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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6387/2017 & CM No. 26421/2017**

INDU BALA & ORS

..... Petitioners

Through: Mr Vivek Kumar, Advocate.

versus

STATE OF NCT OF DELHI & ORS

..... Respondents

Through: Mr Naushad Ahmed Khan, ASC
(Civil), GNCTD/R-1.

Mr Mohit Bhardwaj and Ms Rashmi
Bhardwaj, Advocate for R-2/UOI.

Ms Bhavana Duhoon, Ms Gunjan
Sinha Jain and Mr Mukesh Kumar,
Advocates

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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27.07.2017

CM No. 26422/2017

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The petitioners have filed the present petition, *inter alia*, impugning an order dated 17.07.2017 (hereafter 'the impugned order') passed by Highway Administrator, NHAI (hereafter 'the Highway Administrator') whereby the Highway Administrator has ordered the petitioners to demolish the dwelling units of the petitioners within a period of seven days and further cautioned that failure to do so would invite penalty under Section

26(6) of the Control of National Highways (Land and Traffic) Act, 2002.

4. It is seen that the impugned order proceeds on the premise that the petitioners' land in question lies within the 11 Biswas of in Khasra no.26 of Village Gharona Neemka Bangar, which was acquired under the Land Acquisition Act, 1894 and is, inter alia, subject of an Award No.1932 of 1966. The learned counsel for the petitioners has drawn the attention of this Court to the said award which indicates that certain lands in Khasra no.26 had been acquired, however, it is petitioners' case that their land comprises in Khasra no.26/101 and no part of that land was the subject matter of the said award.

5. On the other hand, the learned counsel for the Highway Authority submits that there is an error in the impugned order inasmuch as it mentions that the petitioners' lands falls within the 11 Biswas acquired in Khasra no.26. According to the learned counsel for the Highway Authority, the petitioners' lands falls in Khasra no.27/41/1 and that forms part of the award in question.

6. In view of the above, it is clear that the impugned order cannot be sustained as it obviously proceeds on an erroneous premise. In the circumstances, the impugned order is set aside and the matter is remanded to the Highway Administrator to examine the records and determine whether the petitioners' land falls within any of the land acquired by the Government. The petitioners would also be given opportunity to produce all records to show that their land falls in Khasra no.26/101 and that the said land had not been acquired.

7. The Highway Administrator shall pass an appropriate order after hearing all concerned parties. In the first instance, the Administrator shall hold hearing on 10.08.2017 at 11:00 AM at his. The petitioners are at liberty to produce all necessary documents that the petitioners seek to rely on. The concerned SDM shall also be present at the hearing or depute a responsible officer, who is also fully well versed with the same, with all available records to be present as the hearing. In the event, the Highway Administrator considers it expedient, it would be open for him to direct fresh demarcation by the total station method, the expenses of which shall be borne by NHAI.

8. The writ petition and the pending application are disposed of with the aforesaid directions.

9. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

JULY 27, 2017
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