

ITEM NO.17+18

COURT NO.3

SECTION III

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 19714/2021

(Arising out of impugned final judgment and order dated 19-08-2021 in WPPIL No. 222/2014 passed by the High Court Of Gujarat At Ahmedabad)

UTRAN SE BESTHAN RAILWAY JHOPADPATTI VIKAS MANDAL Petitioner(s)

VERSUS

GOVERNMENT OF INDIA & ORS.

Respondent(s)

WITH

Diary No(s). 23559/2021

Date : 16-12-2021 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE DINESH MAHESHWARI
HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Petitioner(s) Mr. Colin Gonsalves, Sr. Adv.
Ms. Kawalpreet Kaur, Adv.
Ms. Hetvi Patel, Adv.
Mr. Haider Ali, Adv.
Mr. Satya Mitra, AOR
Ms. Amiy Shukla, AOR

For Respondent(s)

Mr. Tushar Mehta, SG
MR. K. M. Nataraj, ASG
Mr. Kanu Agarwal, Adv
Mr. Akshay Amritanshu, Adv
Mr. Sanskriti Pathak, Adv
Mr. Varun Chaugh, Adv
Mr. Amrish Kumar, AOR

Mr. K M Nataraj, Ld ASG.
Mr. Vatsal joshi, Adv.
Mr. Vikas Bansal, Adv.
Mr. S.K Singhanian, Adv.
Mr. Sughosh Subramanyam, Adv.
Mr. Amrish Kumar, AOR

Mr. Arun Bhardwaj, Sr. Adv.
Mr. Rahul Kumar Sharma, Adv.

Ms. Deepanwita Priyanka, AOR

Mr. Munawwar Naseem, AOR
Mr. Dhaval Nanavati,
Mrs. Ruchi Khurana
Ms. Sanjna Dua, Advocates

UPON hearing the counsel the Court made the following
O R D E R

Diary No(s). 19714/2021

This special leave petition takes exception to the judgment and order dated 19.08.2021 in Writ Petition (PIL) No. 222 of 2014 whereby the cause espoused by the petitioners in the public interest litigation, of the occupants of the structures occupied by the concerned persons on Railway property came to be rejected by the High Court.

The fact that the structures are standing on the Railway property is not disputed at all. Their plea is only to provide suitable rehabilitation in lieu of the premises occupied by the concerned persons on the Railway property.

The respondent-Western Railways, at the outset asserts that it has not formulated any scheme much less for rehabilitation of persons who have encroached upon the Railway property. In fact, it is an offence to

encroach upon any Railway property. Further, they want to execute a public project of linking of railway line between Surat-Udhna upto Jalgaon (Third Railway Line Project). That project is being obstructed by unauthorised structures on the Railway property. The project, though sanctioned in the year 2018, is still incomplete because of the standing structures on the Railway property to the extent of 2.65 kilometers length. The total length of project is 10 kilometers and requiring a width of 25 meters all along.

As regards the operative order passed by the High Court of Gujarat at Ahmedabad, rejecting the public interest litigation, we do not wish to deviate from that conclusion. However, the question is about rehabilitation of the occupants of the concerned structures, which are likely to be removed due to the proposed action of demolition by Western Railways.

According to Western Railways, the primary responsibility to ensure that no encroachment takes place on any property is that of the local Government and also of the State Government, in equal measure.

Although, the submission seems to be attractive at the first blush, does not commend to us. For, there is a

special enactment which enables the Railway authorities to protect its property. That is its statutory and public trust obligation. It was open to the concerned Authority to invoke the provisions of special enactment including the Public Premises Act. For that, the Estate Officers should have moved into action in right earnest at the earliest opportunity. Even that option is not being invoked for reasons best known to the Authorities. Besides, the Railway establishment maintains a Railway police force whose services could be utilized to safeguard the Railways property, wherever it is situated.

As a result, the nuanced distinction made by the learned counsel for Western Railways does not commend to us. We hold that the Railways are equally responsible for the situation; and for which reason, it is also equally liable to provide some support to the persons likely to be affected by the removal of their structures.

