

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4504 OF 2018

Sunil Raghunath Wanaye,
age: 34 years, Occ: Farmer,
R/o at & Post-Watad, (Khandala),
Kondawadi, Taluka & District
Ratnagiri.

Petitioner

Versus

1 Competent Authority
@ Sub Divisional Officer,
Ratnagiri, having office at
Collector Compound, Jayastambh,
Ratnagiri, Taluka and District
Ratnagiri.

2 Petroleum and Natural Gas
Ministry, having its office at
Indira Paryavaran Bhawan,
Jor Baugh Road, New Delhi-110 003.

3 H-ENERGY GATEWAY PRIVATE
LIMITED, having its office at
514, Dalamal Towers,
211, FPJ Marg, Nariman Point,
Mumbai 400 021.

Respondents

Mr.C.G.Gavenkar, advocate i/by Mr.Rakesh Bhatkar, advocate for
the petitioner.

Ms.Madhubala Kajale, B-Panel Counsel for Respondent No.1-State.
Mr.Parag Vyas, Standing Counsel for Respondent No.2-Union of
India.

Mr.Milind Sathe, Senior Counsel, Ms.Vaidehi Naik, Ms.Bitika
Kaur, Ms.Amahe Cama, i/by Ms. Neeti Niyaman for Respondent
No.3. Advocate for Petitioner.

CORAM : R.M.BORDE &**V.L.ACHLIYA, JJ.****DATE : 09th January, 2019****ORDER (Per R.M.Borde, J.):**

1 The petitioner, for himself and on behalf of the villagers, is challenging the notification dated 24.11.2017, issued under Section 6(4) of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962, (hereinafter referred to as 'the PMP Act'), declaring that the right of user in the lands specified in the notification shall vest in H-Energy Gateway Private Limited, free from all encumbrances. The lands are required for laying down natural gas pipeline from Jaigad LNG Terminal to Dabhol covering distance of 54.399 kms. The plan of laying down the pipeline for transportation of natural gas from Jaigad LNG Terminal to Manglore is a larger project which includes pipeline between Jaigad LNG Terminal to Dabhol, as one of the components. Petitioner is also objecting to the notice issued by the competent authority on 16.01.2018 to the petitioner calling upon him to tender a claim in respect of amount of compensation. The petitioner has prayed for restraint order against the respondents from proceeding in furtherance to the notice dated 16.01.2018.

2 The interim relief claimed by the petitioner, in the petition, was not granted initially. Petitioner moved the Hon'ble Supreme Court, however, the SLP presented by the petitioner was not entertained and as such, the writ petition is placed before this Court for disposal.

3 On 20.04.2016, Expression of Interest was declared by respondent no. 3 to the Petroleum and Natural Gas Regulatory Board to lay the pipeline from Jaigad LNG Terminal to Manglore. A public notice was issued by the Board soliciting views from the general public.

3 A notification has been issued on 30.10.2015 appointing the Sub-Divisional Officer as competent authority under the PMP Act. After appointment of competent authority instructions were issued to the *Sarpanch* of village Watad to cooperate with respondent no. 3 and SICON for carrying out survey of the land for proposed pipeline. A detailed proposal for acquisition of right of user was submitted by respondent no. 3 to the competent authority and the said proposal included survey maps of proposed pipeline. A notification under Section 3(1) of the PMP Act was published in the *Official Gazette* on 04.03.2017 calling upon the concerned to tender their objections within time specified therein. It appears that one association formed by the villagers approached the competent authority seeking certain information. The petitioner had also presented objection and also requested certain clarification. A notice was issued to the objectors calling upon them to attend the hearing scheduled on 11.08.2017. In the meeting convened for consideration of objections, the objections raised by the petitioner and other villagers were considered and doubts raised by them were also clarified. Further meetings of the villagers were also held with a view to inform them the details of the project and the limitations on user of the land, which is sought to be utilised or used for laying down the pipeline. A notification under Section 6(1) came to

be issued acquiring right of user in the land described in the Schedule on 24.11.2017. It also appears that an award has been declared and amount of compensation has also been determined.

