

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1263 of 2020

1. Ajay Kumar Gupta, S/o Mahavir Prasad Gupta, Aged About 58 Years, House No. 145, Uday Nagar Colony, Kanker, Tehsil And District Kanker, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh Through Secretary, Public Works Department , Mantralaya, Mahanadi Bhawan, Atal Nagar Raipur, District : Raipur, Chhattisgarh
2. Sub Divisional Officer, Public Works Department, National Highways Sub Division Kanker, District : Kanker, Chhattisgarh
3. Collector Kanker, District : Kanker, Chhattisgarh
4. Executive Engineer PWD, National Highways Division Jagdalpur, Chhattisgarh
5. Sub Divisional Officer (Revenue) Kanker, District : Kanker, Chhattisgarh
6. Tehsildar Kanker, District : Kanker, Chhattisgarh
7. Chief Municipal Officer, Municipal Council Kanker, District : Kanker, Chhattisgarh
8. National Highway Authority of India Through Its Project Director National Highway No. 30, Regional Officer, Regional Office, Ministry of Road Transport And Highways, NH Campus, Pension Bada, Raipur, District : Raipur, Chhattisgarh
9. Union of India Through Secretary, Ministry of Road Transport And Highways, Government of India, New Delhi

-----Respondents

For Petitioner	: Mr. Priyank Rathi, Advocate
For State	: Mr. V.R. Tiwari, Addl. Adv. General along with Mr. Jitendra Pali, Dy. A.G.
For Resp. No. 2,4,8 & 9	: Mr. B. Gopa Kumar, Asst. S.G.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17.06.2020

1. The challenge in the present writ petition is to the impugned notices Annexure P-1 dated 31.05.2020 and 01.06.2020 respectively passed by the Respondent No. 2.
2. The counsel for the petitioner submits that the dispute is in-respect of the property, which situates at Aamapara Kanker, sheet no. 12 A plot No. 41/1, ad-measuring 136 sq. mtrs. The contention of the counsel for the petitioner is that the petitioner is in possession of the said property for decades together and he has also been issued lease/patta in his favour by the Respondent No. 3. The counsel for the petitioner further submits that two impugned notices have been issued on 31.05.2020 and 01.06.2020, whereby the respondents have issued notices for removal of encroachment.
3. According to the counsel for the petitioner, there is no encroachment whatsoever that has been made on any land beyond the leased land and whatever construction that he has made is purely within the boundaries of lease/patta, which stands in the name of the petitioner.
4. Learned Assistant Solicitor General appearing for the National Highway submits that notices indicate the petitioner to have encroached upon the Government property, particularly the right of way pertaining to the National Highway running through the said area.
5. The contention of the counsel for the petitioner is that as to whether there is encroachment or not, is a matter of verification and the petitioner is ready for any sort of verification to be done by the

respondents in-respect-of encroachment. He categorically submits that constructions which have been made are purely within the leased area and not beyond that. The counsel for the petitioner in the course of argument referred to an order dated 10.01.2007 passed in WPC No. 7494 of 2006, which was a dispute of the same area and where the notice of similar nature was issued to another persons similarly situated and the High Court while disposing off the said writ petition had specifically directed the respondent-authorities to follow the procedure of law prescribed for taking the said property which includes provisions of National Highway Act. The counsel for the petitioner requests that let the authorities verify this aspect; so far as encroachment part is concerned and thereafter they may take appropriate recourse in-accordance-with law, including the provisions of National Highway Act.

6. Given the said submissions made by the counsel for the parties, this Court is of the opinion that the writ petition in the light of the order passed by this Court way back on 10.01.2007 in an identical matter can also be disposed off directing the respondent-authorities to proceed in-accordance-with law. The Respondent No. 2 and 3 are directed to get the property verified on the basis of lease/patta, which stands in the name of the petitioner and also verify whether there is any construction made beyond the leased area and proceed further in-accordance-with law including demolition of any construction, which has been made on the area beyond the leased property, or the leased property falls on the National Highway. It is expected that the order would also apply on the local body which includes Municipal Council, who would get the property verified to the extent of the lease

right of the petitioner and then act in accordance with law.

7. Till the respondents conduct an enquiry and determine whether there is any encroachment made by the petitioner or not, the two notices dated 31.05.2020 and 01.06.2020 shall not be acted upon.
8. With the aforesaid observation, the writ petition stands disposed-off.

**Sd/-
(P. Sam Koshy)
Judge**

Rahul