

CWPIL No. 249 of 2017.

28.02.2020. Present: Ms. Soma Thakur, Advocate, for the petitioner.

Mr. K.D.Shreedhar, Senior Advocate with Ms. Shreya Chauhan, Advocate, for the NHAI.

Mr. Ashok Sharma, Advocate General with Mr. Vinod Thakur, Additional Advocate General, Mr. Bhupinder Thakur, Mr. Narender Singh Thakur and Ms. Divya Sood, Deputy Advocate Generals, for the respondents-State.

Mr. Shashi Shirshoo, Central Government Standing Counsel, for the Union of India.

We are informed at the Bar that the Divisional Commissioner, Shimla, is seized of the arbitration proceedings relating to the acquisition of the land in question. He is directed to decide all these matters positively before the next date of hearing.

2. Off late, we have noticed that a number of constructions have come up adjoining the National Highway between the Kaithlighat to Parwanoo. One such unauthorised constructions i.e. hotel was noticed on the Parwanoo bye-pass road and suo motto cognizance thereof was taken by this Court initially in CWPIL No. 1299 of 2016 and thereafter in CWPIL No. 36 of 2017 and vide order dated 29.05.2017 passed in CWPIL No. 26 of 2017, further construction was ordered to be stayed.

3. The Parliament has enacted the National Highways Act, 1956 to provide for the declaration of certain highways to be national highways and for matters connected therewith. Section 4 provides that all National Highways shall vest in the Union.

4. The Parliament thereafter enacted the National Highway Authority of India Act, 1988. Under section 3, the Central Government constituted authority viz. National Highway Authority. Section 16 provides for the functions of the Authority.

5. In the year 2002, the Parliament enacted the Control of National Highways (Land and Traffic) Act, 2002 to provide for the control of land within the National highways, right of way and traffic moving on the national highways and also for removal of unauthorized occupation thereon. Under Section 3, the Central Government by notification in the official gazette is empowered to establish Highway Administration. Chapter-III provides for prevention of unauthorized occupation of highway land and their removal and sections 23, 24 and 26 of the Act read as under:

“23. Highway land to be deemed as property of Central Government.—(1) All lands forming parts of a Highway which vest in the Central Government or which do not already vest in the Central Government but have been acquired for the purpose of Highway shall, for the purposes of this Act, and other Central Acts, be deemed to be the property of the Central Government as owner thereof. (2) The Highway Administration shall cause to be maintained a record in the prescribed manner in which the particulars of the lands, relating to the Highway, of which the Central Government is the owner shall be entered and the entries of the particulars of such lands in any record maintained for such purpose before the commencement of this Act shall be deemed to be the entry of the particulars of such lands made in the first said record and accordingly the Central Government shall be deemed to be the owner of the lands regarding which the entries have been made in such records maintained before the commencement of this Act. (3) Any person claiming against the ownership of the

Central Government referred to in sub-section (2) shall make written complaint to the Highway Administration and prove his claim before it and the Highway Administration, after considering the evidence produced by such person, may correct such records or reject the claim.

24. Prevention of occupation of highway land.—(1) No person shall occupy any highway land or discharge any material through drain on such land without obtaining prior permission, for such purpose in writing, of the Highway Administration or any officer authorised by such Administration in this behalf. (2) The Highway Administration or the officer authorised under sub-section (1) may, on an application made by a person in this behalf and having regard to the safety and convenience of traffic, grant permission to such person— (i) to place a movable structure on the Highway in front of any building owned by him or to make a movable structure on support of such building and over the Highway, or (ii) to put up a temporary lawning or tent or other similar construction or a temporary stall or scaffolding on the Highway, or (iii) to deposit or cause to be deposited, building materials, goods, for sale or other articles on any Highway, or (iv) to make a temporary excavation for carrying out any repairs or improvements to adjoining buildings, and such permission shall be granted subject to the conditions and on payment of the rent and other charges by issuing permit in the form as may be prescribed: Provided that no such permission shall be valid beyond a period of one month at a time from the date on which the permission has been granted unless it is renewed by the Highway Administration or such officer on an application made by such person for the renewal of the permission. (3) The permission granted under sub-section (2) shall specify therein— (i) the time up to which the permission is granted; (ii) the purpose of such permission; (iii) the portion of the Highway in respect of which the permission has been granted, and shall be accompanied with a plan or sketch of such portion of Highway. (4) The person, to whom the permit has been issued under sub-section (2), shall produce the permit for inspection

