

In Re: Manoj Tibrewal Akash

(Writ Petition (Civil) No. 1294 of 2020)

06 November 2024

**[Dr Dhananjaya Y Chandrachud,* CJI,
J.B. Pardiwala and Manoj Misra, JJ.]**

Issue for Consideration

Supreme Court laid down guidelines that State authorities must adhere to while removing illegal encroachments in relation to road widening projects.

Headnotes[†]

Petitioner's letter regarding alleged illegal demolition of his house converted into *suo moto* writ petition – Certain portion of Petitioner's house came to be notified as a part of road widening project (NH No. 370) in 2012 – Project sanctioned in 2018 – Petitioner directed between June 2019 to 6 September 2019 through Munadi announcement (by beat of drums) to remove his illegal encroachment from NH No. 370 – Petitioner's family made requests to District Magistrate against demolition by relying on an 1975 interim order of Allahabad High Court in a writ petition ordering no demolition of Petitioner's house except "*in accordance with some statutory provisions of law and after giving to the petitioners a reasonable opportunity of showing cause*" – Writ petition later dismissed in default – Petitioner's family sought compensation from District Magistrate in the event of demolition – On 12 September 2019, Petitioner's family called to remove all their belongings and on 13 September 2019, demolition took place – Legality thereof challenged by Petitioner's family before High Court and National Human Rights Commission (NHRC).

NHRC ordered enquiry and report thereon inter-alia revealed violation of natural justice during demolition as no prior notice was given – Demolition was done beyond the alleged area of encroachment – No compensation awarded – State agency's claim as regards width of the road in front of house being 32 m found contrary to NH-PWD's records and revenue records wherein such width was stated to be only 16 m:

*Author

In Re: Manoj Tibrewal Akash

Held: The Court held that the demolition was high-handed and without the authority of law as State agency failed to give prior written notice and also failed to disclose: (i) actual extent of encroachment; (ii) width of the existing road and that of the notified highway; (iii) extent of Petitioner's property which fell within the notified width; and justification for demolition beyond encroached area – Such demolition is a threat to the legal right to property recognized under Article 300A and is unsustainable in a civilised system of jurisprudence. [Paras 25-29]

The Court issued guidelines which require state authorities to mandatorily: (i) ascertain width of existing road in terms of official records/maps; (ii) conduct a survey to identify possible encroachment thereon; (iii) issuing a proper, written notice to the encroachers to remove the encroachment; (iv) on receiving any objection from notice regarding correctness/validity of the notice, decide the objection by a speaking order by following principles of natural justice; (v) If the objection is rejected, give a reasonable notice to the person affected and if such a person fails to act, he must be proceeded against in accordance with law, to remove the encroachment unless restrained by an order of the competent authority or court; and (vi) If the existing width of road including the State land adjoining the road is not sufficient to accommodate the widening of the road, steps must be taken by the State to acquire the land in accordance with law before undertaking the road widening exercise. [Para 30]

On facts, the Court awarded punitive damages of INR 25 lakhs to the Petitioner as interim measures and directed the Chief Secretary of the State to conduct an inquiry against erring officers and contractors – Not only in relation to Petitioner's house but also in relation to any other similarly situated property in the concerned area – The implementation of these directions was directed to be initiated within a month. [Paras 31-33]

List of Acts

Constitution of India.

List of Keywords

Plea of juvenility; Juvenile; Date of commission of offence; Stage of raising the plea; Irrelevant; Proper inquiry; *Prima facie* satisfaction; JJ Act; Documents/evidence; Ossification test.

Supreme Court Reports

Case Arising From

CIVIL APPELLATE JURISDICTION: Writ Petition (Civil) No. 1294
of 2020

(Under Article 32 of The Constitution of India)

Appearances for Parties

By Courts Motion.

Siddharth Bhatnagar, Sr. Adv., Shubham Kulshreshtha, Aditya Sidhra, Pracheta Kar, Nadeem Afroz, O.P. Vyas, Ms. Manju Sharma, Advs. for the Petitioner.

Ms. Tulika Mukherjee, Anuvrat Sharma, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Dr Dhananjaya Y Chandrachud, CJI

1. On 04 October 2019, Shri Manoj Tibrewal, a senior journalist, addressed a letter to this Court complaining of the unlawful demolition of his ancestral residential house and shop described as House Number 117, Ward Number 16, Mohalla Hamid Nagar, District Maharajganj, Uttar Pradesh by the authorities of the State. A suo motu Writ Petition was registered before this Court under Article 32 of the Constitution on the basis of the said letter.¹
2. On 07 December 2020, notice was issued to the District Magistrate and the Superintendent of Police, District Maharajganj.
3. In order to obviate any controversy in regard to the facts, we would proceed on the basis of the facts as revealed in counter affidavit filed by the District Magistrate.
4. The counter affidavit states that on 7 March 2012, the road on which the petitioner's house was situated was notified as a national highway (National Highway No. 730)² under the provisions of the National

¹ WP (Civil) No 1294 of 2020.

