

THE HIGH COURT OF TRIPURA
AGARTALA

CRP 93 of 2014

Sri Adhir Ch. Paul @ Adhir Kanta Paul,
S/O. Late Santosh Paul @ Santosh Ch. Paul,
Resident of Rajdharnagar, Jamjuri,
P.S. Kakraban, Udaipur,
Dist: Gomati Tripura.

..... *Petitioner*

- Vs. -

1. The Union of India,
Represented by the Secretary to the
Ministry of Petroleum & Natural Gas,
Govt. of India, New Delhi, Through
The Assistant Solicitor General,
Gauhati High Court, now High Court
Of Tripura, Agartala.
2. The Competent Authority (ROU),
The Ministry of Petroleum & Natural
Gas, having its office at ONGC
Quarter No. B-78, South Colony,
P.S. Amtali, Agartala, West Tripura.

..... *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the Petitioner	: Ms. S. Deb Gupta, Advocate.
For the respondent No.1.	: Mr. Bidyut Majumder, CGC.
For the respondent No.2.	: Mr. P.B. Dhar, Advocate.
Date of hearing & delivery of Judgment & order	: 11.03.2015.
Whether fit for Reporting	: Yes.

JUDGMENT & ORDER (ORAL)

The petitioner by means of this petition has challenged the order dated 01.12.2014 passed by the learned District Judge, Gomati District, Udaipur, Tripura, which reads as follows:-

"01.12.14 Learned advocate for the petitioner is present. He filed a prayer for condonation of delay at this belated stage. Application filed on 23.7.12 so this prayer of condonation of delay at this belated stage, can not be considered.

Learned advocate for the petitioner did not withdraw the petition and insisted for condonation of delay. The matter will be heard at the time of argument.

To 18.12.2014 for argument."

2. Briefly stated the facts leading to the filing of this petition are that a pipeline was laid through the land of the petitioner and the Union of India exercised its powers under the Petroleum and Mineral Pipelines (Acquisition of Right of User in Land) Act, 1962 (hereinafter referred to as 'the Act') for laying the pipeline. This Act empowers the Central Government or the State Government or any person authorized by it to enter upon and survey any land to dig or bore into the sub-soil of the land and basically to use the land for laying down a pipeline for the purpose of transportation of petroleum, mineral and other allied products as defined in the Act. At this stage, it may be pertinent to mention that by this Act, the authority does not acquire the land and the ownership of the land is not transferred to the authority of the Government. The owner continues to remain the owner of the

land, but his land is utilized for the purpose of laying the pipeline which is generally laid below the ground and after the pipeline has been laid the land can be used for other purposes subject to certain restrictions laid down in the Act. The provisions of this Act are akin to the provisions of the Indian Telegraph Act, 1885. The Central Government or the State Government or the authorized person, as the case may be, only gets a right to use the land.

3. Section 9 of the Act provides that the land can be used for all purposes except that the owner cannot thereafter construct any building or excavate any tank, well, reservoir or dam or plant any tree on that portion of the land under which the pipeline has been laid.

4. Section 10 of the Act provides for the procedure to be followed for determination of the compensation for use damage of the land. It reads as follows:-

"10. Compensation. (1) Where in the exercise of the powers conferred by section 4, section 7, or section 8 by any person, any damage, loss or injury is sustained by any person interested in the land under which the pipeline is proposed to be, or is being, or has been laid the Central Government, the State Government or the Corporation, as the case may be, shall be liable to pay compensation to such person for such damage, loss or injury, the amount of which shall be determined by the competent authority in the first instance.

(2) 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.

(3) 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) the removal of trees or standing crops, if any, on the land while exercising the powers under section 4, section 7 or section 8;

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

(iii) 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 of any structure or other improvement made in the land after the date of the notification under sub- section (1) of section 3.

(4) Where the right of user of any land has vested in 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.

(5) 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 of the parties to District Judge referred to in sub- section (2), be determined by that District Judge.

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

Under Section 10 where any person suffers any damage, loss or injury due to the laying or proposal to lay the pipeline such persons will be entitled to compensation for such damage, loss or injury which damage has to be assessed by the competent authority.

5. The competent authority has been defined in Section 2(a) to mean any person authorized by the Central Government to act as competent authority.

