

13.12.2022
Ct. 5
D/L 11
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WPA 18171 of 2021

Ruhidas Debnath & Anr.

-Vs-

Union of India & Ors.

Mr. Suddhasatva Banerjee,
Ms. Ayushi Kundu

... for the petitioners

Ms. Santanu Kumar Mitra,
Mr. Subhabarata Das

... for the State

Mr. Goutam Narayan,
Ms. Shraboni Sarkar

... for the private respondents

Mr. Kaushik Gupta

.... Learned Special Officer

The Report of the Special Officer is placed before the Court. The Report contains photographs showing hutment/live constructions next to the National Highway. The photographs show huts forming a colony by the side of the National Highway.

Learned counsel appearing for several of the respondents, representing the National Highway Authority submit that there are encroachments on the side of the National Highway but that the settlers have occupied the land for about 60 years. Counsel submits

that the B.L.& L.R.O. has already been approached for demarcating the area. It is submitted that B.L. & L.R.O. has requisite papers of the land in question.

The private respondents, who are made parties to the writ petition, are represented. Learned counsel submits that about 22 families have been living in the area for the last 60 years. Counsel also submits that the private respondents are not occupying the petitioners' land.

Upon hearing counsel for the parties and considering the Report of the Special Officer, this Court is of the view that Section 26(1) and (2) sets out a procedure for removal of unauthorized occupants under The Control of National Highways (Land and Traffic) Act, 2002. Section 26(2) authorizes the Highway Administration or the officer authorized by the Administration to satisfy himself/herself that any unauthorized occupation has taken place on the Highway. Upon such satisfaction the Administration/Officer shall serve a notice in the prescribed form on the person responsible for the unauthorized occupation requiring him to remove such unauthorized occupation and to restore the Highway to its original condition. Section 26(7) also empowers the Administration/Officer to remove the unauthorized occupation without issuing any notice if the unauthorized occupation is in the nature described under Section 26(7) of the Act.

Since the answering respondents say that steps are already being taken for removal of the allegedly unauthorized construction, the respondents are directed to follow the procedure under Section 26(1) and (2) of the Act and restrict the procedure to the authorities contemplated therein. The added respondents shall be given a hearing as provided under the Act and shall be at liberty of taking all points including that of adverse possession.

The authorities concerned shall complete the exercise within a period of ten weeks from today but not later than 15th March, 2023. Since the occupants of the construction have already been made parties before the Court, the respondents are to ensure that no further construction is undertaken until the exercise is completed by the respondents.

WPA 18171 of 2021 is accordingly disposed of in terms of the above.

(Moushumi Bhattacharya, J.)