

**THE STATE ELECTRICITY OMBUDSMAN**

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APPEAL PETITION NO. P/040/2016

(Present: V.V. Sathyarajan)

Dated: 17<sup>th</sup> October 2016

Appellant : Smt. L. Geetha,  
Palakkavu Wariam,  
Kilimanoor P.O.,  
Thiruvananthapuram.

Respondent : The Assistant Executive Engineer,  
KSE Board Limited,  
Electrical Sub Division,  
Kilimanoor,  
Thiruvananthapuram.

**ORDER**

Sri Vijayakumar, Uthram, Palayakavu, Kilimanoor, who was the petitioner in OP No. 9/2016 filed before CGRF (South), Kottarakkara, had requested the respondent to shift an electric post with three stay wires situated in his one cent property either to the border side of his property or along the nearby 33 kV line route. The respondent demanded an estimated amount of Rs. 1,00,778.00 for the above shifting under work deposit scheme. Since the estimated amount is very high the petitioner requested the Forum to shift the line with an alternative method. But the Forum disposed the petition by directing the respondent to shift the post and overhead line to the side of his property within 30 days from the date of receipt of payment of estimated labour charges only. Against the above order of Forum, the respondent approached Hon'ble High Court with WP (C) No. 23420/2016 and the Hon'ble High Court has issued stay order and is kept for pending final orders.

The appellant herein, Smt. L. Geetha, is the petitioner in OP No. 27/2016 filed before the CGRF (South), Kottarakkara. The grievance of the appellant is that the respondent took a decision to shift the 11 kV line to her property. Though the appellant raised few arguments against the shifting of

line, the Forum has not considered any of those aspects and upheld the decision taken in OP No. 9/2016 and dismissed the petition and directed the respondent to comply with the order in OP No. 9/2016.

The appellant's contention is that the Forum has disposed the petition in OP No. 9/2016 without giving an opportunity of being heard and passed an order directing the respondent to shift the line to the property of the appellant. Aggrieved against the order of the Forum in OP No. 27/2016, the appellant filed this petition. It is also submitted that the petitioner in OP No.9/2016, K. Vijayakumar had purchased one cent of land adjacent to the appellant's property. The electric line came from the MC Road, Kilimanoor is drawn through the private road of late, Lakshmi Warasiyar. The line was drawn at about 40 years back. The petitioner Sri Vijayakumar purchased the above said land recently. Sri Vijayakumar after purchasing the land, he was taking steps to shift the electric line from the side of his property claiming the above said private road is also a part of his property. Therefore there is a dispute regarding the private road between the petitioner in OP No. 9/2016 and appellant herein and the appellant has also stated that there is a dispute between Sri Vijayakumar and the appellant herein regarding the private road and a suit is pending before the Munsiff Court, Attingal in OS No. 252/2014.

The appellant's contention is that suppressing the material facts and not array the necessary party to the complaint, the petitioner Vijayakumar filed complaint OP. No. 9/2016 before the CGRF, Kottarakkara against the respondent praying to seek direction to shift the 11 kV line from the side of the disputed property. It is submitted that on 11-02-2016, the appellant herein submitted a complaint before the CGRF, Kottarakkara, against the movement of the shifting of the electric line through the property of the appellant. But the complaint was not considered by the CGRF and the same time the Forum passed an order directing the Assistant Executive Engineer, Electrical Sub Division, Kilimanoor to shift the electric line within 30 days.

The reliefs sought for by the appellant herein are:

- I. To set aside the order passed by the CGRF, Kottarakkara in OP No. 27/2016 dated 30-05-2016
- II. Direct the respondent not to shift the electric line to the appellant's property before disposing the OS No. 252/2014 pending before the Munsiff court, Attingal.

The respondent has put forward the following contentions in his statement of facts. The appeal petition of the appellant related to the case filed by one Sri Vijayakumar before the CGRF in OP No. 9/2016 and the decision

taken by the CGRF vide order dated 11-04-2016. The petitioner in OP No. 9/2016, Sri Vijayakumar has purchased one cent of land from Smt. Jameela Beevi on 28-12-2011. Two 11 kV feeders from Kilimanoor Substation are passing through this property and also placed an A-pole number K/KV-33/1. Sri Vijayakumar has requested to shift the post and the line to the southern side of his own one-cent property. Knowing this fact, the appellant herein, Smt. L. Geetha had made a complaint to the Assistant Engineer, Electrical Section, Kilimanoor not to shift the post and line since either Smt. Shajitha or Sri Vijayakumar has not in possession of any land and the transaction of property was illegal.

According to the appellant, the private pathway is exclusively for the use of family members and six other land owners who purchased the land from the family members of the appellant. The appellant and others are against the shifting of the 11 kV post to the boundary of the pathway. Sri Vijayakumar approached the CGRF with a request to shift the post and the CGRF allowed the petition. On getting expert opinion from the legal advisor, KSEB Limited, they filed a Writ Petition against the order issued by CGRF in OP No. 9/2016. Since the Hon'ble High Court of Kerala has stayed the order of CGRF in OP No. 9/2016, the respondent has not complied with the above orders of CGRF. The respondent has requested to take a suitable decision on this appeal in accordance with the circumstances mentioned above.

The case was posted for hearing on 27-09-2016 in my chamber at Edappally but the appellant was absent and Sri. Chandran M, Assistant Executive Engineer, Electrical Sub Division, Kilimanoor appeared for the respondent's side. The respondent stated that that they have filed a Writ Petition, WP(C) 23420/2016(B), before the Hon'ble High Court of Kerala against the CGRF order in OP No. 9/2016, which is stayed by the Hon'ble High Court. In the above circumstances the respondent requested to keep the case pending till the disposal of Hon'ble High Court.

The respondent also stated that there is a civil case pending before the Munsiff Court, Attingal regarding the ownership of the property and the pathway. Similarly the Hon'ble High Court of Kerala have also stayed the implementation the CGRF's order. As per Clause 22 (d) of the Kerala State Electricity Regulatory Commission (CGRF and Electricity Ombudsman) Regulations, 2005, provides that ***“maintainability of the complaint- (1) no representation to the Ombudsman shall lie in case where a representation for the same grievance by the complainant is pending in any proceedings before any Court, tribunal or arbitrator or any other authority or a decree or award or a final order has already been passed by any such Court, tribunal, arbitrator or authority”***.

On going through the records it is revealed that a Writ Petition, against the order of the CGRF (South), Kottarakara, is pending before the Hon'ble High Court of Kerala for the same cause of action and related grievances. Also it is noted that a civil case is pending with regard to the ownership of the disputed property. In view of the above discussions I hold that the appeal petition is not maintainable and hence rejected.

**ELECTRICITY OMBUDSMAN**

P/040/2016/ \_\_\_\_\_ /Dated: \_\_\_\_\_

Delivered to:

1. Smt. L. Geetha, Palakkavu Wariam, Kilimanoor P.O., Thiruvananthapuram.
2. The Assistant Executive Engineer, KSE Board Limited, Electrical Sub Division, Kilimanoor, Thiruvananthapuram.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.