
(2016) 11 KL CK 0060

In the High Court Of Kerala

Case No : Writ Petition (C) No. 39054 of 2015 (F)

Komalavally

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-11-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 19(I)(a), Article 19(I)(g), Article 21, Article 226, Article 300A
Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 — Section 5(3), Section 7

Citation : (2017) 1 ILRKerala 564 : (2017) 1 KerLJ 232 : (2017) 1 KLT 19

Hon'ble Judges : Mr. Shaji P. Chaly, J.

Bench : Single Bench

Advocate : Sri. T.B. Hood, Smt. M. Isha and Sri. Amal Kasha, Advocates, for the Petitioner; Sri. B. Prem Kumar, CGC, for the Respondent No. 1; Sri. K. Anand (Sr.), Smt. Latha Anand and Sri. N. Nagaresh Assistant Solicitor General, for the Respondent Nos. 2 and 3

Final Decision : Allowed

Judgement

Mr. Sjaaji P. Chaly, J. - This writ petition is filed by the petitioners seeking to declare that respondents cannot acquire the right of user in land without serving on the affected person a copy of the order passed under Section 5(2) of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 [hereinafter called, Act 1962], and for other related reliefs. Material facts for the disposal of the writ petition are as follows:

2. Petitioners are the co-owners of properties situate in Survey Nos.357/1, 357/4 and 357/5 of Thekkumkara Village in Mukundapuram Taluk of Thrissur District. First petitioner is the owner of property in Survey No.356/3 of the same village.

3. The Ministry of Petroleum and Natural Gas, Government of India issued notification No.S.O.2343(E) in the Extraordinary Gazette of India, dated 11.10.2011, under Section 3 (1) of the Act to acquire right of user in land in

various survey numbers situated in different Villages of Thrissur District. The purpose is to lay Kochi - Koottanad - Mangalore - Bangalore Gas pipeline for the 2nd respondent. Properties of the petitioners mentioned above were also included in the notification. Third respondent, who is the Competent Authority, notified under Section 2(a) of the Act, issued notice to the 1st petitioner intimating about the Government of India notification for acquisition of land, evident from Ext.P1. First petitioner submitted objection before the competent authority on 26.09.2012, evident from Ext.P2. Ext.P2 was submitted through post with acknowledgement due, evident from Ext.P3.

4. Third respondent issued notice dated 16.02.2013 to the 1st petitioner under Section 5(2) of the Act, directing her to appear for hearing at the Village Office, Thekkumkara on 01.03.2013, evident from Ext.P4. Accordingly, 1st petitioner appeared for hearing and the 3rd respondent heard the 1st petitioner. It is the contention of the petitioners, under Section 5 (2) of the Act, competent authority, after hearing objections and after making such further enquiry, if any, by order, either allow or disallow the objections. Section 5(3) of the Act stipulates that any order made by the competent authority under Section 5 (2) of the Act shall be final.

5. It is the contention of the petitioners, the competent authority has not passed an order under Section 5(2) of the Act. Any order passed under that section has severe consequences to the owner of the land, and hence the competent authority is bound to communicate the order to the affected party. But, after hearing on 01.03.2013, competent authority has not communicated any order to the petitioners. According to the petitioners, orders, if any, passed by the competent authority cannot be implemented without communicating the order to the affected party. That apart, it is contended, in respect of the property covered by notification No.S.O.2343(E) dated 11.10.2011, the Central Government has not issued notification under Section 6 of the Act. So, the said notification under Section 3 of the Act ceased to exist.

6. It is stated, on 26.10.2015, persons deputed by the 2nd and 3rd respondents came to petitioners' property and conducted survey. If pipelines were to be laid as per the survey conducted by them, the property of the petitioners would be divided into different pieces and a rough sketch of the petitioners' property is produced as Ext.P5. According to the petitioners, in the event of laying the pipeline through the alternate route suggested by the petitioners, the damage that would be caused to the petitioners will be lesser, when compared to the route proposed by the 2nd and 3rd respondents.

