

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 722 of 2019

1. Rajgulapi Nayak S/o Ghansiram Nayak, Aged About 70 Years, R/o Village Dhaknka, R.N.M.- Pateva, Tahsil and District- Mahasamund, Chhattisgarh., District : Mahasamund, Chhattisgarh
2. Devanand Nayak S/o Rajagulapi Nayak, Aged About 40 Years, R/o Village Dhaknka, R.N.M.- Pateva, Tahsil and District- Mahasamund, Chhattisgarh, District : Mahasamund, Chhattisgarh

....(Respondents 1 and 2)

---- Petitioners

Versus

- Indian Oil Corporation Ltd. Through Chief Managing Director- Mastram Paradip, Raipur, Ranchi Pipeline, Village Devada, Post Lakholi, Tahsil Arang, District- Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
.....(Applicant)

----Respondent

For Petitioners – Shri Hemant Gupta, Advocate.

For Respondent – Shri Anand Shukla, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

13-11-2019

1. This petition has been brought being aggrieved by the order dated 02-09-2019 passed by the District Judge Mahasamud, C.G. in Civil MJC No. H 04/2018 by allowing the application under Section 9 of the Petroleum and Mineral Pipelines (Acquisition of Right of User In Land) Act, 1962 (in short 'the Act, 1962') which was filed by the respondent.

2. It is submitted by learned counsel for the petitioners that the order passed by the Court below is arbitrary without the support of actual facts and circumstances as are present in the place of acquisition so made. Firstly, the respondent did not file any particulars or Map with sufficient description to show user right to be acquired. The original map was never produced regarding, which there is admission made by the witnesses examined in the proceeding. Panchnama (Annexure - P/6) does not give a clear description of the land to be used by the respondent and the notification (Annexure-P/4)

mentioned only Khasra numbers, therefore, there is no document to show the exact location of the pipeline that will pass from the land of the petitioners. It is also submitted the respondent had not paid any compensation for the land acquired by it. The compensation that has been paid was for the loss of crop and for the user right only. It is further submitted that there is no such notification issued within one year of the declaration of intention by the Central Govt. as it is required in Subsection 3 of Section 6 of the Act 1962, hence, without such proper notification the application under Section 9 of the Act, 1962 could not have been entertained and ordered by the Court below. Hence, it is prayed that the petition be allowed.

3. Learned counsel for the respondent opposes the submission made and submits that the notification as required under Section 3(1) of the Act, 1962 was published on 03-08-2010 and subsequent to that the notification was published regarding acquisition of user right on the lands of the persons concerned on 31-01-2011 which is published in the Gazette dated 02-02-2011. The petitioners have no right to challenge the acquisition of user right so made on behalf of the petitioners and the scope of Section 9 of the Act, 1962 is very much limited and it provides for restrictions of use of the owner or occupants of the land only, whereas, the petitioners are attempting to challenge the acquisition procedure which is not permissible.

Learned District Judge has after filing of the application under Section 9 of the Act, 1962 constituted a committee to inquire into the complaint made by the respondent and on the basis of the report submitted by the committee vide Annexure-R/3 that the petitioners have raised construction on the land regarding which user right has been acquired in favour of the respondent, the order has been passed accordingly. Hence, the petition is without any substance which may be dismissed.

4. In reply, it is again submitted by learned counsel for the petitioners that

land has not been properly identified by the committee and the original map was never produced.

5. Heard learned counsel for the parties and perused the documents.

6. Submission in this respect that there is no clear identification of the land on which the user right has been acquired in favour of the respondent and that no proper compensation has been paid to the petitioners is not subject matter of consideration in this petition for the simple reason that order under challenge is the order passed under Section 9 of the Act, 1962 passed by learned District Judge Mahasamund and this provision gives a limited scope placing restrictions on the land owner regarding some use of land and if any such restrictions are violated or disobeyed then the District Judge has powers to order for removal of such obstruction. Therefore, the only issue present is whether learned District Judge has exercised the power under his jurisdiction lawfully and correctly or not. Therefore, further discussion in this petition shall be limited only to the extent of the issue which is present.

7. On perusal of the report Annexure-R/3 which has been submitted by Nayab Tahsildar Jhalap before the Court, it is found that the petitioners have raised construction on the land beneath which the pipeline has been laid down by the respondent. The acquisition is very clearly of the year 2011 and the pipeline which has been physically verified by the Nayab Tahsildar was already laid down by the respondent before any construction was made by the petitioners. At this stage the petitioners cannot challenge the acquisition proceeding by raising any dispute with regard to specification of the land or with regard to the compensation. The Act, 1962 itself speaks that the land is not acquired, it is only user right that is acquired for the respondent and the compensation is paid accordingly, hence, the land owner is not dispossessed or deprived of the land on which the user right has been given for the limited purpose of laying down the pipeline. Hence, under these circumstances after

the acquisition of user right and after laying down of the pipeline the petitioners have raised construction over the same land which is clearly a restricted act under Section 9 of the Act, 1962. Learned District Judge has after making appropriate inquiry passed the impugned order and no fault can be found in the said order. Therefore, I do not find any substance in this petition which is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)
Judge