

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 8800 OF 2019

1 Shri Mohan Nanabhau Sondekar & Ors. ... Petitioners

Vs

1 Competent Authority constituted under
The Petroleum & Minerals Pipelines
(Acquisition of Right Of User In Land)
Act, 1962 & ors. ... Respondents

Mr. Wakankar Siddharth Chandrashekar for the Petitioner.

Ms. R.K. Salunkhe, AGP, for the Respondent No.3 - State.

**CORAM : S.C. DHARMADHIKARI &
G.S. PATEL, JJ.**

MONDAY, 19TH AUGUST, 2019

P.C. :

1 We have heard Mr. Wakankar appearing for the
petitioners.

2 By this writ petition under Article 226 of the
Constitution of India, the petitioners before this Court challenge
the act of the respondent Nos.1 and 2 in notifying the lands
belonging to the petitioner nos.3, 4, 5 and 6 for the purposes of

laying a pipeline. A Notification/dated 28th November, 2018, has been published in the Official Gazette. The petitioners submit that six of them before this Court are carrying on agricultural activities. They are owners of lands bearing Gut Nos. 232/3, 232/2, 219, 215/1, 231/1 and 234 at village Pimple Jagtap, Taluka Shirur, District Pune. The names of the petitioners are entered in the revenue records. They are in possession of these lands. The second respondent to this petition was issued a work order under a contract to lay pipeline. That is to carry petroleum products from Uran, District Raigad to Chakan, District Pune. For the purpose of laying the pipe-line and as per The Petroleum & Minerals Pipelines (Acquisition of Right Of User In Land) Act, 1962 (for short "P&MP Act"), the first respondent is appointed as the competent authority. The petitioners claim that the right of user is to be acquired but in terms of the legal provisions. The third and fourth respondent issued a Notification on 29th June, 2016, declaring that pipelines would be laid by entering upon and by using these lands. The Notification finally issued in this line is of 19th January, 2018. The petitioners rely upon section 5 of the P&MP Act to urge that the procedure prescribed therein has to be followed. The objections have to be considered in depth and not

perfunctorily. The petitioners cannot be deprived of their right in the property, save and except by this process known to law.

3 The intention to lay this pipeline was announced in the year 2011. However, no information, much less a public hearing was given to the Grampanchayat, Pimple Jagtap. That is how on noticing these developments, the petitioners contacted the Revenue Commissioner, Pune (Divisional Commissioner, Pune) and the Maharashtra Pollution Control Board, requesting them to conduct a hearing and allow the farmers to project their grievances thereat. Later on, they came across a Notification dated 26th June, 2016. The land details were mentioned erroneously and this mistake continued in the subsequent Notifications. It is claimed that in the initial Notification, only three lands Gut Nos.232/2, 232/3 and 219 owned by the petitioners Nos.1 to 3 were referred. They raised objections in the year 2016 as well as at the time of publication of the Notification of 19th January, 2018. However, there has been, according to the petitioners, no proper consideration of these objections and now they are in receipt of a declaration on or about 6th December, 2018, which is dated 28th November, 2018 and

referable to section 6(1) of the P&MP Act. After this declaration also, the first respondent issued notices and purporting to give an opportunity of hearing. The objections were, therefore, to be considered at such a hearing and notice of such hearing which was scheduled on 8th January, 2019, was received by the petitioners only on 7th January, 2019 and in such a short duration and time, they were unable to represent themselves. It was not possible for all the petitioners to remain present. In fact, the hearing should have been held at the project location. That was not done and later, notice of 7th January, 2019, fixing hearing on 15th January, 2019 was issued. However, the hearing could not be held on that day and may have been postponed. Later on, such a hearing was to be held on 18th January, 2019, but only a day's notice was given.

4 Despite all this, the second and first respondent entered upon the lands on 12th March, 2019 with bull dozers and commenced digging activities. It is that which gives the apprehension to the petitioners that they will be totally deprived of their rights in the property / lands belonging to them. That is how the writ petition has been filed. That has been filed after

seeking information about the project and other details by making applications under the Right to Information Act, 2005.

5 Prior to approaching this Court, notices have been issued by the petitioners calling upon the respondent Nos.1 and 2 to comply with the law. They have also been objecting to the names of respondent Nos.1 and 2 being entered in the Revenue records. A Civil Suit was also filed, but eventually the Plaint was rejected on the ground that the suit itself was barred by law. That order was confirmed in appeal by the learned District Judge. Thus, the District Court, Pune, dismissed the appeal on 24th April, 2019. Now, this Writ Petition.

6 Though Mr. Wakankar would highlight the above grievances in the petition, on a careful perusal of the writ petition and its annexures, we do not find any substance in this petition.

