

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.07.2019

Pronounced on: 22.07.2019

Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.6649 of 2019
& W.M.P.No.7469 of 2019

B.Elangovan,
S/o. V.P.Balasubramanian,
No.3, Janaki Rathna Nagar,
T.H.Road, Minjur - 601203.

... Petitioner

/versus/

1. The Land Acquisition Officer-cum-Competent Authority,
Indian Oil Corporation Limited,
ATF, CBPL - Pipeline Project,
Plot No.14, Jayaprakash Street,
V.G.P. Nagar, Rajajipuram,
Tiruvallur - 602 001.

2. The District Collector of Thiruvallur,
Master Plan Complex, NH 205,
Tiruvallur - 602 001.

3. The Director,
Indian Oil Corporation Limited,
"Oil Bhavan"
No.139, Nungambakkam High Road,
Chennai - 600 034.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, to call for the records culminating in the issuance of the Declaration dated 03.12.2018 under Section 6 of the Act 50 of 1962 and also the consequent Notice ETBPNMTPL No.2/2018, No.6736 dated 17.12.2018 with regard to the petitioner's Survey No.810/8 part issued by the 1st respondent and to quash both the said declaration dated 03.12.2018 and notice dated 17.12.2018 issued by the 1st respondent.

For Petitioner : Mr.T.K.Ramkumar
for M/s.Ram & Rajan Associates.

For R1 : Mr.J.Sathya Narayana Prasad

For R2 : Mr.D.Raja
Additional Government Pleader

For R3 : Mr.Abdul Saleem, Standing Counsel

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. The petitioner herein is the owner of land in S.Nos.850/3B, 850/3C & 810/8, totally measuring 3.46 acres at Neithavoyal Village, Village Ponneri Taluk, Tiruvallur District. Out of 45 cents of land in S.No.810/8, he settled 20 cents of land to his father by settlement deed dated 24.10.2014. Before settling the property in S.No.810/8, his father dugged a borewell and obtained Electricity Service connection. After settling the property in his name, the petitioner has constructed a small single storied house and enjoying the same. While so, the 1st respondent has issued notice to his father under Section 3 (1) of the Petroleum and Minerals Pipe Lines (Acquisition of a Right of User in land) Act 1962, "hereinafter referred as "Act". From the 1st respondent, the notice was received by his father on 11.06.2018. On receipt of the notice under Section 3(1) of the Act, dated 16.04.2018, his father raised objection through his reply dated 20.06.2018. He has represented that, he has laid pipelines to irrigate in his land 3 feet below the ground level for about $\frac{3}{4}$ th kilometers from his well and also pointing out that alternate route is available, where no damage would be caused to the Villagers. A rough sketch of alternate route was also submitted to the 1st respondent.

3. From the notice dated 16.04.2018, the petitioner also came to know that his portion of land in S.No.810/8 part is also intended to acquire by the 1st respondent. However, the 1st respondent/Land Acquisition Officer-cum-Competent Authority, has not send any notice to him, though a portion of land settled on him as early as 16.02.2007 itself and patta stands in his name. Having come to know about the proposed Acquisition of Right of user, the petitioner has sent objection letter on 18.06.2019 to the 1st and 2nd respondents. Pointing out that in S.No.810/8 part, he has a residential house, well, pumphouse with pumpset, 60 feet Compound Wall and three grill gates etc. Hence acquisition of User of Rights will affect his right of using his property substantially.

4. Contrary to Section 7 of the Act, which prohibits laying of pipeline in any land used for residential purpose and

land appurtenant to a dwelling House or land on which there stands any permanent structure before the date of notification. The respondent has issued proceedings under Section 6(1) of the Act and informed him that they have taken possession of land comprising S.No.810/8 part, to exercise their right of user.

5. Before passing the above order, no opportunity was given to him under Section 5(2) of the Act. Without following the procedure under Section 5 of the Act, issuance of notice under Section 6(1) of the Act is improper and illegal. The respondents has failed to follow the procedures contemplated under Rule 8(3) of the Act, regarding service of notice. Without serving notice to the petitioner, the land has been sought to be acquired in contravention of Section 7 of the Act. The impugned notification issued by the 1st respondent, dated 03.12.2018, is challenged in this Writ Petition.

6. In the counter filed by the 1st respondent, it is stated that for the purpose of laying pipeline for the Transport of Liquefied Natural Gas from Ennore Port to Tuticorin via., Tiruvallur - Bangalore - Puducherry - Nagapattinam - Madurai - Tuticorin to feed City Gas Distribution network (CGD) for domestic consumption of gas through Piped Natural Gas (PNG) for household usage and compressed Natural Gas (CNG) for automobiles. The land has been acquired under the provisions of Petroleum and Minerals Pipe Lines (Acquisition of a Right of User in land) Act 1962. The route of the pipeline was approved by Government of India and land pertaining to S.Nos.810/8 and 810/23 of Neidavoyal-II Village falls within the approved route. Hence, the notification under Section 3(1) of the Act was published in the Gazette and the notice was sent to V.P.Balasubramanian, based on the record available in the Revenue Department as on 16.04.2018. The petitioner and his father V.P.Balasubramanian filed their objections on 18.06.2018. Based on the objections, enquiry was held on 07.08.2018. V.P.Balasubramanian the father of petitioner attended the enquiry and submitted Revenue records. A detailed order was passed on 29.08.2018 rejecting the objection raised by the petitioner and his father. Thereafter, notification under Section 6(1) of the said Act, was published after approval from the Government.

7. It is contended by the Learned Counsel appearing for the Respondents that there is no bore-well in the portion of land which is proposed to be used to lay pipelines. There is no residential house in the notified area. He also assures in the affidavit that suitable precaution will be taken during laying of pipeline in the notified area and no damage to electrical cable or wire-line, running below the ground would cause. The petitioner send his objection and participated in the enquiry through his father. His representation has been duly

considered. The petitioner contention that no notice was issued and he was not heard before passing the order is baseless.

8. It is further stated in the counter affidavit that laying of pipeline for the Transport of RLNG gas is a project of National importance sanctioned by the Government of India. The Right of User in land has been acquired under the provisions of Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act 1962 after observing all the provisions of said Act strictly. Any objection/obstruction for the implementation of the underground Pipeline project will deprive the benefits to the public at large.

9. The intention to acquire the Right of User in Land Act (50 of 1962), was notified in the Gazette of India. On 11.04.2018, in the said notification, 45 cents of land in S.No.810/8 and 60 cents of land in S.No.810/23 were sought to be acquired. The Revenue record indicates that Balasubramainam is the owner of these two piece of lands. Therefore, the respondent has issued notice on 16.04.2018 calling for objection. Both the petitioner and his father Balasubramanian has given their objections separately.

10. The petitioner herein has brought to the notice of the respondents that there is a residential building, bore-well, compound wall, grill gates, water tank, bore pipeline and live trees and suggested an alternate route along the public road. This objection has been considered during the enquiry proceedings and rejected by the 1st respondent vide order dated 29.08.2018. In the said order, the 1st respondent has specifically stated that in the said survey number there is no house, well, bore-well and pumpsets or pipeline. While passing the final order under Section 6(1) of the Petroleum and Minerals Pipeline (Acquisition of Right of User in Land) Act, 1962 on 20.12.2018, it is mentioned that 45 cents of land in S.No.810/8part acquired for the Right of User. In this notification, the respondents has also informed the land owners that for the loss, they will be adequately compensated and also restrained the land owner from putting up any permanent structure, within 18 meters radius of the pipeline and they should not dig any bore-well, well or plant trees.

