

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

209-5CWP-37113-2019

SUMAT PARKASH JAIN... Petitioner

VERSUS

UNION OF INDIA AND OTHERS... Respondents

AND

209-6CWP-14644-2019 (O&M)
Date of Decision: 16.05.2024

ASHOK SHARMA... Petitioner

VERSUS

UNION OF INDIA AND OTHERS... Respondents

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

Present: Mr. Dhruv Gupta, Advocate
for the petitioner in CWP-37113-2019.

Mr. Abhishek Pundir Advocate
for the petitioner in CWP-14644-2019.

Mr. Pankaj Mulwani, DAG, Haryana.

Ms. Puneeta Sethi, Sr. Panel Counsel
for respondent No.1-U.O.I.

Mr. D.K. Singal, Advocate
for respondents No.2, 3 and 8 in CWP-37113-2019 and
for respondents No.2 and 3 in CWP-14644-2019.

Mr. Deepak Balyan, Advocate and
Mr. Sushant Sharma, Advocate
for respondent No.7.

VINOD S. BHARDWAJ, J. (ORAL)

CM-3670-CWP-2020 IN CWP-14644-2019

Allowed as prayed for subject to all just exceptions.

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The document Annexure P-6 i.e. the copy of order dated 21.11.2018 passed in CWP-29516-2018 is ordered to be taken on record. Registry is directed to tag the same at appropriate place of the paper book and page mark the same.

MAIN CASES

Both these writ petitions raise common issues and are accordingly decided by a common order with the consent of the parties. The facts are, however, taken from CWP-37113-2019 titled as Sumat Parkash Jain Versus Union of India and others.

A direction was sought in the present writ petition to the respondents to restore the possession of the land owned by the petitioner abutting the National Highway-1 (Now NH-44) which is alleged to be illegally encroached upon by the respondent-NHAI by demolishing the building owned by the petitioner herein in an alleged misuse of the provisions of the Control of National Highways (Land and Traffic) Act, 2002.

A further prayer has been made for seeking compensation for the wrongful loss/damage that has been caused, claiming that the petitioner was in authorized occupation of the land and had raised construction of the house and shop on the said land after obtaining all necessary permissions and approvals from the Competent Authority.

Written statement has been filed on behalf of the respondents No.2, 3 and 8 through Shri Hanumant Singh, Project Director, Project Implementation Unit, Sonipat, wherein it has been submitted that the widening of the national highway from 6 lane to 8 lane was undertaken in view of the exigencies of the



circumstances. A complaint/petition had been filed by one Mr. P.P. Kapoor before the Lokayukta, Haryana wherein order dated 01.05.2017 was passed by the Lokayukta, Haryana observing that the Deputy Commissioner should convene a meeting of the officer of PWD (B&R) Panipat as well as the officers of M.C. Panipat and to send a report as to whether there was any encroachment as per the allegations levelled thereunder, and if any, what steps have been taken. The copy of the abovesaid order passed by the Lokayukta, Haryana was forwarded to the Project Implementation Unit, NHAI, Ambala and after receipt of the said order, the Concessionaire was instructed to identify the encroachments on the stretch in dispute. The matter was also taken up by the respondent-NHAI with the Deputy Commissioner, Panipat for identification as well as declaration of the land as per the original land plan of NF-44 in the Samalkha region, so as to indentify the encroachment and to enable removal of such encroachment on the land. Thereafter, the matter was again taken up under the consistent supervision of the Lokayukta Haryana. It is submitted that the office of the NHAI instructed the Concessionaire to find out the encroachments and a report was received on 21.07.2017 whereupon notice dated 31.10.2017 was issued under Section 26(2) of the Control of National Highways, (land and Traffic) Act, 2002 to 44 persons who were found to have encroached the land of the National Highway. A large number of representations were received by the NHAI.