whenever called upon to do so by any officer of the Highway Administration and shall, on the expiry of the permission granted under such permit, restore the portion of the Highway specified in the permit in such condition as it was immediately before the issuing of such permit and deliver the possession of such portion to the Highway Administration. (5) The Highway Administration or the officer issuing the permit under sub-section (2) shall maintain a complete record of all such permits issued, and shall also ensure in every case at the expiration of the period up to which the permission under a permit is granted under that sub-section that the possession of the portion of the Highway in respect of which such permission was granted has been delivered to the Highway Administration.

26. Removal of unauthorised occupation.—(1) Where the Highway Administration or the officer authorised by such Administration in this behalf is of the opinion that it is necessary in the interest of traffic safety or convenience to cancel any permit issued under sub-section (2) of section 24, it may, after recording the reasons in writing for doing so, cancel such permit and, thereupon, the person to whom the permission was granted shall, within the period specified by an order made by the Highway Administration or such officer restore the portion of the Highway specified in the permit in such condition as it was immediately before the issuing of such permit and deliver the possession of such portion to the Highway Administration and in case such person fails to deliver such possession within such period, he shall be deemed to be in unauthorised occupation of highway land for the purposes of this section and section 27. (2) When, as a result of the periodical inspection of highway land or otherwise, the Highway Administration or the officer authorised by such Administration in this behalf is satisfied that any unauthorised occupation has taken place on highway land, the Highway Administration or the officer so authorised shall serve a notice in a prescribed form on the person causing or responsible for such unauthorised occupation

requiring him to remove such unauthorised occupation and to restore such highway land in its original condition as before the unauthorised occupation within the period specified in the notice. (3) The notice under sub-section (2) shall specify therein the highway land in respect of which such notice is issued, the period within which the unauthorised occupation on such land is required to be removed, the place and time of hearing any representation, if any, which the person to whom the notice is addressed may make within the time specified in the notice and that failure to comply with such notice shall render the person specified in the notice liable to penalty, and summary eviction from the highway land in respect of which such notice is issued, under sub-section (6). (4) The service of the notice under sub-section (2) shall be made by delivering a copy thereof to the person to whom such notice is addressed or to his agent or other person on his behalf or by registered post addressed to the person to whom such notice is addressed and an acknowledgment purporting to be signed by such person or his agent or other person on his behalf or an endorsement by a postal employee that such person or his agent or such other person on his behalf has refused to take delivery may be deemed to be prima facie proof of service. (5) Where the service of the notice is not made in the manner provided under sub-section (4), the contents of the notice shall be advertised in a local newspaper for the knowledge of the person to whom the notice is addressed and such advertisement shall be deemed to be the service of such notice on such person. (6) Where the service of notice under sub-section (2) has been made under sub-section (4) or sub-section (5) and the unauthorised occupation on the highway land in respect of which such notice is served has not been removed within the time specified in the notice for such purpose and no reasonable cause has been shown before the Highway Administration or the officer authorised by such Administration in this behalf for not so removing unauthorised occupation, the Highway Administration or such officer as the case may be, shall cause such unauthorised occupation to be removed at the expenses of

the Central Government or the State Government, as the case may be, and impose penalty on the person to whom the notice is addressed which shall be five hundred rupees per square metre of the land so unauthorisedly occupied and where the penalty so imposed is less than the cost of such land, the penalty may be extended equal to such cost.

