

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 26 of 2020

In the matter of:

Revision of Order dated 23.07.2020 passed by the District Magistrate, Haridwar, deciding Khasra No. 44 situated at Village Dheer Majara, Ahatmaal, Tehsil Bhagwanpur as the land belonging to Gram Sabha and payment of compensation of Rs. 1,91,325 to the Gram Sabha.

In the matter of:

1. Shri Chandra Kiran S/o Shri Jagpal Singh
2. Shri Jagpal Singh S/o Late Shri Malhu Ram

... Petitioner(s)

AND

In the matter of:

1. The Executive Engineer, Power Transmission Corporation of Uttarakhand Ltd.,
220 kV Line Piran Kaliyar, Office, 26, Civil Line, Roorkee-247667
2. The District Magistrate, Haridwar-249401
3. Gram Pradhan, Gram Sabha, Hallu Majra, Tehsil Bhagwanpur,
District Haridwar

... Respondent(s)

Coram

Shri D.P. Gairola, Member (Law)

Shri M.K.Jain, Member (Technical)

Date of Hearing November 10, 2020

Date of Order: December 01, 2020

ORDER

The Revisionists have preferred the present revision under Rule 3 of the Works of Licensee Rules 2006 (hereinafter referred to as "the 2006 Rules") against the revision of order dated 23.07.2020 passed by the District Magistrate, Haridwar (hereinafter referred to as "the Respondent No. 2" or "District Magistrate") by which the learned District Magistrate awarded a sum of Rs. 1,91,325/- for damage to trees by Power

Transmission Corporation of Uttarakhand (hereinafter referred to as "PTCUL" or "Licensee") for undertaking works under the Electricity Act, 2003.

2. Background

- 2.1 A Revision Petition dated 22.09.2020 was filed by Sh. Chandra Kiran & Ors. (hereinafter referred to as "the Revisionists" or "the Petitioners") under Rule 3 of the Works of Licensee Rules 2006 against the order dated 23.07.2020 passed by the District Magistrate, Haridwar, in the matter of payment of compensation of Rs. 1,91,325/- to the Petitioners for damage to trees by Power Transmission Corporation of Uttarakhand for laying of LILO of 132 kV Bhagwanpur-Chudiyala transmission line at 220 kV Pirankaliyar S/s.
- 2.2 The Licensee is a Power Transmission Company authorized to undertake power transmission business in Uttarakhand under the provisions of the Electricity Act, 2003. The Licensee is installing a 220/132 kV sub-station at Piran Kaliyar (Imlikhera) and is laying a 9.5 kilometer LILO of 132 kV Bhagwanpur-Chudiyala transmission line at 220 kV Pirankaliyar S/s and accordingly, has proposed to install 32 towers for the same.
- 2.3 The Petitioners in their Petition have submitted that the proposed 132 kV LILO line is passing over their land, having Khasra No. 305/12, 305/13 and Khasra No. 44 situated in revenue village Dheer Majra, Ahatmaal, Tehsil Bhagwanpur which is an agricultural land for which they are entitled for payment of compensation and yearly rent.
- 2.4 In the matter, the Petitioners earlier had approached the Hon'ble High Court of Uttarakhand seeking compensation from the Licensee for the use of their land by the Licensee under Writ Petition no. 1244 of 2018 which was dismissed by the Hon'ble Court vide order dated 10.04.2019 on the ground that provisions of Indian Telegraph Act, 1885 (The Telegraph Act) are applicable and thus Revisionists should approach appropriate forum as provided under Section 16 (3) of the Telegraph Act. However, the Petitioners filed Special Appeal no. 568 of 2019 before the Division Bench of the Hon'ble Court on the ground that since the enactment of Electricity Act, 2003 the provisions of the said Act shall prevail under which the Works of Licensees Rules, 2006 have been enacted. The said special appeal was also dismissed by the Hon'ble Court holding that the Petitioners are free to avail such

other remedies as are available to them in law. Thereafter, the Petitioners approached the District Magistrate, Haridwar and filed the matter before him on 15.07.2019.

