

GAIL (India) Limited

v.

State of Maharashtra & Ors.

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

WRIT PETITION NO. 14509 OF 2022

GAIL (India) Limited,

Government of India undertaking registered
under the provisions of Companies Act, 1956
having its Corporate Office at Gail Bhavan, 16,
Bhikaji Cama Place, R. K. Puram, New Delhi-
110066 and also having its Regional Pipeline
Network Head Quarter At Gail Bhavan, Plot No.
73, Road No. 3, Sector-15, C.B.D. Belapur,
Navi Mumbai-400 0614.

...Petitioner

Versus

1. State of Maharashtra

through its Revenue Ministry, Sachivalaya,
Nariman Point, Mumbai – 400 021.

2. The District Collector, Sindhudurg,

Main Administrative Building, First Floor,
Oros-Sindhudurgcity, Taluka-Kudal, District-
Sindhudurg-416812.

3. The Tahasildar, Dodamarg,

Taluka-Dodamarg, District-Sindhudurg.

...Respondents

Mr. A. R. Bamne for Petitioner.

Mr. A. I. Patel, Addl. GP a/w Mr. S. B. Kalel, AGP for Respondents-
State.

**CORAM : K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.**

DATED : 2nd November 2023.

JUDGMENT (Per K. R. Shriram, J.) :

1. Petitioner, Gas Authority of India Limited (“GAIL”) is a

Government of India undertaking registered under the provisions of Companies Act, 1956. Petitioner, a Public Sector Undertaking, has been entrusted with the rights of transmission, supply and distribution of natural gas from different sources through the pipeline to its consumers across the country under the mandate of Ministry of Petroleum and Natural Gas.

2. Petitioner acquired the land required for laying the pipeline for transmission of natural gas under the provisions of the Petroleum and Mineral Pipelines (Acquisition of Rights of User in Land) Act, 1962 (“**the Act**”) as Rights Of User (“**ROU**”) area for laying the underground pipeline. As Petitioner intended to lay a natural gas pipeline known as ‘Dabhol-Kolhapur-Bengalore Natural Gas Pipeline’ (“**the said pipeline**”), the Government of India, Ministry of Petroleum and Natural Gas issued a Gazette Notification dated 21st June 2010 under Section 3(1) of the Act. After calling for and receiving objections from the general public regarding the acquisition of land, including land owned by the Government of Maharashtra in Taluka Dodamarg, Petitioner laid the pipeline. The details of land owned by the Government of Maharashtra through which the pipeline was laid are in paragraph 4 of the petition.

3. Before laying the pipeline, the Government of India, Ministry of Petroleum and Natural Gas vide Gazette Notifications dated 24th February 2011 and 17th January 2012 issued a declaration of

acquisition of ROU under Section 6(1) of the Act and thereby acquired the ROU in respect of various lands including the land of the State Government mentioned in paragraph 4 of the petition. The details of the land acquired are also reflected in the Gazette Notification issued.

4. The competent authority under the Act paid an amount of Rs. 21,72,215/- to Respondent No. 2 viz. the District Collector, Sindhudurg, as compensation in respect of the ROU area of the State Government. Of course, compensation was also paid to other land owners through whose land the pipeline of Petitioner has been laid.

5. It is Petitioner's case that, for the first time, when Petitioner received a letter dated 20th December 2021 from Respondent No. 3, the Tahsildar, Sindhudurg, Petitioner came to know about the impugned order dated 24th May 2011 passed by Respondent No. 2. By the letter 20th December 2021, Respondent No. 3 called upon Petitioner to pay a sum of Rs. 21,04,320/- as 5% lease rent in respect of the land mentioned in paragraph 4 of the petition for the period 2010 to 2022, alleging that the land was given to Petitioner for 15 years lease for laying gas pipeline. Petitioner replied denying that any lease rent was payable particularly in view of the provisions of the Act as well as compensation being already paid to the State Government.

6. In response, Respondent No. 2 vide a letter dated 20th May 2022 issued a final notice and called upon Petitioner to pay the 5% lease rent as per the demand made, failing which action would be taken against Petitioner for recovery of the amount as arrears of land revenue. It is at that stage Petitioner approached this Court by this petition and by an order dated 1st December 2022 an ad-interim relief was granted in terms of prayer clause (c). Effectively, Respondents were restrained from taking any steps or action against Petitioner pursuant to the impugned order dated 24th May 2011 and as threatened in the notices dated 20th December 2021 and 20th May 2022.

7. Since an affidavit-in-reply has been filed, this Court with the consent of Counsels decided to dispose the petition at this stage itself.

8. In the affidavit-in-reply, Respondents have reiterated the stand taken by them in the impugned order and relied upon the provisions of Rule 39 of the Maharashtra Land Revenue (Disposed of Government Lands) Rules, 1971 (“**the said Rules**”), which prescribes 5% market value as “lease rent”.