(7) Notwithstanding anything contained in this section, the Highway Administration or the officer authorised by such Administration in this behalf shall have power without issuing any notice under this section to remove the unauthorised occupation on the highway land, if such unauthorised occupation is in the nature of— (a) exposing any goods or article— (i) in open air; or (ii) through temporary stall, kiosk, booth or any other shop of temporary nature, 10 (b) construction or erection, whether temporary or permanent, or (c) trespass or other unauthorised occupation which can be removed easily without use of any machine or other device, and in removing such occupation, the Highway Administration or such officer may take assistance of the police, if necessary, to remove such occupation by use of the reasonable force necessary for such removal.

(8) Notwithstanding anything contained in this section, if the Highway Administration or the officer authorised by such Administration in this behalf is of the opinion that any unauthorised occupation on the highway land is of such a nature that the immediate removal of which is necessary in the interest of— (a) the safety of traffic on the Highway; or (b) the safety of any structure forming part of the Highway, and no notice can be served on the person responsible for such unauthorised occupation under this section without undue delay owing to his absence or for any other reason, the Highway Administration or the officer authorised by such Administration may make such construction including alteration of any construction as may be feasible at the prescribed cost necessary for the safety referred to in clause (a) or clause (b) or have such unauthorised occupation removed in the manner specified in sub-section (7).

(9) The Highway Administration or an officer authorised by such Administration in this behalf shall, for the purposes of this

section or section 27, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:— (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents; (c) issuing commissions for the examination of witnesses; and (d) any other matter which may be prescribed, and any proceeding before such Administration or officer shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860) and the Administration or the officer shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).”

6. Thus, as per the above provisions, National Highway Authority of India (NHAI) is required to remove all the encroachments not only from the land which is acquired for the National Highway purposes but even the land appurtenant to the Highway is required to be kept safe from encroachment in the interest of traffic safety and NHAI is also empowered to remove any unauthorized construction whether temporary or permanent on such land without further notice.

7. Apart from the above, the State Government has enacted the Himachal Pradesh Roadside Land Control Act, 1968 and Himachal Pradesh Road Infrastructure Protection Act, 2002 and in addition the State has also enacted the Municipal Corporation Act, 1994 as also the Municipal Act, 1994 whereby it is authorized to remove the encroachments not only over the acquired width but also the one which are existing over the controlled width.

8. There can be no gainsaying that an encroacher is a trespasser and has no right to obstruct the duties of the Government in maintaining the roadway for free flow of traffic. Further nobody is adversely affected by the removal of encroachment except the encroacher. The encroacher who besides encroaching the highways lands acquired for road purpose also creates hindrance to traffic.

9. In our view the responsibility of maintaining and managing the Highways is vested in or entrusted to the NHAI or the State Government or any other authority and entails the functions of prevention or removing encroachments along the highways because encroachments along the highways are bound to obstruct the use of Highways and impede the flow of traffic on such Highways.

10. Despite the provisions of the Act(s) referred to above and the repeated orders passed by this Court in CWPIIL No. 36 of 2017 and CWPIIL No. 250 of 2017, the acts of illegal encroachments raising illegal and unauthorised construction has continued unabated. In CWPIIL No. 36 of 2017 we had directed the Deputy Commissioner, Solan and Superintendent of Police, Solan to ensure that no further unauthorised construction of any nature should be carried out. Whereas, in CWPIIL No. 250 of 2017 this Court vide order dated 17.08.2018 had directed the competent authority(ies) both National Highway Authority as also the State Government to remove forthwith all the encroachments that are existing over Highways and submit compliance report within six weeks.

11. Accordingly, we direct the competent authority(ies) both National Highway Authority as also State Government to file a status report and furnish the details of the unauthorised constructions /encroachments that have come up on National Highway Kaithlighat to Parwanoo and with regard to the steps taken for preventing and stopping such unauthorised constructions.

List on **27th March, 2020.**

Copy 'dasti'.

(Tarlok Singh Chauhan)
Judge

(Chander Bhusan Barowalia)
Judge

28th February, 2020.
(krt/sanjeev)