

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10019 OF 2016
(Arising out of SLP(C) No.2725 of 2010)

Laljibhai Kadvabhai Savaliya & Ors.

....Appellants

Versus

State of Gujarat & Ors.

.... Respondents

With

CIVIL APPEAL NO. 10020 OF 2016
(Arising out of SLP(C) No. 2226/2010)

CIVIL APPEAL NOS. 10021-10050 OF 2016
(Arising out of SLP(C) Nos. 2228-2257/2010)

and

CIVIL APPEAL NOS. 10051-10068 OF 2016
(Arising out of SLP(C) Nos. 2260-2277/2010)

J U D G M E N T

Uday Umesh Lalit, J.

1. Leave granted. These appeals take exception to the common judgment and order dated 13.07.2009 passed by the High Court of Gujarat at Ahmedabad in Special Civil Application Nos.5107 of 2008, 4321 of 2008, 824-853 of 2008

and 899-916 of 2008. Since all these appeals raise identical issues, they are dealt with and disposed of by this common judgment.

2. The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (herein referred to as the “PMP Act”) was enacted by Parliament to provide for the acquisition of right of user in land for laying pipelines for the transport of petroleum and minerals and for incidental matters, with following Statement of Objects and Reasons :-

“As a result of the implementation of plans for the development of petroleum resources in the country, it is anticipated that in the next few years there will be a substantial increase in the production of crude oil, natural gas and petroleum products by the public sector oilfields and refineries in India. It has therefore become necessary to lay petroleum pipelines in the country to serve as an efficient and cheap means of transportation and distribution of petroleum and petroleum products.

2. Although land can be acquired outright for laying such pipelines under the Land Acquisition Act, 1894 the procedure for such acquisition is long-drawn and costly. Since the petroleum will be laid underground outright acquisition of land is not necessary. Therefore, in the case of these pipelines it is considered sufficient to acquire the mere right of user in the land for laying and maintaining the pipelines. The Bill seeks to achieve the above purpose.

3. The main features of the Bill are—

- (i). No right of user of land can be acquired for the purpose of laying pipelines unless the Central Government declares its intention by Notification in the Official Gazette, and unless objections, if any, filed within twenty-one days of that Notification are disposed of by the competent authority.

- (ii). When final declaration about acquisition is made the right to use land for the purpose of laying pipelines will vest in the

Central Government, State Government or the corporation, as the case may be but notwithstanding such acquisition, 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 declaration by the Central Government. But after the date of acquisition he shall not construct any building or any other structure or construct or excavate any tank, well, reservoir or dam or plant any tree, on that land.

iii). Compensation for the damage, loss or injury sustained by any person interested in the land shall be payable to such person. Besides this, compensation calculated at ten per cent of the market value of the land on the date of the preliminary Notification is also payable to the owner and to any other person whose right of enjoyment in the land has been affected by reason of the acquisition. The compensation in both cases is to be determined by the competent authority in the first instance and an appeal lies from its decision to the District Judge.”

3. Section 2 of the PMP Act defines certain expressions. In terms of Section 3, the Central Government is empowered to acquire the right of user in any land. Under Section 4, it is lawful for any authorized person to enter upon and cause survey in respect of such land. Under Section 5, any person interested in the land can object to the laying of the pipelines under the land. The objections so preferred are to be dealt with by the Competent Authority who would then make a report for the decision of the Central Government. Under Section 6 if the Central Government is satisfied that the land is required for laying any pipeline for transport of petroleum or any mineral, it may declare so by Notification in the Official Gazette, whereafter the right of user shall vest absolutely in the Central Government or in the State Government or the

Corporation as directed. After the right of user stands so vested it is lawful to lay pipelines in terms of Section 7. Section 9 incorporates certain restrictions regarding the use of such land and Section 10 lays down principles for award of compensation in respect of acquisition of the right of user of any land and also in respect of any damage or loss sustained by any person interested in the land. The relevant Sections namely Sections 2, 3, 6, 7, 9, 10 and 18 of the PMP Act are as under:-

“2. Definitions. – In this Act, unless the context otherwise requires–

(a) "competent authority" means any person or authority authorised by the Central Government, by Notification in the Official Gazette, to perform the functions of the competent authority under this Act and different persons or authorities may be authorised to perform all or any of the functions of the competent authority under this Act in the same area or different areas specified in the Notification;

(b) "corporation" means anybody corporate established under any Central, Provincial or State Act, and includes—

(i) a company formed and registered under the Companies Act, 1956; and

(ii) a company formed and registered under any law relating to companies formerly in force in any part of India;

(ba) "minerals" have the meanings assigned to them in the Mines Act, 1952 (35 of 1952), and include mineral oils and stowing sand but do not include petroleum;

(c) "petroleum" has the same meaning as in the Petroleum Act, 1934 (30 of 1934), and includes natural gas and refinery gas;

(d) "prescribed" means prescribed by rules made under this Act.

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.

6. Declaration of acquisition of right of user.– (1) Where no objections under subsection (1) of section 5 have been made to the competent authority within the period specified therein or where the competent authority has disallowed the objections under sub-section (2) of that section, that authority shall, as soon as may be, either make a report in respect of the land described in the Notification under sub-section (1) of section 3, or make different reports in respect of different parcels of such land, to the Central Government containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government and upon receipt of such report the Central Government shall if satisfied that such land is required for laying any pipeline for the transport of petroleum or any mineral, declare, by Notification in the Official Gazette, that the right of user in the land for laying the pipelines should be acquired and different declarations may be made from time to time in respect of different parcels of the land described in the Notification issued under sub-section (1) of section 3, irrespective of whether one report or different reports have been made by the competent authority under this section.

