

THE HONONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.8355 of 2018

ORDER :

Heard the counsel for petitioner, and the learned Government Pleader for Panchayat Raj, for respondents.

2. The petitioner has assailed in this Writ Petition the action of the respondents in trespassing and digging a trench in a part of the land admeasuring Acs.4.33 guntas in Survey No.6 (including Survey Nos.6/1 and 6/2) belonging to him, situated at Jafferpally Village, Parigi Mandal, Vikarabad District, Telangana State, within specified boundaries; and to restrain the respondents from interfering with his possession and enjoyment of the same without following due process of law under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

3. The petitioner contends that he is the absolute owner and possessor of the said land having purchased it under a registered sale deed bearing Document No.1438/2006 dt.14.03.2006 for valuable consideration. The said sale deed has been filed as Ex.P.5. Mutation has also been affected to in the Revenue Records by the Tahsildar, Parigi Mandal (the 3rd respondent) on 24.08.2007, and Ex.P.4 is copy of the same. Title deed and pattadar pass book were issued to petitioner by 3rd respondent which are also filed as Exs.P.2 and P.3.

4. The petitioner contends that fifteen days prior to filing of the Writ Petition, on 13.03.2018, the officials attached to the Revenue Department (i.e., respondent nos.2 and 3) accompanied by some workmen and machinery came to his land and started digging across his land in the direction of Jafferpally Tank from the road to Shadnagar with a view to lay pipelines through it as part of Mission Bhagiratha; that in spite of his protest and a representation to the District Collector on 27.02.2018 (Ex.P.1), the officials of the Revenue Department continued to proceed with the earth work stating that it is a time-bound programme and the work has to be completed within a specified time; that the respondents did not follow any due process and have also not paid any compensation to him; and so, they cannot proceed with the said work and lay pipeline. He contended that the said action of the respondent nos.1 to 3 is in violation of Articles 14, 21 and 300-A of the Constitution of India, that the respondents are bound to follow due process of law and acquire his land under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and without doing so, they cannot do the above referred activity in his land.

5. The petitioner filed I.A.No.1 of 2018 to direct the respondents not to interfere with his possession and enjoyment of the subject land. But no interim direction was granted therein.

6. He also filed I.A.No.2 of 2018 to implead the Divisional Engineer, Mission Bhagiratha, Government of Telangana, Vikarabad

District, and the Divisional Engineer, Transmission Corporation of Telangana Limited, Vikarabad as respondent nos.4 and 5 on 16.03.2018. The said I.A. had been allowed on 28.03.2018.

7. Counter-affidavit has been filed on 26.04.2018 by the respondents.

The stand of the Respondents in the counter-affidavit :

8. In the counter-affidavit filed by the Executive Engineer (R.W.S.) Mission Bhagiratha, Shadnagar Division, Ranga Reddy District, a stand is taken by him that the petitioner had wrongly impleaded the Divisional Engineer of Vikarabad District when the pipeline work being executed by the Shadnagar Division.

9. In view of the said contention the Executive Engineer (Divisional Engineer), Mission Bhagiratha, Group Division, Shadnagar is *suo moto* impleaded as 6th respondent in the Writ Petition.

10. It is stated in the counter-affidavit filed on behalf of the 4th respondent by 6th respondent that the pipeline work being done by the 6th respondent is part of Mission Bhagiratha Programme and the pipeline is being laid from Khammadhanam Water Treatment Plant in Farooqnagar Mandal of Ranga Reddy District to Raghavapur Water Treatment Plant in Parigi Mandal of Vikarabad Mandal for a length of 39 km, out of which 33 km of pipeline has already been laid. According to him, the pipeline is of 1,580 m.m. diameter, and is

intended to serve drinking water to deprived constituencies, viz., Thandur, Vikarabad, Parigi, Chevella, Moinabad, Rajendranagar and Shadnagar; that it was a time-bound programme; and to speed up the work, the respondents had engaged ten gangs to work on the above stretch duly allotting them certain portion of work. It is contended that in the above 39 kilometer alignment, the portion of petitioner's land is only 130 meters and works out to only 0-3.6 guntas. He denied that they proceeded with the earth work in spite of protests of the petitioner and pleaded that as per Revenue Records, Survey No.6 is completely surrounded by Government lands and in the process of laying pipeline, the 6th respondent was unable to recognize Survey No.6. It is contended that the petitioner was unable to show boundaries of his land and because petitioner himself was not sure about the boundaries of his land in Survey No.6, he did not protest for execution of the works by the 6th respondent employees.

