

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.18329 of 2018

ORDER:

The present Writ Petition came to be filed seeking issuance of a writ of mandamus declaring the action of the respondents in proposing to lay the natural gas pipeline through the lands of the petitioners in Sy.Nos.230, 244, 244/A and 246 situated at Puttapaka village, Manthani Mandal, Peddapally District without issuing any notice, as illegal and improper and consequently direct the respondents to change the alignment of the proposed gas pipeline to other Government lands.

2) The petitioners claim to be the owners and possessors of the above land, eking out their livelihood by doing cultivation in the said land. It is said that without issuing any notice and without taking consent of the writ petitioners, the respondents have commenced laying of a pipeline through the lands of the petitioners and others. The action of the respondents in laying the pipeline without following due process of law is subject matter of challenge herein.

3) The affidavit filed in support of the Writ Petition itself is silent as to the violation of the provisions of law. Taking a clue from the averments in the counter, the learned counsel for the petitioners mainly submits that the violation is in respect of the procedure contemplated under the Petroleum and Minerals Pipeline

Act, 1962 (for short "the Act"). The main argument of the learned counsel for the petitioners is that though notification under Section 3(1) of the Act was issued on 07.06.2014, the notification under Section 6(3) of the Act came to be made beyond a period of one year, whereby the entire proceedings get vitiated. It is further stated that after issuance of notice under Section 3(1) of the Act, an obligation is cast on the authority to conduct an enquiry so as to allow or disallow the objections. It is stated that, in the instant case, neither any notice was given to the petitioners nor any enquiry as contemplated under Section 5(1) of the Act was conducted nor a Gazette notification was issued within a period of one year as required under Section 6(3) of the Act. Taking the court through the proceedings issued by the officers of the competent authority dated 16.04.2018, which is said to be a notice under Section 10(4) of the Act, the learned counsel for the petitioner would submit that even this notice does not refer to holding an enquiry as contemplated under Section 5(1) and the consequential proceedings under Section 6(3) of the Act, before deciding the quantum of compensation to be paid.

4) The same is disputed by the learned counsel for the 5th respondent. A detailed counter came to be filed explaining the circumstances under which the pipeline came to be laid through the land of the petitioners. It is said that the Ministry of Petroleum

and Natural Gas, Government of India, is developing the Mallavaram Bhopal-Bhilwara-Vijaipur Natural Gas Pipeline Project and for formation of pipeline, land is acquired under the provisions of the Petroleum and Minerals Pipeline Act, 1962. Twenty meters of the land (spur land) was acquired for the purpose of laying a pipeline underneath the surface of the soil, at a depth of over 2 meters. After the pipeline is laid, the land will be restored to its original position and possession will be handedover to the original owner. The only restriction on the land owners is that they cannot construct any building or permanent structure or plant trees at the place where the pipe line is passing. It is said that after issuing the statutory notice under Section 3(1) of the Act, the declaration under Section 6(1) of the Act was published vide Gazette Notification 1701 dated 12.08.2015. The same was also displayed on the notice boards of the District Collector, Superintendent of Police, Office of the MPDO, Tahsildar Manthani, Police Station Manthani, Grama Panchayat office and office of V.R.O., on 18.09.2015 and 21.09.2015. It is said that notice issued under Section 6(1) of the Act was refused by the petitioners. Hence, the same was affixed in the Notice Board of Grama Panchayath Office, Puttapaka on 06.11.2015 by the concerned V.R.O. It is said that by virtue of publication made under Section 6 of the Act, that portion of the land stand vested with the Government/GITL. It is said that

the petitioners were aware about the entire proceedings and by suppressing the same, the present writ petition came to be filed.

5) The averments in the counter further show that notices were served and before taking over the land, Grama Sabha was conducted at Puttapaka village on 18.11.2017 and pamphlets were also distributed by Natural Gas Pipe Line before holding another meeting on 06.01.2018, in the office of the Revenue Divisional Officer, Manthani. By an order dated 24.07.2018, this Court while issuing notice, directed the respondents not to lay the pipeline through the survey numbers referred to above, for a period of two weeks.

6) No reply came to be filed to the counter filed by the respondents. As stated earlier, the argument is built on the averments made in the counter filed by the 5th respondent, which was not the case of the petitioners in the writ petition.

7) However, since arguments came to be advanced on these aspects during the course of hearing of the writ petition, it would be useful to refer to the provisions of law.

Section 3 of the Act deals with the publication of notifications for acquisition. Section 3(1) of the Act postulates that whenever it appears to the Central Government that it is necessary in the public interest, for transport of petroleum or any mineral from one locality to another locality, pipelines be laid by

that Government or by any State Government or a corporation and for the purpose of laying such pipelines, it is necessary to acquire the right of user in any land under which such pipelines may be laid, it may, by notification in the official gazette, declare its intention to acquire the right of user therein. Sub section 2 of Section 3 states that every notification under sub-section (1) shall give a brief description of the land. Sub section 3 of Section 3 states that the competent authority shall cause the substance of the notification to be published at such places and in such manner as may be prescribed.

