

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02 .2021

CORAM:

THE HON-BLE MR.JUSTICE N.KIRUBAKARAN
and
THE HON-BLE MR.JUSTICE P.VELMURUGAN

W.A.1800 of 2019
and Connected CMPs

K.Surendranath ..Appellant/Writ Petitioner

~Vs~

- 1.The Secretary to Government
Ministry of Petroleum and Natural Gas
Government of India, New Delhi
- 2.The Under Secretary to Government
Ministry of Petroleum and Natural Gas
Government of India, New Delhi
- 3.The Land Acquisition Officer~cum~
Competent Authority
Indian Oil Corporation Limited
ATF, CBPL,CBRT & ET~LPG, Pipeline Projects
Plot No.14, Jayaprakash Street
V.C.P.Nagar, Rajajipuram
Tiruvallur~602 001
- 4.M/s.Indian Oil Corporation Ltd.,
No.139, Indian Oil Bhavan
Nungambakkam High Road
Nungambakkam, Chennai~600 034

..Respondents
/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 08.03.2019 made in W.P.No.7108 of 2018. W.P.No.7108 of 2018 Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records relating to Notification bearing No. S.O.1996(E) dated 15.06.2017 published in the Gazette of India, Extra~Ordinary (Part~II Sec 3(ii) dated 23.06.2017 on the file of the 2nd respondent culminating in the notices bearing No.ETBPNMT.PL.No.16/17~283 and No.ETBPNMT.PL.No.16/17~53, both notices dated 05.07.2017 and notice dated 20.12.017 bearing No.ETBPNMT.PL.No.16/17~53 and order dated

19.10.2017 bearing No. ETBPNMT.O.P. 05/2017 (Thiruvallur) on the file of the 3rd respondent and the consequential declaration dated 15.03.2018 bearing Notification No. S.No.1249(E) Published in the Gazette of India, Extra~Ordinary (Part~II Sec 3(ii) dated 20.03.2018) on the file of the 2nd respondent and quash the same. [Prayer amended as per order dated 09.08.2018 in W.M.P.No.22820 of 2018]

For Appellant : Mr.G.Masilamani, Senior Counsel
for M/s.G.M.Mani Associates

For Respondents : Mr.G.Karthikeyan for R1 and R2
Mr.David Thyagaraj R3 and R4.

JUDGMENT

P.VELMURUGAN, J.

This Writ Appeal is filed against the order dated 08.03.2019 passed by the learned Single Judge in W.P.No.7108 of 2018. The Writ petition has been filed challenging the notification dated 15.06.2017 issued by the 2nd respondent under Section 3(1) of The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 and the consequential notification dated 15.03.2018 issued under Section 6 of the above said Act for acquisition of right of user in the land of the petitioner for laying pipeline for Indian Oil Corporation Limited.

2. The case of the petitioner in brief is as follows: The petitioner is the absolute owner of the landed properties comprised in S.Nos.30/3B, 31/1A, 31/1C, 33/1, 34/1 and 35/1A, situated at Kottakuppam Village, Uthukkottai Taluk, Tiruvallur District by way of inheritance through his father and ancestors. The above said lands are agricultural lands and the petitioner and his family have been cultivating in the same for several decades. The above said lands are situated at Annadanakkakavakkam Village Road, which connects Periyapalayam State Highways [SH 51] and the lands are situated hardly 500 meters away from the State Highways. Earlier, the 2nd respondent herein had issued a notification on 15.06.2017 under Section 3(1) of The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (in short ?the PMP Act?) which was published in the Government of India Gazette Extraordinary on 23.06.2017 whereby the 2nd respondent Ministry expressed its intention to acquire the right of user in the lands owned by the petitioner herein for laying Natural Gas Pipeline (in short, LNG pipeline?) for Indian Oil Corporation Limited. Pursuant to the above said notification, the 3rd respondent had issued another notice dated 05.07.2017 and yet

another notice 09.01.2018 directing the petitioner to submit his objections, if any, for acquiring the right of user in the land in question. Pursuant to the notice, the petitioner had sent a detailed objection on 04.08.2017, pointing out his objection for acquiring the right of user (hereinafter referred to as -the ROU-). Thereafter, a personal enquiry was conducted on 11.10.2017 wherein the petitioner had appeared and submitted another detailed objection. Thereupon, the 3rd respondent, by his proceedings dated 19.10.2017 disposed of the petitioner's objections without considering none of the objections raised by the petitioners, however, with an observation that the land belonging to the petitioner are not being acquired and only the ROU in the land alone is sought to be acquired for the purpose of laying Natural Gas Pipeline and the owner of the land is entitled to cultivate the land without any hindrance, as such, there would not be any loss of agricultural income from the lands and under Section 10(4) of the PMP Act, the petitioner would be suitably compensated on payment of 10% of the market value of the land in which the right of user in the land is sought to be acquired. Challenging the aforesaid notification and declaration under Section 6 of the PMP Act issued on 15.03.2018 which was also subsequently published in the Government of India Gazette on 20.03.2018, the appellant/petitioner has filed the writ petition.