(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) Where in respect of any land, a Notification has been issued under sub-section (1) of section 3 but no declaration in respect of any parcel of land covered by that Notification has been published under this section within a period of one year from the date of that Notification, that Notification shall cease to have effect on the expiration of that period.

(3A) No declaration in respect of any land covered by a Notification issued under subsection (1) of section 3, published after the commencement of the Petroleum Pipelines (Acquisition of Right of User in Land) Amendment Act, 1977 (13 of 1977), shall be made after the expiry of three years from the date of such publication.

(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 in 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.

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 servants and workmen to enter upon the land and lay pipelines or to do any other act necessary for the 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) any land at a depth which is less than one metre from the surface;

(ia) for laying pipelines for the transport of petroleum, it shall be lawful for any person authorised by the Central Government or such State Government or corporation to use such land for laying pipelines for transporting any mineral and where the right of user in any land has so vested for laying pipelines for transporting any mineral, it shall be lawful for such person to use such land for laying pipelines for transporting petroleum or any other mineral; and

(ii) such land shall be used only for laying the pipelines and for maintaining, examining, repairing, altering or removing any such pipelines or for doing any other act necessary for any of the aforesaid purposes or for the utilisation of such pipelines.

(2) If any dispute arises with regard to any matter referred to in paragraph (b) or paragraph (c) of the proviso to clause (i) of sub-section (1), the dispute shall be referred to the competent authority whose decision thereon shall be final.

9. Restrictions regarding the use of land.— (1) The owner or occupier of the land with respect to which a declaration has been made under sub-section (1) of section 6 shall be entitled to use the land for the purpose for which such land was put to use immediately before the date of the Notification under sub-section (1) of section 3:

Provided that, such owner or occupier shall not after the declaration under sub-section (1) of section 6 –

(i) construct any building or any other structure;

(ii) construct or excavate any tank, well, reservoir or dam; or

(iii) plant any tree, on that land.

(2) The owner or occupier of the land under which any pipeline has been laid not do any act or permit any act to be done which will or is likely to cause any damage in any manner whatsoever to the pipeline.

(3) Where the owner or occupier of the land with respect to which a declaration has been made under sub-section (1) of section 6-

(a) constructs any building or any other structure, or

(b) constructs or excavates any well, tank, reservoir or dam, or

(c) plants any tree,

on that land, the Court of the District Judge within the local limits of whose jurisdiction such land is situate may, on an application made to it by the competent authority and after holding such inquiry as it may deem fit, cause the building, structure, reservoir, dam or tree to be removed or the well or tank to be filled up, and the costs of such removal or filling up shall be recoverable from such owner or occupier in the same manner as if the order for the recovery of such costs were a decree made by that Court.

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 subsection (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.

(3) The competent authority or the District Judge while determining the compensation under sub-section (1) or sub-section (2), as the case may be, shall have due regard to the damage or loss sustained by any person interested in the land by reason of—

(i) the removal of trees or standing crops, if any, on the land while exercising the powers under section 4, section 7 or section 8;

(ii) the temporary severance of the land under which the pipeline has been laid from other lands belonging to, or in the occupation of, such person; or

(iii) any injury to any other property, whether movable or immovable, or the earnings of such persons caused in any other manner:

Provided that in determining the compensation no account shall be taken of any structure or other improvement made in the land after the date of the Notification under sub-section (1) of section 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 subsection (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) The market value of the land on the said date shall be determined by the competent authority and if the value so determined by that authority is not acceptable to either of the parties, it shall, on application by either of the parties to the

District Judge referred to in subsection (2), be determined by that District Judge.

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

18. Application of other laws not barred. – The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force relating to acquisition of land.

4. In exercise of the powers conferred by Section 3 of the PMP Act, the Central Government by Notification published on 07.01.2006 in the Gazette of India declared its intention to acquire the right of user in respect of certain lands.

Said Notification was as under:-

“Whereas it appears to the Central Government that it is necessary in the public interest that for the transportation of natural gas through an interconnection between Jamnagar-Bhopal and Kakinada-Hyderabad-Goa pipeline a pipeline should be laid by Gas Transportation and Infrastructure Company Ltd¹.

And whereas it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed to this Notification.

Now, therefore, in exerciser of the powers conferred by sub-section (1) of Section 3 of the Petroleum and Minerals

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Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein.

Any person interested in the land described in the said Schedule may, within twenty one days from the date on which the copies of this Notification as published in the Gazette of India under sub-section (1) of Section 3 of the said Act, are made available to the general public, object in writing to the acquisition of the right of user therein for laying of the pipeline under the land to Shri A.K. Sanghavi, Competent Authority, Gas Transportation and Infrastructure Company Limited Pipeline Project, Anand Mahal Apartment, Opposite to Bhulka Bhavan School, Anand Mahal Road, Surat-395009, Gujarat.”

The Notification set out details of survey numbers of lands from different villages and the extent of land in respect of which right of user was sought to be acquired.

