

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1967 of 2016

- Manvendra Pratap Singh S/o Shri Amarnath Singh, Aged About 24 Years
R/o Gram Bilaigarh, Tehsil Dabhra, District Janjgir Champa Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Revenue And Disaster Management Department, Mahanadi Bhawan, Naya Raipur, Raipur Chhattisgarh
2. National Thermal Power Company, Through Its General Manager, Lara Project, District Raigarh Chhattisgarh
3. Collector, District Janjgir Champa Chhattisgarh
4. Sub Divisional Officer Revenue Dabhra, District Janjgir Champa Chhattisgarh
5. Tehsildar, Dabhra, District Janjgir Champa Chhattisgarh

---- Respondents

WPC No. 2743 of 2017

1. Radhelal Gupta S/o Late Shri Yudisthir Gupta, Aged About 60 Years
Occupation Agriculturist R/o Village Saraipali, Post Pussour, Thana And
Tehsil Pussour District Raigarh Chhattisgarh
2. Safed Kumar Gupta S/o Late Shri Yudisthir Gupta Aged About 48 Years
Occupation Agriculturist R/o Village Saraipali, Post Pussour, Thana And
Tehsil Pussour District Raigarh Chhattisgarh
3. Kuntibai Wd/o Late Shri Yudisthir Gupta Aged About 85 Years R/o Village
Saraipali, Post Pussour, Thana And Tehsil Pussour District Raigarh
Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh Through The Secretary , Revenue And Disaster Management Department Mantralaya Mahanadi Bhawan Naya Raipur District Raipur Chhattisgarh
2. Union Of India, Through Secretary Ministry Of Rural Development Krishi Bhavan , Dr Rajendra Prashad Road New Delhi 110001, District : New Delhi
3. Collector, Raigarh, District Raigarh Chhattisgarh
4. Sub Divisional Officer Revenue Dabhara District Janjgir - Champa Chhattisgarh
5. Tehsildar, Dabhara, District Janjgir Champa Chhattisgarh

6. National Thermal Power Corporation Ltd., Corporate Centre, Scope Complex, Lodhi Road New Delhi
7. Lara N T P C Project Pussour, Tehsil Pussour, District Raigarh Chhattisgarh Through General Manager, District : Raigarh, Chhattisgarh

-----Respondents

For Petitioner	: Shri Mateen Siddiqui, Advocate
For Respondents /State	: Shri SC Verma, Additional Advocate General
For Respondent- 2	: Dr NK Shukla, Senior Advocate with Shri BD Guru and Shri Ajay Lakra, Advocates

**Hon'ble Shri Ajay Kumar Tripathi, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board**

Per Ajay Kumar Tripathi, Chief Justice

02.01.2019

1. The Writ Petition under Article 226 of the Constitution of India has been preferred by the petitioners to declare sub-Section 2 of Section 9 of Chhattisgarh Underground Pipelines (Acquisition of Right of User in Land) Act, 2004 (for short, 'the Act, 2004') to be *ultravires* of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'Act of 2013').

2. The petitioner claims himself to be resident of Bhilaigarh, Tehsil-Dabhra, District- Janjgir Champa in the State of Chhattisgarh. The Sub-Divisional Officer, Janjgir Champa issued an order dated 07.02.2016 by virtue of which the respondent authorities have decided or proposed to use the land of the petitioner bearing Khasra No. 195 Rakba 0.146 Hectors situated at PH No.26, village Bhilaigarh, Tehsil- Dabhara, District- Janjgir Champa, for laying/construction of underground pipeline for

National Thermal Power Corporation Limited (NTPC), Lara Project at Raigarh, Chhattisgarh.

3. Stand or pleading of the petitioner is that even though the entire land of 0.146 hectares is being acquired by the respondent authorities but only a token sum of Rs.1,00,744/- was paid to him as compensation. It is highly inadequate, unreasonable and unfair keeping in mind the new land acquisition Act of 2013.

4. From Annexure P/2 dated 07.10.2015, an order was passed by the competent authority indicating the plot and the area of land which was going to be temporarily acquired for laying down pipeline for NTPC Lara Project. The decision of the competent authority was also published in the newspaper for the benefit and information of the land-holders and public at large, which is evident from Annexure P/3 to the writ application. Land of the present petitioner was also indicated in the said notification/decision. Petitioner lodged his protest against inadequate compensation and on rejection thereof, the writ application has been filed challenging the *Vires* of the Act, 2004.

5. A copy of the legislation ie the Act, 2004 has been brought on record as Annexure P/1 to the writ application. The said Act was notified after receiving the assent of the Governor of the State of Chhattisgarh on 02.04.2004. The Act was further published in the official Gazette on 16.04.2004.