- 2.5 The District Magistrate vide order dated 23.07.2020 disposed the matter deciding a compensation of Rs. 1,91,325/-against the affected 472 trees in the name of Gram Sabha, Dheer Majra, Post Hallu Majra, Tehsil Bhagwanpur, District Haridwar.
- 2.6 The Petitioners on not being satisfied with the order of the District Magistrate have preferred present revision against the order of the District Magistrate, requesting the Commission to quash the aforesaid order of the District Magistrate and direct the Licensee to pay compensation for proposed cutting of trees and losses to the tune of Rs. 50 lakh and a yearly rent at the rate of Rs. 1 lakh per annum for future losses due to establishment of overhead Electricity Transmission line.
- 2.7 Accordingly, the Commission on receiving the Revision Petition decided to hear the matter on admissibility on 27.10.2020. Meanwhile, the Licensee vide letter dated 22.10.2020 and District Magistrate, Haridwar vide letter dated 22.10.2020 submitted their comments on admissibility, thereby, requesting the Commission to dismiss the Petition on admissibility.
- 2.8 On the said date of hearing i.e. 27.10.2020, the Commission heard the parties and decided to admit the Petition vide daily order dated 27.10.2020. Further, the Commission vide the aforesaid order dated 27.10.2020, directed the Respondent to file a reply on merits by 03.11.2020 with an advance copy to the Petitioners who were given liberty to file rejoinder, if any, by 09.11.2020 before the Commission.
- 2.9 Thereafter, the Commission decided to schedule a hearing on merits in the matter on 10.11.2020 and informed the parties about the said hearing vide letter dated 28.10.2020. Meanwhile, the Licensee vide letter dated 02.11.2020 submitted its comments on merits in the matter.
- 2.10 On the scheduled date of hearing, the Commission heard the learned Counsels for the Parties at length and perused records.

3. Submissions by the Revisionists

- 3.1 The Revisionists vide their Petition have submitted that:

“...the Revisionist belongs to Schedule cast and the father of Revisionist No. 2 was granted Asami Patta of land bearing Khasra No. 305/12, 305/13 and Khasra No. 44 situated in revenue village Dheer Majra, Ahatmaal, Tehsil Bhagwanpur as such as regard to Khasra No. 305/12, 305/13 proceedings against cancellation of said Asami patta are filed and pending and as regard to Khasra No. 44 area 0.3380 is concern it was never cancelled nor any proceedings for cancellation are pending although after death of Malhu Ram Revisionists are in possession and have grown trees for agricultural purposes (Popular and Eucalyptus trees as farming and other trees) and the land used for agricultural purpose having popular and other trees standing bye at the said plot.”

3.2 In continuation to the above, the Revisionists have submitted that:

“...father of revisionist No. 2 was granted Asami Patta of Khasra No. 305/12 and 305/13 as such the other Khasra No. 44 is also entered in same khatauni and as proceedings for cancellation of Asami Patta was initiated in 2000 and vide General order dated 14.02.2001 asami patta were cancelled through a list annexed with said order and name of the father of revisionist No. 2 appears at serial no 235 and the same is only as regard to Khasra No. 305/12 and 305/13 is concern and these two allotments were cancelled although in khatauni entry was made in respect of total area wrongly, although there being n order on record which can suggest that Khasra No. 44 is ever cancelled.”

3.3 Further, the Revisionists have submitted that the District Magistrate without having jurisdiction passed an illegal order and directed to cut down the trees belonging to the Revisionists and are called for being auctioned publicly and further the amount shall be paid to Respondent No. 3 which is patently illegal.

3.4 Further, the Revisionists have submitted that the Licensee started working on laying of the LILO line without the consent of the Revisionists and was illegally trying to lay down the said transmission line without payment of compensation, yearly rent, future damages etc. to them.

3.5 With regard to the impugned order of the District Magistrate, the Revisionist has submitted that:

“...the District Magistrate, Haridwar heard the matter on 23.07.2020 and passed an illegal order whereby after looking into the khatauni passed an order that the patta/lease as regard to Khasra No. 44 is concern stand cancelled and thus revisionists are not entitled for any compensation or claim and thus counted 472 trees and as per the market

value directed to pay Rs. 1,91,325/- to Gram Sabha and the trees shall be fallen down and shall be sold in auction and the amount received in auction shall be kept in account of Gram Sabha."

- 3.6 Further, the Revisionists have submitted that on 06.10.2017, an inspection at the plot of Revisionists was made by the Licensee and as per the said spot inspection, there were 604 trees of various varieties standing. In-case, rate list as prevalent in year 2013 is applied, the cost of compensation for trees only comes to Rs. 32,62,500/- and thus order dated 23.07.2020 is liable to be quashed and the Revisionists are entitled for minimum rates as prevalent in the year 2013.
- 3.7 Further, the Revisionists have submitted that the order passed by the District Magistrate is illegal as the District Magistrate has not allowed a yearly rent for the future losses due to the laying of the said LILO line and the compensation awarded for trees is also not in accordance with previous order dated 15.10.2013 passed by the District Magistrate in the matter of Power Grid Corporation of India Limited.
- 3.8 Furthermore, the Revisionists have submitted that the Works of Licensee Rules 2006 have provided for yearly rent also for the use of land of the occupier as such after installation of LILO line, the land cannot be used for any other purposes except for cultivating low height crops. Therefore, yearly rent be provided to the Revisionists.
- 3.9 The Revisionists averred that while considering the matter, the District Magistrate has considered the provisions of the Telegraph Act and the same is not applicable since the enactment of the Electricity Act, 2003. Under Section 176(2)(e) and Section 67(2) of the Electricity Act, 2003, the Works of Licensee Rules 2006 have been framed and Rule 3 of the same provides the manner and way as regard to the compensation is to be paid to the owner of building or land for laying any overhead line and yearly rent which can be termed as compensation for future losses.
- 3.10 The Petitioners submitted that the District Magistrate has completely ignored the fact that the land cannot not be used for any purpose in future due to passing of the overhead transmission line and thus, is entitled for yearly rent which is completely ignored in the impugned order of the District Magistrate.
- 3.11 Further, the Revisionists have requested that the impugned order of the District Magistrate be set aside to the extent that the Licensee be directed to pay

