



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Spl. Appl. Writ No. 293/2023

Nagraj Nai S/o Ram Lal Nai, Aged About 60 Years, N.h. 11 Ke Pas, Bigga Bas, Ward No. 14 Shri Dungargarh, Bikaner, Rajasthan.

----Appellant

Versus

1. Union Of India, Through Ministry Of Road Transport And Highways, New Delhi.
2. National Highway Authority Of India, New Delhi.
3. District Collector, Bikaner, Rajasthan
4. District Collector, Churu, Rajasthan
5. Sub Divisional Officer, Shri Dungargarh.
6. Nagar Palika, Shri Dungargarh, Bikaner Through Executive Officer.
7. Executive Engineer, Public Work Department, National Highway, Block Churu.

----Respondents

Connected With

D.B. Spl. Appl. Writ No. 275/2023

Suresh S/o Lalji Sindhi, Aged About 46 Years, Village Sri Dungargarh, Tehsil Sri Dungargarh, District Bikaner (Rajasthan).

----Appellant

Versus

1. State Of Rajasthan, Through Secretary, Department Of Public Works, Government Of Rajasthan, Jaipur.
2. Executive Engineer (National Highway Division), Public Works Department, Churu.
3. Sub Divisional Officer, Sri Dungargarh.
4. Municipal Board Sri Dungargarh, Through Its Executive Engineer.

----Respondents

D.B. Spl. Appl. Writ No. 288/2023

Kamal Kishore Nai S/o Late Shri Malaram Nai, Aged About 55 Years, Momasar Bas, Shri Dungargarh, Bikaner, Rajasthan.

----Appellant

Versus

1. Union Of India, Through Ministry Of Road Transport And Highways, New Delhi.
2. National Highway Authority Of India, New Delhi.
3. District Collector, Bikaner, Rajasthan.
4. District Collector, Churu, Rajasthan.
5. Sub Divisional Officer, Shri Dungargarh.
6. Nagar Palika, Shri Dungargarh, Bikaner Through Executive Officer.

7. Executive Engineer, Public Work Department, National Highway, Block Churu.

-----Respondents

D.B. Spl. Appl. Writ No. 289/2023

Bhawani Shankar Saini S/o Ghisa Ram Saini, Aged About 33 Years, R/o Gandhi Park Ke Pas, Ward No. 5, Shri Dungargarh, Bikaner, Rajasthan.

-----Appellant

Versus

1. Union Of India, Through Ministry Of Road Transport And Highways, New Delhi
2. National Highway Authority Of India, New Delhi.
3. District Collector, Bikaner, Rajasthan
4. District Collector, Churu, Rajasthan
5. Sub Divisional Officer, Shri Dungargarh, Bikaner.
6. Nagar Palika, Shri Dungargarh, Bikaner Through Executive Officer.
7. Executive Engineer, Public Work Department, National Highway, Block Churu.

-----Respondents

D.B. Spl. Appl. Writ No. 290/2023

Mamraj S/o Ramrakh Jat, Aged About 60 Years, R/o Upani, Shri Dungargarh, Bikaner, Rajasthan.

-----Appellant

Versus

1. Union Of India, Through Ministry Of Road Transport And Highways, New Delhi
2. National Highway Authority Of India, New Delhi.
3. District Collector, Bikaner, Rajasthan
4. District Collector, Churu, Rajasthan
5. Sub Divisional Officer, Shri Dungargarh, Bikaner.
6. Nagar Palika, Shri Dungargarh, Bikaner Through Executive Officer.
7. Executive Engineer, Public Work Department, National Highway, Block Churu.

-----Respondents

D.B. Spl. Appl. Writ No. 291/2023

Mangala Ram Godara S/o Ganpat Ram Godara, Aged About 72 Years, Godara Bas, Upani, Shri Dungargarh, Bikaner, Rajasthan.

-----Appellant

Versus

1. Union Of India, Through Ministry Of Road Transport And Highways, New Delhi.
2. National Highway Authority Of India, New Delhi.
3. District Collector, Bikaner, Rajasthan.
4. District Collector, Churu, Rajasthan.

