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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 13594/2024**

OCUS SKYSCAPERS REALTY PRIVATE LIMITED

.....Petitioner

Through: Mr. Sanjoy Ghose, Senior Advocate
with Mr. Lokesh Bhola, Ms. Sanjana
Manchanda, Mr. Lavish Soni,
Advocates

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. P.S. Singh, CGSC with Mr. Amit
Acharya, GP for R-1
Mr. Govind Kumar, Mr. Kumar
Kshitij, Mr. Shivam Goel, Mr. Anil
Goel, Advocates for R-2 & 3

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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26.09.2024

CM APPL. 56874/2024 (Exemption)

1. Exemption is granted, subject to all just exceptions.
2. The Petitioners shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.
3. Accordingly, the application stands disposed of.

W.P.(C) 13594/2024, CM APPL. 56873/2024 (for stay) & CM APPL. 56875/2024 (seeking permission to file synopsis and list of dates)

4. The Petitioner has filed the present petition, assailing the notice

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bearing reference no. PIU/DWE/40/02/2937 dated 28th August, 2024,¹ issued by Respondent No.1/ Project Director, National Highway Authority of India.² Through the impugned notice, the Petitioner has been directed to remove the unauthorised access on the National Highway NH 24BB, within seven days from the issuance of the notice.

5. The facts leading to the present petition are as follows:

5.1 The Petitioner had obtained approval of their building plan for the purpose of erecting buildings on a commercial site measuring 4.14 acres falling in Sector 99, Near Dhankot Chowk, Dwarka Expressway, Gurugram, Haryana 122006. The said approval was granted by the Directorate of Town and Country Planning, Haryana on 17th April, 2012. The Petitioner was also granted occupation certificate with respect to the said project, known as ‘Ocus Medley’, on 25th September, 2018.

5.2 The zoning plan of the said project was also approved by the Directorate of Town and Country Planning, Haryana. The Petitioner secured all necessary No Objection Certificates in the year 2012-13, such as NoC from the Airport Authority of India as well as Haryana State Pollution Board. The Petitioner’s project is also registered with RERA, Haryana.

5.3 In 2017, NHAI notified NH 248BB as National Highway, which runs adjacent to the Petitioner’s project. The construction of the said highway was completed and it was inaugurated on 11th March, 2024.

5.4 Shortly thereafter, Respondent No. 3 issued the impugned notice calling upon the Petitioner to remove the unauthorized access on the National Highway, which is comprised in the Right of Way. The Petitioner was directed to comply with the notice within seven days of issuance of the

¹ (“impugned notice”)



notice.

5.5 The Petitioner submitted a representation dated 3rd September, 2024, apprising Respondent No. 3 that as per the approved layout, the project had designated access from the service lane, which is yet to be constructed by the concerned authorities. The Petitioner urged that the only access to the project is from the National Highway, and blocking the same without providing an alternative, would severely hamper the functioning of the project and cause significant inconvenience to its occupants, while also effecting the business operations of the Petitioner.

5.6 As per the impugned notice, the Petitioner was afforded a personal hearing on 11th September, 2024 and the final decision on the impugned notice is awaited.

6. In the above circumstances, the Petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India, 1950, assailing the impugned notice. The Petitioner also seeks a declaration that the ‘Guidelines/Norms for Grant of permissions for construction of access to Fuel Stations, Wayside amenities, connecting roads, Other properties, Rest Area Complexes & such other facilities’ dated 26th June, 2020, issued by Respondent No. 1,³ are inapplicable to structures which had received sanction plans and had initiated construction activities prior to the notification of declaration of National Highway.

7. Mr. Sanjoy Ghose, Senior Counsel for the Petitioner, acknowledges that the final decision on the impugned notice is still pending. However, he contends that an adverse outcome could abruptly halt the Petitioner’s operations, creating significant disruptions. Further, acknowledging the

² (“NHAI”)



availability of a remedy of statutory appeal under the Control of National Highways (Land and Traffic) Act, 2002, Mr. Ghose nonetheless argues for an interim safeguard. He emphasizes that should Respondent No. 3 issue an unfavourable decision, it would take immediate effect, leaving the Petitioner with little to no time to pursue the statutory remedies. Therefore, he urges that a buffer period be afforded to the Petitioner, allowing them to properly exercise their right to appeal under the Act.