compensation to the tune of Rs. 50 lakh and a yearly rent at the rate of Rs. 1 lakh per annum for future losses due to establishment of the said transmission line.

4. Submissions by the Respondents

4.1 In reply to the submissions made by the Revisionists, the Licensee has submitted that:

“The learned Magistrate has not finally decided the issue of ownership as has been suggested by the petitioner, from the reply submitted by the respondent No. 2 it is clear from para 14 of the reply submitted by learned District magistrate before the Hon’ble Commission that the case regarding the cancellation of the Assami Patta in favour of the father of the petitioners is pending before the Assistant Collector 1st class Roorkee, it is pertinent to mention here that the learned magistrate has vide his impugned order only directed the amount of compensation determined to be deposited in the account of Gram Sabha, and petitioner if becomes successful in the title suit, can receive the same.”

4.2 Further, the Licensee has submitted that the District Magistrate under Works of Licensee Rule, 2006 is required to see the ownership or lawful occupancy and has accordingly, given a finding in the case which can not be disturbed in the present Revision Petition. Further, Licensee has submitted that:

“It is humbly submitted, the revenue authorities have an exclusive jurisdiction as per section 331 of UPZA & LR Act 1950 with regard to the matter mentioned in column 3 of the Schedule II of the Act other than authority mentioned in Column 2 of the said schedule. It is pertinent to mention that collector of the district has authority to evict a person from the land of public utility as per section 212 of the Act.”

4.3 In continuation to the above, Licensee has submitted that from the records it appears that Petitioner is claiming a Asami Patta, however, there is no record to show that the Petitioners were granted the Patta. Even otherwise, duration of the lease cannot be more than 5 years, hence, the occupancy of the land by Petitioners is unlawful and liable for eviction.

4.4 Further the Licensee has submitted that the land belongs to Gram Sabha and that there is no evidence to show that the trees were planted by the Petitioners or their ancestors. The right if any, of the Petitioners, on the land was only for a limited period and now the same vests with the Gram Sabha. The question of title of the Petitioners cannot be decided in the present proceedings.

- 4.5 Referring to the impugned order of the District Magistrate, the Licensee has submitted that:
- “That it is evident from the petition that the report of the committee constituted by the District Magistrate vide his order dated 19.06.2020 has given a detailed analysis for computing the compensation, the composition of the committee itself shows that the best possible officers of concerned departments were deputed for the task, the documents prepared by the committee were even signed by one of the petitioner, further the said report was not challenged nor any objections against the same were filed. The report was accepted and has attained finality, even otherwise in the petition the grounds of revision are only as has been mentioned above.”*
- 4.6 With regard to the determination of the compensation by the District Magistrate, Licensee has submitted that the District Magistrate should have granted compensation as per the rates which are available as per the list of the forest department prepared in the year 2012. District Magistrate on his own deemed it just to grant compensation for tree cutting as per the present market value and accordingly, granted compensation which is higher than the rate permissible as per the aforesaid list.
- 4.7 The Petitioners submitted that it was the Petitioners only who had requested the District Magistrate to allow them compensation as per prevalent rates of the forest and horticulture department. That there was no objection raised by the Petitioners on the findings of the committee constituted by the District Magistrate which has now become final.
- 4.8 That from the Petition it can be observed that the order dated 15.10.2013 passed by District Magistrate, Haridwar shows that even in the matter of Power Grid Corporation Ltd.(PGCIL), the compensation was to be given as per the assessment done by the officers of the Forest, Agriculture and Horticulture Departments as per the notified Government list dated 16.05.2012. The compensation was to be granted as per the highest rate permissible in the list for the various categories of trees provided therein. However, from the minutes of meeting dated 02.12.2014 held between officials of PGCIL and the affected farmers, it can be seen that the determination of the compensation by PGCIL is not in the light of the order of the District Magistrate but only for resolving the dispute amicably. The minutes of the

said amicable settlement nowhere mention that the compensation is being given as per the order of the District Magistrate. Therefore, reliance on the said order of the District Magistrate dated 15.10.2013 is irrelevant.

