhasin, Advocate, *for the petitioner* in CR-2873-2021.

Deepak Balyan, Advocate, *for the petitioner* in CWP-26406-2017 & CWP-28570-2017.

Anil Dutt, Advocate with S.P. Khatri, Advocate, *for the petitioner* in CWP-9495-2017 & for respondent No.1 in CWP-28570-2017 & for respondents No.1 to 13 in CR-3503-2017.

Pankaj Mulwani, DAG, Haryana.

R.D. Bawa, Advocate with Samuel Gill, Advocate & Randhir Bawa, Advocate for respondent No.2-HVPL in CWP-21878-2017.

R.S. Longia, Advocate, for respondents No.2 & 3 in CWP-9495-2017.

VINOD S. BHARDWAJ, J. (ORAL)

(1) A batch of 09 petitions is being decided by a common judgment as the counsel for the respective parties agree that the issue involved in the present batch of petitions relates to compensation for the same transmission line and can be decided together. The challenge is to the Award dated 28.02.2017 passed by the Additional District Judge, Sonapat. The land owners have assailed the judgment and decree on the ground that the same is inadequate while the Transmission Licensee has assailed the awarded amount to be high.

(2) For the facility of reference, the facts are being extracted from CWP-21878 of 2017 titled as 'Vinod and others Vs. Kalpataru Power Transmission Ltd. and others'.

(3) Briefly summarized, the facts of the present case are that the petitioners No.1 and 2 are owners in possession of 3/5 share out of total land measuring 55K-7M comprising in Khewat No.6, whereas petitioners No.3 to 6 are the legal representatives of deceased Tara Chand and are owners in possession of agricultural land measuring

98K-4M comprising in Khewat No.69/60 and khata No.101 situated in the revenue estate of village Rai, Tehsil and District Sonapat. The details of the above mentioned land is duly given in paragraph No.3 of the petition. Both above mentioned chunks of land are situated in the vicinity of the border of National Capital and fall within the National Capital Region. It is thus alleged that the land in question has a great market value owing to its potential and that the said valuation has diminished considerably on account of installation of electric poles and the 400 KV High Tension Wires. The petitioners claim to have received notices in the year 2011 regarding installation of electric poles and erecting 400 KV Jharli-Kabulpur- Deepalpur High Tension wire in the land of the petitioners. It is averred that laying of such transmission line has affected the land measuring 8000 Sq. Yards belonging to the petitioners No.1 and 2, whereas land measuring 6747 Sq. Yards pertaining to petitioners No.3 to 6 was also affected. It has been averred that owing to the immense potential of the said land and the same being situated near the National Capital, the market value of the land is approximately Rs.5 crores per acre. The respondents, however, awarded a very meager compensation of Rs.82,573/- to petitioners No.1 and 2; and a sum of Rs.98,776/- to petitioners No.3 to 6 as compensation towards the crop damage. A legal notice was served by the petitioners upon the respondent-Authorities and thereafter a petition under Section 16(3) of The Indian Telegraph Act, 1885 was preferred before the Addl. District Judge, Sonapat and compensation to tune of Rs.10,000/- per square yard was claimed by the petitioners qua their respective affected areas.

(4) Pursuant to the notice issued by the Addl. District Judge, respondent No.1 appeared and filed written statement thereby raising preliminary objections regarding maintainability, locus standi, cause of action, suppression of material facts etc. On merits, it has been asserted that the answering respondent had installed towers only as per the sanctioned route map, which was provided by the government. The answering respondent had not acquired any land, rather the land in question is fully useable for agriculture even after installation of the said towers in the fields of the petitioners. It was further asserted that as per the provisions of Indian Telegraph Act, 1885 the petitioners are only entitled for compensation for the crops only. It has been submitted that notices were issued to the petitioners regarding installation of the towers of the electricity line and for that purpose, the answering respondent distributed the compensation for damages to the crops and an amount of Rs.98,776/- has also been accepted by the petitioners. It was denied that the answering respondent did not adopt proper procedure and also denied that the market value of the land is Rs.5

crores per acre. Denying all other material averments, dismissal of the suit has been prayed for.

(5) Respondent No.2 filed his separate written statement thereby raising preliminary objections qua maintainability, cause of action, locus standi, estoppel, affixation of proper court fee etc. On merits, it has been asserted that the line erected by the respondents is very high and during installation no crop was affected in the fields of the petitioners rather the answering respondent has paid the compensation for damages to the crops at the time of installation of the said towers. It is further asserted that land of the petitioners was not acquired and the wires of line pass at a high distance from the ground and the same being an agricultural land, their crops will in no case be damaged. That there can be no obstruction in harvesting of the crop merely by erecting the electric poles and transmission lines. Denying all other material averments, dismissal of the suit had also been prayed for.

(6) The respondent No.3 adopted the written statement already filed on behalf of respondents No 1 and 2.

(7) After considering the respective contentions raised by the parties and the objections filed, the following issues were framed by the Addl. District Judge, Sonapat:

“1. Whether the petitioner is entitled to compensation under Section 16(3) of The Indian Telegraph Act, 1885? OPP

2. If issue No.1 is decided in favour of the petitioner, as to what amount of compensation? OPP

3. Whether the reference petition is not maintainable in the present form? OPD

4. Whether the petitioner has no cause of action and locus standi to file the present petition? OPD

5. Whether the petitioner is estopped by his own act and conduct to file the present petition? OPD

6. Whether the present petition is undervalued as the petitioner has not affixed the proper Court fee? OPD

7. Relief.”

(8) In order to prove his case, the petitioner examined Jai Ram, Patwari as PW-1, Kuldeep, Clerk as PW-2, Pawan Kumar as PW-3, Hawa Singh, Naib Sadar Kanungo as PW-4, Deepak Tyagi, Patwari as PW-5 apart from relying upon some documentary evidence.

(9) On the other hand, the respondents have examined Vikas Malik, S.E. as RW-1, besides relying upon some documentary evidence.

(10) Upon consideration of the evidence adduced by respective parties, the Addl. District Judge, Sonapat recorded the following findings in respect to Issues No.1 and 2:

“23. It is not in dispute that the respondents had installed towers and high tension wires on the land of the petitioners and that they have not paid any single paisa towards land covered under the poles of the towers or the diminution of value of such lands, except paying some compensation to the crops etc. at the time of erecting towers and high tension wires. It is an unfortunate case, where the lands of the farmers were utilized by the respondents to erect towers and high tension wires and the reasonable and fair compensation has not been paid to the poor farmers. High tension wires were fixed on the land of the petitioners, forever the value of the lands of the petitioners would be diminished, thereby the right to life, which is guaranteed by Article 21 of the Constitution of India, includes right to livelihood, would be affected, since, they would be deprived of their livelihood in view of the erection of towers and high - tension wires over the lands of the petitioners and without paying any compensation for the land covered under the poles of towers or diminishing value of the lands. The sweep of the right to life conferred by Article 21 of the Constitution of India to the petitioners is wide and far-reaching. It does not mean merely that, life cannot be extinguished or taken away and an equally important facet of that right to life includes right to livelihood, because no person can live without the means of livelihood. If the right to livelihood is not treated as a part of constitutional right to life, the easiest way of depriving a person of his right to life would be depriving him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but, it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. Article 39A of the Constitution of India, which is a Directive Principle of State Policy, provides that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to

an adequate means of livelihood. Article 41 of the Constitution of India, which is another Directive Principle, provides, inter alia, that the State shall, within the limits of the economic capacity and development, make an effective provision for securing the right to work in cases of unemployment. The principles contained in Article 39A and Article 41 of the Constitution of India must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of the fundamental rights. If there is an obligation upon the State to secure to citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the contents of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood, or work to citizens. But, any person, who is deprived of his right to livelihood, except according to the just and fair procedure established by law, can challenge the deprivations as offending the right to life conferred under Article 21 of the Constitution of India.

