

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 106 of 2018

John Freeman S/o Late Shri E.S. Papachand, Aged About 52 Years
R/o Jarhabhatha, Bilaspur (Chhattisgarh)

---- Petitioner

Versus

1. Additional Commissioner, Bilaspur Division (Arbitrator), Bilaspur (Chhattisgarh)
2. State Of Chhattisgarh, Through Revenue Secretary, Mahanadi Bhawan, Naya Raipur (Chhattisgarh)
3. State Of Chhattisgarh, Through Collector, Bilaspur, District Bilaspur (Chhattisgarh)
4. Sub Divisional Officer (R) Cum Competent Authority, Land Acquisition, Bilaspur, District Bilaspur (Chhattisgarh)
5. National Highway Authority Of India, Through Chief Executive Engineer, Public Works Department, National Road Area (Highway No.-43) Bilaspur, District Bilaspur (Chhattisgarh)
6. Union Of India, Through Secretary, Road Transport And Highway Ministry, New Delhi, Sector- 10, Dwarika, Delhi
7. Naib Tahsildar, Masturi, District Bilaspur (Chhattisgarh)

---- Respondents

For petitioner – Shri Achyut Tiwari, Advocate.
For Union of India-Shri B. Gopa Kumar, ASG.
For respondent No.5-Smt. Fouzia Mirza, Advocate.
For State- Shri Adhiraj Surana, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

01/02/2018

Heard.

1. Instant petition is to quash the notice dated 15/01/2018 wherein the submission of the petitioner that he has been served with notice dated 15/01/2018 on 18/01/2018 and it has been directed that till 20/01/2018 the entire superstructure which is existing on the land which is said to have been vested in the Central Government under Section 3(D) of the National Highways Act, 1956 is unreasonable as minimum period of 60 days has not been provided.
2. It is submitted that an application has been preferred under Section

3(G) of the National Highways Act, 1956 whereby the petitioner has sought for enhancement of the compensation amount and the issue has been referred to the Arbitrator i.e. Additional Commissioner, Bilaspur Division who has been appointed by the Central Government to arbitrate and that the proceeding are pending since 1/05/2017, therefore till such proceedings are decided by Arbitrator, the respondents may be restrained to take possession of the land.

3. Learned State counsel submits that they may be given liberty to issue fresh notice as per Section 3(E) of the National Highways Act, 1956 to the petitioner to remove the superstructure giving him reasonable time as per statutory scheme of Section 3(E) of Act of 1956.

4. For the sake of brevity Section 3(E) of the Act of 1956 is reproduced herein below:-

3(E). Power to take possession.— (1) Where any land has vested in the Central Government under sub-section (2) of section 3D, and the amount determined by the competent authority under section 3G with respect to such land has been deposited under sub-section (1) of section 3H, with the competent authority by the Central Government, the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within sixty days of the service of the notice.

(2) If any person refuses or fails to comply with any direction made under sub-section (1), the competent authority shall apply—

(a) in the case of any land situated in any area falling within the metropolitan area, to the Commissioner of Police;

(b) in case of any land situated in any area other than the area referred to in clause (a), to the Collector of a District, and such Commissioner or Collector, as the case may be, shall enforce the surrender of the land, to the competent authority or to the person duly authorised by it.

5. Perused the notice dated 15/01/2018. Perusal of Section 3(E) of the National Highways Act, 1956 would show that statutory period of 60 days has been incorporated in the statute, which is inclusive to hand over the possession of land to person whose land is acquired. So the reading

of section 3(E) reflects that in scheme of Act 60 days breather is given so that person whose properties are acquired may act accordingly which may reduce the extent of loss which may be caused otherwise. The section lays down that if it is not been done within period of 60 days State Government and Central Government authorities has the right to take possession forcefully by removing the superstructure, if any, on it. Therefore the spirit and object behind the Act of 1956 is to give a minimum period of 60 days to surrender the possession.

6. In the light of the fact that State has already made a submission that they will withdraw the notice issued to the petitioner i.e. Annexure P-1 on 15/01/2018 and would issue a fresh notice, it is expected that spirit and object of Section 3(E) of the Act of 1956 shall be followed and minimum time as prescribed shall be given for removal of the superstructure, if any, failing which, State shall be free to take possession forcefully in terms of the Section 3(E) of the Act of 1956.

7. Further considering the fact that application for enhancement of the compensation amount is pending before the Additional Commissioner, Bilaspur in respect of the determination of compensation as per Section 3 G(5) of Act of 1956, it is directed that the Additional Commissioner, Bilaspur may decide the application of the petitioner within a period of 45 days of the receipt of this order.

8. Therefore, in view of this since liberty has been given to issue fresh notice in compliance to Section 3(E) of the National Highways Act, 1956, the notice dated 15/01/2018 is quashed at present.

9. With the above observation, the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE

