

Court No. - 21

Case :- WRIT - C No. - 42061 of 2023

Petitioner :- Harbeer Singh

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Sunil Kumar Upadhyay, Sujeet Kumar

Counsel for Respondent :- A.S.G.I., C.S.C.

Hon'ble Manoj Kumar Gupta, Acting Chief Justice

Hon'ble Donadi Ramesh, J.

1. Heard Shri Sujeet Kumar, learned counsel for the petitioner, Shri Jay Prakash Rai, learned counsel for respondent nos. 1 and 2 and Shri Rajiv Gupta, learned Additional Chief Standing Counsel appearing for respondent nos. 3, 4 and 5.

2. The petitioner has challenged the orders dated 10.08.2023 and 18.08.2023 passed by respondent no. 2. Order dated 10.08.2023 is in the form of a notice given in purported exercise of power under Section 26(2) of the Control of National Highways (Land and Traffic) Act, 2002, requiring the petitioner to remove unauthorized constructions made over a national highway within seven days from the date on which notice is served upon him. The notice states that in case any representation is made, it shall be heard on a suitable date to be intimated separately.

3. The case of the petitioner is that he filed objection/representation on 17.08.2023 but the respondents, without considering and deciding the same, have passed order dated 18.08.2023 providing for removal of unauthorized constructions within seven days of the service of the order.

4. Counsel for the petitioner submits that the scheme of the Act shows that the person, alleged to be in unauthorized occupation, will have right to file objections and in which event, the same will have to be considered by the competent authority before issuing final order. It is urged that in the instant case, the objections having not been considered, the impugned final order dated 18.08.2023 is rendered vulnerable.

5. Counsel appearing on behalf of respondent nos. 1 and 2 is not in a position to show to us that the objection filed by the petitioner

was considered while passing the final order dated 18.08.2023. There is also no evidence that any date for hearing was intimated to the petitioner. Thus, there is clear breach of principle of natural justice.

6. Counsel for respondent nos. 1 and 2 suggests that the instant matter be remitted back for consideration of the objections.

7. Accordingly, we quash the order dated 18.08.2023 and leave it open to the respondents to pass a fresh order after considering the objection dated 17.08.2023. Needless to mention that the respondents would intimate to the petitioner a date for hearing of his objection before final order is passed.

8. The petition stands **disposed of** accordingly.

9. This order would be of no avail in case demolition has already taken place and in which event, it would be open to the petitioner to avail such other remedy as may be advised.

(Donadi Ramesh,J.) (Manoj Kumar Gupta, A.C.J.)

Order Date :- 6.12.2023

Brijesh Maurya