3. According to the petitioner, there is a change of alignment of the pipeline from the originally planned route and the IOCL is now rerouting the pipeline through his lands for extraneous consideration so as to protect some of the land owners under whose lands the proposed pipeline was originally sought to be laid. It is the further case of the petitioner that he dug a deep bore well in his land and laid pipeline for agricultural purposes and he has been extensively carrying on agricultural operation thereon. The grievance of the petitioner is that, if the right of user in the lands in question is acquired for laying pipeline, entire agricultural operations would get seriously affected which would not only cause much loss to the petitioner, but, much hardship as well. As the lands in which the right of user is sought to be acquired has got potential value and the petitioner has been carrying on agricultural activities therein, instead of acquiring the right of user in the petitioner's land, the respondents can very well reroute the pipeline without causing any hindrance to the private land owners.

4. Before the learned Single Judge, the respondents 1 and 2 filed counter affidavits explaining about the sanction of the project and also acquisition of right of user in the lands in question under the provisions of the PMP Act. The 3rd respondent also filed detailed counter affidavit contending that the

Government of India has intended to acquire the right of user in the land from Ennore Port to Tuticorin viz., Tiruvallur, Kancheepuram, Nagapattinam, Trichy, Sivagangai, Ramanathapuram District under ETBPNMTPL Project (Ennore, Tiruvallur Bangalluru Pondicherry, Nagapattinam, Madurai and Tuticorin) underground pipeline Project for the transportation of natural gas by Indian Oil Corporation Limited and the right of user in the land for laying natural gas pipeline was taken under the provisions of the PMP Act. A Deputy Collector, on deputation from the State Government has been notified as competent authority for acquiring the lands under the Act. Thereafter, a preliminary notification under Section 3(1) of the PMP Act was issued for the proposed acquisition of right of user in lands situated in Kottakuppam Village in Uthukkottai Taluk, Tiruvallur District, including the lands of the petitioners in S.No.34/1, 35/1A & 33 was issued and objections were also called for from the land owners. The above notification was also duly published as contemplated under the PMP Act. Thereafter, the petitioner submitted his objection and an enquiry was conducted on 11.10.2017 under Section 5(2) of the Act. In the enquiry, the objections filed by the petitioner were duly considered and the same were over ruled. The entire project has been done only for the benefit of public at large and if the project is implemented, there would be reduction in pollution and in the cost of urea and fertilizers etcetera and the project would also ensure uninterrupted supply of fuel to remote areas. The change of alignment through poramboke land as claimed by the petitioner cannot be considered as the alignment of the pipeline of the project has been done by the Technical Experts from IOCL thereby pipeline route has been designed in the shortest way for the transportation of natural gas and there cannot be any possibility at this stage for re-alignment which would pave way for on inclusion of private land owners and the objections from the farmers. Now, the pipeline has been finalized after ascertaining the technical feasibility as contemplated under the PMP Act and it is not with any intention to favour any individual land owners. After following the procedure contemplated under the Act strictly, a final declaration under Section 6 of the PMP Act was issued on 20.03.2018 and there is no procedure violation as submitted by the petitioner.

5. The contention of the respondents before the learned Single Judge was that the Natural Gas Pipeline course has been decided after considering various technical grounds and safety measures and provisions as contemplated under the PMP Act. Under the impugned notification only the Right of Way for ROU is notified for laying the natural gas pipeline. The laying of pipeline for the transport of petroleum products is of National Important project for the benefit of public at large sanctioned

by the Government of India and Right of User in Land (ROU) will be acquired under the provisions of the PMP Act. The pipeline project has already been laid for 683 kms in Tamil Nadu (CPCL Chennai Refinery to Trichy~Madurai~Sankari) operated and maintained which are traversing through the various Districts for the past 12 years. The farmers / land owners on whose lands the underground pipeline traverse never raised any objection or complaint to the Revenue and IOCL Authorities and the farmers continue to cultivate their lands without any disturbance and have been yielding agricultural income.

6. Subsequently, the petitioner has filed an additional affidavit stating that already a LPG pipeline is available within Uthukkottai Taluk which runs straight through Kottakuppam and Annadanakkavakkam in Uthukkottai Taluk beyond S.No.17 of Kottakuppam Village in Uthukkottai Taluk and joins the existing pipeline at Poochi Ahipattu village in Uthukkottai Taluk. If the respondents want to lay the pipeline in a shortest way for transportation of LNG then, they can very well use ROU acquired for laying the LPG pipeline thereby they can avoid acquiring a vast extent of agricultural lands and also paying compensation. That apart, the interest of the agriculturists, whose lands are sought to be acquired, would be protected.

7. For the above additional affidavit filed by the writ petitioner, the 3rd respondent filed a rejoinder contending that the IOCL is not operating any LPG pipeline in Uthukkottai Taluk as on date. The laying of pipeline cannot be avoided in the land situated beyond Survey No.17 situate at Kottakuppam village.