Section 4(1) of the Act postulates that on issuance of a notification under sub-section 1 of Section 3, it shall be lawful for any person authorized by the Central Government or by the State Government or by the Corporation which proposes to lay pipelines for transporting petroleum or any mineral, and his servants and workmen (a) to enter upon, survey and take levels of any land specified in the notification; (b) to dig or bore into the sub-soil; (c) to set out the intended line of work; (d) to mark such levels, boundaries and line by placing marks and cutting trenches; (e) where otherwise survey cannot be completed and levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle, and (f) to do all other acts necessary to ascertain whether pipelines can be laid under the land;

Provided that while exercising any power under this Section, such person or any servant or workman of such person shall cause as little damage or injury as possible to such land.

Section 5 of the Act, which deals with hearing of objections, is as under:-

- (1) Any person interested in the land may, within twenty-one days from the date of the notification under sub-section(1) of section 3, object to the laying of the pipelines under the land.
- (2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector and opportunity of being heard either in person or by a legal practitioner and may, after hearing all such objections and after making such further inquiry, if any, as that authority thinks necessary, by order whether allow or disallow the objections.
- (3) Any order made by the competent authority under sub-section (2) shall be final.

Section 6 of the Act relates to declaration of acquisition of right of user. Sub section 1 of Section 6 states that where no objections under subsection (1) of Section 5 have been made to the competent authority within the period specified therein or where the competent authority has disallowed the objections under sub-section (2) of that section, that authority shall, as soon as may be, either make a report in respect of the land described in the notification under sub-section (1) of section 3, or make different

reports in respect of different parcels of such land, to the Central Government containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government and upon receipt of such report the Central Government shall, if satisfied that such land is required for laying any pipeline for the transport of petroleum or any mineral, declared, by notification in the Official Gazette, that the right of user in the land for laying the pipelines should be acquired and different declarations may be made from time to time in respect of different parcels of the land described in the notification issued under sub-section (1) of section 3, irrespective of whether one report or different reports have been made by the competent authority under this Section. Sub-section 2 of Section 6 states that on publication of the declaration under sub-section (1), the right of user in the land specified therein shall vest absolutely in the Central Government free from all encumbrances. Sub-section 3 of Section 6 postulates that where in respect of any land, a notification has been issued under sub-section (1) of Section 3, no declaration in respect of any parcel of land covered by that notification has been published under this section within a period of one year from the date of notification, that notification shall cease to have effect on the expiration of that period. Sub-section 3A of Section 6 states that no declaration in respect of any land covered

by a notification issued under sub-section (1) of Section 3, published after the commencement of the Petroleum Pipelines (Acquisition of Right of User in Land) Amendment Act, 1977, shall be made after the expiry of three years from the date of such publication. Sub-section 4 of Section 6 explains that notwithstanding anything contained in sub-section (2), the Central Government may, on such terms and conditions as it may think fit to impose, direct by order in writing, that the right of user in the land for laying pipelines shall, instead of vesting in the Central Government vest, either on the date of publication of the declaration or, on such other date as may be specified in the direction, in the State Government or the corporation proposing to lay the pipelines and thereupon the right of such user in the land shall, subject to the terms and conditions so imposed, vest in the State Government or corporation, as the case may be, free from all encumbrances.

8) In exercising the power conferred under Section 3 of the Act, the Central Government by notification published on 09.05.2014 in the Gazette of India, declared its intention to acquire the right of user in respect of certain lands. The said notification is as under:

"S.O. 1255(E)- Whereas, it appears to the Central Government, that it is necessary in the public interest that for the transportation of Natural Gas through the Spurline under Mallavarm-Bhopal-Bhilwara-

Vijaipur Pipeline project to various customers en-route should be laid by the GSPL India Transco Limited.

- i. Spurline from Tap off in Gumnoor village to FCIL (Ramagundam) in Karimnagar District, Andhra Pradesh.

And whereas, it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in the land under which the said pipeline is proposed to be laid, in Karimnagar district of Andhra Pradesh State and which is described in the Schedule annexed to this notification.

Now, therefore, in exercise of the powers conferred by Sub section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein.

