

Andhra Pradesh High Court - Amravati

Punyamanthula Satyanarayana ... vs Union Of India on 7 January, 2021

Bench: D Ramesh

THE HONOURABLE SRI JUSTICE D.RAMESH

WRIT PETITION NO.2521 OF 2019

ORDER:

This petition is filed under Article 226 of the Constitution of India, seeking the following relief:

"to issue a writ, order or direction more particularly one in the nature of Mandamus, declaring the P&MP Action of respondents not to interfere with the petitioners' land admeasuring Ac.1-00 in Survey no.593/2;Ac.0-95 cents, in Survey No.568/1, Ac.2-81 cents in Survey No.687; Ac.0-63 cents in Survey No.706/5 and 706/4, Ac.1-00 cents in Survey No.657/2, Ac.0-99 cents in Survey No.16/2, Ac.1-45 cents, in Survey No.570/1 and 568/2, Ac.1-20 cents in Survey No.616/3 and 616/4, Ac.1-00 cents, in Survey No.616/5, Ac.3-30 cents, in Survey No.575 and 577/2, Ac.1-05 cents in Survey No.614/2, Ac.1-00 cents in Survey No.687, Ac.1-56 cents, in Survey No.583/2 and 579, Ac.2-84 cents in Survey No.583/2 and 579, Ac.1-50 cents in Survey No.565/2A1 and 566/1A, Ac.2-12 cents in Survey No.567/1 and 567/2, Ac.2- 05 cents in Survey No.568-3B, 568-4B, 569-2B, Ac.1-00 cents in Survey No.592/2, Ac.1-20 cents, in Survey No.660, Ac.1-00 cents, Survey No.575 and 577/2, Ac.1-00 cents in Survey No.659/1, Ac.1-00 in Survey No.688, Ac.1-00 in Survey No.629/2 and Ac.1-90 cents in Survey No.567/, situated in Dharmavaram village, Prathipadu Mandal, East Godavari District, without following due process of law and provisions of Petroleum and Mineral Pipelines) Acquisition of Rights of Users in Land) Act, 1962 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as illegal, highhanded, unconstitutional, deliberate, unwarranted, unsustainable, arbitrary against law as well as principles of natural justice and consequently direct the respondents to issue notices to the petitioners as contemplated under the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 for hearing objections and to follow the provisions of the P&MP Act"

2. Heard Sri K B Ramanna Dora, learned counsel appearing for the petitioners, Sri N.Harinath, Assistant Solicitor General of India for respondent No.1, Sri G.Rama Gopal, Standing Counsel appearing for respondents 2 and 3, and learned Government Pleader for Revenue, appearing for respondents 4 and 5.

3. As per the averments of the Writ Petition, all the petitioners are small farmers and cultivating their lands for their livelihood. Earlier some of the petitioners lost their lands in acquisition of Yeleru Canal and Polavaram Project and sustaining their livelihood with the remaining land. While so, the 3rd respondent for the purpose of laying pipeline for transportation of the petroleum products, undertook a project named "Paradip-Hyderabad Pipeline Project" laying pipeline from

Paradip in the State of Orissa via State of Andhra Pradesh to Hyderabad in the State of Telagana. Accordingly, the 3rd respondent appointed 2nd respondent as the competent authority under the Petroleum and Minerals Pipelines [Acquisition of right of User in Land) Act, 1962 [for short "the P&MP Act"], for the purpose of hearing objections from the affecting land owners. Subsequently, a notification was issued on 27.04.2017 in accordance with the said Act and 2nd respondent issued notices dated 02.06.2017 only to some of the petitioners, calling for objections. In response to the said notices, some of the petitioners gave reply in writing and remaining owners met the 2nd respondent in person and conveyed their objections.

4. The contention of the petitioners is that notices were issued only to some of them, and still some of the land owners did not receive any notice. Though the petitioners raised objections in writing, the 2nd respondent did not even consider those objections and issued orders dated 30.11.2017, conveying that the compensation will be paid to the land users. Though the 2nd respondent claims that they issued notices dated 28.10.2017 to the land owners to appear before the Revenue Divisional Officer Peddapuram on 10.11.2017, said notices were not received by the land users, as such the 2nd respondent taken decision without following the principles of natural justice.

5. The petitioners submits that in pursuant to the notification issued during the year 2017, notice was issued to only petitioner No.21 herein, however, all the petitioners submitted representation to the District Collector apart from specific objections in writing submitted by the petitioner No.21, in the month of October, 2017. Further contention of the petitioners is that the Government recently acquired the land on the parallel line to be proposed pipe line for the purpose of digging Polvaram canal and if the said pipe line laid on the Bund adjacent to the said canal, there would be no loss to any of the petitioners and also convenient for the respondents, for which they made specific representation to go for alternative way for proposing pipe line through the Dharmavaram Village. The respondents without taking any action with reference to the earlier notification, nearly after lapse of two years, now visited the fields of the petitioners and informed them that a notification was published in the Gazette of India on 03.03.2018 under section 3(2) of the P&MP Act.