24. In the present case, the action of the respondents erecting towers and high tension wires over the land of the petitioners without paying compensation for the land covered under the poles of towers or diminished value of the lands, amounts to violation of Articles 21, 39A and 41 of the Constitution of India.

25. Regarding effect of high tension wires, it is worth mentioning here an article published by one Sri. Kunal Mahajan on 22.06.2013, with regard to "Effects of high voltage transmission lines on humans and plants", wherein it is concluded that according to research and publications put out by the World Health Organization (WHO), Electro Magnetic Field such as those from power lines, can also cause short-term health problems, namely:

- (i) Headaches,
- (ii) Fatigue,
- (iii) Anxiety;
- (iv) Insomnia;
- (v) Prickling and/or burning skin;
- (vi) Rashes;
- (vii) Muscle pain.

Long-term health problems include, following serious health problems due to electromagnetic field effects on human body:

- (i) Risk of damaging DNA;
- (ii) Risk of cancer;
- (iii) Risk of Leukemia;
- (iv) Risk of Neuro-generative disease;
- (v) Risk of Miscarriage;
- (vi) EMF effects on animals;

The results of the experiments are shocking as animals (are kept below high electrostatic field, their body acquires a charge and when they try to drink water, a spark usually jumps from their nose to the grounded pipe) like hens are unable to pick up grain because of chattering of their beaks which also affects their growth.

- (vii) EMF effects on plant life;

Most of the areas in agricultural and forest lands where high power transmission lines pass, the voltage level of high power transmission lines are 400 KV, 230 KV, 110 KV, 66 KV etc. the electromagnetic field from high power transmission lines affects the growth of plants.

26. Considering the provisions of Sections 10 and 16 of the Indian Telegraph Act, 1885 in the case of **Pejavar Chitananda Rao and others v. Karnataka Electricity Board and another** reported in **ILR 2004 Kar 627** has held that Electricity Board drew high tension power lines over petitioners agricultural lands for the benefit of 2nd respondent company. Compensation at 10% of value of land was awarded to the petitioners for aerial encroachment is reasonable. The Hon'ble Supreme Court in the case of **Kerala State Electricity Board v. Chinamma Antony** reported in **AIR 2008 SC 3265** while considering the provisions of the Electricity Act and the Telegraph Act, for determination of compensation for loss of diminution in land value on account of drawal of electricity lines over property, has held that the sites of the land, distance between the high voltage electricity lines 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 are required to be considered. 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. Therefore, the Hon'ble Supreme Court has held that the diminishing value of the land has to be determined.

27. No doubt the value of the land is also a relevant factor. There cannot be any hard-and-fast rule in determination of the compensation payable. The purpose and object of the Indian Telegraph Act and the methodology laid down therein, for the purpose thereon, should be a guiding factor in determining the compensation payable. Each case is required to be determined on its own merit as the sites of the land/property, the additions etc., will have to be kept in view.

28. There is no doubt that due to erection of towers and passing of high tension wires, there might be a diminution in the value of the lands of the petitioners. Admittedly, there was no compensation assessed or paid by the respondents to any of the petitioners, either for erecting the tower or drawing of wires in the lands of the petitioners and held that due to drawing of high tension wires in the lands of the petitioners and erecting of towers, there would be diminution of value of the lands, as such, the petitioners are entitled for damages. Reliance can be placed upon the dictums of the Kerala High Court in the case of **Arya Antherajnam v. Kerala Electricity Board, Trivendrum**, reported at **AIR 1996 Kerala 309** and in the case of **Kerala Electricity Board v. Cheriyan Varghese and others**, reported in **AIR 1989 Kerala 198**.

29. It is relevant to mention here that LRs of petitioner, namely, Pawan Kumar who has been examined as PW-3 categorically stated on oath regarding diminution of value of lands and PW-3 has stated on oath as under:

“...father of the deponent, namely, Tara Chand was owner in possession of agricultural land total measuring 98 kanal 4 marla.....The respondent No.1 had issued the notice to the father of the deponent vide Tower No.2718 dated 18.11.2011 regarding installation of electric poles and erecting 400 KV Jharli-Kabulpur-Deepapur High tension wire in the land of the deponent and for compensation of the damages effected to the father

of the deponent and the dimensions of the crops is also given but the respondents have not given the complete details of the land, which has been effected by installing of the electric poles and erection of the electric wires..... That by installing the electric poles and erecting the electric lines over the land of the father of the deponent, land measuring 6747 sq. yards is effected. The land of the father of the deponent has been bifurcated due to the erecting of cable wires as well as installations of poles.....That the land of the father of the deponent is potential and having the market value of Rs.5.0 crores per acre..... The respondents have not paid the compensation for which the father of the deponent is entitled i.e. to the tune of Rs.10,000/- per sq. yards "

30. PW-1/Jai Ram, Patwari, LAC, Ambala has proved the report Ex.PW-1/B under RTI No.101 dated 10.10.2011 vide letter Ex.PW-1/A. PW-2/Kuldeep, Clerk HRC Branch proved the copy of collector rate of village Rai for the year 2011-2012 as Ex.PW- 2/A. Further PW-4/Hawa Singh, Local Commissioner proved the demarcation report prepared by him as Ex.P-16 (containing eight pages). PW-5/Deepak Tyagi, Patwari proved the documents Ex.PW-5/A to Ex.PW-5/D. In fact, a Senior Engineer Vikas Malik appeared on behalf of the respondents as RW-1, has categorically stated that the petitioner has already received the compensation amount of the crops when the tower was erected in their fields. Further stated that the respondents have installed only towers as per the sanction route map provided by the Government and respondents have not required to acquire any land rather the land in question is fully useable even after installation of the said towers in the fields of the petitioner. He further stated that the petitioner is not entitled to get any compensation of the land for the installation of the tower because as per the provisions of Indian Telegraph Act there is no need to acquire the land for installation of the poles/towers. It is also admitted by him in the cross-examination that the material and machines were taken to the spot through the fields in vehicles. He further admitted that their vehicle passes through the fields where no passage was provided for installation of the poles.

31. The amount of compensation is required to be determined keeping in view the purpose and object of the

statute. There cannot be any fixed formula therefor or the other. Although, undoubtedly one formula laid down, may assist the Board and/or the Reference Court to apply the same, but there cannot be hard- and-fast rule in this behalf. A fixed formula for determining the amount of compensation although may make the task of the Land Acquisition Officer or the Reference Court easier but in the opinion of the each case is required to be taken on its own merit. The Court, in given facts and circumstances of the case and keeping in mind the potentiality and utility of the land acquired, petitioners are not deprived of their property without grant of fair compensation.

32. In the present case, as per report of the local commissioner Ex.P-16 it cannot be said that towers and transmission lines were erected in the center of the land of the petitioner and they cannot utilize the remaining lands. As per deposition of the RW-1, the respondents have installed the towers as per sanction route plan. Yet it is clear that land covered under the poles might cause inconvenience in ploughing the field and that portion of the land might become useless and consequently, there might be diminution of value of land. Even laying of high tension wires might cause some health problems. However, the petitioner has failed to prove his claim for damages/compensation @ Rs.6,74,70,000/- per acre. Moreover, there is no evidence on behalf of the respondents that they had paid the compensation regarding the land covered under the poles of the towers or regarding the diminution value of land. Meaning thereby that the respondents have not paid any compensation for the lands on which the towers are erected. In view of the provisions of Sections 10 and 16 of the Indian Telegraph Act, 1885 and in view of the dictums of this Court and the Hon'ble Supreme Court, stated above, the petitioner is entitled to get just and fair compensation for land covered under the poles of the towers or regarding the diminution value of land. It is pertinent to mention here that the respondents have not acquired the land but used the land for the purpose of laying of towers and high tension wires in larger public interest including the petitioner. Thus, it is logical to hold that the land underneath the legs of the tower (permanently fixed to the earth) is permanently lost by its owners. Even though those pieces of land are not required for acquisition and the

ownership remains with the owners yet all incidents of the ownership, enjoyment and free use of those pieces of land becomes severally restricted. In such cases compensation ought to be made to the interested persons.

