

27.03.2023
Ct. 5
D/L 14
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WPA 25736 of 2022

Provat Mandal

-Vs-

The Union of India & Ors.

Mr. S. Dasgupta,
Mr. Biswaroop Mukherjee,
Mr. Avijit Dey

... for the petitioner

Mr. Raja Saha,
Mr. S. P. Lahiri

... for the State

Ms. Manika Roy

... for the NHAI

The petitioner continues to remain protected by an interim order dated 30th November, 2022. The interim order was passed on the petitioner's apprehension that the petitioner's dwelling house will be demolished by the National Highways Authority of India (NHAI). By a subsequent order of 20th December, 2022, the Court refused to vacate the interim order despite the Report filed by the NHAI, since the Court was of the view that the NHAI had not complied with the statutory procedure under Section 26 of The Control of National Highways (Land and Traffic) Act, 2002 relating to removal of unauthorized occupation.

The subsequent supplementary Report filed by the NHAI contains an order dated 30th December, 2022 passed by the Highway Administrator -cum- Project Director, NHAI rejecting the representation made by the petitioner against the notice directing removal of the unauthorized occupation of the highway land.

Learned counsel appearing for the petitioner submits that the petitioner was not served with the notice dated 16th March, 2022 and received the same only on 22nd March, 2022, immediately after which he filed a representation on 5th April, 2022 which was rejected by an order of 30th December, 2022.

Learned counsel appearing for the NHAI submits that the order dated 30th December, 2022 is an appealable order under Section 14 of the 2002 Act.

Upon considering the effect of Section 14 of the 2002 Act, it appears that the petitioner is empowered to appeal from the said order before any Court. The order does not come within the exception under Section 14 since the order was admittedly issued under Section 26 of the Act. Section 2(da) of the 2002 Act defines “Court” to mean the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction.

Section 14 read with Section 2(da) of the Act indicates that the Writ Court is not the appellate forum which is available to the petitioner against the order

dated 30th December, 2022. The Act does not mention any limitation period for filing of the appeal, which is also the position taken by the counsel appearing for the NHAI.

In any event, since the order is of 30th December, 2022, and almost four months have passed since then, the petitioner is given leave to approach the appropriate Court to challenge the order. Any delay on the part of the petitioner should be condoned.

The petitioner shall remain protected from any action taken on behalf of the Authorities until 7 days after the Appellate Authority passes an order on an appeal filed by the petitioner subject to petitioner filing the appeal within a fortnight from date. The protection in favour of the petitioner is given on the consideration that the NHAI has not been able to satisfy the Court that the procedure envisaged under Section 26 of the Act was followed by the NHAI at any point of time.

WPA 25736 of 2022 is disposed of in terms of the above.

(Moushumi Bhattacharya, J.)