8. The 4th respondent also filed additional counter affidavit stating that the proposed right of way for the ETMPL LPG pipeline alignment is not acquired completely and no compensation amount has been made as on date due to change in LPG supply~demand scenario in the State of Tamil Nadu on account of upcoming new refinery at Nagapattinam. Since the RoW not acquired in totality and the project has been shelved, it necessitated de~notification of ROU notified in the stretches.

9. After discussing elaborately the submissions put forth on both sides and also going through the relevant sections of the PMP Act, the learned Single Judge held that notification under Section 3(1) of the PMP Act was issued on 15.06.2017 and the same was subsequently published in the Government of India on 23.06.2017, inviting objections from the interested persons within 21 days from the date of issuance of such notification. The gazette was also published in the Notice Board of the District Collector, Tiruvallur and Office of the Revenue Divisional Officer, Tiruvallur on 07.07.2017 and at the Office of the Tahsildar, Uthukkottai on 30.06.2017. Thereafter, a

notice was issued to the petitioner on 05.07.2017 calling upon his objections, if any. Pursuant to the same, the petitioner had also submitted his objections by way of speed post on 19.07.2017 which was received by the 3rd respondent on 07.08.2017. Thereafter, an enquiry was conducted on 11.10.2017 under Section 5(2) of the PMP Act, wherein the petitioner had appeared and submitted his further objections. The 3rd respondent considered the objections and were overruled by him, thereafter, a report was submitted to the Central Government and the Central Government, in turn, upon considering the report and on being satisfied that the lands were required for the project, issued a declaration under Section 6 of the PMP Act which was also published in the Government of India Gazette on 15.03.2018. Therefore, the procedures contemplated under the PMP Act have been duly followed by the respondents and the court does not find any procedural violation. The other contentions of non mentioning of the sub division of the survey number is concerned, the learned Single Judge, held that it could not have caused any prejudice to the writ petitioner. The learned Single Judge also pointed out that the alignment was designed based on the opinion of the Experts; normally, the court should not interfere in the opinion of the experts, unless it is established that it was done with malafide intention. Holding so, the Writ Petition was dismissed.

10. Aggrieved by the said order of the learned Single Judge, the writ petitioner/appellant filed the present intra court appeal raising the following grounds:-

(a) In respect of S.No.33, as the Notice dated 20.12.2017 was served on the appellant on 08.01.2018, the appellant sent his objections on 23.01.2018 but without even conducting any enquiry, the right of user in the land was acquired, thereby, the respondents violated the statutory provisions and the principles of natural justice.

(b) In respect of S.No.34/1 and 35/1A, no proper enquiry conducted on 11.10.2017, but order was passed on 19.10.2017 without taking notice of the fact that there is a deep bore-well and underground water pipelines laid by the appellant for irrigation of lands.

(c) The respondent is paying only 10% of the value of the land to the appellant who is the owner and since the Right of User is sought to be acquired, the right of user in the appellant's land is colourable exercise of power.

(d) The Notification issued under Section 3(1) of the PMP Act is vague and no sub-divided survey number and names of the owner is mentioned.

(e) For the second notice dated 20.12.2017, appellant sent his objections but the 3rd respondent did not conduct any enquiry but 6(1) Declaration has been issued without following the Statutory Provisions.

(f) The 3rd respondent is acquiring the user right in more than 22 acres and 35 cents of lands situate in 7 villages by taking the circuitous and longest route. This is unnecessary expenses to the public exchequer and the 3rd respondent can use the right of user in the land already acquired for laying the LPG pipeline to join the CBPL pipeline.

(g) The distance between S.No.16/7 Kottakuppam Village and the proposed Tap-off point at Thirukandalam Village, Thiruvallur District is 3.77 Kms but whereas the distance between S.No.16/7 Kottakuppam Village and CBPL Pipeline is approximately 1 KM only, so instead of taking the shortest route, the act of 3rd respondent is going for long route would amount to arbitrary exercise of power and hence the Notification issued u/s.3(1) of PMP Act is liable to be set aside.

(h) According to the appellant, his representation regarding the deep bore-well and the underground pipelining to take water to do cultivation situate in the lands has not been properly considered by the 3rd respondent. The existence of deep bore-wells and underground pipelines could be seen from the photographs and from the other documents which is produced before the court.

(i) The copy of the reply statement obtained from the requisition department has not been furnished to the appellant, hence, the acquisition proceedings are liable to be struck down.

(j) In Section 3(1) Notification dated 15.06.2017 one of the survey number of the land is shown as S.No.33, in the Notice dated 20.12.2017 served on the appellant, the survey number is mentioned as S.No.33/1 and in the Section 6(1) Declaration dated 15.03.2018, survey number was mentioned as S.No.33/2, which would show the non-application of mind in the acquisition proceedings.

(k) Without conducting any enquiry, publishing Section 6(1) Declaration dated 15.03.2018 in respect of S.No.33, Kottakuppam Village, is contrary to mandatory legal requirements.

(l) Without detailed land survey, mentioning of wrong survey numbers in Section 3(1) Notification dated 15.06.2017 affected the land owner rights.

