IN THE HIGH COURT OF TRIPURA
A G A R T A L A

CRP NO.75 OF 2014
CRP NO.01 OF 2015
CRP NO.02 OF 2015

IN
CRP NO.75 OF 2014

1. Oil and Natural Gas Corporation Ltd.,
   Jeevan Bharati Building, New Delhi-110001

2. Chairman cum Managing Director,
   ONGC, 7th Floor, Jeevan Bharati Building,
   New Delhi-110001

3. The Asset Manager, ONGC Ltd.,
   Tripura Asset, Agartala, P.O. Badharghat,
   District : West Tripura, PIN : 799014

4. Competent Authority (ROU), ONGC Ltd.,
   Qtr. B-78 South Colony, Agartala,
   P.O. Badharghat, District : West Tripura,
   PIN : 799014

………………… Petitioners

– Vs –

Sri Kartik Debbbarma,
son of late Rakemdra Debbarma,
resident of Sreenagar,
P.S. Sreenagar, District : West Tripura.

...………….Respondent

IN
CRP NO.01 OF 2015

1. Oil and Natural Gas Corporation Ltd.,
   Jeevan Bharati Building, New Delhi-110001

2. Chairman cum Managing Director,
   ONGC, 7th Floor, Jeevan Bharati Building,
   New Delhi-110001

3. The Asset Manager, ONGC Ltd.,
   Tripura Asset, Agartala, P.O. Badharghat,
   District : West Tripura, PIN : 799014

4. Competent Authority (ROU), ONGC Ltd.,
   Qtr. B-78 South Colony, Agartala,
   P.O. Badharghat, District : West Tripura,
   PIN : 799014

………………… Petitioners

– Vs –

Sri Sudhir Barman,
son of late Darika Barman,
resident of Anandanagar,
P.S. Sreenagar, District : West Tripura.

..............Respondent

IN
<u>CRP NO.02 OF 2015</u>

1. Oil and Natural Gas Corporation Ltd.,
   Jeevan Bharati Building, New Delhi-110001

2. Chairman cum Managing Director,
   ONGC, 7th Floor, Jeevan Bharati Building,
   New Delhi-110001

3. The Asset Manager, ONGC Ltd.,
   Tripura Asset, Agartala, P.O. Badharghat,
   District : West Tripura, PIN : 799014

4. Competent Authority (ROU), ONGC Ltd.,
   Qtr. B-78 South Colony, Agartala,
   P.O. Badharghat, District : West Tripura,
   PIN : 799014

………………… Petitioners

– Vs –

Smt. Supriya Das,
wife of Sri Samir Chandra Das,
resident of Santipara, R.K. Nagar,
P.S. Bodhjangnagar, District : West Tripura.

..............Respondent

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioners : Mr. P.B. Dhar, Advocate

For the respondents : Mr. B. Choudhury, Advocate

Date of hearing : 17.06.2015

Date of judgment & order : 31.08.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER

All these revisions, being CRP No.75/2014, CRP No.01/2015 and CRP No.02/2015 Article 227 of the Constitution of India projecting that no statutory remedy is available to the petitioners are filed to question the legality and propriety of the award made by the District Judge or the Additional District Judge under Section 10(2) of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962. Those are taken up together as the similar set of facts and question of law are involved.

2. For purpose of reference, the revision petitions vis-a-vis the Civil Misc.(PMP) numbers, date of judgment and award, amount of compensation and the description of land on which the right of the user has been claimed, are given in a tabular form hereunder :

Sl. No.	Petition No.	Civil Misc. (PMP) no.	Date of Judgment and award	Amount of compensation	Description
1.	CRP No. 75/2014	Civil Misc. (PMP) No. 24/2014	04.08.2014	₹21,15,700	Plot No.4710(P), Khatian No.61/1, Mouja Sreenagar, measuring 0.21 acre
2.	CRP No. 01/2015	Civil Misc. (PMP) No. 11/2014	27.11.2014	₹7,12,381	Plot Nos.7515(P), 7516(P) Khatian No.391, Mouja Anandanagar, measuring 0.28 acre in total
3.	CRP No. 02/2015	Civil Misc. (PMP) No. 10/2014	27.11.2014	₹37,78,750	Plot Nos.7469(P), 7470(P) Khatian No.1406, Mouja Anandanagar, measuring 0.87 acre in total

* The land descriptions are subject to record and the compensation reflects 10% of the land value, the actual damage of the land, value of the trees standing on the land and another properties.