6. Sub-Section (2) provides that if the compensation determined by the competent authority is not acceptable to either of the parties then the aggrieved party may approach the District Judge within the limits of whose jurisdiction the land or any part thereof is situated so that the compensation is determined by the District Judge. This means that when any party is dissatisfied with the compensation determined by the competent authority, it is entitled to approach the District Judge for determination of the same. It has been contended by Mr. Dhar, learned counsel that since the words used in sub-Section (2) are determination and not re-determination, the provisions of Section 5 of the Limitation Act will not be applicable. I am unable to accept this contention. Whether it is determination or redetermination what is filed before the District Judge is not a suit, but an application and that application is covered under Article 137 of the Limitation Act. It is by now well settled law that applications need not always be governed by the Civil Procedure Code, but may be governed by other laws also.

7. As far as the present case is concerned, limitation for filing such application has been provided under the Rules. The Central Government has been given the power to make Rules under Section 17 of the Act. In exercise of the said powers, the Central Government has framed Rules and Rule 5 of the said Rules reads as follows:-

"5. 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)."

8. Rule 5 clearly provides that the application to the District Judge for determination of the amount of compensation must be filed within a period of 90 days from the receipt of the intimation from the competent authority about the determination of the compensation. Effectively what this means is that after the competent authority has determined the compensation, it is required to communicate the same to the land owner and the limitation of 90 days will start from the date when the land owner receives the intimation about the determination of the compensation. There can be no dispute with the contention of Mr. Dhar, learned counsel that the outer limit for filing the application is 90 days from the date of receipt of the communication from the competent authority.

9. The question is whether a party, who has not filed the application within time, can seek condonation of delay or not. The argument of Mr. Dhar appears to be that since determination under Section 10(2) is in the nature of a suit even if the provisions of the Limitation Act apply, the provisions of Section 5 will not

apply because Section 5 of the Limitation Act only applies to appeals, applications, petitions etc., but not to original suit.

10. I am of the considered view that this application for determination of the compensation is not a civil suit to establish what any right, but is only a petition or an application for determining what is the amount due and payable. When the matter is referred to the competent authority, the right of the party to receive compensation is already determined. The competent authority assesses the amount of compensation and any party aggrieved by that assessment can approach the District Judge. Unlike the Land Acquisition Act even the department can approach the District Judge if it is not satisfied with the determination of the compensation by the competent authority. Therefore, effectively what the District Judge does is that he again records evidence and then determines the compensation. Why the word redetermination has not been used is because the District Judge has the power to record evidence and try it in the nature of a suit. However, this does not mean that it is a suit. A suit has to be a suit within the meaning of the Civil Procedure Code and this application cannot be determined to be a suit.

11. In this behalf reference may be made to the Judgment of the Apex Court in the case of ***The Kerala State Electricity Board, Trivandrum vs. T.P. Kunhaliumma, 1776 (4) SCC 634***

wherein the issue was whether the provisions of the Limitation Act is applicable to applications presented before the District Judge under the Telegraph Act. The Apex Court held that a petition filed before the District Judge under The Indian Telegraph Act for determination of compensation is in the nature of an application falling under Article 137 of the Limitation Act and therefore the Limitation Act applies.

12. In ***Mukri Gopalan vs. Cheppilat Puthanpurayil Aboobacker, 1995 AIR 2272*** the Apex Court again held that even if the Appellate authority is a *persona designata*, but is in fact the District Judge than also the provisions of the Limitations Act would apply.

13. Following the aforesaid two judgments, a Single Judge of the Andhra Pradesh High Court in ***W.P. No.6783 of 2006, Desam Venkateswara Reddy vs. The Special Deputy Collector & Competent Authority, Gas Authority of India Ltd. & anr.*** held as follows:-

"In W.P.No.6783 of 2006, it is precisely the case of the petitioners herein in the affidavit filed in support of the delay application that the authorities paid compensation on 17.02.2003 and he filed representations on 15.06.2005 and 27.06.2005, requesting for reference to Civil Court for enhancement and it is also his case that he made a request for providing an award copy and the authorities did not respond to the same, which prompted him to file W.P.No.20279 of 2005 and in pursuance of the orders of this Court in the said Writ Petition, he filed petition before the District Court with a delay of 976 days. In the affidavit

filed in support of the delay application, the petitioner in W.P.No.6783 of 2006 categorically stated that the Act is not familiar as such he sent his request to the competent authority-cum-Special Deputy Collector to refer his claim for enhancement to the District Court, but he did not receive any information from the authorities, which prompted him to approach this Court by filing W.P.No.20279 of 2005 and in pursuance of the orders of this Court in the said Writ Petition, he filed an application with a delay of 976 days before the learned District Judge, as such, the said delay is not a deliberate one. It is also his case that he bonafidely pursued with the authorities for enhancement of the compensation.”