33. The petitioner has placed reliance upon documents Ex.PW1/A to Ex.PW-1/D. These documents are proved by PW-1 Jai Ram, Patwari, office of the SDO(C)-cum-LAC, Ambala. As per document Ex.PW-1/B compensation of 10% of the average market value of the land was paid to the landowners for Natural Gas Pipe line Project from Bawana (UP) to Nagal (Punjab) by the Deputy Commissioner, Ambala. The petitioner has also placed reliance upon certified copy of Collector rate of village Rai Distt. Sonapat for the year 2011-12 as Ex.PW-2/A. As admitted by the petitioner the land of the petitioner is agricultural land and it is not proved on record that the land in question is adjoining to the G.T. Road and of commercial nature. Further as per Ex.P-15 Land Acquisition Award No.16 dated 15.03.2013 passed by the learned Collector, the value of all kind of land situated in village Rai along with other villages is assessed as Rs.80 lakhs per acre. Hence as per Ex.PW2/A the collector rate of land of village Rai, Distt. Sonapat is considered as Rs.85 lakhs per acre of the agricultural land for the purpose of making just and fair compensation. Vide letter No.3/7/2015-Trans Government of India, Ministry of Power, Shram Shakti Bhawan Rafi Marg, New Delhi dated 15.10.2015 the Government of India issued the guidelines for determination the compensation payable towards "damages" as stipulated in Indian Telegraph Act which will be in addition to the compensation towards normal crop and tree damages is as under:

"Compensation @ 85% of land value as determined by District Magistrate or any other authority based on Circle rate / Guideline value / Stamp Act rates for tower base area (between four legs) impacted severally due to installation of tower / pylon structure."

This amount will be payable only for transmission lines of 66 KV and above, and not for sub-transmission and distribution lines below 66 kv. Though, there is no evidence on record that these guidelines have been adopted by the Government of Haryana, yet a reasonable inference may be drawn for making the payment of just and reasonable compensation by applying some standard uniform norms.

34. Perusal of Ex.R-2 Crop Compensation Details and evidence led by RW-1 Vikas Malik Sr. Eng. shows that the petitioner has received compensation in respect of crops. RW-1/Vikas Malik, Sr. Engineer of the Corporation, in his cross-examination has admitted to the effect that the damages of crops have already been paid by their company. Hence, the claim of petitioners qua compensation towards damages of standing crops is hereby rejected as cross-examination of RW-1 clearly indicates that the damages are duly paid regarding loss of crops which are just and reasonable.

35. As per Extract from Haryana Government Gazette(Extra), dated the 9th December, 2010 Ex.R4, vide memo No. 9/305/PPP/109/Part-B, dated the 8th September,2010, the Haryana Government, Power Department, Chandigarh had granted approval under section 68 of the Electricity Act, 2003 (36 of 2003) for the transmission lines JhajjarKabulpur (Rohtak) 400 KV D/C line with Quad Moose Conductor ; Kabulpur (Rohtak) – Dipalpur (Sonapat) 400 KV D/C line with Quad Moose Conductor and Loop-in-Loop-out (the “LILLO”) of one circuit of Abdulapur – Bawana 400 KV D/C line at Dipalpur (Sonapat). Respondent No.1 is licensee for laying intra state transmission of electricity lines. Thus, it is clear that the Government of Haryana has granted the licence to respondent No.1 for the installation of the transmission lines. Hence, respondent No.2 and 3 are liable to pay the compensation to the petitioner.

36. This court, ultimately, has come to the conclusion that the petitioner is entitled to compensation towards erection of towers, transmission of high tension wires and diminution of value of the lands at the rate of 85% of the collector rate i.e. 85,00,000/-per acre along with 8% interest per annum for tower base area (between four legs) regarding khasra No.16//11/1/2 (192 gaj) and 17//15/1/2 (567 gaj) total land measuring 759 sq. yards (gaj) belonging to the petitioner in which the poles were installed. Accordingly, both these issues are decided in favour of the petitioner.”

(11) Further, on the basis of the findings given by the Addl. District Judge, Sonapat on Issues No.1 and 2, the remaining issues were decided against the respondents.

(12) The Court assessed the compensation at the rate of 85% of the Collector Rate fixed at Rs.85,00,000/- per acre alongwith interest at the rate of 8% per annum for the area falling under the Tower Base only.

(13) Aggrieved thereof, the present petitions have been filed by the petitioners-land owners. At the same time, Civil Revision Petitions have also been filed by the Transmission Licensee and the Contractors assailing the compensation to be exorbitant and further praying for reduction of the compensation awarded by the Addl. District Judge, Sonapat.

(14) It has been averred in the petition that the assessment of the compensation is inadequate and that the evidence adduced before the trial Court especially the sale deeds of neighboring village have not been taken into consideration to ascertain the market value of the property. It has been further contended that the District Judge has failed to take into consideration the guidelines issued by the Ministry of Power, Government of India for assessment of compensation. The District Judge has awarded the compensation for the affected area at the rate of 85% of the assessed Collector rate only and even while doing so, he has awarded compensation only for the tower-base area and has not taken into consideration the adjacent area that has been rendered unfit for use and enjoyment. It is further averred that no compensation towards diminution of the land value in the width of Right of Way (ROW) Corridor has been granted even though the said guidelines duly provide for the same. A further argument has been raised that the trial Court has not taken into consideration the factum of loss towards reduced crop production due to the impact of magnetic field of high tension electric wires/poles apart from the short term and long terms health problems that may occur to the human beings.

(15) Responses have been filed by the Distribution/Transmission Licensee i.e. respondent No.2, wherein the factual aspect noticed above has not been disputed. It is, however, averred that the work in question already stands executed in accordance with The Electricity Act, 2003 and The Indian Telegraph Act, 1885. Reference was made to various precedent judgments of the Hon'ble Supreme Court in relation to the right of transmission utility to set up transmission lines. It has been further stated in the response filed by the Transmission Licensee that compensation has been rightly assessed by the Addl. District Judge, Sonapat and that the ownership of the said land still vests with the land owners-petitioners and that it not being a case of forcible acquisition, the petitioners cannot submit that the land has been acquired by the Transmission Licensee. It is further denied that laying of the electric poles and high tension wires reduces the productivity of

the land and averred that there is no evidence to suggest that the productivity and fertility of the land is prejudicially affected on account of over-head high tension wires. Besides, the high tension wires are installed at a height where the agricultural operations undertaken by the land owners are in no way hampered. No loss or damage is reported to have ever been caused to the crop of any land owner on account of magnetic or electric field of transmission lines.

(16) A separate written statement has been filed by the Deputy Collector, Sonapat, in which the stand adopted by the Transmission Licensee has been reiterated. The said response, however, is silent with regard to the Collector rate of the concerned area even though a specific plea had been raised by the petitioners about the applicable Collector rate in their rejoinder.

(17) The respondent No.1- Transmission Licensee has also filed a Civil Revision Petition. A separate reply has, however, not been filed in the present writ petition by it. As such, stand of respondent No.1- Kalpa-Taru Power Transmission Ltd. is being adverted to from the grounds raised by it in its Civil Revision Petition. It has been averred in the grounds taken in Civil Revision Petition No.CR-3503-2017 that the enhancement of compensation has been undertaken without application of judicial mind and the same is based on surmises and conjectures. It has also been averred that the petitioners herein have not been able to produce any evidence to substantiate their claim qua the loss allegedly suffered by them. It has also been averred that the guidelines issued by the Ministry of Power, Government of India are not binding and they have correctly not been considered by the Addl. District Judge, Sonapat while deciding the appeals of the petitioners. It has been further averred that the land beneath the tower base is capable of being put to utilization for agricultural purposes and that there is nothing on record to justify the compensation assessed and awarded by the Addl. District Judge, Sonapat vide the impugned Award.

