



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
(सड़क परिवहन और राजमार्ग मंत्रालय)
National Highways Authority of India

(Ministry of Road Transport and Highways)
जी-5 एवं 6, सेक्टर-10, द्वारका, नई दिल्ली-110075
G-5 & 6. Sector-10, Dwarka, New Delhi-110075

दूरभाष / Phone : 91-11-25074100/25074200
फैक्स / Fax : 91-11-25093507 / 25093514

No.11041/218/2007-Admn

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POLICY MATTERS-Administration/Finance (170/2016)
(Decision taken in File No.NHAI/Legal/Opinion-4/974/2015)

Sub: The Control of National Highways (Land & Traffic) Act, 2002 (13 of 2003) – Implementation Regarding.

This is in continuation of NHAI's Policy Circular-Administration / Finance (100/2005), dated 09.03.2005 vide which all the PDs were requested to go through The provisions of the Control of National Highways (Land & traffic) Act 2002 (13 of 2003) [hereinafter referred to as the 'Act'] and Highway Administration Rules 2004 [hereinafter referred to as the 'Rules'], but a review in the matter reveals that the provisions of the Act and the Rules are not being effectively implemented by Project Directors.

2. The Act was enacted by the Parliament in the year 2003 and came into force vide Government of India Gazette Notification dated 15.01.2003. The Act empowers the Central Government to establish Highway Administrations u/s 3(1). Accordingly, Ministry of Road Transport & Highways established 192 Highway Administrations throughout the country and notified vide Gazette Notification dated 20.01.2005. Subsequently MoRT&H, in supersession of the aforesaid Notification dated 20.01.2005, established 16 Highway Administrations and these were notified vide Gazette Notification dated 02.06.2015. In order to control unauthorized occupation of land and unauthorized access and also to regulate the traffic on National Highways, the provisions of the Act must be implemented by the PDs, who have been designated as 'Authorized Officer' of Highway Administration. Among other points, there is need for NHAI Officers to pay special attention to:

- (i) Delegation of powers to the Project Directors of NHAI
- (ii) Removal of unauthorised Occupation
- (iii) Removal of unauthorised Access
- (iv) Criminal prosecution for repeat offences
- (v) Regulation of Traffic

3. **Delegation of Powers to PDs:** The Highway Administrations are empowered under Section 20(1)(c), to appoint, with the approval of Central Government, by notification in the official gazette officers of the National Highway Authority of India to exercise such powers and discharge such functions of the Highway Administration, as may be specified in the Notification. As per the extant procedure adopted by MoRTH, powers and functions of the Highway Administration under Section 24, 25, 26, 27 & 43 of the Act are delegated to the Project Directors of NHAI within their respective jurisdiction. It is therefore important for ROs and PDs of NHAI to ensure that the powers under these Sections are delegated to the PDs by the Highway Administrations (RO, MoRTH) in respect of NH stretches entrusted to NHAI. Wherever these powers have not been delegated, the matter shall be taken up with the RO, MoRTH and with CGM(LA) at NHAI (HQ) immediately. They would be reminded every month till the powers are delegated to PDs.

4. **Removal of Unauthorised Occupation:** Section 23, 24, 25, 26 and 27 of the Control of National Highway (Land & Traffic) Act 2002 deal with unauthorised occupation and its removal. ROs & PDs of NHAI should study and implement these provisions effectively. The important provisions are summarized as under :

- (i) Section 23 (2) of the Act - Maintenance of Highway Land Register. Rule (4) of the Rules may be referred in this regard.
- (ii) Section 26 of the Act - Removal of unauthorised occupation.

Section 26 (2) of the Act requires detection of cases of unauthorised occupation through periodic inspections. As per concession agreement, duty has been cast upon BOT concessionaire to protect NH ROW from unauthorised occupation. IE for BOT projects and the Supervision Consultant/Authority's Engineer for public funded projects should be directed to report the cases of unauthorised occupation and unauthorized access in their monthly inspection reports. The format for submission of monthly report by IE / SC / AE is at (Annexure – I). The Project Director will maintain a record of register project-wise of unauthorized occupation in (Annexure – II).

Section 26 (2) also deals with the issuance of notice in a prescribed form i.e. Rule 11 and Schedule III.

Section 26 (4) prescribes procedure for service of notice. This section should be read along with Rule 25 of the Highway Administration Rules 2004. Such notice shall be served in such a manner, as is prescribed in the Highway Administration Rules 2004.

Rule 24 (3) of the Rules – the Highway Administration is required to send a report once in every 3 months to central government. These provisions are extremely important and have to be read carefully by the PDs. Rule 24 of the Highway Administration Rules 2004 provides for elaborate procedure of inspection of the site of unauthorised occupation, a written order by the 'authorised officer' etc. The 'authorised officers' i.e. PDs are fully competent to remove the unauthorised occupation under Section 26(6) read with Section 43 of the Act of 2002 and Rule 24 of the Rules 2004. The Project Directors are directed to send the details of action taken in the format at (Annexure – III) enclosed herewith to CGM(LA)HQ.

Section 26 (6) – Removal of unauthorised occupation and imposition of penalty : Order under section 26(6) is to be passed after hearing the party and holding of enquiry as prescribed under Section 43 and Rule 24. PDs should submit a monthly report in this regard to the CGM (LA) in NHAI HQ in the format at (Annexure – III).

Section 26 (9) – confers powers as are vested in a court under CPC and IPC on PDs.

- (iii) Section 27 provides for recovery of cost of removal of unauthorised occupation. This section also needs to be read along with Rule 25 of Highway Administration Rules 2004 for manner of service of notice/presentation of bills.



- (iv) Section 43 – Conduct of Enquiry – Section 43 requires the Project Directors to make enquiry before passing an order for removal of unauthorized occupation and access. The procedure for enquiry has been elaborated in Rule 24 of 2004 Rules.

5. **Removal of Unauthorised Access:** Section 28, 29 and 30 of the 2002 Act provides for right of access and removal of unauthorized access. As of now, powers under these 3 sections have been retained with Highway Administration and have not been delegated to the Project Directors. On the National Highways, more than unauthorised occupation, unauthorised access is a more serious issue and poses greater safety hazard to the traffic and road users. Hence, the attention of PDs is specifically invited to Section 29(4), which deals with removal of unauthorised access. The PDs should report such cases promptly to Highway Administration for immediate action. Project Directors should have the notices issued from the Highway Administration and have the unauthorised access removed. They should also report such cases along with action taken by Highway Administration to CGM(LA). The IE / AE / SC would submit a monthly report regarding cases for unauthorized access in the format at (Annexure – IV). The Project Director would maintain a record of register of unauthorized access in the format at (Annexure – V). The Project Director would submit a monthly report to CGM(LA)HQ in regard to work done by the Highway Administration project wise for removal of unauthorized access in the format at (Annexure – VI).

6. **Prosecution :** Section 39 of the Act provides for offence and penalty for repeat offences i.e. persons who have been removed from unauthorised occupation and who have re-entered and again occupied a portion of NH ROW including for the purpose of access. The Project Directors are accordingly directed to prosecute for repeat offences in the courts of competent jurisdictions. A judicial complaint under Section 39 will have to be filed in the courts of competent jurisdictions through Regional Offices of the MoRTH. This is an extremely effective Section and is not being used by MoRTH and NHAI Officers. The cases of unauthorised occupation and access are easy to prove in the courts and it is doubtful if the offenders can escape conviction once the cases are filed by the authorities. The PDs may be required to take the help of legal counsels for filing of these cases in the courts. The PDs are directed to report number of cases initiated under Section 39 and cases filed in the courts. The IE / AE / SC would report cases for re-occupation of National Highway in the format at (Annexure – VII). The Project Director would maintain a record of judicial complaints lodged through Highway Administration, project wise in register / format at (Annexure – VIII). The Project Director would submit a monthly report to NHAI(HQ) in regard to disposal of judicial complaints in the format at (Annexure – IX).

