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ORDER

Dated this the 05th day of December, 2023

The revision petitioners are aggrieved by the dismissal of original petitions filed by them seeking enhancement of the compensation awarded for the damages sustained due to the drawing of High Tension Electric Lines over their properties by the first respondent Corporation. The original petitions were dismissed for the reason that they were filed after three years of receipt of compensation and are hence barred by limitation.

2. Adv.Babu Karukapadath appearing for the revision petitioners contended that the reasons stated in the impugned order are factually incorrect and legally unsustainable. It is submitted that during 2010-11 compensation towards the value of trees cut alone was paid and



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the compensation towards diminution in land value was paid only during 2017-2018. The revision petitioners had approached the District Court in 2019 dissatisfied with the quantum of compensation paid towards diminution in land value within the three year period stipulated in Article 137. Drawing attention to the words '*if any dispute arises concerning the sufficiency of the compensation to be paid under Section 10*', it is argued that a dispute regarding sufficiency of compensation can arise only on payment of the full compensation, which, in the case of the revision petitioners, had occurred only in 2017/2018. The finding of the District Judge that the original petitions are barred by limitation, the trees having been cut in 2010-11 and the original petitions being filed only in 2019, is assailed by pointing out that even though the trees were cut in 2011, the posts were erected, towers constructed and lines drawn much later.



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The value of the property having diminished by the series of acts committed by the first respondent, time would start to run from the last of those acts, the land owners being entitled to compensation '*for any damage sustained*'.

3. The finding in the impugned order that the payment made in the year 2017/2018 is not compensation, but '*ex gratia*' payment by the Government, is refuted by referring to the notices issued to the revision petitioners requiring them to collect the compensation ordered towards land value.

4. Adv.Millu Dandapani appearing for the first respondent submitted that the impugned orders warrant no interference, the reasons stated therein being well founded. It is contended that the payment in 2017/2018 was an *ex gratia* payment at the rate of 20% of the land, for the land area covered under the conductors



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(lines). The payment was not made by the first respondent Corporation, but by the Government as per the Government order (G.O(Rt) No.581/2010/RD dated 04.02.2010). Therefore, the *ex gratia* payment cannot be termed as 'compensation'. Being so, the period of three years is to be calculated from the date of cutting of trees. The original petitions, having been filed much after three years from the cutting of trees, were rightly dismissed by the District Court.

5. From the contentions advanced, the question arising for consideration is whether the period stipulated under Article 137 of the Limitation Act, 1963 had expired by the time the original petitions were filed. In order to answer this question, it is essential to understand the scheme of the Indian Telegraph Act, 1885 ('the Act' for short), with respect to payment of compensation to affected persons.



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6. As per Section 4(1) of the Act, the Central Government is having the exclusive privilege of establishing, maintaining and working telegraphs. The proviso to Section 4(1) empowers the Central Government to grant licence to any person to establish, maintain or work a telegraph within any part of India. By virtue of Section 19B, the Central Government can confer upon the licensee under Section 4, all or any of the powers which the telegraph authority possesses. The first respondent Corporation issued with licence under the proviso to Section 4(1) and conferred powers as per Section 19B. As per Section 10, the Telegraph Authority can place and maintain a telegraph line under, over or across, any immovable property. It is in exercise of such power that the first respondent entered the properties of the revision petitioners, cut down trees, drew lines over and installed posts/towers in the properties of the revision



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petitioners.

7. In this context, Section 10(d), as per which the telegraph authority should endeavour to do as little damage as possible to the property and pay full compensation for 'any damage' sustained, assumes relevance. By using the terminology 'any damage' the legislature has consciously widened the landowners' right to claim compensation. The compensation for damage sustained is therefore not confined to the initial cutting of trees and drawing of lines. If the telegraph authority does any further work in the property after drawing the lines and such action results in the landowner sustaining damage, he can claim compensation, even if he was paid compensation for the damage sustained earlier. The above reasoning is supported by the concept of continuing cause of action, whereby a cause action once arisen will continue and go on, if the act complained of is continuously



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repeated. Yet another reason being that, every work done in a person's property by another without permission, infringes upon the owner's right to enjoy his property without let or hindrance.

8. As held by this Court in **KSEB v. Cheriyan Varghese [1989 (1) KLT 451]**, the landowners are entitled to claim compensation for the value of trees cut as well as diminution of land value. If the land owners are not satisfied with the compensation awarded by the authority, they have to approach the District Court under Section 16(3) of the Act. Being contextually relevant, Section 16(3) is extracted hereunder;

“16(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 situated, be determined by him.”



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No time limit for filing original petition before the District Court under Section 16(3) is stipulated in the Indian Telegraph Act or the Limitation Act. The Apex Court in **Kerala State Electricity Board v T.P. Kunhaliumma [(1976) 4 SCC 634]** has held that such original petitions are in effect applications falling within the scope of Article 137 of the Limitation Act. Hence, the land owners can approach the District Court under Section 16(3) within three years of accrual of their right to apply. Here, the revision petitioners were initially paid compensation only for the value of trees cut. They and owners of similarly affected lands protested against the failure to grant compensation for diminution of land value and prevented the first respondent Corporation from drawing lines across their properties. As completion of the work at the earliest would benefit the State by securing



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power from the Kudankulam Nuclear Power Station, the Government of Kerala intervened in the matter and issued G.O(Rt)No.581/2010/RD dated 04.02.2010, fixing compensation for damage caused at the tower location and *ex gratia* payment towards land value for the land area falling under the line. As the land owners were not satisfied with the Government's offer, they continued the protest. Finally, the Government came out with G.O.(Ms) No.29/2015/PD dated 30.07.2015, declaring a special compensation package exclusively for the construction of 400 KV transmission line in the Edamon-Kochi sector. Going by the Government order, the compensation and *ex gratia* payment are to be shared between the Government of Kerala, KSEB and the first respondent Corporation.