11. It is also stated that the R.W.S. & S. Department had informed the Revenue Authorities, i.e. the Tahsildar, Parigi and Revenue Divisional Officer, Vikarabad, well in advance regarding the laying of a pipeline, that joint inspection of the site was conducted by both the officials of R.W.S. & S and the Revenue Department on 13.02.2018, that the proposed alignment was clearly shown on the same day, that the R.W.S & S Department proceeded with the pipeline work in Survey No.6 and it is completed. It is stated that no work is pending in the stretch at present, that the destination of the pipes is fixed and

alignment of the pipes cannot be altered, and so the R.W.S. & S Department had laid the pipeline through the land in Survey No.6 without invoking the provisions of the Telangana Domestic and Industrial Water Grid Pipelines (Acquisition of Right of User in Land) Act, 2015 [Act No.6 of 2015], **(for short, 'Act No.6 of 2015')**.

12. It is contended that the respondents followed the due procedure in discharging their official duties keeping in view the interest of the people and since the pipelines having been already laid, their alignment cannot be now changed. It is also stated that the R.W.S. & S Department is ready to pay compensation as per the provisions of Act No.6 of 2015.

Reply-affidavit of petitioner:

13. The petitioner filed a reply-affidavit reiterating that the respondents had violated the provisions of Act No.6 of 2015 and highhandedly laid pipelines through petitioner's land without following the procedure laid down therein, and their action is null and void.

14. He stated that under the provisions of Act No.6 of 2015, it was necessary for the State to issue a notification declaring the intention to acquire 'right of the user' in the land before laying pipelines through private lands and call for objections thereto, but no such notification has been given by respondents and he had been deprived of valuable right to object to the laying of the pipeline. He stated that had he been

given any opportunity, he would have demonstrated that the alignment of pipeline could be adjusted in a manner which would ensure that the pipelines do not go through his land, that the respondents had highhandedly done the work, though he protested against the same.

15. He denied that he was unable to show boundaries to his land and pointed out that his registered sale deed itself gave boundaries and there was total clarity on this aspect; that the total land owned by him is Acs.4.33 guntas and the way the work is executed by the respondents is such that the pipelines passed through the centre of his land leaving Acs.2-9.5 guntas on the west side and Acs.1-29.8 guntas on the east side, and this disables the petitioner to utilize the balance land for any purpose and renders it useless.

16. He contended that there is no justification by the respondents to lay the pipeline through his land without invoking the provisions of the said Act and respondents cannot be allowed to violate individual rights brazenly and plead public interest in defence thereof.

17. Petitioner also filed a sketch showing the excavation done by the respondents and pointed out that no pipelines were put in the land they were not being properly laid.

18. Sri B. Nalin Kumar, Counsel for petitioner and the Govt. Pleader for Panchayat Raj reiterated the contentions of their respective clients.

The consideration by the Court :

19. The ownership of the petitioner of the subject land and his possession thereof is established not only by the registered sale deed Ex.P.5dt.03.05.2006, but also mutation proceedings Ex.P.4 dt.24.08.2007, title deed and pattadar pass book and Ex.P.2 and P.3 issued to him under the Andhra Pradesh Rights in Land and Pattadar Pass Book Act, 1971.

20. In the light of the above material filed by petitioner I do not accept the contention of respondents that petitioner himself did not know the boundaries of the land owned by him. It is accordingly rejected.

21. In para no.5 of the counter-affidavit filed by 6th respondent on behalf of 4th respondent, it is stated that the officials of R.W.S. & S Department informed the 3rd respondent and Revenue Divisional Officer, Vikarabad well in advance regarding the layout of a pipeline, and there was a joint inspection taken on 13.02.2018. In view of this statement, I reject the contention of the respondents that they were unable to recognize where Survey No.6 was located since the Revenue Officials, who have access to the Revenue Records and who have issued Exs.P.2 to P.4, would know where land in Survey No.6 is located and that it is owned by the petitioner.

22. Act no.6 of 2015 was enacted by the Telangana State Legislature to provide for acquisition of 'right of user' in land for

laying pipelines for supplying drinking water to Gram Panchayats, habitations and to meet the demands of industries and for other connected matters thereto. The said Act came into force from 21.02.2015.

23. Section 3(1) thereof enables the State Government to issue a notification declaring its intention to acquire 'right of user' in any private land if it is of the opinion that such a right of user needs to be acquired for the transport of water from one area to another area and pipelines are required to be laid by it or a Corporation. The said notification, as required under sub-Section(2) thereof, shall contain description of the land where the right of user is sought to be acquired, and sub-Section (3) thereof also mandates that the substance of the notification is to be published at such places and in such a manner as may be prescribed by the Rules.