7. It is also contended, the proposed route is through the land used for residential purpose. The land is being used for residential purpose even before the notification under Section 3 of the Act. The land is appurtenant to the dwelling house of the petitioners, and therefore under Section 7 of the Act, pipeline cannot be laid through the proposed route. That apart, it is stated, 1st petitioner is an agriculturist and on laying the pipeline through the route

proposed by respondents 2 and 3, many fruit bearing trees will have to be cut and removed, and if the alternate route suggested is accepted, no manner of damage will be caused to the trees. It is in this background, the writ petition is filed, challenging the actions of the respondents.

8. Second respondent has filed a counter affidavit denying the allegations and statements contained in the writ petition. According to the respondents, petitioners have not made out any ground to invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India. So also, it is stated, there is no infringement of any fundamental right or legally enforceable right by the State or its authorities. According to the 2nd respondent, notification under Section 3(1) of Act 1962 in respect of Thekkumkara Village in Mukundapuram Taluk was issued by the Government of India, on 11.10.2011, evident from Ext.R2(a). Though the petitioners allege that petitioners properties in survey Nos.356/3, 357/1, 357/4 and 357/5 of Thekkumkara Village are included in the notification, it is far from true. Only properties comprised in survey Nos.356 and 357/1 of Thekkumkara Village are included in Ext.R2(a) notification. Pursuant to Ext.P1 notice, 1st petitioner filed Ext.P2 objection dated 26.09.2012, and the objection is in respect of the properties situated in survey Nos.356 and 357/1 alone. It is also stated, 1st petitioner was heard in person on 01.03.2013 by the 3rd respondent, in contemplation of Section 5 (2) of the Act 1962. After hearing the petitioner's objections, the objections were disallowed by the 3rd respondent, and therefore the allegation to the contrary that no order as contemplated under Section 5(2) of the Act has been passed by the 3rd respondent is not correct. It is also contended, Section 5 (3) makes it clear, the order passed by the competent authority under Section 5(2) shall be final, which in turn, means, there is no scope for appeal or review or revision of the order passed by the competent authority. That being so, the mere alleged non-communication of the order passed under Section 5 (2), disallowing the petitioners objection, by itself does not render the order invalid. It is also contended, there is no prejudice caused to the petitioners for want of communication of the order passed by the 3rd respondent.

9. Further, the procedure to be followed after passing an order under Section 5(2) has been detailed in Section 6(1) of the Act. According to the 2nd respondent, the procedure contemplated under Section 6(1) of the Act has been strictly followed by the respondents. The 3rd respondent competent authority has no duty to communicate the order to the petitioners, but is vested only with a duty to pass on the report containing its recommendations and also the proceedings held by him, to the Central Government under Section 6(1) of the Act, 1962. The 3rd respondent submitted its report to the Central Government for its decision accordingly.

10. It is also submitted, as the Central Government was satisfied that the lands were required for laying the pipelines, declaration under Section 6 of the Act 1962 was passed on 08.08.2013, evident from Ext.R2(b). Therefore, Section 6

declaration was not made as contended by the petitioners is not true or correct. It is also stated, only the right of user on the property for laying pipeline is acquired, and not the entire property in itself. The ownership and possession of the property shall vest with the owner itself, even after the pipeline is laid. After the pipeline is laid, the owners can utilize the land subject to the restrictions under Section 9 of the Act 1962. The averment made by the petitioners with respect to the division of land consequent on the acquisition proceedings is also denied. The claim made by the petitioners in respect of acquisition of residential building and appurtenant land is also denied. According to the 2nd respondent, the property comprised in survey Nos.356 and 357/1 of Thekkumkara Village, Mukundapuram Taluk does not fall within the ambit of provisos to Section 7(i) of Act, 1962. So also, it is stated, the alternate route suggested by the petitioners is not feasible and hence it cannot be acted upon. The present route as determined by the respondents for laying the pipeline is the best possible route and petitioners cannot be heard to contend that an alternate route has to be used for laying the pipeline. Therefore, the respondents seek dismissal of the writ petition.

