

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10/6/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.15554 of 2019

Farmers of Varttanapalli Village
rep. By Mr.V.R.Venkatesan
Varattanapalli Village Panchayat
Bangur Taluk
Krishnagiri District.

... Petitioner

Vs

1. The Secretary to Government of Tamil Nadu
Revenue Department
Secretariat, Fort St. George
Chennai 600 009.
 2. The District Collector of Krishnagiri
Collectorate
Krishnagiri 635 001.
 3. The Deputy Director
Geographical and Tunnel Department
District Collector's Office Complex
Krishnagiri 635 001.
 4. The District Revenue Officer
Krishnagiri.
 5. The Tahsildar
Bangur Taluk
Krishnagiri District.
 6. The Surveyor
Pallappali, Bangur Taluk
Krishnagiri District.
 7. The Deputy Collector/Nodal Officer
Pipeline Project
Hindustan Petroleum Corporation Ltd
Dharmapuri.
- Respondents

3. On 7/6/2019, we directed Mr.E.Manoharan, learned Additional Government Pleader to take notice, on behalf of the respondents 1 to 6 and Mr.M.Vijayan, for the Deputy Collector/Nodal Officer, Pipeline Project, Hindustan Petroleum Corporation Ltd/seventh respondent.

4. Reverting and on the basis of the instructions, dated 7/6/2019, Mr.M.Vijayan, learned counsel for Hindustan Petroleum Corporation Ltd., submitted that petroleum product pipeline will be laid at a minimum depth of 2 meters (6 feet) from the ground level. The total length of the proposed Vijayawada and Dharmapuri Pipeline (VDPL) is 698 Kms, out of which 81 kms of pipeline is proposed to be laid in Krishnagiri and Dharmapuri Districts of Tamil Nadu. As per the alignment, about 79 Kms of the pipeline is within the Right of Way of Roads (National Highways). In a limited stretch along National Highways - 219, which comes under Krishnagiri District, Varatanapalli Village, high congestion exists on either side of NH and the Right of Way available with NH is very restricted which is imposing a technical issue for laying the pipeline along this portion of NH. Hence due to the site constraints and technical reasons, the pipeline alignment is proposed along the agricultural lands for a limited stretch of 1.9 km only. The Right of User for this portion will be acquired through the PMP Act, 1962.

5. Learned counsel further submitted that the lands will be utilized for a temporary period (i.e., 3 months) for laying of the pipeline. Thereafter, the lands will be restored and returned to the land owners for agricultural use. As per the provisions of the Act, due compensation to the land owners will be paid for the land utilised for laying pipeline, crops and trees damaged during the process and also for the estimated loss in view of loss of opportunity to grow crops during the interim period of pipeline laying, until the lands are restored and returned to the land owners. The estimated duration, from commencement of laying the pipeline to restoration and returning the lands to land owners for this Section is 3 months. The lands thus restored can be used for agricultural purposes and hence the land owners' livelihood will not be affected.

6. Prior to the Notification of the lands, in accordance with Section 3, sub-Section 1 of the PMP Act, 1962, the land owners covered in 1.9 km stretch were called through Tahsildar - Bargur, for preliminary meetings, on

2/5/2019 and 8/5/2019, in order to explain to them the details of the proposed pipeline project and provisions of the Act.

7. Mr.E.Manoharan, learned Additional Government Pleader appearing for the respondents 1 to 6 submitted that so far, Notification, under Section 3 of the Petroleum Pipelines (Acquisition of Right of User in Land) Act, 1962, 50 of 1962, has not been issued and that therefore, writ petition is premature.

He further submitted that it is always open to the land owner to submit his objections, under Section 5 of the said Act.

8. Heard Mr.N.Agilesh, learned counsel for the petitioner, Mr.E.Manoharan, learned Additional Government Pleader for the respondents 1 to 6 and Mr.M.Vijayan, learned counsel for the seventh respondent and perused the materials available on record.

9. Sections 3 to 6 of the Petroleum Pipelines (Acquisition of Right of User in Land) Act, 1962, 50 of 1962, reads as follows:-

3. Publication of Notification for acquisition: (1) Whenever it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum 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 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.

(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, 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 where exercising any power under this section such person or any servant or workmen of such person shall cause as little damage or injury as possible to such land.

5. Hearing of Objections: (1). Any person interested in the land may, within, twenty one days from the date of the Notification under sub-Section 91) 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 a legal practitioner and may, after hearing all such objections and after making such further inquiry, if any as authority thinks necessary by order either allow or disallow the objections.

(3). wherein respect of any land, a Notification has been issued under sub-Section (2) shall be final.

6. Declaration of acquisition of right of user - (1). Where no objection under sub-Section (1) of Section 5 have been made to the competent authority within the period specified therein or where the competent authority had disallowed the objections under sub-Section (2)

of that Section, that authority, shall as soon as may be submit a report accordingly to the Central Government and upon receipt of such report the Central Government shall declare by Notification in the Official gazette, that the right of the use in the land for laying the pipelines should be acquired.

(2). On the publication of the declaration under sub-Section (1), the right of user in the land 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 under this Section has been published within a period of one year from the date of that Notification that Notification shall causes to have effect on the expiration of that period.

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

10. Material on record discloses that, so far publication of the Notification, for acquisition, under Section 3 of the said Act, has not been issued. As rightly pointed out by the learned counsel appearing for the respondents that no sooner publication of Notification is issued, under Section 3 of the above said Act, it is always open to any person interested, in the land, to submit his objections of laying the pipelines. When the statute provides for submission of objections and hearing, there is no need to consider the representation of the petitioner, dated 3/5/2019 and to pass any orders. Such an eventuality is required only if there is a publication.

11. In view of the above, writ petition is premature

and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mvs.
To

1. The Secretary to Government of Tamil Nadu
Revenue Department
Secretariat, Fort St. George
Chennai 600 009.
2. The District Collector of Krishnagiri
Collectorate
Krishnagiri 635 001.
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Krishnagiri.
5. The Tahsildar
Bangur Taluk
Krishnagiri District.
6. The Surveyor
Pallappali, Bangur Taluk
Krishnagiri District.

+1cc to Mr.T.Dhanasekaran , Advocate SR.No. 47238
+1 cc to Government Pleader Sr.No. 46894
+1cc to Mr. M/s. King & Partridge, Advocate SR.No. 46830

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jp (CO)
A.SK(08/07/2019)