(m) There is nothing on record to show that the right of user acquired for laying the LPG pipeline, has been shelved and acquisition is going to be denotified.

(n) According to the appellant, as per RTI reply on 19.07.2018, 4th respondent informed that LPG pipeline would be laid alongside the LNG pipeline track and LPG pipeline work commenced from the year 2013 but thereafter, 4th respondent is informing that they are scrapping off the proposed LPG pipeline, but no material is placed before this court to the said plea.

11. The learned Senior counsel appearing for the appellant would submit that for the Notice issued by the 3rd respondent dated 05.07.2017 stating that user rights in the lands in Survey

Nos.34/1 and 35/1A are proposed to be acquired as per the provisions of Section 3(1) of the Act, the appellant made a detailed representation pointing out objections. Enquiry was conducted on 11.10.2017 under Section 5(2) of PMP Act, wherein, the petitioner had appeared and submitted his further objections. On 19.10.2017, 3rd respondent disposed of appellant's objections by overruling the same. On 15.03.2018, Section 6 Declaration filed, against which, Writ Petition filed which was also dismissed by this court on 08.03.2019, hence, the present appeal is filed on the main ground that the acquisition is liable to be quashed.

12. During pendency of the appeal, the learned Senior counsel appearing for the appellant submitted that from Ennore Port, already CTMPL line is available along with CBPL and if the same lane could be used parallelly for laying two pipelines, the intended LNG could also be laid in the same lane used for laying CTMPL and CBPL. So the suggestion regarding alternative way to lay pipeline in the shortest route was put to respondents for filing report by the order of this Court on 10.07.2019 as follows:~

?The appeal has been preferred against the dismissal of the Writ petition filed by the appellant challenging the proceedings issued under the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 for having right of way for laying the Natural Gas Pipelines (LNG Pipelines) on the petitioner-s land.

2. During the arguments, it is pointed out by the learned Senior Counsel appearing for the appellant that from Ennore Port already CTMPL line is available along with CBPL, which has already been laid making use of the same lane. If the same lane could be used parallelly for laying two pipelines, the intended LNG could also be laid in the same lane used for laying CTMPL and CBPL. If the respondents go by the suggestions given by the appellant, it would save huge amount to be paid as compensation and also fertile lands could be saved for cultivation.

3. Prima facie, this Court is convinced with the suggestion given by the appellant as it is evident from the sketch filed by the appellant that CBPL and CTMPL are laid parallelly from Ennore Port to Kottakuppam village and thereafter, only CBPL goes to Bangalore. Already the acquired land used for laying the above said two pipelines is wide enough to make use of the lane for laying the LNG Pipelines also. If it is feasible and if it is accepted as contended by the learned Senior Counsel, it will save huge amount to be paid as compensation to the land losers and it would also help the respondents to have a vigil over the said route as pipeline products and gas products are being taken by the pipelines.

4. Therefore, the respondents have to consider the said suggestion and take a decision and report before this Court

within a period of three weeks. While considering the suggestion made by the appellant, the plan submitted by the appellant shall also be taken into consideration.

5. Post the matter on 24.07.2019. ?

13. Based on the above order of this court, the 3rd respondent~The Land Acquisition Officer/competent authority obtained opinion from the Technical Team for feasibility of laying of ETBPNMT R~LNG pipeline ROW situated in Kotakuppam village and from Kottakuppam Village to Ayalacheri in CTMPL ROW. The detailed field survey has been done and realignment option as suggested by the appellant was analysed and it was found that the option suggested is technically not feasible and not viable for realignment of the LNG pipeline. Based on the said analysis report, orders were passed by the 3rd respondent on 14.09.2019 holding that it is not technically feasible to realign the ETBPNMT natural gas pipeline alignment. The order passed by the 3rd respondent dated 14.09.2019 reads as follows:~

? Order

? INDIAN OIL CORPORATION LTD.

Proceedings of the Land Acquisition Officer cum
Competent Authority

Ennore~Thiruvallur~Bengaluru~Puducherry~Nagapatinam~
Madurai~Tuticorin

R~LNG Pipeline projection

Present : S.P.Madhusudhanan

ETBPNKTPL:No.1/19 (Thiruvallur) 14.09.2019

Sub: Feasibility for laying of ETBPNMT natural gas pipeline through the ETM LPG Pipeline corridor in Kotakuppam village~W.A.No.1800/2019 ~Passing of orders.

Ref: Orders from High Court of Madras dated 10.07.2019.

Order:

The order passed by Hon-ble High Court of Madras dated 10.07.2019 advising to review the feasibility of laying of ETBPNMT natural pipeline through the LPG pipeline ROW from Pipeline Chainage 26 km to join CBPL pipeline ROW situated in Kotakuppa village and from Kottakuppam village to Ayalacheri in CTMPL ROW has been reviewed.

