

March 7, 2022  
Sl. No.61  
Court No.1  
SG/s.biswas

WPA 15117 of 2018  
with  
CAN 1 of 2021

*Narayan Chandra Maity and others*  
*vs.*  
*Union of India and others*

Mr. Biswaranjan Bhakat,  
Mr. Anup Dasgupta,  
Mr. Somnath Bhattacharjee,  
Ms. Sharmistha Paul, Advocates

... for the petitioners

Mr. Suransh Chowdhury,  
Ms. Manika Roy, Advocates

... for the NHAI

Mr. Jahar Lal De,  
Mr. Ayan Banerjee, Advocates

... for the State.

The petitioners have approached this Court by way of present public interest litigation alleging encroachment on the public road situated at Mouza Shantipur, JL No.3, Mouza Guluria, JL No.4, Mouza Kakdihi, JL No.5.

Learned counsel for NHAI has pointed out that the communication dated 30.09.2020 sent by the Project Director of the NHAI to the District Magistrate and Collector of Purba Medinipur stating that the encroachment is to be removed from the lands of NHAI on both sides of road and construction near Mouza Shantipur, JL No.3, Mouza Guluria, JL No.4, Mouza Kakdihi, JL No.5 and as per LA Case Nos.30/64-65, 29/64-65, 1/73-74, Plot Nos.18, 19, 20, 21, 22, 2, 24, 1, 2 and another plot on NH-41, Surplus Lands.

It has been pointed out by learned counsel for the NHAI that the unauthorized construction on the highways are required to be removed in terms of Sub-section (2) of Section 26 of the Control of National Highways (Land and Traffic) Act, 2002 which provides as under:

*“(2) When, as a result of the periodical inspection of highway land or otherwise, the Highway Administration or the officer authorised by such Administration in this behalf is satisfied that any unauthorised occupation has taken place on highway land, the Highway Administration or the officer so authorised shall serve a notice in a prescribed form on the person causing or responsible for such unauthorised occupation requiring him to remove such unauthorised occupation and to restore such highway land in its original condition as before the unauthorised occupation within the period specified in the notice.”*

After completing of procedure as per Sub-section (3) to (5) of Section 26, action is required to be taken by the concerned persons in terms of Sub-section (6) of Section 26 of the said Act for removal of unauthorized construction.

The submission of learned counsel for the NHAI is that the support of the State authorities is needed for removal of the alleged encroachment or unauthorized construction, to which learned counsel for the State has no objection.

Learned counsel for NHAI has also informed that on 03.02.2022 a joint inspection has already been carried out and the unauthorized encroachment and construction have been identified.

Hence, we dispose of the present petition directing the competent authority of the NHAI to take action as required under Section 26 of the Act. In case the competent authority of the NHAI approaches the State authorities for extending the police help etc. for removal of unauthorized construction, then the same will be duly and promptly extended by the State authorities.

Let the aforesaid exercise be completed within a period of 4 months from today.

Accordingly, this petition and connection application are disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

**[Prakash Shrivastava, C.J.]**

**[Rajarshi Bharadwaj, J.]**