3. Having regard to the jurisdictional limitation with respect to the challenge under Article 227 of the Constitution of India, the petitioner, the requiring Department, has questioned the impugned judgment and award, primarily on four aspects, viz.

(i) inherent lack of jurisdiction

(ii) the application under Section 10(2) of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962, hereinafter 'the Act' in short, was barred by limitation;

(iii) non-joinder of necessary parties; and

(iv) misreading of evidence on record.

4. Mr. P.B. Dhar, learned counsel appearing for the petitioner-requiring Department, has submitted that at the instance of the land-owner respondents, a petition under Section 10(2) of the Act was pressed in the court of the District Judge of the said Act. Those were initially registered as Misc.(LA) and later on, those were re-registered as Civil Misc.(PMP). Under Section 2(a) of the Act, a competent authority is to be appointed by the Central Government for purpose of determining the compensation payable to the land-owners. The right of user shall vest absolutely in the Central Government or in the State Government. If for any purpose the right of the user is required to be vested in the State Government or the Corporation then only at the instance of the Central Government, liability would be transferred to the State Government or the Corporation proposing to lay the pipelines. Mr. Dhar, learned counsel has submitted that the District Judge, West Tripura exercised the power wrongly at the first instance by registering the cases as the Misc.(LA) and, thereafter, converting those cases as the Civil Misc.(PMP) cases. At the first instance, there was inherent lack of jurisdiction.

5. Mr. Dhar, learned counsel has further submitted that in exercise of the powers conferred by Section 17 of the Act, the Central Government has framed the Petroleum

Pipelines Acquisition of Right of User Rules, 1963, hereinafter 'the Rules' in short. Rule 5 of the said Rules provides that :

> **"Application to the District Judge for determination of compensation- Any party aggrieved by the determination of the amount of compensation may prefer an application to the District Judge within the limits of whose jurisdiction the land or any part thereof is situated, not later than ninety days of the receipt of the intimation from the competent authority under rule 4(3)."**

6. According to Mr. Dhar, learned counsel, the application under Section 10(v) of the Act filed by the individual land-owner-respondent was much beyond ninety days and as such the application, being barred by the limitation, ought to have been rejected at the threshold. But, the District Judge or the Addl. District Judge has decided the applications on merit by the impugned judgments and awards without looking into the delay. Thus, the District Judge or the Addl. District Judge has exercised the jurisdiction which was not vested on him. According to Mr. Dhar, learned counsel, the Central Government was a necessary party inasmuch as the right of users under the said Act vests with the Central Government. In the absence of the Central Government, the applications ought not have been decided. Thus, the applications were hit by non-joinder of the necessary party. Mr. Dhar, learned counsel has submitted that the District Judge or the Addl. District Judge has misread the evidence and

returned the finding in a fanciful manner. He has further submitted that the competent authority has determined the actual loss by awarding the compensation at 10% of the damages, excluding the land value. The land-owners had accepted that money by executing the indemnity bond and by issuing the no objection certificate. For purpose of questioning the method of assessing the actual damage, Mr. Dhar, learned counsel has relied on a decision of this court delivered in **Oil and Natural Gas Corporation Ltd. Vs Basudev Biswas and another** (judgment and order dated 01.12.2014 in L.A. Appl. No.37 of 2008 etc) and contended that price for rubber plant has been granted by this court at ₹210 whereas by the impugned judgment and award, the damage per rubber plant was calculated at ₹10,000.

7. From the other side, Mr. B. Choudhury, learned counsel appearing for the land-owner-respondents, has submitted that in the written objection filed by the petitioners, no specific plea on limitation has been taken. Even in the examination-in-chief filed in Civil Misc.(PMP) 11/2014, re-registered from Misc.(LA) 276/2012, no endeavour by the requiring Department has been made to lay the basic fact as to when the information in respect of the award by the competent authority was made to the land-owner respondents. Similar examination-in-chief was filed in Civil Misc.(PMP)