The matter was referred to the technical team of M/s.Indian Oil Corporation Ltd., Pipelines Division, Chennai, who is the Project Proponent executing the said pipeline projects. After detailed perusal, the feasibility report has been submitted by them which is enclosed along with this order. It is conveyed that it is not technically feasible to realign the ETBPNMT natural pipeline alignment through the LPG pipeline ROW from Pipeline Chainage 26 Km to join CBPL pipeline ROW situated in Kotakuppam village and extend further downwards from Kotapukkam village to Ayalacheri in CTMPL ROW

On careful consideration, the orders are hereby passed that it is not technically feasible to realign the ETBPNMT natural gas pipeline alignment through the ETM LPG pipeline ROW from Pipeline Chainage 26 km to join CBPL pipeline ROW situated in Kotakuppam village and extend further downwards from Kottapukkam village to Ayalacheri in CTMPL ROW.?

14. After the competent authority passing the order dated 14.09.2019, the appellant filed his submissions regarding the two suggestions made by him. It is stated that the 4th respondent has furnished his reply only in respect of the second proposal namely laying the LNG pipeline from CH~26 KM (Point~A) to Ayalacheri (Point~D). According to the appellant, the first proposal/suggestion given by him to save vast extent of land from being acquired was to lay the LNG pipeline in the LPG ROW already acquired from CH~26 KM upto CBPL ROW which is a distance of 0.63 Kms. But the said suggestion is not considered by the respondents. It is further mentioned that the second suggestion namely laying the LNG pipeline from CH~26 KM (Point A) to Ayalacherri Village (Point D) was held that it is not technically feasible to realign the ETBPNMT (LNG pipeline) from CH~26 KM to join CBPL Pipeline situate in Kottakuppam Village and extent further downwards to Ayalacherri Village to join CTMPL ROW by merely relying upon the report submitted by the 4th respondent.

15. The appellant also by way of Sketch showing LPG pipeline (yellow line) from CH~26 km to Boochiathipattu shows the distance between CH~26 km to Kottakuppamvillage as 0.63 km and the entire stretch will be only 4.07 km. The sketch further shows that the route map finalized by the respondents, wherein it is shown that the said line is feasible for laying pipeline is 3.77 km from CH~26 Km to Boochiathipattu.

16. The appellant also filed his counter to the affidavit filed by the 4th respondent, wherein it is again reiterated that from the point CH~26 Km, if the proposed LNG pipeline is taken straight down in the already acquired LPG ROW to join the

existing CBPL ROW situate in Kottakuppam Village, then approximately 19 acres 95 cents of lands could be saved and from that point, if the LNG pipeline is taken straight further down to join the CTMPL ROW situate in Ayyalacherry Village, Thiruvallur District, then approximately 31 acres could be saved. If both the extents are totaled, then approximately 50 acres and 95 cents of lands could be saved from the acquisition, thereby saving on expenditure payable by way of compensation towards the land acquisition. It is stated that a separate CBPL ROW was acquired in the year 2008 and is running from Kottakuppam village through Thirukkandalam village before reaching its Bangalore destination. From Kottakuppam Village, the CTMPL ROW takes a deviation downwards south and from that point onwards it carries only two pipelines, having enough space to lay the LNG pipeline at Ayyalacherry village, the nearest point rather than at Boochiathipattu village. It is submitted that the LNG pipeline takes a bend at CH~26 kms as per the proposed acquisition and runs west ward towards appellant's land before reaching CBPL ROW at Thirukkandalam village taking several turns and bends and this could have been avoided by taking the shortest route. The appellant further denied the averments made by the 4th respondent that it would be feasible only if the LNG pipeline is laid in the appellant's land to reach the Thirukkandalam Village. There is no major variation in the ROW length between LPG alignment and LNG alignment and therefore, by taking route suggested by the appellant would not affect the future demand or future distribution.

17. To the above referred to counter affidavit, the 4th respondent filed reply. It is replied that out of the entire length of 1444.6 km of Ennore~Thiruvallur Bengaluru~Puducherry~Nagapattinam~Madurai~Tuticorin Natural Gas pipeline route only 30% of Right of way (ROU in the land) land acquired falls under new Right of way (ROW) land and acquisition activities carried out as per the provisions contemplated in Petroleum & Mineral Pipelines Act 1962. In the balance 70% of the Right of way land, the pipeline alignment traverses through the already acquired Right of Way (ROW) of Chennai~Trichy~Madurai pipeline (CTMPL) and Chennai Bengaluru pipeline (CBPL) wherever it is technically feasible and after complete detailed engineering survey. Due care has been taken for pipeline routing and fixing of pipeline alignment. The utilization of existing notified CTMPL ROW has been considered only to avoid fresh land acquisition and thereby saving public money. The tap~off location has been duly selected by land selection Technical Team keeping in view of the safety requirements, abutting road width required for sufficient turning radius of a mobile flare unit, populating density index, PNGRB guidelines, and availability of land. From thereon the pipeline alignment traverses in the existing ROW of

Chennai~Bengaluru pipeline. This land has already been purchased and duly registered and the works for setting up of the Sectionalizing valve station (safety valve) and tap~off provision is commencing shortly. The LNG pipeline should necessarily traverse through this land located at Thirukandalam village only.

