



W.P.(MD) No.6780 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.06.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.6780 of 2020

and

W.M.P.(MD) Nos.6167 and 6169 of 2020

M/s.Pioneer Power Ltd.,
Rep., by its Chief General Manager,
Therkukattur Village, Valantharavai,
Ramanathapuram Taluk,
Ramanathapuram District.

.. Petitioner

Vs.

- 1.Union of India,
Rep., by is Secretary,
Ministry of Petroleum and Natural Gas,
New Delhi.
- 2.The Director,
Ministry of Environment and Forests,
Paryavaran Bhavan,
Lodi Road, CGO Complex,
New Delhi.
- 3.The Competent Authority cum
Deputy Collector,
Indian Oil Corporation Limited,
ETBPNMT – Pipeline Projects,
Ramanathapuram.



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4.The Construction Manager,
Indian Oil Corporation Limited,
House No.3/3314-II,
Athmanathasamy Nagar,
South 2nd Street, Pattinamkathan,
Ramanathapuram District.

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records in pursuant to the first respondent's impugned Notification No.SO 2449(E) published in Extraordinary-Part II, Gazette of India, dated 31.07.2017 and first respondent's Sec.6(1) Notification No.SO 3333(E) published in Extraordinary-Part II, Gazette of India, dated 12.09.2019 issued under the Petroleum and Minerals Pipe Lines (Acquisition of Right of User in Land) Act, 1962 and third respondent's impugned proceedings in CA/RMD/RTPL/30/2019 dated 20.03.2020 in respect of the petitioner's company properties in S.No.203/4B1C in an extent of 95 Sq Meters, 203/4B1B in an extent of 30 Sq Meters, 203/4B1A in an extent of 45 Sq Meters, in 203/2B1 in an extent of 20 Sq Meters, 203/3B in an extent of 60 Sq Meters and 203/2B2 in an extent of 65 Sq. Meters in a total extent of 8415 Sq. Meters out of 16 Acre 69 Cents, Valantharavai Village, Ramanathapuram Taluk, Ramanathapuram District is liable to quash and consequently directing the respondents to re-route the proposed petroleum transport pipeline in any other alternative site in accordance with law.



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For Petitioner : Mr.J.John
For RR1 & 2 : Mr.V.Kathirvel
Assistant Solicitor General
For R3 : Mr.K.Muralitharan
Standing Counsel

ORDER

This writ petition has been filed for the following relief:

“For the issue of a Writ of Certiorarified Mandamus to call for the records in pursuant to the first respondent's impugned Notification No.SO 2449(E) published in Extraordinary-Part II, Gazette of India, dated 31.07.2017 and first respondent's Sec. 6(1) Notification No.SO 3333(E) published in Extraordinary-Part II, Gazette of India, dated 12.09.2019 issued under the Petroleum and Minerals Pipe Lines (Acquisition of Right of User in Land) Act, 1962 and third respondent's impugned proceedings in CA/RMD/RTPL/30/2019 dated 20.03.2020 in respect of the petitioner's company properties in S.No. 203/4B1C in an extent of 95 Sq. Meters, S.No. 203/4B1B in an extent of 30 Sq. Meters, S.No. 203/4B1A in an extent of 45 Sq. Meters, S.No. 203/2B1 in an extent of 20 Sq. Meters, S.No.203/3B in



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an extent of 60 Sq. Meters and S.No.203/2B2 in an extent of 65 Sq. Meters in a total extent of 8415 Sq. Meters out of 16 Acre 69 Cents, Valantharavai Village, Ramanathapuram Taluk, Ramanathapuram District, quash the same and consequently direct the respondents to re-route the proposed petroleum transport pipeline in any other alternative site in accordance with law.”

2. The facts in brief, which have been set out in the affidavit filed in support of the writ petition, are set out herein below:

The petitioner is a registered company engaged in the business of generation of power by using natural gas. It is their case that they were incorporated in the year 1998 and had purchased an extent of 16.69 Acres in Valantharavai Village, Ramanathapuram. The company was originally established in the name and style of ARKAY Energy Ltd., and thereafter, the name was changed to its present state.

3. The petitioner would submit that their power plant had been established only to generate energy for the TANGEDCO. The company



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was established at a cost of Rs.246 Crores. The factory premise is existing in an extent of 16.69 Acres and 30% of the land has been earmarked as a 'green belt' as per the Environment Clearance. This portion of land is comprised in S.Nos.203/4B1C, 203/4B1B, 203/4B1A, 203/2B1, 203/3B and 203/2B2.

4. It appears that on 10.10.2019, the third respondent had served a notice dated 23.09.2019 upon the petitioner in which it was stated that the aforesaid properties, in a total extent of 8415 sq. meters out of a total extent of 16.69 Acres, have been acquired under Section 6(1) of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (hereinafter referred to as “the Act”) and a Gazette Notification dated 30.07.2012 was also published on 12.09.2019. After receiving the Gazette Notification, the petitioner made a representation to the third respondent and the third respondent by reply dated 25.10.2019, had stated that the fourth respondent viz., the Indian Oil Corporation may lay the pipeline in S.Nos.203/4B1C, 203/4B1B and 203/4B1A and they have no proposal of laying the pipeline in other properties mentioned in the



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notice dated 23.09.2019. The petitioner had submitted their objections on 05.11.2019. Meanwhile, the Government of India had issued a notification for the purpose of laying a pipeline for transportation of natural gas through the Ennore-Tiruvallur, Bengaluru-Pondicherry, Nagapattinam-Madurai-Tuticorin natural gas pipeline in the State of Tamil Nadu.