4 The primary objection raised by the petitioner is that the pipeline, which is proposed by the respondents, passes through the *gaathan* area and affects huge number of constructed structures. It is also contended that the petitioner would be prohibited from using the area for raising permanent construction or for planting trees. It is further contended that the transportation of gas through the pipeline is an hazardous and risky operation and as such, the pipeline transporting such hazardous material shall be prescribed away from the village and the agricultural lands under cultivation also shall not be utilised for laying down the pipeline. The petitioner also contends that the procedure prescribed under the PMP Act has not been adhered to. The petitioner vehemently contended that the notification under Section 3 was issued, which was followed by declaration under Section 6, however, the survey of lands and identification of the area for laying down the pipeline has been carried out after issuance of notification under Section 6, which is an illegality. Sections 3 to 6 of the Act read as under :

3 PUBLICATION OF NOTIFICATIONS FOR ACQUISITION:

(1) Whenever it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum (or any minerals) from one locality to another locality pipelines may be laid by that Government or by any State Government or a

Corporation and that for the purpose of lying such pipelines it is necessary to acquire the right of use 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.

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published at such places and in such manner as may be prescribed.

4 Power to enter, survey, etc. - On the issue of a notification under sub-section (1) of section 3, it shall be lawful for any person authorised by the Central Government or by the State Government or the Corporation which proposes to lay pipelines for transporting petroleum (or any mineral), and his servants and workmen -

- (a) to enter upon and 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.

5 Hearing of objections – (1) Any person interested in 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 an opportunity of being heard either in person or by legal practitioner and may, after hearing all such objections and after making such further inquiry, if any, as that authority thinks necessary, by order either allow or disallow the objections.

(3) Any order made by the competent authority under sub-section (2) shall be final.

6 Declaration of acquisition of right of user –

(1) Where no objections under sub-section (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 land described in the notification under sub-section (1) of section 3, or make different reports in respect of different parcels of such lands, 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], declare, 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 lands 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].

(2) On the publication of the declaration under sub-section (1), the right of user [in the lands specified therein] shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been issued under sub-section (1) of section 3 but [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 that notification, that notification shall cease to have effect on the expiration of that period.

[(3A) No declaration in respect of any land covered by notification issued under sub-section (1) of section 3, published after the commencement of the Petroleum Pipelines (Acquisition of Right of User in Land) Amended Act, 1977, shall be made after the expiry of three years from the date of such publication.]

(4) Notwithstanding anything contained in sub-section (2), the Central Government, on such terms and conditions, as it may think to impose, direct, by order in writing, that the right of user of the land for laying the pipelines shall, instead of vesting in the Central Government vest, either on the date of publication of declaration or, on such other date, as may be specified in the direction, in the State Government or the Corporation proposing to lay the pipeline and thereupon the right of such user in the land shall, subject to the terms and conditions so imposed, vest in that State

Government or Corporation, as the case may be,
free from all encumbrances.

5 The petitioner contends that the authorities are expected to enter upon land and conduct the survey of the property of the persons affected only after publication of notification under Section 3. It would be permissible to issue declaration of acquisition of right of user under Section 6 only after observing the procedure prescribed under Sections 3, 4 and 5 of the Act.

6 It is contended that until issuance of declaration under Section 6, the procedure prescribed under Section 4 was not completed and the survey was conducted quite at a late stage. The procedure, that was adopted by the competent authority, is in violation of the provisions of PMP Act and as such, the notification under Section 6 deserves to be quashed and set aside.

7 As regards the objection raised by the petitioner referring to conduct of survey under Section 4 of PMP Act is concerned, it shall have to be taken into consideration that the aforesaid provision is an enabling provision and merely because the survey is conducted prior to issuance of notification under Section 3 or a detailed survey for locating the survey numbers or *hissa* numbers is conducted later on, that itself, does not vitiate the proceedings.

8 An additional affidavit has been presented on behalf of respondents i.e. by the competent authority-Sub-Divisional Officer wherein it has been stated that the proposal prepared by SICON

included the maps of proposed right of user (ROU). The proposal includes the certificate from the acquiring body i.e. H-Energy Gateway Private Limited stating that the demarcation of proposed right of user of land is done in all the villages including village Watad. Respondent no. 1 asked about the detailed survey conducted by respondent no. 3 by communication dated 27.09.2016 and thereupon concerned respondent submitted a copy of detailed report to respondent no. 1 vide letter dated 04.10.2016. The report consists of seven volumes. The technical details contained in the report can be analysed by experts, however, the executive summary is placed on record of this petition. It is the contention of respondents that merely because survey was conducted by the acquiring body prior in point of time, does not itself vitiate the proceeding in respect of determination of compensation for right of user.