6. The main contention of the petitioners is that the petitioners left with small extent of land, as they have already lost their lands during acquisition of Polavaram Project and Yeluru Project and the proposed pipe line is for the commercial purpose, the respondents without following the procedure contemplated either in the Land acquisition Act, 2013 or in the P&MP Act, 1962, trying to encroach the petitioners lands. Hence, the Writ Petition.

7. At the time of admission, this Court granted interim stay on 27.02.2019.

8. It is apt to refer the following Sections and Rules of the P&MP Act, for better appreciation of the case on hand:

"SECTION 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 [or any mineral] 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.

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published at such places and in such manner as may be prescribed.

SECTION 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 sub-section (2) shall be final.

SECTION 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) If the amount of compensation determined by the competent authority under sub-section (1) is not acceptable to either of the parties, the amount of compensation shall, on application by either of the parties to the District Judge within the limits of whose jurisdiction the land or any part thereof is situated, be determined by that District Judge.

(6) The decision of the District Judge under sub-section (2) or sub-section (5) shall be final."

RULE 8: MODE OF SERVICE OF NOTICE:

(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 know place of residence or business.

(2) Where the serving officer delivers or tenders the copy of the notice, letter under sub-rule (1), he shall require the signature of the person to whom the copy is to be delivered or tendered to an acknowledgment of service endorsed on the original. (3) Where the person or the adult member if the family of such family refuses to sign the acknowledgment of where the serving officer, after using all the 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 if 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, as the case may be."

9. Counter is filed on behalf of respondent No.2, contending that the subject matter pertaining to the Paradip - Hyderabad Pipeline is having national importance, laying of said pipeline in East Godavari District is completed up to 90% and in view of the interim order, dated 27.02.2019 passed in the Writ Petition, the entire work was stalled. It is further submitted that the Government of India, in the interest of Public undertook transportation of petroleum products from Paradip in the State of Odisha via State of Andhra Pradesh to Hyderabad in the state of Telangana through pipe line project named "Paradip-Hyderabad Pipeline Project", pursuant to the same a notification was issued in S.O.No.1071 "E", dated 18.04.2017, published in the Gazette of India, under section 3(1) of the P&MP Act, 1962, declaring its intention to acquire the right of use in the lands.

10. The 2nd respondent being competent authority, initiated the process of determining the compensation payable for the petitioners land for acquiring right of use, and as per the procedure prescribed under section 3(1) of the P&MP Act, 1962, issued notices calling for the objections, upon which, fifteen affected farmers filed their objections and petitioner No.21 herein is among one of them. Subsequently, as per section 5(2) of the P&MP Act, 1962 all the objections were heard on 10.11.2017 at RDO Office, Peddapuram East Godavari District, with due intimation to the objectors, but the petitioner No.21 not turned up for hearing and the objection was disposed of on merits and orders were passed on 30.11.2017. Thereafter notification dated 11.04.2018 under section 6(1) of the P&MP Act, 1962 was issued to the petitioners declaring their lands as being acquired for the right of use for the purpose of laying the pipeline. But the petitioners have refused to accept the notices issued under section 6(1) of the P&MP Act. Accordingly, Panchanama was conducted in the lands of the petitioners, in the presence of Village Revenue Officer concerned, and an extent of Ac.20-89 cents (84539 Sq.Mts) has been proposed for acquisition under ROU in Dharamavaram Village of Prathipadu Mandal in East Godavari District. Thus the total affected farmers for the Scheduled land is 77 and out of them, 33 farmers given consent for an extent of Ac.8-69 cents.

11. Finally it is submitted that 2nd respondent being competent authority after considering the objections submitted by the petitioner No.21, considered and passed order dated 30.11.2017 and said order is made under section 5(2) of the P&MP Act, 1962 and attained finality under section 5(3), accordingly as per section 6(1) of the P&MP Act, notification was issued on 11.04.2018 and published in the gazette of India. As per section 6(2) of the P&MP Act, the Right of User in the land will absolutely in the Central Government, free from all encumbrances. Subsequently award was passed determining the compensation payable to land owners on 20.02.2019. Thus, all the proceedings under the provisions of the P&MP Act, 1962 were concluded by following the due process of law, and the petitioner filed the present Writ Petition on 26.02.2019 long after a year, therefore, prays to dismiss the Writ Petition.

12. Further submitted that on earlier occasion, the affected farmers in Dharamvaram Village approached this Court on the same issue vide W.P.No.2620 of 2019, wherein this court passed order dated 01.03.2019 and prays to dispose this writ petition in terms of the said Writ Petition.

