



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2404 OF 2025

Chandrakant Pandharinath Solunke

APPELLANT
(Original Plaintiff)

VERSUS

Power Grid Corporation Of India Ltd.,

RESPONDENT
(Original Defendant)

AND

FIRST APPEAL NO. 2405 OF 2025

Bappasaheb Pandurang Salunke.

APPELLANT
(Original Plaintiff)

VERSUS

Power Grid Corporation Of India Ltd.,

RESPONDENT
(Original Defendant)

AND

FIRST APPEAL NO. 2448 OF 2025

Vishnu Tukaram Salunke,

APPELLANT
(Original Plaintiff)

VERSUS

Power Grid Corporation Of India Ltd.,

RESPONDENT
(Original Defendant)

AND

FIRST APPEAL NO. 2449 OF 2025

Bebibai Vishnu Salunke

APPELLANT
(Original Plaintiff)VERSUS

Power Grid Corporation Of India Ltd.,

RESPONDENT
(Original Defendant)

Mr. K. D. Jadhav, Advocate for Appellant in respective FA
Mr. Girish Rane, Advocate for Respondents in respective FA

CORAM : AJIT B. KADETHANKAR, J.
RESERVED ON : 16TH SEPTEMBER, 2025
PRONOUNCED ON : 25TH SEPTEMBER, 2025

ORDER :-

1. All these First Appeals have been filed by the respective appellants therein, thereby challenging judgment and decree passed by the learned District Judge-11, Aurangabad in their respective proceedings titled as Civil Suit, and having been instituted under Section 16(3) of the Indian Telegraph Act, 1885 (hereinafter referred to as 'the Act of 1885').

2. The Registry of this Court has endorsed an objection in all these proceedings as 'First Appeals not maintainable' in view of Section 16(3) and 16(5) of the Indian Telegraph Act, 1885. Hence, the appellants have moved these appeals before me.

FIRST APPEAL NO. 2404 OF 2025:**(Presented on 13.08.2025)**

- a. Contending that the appellant/plaintiff sustained loss to his agricultural land as also to the agricultural produce due to the act of the respondent having exercised under Section 10 of the Act of 1885, the appellant/plaintiff sued the present respondent before the learned District Judge-11 at Aurangabad under Section 16(9) of the Act of 1885. These proceedings were titled as Civil Suit No.11 of 2019. After going through the evidence and hearing the concerned parties, the learned District Judge-11, exercising its jurisdiction under Section 16(3) of the Act of 1885 passed a judgment and order dated 21.02.2025, thereby directing the respondent/corporation to pay Rs.2,232/- together with 6 percent interest per annum, to the plaintiff/appellant. Pertinent to note that the learned District Judge-11, Aurangabad also drew a decree on 21.02.2025, pursuant to the judgment and order.
- b. Against the judgment and decree, present appellant has preferred this appeal.

FIRST APPEAL NO. 2405 OF 2025**(Presented on 13.08.2025)**

a. Contending that the appellant/plaintiff sustained loss to his agricultural land as also to the agricultural produce due to the act of the respondent having exercised under Section 10 of the Act of 1885, the appellant/plaintiff sued the present respondent before the learned District Judge-11 at Aurangabad under Section 16(9) of the Act of 1885. These proceedings were titled as Civil Suit No.10 of 2019. After going through the evidence and hearing the concerned parties, the learned District Judge-11, exercising its jurisdiction under Section 16(3) of the Act of 1885 passed a judgment and order dated 21.02.2025, thereby directing the respondent/corporation to pay Rs.2,232/- together with 6 percent interest per annum, to the plaintiff/appellant. Pertinent to note that the learned District Judge-11, Aurangabad also drew a decree on 21.02.2025, pursuant to the judgment and order.

b. Against the judgment and decree, present appellant has preferred this appeal.