- 4.9 That the order dated 15.10.2013 and the order dated 03.08.2010 of the Hon'ble Allahabad High Court annexed with the Revision Petition are not at all relevant after the notification of the guidelines dated 15.10.2015 by the Government of India, Ministry of Power, for determination of compensation in regard to right of way for laying Transmission lines. The said guidelines have been adopted by PTCUL and the same reads as:

“ ...

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

As can be seen these guidelines not only lay down criteria for determination of compensation in case where the land utilization is severely affected and the land becomes almost completely utilizable, but also in cases where there is diminution of land value, the report of the committee and the comments of various stake holders have also been published, from the background mentioned in the report of the committee the purpose why it was necessitated has also been mention, which shows that how compensation earlier by various authorities were settled differently and why it was necessary to lay down lies together with the relevant law under which the compensation was determined.”

- 4.10 The Petitioners are assuming and considering that the construction of LILO line is for the purpose of making gains, and therefore, expecting handsome amount so as to encash the opportunity without even realizing that this act of the Petitioner is causing huge loss to the Licensee and eventually to the State and its consumers. The Petitioners on one pretext or the another are obstructing cutting of trees, because of

which the stringing of the conductor between five towers out of total 32 towers is held up.

4.11 That it is humbly submitted that:

“...the Learned Magistrate has as per the mandate of the Act already granted permission as required under Section 67(2) and also the permission of the Government under Section 68 of the Electricity Act was obtained. The Petitioner has no authority to obstruct the construction of line or in removal of trees causing hindrance, the act of the Petitioner is punishable, the Hon’ble Commission has been conferred with powers to penalize the defaulting party, we request the Hon’ble Commission to take stern action against the Petitioner so that recurrence of such instances in the construction of transmission lines can be minimized and necessary direction be issued so that the work of the line is completed at the earliest.”

4.12 That for the Commission to exercise revisional jurisdiction, the Petitioners have to point out any jurisdictional error committed by the District Magistrate. However, the Petitioners have failed to do so in their Petition.

5. Commission’s observations, views & decision

5.1 The instant matter in hand is filed under the Revisional jurisdiction of the Commission, whereby, the Commission is requested by the Revisionists to revise the impugned order dated 23.07.2020 of the District Magistrate, Haridwar. The said Revision jurisdiction of the Commission is requested under Rule 3 of the Works of Licensee Rules, 2006. However, the said Rules are prescribed by the Central Government under Section 67 (2) of the Electricity Act, 2003 and not by the Uttarakhand Government which is the appropriate Government in the present case to may have prescribed the Rules. Since, in absence of Rules prescribed by the State Government, Section 12 to Section 18 of the Indian Electricity Act, 1910 are applicable as stated in Section 185 (2) (b) of the 2003 Act. The said Section reads as;

“(b) the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 and rules made thereunder shall have effect until the rules under section 67 to 69 of this Act are made;”

Therefore, the present Revision is being exercised under the aforesaid prevailing provisions of the Indian Electricity Act, 1910.

5.2 The exercise of Revision jurisdiction has been provided under Section 115 of the Code of Civil Procedure, 1908, (CPC) and therefore, it is imperative that the instant matter be examined within the scope & essentials of Revision provided under Section 115 of the Code of Civil Procedure, 1908, (CPC) which stipulates that:

“(1)] The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:”

Therefore, the submissions of the parties are strictly being dealt and examined within the scope and ambit of Section 115 of the CPC.

5.3 It is observed from the order of the District Magistrate that, while proceeding with the matter before it, the District Magistrate had given an opportunity to the Revisionists and the Licensee to file their submissions before him. The District Magistrate while examining the dispute before it, had taken the submissions of the Revisionists and the Licensee on record on dated 19.09.2019 and 03.09.2019 respectively. Thereafter, the District Magistrate heard the parties on 19.06.2020. It is observed from the impugned order that the Revisionists had requested before the District Magistrate to provide them compensation at the prevailing rates list of the Forest and Horticulture Department. The District Magistrate considering that the latest rate list of the Forest and Horticulture Department was for the year 2012 and has not been revised till date, thought it wise to provide compensation for the affected trees to the Petitioners at the prevailing rates, and accordingly, vide its order dated 19.06.2020 constituted a committee for assessing the value of the affected trees. The committee submitted its conclusive report on 03.07.2020. It was through the said report of the committee dated 03.07.2020, it was brought to the notice of the District Magistrate that Khasra No. 305/12 and 305/13 are not affected by the aforesaid LILO Line as the same is not passing over these plots. With regard to Khasra No. 44, it was informed that the said Khasra No. is registered in the name of Gram Sabha, Village Dheer Majara, Post Hallu Majara, Tehsil Bhagwanpur.