5. In these matters we are concerned with Block Nos.331, 342 and 364 of Village Gothan, District Surat which were mentioned in the aforesaid Notification published on 07.01.2006. In so far as Block No.331 is concerned, non-agricultural permission was granted on 03.03.1982. However, since there was no construction within the stipulated time, this non-agricultural permission is said to have lapsed by efflux of time. In any case the land had always been shown as agricultural land in Revenue Records. The appellants Nos.1 to 3 in appeal arising from SLP(Civil) Nos.2228-2257 of 2010 are stated to have purchased land admeasuring 29,370 sq.mtrs. and 8,531 sq.mtrs. from Block No.331 and thereafter sold sub-plots to about 70 persons including appellants Nos.4 to 29 in that appeal. The appellant No.1 in appeal

arising out from SLP(Civil) Nos.2260-2277 of 2010 along with his brother is said to have purchased land admeasuring 50,691 sq.mtrs. from Block Nos. 342 and 364 and sold individual plots from that land to 68 persons including appellant Nos.2 to 18 in said appeal.

6. On 07.03.2006, One Mr. V.I. Gohil, retired Deputy Collector was appointed as Competent Authority vide Notification dated 7.03.2006 issued by the Central Government which was published on 11.03.2006 in the Official Gazette. Thereafter all the recorded owners were sought to be served with notices inviting them to prefer objections to the proposed acquisition of right of user. Some of the land-owners filed their objections in respect of proposed acquisition. The Competent Authority had fixed the hearing on 2.08.2007. After considering the objections and hearing those who were present including appellant No.1 Laljibhai, the Competent Authority forwarded its Report dated 7.08.2007 to the Central Government. The report indicates that the Competent Authority had held meetings with the owners/occupiers as well as the representatives of RGTIL. The report further shows that the average rate at which the lands in village Gothan were sold during the years 2002-2005 was Rs.13.40 per sq.mtr. The compensation determined by consent was Rs.181/- per sq.mtr. including damages under Section 10(1) for lands other than those falling in industrial zone. For those lands falling in industrial zone, the compensation was increased to the level of Rs.201/- per

sq.mtr. by consent. Ninety percent of this compensation was paid in advance. Thereafter, spot verification was undertaken and photographs were taken which show that there was no construction on the lands in question. In the meantime, by order dated 29.03.2007 District Panchayat Office, Revenue Branch, Surat had accorded permission for conversion of certain lands including Block Nos.342 and 364 of village Gothan to non-agricultural use for the industrial purposes. The order shows that the steps to seek such permission were taken and the recommendations in that behalf were made after the publication of the aforesaid Notification on 7.01.2006.

7. After considering the report of the Competent Authority, by Notification dated 17.11.2007 issued in exercise of the powers conferred by Section 6 of the PMP Act, the Government of India directed that the right of user in respect of land mentioned in said Notification dated 17.11.2007 shall stand vested in M/s Reliance Gas Transportation Infrastructure Ltd. (“RGTIL” for short) free from all encumbrances. The Notification reads as under:-

“S.O. Whereas by Notification of the Government of India in the Ministry of Petroleum and Natural Gas Number S.O. 41 dated 06th January, 2006, issued under the sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in the land, specified in the Schedule appended to that Notification for the purpose of laying Kakinada-Hyderabad-Uran-Ahmedabad gas pipeline for transportation of natural gas by M/s Reliance Gas Transportation Infrastructure Limited to various Consumers of District Surat in the State of Gujarat

And, whereas copies of the said Gazette Notification were, made available to the public on or before 08th September, 2007;

And whereas, the objections received from the public to the laying of the pipeline have been considered and disallowed by the Competent Authority;

And whereas the competent authority has, under sub-section (1) of Section 6 of the said Act, submitted reports to the Government of India;

And whereas the Central Government, after considering the said report and on being satisfied that the said land is required for laying the pipeline, has decided to acquire the right of user therein;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this Notification is hereby acquired for laying the pipeline;

And, further, in exercise of the powers conferred by sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the right of user in the said land for laying the pipeline shall, instead of vesting in the Central Government, vest, on the date of the publication of the declaration, in M/s Reliance Gas Transportation Infrastructure Limited free from all encumbrances.”

The Schedule appended to the Notification included Block Nos.331, 342 and 364 of village Gothan and the extent of land in respect of which right to user was acquired from these Blocks was mentioned as 2295 sq.mtrs., 5047 sq. mtrs. and 3424 sq. mtrs respectively.

- 8.** In the physical verification of Block Nos.342 and 364 carried out in January, 2008, it was seen that some of the owners had commenced construction

activities. A communication was therefore addressed by the Competent Authority on 08.01.2008 to the District Development Officer, Surat annexing Notifications issued under Sections 3 and 6 of the PMP Act. Around this time the owners/occupiers of Block Nos.331, 342 and 364 filed Special Civil Application Nos.824-898 of 2008 and Nos.899-966 of 2008 before the High Court of Gujarat seeking declaration that RGTIL had no authority to enter the lands of said owners/occupiers and that it be accordingly restrained. Notices were issued in the aforesaid Special Civil Applications on 04.02.2008 and according to the respondents therein, it was only then it came to their knowledge that non-agricultural permissions were granted on 03.03.1982 in respect of Block No.331 and on 29.03.2007 in respect of Block Nos.342 and 364. RGTIL challenged these non-agricultural permissions by filing Special Civil Application Nos.2252 of 2008 and 3380 of 2008. The High Court by its interim orders dated 06.02.2008 in Special Civil Application No.2252 of 2008 and 21.02.2008 in Special Civil Application No.3380 of 2008 stayed the operation of non-agricultural permissions in respect of aforesaid Block Nos.342, 364 and 331. These interim orders as well as the orders refusing interim relief in Special Civil Application Nos.8992 and 996 of 2008 preferred by the owners/occupiers themselves, were challenged by filing Letters Patent Appeals. In those appeals, the Division Bench of the High Court permitted RGTIL who had by then started laying the pipelines to cover

the ditches and to produce the memorandum to that effect in Special Civil Application Nos.899-966 of 2008 and in 2252 of 2008.