9. An identical situation arose sometime in 1998 and Petitioner had filed a Writ Petition No. 1929 of 2002 in the Civil Appellate Jurisdiction of this Court. The said Petition came to be disposed vide a judgment dated 10th October 2006 and the Court was pleased to

hold that State was not entitled to demand any amount under Rule 39 of the said Rules. In fact, the Court held that Rule 39 of the said Rules was not applicable at all. Paragraphs 3 and 4 of the said judgment read as under :

“3..... The learned Assistant Government Pleader appearing on behalf of the Respondents, has, on the other hand, relied upon the provisions of Rule 39 of the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971 [hereinafter called “the Rules”] to argue that the imposition of the cess was fully justified.

“4. We find that the Objects and Reasons pertaining to the land clearly spell out that for the purpose of creating right of user in the land, either in Central Government or its nominee, a declaration is required to be made and compensation to be paid to the owner of the land. The Statement of Objects and Reasons have been elaborated in Sections 3, 6, and 10 of the Act and are reproduced hereunder :

“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 [of 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 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.”

"6. Declaration of acquisition of right of user.-

(1)

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

(3)

(3A)

(4) Notwithstanding anything contained in sub-section (2), the Central Government may, on such terms and conditions as it may think fit 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 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. Compensation.(1) Where in the exercise of the powers conferred by section 4, section 7 or section 8 by any person, any damage, loss or injury is sustained by any person interested in the land under which the pipeline is proposed to be, or is being, or has been laid, the Central Government, the State Government or the corporation, as the case may be, shall be liable to pay compensation to such person for such damage, loss or injury, the amount of which shall be determined by the competent authority in the first instance.

(2)

(3)

(4) 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 to 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 per cent. of the market value of that land on the date of the notification under sub-section (1) of section 3.

(5)

(6)”

A bare perusal of these sections would reveal that the Act is a complete Code for dealing with a particular situation. Section 3 provides for the issuance of a Notification specifying that it was necessary to acquire the right of user of the land for the purpose of laying a pipe-line. It also gives the land owner a right to file objections. Section 5 visualizes the hearing of the objections by the Competent Authority and for reasons to be recorded as to why the objections were being accepted or rejected. Section 6 clearly stipulates that after the Competent Authority found that the land was, in fact, required for the purpose of user, it would vest absolutely in the Central Government, free from all encumbrances, and sub-section (4) of section 6 postulates that this right can be transferred by the Central Government to a nominee of its own choice-the nominee in the present case being the petitioners. Section 10 gives a right to compensation to the owner of the land for

damage caused to the land and sub-section (4) of Section 10 specifically provides that after the land has vested in the Central Government or its nominee, the compensation for damages payable would be calculated at 10 per cent of the market value. Concededly again, this amount has been deposited with the concerned authority. We therefore endorse the argument that after the land had been identified for the purpose of user and the procedure envisaged under the Act had been followed and compensation paid no other cess was leviable and it would not be open for the State Government to take recourse to any other law for the purpose of creating another levy on the property. We have also perused Rule 39 of the Rules, which clearly does not deal with the situation in hand, as it would be applicable to the provision of public utility services such as the laying of water mains, pipes, underground cables, construction of cess-pools and the erection of electricity poles, towers and Stay Cables etc. This rule has no applicability to a right of user created under the Act for the limited purpose of the laying an underground pipeline for carrying oil from one place to the other.”

10. In view of the above, following the said judgment with which we respectfully agree, we also endorse the argument of Petitioner that after the land had been identified for the purpose of user and the procedure envisaged under the Act had been followed and compensation paid, no other cess was leviable and it will not be open for the State Government to take recourse to any other law for the purpose of creating another levy on the property. We also respectfully agree with the findings in the said judgment that Rule 39 of the said Rules does not deal with the situation in hand as it would be applicable to the provisions of public utility services such as laying of water mains, pipes, underground cables, construction of cess-pools and erection of electricity poles, towers and stay cables etc. Rule 39 of the said Rules has no applicability to a ROU created under the Act for the limited purpose of laying an underground pipeline for

carrying oil from one place to the other.

11. Rule accordingly made absolute in terms of prayer clause (a), which reads as under :

“(a) that this Hon’ble Court be pleased to issue a writ of certiorari or in the nature of certiorari or any other writ, order or direction thereby calling for the records and proceedings of the impugned order dated 24.05.2011 annexed as Exhibit “D” hereto passed by the Respondent No. 2 as well as the records and proceedings of the impugned Notice/Letter dated 20.12.2021 issued by the Respondent No. 3 annexed as Exhibit “E” hereto and impugned Notice/Letter dated 20.05.2022 annexed as Exhibit “H” hereto issued by the Respondent No. 2 and after examining the propriety, correctness, legality and validity of the impugned order as well as the impugned Notices/Letters passed and/or issued by the Respondent Nos. 2 and 3, the impugned order dated 24.05.2011 annexed as Exhibit “D” hereto passed by the Respondent No. 2 as well as the impugned Notice/Letter dated 20.12.2021 issued by the Respondent No. 3 annexed as Exhibit “E” hereto and impugned Notice/Letter dated 20.05.2022 annexed as Exhibit “H” hereto issued by the Respondent No. 2 be quashed, set aside and cancelled.”

12. Petition disposed.

(DR. NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)

GITALAXMI
KRISHNA
KOTAWADEKAR

Digitally signed by
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