9. The terminology used in the Government order being *ex gratia* payment for the line



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corridor, the first respondent contends that the payments made in 2017/2018 is *ex gratia* payment and not compensation. To address this argument, it is essential to understand the meaning of the terms 'compensation', 'ex gratia' and 'ex gratia payment'. The meaning of the aforementioned terms as shown in the 6th Edition of Black's Law Dictionary, are as under;

“Compensation: *Indemnification; payment of damages; making amends; making whole; giving an equivalent or substitute of equal value. That which is necessary to restore an injured party to his former position. Remuneration for services rendered, whether in salary, fees, or commissions. Consideration or price of a privilege purchased.*

Equivalent in money for a loss sustained; equivalent given for property taken or for an injury done to another; giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; recompense in value; recompense or reward for some loss, injury, or service, especially when it is given by



statute; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or satisfaction for injury or damage of every description (including medical expenses). An act which a court orders to be done, or money which a court or other tribunal orders to be paid, by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury. Hughson Condensed Milk Co. v. State Board of Equalization, 23 Cal.App.2d 281, 73 P.2d 290, 292.

Ex gratia: *Out of grace; as a matter of grace, favor, or indulgence; gratuitous. A term applied to anything accorded as a favor; as distinguished from that which may be demanded ex debito, as a matter of right.*

Ex gratia payment: *Payment made by one who recognizes no legal obligation to pay but who makes payment to avoid greater expense as in the case of a settlement by an insurance company to avoid costs of suit. A payment without legal consideration."*

Thus, the term 'compensation' takes in payment of



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compensation necessary for restoring any injured party to his former position. On the other hand, *ex gratia* payment is made by one who recognises no legal obligation to pay, but makes the payment to avoid greater expense. In short, *ex gratia* payment is payment without legal consideration.

10. Indisputably, the revision petitioners are conferred with the statutory right to claim compensation under Section 16(3) of the Telegraph Act. As such, they could have demanded the compensation *ex debito*. In this context, it is also essential to note that the Government, while coming out with the special compensation package, was conscious of the landowners' right to claim compensation under the Act. That right cannot be taken away by terming the payment, towards diminution of land value, as *ex gratia* payment. Under the facts and circumstances of this case, it can unhesitatingly be held that the payment



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made towards diminution of land value, even if termed as 'ex gratia payment', is nothing but 'compensation'.

11. Yet another crucial factor emerging from G.O.(Ms) No.29/2015/PD dated 30.07.2015 is that the drawing of lines in the Edamon-Kochi sector could be resumed only after payment of compensation in 2017/2018. Being so, the landowners' right to apply for compensation can be based on the damage sustained during such work. Viewed in that manner also, the original petitions were filed within time.

12. While on the question of limitation, it is essential to note that the three year period mentioned in Article 137 will begin to run from the date when the right to apply accrued. In **Shakti Bhog Food Industries Ltd v Central Bank of India and another [(2020) 17 SCC 260]**, the Apex Court compared Article 113 in the First Division



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of the Schedule of the Limitation Act dealing with suits, with the expression used in other Articles, to hold as under;

“17. The expression used in Article 113 of the 1963 Act is “when the right to sue accrues”, which is markedly distinct from the expression used in other Articles in First Division of the Schedule dealing with suits, which unambiguously refer to the happening of a specified event. Whereas, Article 113 being a residuary clause and which has been invoked by all the three courts in this case, does not specify happening of particular event as such, but merely refers to the accrual of cause of action on the basis of which the right to sue would accrue.”

While Article 113 is with respect to suits for which there is no prescribed period, Article 137 is the residuary provision in the Third Division, dealing with applications other than those in specified cases. The above discussion leads to



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the conclusion that the right to apply, as far as the revision petitioners are concerned, would accrue when the property sustained damage by cutting of trees or any further act resulting in the property sustaining damage. Their right to apply would also accrue when the compensation paid is inadequate. Hence, the revision petitioners could have filed the original petitions before the District Court, within three years of commission of the last act resulting in damage or three years from the date of payment of compensation. In the cases under consideration, neither of these instances, giving rise to the right to apply, was considered by the District Court. On the other hand, the period of limitation was calculated based on the date of cutting of trees. The court below ought to have also taken into account the cardinal principle that the rules of limitation are not meant to destroy the rights of parties, but to ensure that



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the parties do not resort to dilatory tactics or sleep over their rights. In the cases under consideration, neither was any dilatory tactic adopted by the revision petitioners nor did they sleep over their rights. Being so, the impugned orders are liable to be set aside.

In the result, the civil revision petitions are allowed and the impugned orders are set aside, finding the original petitions to have been filed within time. These matters are remitted to the court below for fresh consideration on merits. The court below shall make earnest efforts to dispose of the original petitions at the earliest.

Sd/-

V . G . ARUN
JUDGE

scl/