Examining the Report submitted by the Committee the District Magistrate gave the impugned order. Relevant extract of the impugned order which *inter alia* entails the observation on the report of the committee is reproduced hereunder;

“ वाद में पक्षों को लिखित तथा मौखिक साक्ष्य दाखिल किये जाने का अवसर प्रदान किया गया। वादीगण द्वारा दिनांक 19.09.2019 को फ़ैहरिस्त सबूत में अंकित अभिलेख दाखिल किये गये तथा प्रतिवादी द्वारा दिनांक 03.09.2019 को फ़ैहरिस्त सबूत में अंकित अभिलेख दाखिल किये गये।

वाद में दिनांक 19.06.2020 को पक्षों को सुना गया। वाद में वादी संख्या-2 के द्वारा यह कथन किया गया कि प्रतिवादी द्वारा वन विभाग द्वारा वर्ष-2012 की आख्यानुसार पेड़ों का मुआवजा दिया जा रहा है जो कि बहुत कम है तथा उन्हें स्वीकार नहीं है। वादीगण को पेड़ों का मुआवजा वर्तमान में वन विभाग व बागवानी विभाग के लागू नियमों के अनुसार दिये जाने पर बल दिया गया। प्रतिवादी के अधिवक्ता द्वारा वन विभाग द्वारा वर्ष-2012 निर्धारित दर से पेड़ों का मुआवजा दिये जाने पर बल दिया गया।

वाद पत्रावली में दोनों पक्षों को सुनने के उपरान्त पत्रावली का अवलोकन किया गया। पत्रावली पर उपलब्ध कार्यालय उप प्रभागीय वनाधिकारी, रुड़की उप वन प्रभाग रुड़की द्वारा अपने पत्र दिनांक 26.03.2016 के द्वारा वन विभाग द्वारा वर्ष-2012 से प्रचलित विभिन्न प्रजाति के वृक्षों के व्यासवार अनुसूचित दरों/मूल्यांकन सूची की छायाप्रति के आधार पर प्रतिवादी द्वारा मुआवजा धनराशि की गई है। वर्ष-2012 से वर्ष-2020 तक उक्त अनुसूचित दरों/मूल्यांकन सूची को परिवर्तित नहीं किया गया। वन विभाग द्वारा वर्ष 2020 अनुसूचित दरों/मूल्यांकन सूची में परिवर्तन होना स्वाभावित था। यहां पर यह उल्लेखनीय है कि ऐसा कोई स्पष्ट आदेश नहीं है कि वन विभाग द्वारा निर्धारित अनुसूचित दरों/मूल्यांकन सूची के आधार पर वृक्षों के मुआवजे को निर्धारित किया जाए।

चूंकि प्रश्नगत प्रकरण में सम्बन्धित द्वारा वर्ष-2012 के वृक्षों की अनुसूचित दरों/मूल्यांकन सूची में कोई परिवर्तन नहीं किया गया जबकि वृक्षों के प्रतिकर का निर्धारण वर्तमान में किया जाना है। वन विभाग की अनुसूचित दरों/मूल्यांकन सूची के अतिरिक्त अन्य किसी विभाग की पेड़ों के मूल्यांकनके सम्बन्ध में कोई मूल्यांकन सूची नहीं है जिसके आधार पर प्रभावित वृक्षों के प्रतिकर के निर्धारण के लिए मेरे द्वारा आदेश दिनांक 19.06.2020 के द्वारा वादीगण की कृषि भूमि खाता संख्या 257 खसरा नम्बर 305/12, 305/13, 44 स्थित ग्राम धीरमजरा, परगना व तहसील भगवानपुर, जिला हरिद्वार में खड़े पेड़ों के मुआवजे के मूल्यांकन किये जाने हेतु 1- प्रभागीय वनाधिकारी, वन प्रभाग, हरिद्वार की ओर से नामित अधिकारी, 2-प्रभागीय लॉगिंग प्रबन्धक, हरिद्वार की ओर से नामित अधिकारी, 3- अधिशासी अभियन्ता, पिटकुल, रुड़की व 4-तहसीलदार भगवानपुर समिति का गठन कर, समिति से अपेक्षा की गई कि अपनी पेड़ों की मूल्यांकन आख्या न्यायालय में दिनांक 26.06.2020 तक उपलब्ध कराना सुनिश्चित करें। साथ उक्त की वीडियोग्राफी किये जाने हेतु भी निर्देशित किया गया। गठित समिति द्वारा अपनी संयुक्त मापांकन जांच आख्या दिनांक 03.07.2020 को न्यायालय