18. The Appellant filed rejoinder to the reply filed by the 4th respondent. It is stated that for the lands acquired in the year 2015 for Right of User, compensation is not paid, similarly, for the ROU in the lands that acquired in the year 2017, compensation was not paid. As per Section 106 of the Evidence Act, whoever is in possession of the lands, IOCL is duty bound to place on record to give all the details. But the IOCL has not done so. The respondent already decided to lay the LNG pipeline in the CBPL Row at Thirukandalam Tap~off point to be taken to Bangalore and from the Tap~off point, the LNG pipeline is to be taken to CTMPL ROW situate at Boochathipattu village, therefore, technical feasibility will not be affected if the LNG pipeline is laid in the CBPL ROW at Kotakuppam Village. The appellant further denied the averment that the laying of LPG pipeline is presently put on hold and stated that LPG pipeline has already been laid opposite to the Kamarajar Port At Ennore. The appellant questioned the stand taken that they had done a detailed Engineering Survey carried out by Independent Agency apart from doing other surveys before acquiring the ROW for laying the pipeline, why the LPG ROW suddenly turn out to be a safety threat. The appellant also questioned the manner of laying the pipeline in the rivers and protective steps taken. Again it was pointed out that if only the LNG pipeline is laid in the CBPL ROW at Kattakuppam village, there would be no necessity to acquire the right of user in the lands for an extent of 3.77 kms situate between CH~26 km and Thirukandalam village Tap~off point, by wasting public money.

19. The learned Senior counsel for the appellant would submit that the appellant's objections were not properly considered by the competent authority. The competent authority failed to see that the restrictions contained in Section 9 of the PMP Act and thereby preventing agricultural activities. The competent authority has not considered the availability of alternate lands in the order but stated due to technical feasibility, alternate route is not feasible. It is also submitted that the enquiry conducted is not free and fair and principles of natural justice is not followed.

20. The learned counsel for the respondents on the other hand would submit that the respondents acted as per the PMP Act and there is no violation of procedural lapse. The underground pipeline project for the transportation of natural gas by Indian

Oil Corporation Limited and the right of user in the land for laying natural gas pipeline was taken under the provisions of PMP Act. Preliminary Notification under Section 3(1) of the PMP Act was issued for the proposed acquisition of right of user in lands situated in Kottakuppam Village including the lands of the appellant and objections called for. The above notification was duly published as contemplated under the PMP Act. The appellant submitted his objections, enquiry was conducted, objections were considered and were overruled. The entire project has been done only for the benefit of public at large and if the project is implemented, there would be reduction in pollution. Further, it is stated that the change of alignment through poramboke land cannot be considered as the alignment of the pipeline of the project has been done by the Technical Experts from IOCL thereby pipeline route has been designed in the shortest way for the transportation of natural gas.

21. Though in the original sketch, the respondents notified as Sl.No.33, subsequently, on a verification, by finding out owner of the lands from the Revenue Authorities, suitable notification was issued to the concerned land owners. As such sufficient notification has been given for S.No.33(1) and based on the same, appellant submitted his objections in respect of entire extent of land in Survey No.33 and appeared for enquiry.

22. After enquiry, orders were passed by the competent authority. Thus as set out under Section 5 of the PMP Act, report was submitted to the Central Government. Thereafter, as provided under Section 6 of the PMP Act, declaration was published in the Government of India Gazette. Hence, procedures contemplated under the PMP Act have been duly followed by the respondents.

23. It is further submitted that as per the provisions of the PMP Act, the respondents are using the land only for the purpose of laying the pipeline for which under section 10(4) of the PMP Act, suitable compensation for the land at 10% of the market value of the land in which the right of user in the land would be given. Further, for all practical purposes, IOCL would be in virtual possession and so far as enjoyment of the land is concerned, the owner can retain title to the land, due to which acquired land cannot be sold and therefore, they can cultivate the land except cultivation of standing crop in the acquired land, wherein, the pipeline has been laid down. They can cultivate other crops without damaging the pipe line. Further, he would submit that the selection of pipe line, alignment of the shortest route was done in the shortest possible route after ascertaining the technical feasibility as contemplated under the PMP Act. According to the respondents, after complete detailed survey and finding the technical feasibility, existing notified

CTMPL ROW has been considered. Both the pipeline alignments of R~LNG and LPG are essential and have been designed to meet the respective requirements accordingly.

24. It is submitted that since the number of pipelines in that particular regions are more i.e., CTMPL, CBPL, Chennai ATF pipeline, RLNG, LPG, TBPL (RLNG) pipelines are there and increasing the technical complexities and hence, the alignment of pipeline has been done by a technical expert team. The RLNG alignment has been strategically and technical routed to join in CTMPL~ROW at Boochiathipattu Village.

