

(2019) 11 RAJ CK 0081

In the Rajasthan High Court

Case No : Civil Writ Petition No. 303, 347, 348 Of 2019

Prakash Chandra And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 07-11-2019

Acts Referred:

National Highways Act, 1956 — Section 3A, 3D, 8B
Control Of National Highways (Land & Traffic) Act, 2002 — Section 26
Constitution Of India, 1950 — Article 226(3)

Citation : (2019) 11 RAJ CK 0081

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : Awar Dan Ujjwal, Rajan Prajapati

Final Decision : Disposed Of

Judgement

Though the matters have been posted for orders on application under Article 226 (3) of the Constitution of India, but learned counsel for the parties

submitted that they be finally decided. Considering that the controversy lies in a narrow compass and having regard to the fact that project of

construction and widening of National Highway No.76 is stalled, this Court proceeds to finally decide these petitions.

All the three matters involve identical facts and common arguments, hence they are being heard conjointly and decided by a common order. For the

sake of convenience, the facts of SB Civil Writ Petition No.303/2019 are, however, taken into account.

Petitioner claims himself to be a recorded khatedar of parcel of land, admeasuring 7 biswas in Khasra No.1239 of village Ganoli, Patwar Halka Namri,

Revenue Inspection Area Dabok, Tehsil Mawali, District Udaipur. He has approached this Court alleging that the respondents are dispossessing him

and removing the construction raised by him on his owned land.

Coordinate Bench of this Court, vide its order dated 10.01.2019 restrained the respondents from demolishing petitioner's construction by passing the

following order :

In the meanwhile, if the respondents have not acquired the land of the petitioner, by way of Gazette Notification, they are restrained to demolish the

construction of the petitioner over the land bearing Khasra No.1239 measuring 7 Biswa, Khasra No.2149/1247 measuring 5 Biswa, total land

measuring 12 Biswa in revenue Village Ganoli, Patwar Halka Namri, Dabok, Tehsil Mawali, District Udaipur.

Mr. Rajan Prajapati, learned counsel appearing for the respondents No.2 & 3 submits that the land in question had long been acquired in furtherance

of a notification dated 11.04.2002 issued under Section 3A of the National Highways Act, 1956 (hereinafter referred to as the 'Act of 1956'); all the

requisite proceedings were taken; a declaration under Section 3D of the Act of 1956 dated 07.08.2002 was made; and due compensation to the tune

of Rs.10,80,770/- was paid to Uda S/o Kalla Gadri in the year 2002 itself. According to the respondents, the land in question had been duly acquired in

exercise of provisions of Act of 1956 and the same thus, vests in National Highway Authority of India.

Inviting attention of the Court towards Section 8B of the Act of 1956, learned counsel for the respondents submits that the petitioners are

encroachers/trespassers on the land belonging to the respondents and hence they can evict/dispossess them for widening of the National Highway.

Mr. Awar Dan, learned counsel for the petitioners firstly contends that the petitioner is an owner of the land, which is evident from perusal of the

'Jamabandi' he has placed on record, hence neither he can be removed nor his construction demolished, without acquisition. Alternatively and secondly

he submits that even if the land is vested in National Highway Authority, they cannot take the law in their own hands and dispossess the petitioner,

particularly when an Act has been enacted by the Parliament in the name of 'The Control of National Highways (Land & Traffic) Act, 2002'

(hereinafter referred to as the 'Act of 2002').

Inviting Court's attention towards Section 26 of the Act of 2002, learned counsel for the petitioners urges that the respondents are required to follow

the due process of law, as provided under the Act of 2002.

Without recording any finding as to whether the ownership of the land vests in the petitioner or in the National Highway Authority, this Court deems it

appropriate to dispose of these writ petitions with a direction to the respondents to take up appropriate proceedings in accordance with law.

The respondents shall serve upon each of the petitioner(s) a notice contemplated under Section 26 of the Act of 2002, fixing the date of hearing as

18.11.2019. On which date, the petitioners will furnish their reply/response to the notice, whereafter the competent authority shall decide the

petitioners' entitlement/rights within a period of ten days.

It is, however, made clear that in case notwithstanding the fact that a notice is not served upon the petitioners (on account of their refusal/reluctance),

they will have to appear before the Project Director, National Highway Authority of India, Project Unit Office, 10-A New Panchwati, Udaipur, along

with their reply and requisite documents. The competent authority shall consider such representation/documents objectively, in accordance with law.

Untill the proceedings under Section 26 of the Act of 2002 are culminated, status-quo with regard to disputed land(s), as it exists today, shall be

maintained. In case the petitioner(s) is/are found to be encroacher(s) or illegal occupants, no further indulgence be granted to them.

With the above observation and direction, all the three writ petitions are disposed of.

The stay applications are also disposed of.