में उपलब्ध कराई गई जो पत्रावली पर उपलब्ध हैं। उक्त समिति के आख्या पर सुनवाई के दौरान किसी भी पक्ष द्वारा कोई लिखित अथवा मौखिक आपत्ति प्रस्तुत नहीं की गई। जांच समिति द्वारा अपनी मापांकन जांच आख्या में उल्लेख किया गया है कि राजस्व अभिलेखों में भूमि खसरा नम्बर 305/12 व 305/13 में न तो कोई विद्युत लाईन जा रही हैं और न ही कोई पेड़ों का मूल्यांकन किये जाने का प्रकरण है। केवल खसरा नम्बर 44 क्षेत्रफल 0.338 है0 स्थित ग्राम धीरमजरा परगना व तहसील भगवानपुर, जिला हरिद्वार में खड़े यूकेलिप्टिस, पोपलर व शीशम के पेड़ों के मूल्यांकन हेतु पैमाईश की गई। खसरा नम्बर 44 वर्तमान में सम्पत्ति ग्राम सभा दर्ज है। न्यायालय सहायक कलेक्टर, प्रथम श्रेणी, रुड़की में योजित वाद संख्या 10/1995 अन्तर्गत धारा 229 बी0/122बी(4)एफ ज0वि0 अधिनियम मल्लू बनाम सरकार में वादी संख्या-2 के पिता द्वारा प्रश्नगत भूमि पर दिनांक 30 जून, 1985 के कब्जा होने के कारण असंक्रमणीय भूमिधर के अधिकार प्रदान किये जाने का अनुरोध किया गया। न्यायालय सहायक कलेक्टर, प्रथम श्रेणी, रुड़की में योजित वाद संख्या 10/1995 अन्तर्गत धारा 229 बी0/122 बी(4) एफ ज0वि0 अधिनियम मल्लू बनाम सरकार में पारित आदेश दिनांक 17.04.1996 के द्वारा प्रश्नगत भूमि को जमींदारी विनाश अधिनियम की धारा-132 की "नदी" की भूमि होने के आधार पर आसामी श्रेणी-3 के रूप में दर्ज किया गया। उद्धरण खतौनी फसली वर्ष 1423 से 1428 के खाता संख्या 257 पर एस0डी0एम0 रुड़की के आदेश दिनांक 14.02.2001 के द्वारा प्रश्नगत भूमि से आसामी पट्टेदार मल्लू पुत्र मंगन का पट्टा निरस्त कर, सम्पत्ति ग्रामसभा दर्ज करने के आदेश पारित किये गये हैं। इस प्रकार जब उक्त खसरा नम्बर से वादी संख्या-2 के पिता मल्लू को आवंटित दिनांक 14.02.2001 के द्वारा निरस्त कर दिया गया तब उक्त भूमि पर उसका कोई अधिकारी नहीं रह जाता है। इससे यह स्पष्ट होता है कि वाद योजन से पूर्व उक्त भूमि पर कोई वृक्ष नहीं थे तथा दिनांक 14.02.2001 को आसामी पट्टा निरस्त होने के उपरान्त वादीगण को वृक्ष रोपित करने का कोई अधिकार नहीं था। उक्त पत्रावली पर उपलब्ध साक्ष्यों के आधार पर खसरा नम्बर 44 क्षेत्रफल 0.3380 है0 स्थित मौजा धीरमजरा अहतमाल, परगना व तहसील भगवानपुर, जिला हरिद्वार सम्पत्ति ग्रामसभा दर्ज, हैं। जमींदारी विनाश अधिनियम के नियम 176 क (1) के अनुसार आसामी आवंटन की समयावधि अधिकतम अवधि पांच वर्ष होती है। प्रश्नगत प्रकरण में वादीगण को भूमि खसरा नम्बर 44 क्षेत्रफल 0.3380 है0 स्थित मौजा धीरमजरा अहतमाल, परगना व तहसील भगवानपुर, जिला हरिद्वार पर अपने स्वामित्व के सम्बन्ध में अभिलेखीय साक्ष्य दाखिल किये जाने हेतु दिनांक 23.07.2020 को अवसर प्रदान किया गया। वादीगण द्वारा अपने अभिलेखीय साक्ष्य में न्यायालय उप जिलाधिकारी/सहायक कलेक्टर, प्रथम श्रेणी, रुड़की द्वारा पारित आदेश दिनांक 14.02.2001 की प्रमाणित प्रति दाखिल की गई। इसके अतिरिक्त माननीय न्यायालय अपर आयुक्त (प्रशासन), गढ़वाल मण्डल पौड़ी में योजित रिवीजन संख्या जेड0ए0 13/2001-2002 मल्लू आदि बनाम उप जिलाधिकारी, रुड़की, जिला हरिद्वार में पारित आदेश 23.02.2005 की छायाप्रति दाखिल की गई। न्यायालय उप जिलाधिकारी/सहायक कलेक्टर, प्रथम श्रेणी, रुड़की द्वारा पारित आदेश दिनांक 14.02.2001 में भूमि खसरा नम्बर 44 क्षेत्रफल 0.3380 है