7 The P&MP Act has been enacted with the sole object and purpose to provide for acquisition of right of user in land and for laying pipelines for the transport of petroleum and minerals and for matters connected therewith. The provisions in brief

enable the corporation which is defined to mean any body incorporated and established under any Central, Provincial or State Act and includes a company formed and registered under the Companies Act, 1956 and a company formed and registered under any law relating to companies formerly in force in any part of India to move the Central Government and that the Central Government to be satisfied that it is necessary in the public interest for the transport of petroleum or any minerals from one locality to another, pipelines may be laid by that Government or by any State Government or a Corporation and that 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. Section 3 enables publication of the Notification for acquisition. Then, by section 4 there is a power to enter, survey etc. By section 5 hearing of the objections is contemplated. Any person interested in the land may, within twenty one days from the date of notification under sub-section (1) of section 3, object to the laying of the pipelines under the land. Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds

thereof and that the competent authority shall give the objector an 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, that authority thinks necessary, by order either allow or disallow the objections. A finality is attached to such an order by sub-section (3) of section 5. Then, follows the declaration under section 6. Section 7 enables the Central or the State Government or Corporation to lay pipelines and the power to enter land for inspection etc. is independently conferred by section 8. The restrictions regarding a use of land are carved out by section 9 and by section 10, there is a provision of compensation to be paid. That will be paid to any person who sustains damage, loss or injury. That person ought to be interested in the land in which the pipeline is proposed to be or has been laid. There are provisions enabling deposit and payment of compensation conferring certain power of Civil Courts in the competent authority and there is a provision of penalty.

8 In the instant case, it is only on the survey of the provisions of this Act that we can conclude whether Mr. Wakankar's submissions have any substance. Mr. Wakankar does

not dispute that the Hindustan Petroleum Corporation Limited is a Corporation within the meaning of that term and defined by the P&MP Act. That it could have laid the pipeline itself.

9 The further argument of Mr. Wakankar is premised on the fact that the steps under section 3 sub-section (1) be taken in the sense that there is a publication of a notification for acquisition in the Government Gazette dated 4th July, 2016. The argument of Mr. Wakankar does not deny the fact that the land of the petitioners was expressly referred in this Notification. It is common ground that an attempt is made to forward what are styled as objections within the period specified by sub-section (2) of section 5. The objections have to be communicated provided they are forwarded within twenty one days from the date of the Notification under sub-section (1) of section 3. The so called objections, copy of which is at Exhibit-D to the petition page 70 of the paper-book, are dated 3rd February, 2018. Prior thereto, on 19th January, 2018, the Ministry of Petroleum & Natural Gas published a Notification under sub-section (1) of section 3 on 19th January, 2018. Now, what the petitioners do not dispute is that there was already a Notification published under the very

provision in the Official Gazette. The objections are dated 3rd February, 2018. They may have been forwarded within the period specified, but today the matter has progressed to such an extent that even the declaration under sub-section (1) of section 6 has been published. That has been published on 4th December, 2018. The petitioners may complain there was no opportunity given to them to object, but it is evident that at page 75 of the paper-book the petitioners themselves annex the declaration of acquisition of the right of user. In that, it has been very clearly stated that the lands of the petitioners have been identified for laying such pipelines. On 5th January, 2019, the petitioners were informed that though they may have applied on 10th December, 2018 in writing, but once the project is under way, it is to subserve the larger public interest and that if LPG pipelines are not laid in time, they will further delay the project. They were informed that their difficulties can be discussed in a meeting to be convened on 8th January, 2019. The petitioners could not attend the meeting, but their difficulties were duly noted. When the date was fixed, that date was also intimated. Now, what the petitioners desire is to go back to the stage of section 5, but that was clearly impermissible in the given facts and circumstances. Now, the

petitioners could not have objected to the Notification under section 3. That is publication of the Notification for acquisition. By that, the intent to acquire the right to use is declared. It is to that Notification that the objections can be raised. There is no provision once the declaration is made in terms of section 6, to then request the Government or the competent authority to recall the entire exercise. That is not permissible. Precisely this is what is set out at page 80 of the paper-book in the representation. The petitioners seem to suggest that their objections have never been considered, but a careful perusal of the communication at page 80 of the paper-book would reveal that it is addressed to the Police Inspector of the Police Station, namely, Pune Rural.

10 We do not think that all such requests and made in writing, not to the competent authority, but to the Police authorities can carry the matter further. Even then, the Government, through the Department concerned, informed the competent authority to address a communication. The communication at page 82 of the paper book dated 20th April, 2019, in no uncertain terms says that all objections were duly noted and considered, but found to be of no substance. The

clarifications given in this communication all the more do not justify interference with the project and at this belated stage.

11 We have found that the agricultural operations are not affected. It is only in the area through which the pipeline is passing that the petitioners will not be able to construct a house or dig a well or any water body. The rest of the field or land is not affected. The care and caution which will be taken while laying the pipeline ensures that no residential locality in the nearby region or area will be affected. There is no question of any compulsion because the work of laying pipeline is completed by a transparent and open process of public tender. There is no force or pressure and the work is carried out by taking the farmers and agriculturists into confidence. No middlemen, much less, any third party unauthorizedly intervening is permitted to so do. Thus, when there is a deprivation of certain rights for which compensation is also payable, then, what appears to us is that the grievance is with regard to the quantum of compensation. Nobody says that if the quantum is not satisfactory, according to the petitioners, then, they have no remedy. In fact, Mr. Wakankar concedes that the law provides enough remedies to dispute the

quantum and to claim enhancement as well.

12 By taking such a comprehensive view of the matter, we do not think that in writ jurisdiction, we should interdict and stop or obstruct the work on a public project. That project is to subserve larger public good. That project is implemented so as to carry forward the mandate of Article 39 clauses (b) and (c) of the Constitution of India.

13 In the circumstances and when no *mala fides* are alleged nor is there any case of discrimination that the writ petition does not deserve to be entertained. It is, accordingly, dismissed, but without any order as to costs. We clarify that this order does not foreclose the petitioners claim for compensation / enhanced compensation and all contentions in that regard are kept open.

G.S. PATEL, J.

S.C. DHARMADHIKARI, J.