(18) It is submitted that two Civil Suits bearing No.5 of 2016 and 6 of 2016 have been decided by two separate judgments dated 28.02.2017 and that the petitioners have challenged both the said judgments by means of a common writ petition. It was also averred that the guidelines dated 15.10.2015 have not been adopted by the State of Haryana and thus cannot be held binding. Further the fact that the crop compensation has already been paid and the order passed by the Addl. Sessions Judge, Sonapat suffers from erroneous interpretation of Telegraph Act and fails to take into consideration that there is no acquisition of land.

(19) Learned counsel for the petitioner has argued that the Addl.

District Judge, Sonapat has failed to take into consideration the correct value of the land. He further submits that three sale deeds pertaining to nearby area have been produced on record as Exhibits P-9, P-11 and P-12 before the trial Court (Annexures P-7 to P-9 herein). The sale deed (Annexure P-9) was for an area measuring 3 acres 1 kanal and 10 marla and was executed on 09.12.2009 reflecting the market value of the land as Rs.2.28 crore per acre approximately. Since the installation of high tension wires was done in the year 2011 and as the sale deed (Annexure P-9) was in close proximity to the time of the above installation. Hence, the said sale deed lays valid foundation for determination of the then existing market value of the land in question. A specific averment had also been made that the Collector rate in the year 2011-12 in the revenue estate of village Rai was to the tune of Rs.1.50 crore and that despite the response having been filed, the aforesaid assertion has not been denied. He submits that the Collector rate having been admitted, there was no valid basis for the Addl. District Judge, Sonapat to reduce value of land to a sum of Rs.85,00,000/- per acre by referring to the same as Collector Rate. It is further argued that no compensation was awarded by the Addl. District Judge, Sonapat for the diminution of value and utility of the remaining land or qua the damages caused to the crop on account of over head high tension wires alongwith Right of Way (ROW). It is also averred that some land adjacent to the tower base is also rendered to be unfit for agricultural purposes and that compensation ought to have also been awarded for the said piece of land, hence, the compensation cannot remain confined solely to the area falling under the tower base.

(20) The counsel for the respondents have reiterated the submission noticed in their response and in their arguments as well and have contended that the claim for seeking enhancement of compensation is not sustainable and as a matter of fact, the compensation as enhanced by the Addl. District Judge, Sonapat ought to be reduced by taking into consideration the totality of the facts and circumstances. He has placed reliance upon the judgment passed by the Hon'ble Himachal Pradesh High Court in the matter of *Power Grid Corporation of India Ltd. versus Basant Singh and others* bearing *LPA No.204 of 2007* decided on *21.05.2010* to substantiate that the power exercised under Section 16(3) of The Indian Telegraph Act, 1885 is not akin to the power exercised by a Reference Court under the Land Acquisition Act, 1894. He further argued that The Indian Telegraph Act, 1885 contemplates damages for the loss being caused to the property and it is not a compensation as understood under the Land Acquisition Act, 1894 whereby the property/land is itself acquired under the said Act and once the same is

acquired, the proprietor from whom the acquisition has been made, seizes to be the owner of the property and that all proprietary rights and interest stand vested in the acquiring Authority. The same is not the case in laying of transmission lines. Reliance has also been placed on the Full Bench Judgment of Kerala High Court rendered in the matter of *Kerala State Electricity Board versus T.T.P. Kayyu* bearing **C.R.O. 2128 of 1991** decided on **05.01.1996** to contend that the compensation towards diminution of the agricultural land cannot be awarded since the Court can draw presumption that agricultural operations can be carried out in the affected area in a reasonable and profitable manner and that the burden to rebut such presumption lies on the claimant. Further reference has been made to the judgment of the Hon'ble Supreme Court in the matter of *'The Kerala State Electricity Board versus Livisha'*¹ bearing **Civil Appeal No.289 of 2006 decided on 18.05.2007** to contend that no fixed formula can be determined for computing the amount of compensation to be awarded under The Indian Telegraph Act, 1885 and that the same is not akin to Acquisition of the Land but may only cause diminution of value of the property.

(21) I have heard the learned counsel for the respective parties and have gone through the documents/record available on the case file and the judgments relied upon by both parties in support of their respective contentions with their able assistance.

(22) Before proceeding further in the matter, it would be appropriate to refer to certain statutory provisions as are essential for adjudicating the controversy involved in the present batch of petitions:

“THE ELECTRICITY ACT, 2003.

SECTION 164. (Exercise of powers of Telegraph Authority in certain cases): The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co- ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885, any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts

¹ Law Finder Doc. Id. # 129452

for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained.

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THE INDIAN TELEGRAPH ACT, 1885 POWER TO PLACE TELEGRAPH LINES AND POSTS

10. Power for telegraph authority to place and maintain telegraph lines and posts. – The telegraph 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: Provided that--

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the Central Government, or to be so established or maintained;

(b) the Central Government shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post;

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

(d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

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Provisions applicable to other property.

16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.

(1) If the exercise of the powers mentioned in section 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.

(2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code (45 of 1860).

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same.”

(23) It is not in dispute that the respondent No.1-Transmission Licensee has undertaken the works for the installation of transmission lines in exercise of powers conferred under The Indian Telegraph Act, 1885. It is evident that Section 10(d) of The Indian Telegraph Act, 1885 stipulates that while executing the work under The Indian Telegraph Act, 1885, the Authority shall do as little damage as possible and that it shall pay full compensation to all the affected persons for any damage sustained by them due to exercise of such power. It is also evident that the District Magistrate may assess the compensation payable for the damage sustained by the land owners and that in the event, the interest/affected persons are not satisfied with the compensation so assessed, they may prefer to institute appropriate proceedings under Section 16(3) of The Indian Telegraph Act, 1885

before the District Judge concerned and that the computation of compensation shall thereafter be done by the District Judge concerned after taking into consideration the evidence adduced by the parties and giving them an appropriate and effective opportunity of hearing. It is also not in dispute that the land in question falls within the revenue estate of village Rai, Tehsil and District Sonapat, which is adjacent to the National Capital and is a part of the National Capital Region.

(24) The learned counsel of the petitioners has appended the site plan to demonstrate the situs of the acquired land as per the aks-shajra. As per the said site plan, the land in question abuts a 65 meter wide road in killa no.12 and is at a distance of 6 acres/killas from the National Highway, while the remaining khasra numbers are at a distance of 16 to 20 acres/killas from the National Highway and is a part of Sector 37. The Rajiv Gandhi Education Institute as well as Moti Lal Nehru School of Sports, Rai are situated on the other side of the National Highway and that the Industrial Sector 38 of the Haryana State Industrial and Infrastructure Corporation is also at a distance of 12 acres/killas from the land. The land thus is in a high potential zone.

(25) Before examining the issue any further, the primary question which arises for consideration is as to whether the respondents are liable to pay any compensation to the land owners.