FIRST APPEAL NO. 2448 OF 2025**(Presented on 13.08.2025)**

- a. Contending that the appellant/plaintiff sustained loss to his agricultural land as also to the agricultural produce due to the act of the respondent having exercised under Section 10 of the Act of 1885, the appellant/plaintiff sued the present respondent before the learned District Judge-11 at Aurangabad under Section 16(9) of the Act of 1885. These proceedings were titled as Civil Suit No.8 of 2019. After going through the evidence and hearing the concerned parties, the learned District Judge-11, exercising its jurisdiction under Section 16(3) of the Act of 1885 passed a judgment and order dated 21.02.2025, thereby directing the respondent/corporation to pay Rs.2,232/- together with 6 percent interest per annum, to the plaintiff/appellant. Pertinent to note that the learned District Judge-11, Aurangabad also drew a decree on 21.02.2025, pursuant to the judgment and order.
- b. Against the judgment and decree, present appellant has preferred this appeal.

FIRST APPEAL NO. 2449 OF 2025**(Presented on 13.08.2025)**

- a. Contending that the appellant/plaintiff sustained loss to his agricultural land as also to the agricultural produce due to the act of the respondent having exercised under Section 10 of the Act of 1885, the appellant/plaintiff sued the present respondent before the learned District Judge-11 at Aurangabad under Section 16(9) of the Act of 1885. These proceedings were titled as Civil Suit No.9 of 2019. After going through the evidence and hearing the concerned parties, the learned District Judge-11, exercising its jurisdiction under Section 16(3) of the Act of 1885 passed a judgment and order dated 21.02.2025, thereby directing the respondent/corporation to pay Rs.7,900/- together with 6 percent interest per annum, to the plaintiff/appellant. Pertinent to note that the learned District Judge-11, Aurangabad also drew a decree on 21.02.2025, pursuant to the judgment and order.
- b. Against the judgment and decree, present appellant has preferred this appeal.

3. Heard Mr. K. D. Jadhav, learned Advocate for the appellants, who sought to convince the Court that the First Appeals are perfectly maintainable under Section 96 of the Civil Procedure Code.

4. Mr. Girish Rane, learned Advocate who usually appears for the respondent Power Grid Corporation of India Ltd. has also marked his presence in the matter, pursuant to having called upon by the Court for assistance.

5. Mr. K. D. Jadhav, learned Advocate in order to demonstrate that the present proceedings are absolutely maintainable as First Appeals under Section 96 of the Civil Procedure Code, submitted three points as under:

i. That, the proceeding under Section 16(3), which was instituted at the behest of the present appellant was registered by the learned District Judge-11, Aurangabad as a 'Civil Suit'.

ii. That, since the proceeding was undisputedly was a 'Civil Suit', it is rightly disposed of under a judgment and order, which is also accompanied by a decree.

iii. That, since the decree passed by the learned District Judge-11, Aurangabad falls under the definition of 'decree' as per Section 2,

sub Section 2 of the Civil Procedure Code, the appeal under Section 96 is the only remedy for the appellants.

iv. Last but not the least, Mr. K. D. Jadhav further submitted that a claimant in any compensation case, which is tried in the original/Trial Court, must get an opportunity for re-assessment of the evidence in an appellate forum to demonstrate any inadequacy or rejection of the compensation claimed by such claimant.

6. With this, Mr. K. D. Jadhav, learned Advocate for the appellant in all appeals submitted that the appeals are rightly instituted under Section 96 of the Civil Procedure Code and that, this Court has every jurisdiction under Section 96 of the Civil Procedure Code to examine correctness of the judgment and decree impugned in the First Appeals. He therefore requested to overrule the objection raised by the Registry.

7. Mr. Girish Rane, learned Advocate representing the Power Grid Corporation of India Ltd. however submits that the original claim trial proceeding is instituted under the Act of 1885. That, the remedial provision to challenge the compensation granted by the respondent/authority has been

given under Section 16(3) of the Act of 1885 to the District Courts. That, Section 16(5) of the Act of 1885 clearly says that the decision of the District Courts under the proceeding instituted under Section 16(3) and also under Section 16(4) of the Act of 1885 shall be final. With this, Mr. Girish Rane, learned Advocate for the respondent/corporation submits that present First Appeals won't be maintainable in the given form and under Section 96 of the Civil Procedure Code.

8. Upon having heard both the parties at length, I framed following points for consideration:

Sr. No.	Points	Findings
1	Whether this Court can exercise jurisdiction u/s 96 of the Civil Procedure Code against a decision rendered by Ld. District Judge u/s 16(3) of Indian Telegraph Act 1885 if such decision is in the form of a 'Decree' ?	No.
2	If no, what's the fate of proceeding and what is the procedure?	As per final order.
3	What Order	As per final order

9. To answer the points framed, it would be appropriate to look into the definition of 'decree' as well as the provision of First Appeal under Section 96 of the Civil Procedure Code, as also the relevant provisions under the Act of 1885.