6. The Act is to provide for the acquisition of right of users in land for laying pipelines for carrying of water, gas and electricity from one locality

to another locality and to construct pipeline for carrying industrial waste and for the works connected therewith in the state of Chhattisgarh. The legislation identifies the authority who will perform the functions of the competent authority under the Act. It envisages publication of notification for such limited acquisition under **Section 3** of the legislation. **Section 4** contemplates declaration of acquisition of right of users; **Section 5** deals with power to enter survey etc., in the land after publication of the declaration under sub-Section 1 of Section 4; **Section 6** gives power to the State Government or Corporation to lay pipeline; **Section 7** deals with power to enter the land for inspection after giving reasonable notice to the occupier of the land for the purposes of maintaining, examining, repairing, altering or removing any pipeline; **Section 8** puts certain restrictions regarding the use of land; and **Section 9** deals with compensation to be paid for such acquisition for limited purpose under the State legislation. Both Section 8 and 9 are reproduced in *toto* because they do have some reflection on the issue raised in the present writ application.

"8.Restriction regarding the use of land— (1) The owner or occupier of the land with respect to which a declaration has been made under sub-section (1) of Section 4, shall be entitled to use the land for the purpose for which such land was put to use immediately before the date of the notification under sub-section (1) of Section 3:

Provided that, such owner or occupier shall not, after the declaration under sub-section (1) of Section 4.

- (i) construct any building or any other structure;
- (ii) construct or excavate any tank, well, reservoir or dam;
or
- (iii) plant any tree,
on that land.

(2) The owner or occupier of the land shall not do any act which will or is likely to cause any damage in any manner whatsoever to the pipeline.

9. Compensation — (1) Where in the exercise of the powers conferred by Section 5, Section 6 or Section 7 by any person, any damage, loss or injury is sustained by any person interested in the land, the State Government or the corporation, 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. While determining such compensation, he shall have due regard to the damage or loss sustained by reason of, —

- (i) the removal of trees or standing crops, if any, on the land while exercising the powers under Section 5, Section 6 or Section 7;
- (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;

(2) Where the right of user of any land has vested in the State Government or the Corporation, the State Government or the Corporation, shall be liable to pay, in addition to the compensation, if any, compensation calculated at ten percent of the market value of that land on the date of publication of the declaration under sub-section (1) of Section 4. The market value of the land on the said date shall be determined by the Competent Authority.

Explanation.— The market value means the value determined on the basis of the sale price of similar land in the area in the last 3 years.

(3) If the value determined by the Competent Authority is not acceptable to either of the parties, an application may be made by the party within 30 days to the District Judge having jurisdiction.

(4) The decision of the District Judge under sub-section (3) shall be final.

7. The Act, 2004 of the State Government has been enforced after its notification in the official Gazette and the land in the State is being used for the purposes of laying down pipelines etc., for different projects and purposes which was the intendment of the legislatures. There has never been any challenge thrown to the said legislation till the Central Government notified a new Land Acquisition Act known as the Act of 2013.

8. Encouraged by the kind of compensation which has been contemplated under the Act of 2013, effort has been made on behalf of the petitioner to now assail the constitutional validity of the Act, 2004, seeking similar kind of compensation at par with Central legislation or else to strike down the provision for compensation as contemplated under Section 9 of the State legislation of 2004.

9. The argument made on behalf of counsel for the petitioner while seeking to strike down the State legislation is that it is *ultra vires*, the Central legislation of 2013 as it is in conflict on the issue of compensation *vis-a-vis* the State legislation. Though an argument has been made on the question of constitutional validity and the legislative competence of the State of Chhattisgarh to make such a law but the same was more posturing rather than serious effort to bring home the point.

10. Seriously contesting the argument of the petitioner, counsel representing the state as well as NTPC submit that there is no lack of

legislative competence or any conflict in law between the State legislation and the Central legislation keeping in mind that the two are operating in two different fields and that the two legislations have been made under different lists of the 7th Schedule of the Constitution of India and there is no overlapping between the two legislations.

11. So far as the State legislation is concerned, it is only acquisition of certain right for use of the land for limited purpose of laying down pipelines for carrying of water, gas, electricity etc., from one locality to another including certain industrial wastes etc., and it in no manner a legislation to acquire the land of a land holder. If it is not a case of acquisition of land, then the consideration and parameters which have been provided by the Central Government in cases of land acquisition which deprive a land holder of his property in *toto* cannot be equated with an acquisition for a limited purpose in which the land owner is not divested of ownership of the said land. What stands acquired is the right of user in the land and not the land itself.