24. Section 4 thereof entitles a person interested in any land through which a right of user is sought to be acquired by the State under Section 3, to file objections within thirty days for laying of pipelines under his land. Sub-Section (2) thereof mandates that there should be a personal hearing to the person affected or his legal practitioner, that an enquiry should be conducted and an order should be passed either allowing or disallowing the objections. Sub-Section (3) renders the said order of the competent authority to be final.

25. Section 5 of Act No.6 of 2015, directs that after issuance of notification under sub-Section (1) of Section 3, the State Government may cause a survey to be done.

26. Section 6 Act No.6 of 2015 states that when no objection has been filed under sub-Section (1) of Section 4 within the specified period or where such objection has been disallowed, the competent authority shall submit a report to the State Government and thereupon the State Government shall issue a declaration by notification that the right of the user in the land for laying the pipelines has been acquired, and only then such right of user in the land would vest absolutely in the State Government under sub-Section (2) of Section 6. Sub-Section (3) of Section 6 directs that such notification under Section (6) should be issued within (1) year from the date of notification under sub-Section (1) of Section 3.

27. Section 7 of Act No.6 of 2015 states:

“7. Laying of Pipelines:- (1) Where the right of user in any land has vested in the State Government or, as the case may be, the Corporation under Section 6.—

(i) it shall be lawful for any person authorised by the State Government or, as the case may be, the Corporation, and its servants and workmen to enter upon the land and lay pipelines or to do any other thing necessary for laying of pipelines:

Provided that no pipeline shall be laid under.—

(a) any land which, immediately before the date of the publication of notification under sub-section (1) of Section 3, was used for residential purposes;

(b) any land on which there stands any permanent structure which was in existence immediately before the said date;

(c) any land which is appurtenant to a dwelling house; or

(d) any land at a depth which is less than one metre from the surface; and

(ii) such land shall be used only for laying the pipelines and for maintaining, examining, repairing, altering or removing any such pipelines or for doing any other thing necessary for any of the aforesaid purposes or for the utilization of such pipelines.

(2) If any dispute arises with regard to any matter referred to in paragraph (b) or (c) of the proviso to clause (i) of sub-section(1), the dispute shall be referred to the competent authority whose decision thereof shall be final.”

Thus only where the right of user in the land vested in the State Government under Section 6, it shall be lawful for a person authorised by the State Government or its servants and workmen to enter upon the land and lay pipelines.

28. Section 10 of Act No.6 of 2015 contemplates payment of compensation by the State Government to the person interested in the land who has suffered any damage or loss or injury. Under sub-Section (3) of Section 10, while determining compensation, the Collector or the competent authority shall also take into account severance of the lands under which the pipeline has been laid from other lands belonging to the person through whose land the right to use is acquired by the State.

29. It is important to note that there is no provision contained in the Act 6 of 2015 (unlike Sec.17 of the Land Acquisition Act, 1894) to

enter into the land of any person on the pretext of an alleged urgency and lay a pipeline through his land on the ground that there is a time limit for execution of the project. On the contrary, Section 7 permits the laying of pipelines only after the procedure of (i) issuing a preliminary notification under Section 3(1), (ii) hearing of objections under Section 4 and (iii) issuance of a declaration under Section 6 of the Act is issued and the right of user has vested in the State Government.

30. The State Legislature was obviously conscious of the mandate of Article 300-A of the Constitution of India and the requirement to act reasonably in Article 14 when it enacted the legislation. The said Legislative intent of not allowing the laying of any pipelines till the above procedure is followed, has to be given effect to. I am of the opinion that since the legislation itself is in the nature of an *expropriatory* legislation, though to a limited extent, it ought to be strictly construed. (**Godrej & Boyce manufacturing Co. Ltd v. State of Maharashtra**¹)

31. The excuses given by the respondents for not following the provisions of Act No.6 of 2015 cannot be accepted in the light of the clear language of Act No.6 of 2015, and the action of the respondents in entering upon the petitioner's land, digging trenches in the land and laying pipeline through the land in violation of the procedure prescribed in the Act, cannot, therefore be countenanced.