Any person interested in the land described in the said schedule may, within twenty one days from the date on which the copies of this notification issued under sub-section (1) of Section 3 of the said Act, as published in the Gazette of India, are made available to the general public, object in writing to the acquisition of the right of user therein or laying of the pipeline under the land, to Sri Md. Akbar Nawaz, competent authority, GSPL India Transco Limited, Mallavaram-Bhopal-Bhilwa-Vijaipur Project, Flat No.309, 3rd Floor, Sri Kailasa Residency, Opp. Apollo Reach Hospital, Railway Station road, Village-Teegalagutapally - 505 001, Karimnagar district of Andhra Pradesh State.

9) The notification further set out details of survey numbers of land from different villages and the extent of land in respect of which right of user was sought to be acquired. The case on hand relates to land at Puttapaka village. The Gazette No.1039 dated 09.05.2014, wherein the notification under Section 3(1) of the

Petroleum and Minerals Pipeline (Acquisition of Right of User in land) Act, 1962 came to be issued, for laying the pipe line, came to be published on the Notice Board of the office of District Collector, Superintendent of Police, office of MPDO, office of Tahasildar, Police Station of Manthani, Gram Panchayat office and office of V.R.O. from 30.05.2014 to 19.06.2014. It is said that notices came to be issued under Section 3(1) of the Act, to those persons whose lands are getting affected. It is not in dispute that the lands which are subject matter of dispute in this Writ petition are in Sy.Nos.230, 244, 244/A and 246 situated in Puttapaka village of Manthani Mandal, Peddapally District, of which notices under Section 3(1) of the Act came to be issued to the petitioners vide C.A/Karimnagar/A/01/2012 dated 07.06.2014, which were served on the petitioners on different dates. The petitioner herein claim to have received the same on 19.06.2014. As no objections were filed, a declaration under Section 6(1) of the Act was published vide Gazette notification 1701 dated 12.08.2015. Copies of the Gazette came to be published on the Notice Boards of District Collector, Superintendent of Police, office of MPDO, office of Tahasildar, Police Station of Manthani, Gram Panchayat office and office of V.R.O on 18.09.2015 and 21.09.2015. It is said that though notice under Section 6(1) of the Act was issued, the petitioners refused to take the same. Hence, the same were affixed in the office of Gram

Panchayat, Puttapaka village by the concerned V.R.O. on 06.11.2015.

By virtue of this declaration, the land in respect of ROU vest with Government of India.

10) As observed by me earlier, the question would be; Whether there was any violation of the provisions of the Act?

11) Two main grounds are urged by the learned counsel for the petitioners, though the said grounds are not pleaded in the affidavit filed in support of the writ petition. As stated earlier, the counsel for the petitioners has built up his argument basing on the counter filed by the respondents. The first ground being i) the publication under Section 6 (1) of the Act was not made within a period of one year from the date of Gazette notification issued under Section 3(1) and the second ground being that no notices were served on the petitioners before taking the said land for laying the pipeline.

12) The only document filed along with the writ petition is a notice under Section 10(4) dated 16.04.2018 issued by the Competent Authority asking the petitioners to come and collect their cheques prepared for payment of ROU land compensation.

13) Insofar as non-service of notices is concerned, the proceedings dated 16.04.2018, which are filed along with the Writ Petition were sent to the address of the petitioners referring to their name, village, Mandal and District. It appears that this notice

dated 16.04.2018, which is filed along with the Writ Petition, was received by them and then Writ Petition came to be filed on the ground that without following the due procedure, the land of the petitioners was sought to be acquired. As seen from the original record, which is placed before this Court, notices under Section 3(1) of the Act were also sent to the very same address and every notice was signed by the petitioners, which was attested by the Village Revenue Officer, as proof of receipt of the notice. Therefore, the argument of the learned counsel for the petitioners that no such notice was sent or that they have not received any notice, cannot be accepted.

14) The other ground urged by the learned counsel for the petitioners is that the publication under Section 6 (1) of the Act was not made within a period of one year from the date of Gazette notification issued under Section 3(1). As seen from the record, the first Gazette notification came to be issued on 09.05.2014. Pursuant thereto, notices came to be issued to about 270 villagers, calling for their objections. Objections to the notice under Section 3(1) of the Act, were never made by any of the petitioners. Even the persons to whom it was served, did not file their objections. In fact, the petitioner No.5, who received compensation, even did not file his objections. Since no objections were received from any of the villagers, a report was submitted to the Central Government

under Section 6 of the Act. After considering the said report and on being satisfied that the said land is required for laying the pipe line, the Central Government decided to acquire the right of user therein. In exercise of its power under Section 6(1) of the Act, the Central Government declared that the right of user in the land specified in the schedule, appended to the notification, which includes the land of the petitioners, shall be acquired for laying the pipe line. In view of the power conferred under Section 6(4) of the Act, the Central Government directed that the right of user, in the said land for laying the pipeline shall vest with GSPL India Transco Limited. The notification also says that GSPL Transco Limited shall be exclusively liable for payment of compensation in terms of Section 10 of the Act.