- 9.** The owners/occupiers of Block Nos.342 and 364 also preferred Special Civil Application No.5107 of 2008 on or about 24.03.2008 challenging the Notification issued by the Central Government under Section 6 of the PMP Act. This Special Civil Application No.5107 of 2008 was heard along with other Special Civil Applications referred to herein above and the High Court by its order dated 11.07.2008 held that the balance of convenience was in favour of RGTIL and as such the prayers for interim relief by the owners/occupiers were rejected. The High Court recorded the statement of the Counsel who appeared for RGTIL that it would deposit with the Competent Authority provisional compensation @ Rs.300/- per sq.mtr. for the lands including constructions thereon. Accordingly provisional compensation at the aforesaid rate was deposited by RGTIL with the Competent Authority.
- 10.** Thereafter, number of petitioners namely 70 from Special Civil Application No.5107 of 2008, 150 from Special Civil Application No.4321 of 2008, 75 from Special Civil Application Nos.824-853 of 2008 and 68 from Special Civil Application Nos.899-916 of 2008 withdrew their challenge, leaving the remaining petitioners to contest the matter. The Division Bench of the High Court by its judgment and order dated 13.07.2009, which is presently under appeal, disposed of aforesaid Special Civil Application

Nos.824-853, 899-966, 5107 and 4321 of 2008 filed by the owners/occupiers and Special Civil Application Nos.2252 and 3380 of 2008 filed by RGTIL with following observations:-

“Learned counsel for the landowners fairly submitted that none of the petitioners have challenged the validity of Section 3(1) Notification. No grievance is also raised before us in these proceedings against the order passed by the competent authority under sub-section (2) to Section 5 of the Act.....

We find that the pipelines have already been laid over the properties of the petitioners. Petitioners had not challenged at any point of time the Notification issued under Section 3(1) of the Act. Majority of the petitioners have withdrawn from the writ petitions as a whole. So far as remaining petitioners are concerned, it seems that their grievance is only about inadequacy of compensation. Section 10 of the Act specifically says that if any party has any grievance with regard to any damage, loss, injury or inadequacy of compensation, they can always approach the District Judge within the limits of whose jurisdiction the land is situated. Since effective remedy is provided under the Act, this Court under writ jurisdiction is not justified in expressing any opinion regarding various contentions raised by the petitioners, especially when Section 3(1) Notifications has not been challenged and also due to the fact that pipelines have already been laid down.

Under the circumstances, all these matters are disposed of with a direction that if the petitioners are aggrieved they can approach the concerned District Judge claiming compensation and obtain appropriate orders in accordance with law.”

11. These appeals at the instance of the owners/occupiers challenge the correctness of the decision of the High Court. RGTIL however accepted the judgment and did not prefer any challenge. It may be mentioned that the very same owners/occupiers had also filed Writ Petition No.569 of 2009 in this

Court challenging the vires of some of the provisions of the PMP Act. However at the request of the petitioners, said Writ Petition No.569 of 2009 was allowed to be withdrawn on 07.01.2010. While the aforesaid matters were pending, in another batch of matters the question of bias of the Competent Authority was put in issue. Those matters were allowed by this Court by its decision reported in *Trilok Sudhirbhai Pandya v. Union of India and others.*² This Court directed Union of India to appoint another person as Competent Authority for determination of compensation but made it clear that the judgment therein would not affect any orders with regard to acquisition of right of user.

12. On or about 05.11.2011, an application was filed on behalf of the appellants herein praying that appropriate directions be issued to the Competent Authority to decide the compensation payable to the owners/occupiers under Section 9 as well as under Section 10 at the time of taking actual possession. Thereafter, another application namely I.A. No.5 of 2013 was filed seeking permission to raise additional grounds. By raising these grounds, the appellants submitted that PMP Act and the rules framed thereunder were violative of the constitutional framework. This Court by its order dated 10.02.2014 issued notices to State of Gujarat as well as to the

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learned Solicitor General of India in aforesaid I.A. No.5 of 2013 and by subsequent order dated 02.02.2016, said application was allowed. Union of India and other respondents were permitted to file their affidavits in reply and it was clarified that it would be permissible for any other interested person(s) to join these proceedings. Further, by order dated 18.03.2016, this Court stayed further proceedings before the Competent Authority.

13. Before we deal with the challenge raised in these appeals, it must be noted that none of the landowners had challenged the validity of Section 3(1) Notification issued in the instant case nor any grievance was raised against the order passed by the Competent Authority under Section 5(2) of the PMP Act. Though a substantive Writ Petition challenging the vires of some of the provisions of the PMP Act was filed, that petition was also withdrawn, without seeking any liberty. Even then, we have heard the submissions regarding validity of the PMP Act. We have heard Mr. Amar Dave, learned Advocate in support of the appeals, Mr. Ranjit Kumar, learned Solicitor General of India, Dr. A.M. Singhvi and Mr. Paras Kuhad, learned Senior Advocates for RGTIL, Mr. Harin Rawal learned Senior Advocate for the Competent Authority, Mr. Preetesh Kapoor, learned Advocate for State of Gujarat and Mr. K.K. Venugopal, learned Senior Advocate for the intervener namely Gujarat State Petronet Ltd.