² "NH 730".

In Re: Manoj Tibrewal Akash

Highways Act, 1956. Prior to this notification, the road was a state highway spanning from District Pilibhit via Bahraich, Balrampur and Maharajganj to Padrauna.

5. Subsequently, on 13 March 2018, Government of India sanctioned the widening of the existing road. A final Detailed Project Report was prepared stating that the applicable right of way for the chainage between two sections from KM 484 to KM 505.120, was 30 meters. Following the sanction by the Government of India, an agreement was executed on 2 May 2018 between the State Public Works Department³ and Mahakaleshwar Infratech Private Limited⁴ for the execution of the work. The work order stated that the work would commence on 18 February 2019 and conclude on 17 February 2020.
6. The counter affidavit states that in June 2019, it emerged after identifying the right of way that out of the total sanctioned length of 21.120 km, about 4 kilometers of the stretch fell within Maharajganj town. It is alleged that the petitioner was one of several persons who had encroached upon the land of NH 730. According to the State, he had been directed to remove the encroachment from the land by way of a Munadi announcement (by beat of drums) from June 2019; between 25 August 2019 and 30 August 2019 and between 1 September 2019 and 6 September 2019.
7. On 4 July 2019, it is alleged, the mother of the petitioner made an application to the District Magistrate requesting him not to demolish her house by placing reliance on an interim order dated 14 November 1975 passed by the High Court of Judicature at Allahabad in a 1975 writ petition styled as ***Babulal Vs State of Uttar Pradesh***. By the said interim order, the High Court had issued notice in the writ petition and directed that the petitioner's house shall not be demolished except "in accordance with some statutory provisions of law and after giving to the petitioners a reasonable opportunity of showing cause" until further orders.
8. On 8 September 2019, Shri Shubh Karan Singh, the brother of the petitioner is stated to have furnished a letter to the District Magistrate averring that he had purchased the house/land which is registered

3 "PWD"

4 "MPL"

Supreme Court Reports

in the revenue records under Abadi Land category 6.2; and that the house was co-owned by three persons. However, the letter stated that the writ petition was eventually dismissed in default. The letter further stated that in the event that the house was to be demolished for the construction of the national highway, compensation ought to be given to the brother of the petitioner.

9. According to the Collector, on the evening of 12 September 2019, the occupants of the house were called upon to remove all their belongings and on 13 September 2019, “the team removed the encroachment”.
10. Lakshmi Devi Tibrewal, the mother of the petitioner instituted a writ petition before the High Court of Judicature at Allahabad on 28 September 2019.⁵ The petition eventually came to be dismissed as withdrawn by an order dated 18 January 2020 of the High Court.
11. On 4 October 2019, the petitioner moved a complaint before the National Human Rights Commission,⁶ which was registered as Case No 27074/24/49/2019. NHRC constituted a team of two inspectors for conducting a spot enquiry.
12. On 5 November 2019, the petitioner’s brother filed an affidavit stating that there was a two-storeyed ancestral house which was constructed in Hameednagar pursuant to the purchase of the house by his late father on 6 June 1964 by a registered deed in which he, the deponent had a 1/3 share. According to him, a registered deed of partition was executed in the family on 25 November 1967.
13. When in 1975, the Public Works Department⁷ attempted to demolish the house for the construction of a road, a writ petition was instituted before the High Court in which, on 14 November 1975, a Division Bench had passed an interim order. Since the partition could not be implemented, a civil suit was stated to have been instituted as between the co-sharers.
14. The Collector states that the brother of the petitioner has consented for the demolition of property to the extent of his share.