11. In the course of argument, the learned counsel for the petitioner would submit that apart from procedural violation, the contention of the respondent that there is no permanent structure or bore-well in the land under Acquisition is also factually wrong. To prove the same produced photographs to show that the building and compound wall exists. Contrarily the Learned Counsel for the respondents annexing the F.M sketch

of the land and the area where the pipelines are proposed to be laid would also submit that a small portion of land on the Northern Corner of S.No.810/8 alone is to be used for laying pipelines and in the said area there is no structure.

12. Section 7 of the Petroleum and Minerals Pipeline (Acquisition of Right of User in Land) Act 1962, reads as below:

7. Central Government or State Government or corporation to lay pipelines.

(1) Where the right of user in any land has vested in the Central Government or in any State Government or Corporation under section 6-

(i) it shall be lawful for any person authorised by the Central Government or such State Government or corporation, as the case may be, and his servants and workmen to enter upon the land and lay pipelines or to do any other act necessary for the laying of pipelines:

Provided that no pipeline shall be laid under--

(a) any land which, immediately before the date of the notification under sub-section (1) of section 3, was used for residential purposes;

(b) any land on which there stands any permanent structure which was in existence immediately before the said date;

(c) any land which is appurtenant to a dwelling house; or

(d) any land at a depth which is less than one metre from the surface;

(ia) for laying pipelines for the transport of petroleum, it shall be lawful for any person authorised by the Central Government or such State Government or corporation to use such land for laying pipelines for transporting any mineral and where the right of user in any land has so vested for laying pipelines for transporting any mineral, it shall be lawful for such person to use such land for laying

pipelines for transporting petroleum or any other mineral; and

(ii) such land shall be used only for laying the pipelines and for maintaining, examining, repairing, altering or removing any such pipelines or for doing any other act necessary for any of the aforesaid purposes or for the utilisation of such pipelines.

(2) If any dispute arises with regard to any matter referred to in paragraph (b) or paragraph (c) of the proviso to clause (i) of sub-section (1), the dispute shall be referred to the competent authority whose decision thereon shall be final.

13. Under Section 7, there is a specific bar for laying pipeline on the land used for residential purpose for the land appurtenant to the dwelling unit or any permanent structure exist, immediately before the date notification.

14. Though the respondents in the counter as well as in the impugned order has said that there is no building in the proposed route, it is the duty of the respondents to ensure that the pipeline laid by them is 18 meters away from the permanent structure of the petitioner. If at all, they have to disturb any structure, they are bound to adequately compensate. It is true that notice under Section 3(1) of the Act, calling for objection, was issued only to the father of the petitioner and not to the petitioner. The petitioner as per the settlement deed, has become the owner of the land but unfortunately the Revenue Record does not show his name as the owner of the land during the notification. Therefore, the respondents has caused notice to his father. That apart the petitioner as well as his father has participated in the enquiry proceeding. They were heard and orders passed.

15. However, from the proceedings of the 1st respondent, dated 29.08.2018, it appears that the existence of permanent structure i.e., bore-well and compound wall were not been considered by the respondents. The contention of the respondents is that any structure, if any present now, in the said land it must have been constructed only after the notification. In any event, if the laying of pipelines does not disturb the existing structure, the petitioner shall have no reason to appose the scheme. Even otherwise, if any of the structure is to be disturbed, the respondents are directed to compensate the petitioner as per law.

16. With the above direction, the Writ Petition is disposed of. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The Land Acquisition Officer-cum-Competent Authority,
Indian Oil Corporation Limited,
ATF, CBPL - Pipeline Project,
Plot No.14, Jayaprakash Street,
V.G.P. Nagar, Rajajipuram,
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3. The Director,
Indian Oil Corporation Limited,
"Oil Bhavan"
No.139, Nungambakkam High Road,
Chennai - 600 034.

+1cc to Government Pleader sr.62771

+2cc to Mr.J.Sathya Narayana Prasad, Advocate sr.62260

+1cc to M/s.Ram & Rajan & Associates sr.62244

order in
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nr 20/08/2019