9 As has been recorded above, Section 4 is an enabling provision permitting to conduct survey after issuance of notification under Section 3(1) of the Act. In the instant matter, so far as the aspect of identifying survey numbers and pot *hissa* numbers is concerned, the department of Land Records had intimated that no detailed survey maps including *hissa* and pot *hissa* numbers were available and as such, separate measurement was required to be conducted to identify pot *hissa* numbers and survey numbers of the lands. In peculiar facts, therefore, the representatives of respondent no. 3 and Deputy Superintendent of Land Records decided to visit each survey number and identify, measure and draw maps giving exact details of survey numbers and pot *hissa* proposed to be affected by the pipeline route. The

detailed mapping and identification of *pot hissa* was conducted at a later point of time. It further transpires that the concerned agriculturists affected by the acquisition were given notice. They were also called upon to tender their objections as regards price of the area demarcated for right of user; and after considering all the relevant aspects, award determining compensation has been declared. It has been brought to our notice that though Section 10(4) provides that where the right of user of any land has vested in the Central Government, the State Government or the Corporation, the Central Government, the State Government or the Corporation, as the case may be shall, in addition to the compensation, if any, payable under sub-Section (1) be liable to pay the owner and to any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such vesting, compensation calculated at ten percent of the market value of that land on the date of the notification under sub-Section (1) of Section 3, in the instant matter, the acquiring body has decided to award the land value based upon ready reckoner rates and further additional compensation to the extent of 100% as an incentive. The amount of compensation awarded for right of user equivalent to value of the property as per the ready reckoner rate and incentive of 100% is in addition to the damages sustained by the agriculturists, i.e. in respect of crop or for demolition of structure or trees standing on the land. The compensation that has been awarded by the acquiring body is far more than what is within contemplation of Section 7 of the Act. Apart from this, the claimants are entitled to claim additional amount if they are aggrieved by the award, by resorting to the remedies as provided under sub-Section (5) of Section 10 of the Act.

10 Another objection raised in the matter is as regards the alignment of the route passing through the *gaothan* area. It is contended that necessary steps were taken in order to ensure that the pipeline is laid away from residential and dwelling houses and it was assured by the acquiring body that it would abide by relevant statutory requirements in relation to safety. It is further contended that respondent no. 3 had taken steps to find out an alternate route for the proposed pipeline however, despite the attempts of respondent no. 3, no alternate route was found to be suitable for the project. An assurance has been given by respondent no. 3 that the land will be restored to its original condition after laying down the pipeline.

11 So far as safety measures adopted by respondent no. 3 is concerned, it is recorded in paragraph no. 6 of the affidavit tendered by respondent no. 3, as below :

6 Safety standards adopted by the Respondent No. 3 in relation to the Project - I say that the Project undertaken by the Respondents shall have various positive ramifications for the village of Watad. Further, various permissions for the laying of the pipeline have been granted by the Central Government only after taking into account a multitude of factors including the techno-feasibility of the project. I say that projects to enable transportation of natural gas via pipelines is a preferred mechanism is one of the safest and environmentally preferred method of transportation. I say that a number of factories in Ratnagiri district can potentially migrate to cleaner fuel thereby reducing the carbon footprint of the existing factories. I say that without the natural gas pipelines, city gas distribution in the

district of Ratnagiri shall become an impossibility and all/any natural gas in the region would have to be transported by trucks, which is a far more expensive, dangerous and cumbersome method. I say that Respondent No. 3 is following the prescribed national and international safety standards to ensure that during laying of the pipelines or their subsequent usage, no harm is caused to the farmers/land-owners. The Respondent No. 3, during its various meetings with the farmers/land-owners, including the Petitioner herein, has repeatedly assured the said farmers that no harm would be caused to them due to the Project. I say that the Respondent No. 3 shall follow the following standards to ensure that the safety of landowners is taken care of :

a) Respondent No. 3 is adhering to all the international and national safety standards as prescribed, including: (I) ASME B 31.8 : (American Society of Mechanical Engineers) Gas Transmission and Distribution Piping System; and (ii) OISD-STD-226: Natural Gas Transmission Pipelines and City Gas Distribution Networks, Indian national standard issued by the "Oil Industry Safety Directorate".