5. Sub Divisional Officer, Shri Dungargarh, Dist. Bikaner.
6. Nagar Palika, Shri Dungargarh, Bikaner Through Executive Officer, Dist. Bikaner.
7. Executive Engineer, Public Work Department, National Highway, Block Churu.

-----Respondents

D.B. Spl. Appl. Writ No. 292/2023

Harish Kumar S/o Late Shri Indra Chandgumani, Aged About 49 Years, R/o Ward No. 17, Bigga Bas, Shri Dungargarh, Bikaner, Rajasthan.

-----Appellant

Versus

1. Union Of India, Through Ministry Of Road Transport And Highways, New Delhi
2. National Highway Authority Of India, New Delhi.
3. District Collector, Bikaner, Rajasthan
4. District Collector, Churu, Rajasthan
5. Sub Divisional Officer, Shri Dungargarh, Bikaner.
6. Nagar Palika, Shri Dungargarh, Bikaner Through Executive Officer.
7. Executive Engineer, Public Work Department, National Highway, Block Churu.

-----Respondents

D.B. Spl. Appl. Writ No. 294/2023

1. Madhuri Thadani D/o Jawahar Lal Sindhi, Aged About 52 Years, R/o Sindhi Colony, Bigga Bas, Ward No. 13, Shri Dungargarh, Bikaner, Rajasthan.
2. Kavita Thadani W/o Ramesh Kumar Thadani, Aged About 45 Years, R/o Sindhi Colony, Bigga Bas, Ward No. 13, Shri Dungargarh, Bikaner, Rajasthan.

-----Appellants

Versus

1. Union Of India, Through Ministry Of Road Transport And Highways, New Delhi
2. National Highway Authority Of India, New Delhi.
3. District Collector, Bikaner, Rajasthan
4. District Collector, Churu, Rajasthan
5. Sub Divisional Officer, Shri Dungargarh, Bikaner.
6. Nagar Palika, Shri Dungargarh, Bikaner Through Executive Officer.
7. Executive Engineer, Public Work Department, National Highway, Block Churu.

-----Respondents

D.B. Spl. Appl. Writ No. 306/2023

Anchi Devi W/o Shri Puran Ram Pareek, Aged About 85 Years, Resident Of Kalu Bas, Sri Dungargarh, District Bikaner, Through Power Of Attorney Holder Shri Shyam Sunder S/o Shri Puran Ram Pareek, Age 53 Years, Resident Of Kalu Bas, Sri

Dungargarh, District Bikaner.

----Appellant

Versus

1. The State Of Rajasthan, Through The District Collector, Bikaner.
2. The Divisional Commissioner, Bikaner.
3. The Sub Divisional Officer, Sri Dungargarh, District Bikaner.
4. The Executive Engineer, Public Works Department, National Highway Division, Churu.

----Respondents

D.B. Spl. Appl. Writ No. 314/2023

Surendra Kumar Jhanwar S/o Shri Shankerlal, Aged About 52 Years, Resident Of Bigga Bass, Near Daga School, Sri Dungargarh, District Bikaner.

----Appellant

Versus

1. State Of Rajasthan, Through The District Collector, Bikaner.
2. The Divisional Commissioner, Bikaner.
3. The Sub Divisional Officer, Sri Dungargarh, District Bikaner.
4. The Executive Engineer, Public Works Department, National Highway Division Churu.

----Respondents

For Appellant(s)	: Mr. Moti Singh
For Respondent(s)	: Mr. Ayush Gehlot for Mr. Rajesh Panwar, Sr. Adv.-cum- AAG Ms. Divya Bapna and Mr. Yashraj Singh Kanawat for Mr. Ankur Mathur

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE SUNIL BENIWAL

Order(Oral)

13/03/2026

(Per: Arun Monga, J)

1. The present bunch of intra-court Appeals arise out of the final order-cum-judgment dated 14.03.2023 passed by the learned Single Judge, whereby the various writ petitions preferred by the appellants were dismissed holding that they were not

entitled to any protection from this Court under extraordinary writ jurisdiction qua the notices which were issued to them by the competent authority of the respondents to remove the encroachments.

