

07 13.05.2022
rkd Ct.02

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI

W.P.A. 328 of 2022

Md Jamiruddin
-vs-
Union of India & Ors.

Mr. Arjun Chowdhury,
Ms. Pratusha Dutta Chowdhury,
Mr. Bikash Singha

....for the petitioner.

Mr. Jagriti Mishra,
Mr. Subham Gupta,
Mr. Reshab Kumar

....for the respondent nos.2 & 3.

Mr. Sourab Kar

....for the Union of India.

Mr. Subir Kumar Saha,
Ms. Bedashruti Bose

....for the State.

Affidavit-of-service filed on behalf of the
petitioner is taken on record.

This is a writ petition whereby challenge has
been thrown to the steps taken by the authority in
terms of relevant provisions of the Petroleum and
Minerals Pipelines (Acquisition of Right of User in land)
Act, 1962 (hereinafter referred to as the said “Act of
1962”). The concerned respondent authorities issued
notification under Section 3(1) of the said Act of 1962
for laying Gas Pipeline below the surface in between
the Barauni and Guwahati. Respondent authorities are
required to acquire the right of user of the land of the
petitioner in terms of the relevant provisions of the
said Act of 1962.

Mr. Chowdhury, learned advocate appears on

behalf of the petitioner and submits that after the notification has been issued in terms of Section 3(1) of the said Act of 1962 an objection was raised; but in spite of lodging objection in terms of Section 5(1) the competent authority under the said Act of 1962 passed order without granting opportunity of hearing to the petitioner which is required under Section 5(2). Petitioner prays for consideration of the objection by the competent authority prior to taking decision on acquiring the right of user over the land of the petitioner under the scheme of the said Act of 1962.

Mr. Mishra, learned advocate appears on behalf of the respondent nos.2 & 3 and has submitted that the competent authority passed an order on 31st May, 2019. Copy of such order dated 31st May, 2019 passed by the Special Land Acquisition Officer, Darjeeling is filed in Court and is taken on record.

The competent authority under the said Act of 1962 is represented by the learned advocate who has strenuously argued that there was no requirement of compliance of hearing the writ petitioner under Section 5(2) of the said Act of 1962 since the objection of the petitioner is not addressed to the competent authority.

This Court has heard the learned advocates appearing for the parties and has perused the relevant documents available on record and also the order of the competent authority dated 31st May, 2019 which

has been placed on record on behalf of the respondent nos. 2 & 3.

In consideration of the scheme of the said Act of 1962, it appears to this Court that since the concerned respondent authorities will acquire the right of user of the land of the petitioner under the provisions as contained in Section 5(2) of the said Act of 1962 the competent authority is required to grant an opportunity of hearing to the petitioner. For better appreciation of the case made out by the petitioner Section 5 of the said Act of 1962 is quoted below:

“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 and (sic) 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.”

On consideration of the relevant part of Section 5, it also appears to this Court that there is necessity to grant opportunity of hearing to the petitioner before taking decision by the competent authority with regard to acquiring right of user of the land. It is found that though petitioner lodged an objection in terms of Section 5(1) but the said objection has not been considered by the competent authority under Section 5(2) which is required as per the scheme of the said Act of 1962. On behalf of the competent authority attempt has been made to impress upon this Court that since the objection is not addressed to the competent authority the opportunity of hearing could not be granted. Such hyper technical approach on the part of the competent authority pales into insignificance keeping in view the fact that the concerned respondent authorities by issuing notification under Section 3(1) was required to acquire the right of user of the land of the petitioner, therefore, propriety demands forwarding of such objection by the respondent nos.2 & 3 to the competent authority for the sake of granting opportunity of hearing to the petitioner and to comply with the principle of natural justice. Since in the present case, it is found by this Court that the requirement of hearing as contemplated under Section 5(2) of the Act of 1962 has not been

complied with the steps taken by the competent authority based on notification issued under Section 3(1) stand set aside.

The competent authority being the respondent no.4 is directed to decide on the objection lodged by the petitioner in terms of Section 5(2) of the said Act of 1962 within three weeks from the date of communication of this order.

It will be open to the respondent no.4 to direct the petitioner to file another supplementary objection in addition to the objection which has already been lodged addressed to the said competent authority prior to hearing the petitioner. The decision to be taken by the competent authority shall be communicated to the petitioner within one week thereafter.

With the aforesaid direction, the writ petition stands disposed of.

The learned advocate of the petitioner is granted leave to amend the cause title in course of this day and correct the designation of the competent authority as delineated in the cause tile of the writ petition, being the respondent no.4.

(Saugata Bhattacharyya, J.)