10/2014, re-registered from Misc.(LA) 275/2012. But, in Civil Misc.(PMP) 24/2014, re-registered from Misc.(LA) 168/2012, no such examination-in-chief containing the basic fact as stated from the requiring Department has been filed. According to Mr. Choudhury, learned counsel, unless a specific objection is raised with the basic fact demonstrating that the application was barred under Rule 5 of the Rules, the petitioners may not be permitted to raise such objection in a proceeding under Article 227 of the Constitution of India. He has submitted that the land owners filed the applications under Section 10(2) of the said Act within a period of ninety days and as such the applications were not barred by limitation. He has further submitted that from the notification dated 23.03.2012, it clearly appears that the right of the users in land was acquired to lay pipeline for the Tripura Project of the Oil and Natural Gas Corporation Ltd. When the right of users in the land were acquired for the statutory Corporation and if the statutory Corporation is impleaded as the party, the Central Government may not be made a party unnecessarily. Mr. Choudhury, learned counsel has further submitted that acceptance of the money shall not estop the land owners from filing an application for determination of the actual damages under Section 10(2) of the Act as the principle of estoppel does not operate against law. He has further submitted that not a single instance has been shown in these petitions how the District Judge or the Addl. District Judge has misread the evidence. On the contrary, the petitioners have made an attempt to flay their own enquiry reports. Mr. Choudhury, learned counsel, to illustrate the nature of order passed by the competent authority, has referred to Exbt.1 in Civil Misc.(PMP) No.24/2014 (related to CRP No.75/2014), where the following has been provided as the basis of determination of the compensation :

> **"Perused the enquiry report. The applicant stated that he has engaged the labours on contract for the whole year, if the labours are released at this stage he has to pay wages to them and work has been held up for the non-payment of the compensation. It has been observed that the applicant did not cultivate anything on the land and it is like the Natural Resources and the applicant livelihood depends on this business and due to the laying Gas pipe line the business will be closed forever. To ensure the timely completion of the work as per PMP Act, we pay 10% of the land cost.**
>
> **<u>It appears that as per enquiry report total loss of the applicant for the current year Rs.20,95,200/- and 10% of the total loss Rs.2,09,520/-</u>.**
>
> **Thus the applicant for his loss be paid Rs.2,09,520/- (Rupees two lac nine thousand five hundred and twenty) only."**

8. Mr. Choudhury, learned counsel has further submitted that the report of the requiring Department has

been referred by the Addl. District Judge, who passed the impugned judgment and award in Civil Misc.(PMP) No.24/2014 and he has correctly given 10% of the land value as the damage as the loss for the land and the remaining award is made for the actual damage suffered by the land owners for laying down of the pipe line. Thus, the total compensation comes to ₹21,15,700.

9. It is to be noted that the actual damage in Civil Misc.(PMP) No.24/2014, related to CRP No.75/2014, was closure of business of sand quarries whereas in other two cases, being Civil Misc.(PMP) No.11/2014, related to CRP No.01/2015 and Civil Misc.(PMP) No.10/2014, related to CRP No.02/2015, were the felling down of valuable trees and fruit bearing plants. It is to be noted that except the statement that the District Judge or the Addl. District Judge, who passed the impugned judgment and order has misread the evidence, no material particulars have been provided by the petitioners. From the contentions as projected by the petitioners and the land-owner respondents, the questions that fall for consideration are that :

(i) Whether the District Court inherently lacked the jurisdiction?

(ii) Whether the applications are barred by limitation vis-a-vis the Rule 5 of the Rules and whether the objection as to limitation was raised on placing the materials for that purpose?

(iii) Whether the applications are hit by the non-joinder of the necessary parties? and

(iv) Whether there was misreading of the evidence on record?

WHETHER THE DISTRICT COURT INHERENTLY LACKED THE JURISDICTION?

10. The basis of raising this objection by the petitioners that the District Court inherently lacked the jurisdiction is that, initially the cases were registered as Misc.(LA) cases and later on the court of its own accord corrected the mistake by a common notification and the cases filed under Section 10(2) of the Act, were re-registered as Civil Misc.(PMP) cases for removing the apparent mistake committed in the registration of the cases. This cannot be allowed to take as the basis for objecting the jurisdiction of the District Court inasmuch as Section 10(2) of the said Act categorically provides that :

> **"If the amount of compensation determined by the competent authority under sub-section (1) is not acceptable to either of the parties, the amount of**

compensation shall, on application by either of the parties to the District Judge within the limits of whose jurisdiction the land or any part thereof is situated, be determined by that District Judge."

There is no dispute that after the determination made by the competent authority as defined under Section 2(a) of the said Act, the land-owner-respondents filed the applications before the District Judge, within the limit of whose jurisdiction the land is situated. Thus, it cannot be allowed to be stated that the District Judge lacked in the inherent jurisdiction.