2. The translation of one such impugned notice dated 10.01.2023 issued by respondent No.7-Executive Engineer, Public Work Department, National Highway, Block Churu, to remove the encroachment is reproduced as under:-

"Subject: Your shop/wall (for commercial use) is located at a distance of less than 30 meters from the center of the National Highway road and therefore falls under the category of unauthorized construction/encroachment. Hence, under Section 26 (Sub-section 2) and Section 27 of the National Highways Act, 2002, a notice is being issued directing you to ensure that this unauthorized construction/encroachment is removed within 7 days.

Sir,

You are hereby informed through this notice that your shop/hotel/wall (for commercial use) is situated at a distance of less than 30 meters from the center of the National Highway road. As per the rules of the State Government, land cannot be converted for commercial purposes within 75 meters from the center of the National Highway road (except for petrol pumps and residential buildings up to 13 meters in height).

If you have obtained land-use conversion approval for the said shop, then you are required to submit the relevant documents to the office of the Sub-Divisional Officer, Sridungargarh.

You are also instructed to remove the shop that has been established in violation of the rules. Please be informed that if the identified encroachment is not removed by you within 7 days, the department will, with the assistance of the administration, remove the unauthorized construction/encroachment at your cost, and further legal action will be initiated against you as per the rules.

Furthermore, if any obstruction is created in the construction work of the National Highway, an FIR will be registered against you."

3. Brief facts of the case leading to the present appeals are that the Revenue Department issued a circular dated 18.11.2021 prescribing restrictions on new land conversions within the vicinity of National Highways. The circular directed that buildings existing within 40 meters from the centre line shall not be converted for non-agricultural purposes and that construction of residential buildings should remain within 75 meters of the road boundary. However, the circular did not mandate demolition or removal of already existing constructions within the said distance.

3.1 Despite this, the respondent Executive Engineer issued notices dated 16.02.2022 and later 10.01.2023, directing the appellants to remove the existing shops and structures within 7 days. In response, the appellants submitted detailed replies, stating that the land conversion and lease deed had been granted in accordance with the laws prevailing at the relevant time, and therefore the construction cannot be treated as illegal or unauthorized.

3.2. As the respondents persisted in directing removal of the structures within 75 meters from the centre line of the National Highway, the appellants approached this Court by filing writ petitions seeking protection of property held under valid title. The Learned Single Judge initially passed interim orders directing issuance of notice to the respondents, and that petitioner's constructions shall not be removed in pursuance to notice dated 10.01.2023. After hearing the parties, however, the writ petitions were ultimately dismissed by common judgment dated

14.03.2023, which has led the appellant to file the present appeals.

3.3. Hence, these present special appeals.

4. Learned counsel for the appellant argues that the judgment passed by the learned Single Judge is *per se* illegal and contrary to the material facts of the case. It is contended that the learned Single Judge has erroneously relied upon the judgment rendered in *Guna Shekharan v. Divisional Engineer*¹, which pertains to cases involving encroachment upon the road boundaries of a National Highway. However, the present case is clearly distinguishable as the appellant is holding a valid title issued by the competent authority and the construction raised by the appellant is situated beyond the prescribed road boundary of the National Highway. It is further submitted that the learned Single Judge has also relied upon the State Government notification dated 01.12.1968, reserving land within 30 meters from the centre line of the National Highway, whereas a bare perusal of the record demonstrates that the appellant's construction exists beyond the said limit and therefore, cannot be treated as an encroachment liable for demolition by the National Highways Authority of India.

