

WPA 11699 of 2022

Anup Mondal
Vs.
Union of India & Ors.

Mr. P. K. Tarafdar,
...for the petitioner.
Ms. Manika Roy,
...for the NHAI.
Mr. Soumitra Bandyopadhyay,
Mr. Priyabrata Batabyal,
...for the State.

Affidavit of service filed by the petitioner is taken on record.

None appears for the State respondents and the Municipality despite service.

Mr. Soumitra Bandyopadhyay who usually appears for the State and is present in Court is requested to represent the State in this matter along with his junior Mr. Priyabrata Batabyal. The appointment of Mr. Dey and Mr. Batabyal be regularised by the learned Legal Remembrancer.

The petitioner is directed to serve a copy of the writ petition along with annexures thereto upon Mr. Bandyopadhyay in course of the day.

The petitioner claims to be the owner of 1 kattah 43 square feet of land in the plot in question. The petitioner received notice from the National Highway Authority of India (in short NHAI) under Section 26(2) of the Control of National Highways (Land and Traffic) Act, 2002 directing

removal of unauthorised occupation in respect of 325 square meters of land situated on the highway. Learned counsel for the petitioner submits that pursuant to such notice, the encroached portion of land comprising 325 square meters was released by the petitioner in favour of the authority.

The petitioner's grievance is that the NHAI is attempting to encroach upon the portion occupied by the petitioner by dismantling the construction thereon though such construction is made on the land owned by the petitioner. The petitioner submitted a representation before the authority in this regard which is yet to be disposed of. The petitioner prays for a direction upon the authority to consider the representation at the earliest.

It is submitted on behalf of the NHAI that pursuant to a notice under Section 26(2) of the Act of 2002 issued upon the petitioner on 30th November, 2021, about 25 per cent of encroachment has been removed by the petitioner and the remaining 75 per cent is yet to be removed. Further, though representation was invited from the petitioner within three days from the date of receipt of such notice, but such representation was submitted by the petitioner after about seven months for which it was not taken into consideration by the authority.

The petitioner claims to have surrendered the entire portion unauthorisedly occupied by him to the authority

whereas the authority submits that 75 per cent of the said portion is yet to be surrendered.

In view of the same, this Court is inclined to hold that the representation submitted by the petitioner may be considered by the authority after affording reasonable opportunity of hearing to the petitioner and others in accordance with law.

The writ petition is accordingly disposed of directing the 2nd respondent to consider and dispose of the representation submitted by the petitioner dated 17th June, 2022 within one month from the date of communication of this order after affording reasonable opportunity of hearing to all the stakeholders including the petitioner, in accordance with law.

The decision taken by the authority shall be communicated to the petitioner within a week thereof.

It is made clear that this Court has not gone into the merit of the case and the parties shall be at liberty to place their respective contentions before the authority at the time of hearing.

With the above directions, WPA 11699 of 2022 is disposed of. There shall however, be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)