

No. NHIII/P/24/75

Dated the 1st April, 1976

To,

All State Governments, including Goa, Daman and Diu
(Departments dealing with National Highways)

Subject : Removal of encroachments on National Highways

I am directed to say that in the context of the present emergency the need for clearing the National Highways of all encroachments and thereby eliminating nuisance and accident-prone spots and ensuring free flow of traffic thereby increasing the capacity of roads has assumed greater urgency and importance. The question of tackling this problem has accordingly been examined in consultation with the Ministry of Law, who have made the following observations :—

- (1) Various remedies are open to the State Governments to get the National Highways cleared of obstructions and that most speedy remedy is under Section 133 of the Criminal Procedure Code. In order to bring the case under Section 133, the prosecution has to prove that the land in question is either a public way or a public place.
 - (2) Encroachment upon a public road is an obstruction to the public path and it is a nuisance in itself under section 269 of the Indian Penal Code. No argument by a user can justify an encroachment upon a public way. The question of sufficient width of the road being left in support of the encroachment for public use is no ground for allowing encroachment or obstruction to continue. It is the duty of the Magistrate to come to a finding whether the claim of the person complaining of such encroachment is bonafide or not. The question of possession is relevant for this purpose.
 - (3) Criminal proceedings may, therefore, be initiated against the wrong doer under the various provisions of Indian Penal Code, Criminal Procedure Code and such of the Police Acts as are applicable to Central subjects like National Highways which are a Union subject under the Constitution.
 - (4) Section 291 of the Indian Penal Code punishes a person continuing a nuisance after he is enjoined by a public servant not to repeat or continue it. Sections 142 and 143 of the Code of Criminal Procedure empower a Magistrate to forbid an act causing a public nuisance. The Civil Procedure Code also empowers a court to issue temporary injunction.
2. This matter was also placed before the State Chief Engineers at their meeting held at Hyderabad on 6.1.1976 and they had no comments to offer. I am accordingly to request you kindly to take necessary action in the matter for the removal of encroachments on National Highway lands on the lines indicated above. The contents of this communication may also be brought to the notice of all concerned with the development and maintenance of National Highways under the State Public Works Department to facilitate speedier action. It will be greatly appreciated if a copy of the instructions issued will be endorsed to this Ministry also.
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