(26) Learned counsel for the respondents have placed reliance upon the judgment passed by Bombay High Court in the matter of *M/s Harihar Buildspace Pvt. Ltd. versus Union of India and others*² bearing *Writ Petition No.7489 of 2019, decided on 01.10.2020*. The relevant extract of the same is reproduced hereinafter below:

"23. As we have already held that the petitioner is not entitled to any compensation under Section 10 (d) of the Telegraph Act, 1885, it is not necessary to consider the plea that the petitioner is entitled to compensation under the RFCTRR Act, 2013. Suffice is to say that the entire Telegraph Act, 1885 does not contemplate any acquisition of land. This is clear from the language of Section 10 (b) which expressly mandates that the Central Government shall not acquire any right other than that of user only in the property under, over, along, across in or upon which the Telegraph Authority places any line or post. Thus, no acquisition of land is contemplated by the Telegraph Act, 1885 and therefore, the provisions of RFCTRR Act, 2013, which are applicable only to acquisition of land, would

² 2021 5, Mh. L.J. 144

clearly not be available, for any user as contemplated under the Telegraph Act, 1885."

(27) Further, in the matter of '*Power Grid Corporation of India Limited versus Basant Singh & Another*' bearing *LPA No.204 of 2007 decided on 21.05.2020* the Division Bench of Himachal Pradesh High Court has held as under-

"4. Having analysed the legal position as above, and on going through the factual position in the present case, we find that the learned District Judge has misdirected himself in granting the land value itself by way of compensation by comparing the value of the property in the vicinity. The method is to be adopted, only when the Court exercises its power under Section 18 of the Land Acquisition Act, 1894 for the purpose of deciding land value in case duly referred to the Court acquisition of the property. The power that is exercised under Section 16 (3) of the Indian Telegraph Act is not akin to the Power exercised by the Reference Court under the Land Acquisition Act, 1894

5. Therefore, certain the orders calls for interference in principle.

6. We find that the learned Single Judge apparently taking note of the amount being only Rs.24,000/- was not inclined to go into the legal question and on facts it was apparently held that it is sufficient compensation.

7. In view of the factual position as above, we decline to interfere with the amounts already granted to the party towards compensation. However, the law has to be made clear that the District Judge in exercise of the power under Section 16 (3) of the Indian Telegraph Act, shall not granted compensation akin to the land value that is fixed by the Reference Court under the Land Acquisition Act, 1894 Only to the extent of injury suffered by drawing the line or placing a tower, the owner shall be proportionally compensated

8. The letters Patent Appeal is disposed of."

(28) Further reliance has been placed in the judgment of Full Bench of Kerala High Court rendered in the matter of *Kumba Amma versus K.S.E.B.*³, wherein the full Bench of Kerala High Court has given guidelines to assist the compensation. The relevant paragraphs

³ 2000 (3) RCR (Civil) 131

are being reproduced herein below-

“43. In the light of the above discussion, we hold that inflation is a relevant factor to be taken into account while computing compensation for destruction of trees for the purpose of drawing power lines. We are also of the view that if interest rate in a stable economy is applied, the effect of inflation will be automatically taken care of. After considering the rival contentions, raised in this case and the authorities on the subject, we have come to the conclusion that a wrong principle has been applied by the Full Bench in 1981 KLT 646 for arriving at the rate of return. Instead of taking the real rate of interest, the Full Bench has applied the prevalent rate of interest. To that extent, we overrule 1981 KLT 646.

44. Next, we have to consider what should be the rate of return to be applied in this case. As mentioned earlier, regarding the rate of return, the only contention raised by the petitioners is that it should be 5% as held in 1961 KLT 238 and not the higher rate as ordered in 1981 KLT 646. Even though reliance was placed by the petitioners on AIR 1988 Andhra Pradesh 89 in support of their contention that the principle applied in 1981 KLT 646 was not correct, it is not contended by the petitioners before us that in their case, the rate of return as assessed by Jagannadha Rao, J. in AIR 1988 Andhra Pradesh 89 should be applied. The dispute in this case arose when trees standing in petitioners' property were cut down on 9.9.1980. The respondents have not made available before us any material to show that the real rate of interest in 1980 was something different from 5%. Their only contention based on 1981 KLT 646 is that what is relevant is the prevalent rate of interest which was 10%. This contention we have already rejected, as such rate does not take into account the factor of inflation. Under these circumstances, we hold that the rate of interest to be applied in the present case is 5%. We hasten to add that we should not be understood as having laid down 5% as the real rate of interest for subsequent period. The rate of interest applicable in India has been held as 4% by Jagannadha Rao, J. in AIR 1988 Andhra Pradesh 89. 11 years have lapsed after the above judgment. Whether it should be the same rate of return that has to be applied for the period and after the above judgment or whether a higher or lower rate, is a matter to be decided in appropriate cases where relevant

data is available. Till such time, the Board will adopt 5% as rate of return. But, we make it clear that cases finally concluded by decisions of the Court will not be reopened."

(29) Reliance has also been placed on the Full Bench Judgment of Kerala High Court passed in the matter of ***Kerala State Electricity Board versus TTP Kayyu*** bearing ***CRO No.2128 of 1991 decided on 05.01.1996***. The relevant extract of the same is reproduced hereinafter below:

"17. The point stressed by the Board that even if trees are not permitted to be grown below or by the side of the electric lines within the prohibited distance it is open to the owner of the land to raise other agricultural crops and thus continue to utilise the land for agricultural purposes has a material bearing on the question. This argument is based on the rule of mitigation of damage. This rule is explained in McGregor on Damages (14th Edition, page 214) as follows:

"The extent of damage resulting from a wrongful act whether tort or breach of contract, can often be considerably lessened by well advised action on the part of the person wronged. In such circumstances the law requires him to take all reasonable steps to mitigate loss consequent on the defendant's wrong and refuses to allow him damages in respect of any part of the loss which is due to his neglect to take such steps."

Thus it is open to contend that if the land on which electric lines are drawn are fit for other cultivation which would not conflict with the requirement of open space to be left from the electric lines and if such cultivation can be carried on in a reasonably profitable manner, the claimant is expected to carry on such cultivation. If he does not do so, it is a factor which has to be taken into consideration at the time of qualification of the compensation for diminution in land value.

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19. In ***Sortiros Shipping Inc. and Aeco Maritime S.A. versus Sameiet Salholt (The "Solholt")***, (1 Lloyd's Re. p. 605) it is observed by, Sir John Donaldson M.R. as follows

"A plaintiff is under no duty to mitigate his loss, despite the habitual use by the lawyers of the phrase "duty to mitigate". He is completely free to act as he judges to be in his best

interests. On the other hand, a defendant is not liable for all loss suffered by the plaintiff is consequence of his so acting. A defendant is only liable for such part of the plaintiff's loss as is properly to be regarded as caused by the defendants' breach of duty."

The principle has been explained by Viscount Haldane, L.C. in **British Westing house Electric and Manufacturing Company Ltd. v. Underground Electric Railways Company of London Ltd., (1912) A. C. 673**, as follows:-

"The fundamental basis is thus compensation for pecuniary loss naturally flowing from the breach; but this first principle is qualified by a second, which imposes on a plaintiff the duty of taking all reasonable steps to mitigate the loss consequent on the breach, and debars him from claiming any part of the damage which is due to his neglect to take such steps."

The above principle has been accepted in Indian Courts also. In **M/s Murlidhar Chiranjilal v. M/s. Harishchandra Dwarkadas and another, AIR 1962 Supreme Court 366**. Wanchoo, J. (as he then was) has made specific reference to the above mentioned decision and further observed that the two principles follow from the law as laid down in Section 73 of the Indian Contract Act read with Explanation thereof also. Much earlier Privy Council had also taken the same view in **Jamal v. Moola Dawood Sons and Company, 43 A. I. 10**. In **M. Lachia Setty and Sons Ltd. v. The Coffee Board, Bangalore, AIR 1981 Supreme Court 162**, it was clarified that the principle of mitigation of loss does not give any right to the party who is in breach of the contract but it is a concept that has to be borne in mind while awarding damages.