4.1 Learned counsel for the appellant further submits that the learned Single Judge has placed reliance upon certain circulars issued by the Revenue Department, which cannot be given retrospective effect unless specifically provided. It is argued that the circular dated 18.11.2021 pertains to restrictions on fresh land conversions under the Rajasthan Land Revenue (Conversion of

¹ CIVIL APPEAL NO. 4946 OF 2021

Land from Agriculture to Non-Agriculture Purposes in Rural Areas) Rules, 2007, and is applicable only to rural areas. In the present case, the property of the appellant is situated within municipal limits and the land conversion had already been granted in the year 1988. Therefore, the said circular has no applicability to the appellant's property or the construction raised thereon. It is further contended that the learned Single Judge failed to properly consider the submissions advanced by the appellant in the writ petition and during the course of arguments, and instead relied upon revenue records even though the appellant's case does not involve any encroachment upon public land.

4.2 Lastly, learned counsel for the appellant contends that the notice-cum-order dated 10.01.2023 issued by the Executive Engineer is wholly without jurisdiction and contrary to law. The said notice is primarily based upon the circular dated 18.11.2021, which, as submitted earlier, is inapplicable to the appellant's land situated within municipal limits. It is argued that the respondents are seeking to remove the appellant's construction despite the existence of a valid title and conversion order, and without initiating any lawful acquisition proceedings. Such action is arbitrary, high-handed, and violative of the constitutional right to life and livelihood. Hence, it is prayed that the impugned notice-cum-order dated 10.01.2023 and the consequential action of demolition deserve to be quashed and set aside.

5. Heard learned counsel for the respective parties and perused the material available on record.

6. In the course of hearing before us, at the outset, learned Senior counsel for the respondents, inter alia, submits that appeals are pending for long and there is a stay operating in favor of the appellants hindering the work to be carried out by the respondents. Under instructions, in a fair and balanced submission, he would point out that the writ petitions had been instituted at a preliminary stage, prior to any conclusive determination regarding the legality of the constructions in question. It is submitted that if the individual noticees appear before the competent authority in response to the show-cause notices and place on record cogent material substantiating both their title to the land and the legality of the constructions raised thereon, the matter would be examined afresh in accordance with law.

7. Accordingly, he further submits that in the event the competent authority is satisfied that the appellants possess valid title and that the constructions are lawful, the notices shall be withdrawn. Conversely, if upon due consideration of the material, it is found that the appellants lack lawful title or any vested right to raise construction on the land in question, the competent authority shall proceed in accordance with law by issuing appropriate orders. In such an eventuality, a reasoned and speaking order shall be passed, granting the appellants a period of not less than four weeks to remove the unauthorized constructions at their own risk and cost, failing which necessary action, including demolition, shall be undertaken.

8. We find the aforesaid course suggested by learned counsel for the respondents to be fair, reasonable, and in consonance with the principles of natural justice.

9. In the premise, without advertng to the rival stands taken on merits, these appeals are disposed of with liberty to the appellants (writ petitioners) to submit their replies to the respective show-cause notices, along with all supporting material in support of their claims and rights over the land in question. The competent authority shall thereafter pass fresh, reasoned orders, either accepting or rejecting such objections, in accordance with law.

10. It is directed that if the appellants submit their responses within a period of three weeks from today, the interim order dated 21.03.2023 passed by this, restraining the respondents from carrying out demolition, shall continue to operate in their favour. It is further clarified that upon such timely compliance, the said interim protection shall remain in force until the passing of final orders by the competent authority and for a further period of four weeks thereafter, so as to enable the appellants to avail appropriate legal remedies in the event of an adverse decision.

11. The impugned order passed by the learned Single Judge stands modified to the aforesaid extent. It is clarified that the competent authority shall adjudicate the claims of the appellants independently and without being influenced by any observations made in the order of the learned Single Judge.

12. The competent authority shall also ensure compliance with the principles of natural justice by issuing individual notices to the

appellants and affording them an opportunity of personal hearing prior to passing any adverse order.

13. Accordingly, the aforesaid bunch of instant special appeals stand disposed of.

14. All pending application(s) stand disposed of.

(SUNIL BENIWAL),J

(ARUN MONGA),J

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