स्थित मौजा धीरमजरा अहतमाल, परगना व तहसील भगवानपुर, जिला हरिद्वार को निरस्त नहीं किया गया। न्यायालय उप जिलाधिकारी/सहायक कलेक्टर प्रथम श्रेणी रुड़की द्वारा पारित आदेश दिनांक 14.02.2001 को न्यायालय अपर आयुक्त (प्रशासन) गढ़वाल मण्डल, पौड़ी में योजित रिवीजन संख्या जेड0ए0 13/2001-2002 के द्वारा निरस्त कर दिया गया। भूमि खसरा नम्बर 44 क्षेत्रफल 0.3380है0 स्थित मौजा धीरमजरा अहतमाल, परगना व तहसील भगवानपुर, जिला हरिद्वार पर पट्टेदार का पट्टा निरस्त कर सम्पत्ति ग्रामसभा दर्ज किया जाना त्रुटिपूर्ण हो सकता है। न्यायालय उप जिलाधिकारी/सहायक कलेक्टर प्रथम श्रेणी रुड़की में योजित वाद संख्या 10/1995 धारा 229बी/122बी4(एफ) ज0वि0 अधिनियम मल्हू बनाम सरकार की प्रश्नगत में भूमि खसरा नम्बर 44 क्षेत्रफल 0.3380है0 स्थित मौजा धीरमजरा अहतमाल, परगना व तहसील भगवानपुर, जिला हरिद्वार नदी श्रेणी-6(1) अकृषिक भूमि जलमग्न भूमि के रूप में अंकित हैं। इसके अतिरिक्त उक्त पत्रावली के पृष्ठ संख्या 15/3, 15/4 एवं 15/5 पर उपलब्ध यह रसीद है की मूल प्रति जो तत्कालीन ग्राम प्रधान द्वारा मल्हू पुत्र मंगन निवासी गाम धीरमजरा के पक्ष में साल दर साल प्रश्नगत भूमि के लगान के रूप में जारी की गई। उक्त से भी स्पष्ट है कि प्रश्नगत भूमि ग्रामसभा की थी।

पत्रावली पर उपलब्ध साक्ष्यों के परिशीलन एवं पक्षों के मौखिक कथनों के आधार पर खसरा नम्बर 44 क्षेत्रफल 0.3380है0 स्थित मौजा धीरमजरा अहतमाल, परगना व तहसील भगवानपुर जिला हरिद्वार सम्पत्ति ग्रामसभा हैं तथा उसमें खड़े वृक्षों के मुआवजा दिलाये जाना नयायसंगत प्रतीत नहीं होता हैं। प्रश्नगत वृक्षों को मुआवजा सम्बन्धित ग्रामसभा को दिया जाए। यदि प्रश्नगत भूमि के सम्बन्ध में स्वामित्व सम्बन्धि कोई निर्णय वादीगण के पक्ष में पारित हो जाता हैं तो उक्त मुआवजा का तदनुसार वादीगण को किया जाए। ग्रामसभा उक्त मुआवजा की धनराशि को तब तक ग्रामसभा खाता में सुरक्षित रखें।”

आदेश

अतः उपर्युक्त विवेचना के आधार पर वादीगण का वाद निरस्त किया जाता हैं। भूमि खसरा नम्बर 44 स्थित ग्राम धीरमजरा अहतमाल परगना व तहसील भगवानपुर जिला हरिद्वार में खड़े कुल 472 पेड़ों का वर्तमान बाजारी मूल्य रूपये 1,91,325/- (एक लाख इक्कानवे हजार तीन सौ पच्चीस) ग्रामसभा, धीरमजरा, परगना व तहसील भगवानपुर, जिला हरिद्वार दिया जाता है। प्रतिवादी उक्त धनराशि का भुगतान ग्रामसभा को नियमानुसार करना सुनिश्चित करें। ग्रामसभा, धीरमजरा परगना व तहसील भगवानपुर, जिला हरिद्वार प्रश्नगत भूमि में खड़े पेड़ों का कटान तत्काल करना सुनिश्चित करें। ग्रामसभा, धीरमजरा, परगना व तहसील भगवानपुर जिला हरिद्वार उक्त वृक्षों का सार्वजनिक रूप से नीलाम कर, नीलाम धनराशि को भी ग्रामसभा कोष में जमा करना सुनिश्चित करें। भारत सरकार की अधिसूचना दिनांक 18.06.2006 के नियम-3 के परन्तुक-2 के अनुसार प्रतिवादी के विद्युत पारेक्षण लाईन के कार्य में वादीगण या अन्य कोई व्यक्ति/संस्था प्रत्यक्ष या अप्रत्यक्ष रूप से कोई अवरोध/बाधा उत्पन्न नहीं करेंगे। प्रतिवादी प्रश्नगत भूमि पर निर्माणधीन 132 के0वी0 भगवानपुर-चुड़ियाला लीलो पिरान कलियर विद्युत पारेक्षण लाईन को यथाशीघ्र पूर्ण करना सुनिश्चित