20. In the light of the above discussion we are inclined to take the view that the claimants have duty to mitigate the damage by resorting to any other cultivation which is sonably possible in the land covered by the electric line and can be carried on economically. Of course the Board cannot compel the claimants to carry on cultivation underneath the electric lines. But if such cultivation is reasonably possible and at the same time they failed to carry on such cultivation it will be a factor for consideration at the time of quantification of the damages. But the claimants are

expected to do such cultivation which is reasonable. While considering the question whether the farming system adopted by the appellant was a reasonable one in **Thomas and another v. Countryside Council for Wales, (1994) 4 All England Reporter 853**, the relevant considerations are stated as follows:-

“.....Put another way, was the appellant's decision to adopt the farming system which they did a reasonable one? That question is not to be answered solely in terms of the commercial optimum. Obviously profitability is a factor, and an important one, but in an occupation such as farming any test of reasonableness should take some account of other circumstances including individual personal factors of amenity, even of aesthetic preference The question of what is reasonable is entirely one of fact for the arbitrator.”

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22. In this case, it is the claimant who knows best as to how his land could be cultivated with other crops which would not violate the restrictions regarding open space to be left from the electric lines, towers and posts. It is quite plausible that every landowner would be using the land beneath the electric lines (be they of high tension or low tension) to raise cultivation or for some other purpose except of course for growing tall trees or constructing high structures. Thus, regard being had to the common course of natural events, the court can draw a presumption that agricultural operation in a reasonably profitable manner can be carried on in the affected land except growing tall trees. Hence the burden is on the claimant to rebut the said presumption

23. The upshot of the above discussion is that it is open to the owners of the land to claim compensation for diminution in land value when towers and poles are erected on and electric lines drawn over their lands subject to the conditions detailed in this judgment The quantum of damages shall be fixed on the basis of the principles enunciated hereinabove. Whether claimants had taken reasonable steps to mitigate the damage or not is a question to be considered by the District Judge on the evidence in each case and subject to the presumption and onus indicated above.”

(30) Further reference has been made to the judgment of

Hon'ble Supreme Court delivered in the matter of *Kerala State Electricity Board versus Livisha*⁴. The relevant extract of the same is reproduced hereinafter below:

“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. Section 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. Section 11 empowers the officers to enter on property in order to repair or remove telegraph lines or posts. Section 12 empowers the authority to grant permission for laying down such lines to a local authority in terms of clauses (c) & (d) of the proviso to Section 10 of the Act subject to reasonable conditions as it may think fit. Section 16 of the said Act reads as under:-

“16, Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority. (1) If the exercise of the powers mentioned in section 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.

(2) If, after the making of an order under section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under Section 188 of the Indian Penal Code, 1860 (45 of 1860).

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons

⁴ 2007 (6) SCC 792

interested are entitled to share in it, the telegraph authority may pay into the court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under Sub-section (3), or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the persons who has received the same."

10. The situs of the land, the distance between the high voltage electricity line laid there over, 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."

(31) Per Contra, learned counsel for the petitioners has also placed reliance on the judgment of *Livisha (Supra)* and submits that the aforesaid judgment itself recognizes the obligation of the Electricity Department to compensate the land owners for the diminution in value of the land over which the said transmission lines have been laid. He further submits that the judgments relied upon by the respondents did not in any manner reveal that the compensation is not payable to the land owners. Rather, to the contrary, the aforesaid judgments specifically held that the Telegraph Authority is bound to pay the compensation for the damage caused to a property. The only difference is to the extent that the diminution of property is not at par with the acquisition of land/property under the Land Acquisition Act and the principles of the said Act cannot be applied while granting compensation under the provisions of Telegraph Act, 1885 read with The Electricity Act, 2003. He submits that the Full Bench Judgment of Kerala High Court in the matter of *Kumba Amma (supra)* establishes

the entitlement of land owners to the compensation and the judgment of Nagpur Bench of Bombay High Court is not applicable to the facts and circumstances of the present case since the land owners had been denied their rights in the said petitions on account of inordinate delay in institution of the claim. The said judgments in no manner can be read to lay down a light that the land owner is not entitled to any compensation at all and thus does not advance the cause of the respondents.

(32) It thus emerges undisputedly that a land owner is entitled to be compensated for the diminution of value and utilization of land on account of drawing of transmission lines and that the principles of Land Acquisition Act, 1894 would not *ipso facto* be applicable for determining the fair value of the land for compensation since there is no acquisition of land in the case of laying of transmission lines under the Telegraph Act, 1885 read with The Electricity Act, 2003. The said aspect has also been considered by the Additional District Judge, Sonapat and the land owners have been held entitled to compensation for diminution of the value and utilization of their land. The said aspect is also supported by the provision of Section 10 of the Telegraph Act, 1885, which provides for payment of full compensation to all persons interested for any damage sustained by them by reasons of exercise of power and also provides for seeking enhancement of the compensation so determined under Section 15 thereof. Thus, the claim of the compensation is in accordance with the Telegraph Act, 1885 and there is no force in the contentions of the respondents that the land owners are not entitled to any compensation for the damage caused to the land.

(33) Additionally, they have also not raised any objection against the findings recorded by the Addl. District Judge, Sonapat with regard to the maintainability of the petitions under Section 16(3) of The Indian Telegraph Act, 1885 and the entitlement/authority of the said Court to determine the compensation to be awarded to the land owners in the event the compensation assessed by the District Magistrate is found to be insufficient. The sole question which thus survives is with regard to determination and quantum of compensation by the Addl. District Judge, Sonapat and as to whether the said compensation is just and appropriate depicting the true and correct market value of the land and its diminishing profits, value and utility.

(34) It is thus essential to determine at this juncture that the nature of deprivation suffered by the land owners. The position in law is no more in dispute as the activities undertaken under The Indian Telegraph Act, 1885 are not similar as compulsory acquisition of land under the erstwhile Land Acquisition Act, 1894. It is also not in dispute that if the power conferred under The Indian Telegraph Act,

1885 is exercised, the proprietary right, title or interest over the land in question remain vested with the land owners and the persons so affected suffer only the deprivation of their right to enjoyment of the land in any manner as they may want qua the land falling under the tower base and/or the ROW of the transmission of the lines. The statutory provisions and the precedent judgments relied upon by the petitioners as well as the respondents in relation to the entitlement of the land owners to the compensation acknowledge the vesting of a right in favour of the land owners to seek compensation qua the damage sustained by them.

(35) The same now leads to second question as to what would be an appropriate mechanism for determination of the compensation payable to the land owners on account of the damage caused and/or suffered by them due to diminution of land value and utility of their land.

(36) Learned counsel for the parties do not dispute that the State Government has not laid down any uniform criteria or guideline for assessment of compensation to be paid to the land owners under the Telegraph Act, 1885. The same thus leaves this aspect to be determined by the Court when such matter is raised before it by the land owners who are not satisfied with the determination of the compensation under Section 10(d) of the Telegraph Act, 1885.

