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IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

209 (FOUR CASES)

Date of Decision: 16.05.2024.

(1) CWP-29516-2018 (O&M).
SOHAN LAL AND ANOTHER .. Petitioners

Versus

UNION OF INDIA AND OTHERS ... Respondents

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(2) CWP-7925-2019 (O&M).
INDER JEET AND ORS .. Petitioners

Versus

UNION OF INDIA AND OTHERS ... Respondents

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(3) CWP-18824-2019 (O&M).
PURUSHOTTAM DASS GUPTA AND ORS .. Petitioners

Versus

UNION OF INDIA AND OTHERS ... Respondents

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(4) CWP-20058-2019 (O&M).

LEHNA SINGH AND OTHERS

.. Petitioners

Versus

UNION OF INDIA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Narender Kumar Sharma, Advocate and
Ms. Suman Sharma, Advocate,
for the petitioners.

Ms. Puneeta Sethi, Advocate,
for the respondents/Union of India.

Mr. D.K. Singal, Advocate, for the respondent-NHAI.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. Deepak Balyan, Advocate,
for respondent No.7.

VINOD S. BHARDWAJ, J. (ORAL)

The above mentioned four writ petitions involve a similar issue
and thus are being decided by a common judgment.

2 For the facility of reference, brief facts have been extracted
from CWP-29516-2018 titled as ‘Sohan Lal and Another vs. Union of India
and Others.’

3 Challenge in the writ petition is to the Notice bearing Memo
number NHAI/PIU/EPE-1/M-46/2018/D-4489 and NHAI/PIU/EPE-1/M-

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46/2018/ D-4466, under Section 26 (2) of the Control of National Highways (Land and Traffic) Act, 2002.

4 The petitioner approached this Court claiming that they are lawful owners having purchased property through valid sale deeds and have raised construction thereafter. The necessary statutory approvals and permissions had been taken before the construction and that the said land was never acquired but yet demolition proceedings have been initiated by the respondent-NHAI.

5 Reply was filed by the respondents including the NHAI as well as the Municipal Committee, Samalkha. More emphasis has been laid on the demarcation conducted by Revenue Authorities and the petitioners having been found to be in encroachment over the land and road of NHAI due to which proceedings have been initiated for removal of encroachment.

6 Without going further into the factual matrix, the controversy involved in the present case is in relation to demarcation of the land qua which the respondents have claim the same to have been carried out repeatedly and under the Orders passed by the Local administration as well as the High Court. The petitioners were reported to be found in encroachment over the portion of land.

7 The argument advanced by the petitioner is solitary:- the notice for removal of encroachment can only be given by and/or at the instance of the true owner of the land in question and that NHAI has no rights over the land. He contends that a specific plea had been raised by the petitioner in

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para No.4 of the writ petition to the effect that the land in question was never acquired either by the National Highways Authority of India or by the State Government. The specific plea raised in the petition in this regard is extracted as under:-

“4. That the respondents state never acquired the land of the farmers for National Highway as depicts from the revenue record of the Revenue Estate Samalkha. The respondents state is in illegal possession of the National Highway Land in Samalkha. The administration is adamant to harm and harass the petitioners and other residents of the Samalkha by one way or another.”

8 The National Highways Authority of India, while responding to the above said para, has not disputed the factum of the land having not been acquired by the National Highways Authority of India and submits that the land had already been vested with the State Government.

9 The response by the National Highways Authority of India, reads as under:-

4. That the contents of Para no.4 are denied being wrong and incorrect. However, it is submitted that since the petitioners have encroached upon the land, there is no necessity to acquire the land as the same has already been vested with the Government. Thus respondents state is in illegal possession of the National Highway land in Samalkha. It is also specifically denied that the administration is adamant to harm and harass the petitioners and other residents of the Samalkha by one way

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or another in view of the submissions made in the preceeding paras.”

10 The reply of the State Government, however, makes another interesting reading and the same is extracted as under:-

“4. That para no.4 of the Civil Writ Petition is not denied to the extent that the respondent 'state never acquired the land of farmers for National Highway. The contents of remaining para are wrong hence denied. It is wrong to allege that the administration is adamant to harm and harass the petitioner and other residents of Samalkha by one way or the other.”

11 While the National Highways Authority of India does not dispute that it had not acquired the land and had staked claim over the land on the basis of vesting over right of the same in Government of Haryana, the Government of Haryana in its response does not stake any claim over the land and rather, admits the claim of the petitioners that the same was never acquired.

12 There is no document placed on record either by the State Government or by the National Highways Authority of India on the basis whereof it can be deciphered that the land in question had been acquired either by the State of Haryana for further vesting it in the National Highways Authority of India or by the National Highways Authority of India. Counsel for the respondents also could not refer to any provision or notification under which a right was vested in NHAI to issue eviction notices.

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13 Under the given circumstances, there is merit in the argument advanced by the counsel for the petitioner(s) that the respondents have no authority to issue any notices for the alleged encroachment as any such authority for seeking eviction/ejectment of a person in an unauthorized possession can only lie with a person in whom such a right vests.

14 In view of the above and there being no material available with this Court to hold that the respondent-National Highways Authority of India was empowered/entitled to exercise powers conferred upon it under Section 26 (2) of the Control of National Highways (Land and Traffic) Act, 2002, the present writ petitions are allowed. The impugned notices number NHAI/PIU/EPE-1/M-46/2018/D-4489 and NHAI/PIU/EPE-1/M-46/2018/D-4466, issued by respondent No.2 under Section 26 (2) of the Control of National Highways (Land and Traffic) Act, 2002 are set aside without prejudice to the right of the respondents to establish its/their title, if any, over the land and to take appropriate action in accordance with law.

15 Pending, misc. application(s), if any shall also stand(s) disposed of accordingly.

16 A photocopy of the order be placed on the file of each connected case.

May 16, 2024.
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(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No