करें। तदनुसार वाद का निस्तारण किया जाता है। आदेश की प्रमाणित प्रति उप जिलाधिकारी, सहायक कलेक्टर प्रथम श्रेणी, भगवानपुर एवं ग्रामसभा, धीरमजरा, परगना व तहसील भगवानपुर, जिला हरिद्वार को आवश्यक कार्यवाही हेतु भेजी जाए। पत्रावली बाद आवश्यक कार्यवाही के दाखिल दफतर की जावें।”

- 5.4 From the above, it is clear that the District Magistrate on finding that the affected land is only Khasra No. 44, and the same is registered in the name of the Gram Sabha, Village Dheer Majara, Post. Hallu Mjara and observing that the matter over the title of the said land is pending before the Court of law, awarded compensation in the name of the said Gram Sabha with the directions that the Gram Sabha shall ensure cutting of the trees immediately and conduct a public auction of the said trees and to keep the amount received from the auction and from the Licensee as compensation, safe till the matter over title of the land is settled by the Court of law. The procedure and approach taken by the District Magistrate seems to be reasonable and in order, and it is difficult to comprehend how otherwise should the District Magistrate have taken up the matter. The request of the Petitioners does not seem to be justifiable and without any sound reasons.
- 5.5 Further, with regard to amount of compensation determined, the District Magistrate relied on the Report submitted by the Committee on 03.07.2020 and calculated an amount of Rs. 1,91,325/- as compensation as per the prevailing market rates. Further, it is relevant to mention from the impugned order that the Petitioners did not raise any objection before the District Magistrate on the said report. It appears that the District Magistrate has followed utmost diligence in determining compensation and the Commission does not find any infirmity in the amount of compensation determined by the District Magistrate. Further, the submission of the Petitioners, wherein, they are relying on the compensation provided by PGCIL in the similar circumstances cannot be accepted as the compensation provided by PGCIL was not as per the orders of the District Magistrate and was a onetime settlement as has been rightly pointed out by the Licensee provided at para 4.8 supra.
- 5.6 Further, the Commission also does not find any infirmity in the decision of the District Magistrate in deciding the aforesaid Gram Sabha to be the legitimate title holder of the land and directing it to be the custodian of the compensation amount

till the dispute over the title of the land is settled by the Court of Law. Such decision of the District Magistrate appears fair on the test of reasonability. Thus, it is clear that the order of the District Magistrate does not suffer from any illegality. Moreover, since the claim over the land is not yet decided in the name of the Petitioners, the claim for compensation is not justified. Furthermore, the Commission is not the appropriate authority in deciding the title over the land.

5.7 On the question of providing annual rent, it is to clarify that that the said land over which the transmission line is passing, has not been acquired by the Licensee and will remain in the possession of the land owner(s), on which agricultural activities can be carried out unhindered including planting trees of certain height as permissible under the law. Therefore, the claim of annual rent by the Petitioners is unreasonable.

5.8 Besides above, the submission made by the Revisionists do not qualify the grounds of Revision given in the CPC provided supra. It is observed that it is only in cases where the subordinate court has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in excess of its jurisdiction illegally or with material irregularity, that the jurisdiction of the Commission can be properly invoked. After examining the order of the District Magistrate it is evident that there is no error in the order of the District Magistrate or that the District Magistrate has not exercised the jurisdiction vested in him or has failed to exercise jurisdiction vested in him.

In the case of Baldevdas Shiv Lal V/s Filmistan Distributors (India) Pvt. Ltd. AIR 1970 SC 406, the Hon'ble Supreme Court has observed that:

"The primary object of this section is to prevent the subordinate courts from acting arbitrarily, capriciously and illegally or irregularly in the exercise of their jurisdiction. It clothes the High Court with the powers necessary to see that the proceedings of the subordinate courts are conducted in accordance with the law within the bounds of their jurisdiction and in furtherance of justice."

From the above, there appears no jurisdictional error committed by the District Magistrate in the impugned order and there is no illegality or material irregularity found in the said order. Therefore, there is no reason to interfere in the order passed by District Magistrate. Moreover, the claim of the Petitioners to revise compensation

and provide annual rent have been established unreasonable and unjustified, therefore, the Revision itself is uncalled for.

In light of the above, the Commission is of the view that the order of the District Magistrate is sound and reasonable and does not suffer from any infirmities. *Per contra* the Commission does not find any merits/justification in the arguments of the Petitioners and therefore, revision is liable to be dismissed.

The Petition is hereby dismissed.

Ordered Accordingly.

(M. K. Jain)
Member (Technical)

(D.P. Gairola)
Member (Law)