5. The petitioner's grievance is that their power plant units were built nearly than 15 years prior to the first respondent's notification dated 23.09.2019. They further submitted that under the provisions of Sections 7(1)(a), 7(1)(b) and 7(1)(c) of the Act, no pipeline could be laid for transport of materials in a land which is exempted from acquisition.

6. The order of the third respondent was challenged on the ground that though opportunity was given to the petitioner for setting up pipeline, the procedure contemplated under Section 5(1) of the Act has not been followed and the petitioner's properties are exempted under Section 7(b) of the Act.



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7. The third respondent has filed counter in which it has been sated as follows:

“12. I submit that the averments in para 11 of the petitioner's affidavit are denied. I submit that the subject matter of the property is exempted under sec. 7(b) of the Act is incorrect both factually and legally and is hereby denied. There is no permanent structure in the notified area. Further the proposed pipeline alignment falls in the vacant areas in S.Nos. 203/4B1C, 203/4B1B, 203/4B1A between the boundary wall of Writ petitioner's power plant and adjacent other major district Valuthur – Periyapattinam Road, for a length of approximate 70 meters.

13. I submit that the underground pipeline laying works have been completed. I submit that the land has been restored to the original condition. I submit that as per Section 9(1) of the said act, the owner or occupier of the land shall be entitled to use the land for the purpose for which such land was put to use immediately before the date of notification under section 3(1) of the said act. The section 9(1) of the said Act read as follows:

(1) The owner or occupier of the land with



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respect to which a declaration has been made under section (1) of section 6 shall be entitled to use the land for the purpose for which the such land was put to use immediately before the date of notification under sub-section I of section 3.

Provided that, such owner or occupier shall not after declaration under sub-section 1 of section 3 –

- i) Construct Building or any other structure;*
 - ii) Construct or excavate any tank, well, reservoir or dam; or*
 - iii) Plant any tree,*
- On that land.*

I submit that the pipeline laying works has been completed and the interim injunction relief sought by the petitioner has become infructuous.”

8. Learned counsel for the petitioner would submit that in an earlier round of litigation, a Division Bench of this Court had passed an order, in which the Division Bench had observed that the correctness of the order can be adjudicated only by the Court hearing writ petition and therefore, this Court has to take into consideration the same. He would also rely upon a judgment of the Hon'ble Supreme *in Manubhai*



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Sendhabhai Bharwad and another Vs. Oil and Natural Gas Corporation Ltd., and others reported in ***2003 LiveLaw (SC) 55*** in support of his arguments that a temporary acquisition cannot be continued indefinitely, as the land owners may not be in a position to use their lands and cultivate upon the same.

9. Heard the learned counsel on both sides.

10. The petitioner seeks to quash the notification issued by the first respondent and for a direction to the respondents to re-route the proposed petroleum transport pipeline.

11. A perusal of the records would show that by notification dated 31.07.2017 issued under Section 3(1) of the Act, the first respondent had declared its intention to acquire a right of user to the lands described in the schedule to the notification for laying the pipeline for the transportation of natural gas through “Ennore-Tiruvallur-Bengaluru-Pondicherry-Nagapattinam-Madurai-Tuticorin” natural gas pipeline.



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Copy of this notification was made available to the public from 03.08.2017. Thereafter, the competent authority had submitted its report as contemplated under Section 6(1) of the Act, in pursuance of which the first respondent had issued the notification dated 12.09.2019. The right of user in the above lands was acquired. The notification further stipulates that the third respondent-Corporation would be exclusively liable to pay compensation.

12. Section 7 of the Act stipulates that no pipeline be laid under any land which immediately before the date of notification under Section 3(1) of the Act was issued for residential purposes, or any land where a permanent structure is in existence or where the land is appurtenant to a dwelling house. In the judgment in ***Laljibhai Kadvabhai Savaliya Vs. State of Gujarat and others reported in 2016 SCC OnLine SC 1101***, the Apex Court after considering Section 7 of the Act observed that a reading of the same implied that what could be acquired are lands that are lying fallow or which is put to agricultural use. That was also a case where the parties had not challenged the Section 3(1) notification.



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13. The records would further show that the petitioner has filed their objections dated 25.10.2019 after the notice under Section 6(1) of the Act dated 12.09.2019 was issued. In the said letter dated 25.10.2019, the petitioner has stated as follows:

“All out plant land including the above land mentioned was acquired in 2000 and plant buildings, equipment and greenbelts were installed and developed as directed by statutory authorities for power plants and is in operation from 2005 onwards.

Further a double circuit 110KV overhead line and a HT tower is nearby the above survey number. As this is a HT line any gas pipeline nearby this power corridor is prohibited because any earth fault in the electric circuit may create explosion of gas pipeline.

Considering the above, the land under sub survey numbers mentioned in your notice cannot be acquired for any purpose as it is already in use for the power plant and there is no vacant land available.

Hence we request you to consider routing your pipeline away from out plant land and power corridor for safe operation.”



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14. To this, the third respondent has sent a reply dated 30.10.2019 stating that adequate safeguards had been put in place. Therefore, considering the fact that the right of user is claimed only in the land which is kept aside as a green belt where no construction can be put up by the petitioner and also taking note of the fact that the pipeline has already been laid, this Court is not inclined to grant the relief claimed in the writ petition. It is needless to state that the petitioner is entitled to compensation.

15. In fine, this Writ Petition is dismissed as also the connected miscellaneous petitions without costs.

02.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes

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To

- 1.The Secretary to Government,
Union of India,
Ministry of Petroleum and Natural Gas,
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- 2.The Director,
Ministry of Environment and Forests,
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CGO Complex, New Delhi.



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P.T.ASHA, J.

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