IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

CRP.No. 429 of 2009 (C)

AGAINST THE ORDER IN OP(PETRONET) 33/2001 of
DISTRICT COURT, PALAKKAD.

REVISION PETITIONER(S)/1ST RESPONDENT IN THE OP:

PETRONET CCK LIMITED'
IRIMPANAM ISTALLATION OF BPCL,
IRIMPANAM, KOCHI-682309,
REPRESENTED BY ITS COMPANY SECRETARY,
SHRI. S. RAMESH.

BY ADVS.SRI.M.PATHROSE MATTHAI (SR.)
SRI.SAJI VARGHESE
SMT.MARIAM MATHAI
SRI.P.THOMAS GEEVERGHESE

RESPONDENT(S)/PETITIONER IN OP:

1. WESTERN INDIA KINFRA LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR,
V/871, KUPPIYODE ROAD,
CHANDRANAGAR, PALAKKAD-678007.

2. THE COMPETENT AUTHORITY (KERALA),
COCHIN-COIMBATORE-KARUR PIPELINE PROJECT,
XX/105, LAKSHMI BLDG., MAIN ROAD,
TRIPUNITHURA.

R1 BY ADV. SRI.O.RAMACHANDRAN NAMBIAR
R1 BY ADV. SRI.GEEN T.MATHEW

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27-07-2015, ALONG WITH CRP. 537/2009, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P. BHAVADASAN, J.

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C.R.P. Nos. 429 & 537 of 2009

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Dated this the 27th day of July, 2015.

ORDER

These revision petitions arise from the order dated 23.1.2009 in O.P. (Petronet) No. 33 of 2001 of District Court, Palakkad. The facts absolutely necessary for the disposal of these revision petitions are as follows:

The Western India Kinfra Limited, the petitioner in the Original Petition is a Company formed by the Kerala Industrial Infrastructure Corporation (Kinfra) as per the provisions of the Kerala Industrial Infrastructure Development Act, 1993. It is concerned with the establishment of integrated industrial Townships in the State and to provide infrastructure facilities to industries and Wise Infrastructure Limited, a Delhi based Company. The Industries Department sanctioned the establishment of an Integrated Industrial Township-Wise Park in a compact area of 750 acres

contiguous to the Industrial Development area. Wise Park project is a multi crore project intended to provide world class Infrastructure Development to attract huge industrial investment both from India and abroad. The petitioner company is formed by the Infrastructure Development Corporation. The petitioner before the court below spent Rs.200 Lakhs to complete all the engineering, master plan, marketing, surveying etc.

2. The petitioner has taken possession of 200 acres of undeveloped land from Kinfra out of 732 acres of undeveloped land acquired by Kinfra for the establishment of the first phase of Integrated Industrial Township. Section 3(1) notification was issued on 6.9.1999 and possession was given to the petitioner on 9.12.1999.

3. While things stood so, it is claimed by the petitioner before the court below that the second respondent before the court below informed the petitioner their intention to acquire 9.3 acres

of land for laying the Petronet Cochin-Coimbatore Karur pipeline. The proposal was to acquire a strip of land of 18 metres wide cutting across the 750 acres of the Wise Park Project land through the middle for a distance of about 200 metres. The petitioner raised objection and produced documents in support of their contention. After joint inspection even though the petitioner pointed out a suitable location, the respondents were not willing to change the route and decided to lay the pipeline at a depth of 2 ½ metres. It is claimed that the second respondent was ready and willing to compensate the losses incurred by the petitioner company and to bear the expenses due to revision of the Master Plan.

4. Out of the 200 acres of land 53 acres had to be retained for social infrastructure development activities and the balance alone is available for distribution. They entered into an agreement with M/s. Mathur and Kapre Associates,

New Delhi for Master plan. The petitioner before the court below claimed that the act of the second respondent in laying the pipeline in addition to causing considerable inconvenience to the petitioner which resulted in loss also. Since the pipeline is cutting across south to north for more than 2 kms. stretch, the Master Plan has to be changed. The company assessed the loss sustained by it as Rs.45,00,000/-. They also assessed an additional cost of development as per the new Master Plan at Rs. One Crore and that is also to be compensated. On 17.2.2000 the respondents have agreed to complete the work within 4 - 5 days. But they took three months to complete the work. During this period, the petitioner could not commence their work. Assessing the loss so sustained by the petitioner company before the court below due to the acts of the respondents, the Company assessed its loss at Rs.1,60,00,000/-.