WHETHER THE APPLICATIONS ARE BARRED BY LIMITATION VIS-A-VIS THE RULE 5 OF THE RULES AND WHETHER THE OBJECTION AS TO LIMITATION WAS RAISED ON PLACING THE MATERIALS FOR THAT PURPOSE ?

11. The law is well settled that, if law requires certain action to be taken within certain time, the action has to be taken within such time, unless it is provided that the delay in taking some action can be condoned by the court or the forum to which such action has been brought in accordance with the principle so provided by the law. There cannot be any amount of doubt that Rule 5 of the Rules unambiguously prescribes limitation as under :

"Any party aggrieved by the determination of the amount of compensation may prefer an application

> **to the District Judge within the limits of whose jurisdiction the land or any part thereof is situated, not later than ninety days of the receipt of the intimation from the competent authority under rule 4(3).”**

Thus, on receipt of the information from the competent authority under Rule 4(3) of the Rules, within ninety days therefrom the application under section 10(2) of the Act to the District Judge for determination of the amount of compensation has to be filed.

12. This court, in **Adhir Ch. Paul @ Adhir Kanta Paul Vs. Union of India & Anr.** (by the judgment and order dated 11.03.2015) has observed that, Section 5 of the Limitation Act is applicable if the application cannot be filed within ninety days as stipulated by Rule 5 of the said Rules on showing sufficient causes. It has further been held that an application filed under Section 10(2) of the said Act is not a suit, but an application for re-determination of the damages. Even the requiring Department can approach the District Judge, if they felt aggrieved.

13. But, in this case, it is an admitted position that in the written objection filed by the requiring Department, though they have raised that the application is barred by limitation, waiver or estoppel, but nothing has been specifically pleaded in this regard. Even no evidence has been led thereof. Mr.

Choudhury, learned counsel, has rightly contended that the fundamental duty lies with the party which raises such objection to show from the materials from which point limitation had started. In this case, it was the obligation of the petitioners to show when the information, either in writing or any other means of communication as to the award of compensation made by the competent authority was transmitted. In the written objection, no reference has been made thereto or in the examination-in-chief filed for the petitioners, there is no mention in this regard.

14. This court, on scrutiny of records finds that the only document that has been brought on record is a document by which the money was received by the land-owners. For example, in CRP No.75/2014, the application under Section 10(2) of the Act was filed on 16.05.2012 whereas the award was made by the competent authority on 19.03.2012. As such, there was no delay in filing the said application. In CRP No.01/2015, the application under Section 10(2) of the said Act was filed on 22.09.2012, whereas the award was made on 07.06.2012, but there is no document to indicate when such award was communicated to the petitioner under Rule 4 of the said Rules. But no document to prove the communication of the said award (Exbt.E) as made to the petitioner is available on record. No endeavour in this regard has been made by the

petitioner. Similarly, in CRP No.02/2015, the application under Section 10(2) of the said Act was filed on 22.09.2012, whereas the award was made on 07.06.2012, but no document to prove the communication as to when the award was communicated to the land-owner is available in the record. As such, in absence of any pleading or evidence on record in this regard, when the land-owners received the communication of the award, it cannot be held that their applications are barred by limitation. Rule 5 of the said Rules categorically prescribes that the limitation should start from the date when the land-owner would receive the communication. In absence of any proof in this regard, it cannot be held that the applications were barred by the limitation as provided under Rule 5 of the Rules. Hence, the objections in this regard, raised by the petitioners stand rejected.

WHETHER THE APPLICATIONS ARE HIT BY THE NON-JOINDER OF THE NECESSARY PARTIES?

15. It is apparent from the notification of the acquisition of right of users in land that the Central Government has acquired the said right of users for the Oil & Natural Gas Corporation Ltd., which is a Corporation within the meaning of Section 2(b) of the Act. Section 3 of the Act

provides that the acquisition can be made by the Central Government if it is necessary in the public interest that for the transport of petroleum for any minerals from one locality to another locality pipelines are required to be laid by that Government or by any State Government or any Corporation and for that purpose it is necessary to acquire the right of user in any land in the sub-soil of which such pipelines may be laid. It may, by notification in the Official Gazette, declare its intention to acquire the right of user therein. Thus, it is clear that the Central Government when acquires the right of user in any land for any Corporation then the impleadment of the Corporation would suffice for purpose of impleadment of the necessary party inasmuch as the said Corporation is a statutory agent of the Central Government for purpose of acquisition of the right of user in any land. It would be further apparent that so far the dispute relating to the compensation or payment of the compensation is concerned, it will be the exclusive liability of the Corporation when the right of user of any land has vested in the Corporation, inasmuch as Section 10(4) of the Act provides that –