¹ (2014) 3 SCC 430

32. In **Bishan Das v. State of Punjab**², the Supreme Court observed at para no.14 as follows :

*“14. Before we part with this case, we feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law. The facts and the position in law thus clearly are (1) that the buildings constructed on this piece of Government land did not belong to Government, (2) that the petitioners were in possession and occupation of the buildings and (3) that by virtue of enactments binding on the Government, the petitioners could be dispossessed, if at all, only in pursuance of a decree of a Civil Court obtained in proceedings properly initiated. In these circumstances the action of the Government in taking the law into their hands and dispossessing the petitioners by the display of force, exhibits a callous disregard of the normal requirements of the rule of law apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the executive of peaceful possession of property. As pointed out by this Court in **Wazir Chand v. State of Himachal Pradesh** [(1955) 1 SCR 408] , the State or its executive officers cannot interfere with the rights of others unless they can point to some specific rule of law which authorises their acts. In **Ram Prasad Narayan Sahi v. State of Bihar** [(1953) SCR 1129] this Court said that nothing is more likely to drain the vitality from the rule of law than legislation which singles out a particular individual from his fellow subjects and visits him with a disability which is not imposed upon the others. We have here a highly discriminatory and autocratic act which deprives a person of the possession of property without reference to any law or legal authority. Even if the property was trust property it is difficult to see how the Municipal Committee, Barnala, can step in as trustee on an executive determination only. The reasons given for this extraordinary action are, to quote what we said in Sahi case [(1953) SCR 1129] , remarkable for their disturbing implications.” (emphasis supplied)*

² AIR 1961 SC 1570

33. This was reiterated in **State of W.B. v. Vishnunarayan & Associates (P) Ltd³** in the following manner:

“9. The question, which needs our consideration is whether the action of the State Government in taking possession of the suit premises by using force was lawful.

*10. It is the settled position of law that the State or its executive officers cannot interfere with the rights of others unless they can point to some specific provision of law, which authorises their acts. A Constitution Bench of this Court in **Bishan Das v. State of Punjab (2 supra)** held that the State or its executive officers did not have any right to take law into their own hands and remove a person by an executive order. The Court further observed: (SCR p. 80)*

“Before we part with this case, we feel it our duty to say that executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law.”

*11. In **State of U.P. v. Maharaja Dharmander Prasad Singh⁴** an apprehension was raised by the learned counsel that if the State Government, on the self-assumed and self-assessed validity of its own action of cancellation of the lease, attempts at and succeeds in, a resumption of possession extrajudicially by force, it would cause great hardship and injustice. The Court held that possession can be resumed by the Government only in a manner known to or recognised by law and it cannot resume possession otherwise than in due course of law and, therefore, prohibited the Government from taking possession otherwise than in due course of law.”*

34. Similarly, in **Rame Gowda v. M. Varadappa Naidu⁵**, the Supreme Court held :

*“6. The law in India, as it has developed, accords with the jurisprudential thought as propounded by Salmond. In **Midnapur Zamindary Co. Ltd. v. Kumar Naresh Narayan Roy** [AIR 1924 PC 144 : 51 IA 293] Sir John Edge summed up the Indian law by stating that in India persons are not permitted to take forcible possession;*

³ (2002) 4 SCC 134

⁴ (1989) 2 SCC 505

⁵ (2004) 1 SCC 769

they must obtain such possession as they are entitled to through a court.”

35. There is no denial by respondents that petitioner gave a representation to the District Collector on 27.02.2018 complaining of unauthorized laying of power line and pipeline through his land. It is shocking that the 2nd respondent also did not intervene in the matter and stop the digging up of petitioner’s land and the laying of pipelines therein by 6th respondent.

36. Assuming that execution of the project of Mission Bhagiratha was a time-bound programme, even according to the 6th respondent, the Revenue Officials had been informed well in advance. So with help of Revenue officials, the 6th respondent ought to have identified the land of the petitioner and followed the procedure under Act.No.6 of 2015. There is no evidence that he had done so. I hold that there was no such tearing hurry on the part of the respondents to trespass highhandedly into the petitioner’s property and lay the pipeline ignoring the petitioner’s protests by brazenly violating Art.300-A of the Constitution and Act No.6 of 2015.

37. I also do not accept the contention of the respondents that the pipeline having been laid, it is impossible to change the alignment. The State cannot be allowed to take advantage of it’s own wrong in this way.

38. Accordingly, the Writ Petition is allowed with costs of Rs.10,000/- to be paid by the respondents to the petitioner. The

respondents, in particular, the 6th respondent shall remove the pipelines put in the petitioner's land forthwith, and shall not thereafter interfere with the possession and enjoyment of the petitioner of the subject land in any manner without strictly following the procedure laid down under Act No.6 of 2015.

39. As a sequel, miscellaneous petitions pending if any in the Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 12.06.2018

Ndr/*