5 WP No. 1335 of 2020.

6 “NHRC”

7 “PWD”

In Re: Manoj Tibrewal Akash

15. When the petitioner moved the NHRC by a letter dated 04 October 2019, a detailed enquiry ensued. The enquiry culminated in a report dated 3 February 2020, whereby the NHRC concluded that :
 - (i) No notice was given prior to the demolition, save and except for a public announcement through loudspeakers;
 - (ii) The house of the petitioner who was the complainant before the NHRC was constructed on land purchased by his grandfather in 1960 and 1964;
 - (iii) The spot inspections and measurements done by Revenue Department officials in the presence of the NHRC enquiry team revealed that the extent of the encroachment on Government land was about 3.70 meters in length and demolition of that limited extent was justified because the land was falling under a 16-meter-wide road;
 - (iv) However, the house was demolished beyond the extent of the encroachment of 3.70 meters and the actual demolition was in fact between 5 to 8 meters;
 - (v) No compensation has been tendered for the demolition of the property;
 - (vi) The demolition action commenced on 7 July 2019 and on 13 September 2019, the house, which was 16 meters from the center of the road was demolished; and
 - (vii) The video clip provided by the officials of NH-PWD revealed that household goods, as alleged by the complainant, were still in the house before the work of demolition commenced.
16. In this backdrop, the findings of the NHRC indicate that at the highest, demolition to the limited extent of 3.70 meters may have been justified on the ground of encroachment but there was no justification for the demolition beyond the 3.70 meters. The NHRC concluded that the government agency had failed to provide any documents to support that the road in front of the petitioner's house was 32 meters (16 meters on each side from the centre of the road). The revenue records and the NH-PWD records revealed that the road width in front of the house was only 16 meters (8 meters on each side from the centre of the road). However, the District administration and officers demolished properties beyond the permissible extent, upto

Supreme Court Reports

32 meters (16 meters from the centre of the road on both sides) without authority of law.

17. The NHRC, therefore, opined that a *prima facie* violation of the human rights of the petitioner and his family was established. The NHRC:
 - (i) Issued notice under Section 18(a)(1) of the Protection of Human Rights Act, 1993 to the Government of Uttar Pradesh through its Chief Secretary to show cause why interim compensation ought not to be directed to be paid to the petitioner;
 - (ii) Directed the Director General of Police to register an FIR on the petitioner's complaint and have it investigated by the CBCID; and
 - (iii) Directed the Chief Secretary to take Departmental/punitive action against the errant officers of the District Administration, PWD or Police who dispossessed the petitioner and his family.
18. Pursuant to the above directions of NHRC, the Government of Uttar Pradesh responded by a communication dated 21 April 2020. The communication broadly flagged the grievance of the State Government that the version of the State Government was not adequately heard during the NHRC enquiry. It also stated that a separate enquiry was being conducted by the Commissioner, Basti Division, Basti.
19. The first report of the NHRC was followed by an order dated 6 July 2020 whereby a recommendation was issued to the Chief Secretary, Government of Uttar Pradesh to pay a compensation of Rs 5 Lakhs to the petitioner and his family for the loss caused to them. The Chief Secretary and the Director General of Police were directed to submit compliance reports.
20. The NHRC order dated 06 July 2020 was challenged by the State of Uttar Pradesh in a writ petition before the High Court of Judicature at Allahabad. The writ petition is pending before the High Court.
21. Besides the NHRC investigation, the issue was investigated by the Commissioner, Basti. The findings recorded by the Commissioner in an investigation report dated 18 June 2020 are extracted below :

“After scrutiny and on-site inspection of records related to the case, it was found that:

 1. For widening of the national highway in question, the DPR was not prepared by making a correct assessment

In Re: Manoj Tibrewal Akash

of the availability of land, land requirement, etc. on the spot as per rules.

2. During road widening, written notice should have been issued giving sufficient time in connection with the removal of the affected houses and other establishments/shops. Whereas in this case a notice, regarding the removal of the alleged encroachment was not issued. Rather, on 12-09-2019, before the demolition in question, Duggi-Munadhi was made, which was confirmed on the spot, but for such a big action, mere Duggi-Munadhi was not enough. For this, notice should be issued in writing². During road widening, written notice should have been issued giving sufficient time in connection with the removal of the affected houses and other establishments/shops. Whereas in this case a notice, regarding the removal of the alleged encroachment was not issued. Rather, on 12-09-2019, before the demolition in question, Duggi-Munadhi was made, which was confirmed on the spot, but for such a big action, mere Duggi-Munadhi was not enough. For this, notice should be issued in writing to the affected persons as per rules. Which has not been done. to the affected persons as per rules. Which has not been done.
3. It has been accepted by NH officials themselves that 16-16 meters of land is to be taken from the middle to both sides for junction, and according to revenue records, there is only 16 meters' width (8-8 meters from the middle of the road) of land is available on the spot. In such a situation, legal process has not been followed for additional land.
4. In the construction of the questioned road, as per the rules, compensation of landholding and other ownership land should be determined, which has not been done.
5. The officials of the National Highway demolished the complainant's house by getting the support of the

Supreme Court Reports

district administration in an illegal way by hiding the true facts, which was not fair.