11. Petitioners have produced an additional document, which is marked as Ext.P6, a solvency certificate issued by the Village Officer, Thekkumkara, establishing that the petitioner is solvent to the extent of Rs.3,00,000/- on her and her son's immovable property over which they have independent saleable right and which is free from encumbrances. These are the background facts for taking a decision in the grievance voiced by the petitioners in the writ petition.

12. Heard learned counsel for the petitioner, learned CGC appearing for the 1st respondent, and the learned Senior Counsel appearing for 2nd and 3rd respondents. Perused the documents on record and the pleadings put forth by the respective parties.

13. The issue to be decided in this writ petition revolves round Sections 5(6) and 7 of Act 1962. So far, the procedure contemplated under Section 5 is concerned, it is not under dispute. On the basis of the notification issued, 1st petitioner filed an objection and 1st petitioner was heard, as discussed above. According to the petitioners, 1st petitioner has a specific case in the objection that the property notified for acquisition of user right is a residential property having a residential building and appurtenant land which is excluded as per Section 7(1)(a) to (c). Section 7(1)(a) to (c) reads as follows:

"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 servant and workmen to enter upon the land and lay pipelines or to do any other act necessary for 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) x x x x x x x x

(ia) x x x x x x x x

(ii) x x x x x x x x".

14. Therefore, the paramount contention advanced by learned counsel for the petitioner is, when the statutory authority is bound to hear an objection, it is to pass an order as contemplated under Section 5(2). If an order is passed by the authority either allowing or disallowing the objections, the same should be communicated to the petitioners. Admittedly, even according to the 3rd respondent, the order passed is not communicated to the petitioners. The contention raised by the 2nd respondent is that in view of the peculiar provisions of the Act, only user right is acquired and the petitioners are not materially affected by such acquisition and that is the reason why as per sub-section (3) of Section 5 the order passed by the competent authority is made final. In that view of the matter, petitioners have no scope for filing any revision, review or appeal and therefore the order need not be communicated at all, is the contention advanced by learned Senior Counsel.

15. The said contention advanced is seriously opposed by learned counsel for the petitioners for the reason that there are certain exceptions carved out under Section 7 of the Act, and the petitioners have a specific case that the property of the petitioners notified is a residential plot/residential building/appurtenant land, and therefore the competent authority is duty bound to take a decision on the specific contention advanced by the petitioners, pass an order and communicate the same to the petitioners.

16. In that regard, learned counsel for the petitioners has invited my attention to the judgment of the Apex Court in "Bipromasz Bipron Trading SA v. Bharat Electronics Limited (BEL)" [(2012) 6 SCC 384] and specifically to paragraph 33, wherein the Apex Court had occasion to consider the question with respect to communication of an order and held that till the order is communicated, any rights in favour of a party can be created nor take away the rights of any affected party.

17. Learned counsel for the petitioner also invited my attention to paragraph 28 of the judgment of the Apex Court in State of West Bengal and others v. R.K.B.K Limited and another" [(2015) 10 SCC 369], wherein it was held that, "there can be no scintilla of doubt that unless an adverse order is communicated that does not come into effect. Passing of an order the file does not become an order in the

eye of the law".

18. Learned Senior Counsel for the 2nd and 3rd respondents has invited my attention to the judgment of the Madras High Court in "N.V.V. Krishna v. Union of India and others" [2004 KHC 4032 : AIR 2004 Mad. 324], to canvass the proposition that Act 1962 has peculiar characteristics in comparison with the provisions of the Land Acquisition Act, 1894. So also, learned Senior Counsel has invited my attention to the judgment of the Apex Court in "Trilok Sudhirbhai Pandya & others v. Union of India & others" [(2011) 10 SCC 203], and specifically to paragraph 8, which read thus:

"8. A reading of the Section 2(a) of the Act shows that the person to be appointed as Competent Authority is to perform all or any of the functions of the Competent Authority under the Act in the same area or different areas specified in the notification. Accordingly, the Competent Authority is to hear objections of persons interested in the land to the laying of the pipelines under the land and the order passed by the Competent Authority under Section 5 is final. On the basis of the report of the Competent Authority, the Central Government, if satisfied that the land is required for laying any pipelines for the transport of petroleum or any mineral, may declare under Section 6 of the Act that the right of user in the land for laying the pipelines should be acquired and on the publication of such declaration, the right of user in the land specified in the declaration shall vest absolutely in the Central Government free from all encumbrances.

x x x x x x x x

x x x x x x x x

x x x x x x x x".