> **"Where the right of user of any land has vested in the Central Government, the State Government or the corporation, the Central Government, the State Government or the corporation, as the case may be, shall, in addition to the compensation, if any, payable under sub-section (1), be liable to pay to the owner and to any other person whose right of enjoyment in that land has been affected in any**

manner whatsoever by reason of such vesting, compensation calculated at ten per cent of the market value of that land on the date of the notification under sub-section (1) of section 3.”

Therefore, in the dispute relating to the compensation, when the right of the user in the land has vested in the Corporation, the Central Government may be a proper party, but not a necessary party. Thus, the objection raised by the petitioners falls through.

<u>WHETHER THERE WAS MISREADING OF THE EVIDENCE ON RECORD</u>?

16. From the illustrations given by Mr. Choudhury, learned counsel, from Exbt.1 of Civil Misc.(PMP)24/2014, related to CRP No.75/2014, it appears the competent authority without ascertaining the value of the land separately, calculated the damage and awarded 10% of the said damage as the compensation. The District Judge or the Addl. District Judge, by the impugned judgment and awards, has interfered with the said calculation, inasmuch as, Section 10(3) of the Act provides that :

“The competent authority or the District Judge while determining the compensation under sub-section (1) or sub-section (2), as the case may be, shall have due regard to the damage or loss sustained by any person interested in the land by reason of -

(i) <u>removal of trees or standing crops, if any, on the land while exercising the powers under section 4, section 7, or section 8;</u>

(ii) <u>temporary severance of the land under which the pipeline has been laid from other lands belonging to, or in the occupation of, such person;</u> or

(iii) <u>any injury to any other property, whether movable or immovable, or the earnings of such persons caused in any other manner, provided that in determining the compensation no account shall be taken by any structure or other improvement made in the land after the date of the notification under sub-section (1) of Section 3."</u>

Section 10(5) of the Act further provides that –

"The market value of the land on the said date shall be determined by the competent authority and if the value so determined by that authority is not acceptable to either of the parties, it shall, on application by either o the parties to the District Judge referred to in sub-section (2), be determined by that District Judge".

Whereas, Section 10(6) of the Act provides that :

"The decision of the District Judge under sub-section (2) or sub-section (5) shall be final".

[Emphasis supplied]

17. In view of the provisions as aforestated, there can be various heads for damages, one, under section 10(3) of the Act, another under section 10(4) of the Act. But, the competent authority under the misconception of law, has given compensation to the extent of 10% of the damage as defined under Section 10(3) of the Act. But, he did not give any compensation under Section 10(4) of the said Act. The District

Judge or the Addl. District Judge, has corrected that infirmity in assessing the compensation and re-determined the damage under Sections 10(3) and 10(4) of the said Act solely relying on the findings of the competent authority and the documents, such as the value of the rubber tree and teak etc. It is to note here that the lactating rubber trees (the mature ones) cannot be comparable so far their value is concerned. Hence, the decision of this court in **Oil and Natural Gas Co. Ltd. vs Basudev Biswas** cannot have any manner of application, as the lactating rubber trees are much costlier than the ordinary plants, as evidenced from the rate-circular of the Rubber Board.

18. Mr. Dhar, learned counsel appearing for the petitioners, has placed reliance on two decisions in (i) **Trilok Sudhirbhai Pandya Vs. Union of India**, reported in **AIR 2012 SC 1668** and (ii) **Parikh Ramanlal Govindlal Vs. O.N.G.C.**, reported in **1996 (2) Guj L.H. 389**. On perusing those reports, this court does not find any application of the decisions in the present context.

19. This court wholly agrees to what Mr. Choudhury, learned counsel appearing for the land-loser respondents, has submitted that for accepting the compensation by filing the indemnity bonds or no claim cannot operate as estoppel as

Section 10(2) of the Act creates a statutory right in favour of the party aggrieved for determination of compensation by the competent authority on as much as, estoppel cannot operate against the law.

20. On appreciation, this court does not find any perversity at all and hence, this court is of the considered opinion that these revision petitions are devoid of merit and accordingly those are dismissed.

However, there shall be no order as to costs.

JUDGE

ROY