25. The pipeline alignment is fixed judiciously with minimum land acquisition only and new ROW is acquired only wherever essentially required. Hence, there will be drastic reduction in expenditure towards land acquisition and compensation and the project is of national importance and public benefit. Any change in the pipeline alignment will lead to further delay in the project, resulting in usage of large public money. Further, the delay in this matter will cause serious problems and the respondents are unable to implement the project of National importance on time.

26. Any change in pipeline alignment will only further delay the project execution resulting in wastage of huge public money due to non completion of project on time. Any change in pipeline alignment at this stage will also result in re~survey of the route along with redoing of soil survey, chemical analysis survey, soil stratification survey, population density index survey, additional procurement of pipe to the tune of 1 km which have a lead time of 8 months being a high quality AP15L grade pipe result in huge expenditure in comparison to the anticipated pseudo saving in land acquisition as projected by the appellants.

27. According to the 3rd and 4th respondents, the transportation of petroleum product through underground pipeline is the most economical environment friendly and least hazardous. The advantage in laying the pipeline would be for the public purpose and for a public cause which is economical by avoiding road transportation thereby controlling pollution and eliminating environmental hazard. Laying of pipelines will not change the land use pattern of the land due to notified area. Expeditious completion of this project will immensely benefit the public at large and Natural gas being the cleanest eco~friendly fuel, this project will help in combating pollution.

28. During the pendency of the appeal, based on the contentions raised on behalf of the appellants, this court called for report from the competent authority based on the reference

to the Technical Team. Technical Team also after analysing the realignment option as suggested by the appellant, sent the report. Based on the report of the Technical Team, the competent authority passed an order on 14.09.2019, holding change of pipeline is not feasible; everything is done in accordance with law. So far as the laying of pipeline is concerned, it is for transport of gas, so the pipeline alignment is fixed considering factors like safety, population density index, terrain of the ground, ground truths, habitation, developments, availability of land, availability of land to set up of Sectionalizing valve stations, presence of number of road crossings, water bodies crossings, threat to pipeline safety, OISD guidelines. Therefore, considering all the technical points, pipeline alignment is finalized for setting up of Sectionalizing valve stations which were also finalized and purchased.

29. The learned counsel for the 3rd and 4th respondents further contended that based on the report, Competent Authority has initiated the acquisition and they have followed all the procedures under the Act and issued notification and finally also acquired the lands. Therefore, it is only purely for the public purpose and therefore, inconvenience caused to one of the land owners could not disturb the implementation of pipeline project or complete redoing of works is not possible as it will lead to overrunning of cost and time. The interest of the larger public has to be taken into consideration and interest of the public is paramount consideration. Therefore now the pipe line route is fixed based on the technical report and the same stands good. There is no prejudice caused in respect of the land owner. The land owner can at the best use the land at maximum extent, except putting up construction or permanent crop.

30. The learned counsel for 3rd and 4th respondents also placed reliance on the judgments of the Supreme court reported in (2011) 12 Supreme Court Cases 69 [Union of India Vs. Kushala Shetty and Others] and submitted that projects are vital for the development of infrastructure in the country. The Supreme Court, in this regard, in the above decision in paragraph 28, has held as follows:~

?Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it is found to be ex-facie contrary to the mandate of law or tainted due to mala fides. In the case

in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained.?

31. This Court paid its anxious consideration and best attention to the rival submissions and also perused the entire materials placed before it.

32. As observed earlier, the case of the petitioner is that the 2nd respondent had issued a notification on 15.06.2017 under Section 3(1) of the PMP Act which was published in the Government of India Gazette Extraordinary on 23.06.2017 to acquire the right of user in the lands owned by the petitioner for laying Natural Gas Pipeline for Indian Oil Corporation Limited. Pursuant to the above said notification, the 3rd respondent had issued another notice dated 05.07.2017 and yet another notice 09.01.2018 directing the petitioner to submit his objections. The petitioner had sent a detailed objections on 04.08.2017, thereafter, a personal enquiry was conducted on 11.10.2017 wherein the petitioner had appeared and submitted another detailed objection. Thereupon, the 3rd respondent, by his proceedings dated 19.10.2017 disposed of the petitioner-s objections stating that the owner of the land is entitled to cultivate the land without any hindrance, as such, there would not be any loss of agricultural income from the lands and under Section 10(4) of the PMP Act, the petitioner would be suitably compensated on payment of 10% of the market value of the land in which the right of user in the land is sought to be acquired. Thereafter, declaration under Section 6 of the PMP Act was issued on 15.03.2018 which was also subsequently published in the Government of India Gazette on 20.03.2018, challenging the same, the appellant/petitioner has filed the writ petition. The Writ Petition was dismissed on 08.03.2019. Aggrieved by the said order, this Writ Appeal is filed.

33. The main contention raised by the learned counsel for the appellant in respect of issuance of Section 3(1) notification is that, initially sub division has not been shown. The said contention has rightly been answered by the learned Single judge by holding that the writ petitioner had sufficient knowledge that his land comprised in S.No.33/1 was also the subject matter of acquisition and based on the same only, he had submitted his objections in respect of entire extent of land in S.No.33 and appeared for enquiry and as such non mentioning of the sub division of the survey number could not have caused any prejudice to him.