(37) Before adopting any particular uniform yardstick for assessment of compensation, it has become necessary for this Court to examine as to the existence of any other circumstances/parameters prescribed by any Government for the payment of compensation towards the damages in regard to Right of Way for transmission lines. It is significant to point out that during the Power Ministers' Conference held on April 09 and 10, 2015 at Guwahati, it was decided to constitute a Committee under the Chairmanship of the Special Secretary, Ministry of Power to analyze the issues relating to the Right of Way for laying of transmission lines in the country and to suggest a uniform methodology for payment of compensation on this count. The Ministry of Power, Government of India thereafter constituted a committee with the representatives of various State Governments. The report alongwith its recommendations was submitted by the said Committee. Since a decision was taken in the Power Ministers' Conference for formulating a uniform methodology for payment of compensation, numerous State Governments sent their representatives. The views were submitted by as many as 16 States. The Government of Haryana had, however, chosen not to send its representative or furnish any comments thereupon. However, the guidelines for payment of compensation towards damages in regard to the Right of Way for

transmission lines were circulated by the Ministry of Power, Government of India to all the States/Union Territories. The recommendations made by the Committee and circulated vide Memo No.3/7/2015 Transmission dated 15.10.2015, read thus:

“2. The Recommendations made by the Committee are hereby formulated in the form of following guidelines for determining the compensation towards “damages” as stipulated in Section 67 and 68 of the Electricity Act,2003 read Section 10 and 16 of Indian Telegraph Act, 1885 which will be in addition to the compensation towards normal crop and tree damages. This amount will be payable only for transmission lines supported by a tower base of 66 KV and above, and not for sub- transmission and distribution lines below 66 KC:-

(i) Compensation @ 85% and land value as determined by District Magistrate or any other authority based on Circle rate/Guideline value/Stamp Act rates for tower base area (between four legs) impacted severely due to installation of tower/pylon structure:

(ii) Compensation towards diminution of land value in the width of Right of Way (RoW) Corridor due to laying of transmission line and imposing certain restriction would be decided by the States as per categorization/type of land in different places of States, subject to a maximum of 15% of land value as determined based on Circle rate/ Guideline value/Stamp Act rates;

(iii) In areas where land owner/owners have been offered/ accepted alternate mode of compensation by concerned corporation/ Municipality under Transfer Development Rights (TDR) policy of State, the licensee/Utility shall deposit the compensation amount as per (i) & (ii) above with the concerned Corporation/ Municipality/ Local Body or the State Government.

(iv) For this purpose, the width of RoW corridor shall not be more than that prescribed in the table at Annex-2 and shall not be less than the width directly below the conductors.”

(38) It has been apprised by the learned counsel for the respondents that the Power Grid Corporation of India has already adopted the aforesaid recommendations/guidelines and that the aforesaid guidelines are applicable with respect to the transmission

lines supported by a Power Base of 66 KV and above and not for sub-transmission lines below 66 KV. It is also pertinent to point out that the details of the width of RoW as per guidelines issued by the Ministry of Environment and Forest dated 05.05.2014 had also been noticed by the aforesaid Committee and the same are extracted as under:

“1.3 The maximum width of RoW corridor is circulated on the basis of tower design, span, and wind speed, maximum sag of conductor and its swing plus other requirements of electric safety. The requirement of ROW for different voltage types under standard conditions is as follows:

ROW width for different voltage line*

Transmission Voltage	Width of Right of Way (in Meters)
66 kV	18
110 kV	22
132 kV	27
220 kV	35
400 kV S/C	46
400 kV D/C	46
+/- 500 kV HVDC	52
765 kV S/C with delta configuration	64
765 kV D/C	67
+/- 800 kV HVDC	69
1200 kV	89

*Width of Right of Way is as per the MoEF guidelines dated 05.05.2014 (Annex-A).”

(39) Even though the new Electricity Act was notified in the year 2003 while the Telegraph Act has been in force since 1885. However, the State of Haryana has chosen not to lay down any uniformity in computation of the compensation to the land owners. There is no valid explanation or reason given by the counsel for the respondents that as to why the said exercise has not been undertaken

especially when the Statutory Scheme has been in force for nearly one and a half century. The State cannot render its citizens clueless about their rights and leave them to fend for themselves or to claim compensation through different agencies what ought to have been released by the State voluntarily on their own initiative. This reflects gross insensitivity of the respondent-State and its bureaucracy being careless to the needs and sufferings of the people. No reasons have also been given by the respondent-State as to why they chose not to submit their objections, if any, to the recommendations made by the Committee constituted under the Power Ministers' Conference. The failure to submit any objections is subject to twin interpretation, while it may mean that the State did not consent to the same and on the other hand, it may also be construed that the State had no objection to the same. Needless to mention that the conference of 2015 intended to lay down a uniform guideline relating to assessment of compensation and all the States were at liberty to send their representative and/or commends. As many as 16 States had submitted their views on the assessment of compensation. The recommendations made by the said Committee were also circulated thereafter vide memo dated 15.10.2015. The said recommendations can be considered as one persuasive document which is being uniformly followed through the large number of States by the Government of India. The said recommendations thus being already followed by numerous other States and the Government of India highly lays down foundation on adoption of an objective criteria for determination of compensation under Section 10 of the Telegraph Act 1885. There is no reason as to why the aforesaid parameters that are already being followed be not adopted. The failure of the State in filing the objections to the said yardstick itself suggest that there was nothing adverse to the recommendations made by the Committee and has approved the same. Accordingly, the recommendations made by the Committee and circulated vide memo dated 15.10.2015 can safely be relied for determination of compensation by the Authorities/Courts. The Additional District Judge, Sonapat thus committed no error in placing reliance on the aforesaid circular for computation of compensation payable to the land owners. He, however, adopted the aforesaid circular piecemeal and only to the extent of determination of land value for the tower base area only. No reasons have been given by the Addl. District Judge, Sonapat as to why the recommendations ought not be adopted as a whole especially when all aspects had been taken into consideration by the said Committee. The Award passed by the Addl. Sessions Judge, Sonapat is accordingly modified to the above extent, whereby the land owners have been denied compensation towards diminution of land value in the width of Right of Way (RoW)

Corridor due to laying of transmission lines and impositions of restrictions by the State on the utilization of the said land subject to a maximum of 15% of the land value determined based on the Circle Rate/Guidelines Value)/Stamp Act Rate. Hence, with a view to bring along uniformity in the computation and determination of the compensation payable for drawing of transmission lines, there would be no illegality in applying the recommendations made by the Committee and circulated vide memo No.3/7/2015 Transmission dated 15.10.2015 already extracted above.

(40) The issue which arises next relates to compensation against the alleged loss pertaining to the reduced crop production on account of magnetic/ electric field of the transmission lines and the possible damage caused to the humans as well.

(41) I am of the view that there is no such tangible evidence or study available on record on the basis whereof any such damage can be presumed. The claimant is required to establish the damage before a compensation can be claimed. There can be no such remote presumption of loss or damage. In the absence of any such *per se* admissible evidence or undisputed scientific research, such submission is held to be devoid of merit and deserves to be disregarded. All other appurtenant rights and damages sustained would invariably be computed in the compensation that is payable towards diminution of land value in the width of RoW Corridor to a maximum of 15% of the land value. The recommendations would be presumed to have taken all such factors into consideration while recommending such compensation. Having held affirmatively in favour of the land owners, qua their entitlement to seek compensation for the land on account of tower base area as also for the RoW Corridor, the next question which needs to be answered is the rate at which the compensation is to be determined.

(42) As regards the matter related to rate of compensation is concerned, reliance has been placed on the sale instances (Annexures P-9, P-11 and P-12) relating to the land situated in the adjacent village and is at a distance of nearly 10 acres from the land of the petitioner. The same are, therefore, reflective of the prevailing market rates in the area. The said instances pertain to village Livaspur while the land of the petitioners is situated at Village Rai, which is more developed than the said Livaspur and moreover the village Livaspur is at a more distance from the National Capital Region than Village Rai and that the land of the petitioners is closer to the National Capital territory. The sale instances that have been relied upon by the petitioners in the reference petition before the Addl. District Judge, Sonapat are extracted as under:

Exh.	Date of sale deed	Area of land	Total sale consideration	Rate per acre
P-11	21.07.2006	5 acre 1 kanal	Rs.6,15,00,000/-	Rs.1,20,00,000/-
P-12	10.04.2007	1 Acre 7K-2m	Rs.2,24,61,250/-	Rs.1,19,00,000/-
P-9	09.12.2009	3 Acre 1K-10m	Rs.6,85,31,250/-	Rs.2,15,00,696/-

(43) The sale deeds (Ex.P-11 and P-12) pertain to revenue estate of Village Rathdhana, Tehsil and District Sonapat while the sale deed (Ex.P-9) pertains to the revenue estate of village Livaspur. Besides, the averment raised by counsel for the petitioners that the Collector rate of the land in the revenue estate of village Rai was Rs.1.50 crores per acre during the financial year 2011-12 has not been controverted by the respondents in the response(s) filed by them. The site plan and the aks-sijra as well as the distances reflected therein have also not been disputed by the respondents.