Faced with the said situation and in order to settle the issues raised in the said representations, the NHAI took up the matter with the office of Deputy Commissioner, Panipat by writing a letter dated 23.11.2017 to depute

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official so as to demarcate the land and also provide assistance for removal of the encroachment, if any, found at the site in the Right of Way (ROW) of the NHAI. A Duty Magistrate was later on appointed to carry out the demarcation, which was eventually undertaken w.e.f. 09.03.2018 to 16.03.2018 and report thereof was furnished on 30.03.2018. The said demarcation was undertaken by the Revenue Officials in the presence of the representatives of the NHAI as well as the Concessionaire, after verifying the same with the revenue record. A total of 79 persons had been found to have encroached upon the left side of ROW of the NHAI and 17 persons had been found to have encroached upon the right side of the ROW of the NHAI. On receipt of the said report, the NHAI issued notice dated 07.05.2018 to the encroachers under Section 26(2) of the Control of National Highways (Land and Traffic) Act, 2002 asking them to remove the encroachment on the basis of the abovesaid report, failing which action was to be taken by the NHAI.

Some of the persons approached this Court by CWP-16228 of 2018 titled as 'Deepak Kumar and another Vs. Union of India and other' seeking quashing of the impugned notice dated 07.05.2018 sent by the respondent-NHAI. During the pendency of the abovesaid writ petition, a fresh demarcation of the area was carried out as per the mandate of the orders passed by the High Court as well as Lokayukta, Haryana under the supervision of Municipal Committee, Samalkha. Two demarcations were made on 25.07.2018, one in report of khasra no.90 on the left hand side; and the other for khasra No.51 in Village Bhapura, Tehsil Samalkha, District Panipat (right hand side of NH-1) As per the said demarcation report, in khasra No.90, 79 persons were found to



have encroached upon the land; whereas in khasra No.51, 17 persons were found to have encroached upon the land. The said report was prepared in the presence of the revenue officials. The writ petition was disposed of vide order dated 01.08.2024 passed by this Court with an observation that as a fresh demarcation has been carried out, hence, the object of filing the petition stood achieved and the Court was satisfied with regard to the veracity of the demarcation report. It was also directed therein to take necessary steps to execute the work in terms of the demarcation report dated 25.07.2018 (wrongly typed as 24.07.2018 in the judgment dated 01.08.2018). Further action was accordingly undertaken by the NHAI to remove the unauthorized encroachment from the concerned area. At the same time, Lokayukta, Haryana also passed an order dated 06.08.2018 in Complaint No.265 of 2015 whereby he directed the Deputy Commissioner, Panipat to intimate that what steps had been taken by him in view of the demarcation report submitted before the Lokayukta and in compliance to the letter dated 23.11.2017 sent by the Project Director, NHAI. Thereafter, on 18.01.2019, the respondent wrote a letter to the Deputy Commissioner requesting therein to depute Duty Magistrate as well as sufficient police force including the lady police for the period from 29.01.2019 to 31.01.2019 so as to remove the encroachments.

Counsel for the respondent-NHAI contends that as the encroachments have already been removed, there was no further occasion and/or cause for the petitioners to re-agitate the issue of demarcation yet again in a fresh writ petition. In the event, the petitioners are not satisfied with the demarcation so carried out and/or are claiming compensation for the action



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undertaken by the NHAI, the remedy is not by way of a writ petition since disputed question of facts would arise pertaining to the veracity and admissibility of the demarcation report, which has already been accepted by this Court while disposing of the earlier writ petition No.CWP-16228 of 2018 titled as 'Deepak Kumar and others Vs. Union of India and others' vide order dated 01.08.2018.

In view of the aforesaid disputed question of facts, counsel for the petitioner(s) do not press the instant writ petitions at this stage so as to take recourse to the alternative remedies that are available to the petitioners in accordance with law.

Respondents have no objection to the same.

Disposed of as not pressed at this stage, with liberty as aforesaid.

A photocopy of this order be placed on the file of another connected case.

(VINOD S. BHARDWAJ)
JUDGE

16.05.2024.
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No