15) From the above, it is clear that the report was sent after Gazette notification and basing on the said report, the Central Government, on being satisfied with the report for laying the pipeline, decided to acquire the right of the user therein. As held by the Apex Court in **Laljibhai Kadvabhai Savaliya and others v. State of Gujarat and others**¹, upon the publication of declaration under Section 6, the right of user in the land so specified vests absolutely in the Central Government or in the State Government or in the Corporation free from all encumbrances. It has been also

¹ (2016) 9 SCC 791

held that after such vesting, the compensation for the loss or injury suffered is to be determined under Sections 4, 7, 8 and 10 of the Act. It would be appropriate to refer to the findings of the Apex Court, which is as under:

"18. Under the provisions of the PMP Act, what is taken over or acquired is the right of user to lay and maintain pipelines in the subsoil of the land in question. The provisions of the PMP Act get attracted upon the requisite notification having been made under Section 3. If it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum or any minerals any pipeline be made and for the purposes of laying such pipelines it is necessary to acquire the right of user in any land, it may by notification issued in exercise of power under Section 3 declare its intention to acquire such right of user. The Act then provides for making of objections by those interested in land, which objections are thereafter to be dealt with by the competent authority. The report made by the competent authority is then placed before the Central Government for appropriate decision and after considering such report and the relevant material on record, if the Central Government is satisfied that such land is required for laying any pipeline for the transport of petroleum or any other mineral, it may declare by notification in the Official Gazette that the right of user in the land for laying the pipeline be acquired. Upon the publication of such declaration under Section 6 the right of user in the land so specified vests absolutely in the Central Government or in the State Government or in the corporation free from all encumbrances. Thus what stands acquired is the right of user in the land in question for laying pipeline for the transport of petroleum or any mineral and not the land itself."

16) From a reading of the provision of the Act and judgment referred to above, it is clear that upon publication of such declaration under Section 6, the right of user in the land, so specified, vests absolutely with the Central Government or the State Government or the Corporation, free from all encumbrances.

17) The main thrust of the argument of the learned counsel for the petitioners appears to be that in view of Section 6(3) of the Act, wherein the second Gazette notification is required to be issued within one year, which is not done, the entire proceedings are bad in law. As seen from the record, notice under Section 3(1) of the Act came to be issued in June 2014 to more than 250 villagers, and these notices came to be served on different dates.

18) The learned counsel for the respondents did not dispute the fact of notification, as required under Section 6 of the Act, being issued beyond a period of one year from the date of first notification, but submits that there being large number of persons to whom notices are to be served, there was some delay in publishing notification and as such the second notification came to be issued in the month of August, 2015, which does vitiate the proceedings, moreso when no prejudice is caused to the petitioner.

19) In some what identical situation, the Apex court in **P.Chinnanna and others v. State of A.P. and others**², while dealing with the provisions of the Land Acquisition Act observed as under:

"In relation to acquisition proceeding involving acquisition of land for public purposes, the court concerned must be averse to entertain writ petitions involving the challenge to such acquisition where there is avoidable delay or laches since such acquisition, if set aside, would not only involve enormous loss of public money but also cause undue delay in carrying out projects meant for general public good. When a fresh ground of attack to acquisition proceedings, even if it involves purely a question of law, its entertainment cannot be governed by a principle different from that which governs entertainment of writ petitions before the High Court or proceedings arising therefrom before this Court under Article 136 of the Constitution."

20) Further, a perusal of the record shows that all the petitioners, who were issued notices, participated at the time of preparation of panchanama in the month of September, 2017. A reading of the panchanama shows that the petitioners and all villagers were declared to be present on that day, to make a note of existing features in the said lands, for the purpose of determining the compensation. The record shows that all the petitioners appeared and signed on the panchanama. Later, in the month of February 2018, an order of compensation, for acquisition of right of

² (1994) 5 SCC 486

user in the said land, came to be passed by the Competent Authority, GITL, Karimnagar, fixing the total amount of compensation to be paid to all the villagers is Rs.40,52,857/-. It is said that among the petitioners, even the 5th petitioner is said to have received the cheque for payment of compensation. Therefore, delay of 2 months in making the second Gazette publication, which caused no prejudice; and as the land is being listed for public good, does not vitiate the proceedings.

21) Since the entire process of acquisition is complete, pipelines are laid; award proceedings came to be passed; compensation is paid to 90% of the landholders, whose lands have been taken over for laying the pipeline; and in view of the observations made by the Apex Court in the judgment referred to above, the entire procedure cannot be found fault with.

22) Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions, pending if any in this Writ Petition shall stand closed.

C. PRAVEEN KUMAR, J

Date:13.10.2018

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