(44) The learned counsel for the petitioners have submitted that the guiding value for determination of compensation/damages at the rate of 85% of the Circle rate/the Stamp Act rate has also been determined by the District Magistrate. The said Collector rate has been exhibited as Ex.PW-2/A. The Addl. District Judge, Sonapat has, however, taken into consideration the Award No.16 dated 15.03.2013 (Ex.P-15) passed by the Collector for all kind of lands situated at Village Rai, Tehsil and District Sonapat alongwith other villages at Rs.80 lacs per acre and accordingly, determined the Collector rate of land of village Rai, Tehsil and District Sonapat at Rs.85 lacs per acre qua the agricultural land. The compensation determined is thus 85% of the aforesaid Collector rate for the tower base area (within four legs) as stipulated in the guidelines for payment of compensation towards damages.

(45) While the counsel for the petitioners contends that the lands in question are situated in close vicinity of the land of the petitioners and that the market value of the above lands as reflected in the sale deeds had been registered in close proximity to the drawing of transmission lines, hence, they should have been taken as a guiding factor for determination of compensation. It is further contended that the sale deed (Ex.P9) was executed on 19.12.2009 for an area of more than 3 acres at the rate of Rs.2,28,00,000/- per acre, and that in the

event of escalation at the rate of 10% per annum is given for the two years, the price of land would work out to Rs.2,58,00,834/- per acre. The compensation for the Tower Base area at the rate of 85% thus ought to be computed on the aforesaid land value as well as ROW Corridor. On the other hand, counsel for the respondents submitted that the value of land assessed at Rs.85,00,000/- per acre is already on the higher side and ought to have been reduced further. It was also submitted that the report of the Local Commissioner (Ex.P-16) had also been put up before the trial Court which showed that the transmission lines had not been laid down in the centre of the land of the petitioners or that they could have utilized the remaining land and also that there is no evidence to suggest the percentage of the damage caused under the ROW Corridor. It is contended that the drawing of Transmission Line is in the larger public interest and any such escalation in cost would enhance the cost of the project which would eventually be required to be recovered from the ultimate consumer. They further submit that the land in question is the agricultural land and that as per the land acquisition Award No.16 dated 15.03.2013 (Ex.P-15) passed by the Collector, the value of all kinds of land situated at Village Rai alongwith other villagers was assessed as Rs.80,00,000/- per acre. He submits that once the value of land has already been assessed at Rs.80,00,000/- per acre as per the Award dated 15.03.2013, there is no occasion for determination of any higher value in the year 2011.

(46) I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

(47) Insofar as the submission of learned counsel for the respective respondents to the effect that the value of the land is less than Rs.80,00,000/- per acre by placing reliance on the Award dated 15.03.2013 is concerned, I am not inclined to accept the aforesaid document as the sole and exclusive document for determination of value of the land. It is worthwhile to mention herein that the aforesaid Award was passed on 15.03.2013 and as per the provisions of erstwhile Land Acquisition Act, 1894 the market value under Section 23(i)(A) of the Land Acquisition Act, 1894 was to be determined as on the date of notification issued under Section 4 of the Land Acquisition Act, 1894. Hence, even though the Award may have been passed on 15.03.2013, however, it is reflective of the price, which was assessed as on the date of issuance of notification under Section 4 of the Land Acquisition Act, 1894. The burden was cast upon the respondents to lead such evidence regarding the notification issued by the respondent-State under Section 4 of the Land Acquisition Act,

1894. Besides, it has also not been pointed out that as to whether the aforesaid Award No.16 dated 15.03.2013 was the subject matter of any challenge before the Reference Court and as to what compensation was thereafter awarded by the Reference Court. The aforesaid document, thus, cannot be construed as the sole criteria for determination of market value. The burden lays upon the respondents, who had placed reliance upon the said document, to establish that the aforesaid value has become final and binding and that there is no other pending dispute qua the assessment of the compensation.

(48) The provisions of Section 10(d) of the Telegraph Act, 1885 refers to entitlement of a landowner to the compensation and the guidelines for payment of compensation towards damages circulated on 15.10.2015 provide determination of land value by the District Magistrate or any other authority based on Circle Rate/Guideline Value/Stamp Act Rate. Once the aforesaid recommendations have been recorded as uniform guiding criteria for determination of land value, the same is thus required to be assessed at the circle rate itself. Since the circle rate of village Rai in the present case had been fixed at Rs.1.50 Crore per acre and the said specific averment had also not been disputed by the respondents while filing their response(s), the aforesaid yardstick recommended for the abovesaid guideline is thus ordered to be adopted in the present case as well. The derived rate on the strength of the sale deed (Ex.P9) thus would not be a safe criterion to follow especially when a uniform methodology of circle rate has been recommended by the Committee and specifically circulated by the Government of India. Hence, the compensation is required to be computed according to the abovesaid land value for a tower base area (within four legs) at the rate of 85% of the land value. The Award passed by the Additional District Judge is thus modified to the above extent qua the land value for the tower base area (within four legs) and the value of the land is increased from Rs.85,00,000/- per acre to Rs.1,50,00,000/- per acre.

(49) The next question which thus arises relates to the compensation towards diminution of land value in the width of ROW Corridor. The recommendation may, vide guidelines circulated on 15.10.2015, provide for a maximum compensation towards diminution of land value in the width of ROW Corridor to the extent of 15% of the land value as determined according to the circle rate.

(50) As per document (Ex.P1/P) relied upon by the petitioners and proved by the PW1- Jai Ram, Patwari, the compensation of 10% of the market value was paid to the land owners for Natural Gas Pipeline Project from Bawana (U.P.) to Nangal, Punjab by the Deputy Commissioner, Ambala. While Ambala is closer to the regional

capital, the land of petitioners would be equi-distant to the National Capital. There are a lot of developments which are going on in adjacent area and around the land in question including the industrial sector floated by the HSIDC as well as the adjacent educational city and other projects. Being closer to the National Capital and within the NCR, it is a largely potential zone and if 10% has been awarded by the Land Acquisition Collector, Ambala under the Natural Gas Pipelines Project, then the diminution of value, damage caused to the land owners in such a highly potential zone has to be construed as much more. Accordingly, 15% of the land value, as determined above based on the undisputed circle rate circulated for the year 2011-12 (Ex.PW2/A) proved by PW2 namely Kuldeep, Clerk, HRC Branch, is awarded in favour of the land owners.

(51) Accordingly, the petitions filed by the land owners are thus partly allowed. The land owners are held entitled to compensation at the rate of 85% of the Collector Rate/Circle Rate of Rs.1.5 crore per acre alongwith interest at the rate of 8% per annum for the tower base area (within four legs). The land owners shall also be entitled to compensation at the rate of 15% towards diminution of land value in the width of ROW Corridor due to laying of transmission lines and imposition of restrictions on the utilization of the land at the above said rate i.e. Rs.1.5 crore per acre alongwith interest @ 8% per annum. The diminution value of ROW Corridor shall also be undertaken in terms of the recommendations made by the Committee and circulated by the Ministry of Power, Government of India dated 15.10.2015.

(52) On the other hand, the petitions filed by the respondents-Transmission Licensee challenging the aforesaid judgment passed by the Addl. District Judge, Sonapat for seeking reduction in the compensation stand dismissed accordingly.