34. The second contention of the appellant that without following the procedures of PMP Act, right of user in the lands

is sought to be acquired, thereby there is violation of statutory provisions and principles of natural justice, also cannot be accepted and the learned Single Judge, has clearly held in paragraph 22 that procedures contemplated under PMP Act have been duly followed by the respondents and the court does not find any procedural violations. Therefore, the said ground also has no substance.

35. So far as the submissions made by the appellant there is possibility of other shortest route available and so, in the already CTMPL line available, along with CBPL, LNG pipelines can also laid, this court taken note of the said suggestion and directed the respondents to consider the said suggestion and take a decision and report. The report of the competent authority would go to show that as suggested by the Court, detailed field survey has been once again done and realignment option was analysed in detail at site itself, but it is found that the option suggested is technically not feasible and not viable for realignment and among other reasons, in paragraph (vi) it is stated that the number of pipelines in that particular region is more i.e., CTMPL, CBPL, Chennai ATF pipeline, RLNG, LPG, TBPL (RLNG) increasing the technical complexities and accordingly the alignment of pipeline has been done by a technical expert team. The R~LNG pipeline alignment merges the existing CTMPL ROW at Boochiathipattu instead of Ayalacheri since this stretch between Boochiathipattu and Ayalacheri has two pipelines already namely CTMPL and Chennai ATF pipeline. The ROW in this section has got restricted due to the rapid urbanization on both the sides of the pipeline restricting the available for laying of a third pipeline. Hence the RLNG alignment has been strategically and technically routed to join in CTMPL~ROW at Boochiathipattu village.

36. Next, when we analyse the factor regarding the suggestions made, though, the petitioners have made objections and suggestions including the realignment, considering the same, this Court passed the order dated 10.07.2009 stipulating certain directions to the competent authority and the competent authority, after referring the same to the Technical Team, passed the order on 14.09.1999. A reading of the Technical Team report as well as the order passed by the competent authority and the judgment rendered by the Honourable Supreme Court in the case of Union of India Vs. Kushala Shetty and others, (cited supra) clearly emphasize that the Technical Team is comprised of expertise individuals to decide upon the viability and feasibility of the particular project and in such matters, the scope of judicial review is very limited. Further more, the appellant-s submission and suggestions are not based on any technical knowledge. The reasons cited by the appellant or the grounds taken for realignment of pipeline is not based on

technical approach. The said suggestions cannot be equated to the opinion of the experts team based on detailed analysis.

37. In the case on hand, the technical team had analysed the suggestion and after taking note of the entire ground requirements by technically qualified persons, submitted the report and based on the same, Order dated 14.09.2019 is passed by the Land Acquisition Officer cum Competent Authority. The Competent Authority, after careful examination of field study passed the order pointing out the technical feasibility in that route.

38. In the light of the above position, the grounds raised by the appellant that the respondents have failed to comply with the provisions of the PMP Act is unsubstantiated and baseless. The respondents have duly followed the procedures contemplated in the Act. Further more, the entire exercise of the respondents in complying with the directions given by this court on 10.07.2019 by taking note of the grievance and suggestions put forth by the appellant shows that the issues raised by the appellant has been addressed with a view to give natural justice to the land owner. The Competent Authority, by considering all the aspects and the report submitted by the technical team, while stating that it is not possible to change the route, categorically mentioned that the pipeline alignment is fixed considering factors like safety, population density index, terrain of the ground, ground truths, habitation, developments, availability of land and availability of land to set up Sectionalizing valve stations. Hence, change of pipeline alignment at this stage will not only disturb the implementation of the pipeline project but also result in complete redoing of works which will lead to time and cost overrun.

39. It is settled proposition of law that court can only interpret the law and clarify the factual position. In the case on hand, as far as laying of LNG pipeline is concerned, the opinion of experts is based on the technical aspects and thereafter, lands acquired, taking note of safety of LNG pipeline and economical condition of the Government. So strictly speaking, this court cannot interfere with the policy decisions merely on the ground of suggestions made by the appellant, which has no technical feasibility in terms of National Project. In the matter of land acquisition for public purposes, the interest of justice and public interest merges. Therefore, the Courts have to weigh the public interest vis-a-vis the private interest, while exercising the power under Article 226 of the Constitution of India, but at the same time, cannot bypass the opinion of the Technical Team and their Analysis Report to quash the Notification. Further, this court finds no violation of the statutory provisions and mandates of the PMP Act 1962 and the

appellant has not established that the alignment was done with any mala fide intention.

40. Under these circumstances, there is no merit in the appeal. The Writ Appeal is liable to be dismissed. Accordingly, finding no substantive ground to interfere with the order of the learned Single Judge, this Writ Appeal is dismissed. No costs. Consequently, connected CMPs are closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary to Government
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Government of India, New Delhi
- 2.The Under Secretary to Government
Ministry of Petroleum and Natural Gas
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AKM/25.02.21 /19P-8C/

W.A.No.1800 of 2019
03.02.2021