Therefore, it is the contention of the learned Senior Counsel that once a declaration is made under Section 6 of the Act that the right of user in the land for laying the pipelines should be acquired, the right of the user in the land specified in the declaration shall vest absolutely in the Central Government free from all encumbrances. True, in respect of the provisions of Section 6, what is contended by learned Senior Counsel is absolutely right. But, under the facts and circumstances of the case at hand, since petitioners have a specific case in respect of the exemption contemplated under Section 7 of the Act, an order should have been communicated to the petitioners, passed under Section 5(2) of the Act, that is not done.

19. Taking note of the respective submissions made across the Bar, I am of the considered opinion, if any order is passed by the appropriate statutory authority, especially due to the fact, claims are raised in regard to exemption contemplated under Section 7, the owners of the land are entitled to know the decision taken by the authority, whether it is allowed or disallowed. Even if no appeal or other remedies are provided due to the prohibition contained under sub-section (3) of

Section 5, it cannot be said that the petitioners cannot challenge the order passed for other reasons available, enabling the petitioners to invoke the power conferred on this Court under Article 226 of the Constitution of India. If an order is passed by the competent authority in violation of the fundamental rights guaranteed under the Constitution of India, even if there is a prohibition contained under Act, 1962, that will not prevent the petitioners from approaching this Court. This is more so, in this case, since the petitioners have a specific case that they are entitled to get exemption as of right in accordance with the provisions of Section 7 of Act 1962.

20. Learned Senior Counsel for the 3rd respondent submitted that the note file produced along with a memo, as per the direction of this Court dated 20.01.2016 shows that there is an order passed in respect of the properties of the petitioners. I have verified the said note file, in which it is noted that the petitioner has a case that the proposed pipeline passes through the property in question and the petitioners are residing in the proposed property. However, I do not find any order passed by the authority in respect of the claims raised, from the note file dated 01.03.2013, which was the hearing date, even according to the petitioners. That being the situation, I think it is only appropriate and legal that the competent authority is directed to pass an order based on the objection submitted by the petitioners in respect of the properties in question and communicate the same to the petitioners within a time frame.

21. Yet another reason persuaded me to arrive at such a conclusion is the legal right to property conferred to citizens under Article 300A of the Constitution of India. The said provision takes care of all kinds of proprietary rights of a citizen, irrespective of its nature and kind. Even taking away the user right is a deprivation of the right of the owner of the property for its fullest use, especially when, under Section 9 of Act 1962, user of the land is restricted. Moreover, depriving the owner from knowing the restriction created on his rights, is clearly an arbitrary exercise of power, interference with freedom of speech and expression and to carry on any occupation, and thereby affecting the fundamental rights conferred under Articles 14, 19(1)(a) and (g) and 21 of the Constitution of India.

22. Taking note of the respective submissions made across the Bar, there will be a direction to the competent authority, to provide an opportunity of hearing to the petitioners and then pass orders within a time frame to be fixed. In order to enable the competent authority to proceed, petitioners are directed to appear before the 3rd respondent on 06.12.2016, and after providing sufficient opportunity of hearing, an inspection shall be conducted with respect to the claims raised by the petitioners on account of Section 7 of the Act and pass final orders within a month from 06.12.2016, and communicate the order to the petitioners. If any order is passed adverse to the claims raised by the petitioners, the order shall be kept in abeyance for a period of two weeks from the date of receipt of the order by the petitioners.

23. Learned Senior Counsel for the 2nd and 3rd respondents submitted that since Section 6 declaration is already issued by the Central Government, the same may not be disturbed, subject to any variation that is to be made after the directions are complied with. Therefore, there will be an order that till such time orders are passed, status quo shall be maintained with respect to Section 6 of Act 1962.

The writ petition is allowed with the above observations and directions.