6. On 04/07/2019, Smt. Laxmi Devi, wife of Shri Sushil Kumar Tibrewal, presented a letter before the then District Magistrate Maharajganj and it was conveyed that Digar Araji was being marked, out of the road. In this regard, no information and prior notice has been given to them. If land is acquired by damaging the house etc. of the applicant, then appropriate compensation should be provided to him. According to the records, no action was taken at this time, due to which the dispute in question arose. The construction should have been destroyed only after determining this relationship, and after determining and distributing the compensation, which has not been done. Therefore, the then District Magistrate, Maharajganj seems guilty for not following the procedure laid down in the case in question.
7. As far as the question regarding complainant attached at different levels presented with appointment section-5 of Uttar Pradesh Government letter 52/2-5-2020 dated 27/01/2020 and G-1-15 / 2-5-2020 dated 07/02/2020, it is worth mentioning that, in the complaint letters addressed to the Director, Enforcement Directorate, Government of India and Government of India, the Hon'ble Prime Minister, complaint regarding the Disproportionate assets of Amarnath Upadhyay, then District Magistrate, Maharajganj. It has been requested to investigate the issue by making a high-level team. Therefore, it would not be expedient to make any kind of comments etc. in this regard from this level."
22. Following a representation by the District Magistrate, the Commissioner passed a further order dated 31 July 2020 whereby he observed :

"It is clear that administrative before providing the administrative support, the then above District Magistrate Maharaganj had full responsibility to investigate the fact from their revenue records that whether the land on

In Re: Manoj Tibrewal Akash

which National Highway is constructing a road claiming to be in their ownership belongs to them or not. Without verifying the same from the revenue and tehsil records, the house in question was demolished through police and administrative support which was not appropriate from any view point. During the terrestrial inspection, it was found by me that the width of the road at the site in question has been reduced. The place where the complainant's house was located is not mentioned as a road land in the maps. The responsibility Of demarcating and fixing the land of the road which belongs to Public Works department, is of the then District Magistrate Maharaganj. Therefore, the representation/ statement furnished by the then District Magistrate Maharaganj Sh. Amarnath Upadhyay to the effect that he had no direct responsibility in the case in question cannot be accepted under any circumstances. Therefore, the representation/ assertion submitted by the then District Magistrate Sh. Amarnath Upadhyay is not acceptable at all."

23. We have heard Mr Siddharth Bhatnagar, senior counsel who appeared on behalf of the petitioner and Ms Tulika Mukherjee, learned counsel appearing on behalf of the State of Uttar Pradesh.
24. We are not inclined to accept the request of the counsel for the State for a further adjournment of these proceedings, having due regard to the fact that pleadings have been completed and the Court is required to evaluate material that has been placed on the record for deciding upon the legality of the action.
25. The following position emerges from the narration of facts :
 - (i) The State of Uttar Pradesh has produced no document to establish the original width of the State Highway which was notified as NH 730, a National Highway;
 - (ii) No material has been produced by the State of Uttar Pradesh to indicate whether any enquiry or demarcation was carried to earmark the encroachments;
 - (iii) There is no material to indicate that the land had been acquired before the work of demolition was carried out beyond a statement on affidavit that there was 'encroachment';

Supreme Court Reports

- (iv) The State has failed to disclose :
- The precise extent of the encroachment;
 - The width of the existing road;
 - The width of the notified highway;
 - The extent of the property of the petitioner which actually fell within the notified width; and
- (v) Any justification for why the demolition was required to be carried out beyond even the area of alleged encroachment as the report which has been submitted by the NHRC would indicate that the demolition was far in excess of the alleged encroachment which was to the extent of 3.70 meters.
26. The demolition was preceded only by a Munadi. There was no written notice; and no disclosure of the basis of demarcation or the extent of the demolition to the occupiers. Even in respect of the area allegedly encroached no due process was followed and a written notice was not issued.
27. From the above facts that have emerged, based on very disclosures made by the State of Uttar Pradesh, it is clear that the demolition was high-handed and without the authority of law.
28. At this stage, it may be also material to note the allegation of the petitioner in his letter dated 4 October 2019 addressed to the Secretary General which stated :
- “a few days before the demolition of the house, my father had demanded an inquiry by the SIT about the huge irregularities, bribes and corruption taking place in the construction being done with a cost of Rs.185 crore, of the 20 km road at the NH – 730 between 484 to 505 km. This had been published in the local newspapers. The local political and administrative people were vexed with us for demanding an inquiry into a construction costing 185 crore rupees, and were seething with anger hidden inside them.”
29. The petitioner has alleged that the demolition was a reprisal for a newspaper report which contained allegations of wrongdoing in relation to the construction of the road in question. We need not engage with this aspect, save and except to the extent that it supplies