Hence, keeping in mind the dictum of this Court in *Ahemadabad Municipal Corporation Vs. Nawab Khan Gulab Khan* reported in (1997) 11 SCC 121, on that analogy, we propose to issue following directions:

- (i) The respondent - Western Railways do immediately issue notices to the occupants of

the concerned structures which are falling within the belt which is required immediately for commencing the remaining project work by giving two weeks' time to the concerned occupant(s) to vacate the respective premises;

(ii) In respect of the remaining land owned by Railways, even though it may not be immediately required for the project, similar notice be given to the occupants of structures standing thereon by giving six weeks' time to vacate the respective premises;

(iii) In either case (i) and (ii) above, the notices be issued within one week from today and if the occupants fail to vacate the unauthorized structure, it will be open to the respondent-Western Railways to initiate appropriate action to forcibly dispossess them and to demolish or remove the unauthorized structure(s) by taking assistance of the local police force. The Superintendent/Commissioner of Police of the concerned area shall ensure that adequate police force is deployed on the site and surrounding areas including to provide

protection to the officials/staff engaged in the demolition of unauthorized structures and to facilitate them to commence the eviction process and demolition of the unauthorized structures, referred to in the eviction notices on the specified date and time;

(iv) Before commencing the process of eviction and removal of the structures, the Collector of the concerned District must ensure that necessary details about the names and number of persons occupying the concerned structure, including their identity and profile should be duly recorded, which record should be preserved by the Collector for considering the eligibility of those persons for being provided suitable residential accommodation after being evicted owing to proposed demolition action;

(v) The entity, who is the owner of the land, namely, Western Railways in this case as well as the local Government and the State Government shall be jointly and severally liable to pay a sum of Rs. 2,000/- per month per demolished structure for a period of six

months from the date of demolition of their structure as *ex-gratia* amount to the head of the family/occupants of the concerned unauthorized structure removed during demolition action. That amount shall be initially paid by the Collector for a period of six months "only" (not beyond six months each) and shall be later on shared equally by the entity (owner of the land), local Government and State Government;

(vi) In the event, the local Government has any rehabilitation scheme, the affected persons may apply for being rehabilitated under the said scheme, if eligible and subject to verification of eligibility and complying with all other terms and conditions of the prevalent scheme. The local Government may provide them suitable residential accommodation in lieu of rehabilitation owing to demolition of their structure.

(vii) If no rehabilitation scheme has been formulated by the local Government or is in force, the persons likely to be affected by the

action of demolition can apply for allocation of residential premises under the Pradhan Mantri Awas Yojna Scheme, which application be processed not later than six months from the date of its receipt and taken to its logical end, application-wise within such period.

(viii) Be it a case of rehabilitation under clause (vi) or (vii) above, the persons affected by demolition action by the Authorities cannot insist for allotment of alternative residential accommodation at the same place from where they have been evicted (as it is not *in situ* rehabilitation programme). The eligible persons be allotted accommodation wherever available in the same or even in neighbouring districts.

(ix) In addition, since the Railways have power to initiate civil/criminal action against the unauthorized occupants on the Railway property, must resort to those proceedings against the concerned persons immediately after it is brought to the notice to the concerned official of the Railways.

Further, the Railways being the owner of the property, as also the local Government and State Government must initiate appropriate action against the erring persons, including the officials of the concerned establishment for allowing and tolerating such encroachment and for not taking corrective action of removal of encroachments in right earnest and at the earliest opportunity.

(x) The status report of the action taken by the Railway Board as also by the local Government and State Government be furnished to this Court before the next date.

List this matter on 28.01.2022.

In the meantime, learned counsel for the petitioner to cure the defects as pointed by the Registry.

Diary No(s). 23559/2021

The order passed in Diary No(s). 19714/2021 will operate even in this special leave petition, only qua the ten structures of the concerned petitioners herein.

Mr. Colin Gonsalves, learned senior counsel appearing

for the petitioner points out that one more petition has been filed by the affected persons before the High Court of Punjab and Haryana being Writ Petition No.19647 of 2021, involving similar issues. The same is withdrawn and shall stand transferred to this Court in terms of this order.

List the transferred case and this petition along with Diary No. 19714 of 2021 on 28.01.2022.

In the meantime, learned counsel for the petitioner to cure the defects as pointed by the Registry.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)