12. No doubt, keeping in mind the safety and security of the locality or the people therein including the safety and security of the pipeline, certain restrictions have been put on the use of land, details of which are available in Section 8 of the Act, 2004. It is because of those restrictions that the State Government have decided to pay compensation for any damage, loss or injury caused to any person interested in the land or compensation for removal of trees, standing crops or temporary severance of the land from the occupation of the person while laying down

the pipeline, or for any injury to any property movable or immovable caused due to laying down of such pipeline.

13. The other argument which emerges, therefore, is whether laying down of a pipeline beneath the surface of a land whose ownership does not stand divested, can be equated with the action of actual acquisition? The answer seems to be a clear 'NO' because utilisation of a land with an objective talked about in the state legislation by no stretch of argument can be equated with land acquisition.

14. Dr Shukla, Senior Advocate representing NTPC has drawn the attention of this Court to a similar legislation enacted by the State of Madhya Pradesh which is known as ***Madhya Pradesh Bhumigat Pipe Line, Cable Evam Duct (Bhumi Ki Upyokta Ke Adhikaron Ka Arjan) Adhiniyam (5 of 2013)*** which is *pari materia* with the legislation of the State of Chhattisgarh. Before the MP High Court a serious challenge was thrown to the legislative competence of the State legislature and an effort was made to show that the two legislations were in conflict and therefore, keeping in mind the legislative competence of the Central Government *vis-a-vis* the State, effort was made to get the MP Act struck down.

15. A Full Bench of Madhya Pradesh High Court while considering the law in case of **Bhagwanti Bai Vs State of MP and others** reported in **AIR 2018 MP 168 (FB)** had the following to say in paragraphs 21, 22, 23, 24 and 34:

"21. [Section 7](#) stipulates that no pipeline be laid under any land which, immediately before the date of Notification under [Section 3\(1\)](#) was used for residential purposes, or any land on

which there is permanent structure in existence or any land which is appurtenant to a dwelling house. It is clear that only such lands are to be considered for acquisition of right of user therein which are either lying fallow or are being put to agricultural use. It is obvious that care is taken to cause least possible damage to the holdings of the concerned land-owners. According to [Section 9](#), after the pipelines are laid, the owner/occupier could use the land for the purpose for which it was being used before the Notification under [Section 3\(1\)](#) was issued. [Section 9](#) certainly, imposes some restrictions in the sense that such owner/occupier cannot thereafter construct any building or any other structure or construct or excavate any lake, reservoir or dam or plant any tree on such land. Barring such restrictions, the owner/occupier is within his rights to use the land for the same purpose for which the land was earlier being used. The point is clear that neither the ownership in respect of the land itself nor the right to occupy or possess that land is taken over permanently and those rights continue to remain with the owner/occupier. What is taken over is only the right of user namely to lay pipelines in the sub-soil of the land in question and the restrictions imposed by [Section 9](#) are designed to safeguard and secure the pipelines underneath.

22. As laid down by this Court in *Jilubhai Nanbhai Khachar and others Vs. State of Gujarat*, 1995 Supp (1) SCC 596, the term property in legal sense means an aggregate of rights which are guaranteed and protected by law and would extend to entirety or group of rights inhering in a person. It was observed by this Court as under:

"42. Property in legal sense means an aggregate of rights which are guaranteed and protected by law. It extends to every species of valuable right and interest, more particularly, ownership and exclusive right to a thing, the right to dispose of the thing in every legal way, to possess it, to use it, and to exclude everyone else from interfering with it. The dominion or indefinite right of use or disposition which one may lawfully

exercise over particular things or subjects is called property. The exclusive right of possessing, enjoying, and disposing of a thing is property in legal parameters. Therefore, the word 'property' connotes everything which is subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate or status. Property, therefore, within the constitutional protection, denotes group of rights inhering citizen's relation to physical thing, as right to possess, use and dispose of it in accordance with law. In Ramanatha Aiyar's The Law Lexicon, Reprint Edn, 1987, at p.1031, it is stated that the property is the most comprehensive of all terms which can be used, inasmuch as it is indicative and descriptive of every possible interest which the party can have. The term property has a most extensive signification, and, according to its legal definition, consists in free use, enjoyment, and disposition by a person of all his acquisitions, without any control or diminution, save only by the laws of the land."