14. On behalf of the appellants, it was submitted:-

A. Though under the PMP Act right of user simplicitor in respect of notified lands is acquired, for all practical purposes the owners/occupiers stand deprived of their proprietary interest and enjoyment of the lands in toto. According to Section 9 the user of the land stands frozen for all times to come and the owners/occupiers would not be allowed to use or utilize the land for any construction. The acquisition of right of user thus amounts to complete deprivation.

B. The PMP Act is a legislation to bypass the due process of law contemplated under the Land Acquisition Act, 1894. The entire exercise contemplated under the PMP Act is nothing but acquisition of the entire interest of the owners/occupiers in respect of such land. Reliance was placed on the decision of this Court in *H.D. Vora v. State of Maharashtra and others*.³

C. The PMP Act was enacted in 1962 when the activities like production of crude oil, natural gas and petroleum products as well as transportation and distribution of petroleum and petroleum products were exclusively in public sector. The then Industrial Policy was relied upon in support of this submission. Additionally, reliance was also

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placed on the Statement of Objects and Reasons to submit that certain expressions like “Corporation” appearing in Section 2(b) ought to be construed to confine to Corporations in public sector and the PMP Act ought not to be invoked in favour of a company in private sector.

D. Certain provisions of the PMP Act were highlighted to show that there was complete absence of requisite framework leading to unfair treatment to the land owners.

1. The Competent Authority is to discharge important functions like hearing of objections, making a report to the Central Government and deciding the quantum of compensation in the first instance. However unlike other *pari materia* enactments no qualifications are prescribed for appointment of a person as Competent Authority.

2. Upon publication of the declarations under Section 6(1), the right of user in the lands stands vested free from all encumbrances. The statutory scheme shows that after such vesting, the compensation for the loss or injury suffered under Sections 4, 7 and 8 and compensation under Section 10 is to be determined. Neither the Act nor the Rules contemplate any period within which compensation for such damage, loss or

injury and compensation for acquisition of right of user is to be deposited or paid.

3. There are no guidelines in the PMP Act that the pipelines should be laid in such a way so as to cause least amount of damage or loss to the occupiers.

15. In reply, it was submitted by the learned Solicitor General and all other Counsel:-

A. As laid down by this Court in *Jilubhai Nanbhai Khachar and others v. State of Gujarat and another*⁴, the right of user is a property right which can be acquired. Further, it is not necessary that the acquisition should be of “whole” of property rights or ownership rights. The acquisition could be “partial” and the principles laid down in the PMP Act are designed to give fair and just compensation for acquisition of such right of user.

B. Proviso to Section 7(1) of the PMP Act mandates that no pipeline shall be laid under any land which was used for residential purposes, or any land wherein any permanent structure was in existence before the date on which Notification under Section 3(1) was issued or any land which is appurtenant to a dwelling house. The pipeline would be laid

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under lands which are primarily fallow lands or those used for agricultural purposes. After the pipeline is so laid, the land could certainly be used for the purpose for which it was used before such Notification was issued. The agricultural operations could still be continued and the ownership in respect of land is left untouched. The vesting provisions of the PMP Act make it clear that it is an Act relating to acquisition of a limited right namely the right of passage under the sub-soil to enable the laying of pipelines. It would be incorrect to term the PMP Act to be acquiring proprietary interest of the land owners in the land or taking over their right to possess the lands in question.

C. Relying on enactments such as the National Highways Act, 1956, the Railways Act, 1989, the Delhi Metro Railway (Construction of Works) Act, 1978, the Indian Telegraph Act, 1885 it was submitted that for sub-serving the societal needs, right of user simpliciter is required to be acquired rather than acquiring the entirety of interest in the land itself.

D. The definition of “Corporation” is wide enough to include Companies in Private Sector. With the expanding frontiers where the private sector is allowed entry in production and manufacture of petroleum, petroleum products and natural gas as well as transportation thereof, the definition of “Corporation” need not to be given any

restricted meaning. Going by the Expression of Interest invited from interested parties for usage of the pipelines in the present case, the pipeline was required to have such design capacity so as to offer on common carrier basis. Thus the pipeline itself would be sub-serving public interest. The length of the pipeline in question from Kakinada of Gujarat is over 1470 kilometers and if the lands are to be acquired under Land Acquisition Act at every stage, it would lead to enormous escalation in costs to the detriment of public interest.

E. The PMP Act and the Rules provide sufficient guidelines relating to computation of compensation and deposit thereof. Section 10(1) of the PMP Act provides for compensation for diminution in market value as well and thus adequately protects the interest of the land owners. In any case, ninety percent of the compensation assessed to be payable to land owners in the present case was already deposited. Meetings were held with the land owners and the representatives of RGTIL and the amount of compensation was arrived at. As against the prevailing rates of Rs.13.40 per sq.mtr., the compensation was given at the rate of Rs.181/- per sq.mtr. for lands falling in zones other than industrial zone and the compensation was given at the rate of Rs.201/- per sq.mtr. in respect of lands falling in industrial zone.