13. Learned counsel appearing for the petitioners has vehemently contended that the authorities have violated all the provisions of the Act, they have not considered the objections submitted by the petitioners, more specifically of the petitioner No.21. In fact, as per Rule 8 of the act, any notice or letter issued or any order passed may be served by delivery of tendering a copy of such notice, letter or order, to the persons to whom it is intended, and the serving officer shall require to get the signature of the person, to whom the copy is so delivered.

14. In view of the above rule, the authorities have to show that the notice was served on the petitioners, except an acknowledgement of the petitioner No.1, the other petitioners were not served. Hence, there is violation of principles of natural justice and against the Rules prescribed under the Act, more particularly Rule 8 of the Act.

15. Apart from that they have also requested the authorities for change of alignment, if the lands are acquired adjacent to the Canal, it will reduce the costs of the Project, as well as more beneficial to the respondents also. Without considering the objections raised by the petitioners, the 2nd respondent authority has issued orders mechanically under section 6(1) of the Act, on 30.11.2017, hence, requested to set aside the entire notification and consequently direct the respondents to issue notices to the petitioners as contemplated under the P&MP Act, 1962.

16. Refuting to the contentions, the standing counsel appearing on behalf of the 2nd respondent has mainly contended that the Writ petition itself is not maintainable, because they have passed an award on 20.02.2019, but the Writ Petition is filed after the final award is passed i.e. on 26.02.2019. As per Section 10 (2) of the Act, 1962, once the award is passed, if any dispute with regard to the amount of compensation determined by the competent authority under section 10 (1) of the Act, the parties has to approach the District Judge, within the limits of whose jurisdiction, the land or any part there on, is situated. In the instant case, after passing the final order/award, without questioning the final order, the present Writ Petition is filed. Hence, the same is liable to be dismissed.

17. The petitioners have filed the present Writ Petition with malafide intention to stall the entire project, whereas they contend in one way that the notices were not served on them, but in the affidavit they themselves have stated that they have submitted a representation to the District Collector, to go for an alternative way for proposing pipe line through Dharmavaram Village. The said representation is made on 16.12.2017, after lapse of two years, present Writ Petition is filed without questioning the orders under section 6(1) of the Act, on 30.11.2017 or the final award, they are not at all interested to pursue the objections, only to stall the proceedings, after passing the final award, they have filed the present Writ Petition with misconceived facts.

18. To support the above contentions, the learned counsel relied on the judgement P.CHINNANNA AND OTHERS VS. STATE OF A.P AND OTHERS¹. Wherein the Honourable Apex Court, held that "In fact, in relation to acquisition proceeding involving acquisition of land for public purposes, the Court concerned must be averse to entertain Writ Petitions involving the challenge to such acquisition where there is avoidable delay or latches since such acquisition, if set aside, would not only involve enormous loss of public money but also cause undue delay in carrying out projects meant for general public good. When a fresh ground of attack to acquisition proceedings, even if it involves purely a question of law, its entertainment cannot be governed by a principle different from that which governs entertainment of writ petitions before the High Court of proceedings arising there from before this Court under Article 136 of the Constitution".

19. In view of the ratio laid down by the Honourable Apex Court, therein, in my considered opinion when the acquisition is made from the general public at large, the Court should restrain in entertaining the Writ Petition that too after completing the procedure, contemplated under the P&MP Act,1962, and after passing final award, whereas the petitioners have not approached this Court immediately after passing the orders under section 5 of the P&MP Act, or after notification under section 6(1) of the Act. (1994) 5 SCC 486

20. As seen from the record, after lapse of two years, they came to this Court, that too without assailing any of the proceedings, which itself clearly establishes that the intention of the petitioners is not for violation of the provisions of the Act, only to stall the project.

21. In view of the observation made by the Honourable Supreme Court in the above decision, it is clear, in relation to acquisition proceeding involving acquisition of land for public purposes, the Court concerned must be averse to entertain Writ Petitions involving the challenge to such acquisition where there is avoidable delay or latches, since such acquisition, if set aside would not only involve enormous loss of public money but also cause undue delay in carrying out projects meant for general public good.

22. In view of the above discussion, the Writ Petition is devoid of merits, accordingly the interim stay granted on 27.02.2019 is vacated. If the petitioners have any grievance against the award passed under section 10(1) of the P & MP Act, 1962, they are at liberty to file application under section 10(2) of the P& MP Act, 1962, before the concerned District Judge, within whose jurisdiction the subject lands are situated, on filing such application, the District Judge, shall consider the application and pass appropriate orders on merits.

Accordingly the Writ Petition is disposed of. There shall be no order costs.

JUSTICE D. RAMESH Date: 07.01.2020 Pnr THE HONOURABLE
SRI JUSTICE D.RAMESH WRIT PETITION NO.2521 OF 2019 Date: 07-01-2021 Pnr