23. We therefore proceed on the premise that the right of user sought to be taken over under the provisions of the PMP Act amounts to acquisition of one of the facets of property rights which inhere in the owner/occupier. For the acquisition of such right of user, the compensation is prescribed in terms of Section 10 of the PMP Act. There are two elements of compensation under [Section 10](#). The first part deals with any damage, loss or injury sustained by any owner/occupier as a result of exercise of powers conferred by Sections 4, 7 and 8 of the PMP Act that is to say the actual damage, loss or injury sustained because of entry upon and/or digging or marking levels and survey of land under [Section 4](#) or while actual laying of the pipeline including digging of trenches and carrying of requisite material for such operations under [Section 7](#) or at any stage of maintenance, examinations, repairing and altering or removing of pipeline in terms of Section 8 of the PMP Act... ..The damage/loss or injury to the property is separately dealt with under first part of [Section 10](#) and has to be compensated in toto. Theoretically, it is possible that in a barren piece of land as a result of exercise of powers under [Sections 4, 6](#) and [7](#) there may not be any damage/loss or injury. However compensation under sub-section (4) for acquisition of right of user would still be independently payable. The expression "in addition to the compensation, if any, payable under sub-section (1)" clearly shows

the intent that the compensation for acquisition of right of user shall be in addition to the actual damage/loss or injury under first part of [Section 10](#). This part will also be clear from Para 3(iii) of Statement of Objects and Reasons extracted above (in para 2).

24. The provisions of PMP Act do specify the principles and the manner in which the compensation is to be determined. Not only the actual damage, loss or injury suffered as a result of exercise of various activities in terms of [Sections 4, 6 and 7](#) are compensated in toto but additionally compensation linked to the market value of land is also to be given for acquisition of right of user in respect of such land. What is taken over is mere right of user to lay the pipeline in the sub-soil of land in question, leaving the title to the land as well as the right to possess that land intact in the hands of the land owner/occupier. It is no doubt that the enjoyment thereof after the pipelines are laid is impaired to a certain extent, in that the owner/occupier cannot raise any permanent construction or cause any excavation or plant any trees. Barring such restrictions, the enjoyment and the right of possession remains unaltered. The lands under which the pipeline would be laid are primarily, going by the mandate of [Section 7](#), agricultural or fallow and there would normally be no occasion for any rendering of the holding completely unfit for any operations. Even in such cases where the holding is rendered unfit, sub- section 3(iii) of Section 10 could be relied upon and any diminution in market value as permanent impairment could sustain a claim for compensation. The principles of compensation as detailed in the PMP Act are thus reasonable and cannot in any way be termed as illusory. The principle laid down in [H.D. Vora v. State of Maharashtra](#), (1984) 2 SCC 337 has no application at all." (Emphasis supplied)

34. Therefore, in respect of Question No. (ii), we find that the [State Act](#) is not repugnant to the [Central Act](#) as both operate in different fields. Union Parliament does not have any legislative competence to enact any law in respect of matter which falls in List II of the 7th Schedule. Therefore, the fact that The Madhya Pradesh Bhumigat Pipe Line, Cable Evam Duct (Bhumi Ki Upyokta Ke Adhikaron Ka Arjan) Adhiniyam, 2012 is not found in List IV of the Central Act is of no effect."

16. Yet another decision has been brought to the notice of this Court rendered by the Hon'ble Supreme Court which is the case of **Laljibhai Kadvabhai Savaliya and others Vs State of Gujarat and others** reported in **AIR 2016 SC 4715**. The issue before the Hon'ble Apex Court in this matter was the provisions of **Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act (50 of 1962)**. The Hon'ble Apex Court while dealing with the said legislation and the powers vested in the competent authority and the said legislation, upheld its validity and refused to strike down Section 10 of that Act which dealt with grant of compensation.

17. The reason for reliance on the decision of the Hon'ble Apex Court in **Laljibhai** (*supra*) case is to show that similar powers are also vested in a legislation which have been in place and enacted by the Central Government and the constitutional validity and challenge thrown thereto, specially in relation to compensation was held to be *intra vires*.

18. The underlying principle, therefore, which emerges from not only the legislative intendment but the two decisions ie the full Bench decision of Madhya Pradesh High Court as well as the decision of the Hon'ble Supreme Court are that the two legislations are operating in different fields and their object and purpose are totally diverse therefore, in our opinion there is neither any overlapping nor is there any ingress into the powers of either of the two legislative fields or by the two legislatures ie the Central Government as well as the State Government.

19. Merely because in the case of outright acquisition of land, a more attractive package has been provided for under the Act of 2013, therefore, the same cannot become a ground for challenging the *vires* of 2004 State legislation since it provides for limited compensation.

20. These two Writ Applications therefore, lack merit and are dismissed. We hold that **Chhattisgarh Underground Pipelines (Acquisition of Right of User in Land) Act, 2004** does not suffer from any legal or constitutional vice, much less the ground which has been urged and considered by this Court.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge