

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5880 OF 2008

[Arising out of SLP(C) No.9651/2007]

KERALA STATE ELECTRICITY BOARD ... **APPELLANT(S)**

:VERSUS:

LONAPPAN AND ANR. ... **RESPONDENT(S)**

ORDER

Leave granted.

Having heard the learned counsel appearing for the parties, we are of the opinion that the learned Additional District Judge, North Paravur, as also the High Court committed a serious error in directing payment of additional amount of compensation to the respondents herein, i.e. a sum of Rs. 1,45,817/- towards the price of the coconut trees and a sum of Rs. 1,17,925/- for the nutmeg trees while the claim therefor was limited to Rs. 45,000/- and Rs. 17,000/- respectively.

The learned Additional District Judge and the High Court relied upon the report of the Commissioner, but it appears that the learned Additional District Judge in his judgment stated:

to the conclusion that 93 cents of property is under the line, I do not know how he arrived that magic figure. The petitioner has not made any effort to substantiate the same. Hence, the claim regarding depreciation of land value is disallowed.”

It is not in dispute that the Commissioner was appointed by the learned Additional District Judge. It, however, appears that an objection to the report of the Commissioner was filed. We would assume that the Commissioner was not summoned by the appellant for his examination as is provided under Order XXVI Rule 10, sub-rule (2) of the Code of Civil Procedure, but in a case where a dispute has been raised in regard to the amount of claim, the learned Commissioner or for that matter the Courts could not have directed payment of compensation to the claimants over and above the amount prayed for in their claim applications.

For the reasons aforementioned, the order of the Additional District Judge as also the High Court is modified to the extent that in stead and place of the awarded sums of compensation, the respondents shall be allowed compensation for sums of Rs. 45,000/- and Rs. 17,000/- only. The amounts awarded on other heads shall, however, remain unaltered.

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The appeal is allowed to the aforementioned extent. However, in the facts and circumstances of this case, there shall be no order as to costs.

.....J
(S.B. SINHA)

.....J
(CYRIAC JOSEPH)

**NEW DELHI,
SEPTEMBER 26, 2008.**