16. Under the provisions of the PMP Act, what is taken over or acquired is the right of user to lay and maintain pipelines in the sub-soil of the land in question. The provisions of the PMP Act get attracted upon the requisite Notification having been made under Section 3. If it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum or any minerals any pipeline be made and for the purposes of laying such pipelines it is necessary to acquire the right of user in any land, it may by Notification issued in exercise of power under Section 3 declare its intention to acquire such right of user. The Act then provides for making of objections by those interested in land, which objections are thereafter to be dealt with by the Competent Authority. The report made by the Competent Authority is then placed before the Central Government for appropriate decision and after considering such report and the relevant material on record, if the Central Government is satisfied that such land is required for laying any pipeline for the transport of petroleum or any other mineral, it may declare by Notification in the official gazette that the right of user in the land for laying the pipeline be acquired. Upon the publication of such declaration under Section 6 the right of user in the land so specified vests absolutely in the Central Government or in the State Government or in the Corporation free from all encumbrances. Thus what stands acquired is the right of user in the land in question for laying pipeline for the transport of petroleum or any

mineral and not the land itself. The Statement of Objects and Reasons throws light on this facet of the matter and shows that although the land could be acquired outright for laying such pipelines under the Land Acquisition Act, 1894, such procedure for acquisition would be costly. For instance, as the facts of the present case disclose the pipeline from Kakinada to Jamnagar would be over 1470 kilometers in length. If the lands were to be acquired outright, it would lead to tremendous increase in costs finally reflecting in escalation of the costs of petroleum or minerals. At the same time, if at every stage outright acquisition is to be insisted upon, many agriculturists would stand deprived of their holdings causing great prejudice. The Act is thus designed to achieve the purpose of laying of the pipelines for petroleum and minerals as “efficient and cheap means of transportation and distribution of petroleum and petroleum products”. At the same time Section 18 specifically lays down that the provisions of the PMP Act shall be in addition and not in derogation to any other law for the time being in force relating to acquisition of land. Thus in a given case where the circumstances and the occasions so demand, a resort could still be taken to acquire the lands by relying upon the general law of acquisition under the provisions of the Land Acquisition Act, 1894. For instance, for monitoring the pressure gauges or in cases where pipelines are branching in different directions, implementations to regulate the flow may require permanent establishments necessitating acquisition of the

land itself rather than acquisition of a mere right of user. The PMP Act is thus a special enactment designed to achieve the purpose of laying pipelines as efficient means of transportation and with this idea it is only the right of user in the land to lay such pipelines is acquired.

17. Section 7 stipulates that no pipeline be laid under any land which, immediately before the date of Notification under Section 3(1) was used for residential purposes, or any land on which there is permanent structure in existence or any land which is appurtenant to a dwelling house. It is clear that only such lands are to be considered for acquisition of right of user therein which are either lying fallow or are being put to agricultural use. It is obvious that care is taken to cause least possible damage to the holdings of the concerned land-owners. According to Section 9, after the pipelines are laid, the owner/occupier could use the land for the purpose for which it was being used before the Notification under Section 3(1) was issued. Section 9 certainly, imposes some restrictions in the sense that such owner/occupier cannot thereafter construct any building or any other structure or construct or excavate any lake, reservoir or dam or plant any tree on such land. Barring such restrictions, the owner/occupier is within his rights to use the land for the same purpose for which the land was earlier being used. The point is clear that neither the ownership in respect of the land itself nor the right to occupy or possess that land is taken over permanently and those rights continue to

remain with the owner/occupier. What is taken over is only the right of user namely to lay pipelines in the sub-soil of the land in question and the restrictions imposed by Section 9 are designed to safeguard and secure the pipelines underneath.

18. As laid down by this Court in *Jilubhai Nanbhai Khachar and others* (Supra), the term property in legal sense means an aggregate of rights which are guaranteed and protected by law and would extend to entirety or group of rights inhering in a person. It was observed by this Court as under:

“42. Property in legal sense means an aggregate of rights which are guaranteed and protected by law. It extends to every species of valuable right and interest, more particularly, ownership and exclusive right to a thing, the right to dispose of the thing in every legal way, to possess it, to use it, and to exclude everyone else from interfering with it. The dominion or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects is called property. The exclusive right of possessing, enjoying, and disposing of a thing is property in legal parameters. Therefore, the word ‘property’ connotes everything which is subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate or status. Property, therefore, within the constitutional protection, denotes group of rights inhering citizen’s relation to physical thing, as right to possess, use and dispose of it in accordance with law. In Ramanatha Aiyar’s *The Law Lexicon*, Reprint Edn., 1987, at p.1031, it is stated that the property is the most comprehensive of all terms which can be used, inasmuch as it is indicative and descriptive of every possible interest which the party can have. The term property has a most extensive signification, and, according to its legal definition, consists in free use, enjoyment, and disposition by a person of all his acquisitions, without any control or diminution, save only by the laws of the land.”

19. We therefore proceed on the premise that the right of user sought to be taken over under the provisions of the PMP Act amounts to acquisition of one of the facets of property rights which inhere in the owner/occupier. For the acquisition of such right of user, the compensation is prescribed in terms of Section 10 of the PMP Act. There are two elements of compensation under Section 10. The first part deals with any damage, loss or injury sustained by any owner/occupier as a result of exercise of powers conferred by Sections 4, 7 and 8 of the PMP Act that is to say the actual damage, loss or injury sustained because of entry upon and/or digging or marking levels and survey of land under Section 4 or while actual laying of the pipeline including digging of trenches and carrying of requisite material for such operations under Section 7 or at any stage of maintenance, examinations, repairing and altering or removing of pipeline in terms of Section 8 of the PMP Act. The measure for determining such compensation is given with sufficient clarity in sub-section (3) of Section (10). The idea is to compensate the owner/occupier for actual damage, loss or injury sustained by him as a result of the operations carried out in terms of Section 4, Section 7 or Section 8 of the Act. One of the indicia under sub-Section 3 could be “any injury to any other property whether movable or immovable, or the earnings of such persons in any other manner”. All possible acts as a result of which the damage, loss or injury