14. I am in respectful agreement with the observations of the Andhra Pradesh High Court. In addition to what has been said by the Andhra Pradesh High Court, it is manifestly clear that the determination by the District Judge is not being done in a civil suit, but it is being done on the basis of an application filed under Section 10(2) of the Petroleum Act. This application is not a civil suit.

15. Section 5 of the Limitation Act reads as follows:-

"5. Extension of prescribed period in certain cases. —Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.”

16. It deals with all appeals or any application. A petition under Section 10(2) would in my opinion, be an application within the meaning of Section 5 of the Limitation Act. Section 14 also applies to suits and there can be no problem with this regard.

Therefore, I am of the considered view that the application under Section 5 of the Limitation Act is maintainable.

17. At this stage, I may point out certain other facts. The determination by the competent authority in this case was done on 03.03.2011 and it appears that the same was intimated by him soon thereafter because the petitioner himself vide notice dated 04.04.2011 demanded higher compensation. The petitioner, however, did not approach the District Judge in terms of Section 10, but filed a writ petition in the Agartala Bench of the Gauhati High Court being **W.P.(C) 330 of 2011**, which was disposed of on 02.03.2011 with the following order:-

"When the matter is taken up, Mr. R. Dasgupta, learned counsel appearing for the respondent No.2 submits that the instant writ petition is not maintainable being the petitioner did not make any application to the concerned District Judge.

At this stage, Ms. S. Deb(Gupta), learned counsel appearing for the petitioner submits that the petitioner may be allowed to withdraw the instant writ petition with a liberty to file an application before the appropriate authority in accordance with law.

Heard Mr. P.K. Biswas, learned Asstt. SG appearing for the respondent No.1.

In view of the above submission of the learned counsel for the petitioner, the instant writ petition is disposed of as withdrawn with a liberty to file an application before the appropriate authority in accordance with law, if so advised."

18. Unfortunately, the petition was not even filed immediately thereafter and in fact, a petition under Section 10(2) of the Act was filed on 21.07.2012. No application for condonation of delay was filed with this petition. The respondents i.e. the Union

of India and the competent authority raised an objection that the petition is time barred. Thereafter, an application was filed under Section 5 of the Limitation Act. This application was filed on 01.12.2014. This application has been dealt with by the learned District Judge. He has neither dismissed the application nor has he allowed the application, but has only ordered that since the counsel for the petitioner did not withdraw the application and insisted for condonation of delay, the matter will be heard at the time of argument. To say the least, this approach of the District Judge is absolutely unwarranted. A party has a right to file an application. The opposite party has the right to file a counter affidavit and oppose the application. It is the duty of the Judge to hear and decide the application on merits. No Court can insist that a party should withdraw a petition.

19. Therefore, the order dated 01.12.2014 is set aside and it is directed that the learned District Judge shall first decide the issue whether the petitioner herein, i.e. the applicant before the learned District Judge is entitled to seek condonation of delay or not. There is no use of determining the dispute on merits if the application is to be rejected on the grounds of delay.

20. Therefore, the impugned order is set aside and the matter is remanded to the learned District Judge, who shall give the opposite parties reasonable opportunity of filing reply to the

application for condonation of delay. Thereafter, if the learned Court decides it may either on the basis of affidavits or on the basis of oral evidence led before it decide the question whether the petitioner is entitled to condonation of delay or not.

21. It is made expressly clear that this Court has expressed no opinion on the merits of the application which shall be decided by the Court below strictly in accordance with law.

22. The petition is disposed of in the aforesaid term.

23. Send down the LCRs forthwith.

CHIEF JUSTICE

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