

15/12/2020
Item No.26 DL
Ct. No.38
S. DE

Through Video Conference

W.P.A. 9793 of 2020

Shyam Sel & Power Limited & Anr.

-Vs-

Union of India & Ors.

Mr. Saptanshu Basu, Sr. Adv.

Mr. Debnath Ghosh

Mr. Sushovit Dutt Majumdar

Mr. Ajay Saha

Mr. Rajeev Ginidia

...for the Petitioners.

Mr. Gouranga Kumar Das

...for the Union of India.

Mr. Satyajit Talukdar

...for the respondent no.4

Ms. Sanjana Nandi

...for the respondent no.2

Md. T.M. Siddiqui

...for the respondent

Mr. Ram Chandra Guchchait

...for the respondent

The petitioner no. 1, company claims to be a lawful occupation of the plot of land described in paragraph 2 of the writ petition (hereinafter referred to as “the said property”) which is surrounded by a wall. According to the petitioners, in order to defend their right against a wrongful claim by the respondent no.2, National Highway Authority of India in respect of the said property, they have filed an application under Section 23 of the Control of National Highways (Land and Traffic) Act, 2002 (in short, “the Act of 2002”).

By an order dated February 26, 2013 a co-ordinate Bench of this Court disposed of the petitioners' earlier writ petition being W.P. No.3791 (W) of 2013 by directing the Chief General Manager, National Highway No.6 to decide the petitioners' application under Section 23 of the Act of 2002 by a reasoned order. By the said order, it was further directed that it is only in the event of the petitioners' claim failing and a finding is recorded that they have encroached a portion of National Highway No.6, the National Highway Authority of India shall have full liberty to initiate proceeding for removal of the encroachment by taking recourse to Section 26 of the Act of 2002. Thereafter, the Chief General Manager (Technical), regional office, Kolkata of the National Highway Authority informed the petitioners that a hearing will be held, in terms of the said order dated February 26, 2013 before March 30, 2013.

It is the case of the petitioners that in fact, the respondent National Highway Authority has not yet disposed of their said application under Section 23 of the Act of 2002, but the employees/officers of the National Highway Authority are attempting to demolish the wall of the petitioners' said property. Learned Senior Counsel for the petitioners pressed for an interim order against the respondent National Highway Authority. A copy of the writ petition has

been served upon all the respondents, including the National Highway Authority and its officers.

Ms. Sanjana Nandi, learned advocate appeared for the respondent no.2, National Highway Authority of India and submitted that no step shall be taken by the respondent no.2 and 3 to demolish the wall of the petitioners' said property without taking recourse to Section 26 of the Act of 2002 for which a notice has already been issued.

The State respondents and the K.M.D.A. authority who have been impleaded in the writ petition have nothing to submit with regard to the assertion made by the petitioners in this writ application.

Considering the facts of the case and the submission of the learned counsel appearing for the petitioners and the respondent nos.2 and 3 respectively, this Court does not find any reason to keep this application pending.

In view of the order dated February 26, 2013 passed by the co-ordinate Bench of this Court in W.P. No.3791 (W) of 2013, the respondent no.3, Project Director of the National Highway Authority of India is directed to dispose of the petitioners' application under Section 23 of the Act of 2002 within a period of six weeks from the date of communication of this order. Needless to mention that while deciding the said application of the petitioners, the respondent no.3

shall act strictly in terms of the directions passed by the said order dated February 26, 2013. It is only if the respondent no.3 comes to a conclusion to reject the petitioners' application under Section 23 of the Act of 2002, a proceeding can be initiated against the petitioners under Section 26 of the Act of 2002.

Until disposal of the proceeding under Section 26 of the Act of 2002, if there be any the respondent no.2 or its officers/employees shall not interfere with the possession of the petitioner no.1 in respect of the said property.

Since the respondents are not called upon to file any affidavit, allegations if any, made in the writ petition against them shall be deemed not to be admitted.

With the above directions, the writ petition being W.P.A. No.9793 of 2020 is disposed of.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Ashis Kumar Chakraborty, J.)