could be so occasioned are taken care of and stipulated in said sub-section. Over and above such compensation for actual damage, loss or injury, additional compensation @ 10% of the market value of the land is given to the owner/occupier under sub-section 4 of Section 10 for taking over the right of user to lay the pipelines. This element of additional compensation is independent of any actual loss or damage and is purely linked to the value of the land for the purposes of computation. This element of compensation is purely for acquisition of right of user simplicitor. The damage/loss or injury to the property is separately dealt with under first part of Section 10 and has to be compensated in toto. Theoretically, it is possible that in a barren piece of land as a result of exercise of powers under Sections 4, 6 and 7 there may not be any damage/loss or injury. However compensation under sub-section (4) for acquisition of right of user would still be independently payable. The expression “in addition to the compensation, if any, payable under sub-section (1)” clearly shows the intent that the compensation for acquisition of right of user shall be in addition to the actual damage/loss or injury under first part of Section 10. This part will also be clear from para (iii) of Statement of Objects and Reasons extracted above.

20. The provisions of PMP Act do specify the principles and the manner in which the compensation is to be determined. Not only the actual damage, loss or injury suffered as a result of exercise of various activities in terms of

Sections 4, 6 and 7 are compensated in toto but additionally compensation linked to the market value of land is also to be given for acquisition of right of user in respect of such land. What is taken over is mere right of user to lay the pipeline in the sub-soil of land in question, leaving the title to the land as well as the right to possess that land intact in the hands of the land owner/occupier. It is no doubt that the enjoyment thereof after the pipelines are laid is impaired to a certain extent, in that the owner/occupier cannot raise any permanent construction or cause any excavation or plant any trees. Barring such restrictions, the enjoyment and the right of possession remains unaltered. The lands under which the pipeline would be laid are primarily, going by the mandate of Section 7, agricultural or fallow and there would normally be no occasion for any rendering of the holding completely unfit for any operations. Even in such cases where the holding is rendered unfit, sub-section 3(iii) of Section 10 could be relied upon and any diminution in market value as permanent impairment could sustain a claim for compensation. The principles of compensation as detailed in the PMP Act are thus reasonable and cannot in any way be termed as illusory. The principle laid down in *H.D. Vora v. State of Maharashtra* (Supra) has no application at all.

21. Coming to the facts of the present case, Block Nos.331, 342 and 364 of village Gothan were agricultural lands and recorded so in the revenue records

on the day the Notification under Section 3(1) was issued. The permission to convert Block Nos.342 and 364 to non-agricultural use was granted after such Notification. In any case, the compensation including damages, was arrived at by consent in the meeting held with the land owners/occupiers and determined at the level of Rs.181/- per sq.mtr. for lands other than those falling in industrial zone and in respect of those falling in industrial zone, the compensation was at Rs.201/- per sq.mtr. If the average rate at which the lands were sold in preceding five years was taken into account, this compensation was not inadequate. In any case, while the matter was pending in the High Court, provisional compensation @ Rs.300/- per sq.mtr. was deposited with the competent authority. This compensation in our view, for acquisition of right of user cannot be called inadequate or illusory on any count.

22. We now turn to the submissions advanced with respect to the terms “Corporation” and “Competent Authority” under the PMP Act.

23. Natural gas is one of the most important and environment friendly sources of energy. Easy access to the deposits of natural gas and quick and cost effective transportation thereof are critical for fulfilling basic necessities of the society. Petroleum and Natural Gas Regulatory Board Act, 2006 enacted by Parliament creates Petroleum and Natural Gas Regulatory Board

to authorize entities to lay, build, operate or expand to a common carrier or contract carrier; regulate access to common carrier or contract carrier; regulate transport rates and ensure adequate availability of natural gas and secure equitable distribution for petroleum products. The activity of transportation of gas is thus recognized as an activity of highest national importance and subjected to statutory control in all its dimensions. Transportation of natural gas requires creation of necessary infrastructure either by the State on its own or through private enterprise. The pipeline in question was designed to sub-serve public interest and as rightly contended by the learned Solicitor General the element of public interest is present all through, even when the activity is undertaken through an entity in private sector. Considering the nature of activity where entities in private sector are encouraged to participate, it would be incorrect to put any restricted meaning as regards the expression “Corporation”. The definition of “Corporation” under Section 2(b) of the PMP Act is wide enough to include entities in private sector. This definition is designedly kept wide enough to include all such possibilities and there is no reason for giving any restricted meaning to such expression. We, therefore, reject the submission advanced by the appellants.

24. As per Section 2(a) of the PMP Act, “Competent Authority” means any person or authority authorized by the Central Government to perform

functions of the Competent Authority under that PMP Act. According to Section 5, all objections preferred by interested persons to the laying of the pipeline are to be dealt with and heard by the Competent Authority, who may allow or disallow such objections. Under Section 5(3) the order so passed by the Competent Authority is to be final. As per Section 6, the Competent Authority thereafter has to make a report to the Central Government containing his recommendations on the objections together with the record of the proceedings held by him. After the order is passed by the Central Government under Section 6(1), the role of the Competent Authority is to assess compensation for damage, loss or injury occasioned to any person as a result of exercise of the powers conferred under Sections 4, 7 and 8. Section 10(3) obliges the Competent Authority *inter alia* to have due regard to facets enumerated in sub clauses (i), (ii) and (iii) of Section 10 (3). In addition, the Competent Authority is also to determine the market value of the land, 10% of which is required to be paid by way of compensation for acquisition of right of user under Section 10 (4). Section 12 confers powers of Civil Court on the Competent Authority.

25. It is thus clear that “Competent Authority” is given wide ranging powers under Section 5 for considering the objections, under Section 6 for making the report to the Central Government and under Section 10 for determining compensation for damage/loss or injury under first part of

Section and to determine the market value under the second part of the Section. By virtue of these powers, crucial rights of the persons interested in the land are bound to be affected. His orders and report would certainly deal with variety of civil rights of the interested persons and issues pertaining to compensation. At this stage, the observations of this Court in *Trilok Sudhirbhai Pandya* (Supra), in the context whether the person appointed as Competent Authority could be a person other than a public servant are quite eloquent:-

“17. The aforesaid reference to the various provisions of the Act shows that the competent authority has got vast powers, which affects the rights of persons interested in the land over which the pipeline is to be laid and on the reports of the competent authority, the Central Government and the State Government are to take decisions affecting the rights of persons interested in the land. Under the provisions of the Act, therefore, the competent authority does not merely determine the compensation at the first instance in accordance with the statutory rules as has been contended by the learned counsel for Respondent 4, but has to perform various other quasi-judicial functions which are normally performed by public servants whose pay allowances and other incidentals of service are met out of the public exchequer. If instead of public servants, a person is appointed whose pay, allowances and other incidentals are not paid out of the public exchequer but directly paid by a private employer such as Respondent 4, for whom the right of user is being acquired and by whom the compensation is payable, persons interested in the land will have reasonable grounds for assuming that such a competent authority, who is dependent on a private corporation for his salary, allowances, accommodation and transport allowances, will have a bias in favour of the private corporation.”

26. It is axiomatic that a person who occupies the position of Competent Authority under the PMP Act must evoke and enjoy public confidence. Neither the Act nor the Rules framed thereunder deal with the qualifications required of a person before his appointment as Competent Authority nor do they deal with any transparent process for such appointment. We may now turn to see the requirements in that behalf in an enactment which is *pari materia*. Section 2(e) of the Metro Railway (Construction of Works) Act, 1978 (Metro Act, for short), defines Competent Authority as the one appointed under Section 16. Section 16(2) then sets out, “a person shall not be qualified for appointment as a Competent Authority unless he is holding, or has held, a Judicial Office, not lower in rank than that of a Subordinate Judge.” Like the PMP Act, the Metro Act also confers power upon the Competent Authority therein to consider objections to the construction of the Metro Railway or any other work and to determine the amount payable for acquisition. The orders passed by the Competent Authority under the Metro Act are also appealable before an Appellate Authority. In our view, the Competent Authority under the provisions of the PMP Act must also be someone who is holding or has held a Judicial Office not lower in rank than that of a Subordinate Judge or is a trained legal mind. If such requirement is not read into and not taken as an integral and essential qualification before appointment of any person as Competent Authority, the provisions in that

behalf will not be consistent with the doctrine of fairness under Article 14 of the Constitution of India. At the same time, we hasten to add that actions taken by the Competent Authority till now, will not in any way stand impaired or be invalidated purely on this count. But the Central Government may do well to step in immediately and remedy the situation with appropriate measures.

27. Lastly, it is correct that the PMP Act and the Rules framed thereunder do not stipulate any period within which compensation for damage, loss or injury and compensation for acquisition of right of user is to be deposited. While damage, loss or injury occasioned as a result of exercise of power under Sections 4 and 7 could be one time damage, that in respect of Section 8 could re-occur as a result of repeated entries for maintenance. Even when no time limit is fixed, it is expected of the concerned authorities to determine and deposit compensation within reasonable time. In so far as the facts of the present case are concerned, ninety percent of the amount so determined by the Competent Authority in the first instance, was deposited in advance.

28. We thus do not find the provisions regarding computation of compensation with regard to both elements under Section 10 of the PMP Act to be invalid on any count. We further find that the definition “Corporation” is wide enough to take within its sweep entities in private sector as well. We

also do not find the provisions of the PMP Act to be lacking on any count, except to the extent indicated above as regards appointment of Competent Authority. Civil Appeals are thus disposed of without any order as to costs.

.....J.
(V. Gopala Gowda)

.....J.
(Uday Umesh Lalit)

New Delhi,
October 05, 2016

ITEM NO.1A

COURT NO.4

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 2725/2010
(Arising out of impugned final judgment and order dated 13/07/2009
in SCA No.5107/2008 passed by the High Court of Gujarat at
Ahmedabad)

LALJIBHAI KADVABHAI SAVALIYA & ORS.

Petitioner(s)

VERSUS

STATE OF GUJARAT & ORS.

Respondent(s)

WITH

SLP (C) No. 2226/2010

SLP (C) No. 2228-2257/2010

SLP (C) No. 2260-2277/2010

Date : 05/10/2016 This petition was called on for judgment today.

For Petitioner(s) Ms. Garima Prashad, AOR

Mr. Vikas Mehta, AOR

For Respondent(s) Mr. D. S. Mahra, AOR

Mr. Kaushal Yadav, AOR

Mr. K. R. Sasiprabhu, AOR

Ms. Hemantika Wahi, AOR

Ms. Aruna Gupta, AOR

Mr. S.C. Patel, AOR

Hon'ble Mr. Justice Uday Umesh Lalit pronounced the judgment
of the Bench consisting of Hon'ble Mr. Justice V. Gopala Gowda and
His Lordship.

Leave granted.

The appeals are disposed of in terms of the signed
non-reportable judgment without any order as to costs.

(Gulshan Kumar Arora)

Court Master

(Signed non-reportable judgment is placed on the file)

(H.S. Parasher)

Court Master