8. Mr. Ghose candidly states that the challenge to the Guidelines primarily stems from the grievance linked to the issuance of the impugned notice. He further asserts that if the forthcoming decision effectively addresses the Petitioner's concerns, there may be no compelling reason or necessity to challenge the Guidelines. At the same time, he urges the Respondent Authorities to adopt a pragmatic approach, mindful of the Petitioner's situation, and to explore an alternative solution that could avoid further litigation. In fact, Mr. Ghose, under instructions, expresses the Petitioner's willingness to contribute proportionally to any costs incurred in the construction of an access road, should such a requirement arise under the Guidelines. This, he suggests, could pave the way for an amicable resolution.

9. Mr. Govind Kumar, Counsel for Respondent Nos. 2 and 3 apprises the Court of Section 14 of the Control of National Highways (Land and Traffic) Act, 2002, which reads as follows:

“14. Appeal.—An appeal from any order passed, or any action taken, excluding issuance or serving of notices, under sections 26, 27, 28, 36, 37 and 38 by the Highway Administration or an officer authorised on its behalf, as the case may be, shall lie to the Court.”

³ (“the Guidelines”)



He argues that the present matter falls within the ambit of issues that are best addressed by the competent Court as outlined in the Act. He further informs the Court that the decision on the impugned notice is expected shortly.

10. The Court has carefully weighed the Petitioner's arguments for invoking this Court's territorial jurisdiction, which hinge on the issuance of the impugned notice by the NHAI office in Delhi. While this fact might indicate that a part of the cause of action occurred within this Court's territorial boundaries, the core issue is fundamentally linked to the Haryana state authorities responsible for sanctioning the building plans of the Petitioner's project. Therefore, despite the technical jurisdictional link provided by the NHAI's notice originating from Delhi, the location of the project property in Gurgaon directs the matter towards a more appropriate forum. Applying the principle of *forum non conveniens*, it is clear that the High Court of Punjab and Haryana is better suited to adjudicate the matter. This principle emphasizes the selection of the most convenient and suitable forum for resolving a dispute, especially when the property and the involved state authorities lie outside this Court's jurisdiction. Furthermore, this approach aligns with Section 2(da) of the Control of National Highways (Land and Traffic) Act, 2002, which defines the "Court" as the principal Civil Court of original jurisdiction in a district and, where applicable, the High Court in exercise of its original civil jurisdiction. In light of these considerations, even if the challenge to the Guidelines is to be taken up by a High Court, it would be more appropriate for the Petitioner to approach the High Court of Punjab and Haryana to address the anticipated issues along with the said challenges.

11. At this juncture, Mr. Ghose submits that, given the interim relief



sought by the Petitioner, the Court need not express a definitive view on this issue. He further asserts that should the need arise for the Petitioner to revisit the challenge to the Guidelines, the Petitioner will take into account the observations made by this Court.

12. In view of the above, the present petition is disposed of with the following conditions:

- (a) The Petitioner is at liberty to submit an additional representation to Respondents Nos. 2 and 3 within 5 days, provided that no final decision has been rendered with respect to the impugned notice as on the date of this order.
- (b) The Respondents shall be at liberty to seek any further information or conduct a personal hearing with the Petitioner.
- (c) Should the decision of Respondents Nos. 2 and 3 be adverse to the Petitioner, they shall pursue the statutory remedies provided under the Act, in accordance with law.
- (d) The Petitioner shall also be at liberty to challenge the Guidelines, in case needs arises in the future, having regard to the observations made hereinabove.
- (e) If the decision rendered by Respondents Nos. 2 and 3 is adverse to the Petitioner, its implementation shall be stayed for a period of ten days to allow the Petitioner to exercise their legal options in accordance with the law noted above.

13. The Court has not examined the merits of the case. All rights and contentions of the parties are left open.

14. It is clarified that the extension of timelines has been granted to the Petitioner to enable them to avail legal remedies in order to challenge the



awaited order, and does not reflect the Court's opinion on the contentions urged by the Petitioner on the merits of the case.

15. With the aforesaid directions, the present petition is disposed of.

SANJEEV NARULA, J

SEPTEMBER 26, 2024/ab