

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

109

CWP No.9620 of 2021(O&M)

Date of decision: 19.05.2021

Om Parkash

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Rohini Bedi, Advocate, for
Mr. Bhavnik Mehta, Advocate,
for the petitioner.

Ms. Kirti Singh, Advocate, DAG, Haryana

ANIL KSHETARPAL, J. (ORAL)

By this order, Civil Writ Petition No.9620, 9623, 9624, 9625, 9628, 9643 and 9645 of 2021, involving identical questions of fact and law, shall stand disposed of. With the consent of learned counsel for the parties, the petitions are taken on board for final disposal.

In these 7 separate writ petitions, filed under Article 226/227 of the Constitution of India, the petitioners inter alia pray for a writ of certiorari to quash a common order dated 17.03.2021, passed by the Superintending Engineer, P.W.D(B&R) Branch, Hisar (While exercising the power of the Appellate Authority under The Haryana Road Infrastructure Protection Act, 2017' (hereinafter referred to as 'the 2017 Act')), the operative part whereof reads as under:-

*“Against these speaking order, 17 Nos. applicant filed
appeal to undersigned vide this office diary no.286, 287,*

288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298 & 299 dated 03.03.2021 & No.305, 306 & 309 dated 04.03.2021. After going through the contents of the case undersigned also agrees with the speaking order issued by Executive Engineer, Provincial Division No.I, Hisar and appeal of 17 applicants made through Sh. Sushil Kumar Sardana, Advocate, is hereby rejected.

I order accordingly.”

From the reading of the writ petition, it is apparent that the petitioners are alleged to have encroached upon certain portion of the public land. The Government of Haryana has enacted 'the 2017 Act') authorizing the Sub Divisional Engineer of the Haryana Public Works (Building and Roads) Department to act as the competent authority in discharging its functions under the Act including the function of expeditious removal in case of any unauthorised occupation. As per Section 5(4), the Competent Authority has the power to order removal of unauthorised encroachments from the roads. Section 7 of the Act, allows the person aggrieved from the order of the Competent Authority to file objections before the Confirmatory Authority, who is required to pass an order after affording an opportunity of hearing. As per Section 8, appeal against the order passed by the confirmatory authority is maintainable before the Appellate Authority.

In the facts of these writ petitions, the Competent Authority, on the basis of a demarcation carried out, ordered the eviction of the petitioners in various writ petitions. The objections filed before the Confirmatory Authority were also rejected. The petitioners did file 17 appeals, however, the same were disposed of in terms of the order, the operative part whereof

has been extracted above. It may be noted here that Section 13 of 'the 2017 Act' bars the jurisdiction of Civil Court in the matter.

Once the judicial functions are delegated to the administrative officers of the State, then they are expected to perform the same in accordance with law. One of the essential requirements of the principle of natural justice is to pass a speaking order after analyzing the arguments of both the parties. It is also expected that the quasi-judicial authorities would critically examine and evaluate the arguments and then pass an appropriate and rational order, which must ex-facie disclose the reasons in support of it.

From the reading of the order, it is apparent that the Superintending Engineer dismissed the 17 appeals by only observing that he agrees with the orders passed by the Executive Engineer. In the considered view of this bench, such an order shows no conscious application of mind and thus, cannot stand judicial scrutiny. The Appellate authority is expected to keep in mind that Appeal is a valuable right of the litigant and the parties have a right to be heard on all the questions involved. Thus, it is expected from such authorities to discharge obligation in accordance with the well settled principles and practices of law in a judicious manner.

Keeping in view the aforesaid facts, the impugned order is set aside. The matter is remitted back to the Appellate Authority(Superintending Engineer, P.W.D.(B&R) Branch, Hisar) for re-decision thereupon. The parties through their counsels are directed to appear before the officer concerned on 02.06.2021.

It is expected that the Superintending Engineer (The Appellate Authority) before deciding the appeals will afford an opportunity of hearing to the parties or their counsel and pass a speaking and reasoned order after

giving due consideration to the contentions of the parties.

With these observations, the writ petitions are allowed.

May 19, 2021
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :Yes / No
Whether Reportable :Yes / No