In Re: Manoj Tibrewal Akash

the background to the grievance of the petitioner. In any case, such high-handed and unilateral action by the State Government cannot be countenanced. Justice through bulldozers is unknown to any civilized system of jurisprudence. There is a grave danger that if high handed and unlawful behaviour is permitted by any wing or officer of the state, demolition of citizens' properties will take place as a selective reprisal for extraneous reasons. Citizens' voices cannot be throttled by a threat of destroying their properties and homesteads. The ultimate security which a human being possesses is to the homestead. The law does not undoubtedly condone unlawful occupation of public property and encroachments. There are municipal laws and town-planning legislation which contain adequate provisions for dealing with illegal encroachments. Where such legislation exists the safeguards which are provided in it must be observed. We propose to lay down certain minimum thresholds of procedural safeguards which must be fulfilled before taking action against properties of citizens. The state must follow due process of law before taking action to remove illegal encroachments or unlawfully constructed structures. Bulldozer justice is simply unacceptable under the rule of law. If it were to be permitted the constitutional recognition of the right to property under Article 300A would be reduced to a dead letter. Officials of the state who carry out or sanction such unlawful action must be proceeded against for disciplinary action. Their infractions of law must invite criminal sanctions. Public accountability for public officials must be the norm. Any action in respect of public or private property must be backed by due process of law.

30. Before acting in pursuance of a road widening project, the State or its instrumentalities must :
 - (i) Ascertain the existing width of the road in terms of official records/maps;
 - (ii) Carry out a survey/demarcation to ascertain whether there is any encroachment on the existing road with reference to the existing records/maps;
 - (iii) If an encroachment is found, issue a proper, written notice to the encroachers to remove the encroachment;
 - (iv) In the event that the noticee raises an objection with regard to the correctness or the validity of the notice, decide the objection

Supreme Court Reports

by a speaking order in due compliance with the principles of natural justice;

- (v) If the objection is rejected, furnish reasonable notice to the person against whom adverse action is proposed and upon the failure of the person concerned to act, proceed in accordance with law, to remove the encroachment unless restrained by an order of the competent authority or court; and
 - (vi) If the existing width of road including the State land adjoining the road is not sufficient to accommodate the widening of the road, steps must be taken by the State to acquire the land in accordance with law before undertaking the road widening exercise.
31. In the present case, we conclude that the entire process which was followed by the State was high handed. We, therefore, direct as follows :
- (i) The State must make payment of punitive compensation;
 - (ii) The Chief Secretary of the Government of Uttar Pradesh is directed to have an enquiry conducted into the entire matter pertaining to the illegal demolition, against all concerned officers of the state and the contractors who are responsible for the illegal demolition. In addition, disciplinary action must be initiated against any officer who is found to be involved in the illegal demolition, not only of the house of the petitioner but of other similarly situated properties in the area which were similarly demolished without adequate notice; and
 - (iii) The Chief Secretary of the Government of UP shall lodge a First Information Report as directed by the NHRC. The FIR shall be investigated by the CB-CID.
32. The State of Uttar Pradesh is directed to pay the petitioner compensation in the amount of Rs twenty-five Lakhs, as an interim measure. By way of abundant caution, we clarify that this compensation shall not come in the way of the petitioner, should he choose to pursue any other proceedings which are available in law for compensation for the demolition and for the taking over of property without the authority of law.

In Re: Manoj Tibrewal Akash

33. The Chief Secretary of the Government of Uttar Pradesh shall, after conducting the enquiry, take suitable action including penal measures to ensure accountability of individual officials who have acted in violation of law. The implementation of these directions shall be initiated no later than within a period of one month from the date of this order. Disciplinary proceedings shall be completed within four months of initiation.
34. The Registrar (Judicial) shall circulate a copy of this judgment to the Chief Secretaries of all the States/Union Territories to ensure compliance with the directions which have been issued in regard to the procedure to be followed for the purpose of road widening in general.
35. The Writ Petition is accordingly disposed of.
36. Pending applications, if any, stand disposed of.

Result of the case: Writ Petition disposed of.

[†]*Headnotes prepared by:* Niti Richhariya, Hon'y. Associate Editor
(Verified by: Abhinav Mukerji, Sr. Adv.)