The pipeline shall be protected by Cathodic Protection (CP) system and three (3) layer of polyethylene (3LPE) coating which prevents corrosion and deterioration of the pipeline.

c) Various safety devices shall be installed on the pipeline system to deal with any unforeseen and unpredictable eventualities, such as emergency shutdown system, pressure limiting devices, gas leak detection system, fire safety alarm, firefighting equipment etc.

d) Installation :

i. After the pipeline is commissioned, condition monitoring and maintenance program shall be implemented to ensure integrity of the

pipeline is maintained.

ii. Pipeline markers shall installed at regular intervals to indicate presence of pipeline.

iii. Hydrostatic testing and other testing shall be performed to ascertain the integrity of the laid pipeline before operations.

e) Operations :

i. During operation, pipeline patrolling shall be performed by the personnel of Respondent No. 3 at regular intervals in compliance with codes and standards.

ii. Periodic inspection of equipment shall be performed to ascertain good health of the equipment for continual use.

iii. Various Safety and fire protection systems shall be installed such as gas detection system, fire safety alarm and firefighting equipment.

iv. Pipeline integrity management system shall be used to monitor the pipeline.

f) **Sectionalizing Valve ("SV") stations** : In case of any emergency and to prevent any damaging effect thereafter, 3 Sectionalizing Valve stations shall be installed on this pipeline which will be used to isolate certain sections of the pipeline in case of an emergency. All SV stations are equipped with vent system to evacuate the gas to a safe location.

g) **Supervisory Control and Data Acquisition ("SCADA")** : SCADA is a control system that will monitor all pipeline parameters like pressure, temperature and flow.

h) **Pipeline Intrusion Detection System ("PIDS")** : This system will indicate any activity in the near vicinity of the pipeline. e.g.excavation.

i) Officers of Respondent No. 3 shall be available or can be contacted at the three SV stations as well as the Jaigarh/Dabhol terminals.

I say that from the aforesaid, it is evident that the pipeline is designed in a manner that ensures adequate public safety under all conditions likely to be encountered during installation, testing and operations. I say that the Respondents have taken all necessary precautions to ensure that the Project does not disrupt the lives of the villagers/land owners and the Petitioner and other land owners have been repeatedly intimated of the same. I say that the Project causes no harm or threat to the farmers/landowners, as alleged or at all.

12 So far as proposed pipeline project is concerned, it is claimed that the project is not first of its kind in India and has been widely implemented by GEL, IOCL and others through out the country. Even in Ratnagiri District similar projects have been implemented. The owners of the affected properties can continue to carry on usual activities around the pipeline. The pipeline, is laid one meter below the ground level and except raising a permanent construction and planting trees in the area, the agriculturists can utilise the area for routine agricultural operations and there are no other restrictions. It has been assured to the petitioner and affected land owners that no permanent structures of any of the villagers shall be affected due to laying of the pipeline and the route has been finalised only after verifying that no permanent structures are affected due to the project. The day to day activities of the farmers / villagers are being carried out and can be carried out without any disruption around the area of pipeline route.

13 On consideration of the merits of contentions raised by the respondents, according to us, the objections raised by the petitioner to the proposed pipeline, which itself is a part of mega public project, do not deserve any consideration. The respondents have assured as regards safety aspects, as regards maintenance of the structures in the vicinity of the pipeline, so also as regards payment of adequate compensation to the satisfaction of the land holders. As has been recorded above, though the Act contemplates only payment of 10% of the cost of the land, since only right of user is being affected, the acquiring body has declared an award determining compensation to the tune of 100% of the land value and has also decided to further award additional sum equivalent to the land value as an incentive, apart from the actual damages sustained by the agriculturists, the compensation that has been awarded by respondents is more than adequate and in excess of the statutory liability. Apart from this, even in the event, the petitioner or any other agriculturist is not satisfied as regards amount of compensation awarded, remedy is available under Section 10(5) of the PMP Act.

14 For the reasons recorded above, no interference is called for in exercise of extra ordinary jurisdiction conferred upon this Court under Article 226 of the Constitution of India.

15 The petition is devoid of substance. Hence stands dismissed. No costs.

V.L.ACHLIYA
JUDGE

R.M.BORDE
JUDGE