5. The first respondent resisted the petition by filing a separate counter statements. The first respondent in his counter pointed out that 9.28 acres of land out of 732 acres owned and possessed by Kinfra was notified for acquisition under the Petroleum and Mineral Pipelines Acquisition of Right and User in Land Act, 1962. It is pointed out that at the relevant time the entire land was completely undeveloped and was a barren land. There was not even access to the property. The notification under Section 3(1) was issued on 6.9.1999 and 22.11.1999. The petitioner had taken possession of the land in pursuance to the notification. Out of the land taken by the respondents, 3.18 acres was in the possession of the petitioner. The respondent pointed out that there was a joint inspection and even though the respondent offered to reduce the width of ROU proposed to be acquired from 18 to 12 metres, the petitioner objected to the same. Even though

alternate site was suggested to the petitioner, the respondent found it to be unfeasible to lay the pipeline through that portion as it would amount to spending considerably high amount for that purpose. According to this respondent, by the laying of the pipeline, the petitioner is highly benefited and that the various claims made by the petitioner are without any basis. They also contended that for the preparation of Master Plan etc., which are purely within the province of the petitioner, the first respondent is not liable to pay any amount. For the laying of the pipeline, a total of Rs.4,81,462/- was paid as per Ext.A41 award. According to the first respondent, the amount so awarded is just, fair and reasonable.

6. In the counter affidavit filed by the second respondent, they pointed out that the market value of the land was fixed at Rs.1,21,378 per acre, which was much above the market value as could be discerned from the documents produced by

the petitioner. The first respondent has also formed a mud road through the area and the petitioner is using the same. No loss or damage is caused to the petitioner due to the drawing of the pipeline. The very many assurances claimed by the petitioner is without any basis. They have contended that the amount already awarded is adequate. They therefore prayed for a dismissal of the petition.

7. Before the court below, the parties adduced evidence. The petitioner examined P.Ws. 1 and 2 and had Exts. A1 to A50 marked. The respondents examined R.W.1. Exts.C1 to C1(d) are the commission reports and plans. The court below on appreciation of the materials before it and after applying the well settled principles, found that the amount claimed by the petitioner Company under various heads cannot be sustained. Then the question arose as regards the construction of the road. It is admitted fact that there is a road

running across the property. The pipeline is admittedly laid at a width of 8 metres and length of 2 kms. The court below found that the road cuts across the property and injuriously affects the property even though it is beneficial to the petitioner. The court below also found that the petitioner had put up the road and considerable amount has been spent for that purpose. The court below formed the opinion that construction of the road became a necessity due to the drawing of the pipeline and therefore, the petitioner company is liable to compensate the same. The commissioner had assessed the cost of the construction of the road at Rs.25,68,800/-. The court below also found that it will be inappropriate to direct the respondent to pay the entire expenses for putting up the road and it will be sufficient if they pay 50% of the liability. Holding so, the court below formed the opinion that the petitioner is entitled to recover Rs.13,00,000/- with 6% interest from the

respondents.

8. Aggrieved by the said order, the first respondent has come up in revision by filing C.R.P.No.429 of 2009 and aggrieved by the denial of compensation under various heads, the petitioner before the court below has come up in revision by filing C.R.P. 537 of 2009.

9. Shri. G.Unnikrishnan, learned counsel appearing for the revision petitioner in C.R.P. 429 of 2009 has pointed out that by no stretch of imagination the order directing the respondents to pay a sum of Rs.13,00,000/- with 6% interest can be sustained. The petitioner before this Court has acquired the right to use an extent of 9.28 acres from Kinfra for laying pipeline and the petitioner cannot understand how the petitioner herein can be made liable to pay Rs.13,00,000/-. The basis adopted by the lower court that 50% of the cost of construction of the road should be borne by the respondent has no legal sanction. Even assuming

that the petitioner before this Court is benefited by the road, it can be directed to pay proportionate amount for the area which is utiized by the respondent for the purpose of drawing the pipeline. At any rate, calling upon the petitioner Company before this Court to pay half the amount cannot be sustained.

10. Shri. Ramachandran Nambiar, learned counsel appearing for the petitioner in C.R.P. 537 of 2009 contended that the court below was not justified in declining to grant the amounts claimed under various heads by the petitioner before the court below. It cannot be disputed, according to the learned counsel, that the petitioner before the court below is injuriously affected by the drawing of the pipeline through the middle of the road cutting across the road and affected the over all development of the area. The injury so sustained has to be compensated and the court below was not justified in declining to grant the relief in that

regard.

11. As regards C.R.P. 429 of 2009 is concerned, learned counsel was of the view that the court below passed the order after taking into consideration the various submissions made by both parties.

12. After having heard learned counsel on both sides, it is felt that there is considerable force in the submission made by both counsel. Admittedly the court below has refused to entertain the grievances regarding the inadequate compensation awarded by the first respondent before the court below regarding the various claims made by the petitioner before the court below. Learned counsel appearing for the revision petitioner in C.R.P. 537 of 2009 may be justified in his submission that the court below ought to have considered various aspects like the injuries affected to the property, the difficulties in developing the area and so also the various other

aspects, and should have found that the petitioner Company before the court below is entitled to a higher amount than what is awarded by the first respondent as per the provisions of the Act.

13. Learned counsel appearing for the revision petitioner in C.R.P. 429 of 2009 is fully justified in his submission that it is quite inappropriate and unreasonable to call upon the petitioner before this Court to bear 50% of the cost of the construction of the road without any justification. It is not in dispute that the area utilized by the petitioner before this Court is only 7.28 cents of land for laying the pipeline. It does not stand to reason that an extent of 7.28 cents of land is used for laying the pipeline, the Company is called upon to pay half the expenses for laying the road. Assuming that the Company has to bear portion of the expenses that can be only proportionate to the area utilized by them. The act of the court in mulcting the petitioner before

this Court in C.R.P. 429 2009 with the liability to pay Rs.13,00,000/- with 6% interest being half the cost of the construction of the road cannot be justified.

14. It is not as if the road is for the sole benefit of the revision petitioner in C.R.P. 429 of 2009. The road had to be constructed for the development of the area and as already noticed at best what can be claimed is that the petitioner in C.R.P. 429 of 2009 is also a beneficiary of the portion of the road. But it may not be possible therefore to call upon them to bear half the expenses. The first respondent Company has also been benefited by the road. Bearing this aspect in mind, it becomes difficult to accept the finding of the court below that the drawing of the pipeline has resulted in injuriously affecting the property and that they will have to pay 50% of the cost with 6% interest. As already stated, what can at best be stated is that the proportionate cost for

utilizing the area covered by the portion of the road may have to be borne by them. If at all the petitioner in C.R.P. 429 is liable to pay the sum, it will have to be confined to that extent alone. This Court is unable to sustain the impugned order.

In the result, the impugned order is set aside and the matter is remanded to the District Court for fresh consideration in accordance with law and in the light of what has been stated above. If the parties are so desirous, they are entitled to adduce evidence in the matter. The parties shall appear before the District Court on 8.9.2015.

P. BHAVADASAN,
JUDGE

sb.

The order dated 27.7.2015 in CRP No.429 and 537 of 2009 is reviewed and the following sentence is added in the operative portion of the order:

> "While considering the matter as directed by this Court in CRP, the extent of property for drawing of pipeline which is in possession of the petitioner shall be ascertained in accordance with law.".
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> [vide order dated 28.3.2016 in I.A. Nos. 720 and 715 of 2016 in CRP No. 429 & 537 of 2009]

Sd/-
Registrar (Judicial)