Section 2 of the Civil Procedure Code, 1908:

(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within [3] * * section 144, but shall not include-*

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation-A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit, it may be partly preliminary and partly final;

Section 96 of the Civil Procedure Code, 1908:

96. Appeal from original decree (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

[(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature

cognisable by Courts of Small Cause, when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees.]

Section 10 of the Indian Telegraph Act, 1885

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 establish Ector maintained by the 1 [Central Government], or to be so established or maintained;

(b) the 1[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.

Section 16 of the Indian Telegraph Act, 1885

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 subsection (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.

10. It is clear from the plain reading of Section 16(5) of the Act of 1885 that ‘every determination of a dispute by a District Judge under sub Section 3 and 4 of Section 16 shall be final’, meaning thereby, the Act does not provide any appellate procedure itself, but also forbids any other statutory appellate procedure.

11. Sub section 1 of Section 96 of the Civil Procedure Code lays down that ‘Save where “otherwise expressly provided” in the body of this Code or by any other law for the time being in force’, an appeal shall lie from every decree passed by any

Court exercising original jurisdiction the Court authorized to hear appeals from the decisions of such Court.

12. It is apparent that the provision for appeal has been made from every 'decree' excepting the expressed provisions. Meaning thereby, the term "otherwise expressed provision" includes a remedial provision as also a restrictive provision in the Code and any other Law for the time being in force as the case may be. As such, the 'subject matter decrees' drawn by the learned District Judge-11, Aurangabad would not fetch any legal significance to become appealable under Section 96 of the Civil Procedure Code; nor would confer on this Court to jurisdiction under Section 96 of the Civil Procedure Code to examine its legality and validity/correctness as a First Appellate Court.

13. A conjoint reading of Section 16(5) of the Act of 1885 and Section 96(1) of the Civil Procedure Code would demonstrate that 'the decision taken by the District Courts in a dispute referred to it or instituted before it under Section 16(3) of the Act of 1885 is held to be final', and falls out of the purview of Section 96 of the Civil Procedure Code. True that the proceeding that was instituted by the respective

appellants in the Court of learned District Judge-11, Aurangabad were styled and titled as 'Civil Suits', that itself would not create an exception to the aforesaid legal provisions nor those provisions are made redundant only because of titling a proceeding as Civil Suit.

14. So far as, another contention of the appellant that 'a decree is drawn by the learned District Judge-11, Aurangabad' pursuant to the respective judgments and orders, for the reasons stated above, such decree would not *ipso facto* create/confer jurisdiction under Section 96 of the Civil Procedure Code for a First Appeal to be presented in this Court.

15. Now on the last contention of the appellant seeking an appellate remedy for re-assessment of the evidence and valuation for the claimed compensation is concern, a profitable reference can be made to a judgment and order rendered by the Hon'ble Supreme Court of India in the matter of *Kalpataru Power Transmission Ltd. (Now known as Kalpataru Projects International Ltd.) Vs. Vinod and Others, reported in 2025 SCC OnLine SC 1731.*

16. Briefly speaking, in the above case the claimants therein have lodged their grievance in the concerned District Court under Section 16(3) of the Act of 1885. A Writ Petition was filed either under Article 226 or 227 in the High Court against the judgment and order passed by the concerned District Court under Section 16(3) of the Act of 1885. This was obviously because Section 16(5) of the Act of 1885, statutorily gives finality to the decision taken by the learned District Judge under Section 16(3) of the Act of 1885. In the given case, the order passed by the High Court was taken up before the Hon'ble Supreme Court questioning correct assessment of the compensation. The Hon'ble Supreme Court while disposing of the appeals pending before it observed that the Law Commission of India and the Ministry of Law and Justice as well as the Government of India to determine whether a statutory remedy of appeal should be provided against the judgments and order passed by the District Courts in a dispute under Section 16(3) and 16(4) of the Act of 1885. The Hon'ble Supreme Court also opined that there is need for uniformity in nomenclature of the case filed under Section 16(3) of the Act of 1885. For the sake of convenience,

paragraphs 33 to 36 of the judgment in **Kalpataru** (supra) are reproduced as follows:

33. Needless to add here that, in the process of determination of compensation, evidence will have to be led by the parties. Unless statutory remedy of appeal is provided where all issues of law and facts can be re-examined, any other remedy may be illusory. As is noticed in the facts of the present case, the remedies availed by different parties were different. In some of the cases, writ petitions were filed by the landowners under Article 226 of the Constitution of India, impugning the judgment and decree of the civil court and in some of the cases, the contractor as well as the landowners filed petitions under Article 227 of the Constitution of India. Reappreciation of evidence in those proceedings may be an issue. Remedy may not be effective and can become illusory.

34. Not only this, but the anomalies as have been referred to in the paragraph 30 with reference to various timelines as well, the matter needs to be examined.

35. In the aforesaid background, we are of the opinion that these issues need to be examined by the Law Commission of India and the Ministry of Law and Justice, Government of India, so as to determine whether a statutory remedy of appeal should be provided against judgments/orders passed under Sections 16(3) and 16(4) of the 1885 Act, the Petroleum Act or any other similar statute.

36. Section 16(3) of 1885 Act, provides that an application can be filed before the District Judge in case of a dispute related to compensation. In district Sonapat, such an application was registered and numbered as a Civil Suit where a judgment and decree has been passed. Whereas in district Jhajjar, the same was registered as a Civil Miscellaneous Application and only judgment has been passed. There is need to bring uniformity in the nomenclature to be assigned to these kinds of proceedings, which may come to the court under the 1885 Act and also the proceedings under the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962.

17. Thus, it is clear that although in a dispute under Section 16(3) or 16(4) of the Act of 1885, as the case might be styled and titled in any nomenclature, the provision of Section 16(5) shall prevail over such decision.

18. In view of above, I am of the considered view that this Court cannot exercise jurisdiction under Section 96 of the Civil Procedure Code against any decision, may be in the form of a judgment, judgment & order and a judgment & order with a decree passed by the District Court exercising the jurisdiction under Section 16(3) of the Act of 1885.

19. It is quite clear from the judgment and order passed by the Hon'ble Supreme Court in the matter of **Kalpataru** (supra),

that the parties aggrieved by a decision rendered by District Courts under Section 16(3) or 16(4) of the Act of 1885, have taken recourse to Article 226 as also to Article 227 of the Constitution of India in respective cases. The Hon'ble Supreme Court at paragraph 27 of the said judgment has observed as follows:

27. In the present case as well, some parties invoked Article 226 of the Constitution, whereas others filed petitions invoking Article 227 of the Constitution. This is solely because no proper appellate remedy has been provided. The only scope of interference in exercise of extraordinary jurisdiction of the High Court would be within the parameters of judicial review.

20. In view of above, in the peculiar facts, this Court can either reject the appeal as not maintainable in view of Section 16(5) of the Act of 1885, or the appeal can be returned to the appellants under Order VII, Rule 10 of the Civil Procedure Code for want of subject matter jurisdiction. The powers u/o Order VII Rule 10 and Order VII Rule 11 are mutually exclusive.

21. At this stage it would be beneficial to quote what this Court has observed in the case of "Roda Mehta case" (*Roda Jal Mehta & Others Versus Homi Framrose Mehta & Others, reported in AIR 1989 Bombay 359*) which is

reproduced as follows:

"If I am not empowered to receive a plaint, I cannot deal with such a plaint. If I am not empowered to receive, I cannot keep it in the records of this Court. I must necessarily return the plaint to the person who has tendered such a plaint. I cannot understand how on this basis I can dismiss the plaint when I am not empowered to receive the same."

22. In view of above, and considering that the poor farmers who are appellants in the present proceedings, who due to misconception of law have presented these First Appeals by paying Court Fees, I deem it appropriate in the interest of justice to return the appeals to the appellants under Order VII Rule 10 of the Civil Procedure Code. Needless to mention appellants may present the proceedings in proper form and before proper forum in view of paragraph 19 of this order.

23. It is ordered accordingly on 25.09.2025 by intimation to the appellant.

(AJIT B. KADETHANKAR, J.)