7. **Regulation of Traffic :** Section 31 to 37 of the Act deal with regulation of different types of traffic on the National Highways and corresponding Rules are Rule 17, 18, 19, 20 and 21 of the Highway Administration Rules 2004.

- (i) Section 35 of the Act and Rule 19 of the Rules - mandates that signboards shall be placed indicating the limits of maximum laden weight, earmarking of lanes for different classes of vehicles etc.



- (ii) Section 32 of the Act - prohibits the use of overloaded vehicles as indicated in Rule 17 of the Rules. Relevant Rules and Sections of the Motor Vehicles Act as well as Rule 10 of NH Fee Rules 2008 are to be noted in this regard.
- (iii) Section 37 (2) and Section 37 (3) empower the Highway Administration to seize over-loaded and wrongly parked vehicles and release them after payment of expenses, as assessed by the Highway Administration. Rule 20 & 21 of 2004 Rules, provide a detailed procedure for such seizure.

8. To summarize, removal of unauthorised occupation and access and regulation of traffic are one of the important functions of the Project Directors and Regional Officers of NHAI. The Authority is taking up the issue of conferring powers for removal of unauthorised access (Section 29(4), prosecution of repeat offences (Section 39) and regulation of traffic (Section 32 and 35) with MoRTH. NHAI officers are in a better position to ensure effective compliance of these sections till then the Project Directors would have them implemented through the Highway Administration.

9. The NHAI(HQ) is placing all the format at (Annexure – I to IX) on the website and Project Director can directly get the details uploaded in the web-site.

The Authority would welcome suggestions from Project Directors and Regional Officers for effective implementation of the Act and Rules.



(A.K. Sadhu)
CGM(Coord)

To

All Officers & Employees of HQ/ROs/ PIUs/ CMUs/ Site Offices

MONTHLY REPORT OF IE / SC / AE ON UNAUTHORISED OCCUPATION ON NH LAND

Name of IE/SC/AE : _____ Report for the month of: _____

NH No. (Project Name) : _____

STATE / UT : _____

PIU : _____

S.No.	Location (Chainage) km to km (LHS/RHS)	Area under Unauthorised Occupation	Nature of Unauthorised Occupation	Name of Unauthorised Occupants	Tentative Date of Unauthorised Occupation	Date of Detection of Unauthorised occupation	Detected by whom
1	2	3	4	5	6	7	8




REGISTER FOR RECORD OF REMOVAL OF UNAUTHORISED OCCUPATION

Name of IE / SC / AE : Report for the month of :
 NH No. (Project Name) :
 STATE / UT :
 PIU :

S. No.	Location (Chainage) km to km (LHS/RHS)	Area under Unauthorised Occupation	Name of Unauthorised Occupants	Date of first time detection of unauthorised occupation	Detected by whom	Dates of notice issued u/s 26(2) of the Act	Dates of hearings	Date of order for removal of the unauthorised occupation	Date of removal of unauthorised occupation	Remarks
1	2	3	4	5	6	7	8	9	10	11

Annexure-IX

REGISTER FOR RECORD OF REOCCUPATION OF NATIONAL HIGHWAY LAND

Report for the month of :

Name of IE/SC/AE :

NH No. (Project Name) :

STATE / UT :

PIU :

Sr. No.	Project Name	Judicial complaints pending up to the previous MONTH	Judicial complaints lodged during current month	Judicial complaints available for disposal up to the current month	Judicial complaints disposed off during the current month	Judicial complaints pending at the end of current month (Total)	Pending for more than 6 months	Pending from 6 to 12 months	Pending more than for 1 year	Pending for more than 2 years
1	2	3	4	5	6	7	8	9	10	11

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