

(2008) 06 KAR CK 0032
In the Karnataka High Court
Case No : Writ Petition No. 19003 of 2007

Smt. Padma Jalan

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 17-06-2008

Acts Referred:

Petroleum and Minerals Pipelines (Acquisition of a Right of User in Land) Act, 1962 —
Section 3 (1), 5, 6 (4)
Petroleum Pipelines (Acquisition of Right of User in land) Rules, 1963 — Rule 8, 8 (3)

Citation : (2008) ILR (Kar) 3873 : (2008) 3 KCCR 2082

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Naganand for N.S. Sanjay Gowda, for the Appellant; M. Keshava Reddy, AGA for R1, V.Y. Kumar, for R-2 and R3, K. Nageshwarappa, for R4 and Vijaya Shankar for B.K. Sridhar, for R5, for the Respondent

Judgement

B.S. Patil, J.—In terms of the order dated 05.06.2008 passed by this Court and with the consent of the learned Counsel appearing for the parties, the prayer made seeking to quash the Notification (Preliminary) issued u/s 3(1) of the Petroleum and Minerals Pipelines (Acquisition of a Right of User in Land) Act, 1962 (hereinafter referred to as "the Act", for short) and the declaration made on 17.08.2007 under Sub-section (4) of Section 6 of the Act, the matter is taken up for consideration.

2. In this writ petition, the petitioner has challenged the Notification issued by the 5th respondent - Indian Oil Corporation Ltd. through the competent authority u/s 3(1) of the Act, in so far as the acquisition of the right of User in the land belonging to the petitioner for the purpose of laying a pipeline for transportation of petroleum products. By amending the writ petition, the Final Notification issued u/s 6(4) of the Act is also challenged.

3. Learned Senior Counsel Sri. Nagananda appearing for the petitioner submits that the right of User in the land for the purpose of laying pipelines can be

acquired only after complying with the provisions contained u/s 5 of the Act which provides for hearing of objections by providing an opportunity of being heard, either in person or by a legal practitioner. It is his submission that without providing any such opportunity, the land is sought to be acquired for the purpose of laying the pipelines. He draws the attention of the Court to the objections filed by the petitioner which is produced at Annexure-K and urges that omission to provide personal hearing to the petitioner has vitiated the acquisition proceedings.

4. Sri. Vijayashankar, learned Senior Counsel appearing for the 5th respondent submits that what is acquired is only an extent of 500 mts x 10 mts in Sy. Nos. 39 and 40 and that pursuant to the objections filed, the Authorities sent a notice addressed to the same address as furnished by the petitioner in his objections. But the notice sent was returned unserved. Whereupon, the respondent-authority has proceeded to consider the objections and has held that the same were untenable. He therefore contends that there is sufficient and substantial compliance with the requirements of Section 5 of the Act requiring personal hearing. He further submits that there is absolutely no prejudice caused to the petitioner as he is entitled to use the land for agricultural purpose even after the pipelines are laid.

5. Having heard the learned Counsel for the parties and upon consideration of the materials on record, I find that the petitioner has filed objections for the proposed acquisition of right of User in the lands for laying pipeline. Section 5 of the Act which provides for hearing of objections reads as under,-

5. Hearing of objections. (1) Any person interested in the land may, within twenty-one days from the date of the Notification under Sub-section (1) of Section 3, object to the laying of the pipelines under the land.

(2) Every objection under Sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and may, after hearing all such objections and after making such further inquiry, if any, as that authority thinks necessary, by order either allow or disallow the objections.

(3) Any order made by the competent authority under the Sub-section (2) shall be final.

6. It is clear from the language of Sub-clause (2) of Section 5 that the competent authority is enjoined with a duty to give the objector an opportunity of being heard either in person or by a legal practitioner and after hearing such objections and after making such further enquiry, it may either allow or disallow the objections.

7. It is necessary to note here that the provision contained in Section 5 of the Act providing personal hearing embodies a just and wholesome principle that a

person whose property is being or is intended to be acquired, should have an opportunity to persuade the authorities concerned that his property be not acquired. Therefore, the petitioner is justified in contending that if a personal hearing had been afforded by serving notice on him, as contemplated in law he would have persuaded the authority not to acquire his land or would have pleaded other defences set out by him in the objections.

8. There are rules framed which are known as the Petroleum Pipelines (Acquisition of Right of User in land) Rules, 1963 (hereinafter referred to as "the Rules" for short), which contain instructions regarding the procedure to be followed in the matter of publication of the notification and hearing of objections. Clause (4) of the said Instructions provides that except where the requirement of service of notice is resorted to under Rule 8(3), in all other cases the notice may be sent to the persons concerned by registered post acknowledgement due. Rule 8 provides for mode of service of notice. It reads as under,-

8. Mode of service of notice, etc:

(1) Any notice or letter issued or any order passed may be served by delivering or tendering a copy of such notice, letter or order, as the case may be, to the person for whom it is intended or to any adult member of his family or by sending it by registered post acknowledgement due addressed to that person at his usual or last known place of residence or business.

(2) Where the serving officer delivers or tenders the copy of the notice, letter or order under Sub-rule (1), he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original.

(3) Where the person or the adult member of the family of such person refuses to sign the acknowledgement or where the serving officer, after using all due and reasonable diligence, cannot find such person and there is no adult member of the family of such person, the serving officer shall affix a copy of the notice, letter or order on the outer door or some other conspicuous part of the ordinary residence or usual place of business of such person and then shall return the original to the competent authority who issued the notice, letter or order, as the case may be, with a report endorsed thereon or Annexed thereto stating that he has so affixed a copy, the circumstances under which he did so and the name and address of the person, if any, by whom the usual or last known place of residence or business, as the case may be, was identified and in whose presence the copy was affixed.

(4) Where the person to be served with the notice, letter or order is a minor or a person of unsound mind, the notice, letter or order shall be served in the aforesaid manner, on the guardian of such minor or person of unsound mind as the case may be.

9. As is clear from Sub-rule (3) of Rule 8 that if no adult member of the family

can be found, the serving officer is required to affix a copy of the notice, letter or order on the outer door or some other conspicuous part of the ordinary residence or usual place of business of such person and thereafter shall return the original to the competent authority who issued the notice with a report stating that he has so affixed the notice and the circumstances under which he did so. It is therefore prima facie clear that for the purpose of providing personal hearing as required u/s 5(2) of the Act, the petitioner ought to have been notified the date of hearing. If the notice issued by registered post is returned unserved, the authority ought to have resorted to the mode of service provided under Rule 8 of the Rules. Instead of taking recourse to such alternative method of serving the notice as provided under Rule 8, the authority has simply proceeded to consider the objections and reject the same.

10. In my view, having regard to the provisions set out hereinabove and the omission of the authority in notifying the petitioner and hearing him before proceeding with the acquisition, the petitioner is entitled to succeed. However, as the matter involves public interest and the proceedings have to be restarted from the stage where the defect has set in, necessary directions are required to be issued.

11. In the result, the writ petition, as against Respondents No. 4 and 5 are concerned, is partly allowed. The impugned final declaration made under Sub-section 4 of Section 6 of the Act in so far as it pertains to lands bearing Sy. Nos. 39 & 40 of Dummanahally village, Yelahanka Hobli, Bangalore North Taluk, is set aside. The petitioner shall appear before the competent authority on 02.07.2008. The competent authority shall afford him an opportunity of personal hearing and receive the documents if any to be produced by him in support of the objections already filed. The respondents shall thereafter pass appropriate orders in accordance with law.