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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 07th July, 2020

+ **LPA 170/2020, C.M. Appl. No. 14279-14281/2020**

AMAR SINGH GAUTAM AND ANR Appellants

Through: Mr. Prashant Manchanda and Ms. Aditi
Sharma, Advocate

versus

**G. BLOCK RESIDENT'S WELFARE ASSOCIATION
(REGD). & ORS.** Respondents

Through: Mr. Rajeev Sharma, Advocate for
respondent No. 1 along with Mr. Deepak
Gulati, Member G-Block Residents
Welfare Association.
Mr. Akhil Mittal, Advocate for
respondent No. 4/Nr DMC.
Ms. Shobhana Takiar, Advocate for
DDA.
Mr. Jagjit Singh, Advocate for Railways.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

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[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

C.M. Appl. No. 14280/2020 (for exemption from filing attested affidavits and further permission to pay requisite court fee) and C.M. Appl. No. 14281/2020 (for exemption from filing the complete writ petition)

1. Allowed, subject to just exceptions and as per extant rules.
2. The applications are disposed of.

LPA No.170/2020 & C.M. Appln. No. 14279/2020 (for interim relief)

1. The challenge in this Letters Patent Appeal, is to the order dated 4th June, 2020 of the learned Single Judge in W.P. (C) No. 3223/2020, filed by the respondent No. 1 i.e. G Block Resident's Welfare Association (Regd.), respondent No. 2 Ministry of Railways, Union of India, respondent No. 3 Delhi Development Authority (DDA), respondent No. 4 North Delhi Municipal Corporation (Nr DMC), respondent No. 5 Government of NCT of Delhi, and respondent No. 6 The Commissioner of Police, North Delhi only as the respondents thereto.

2. The two appellants, Amar Singh Gautam and Sanjay Bairwa, claiming to be the residents of Budh Nagar, Inderpuri, or any other resident of Budh Nagar, Inderpuri, were not impleaded as parties to the said writ petition.

3. The appellants have filed this appeal contending that they were necessary and proper parties to the *lis* subject matter of the writ petition from which this appeal arises but were not impleaded as parties thereto and order affecting them has been obtained behind their back and without their having an opportunity of being heard. It is also the contention of the counsel for the appellants before us that the two appellants represent a large number of other residents of the locality of which the appellants are residents of and all of whom are affected by the order impugned in this appeal.

4. Having heard the counsel for the appellants we are satisfied that the appellants are affected by the order impugned in this appeal and thus grant liberty to the appellants to appeal there-against, though not parties to the writ petition from which this appeal arises. We have heard the counsel for the appellants on merits also.

5. The writ petition, from which this appeal arises, was filed by the respondent No.1 - G Block Resident's Welfare Association (RWA) (Regd.), Naraina Vihar, seeking a direction against the respondents No. 2 to 6 herein, to repair/construct and maintain the wall adjacent to the Railway Track, barricading Naraina Vihar Colony. It was the plea of respondent No.1 RWA/Writ Petitioner in the writ petition, (i) that adjacent to Naraina Vihar Colony, there is a Railway Track and in the vicinity of the said track are the Railway Stations of Naraina and Inder Puri; (ii) that on the other side of the Railway Track, Budh Nagar J.J. Colony and colony of Inder Puri are situated; (iii) both the said colonies had been declared as Corona Virus Hotspots/containment zones by the Delhi Government and the broken portions of the barricading wall existing between the said railway track and C, H, I and G Blocks of Naraina Vihar, particularly adjacent to the G Block of Naraina Vihar Colony were giving an easy access to the people crossing over from the colonies across the Railway Track into Naraina Vihar and using the same as a thoroughfare; this was increasing the risk of infection of the residents of Naraina Vihar, which included

children as well as senior citizens; and, (iv) on 21st May 2020, in view of the urgency owing to the prevalent Covid-19 pandemic, the respondent No. 1/writ petitioner volunteered to rebuild/reconstruct the broken portions of the barricading wall, in case the respondents No. 2 to 6 authorities found it difficult to do so.

6. The respondent No.2 Railways, before the Single Judge took a stand that the barricading wall in question was not constructed by the Railways but was constructed by the Civic Authorities and therefore the subject matter of the writ petition fell in the jurisdiction of the Civic Authorities.

7. The respondent No.4 Nr DMC, though had earlier filed an affidavit in the writ petition aforesaid, *inter-alia* stating that it had no connection with the wall in question but subsequently filed an additional affidavit stating that in the earlier affidavit it had been inadvertently stated that the Nr DMC had no connection with the wall in question; however after perusal of the record it was revealed that in the year 2013, the Nr DMC had executed the work of construction/repair of the boundary wall in 'I- Block (MIG Flats)' and some portion of LIG Flats parallel to Ring Railway in Naraina Village in C-1S2/KBZ and for this purpose, the work order dated 17th April, 2013 was also issued.

8. The Single Judge, on the basis of the aforesaid additional affidavit of Nr DMC, in the impugned order held, that the barricading wall was the responsibility of the Nr DMC, and on the

statement of the counsel for the respondent No. 1/writ petitioner, granted liberty to the respondent No.1/writ petitioner to re-construct/re-build the broken portions of the barricading wall existing around the Naraina Vihar Colony including near house numbers G-97 & G-136, Naraina Vihar, New Delhi – 110028 mentioned in para 7 of the petition and recorded the statement of counsel for respondent No. 4 Nr DMC that the said municipality had no objection if the respondent No.1/writ petitioner took necessary steps to re-build the broken portions of the wall and further recorded the statement of the counsel for respondent No 5 Government of NCT of Delhi and counsel for the respondent No. 2 Railways that in case the need arose, the Delhi Police and the Railway Protection Force would render every possible assistance and cooperation in building of the wall by the respondent No. 1/writ petitioner.

9. The appellants, in this appeal have pleaded (i) that there has never been any wall barricading Naraina Vihar and the locality where the appellants are residing and the appellants and the other residents of localities across the railway track from Naraina Vihar have been openly, uninterruptedly, freely, as a proper pathway and a thoroughfare been using the passage across the railway track; the said passage has been used by thousands of citizens/daily wage workers/labourers/school children, etc., for more than 55 years, to avail immediate access to hospitals, government schools, private schools for children under EWS category, factories, industrial

areas, etc. and the said facts were suppressed by the respondent No. 1/writ petitioner as well as other respondents from the Single Judge; (ii) that the appellants and other residents of Budh Nagar J.J. Colony include poor labourers, daily wage workers, school children, etc., who were not arrayed in the writ petition or even intimated, and who were necessary parties thereto, and the respondent No. 1/writ petitioner in collusion with other respondents impleaded in the writ petition, has obtained an order from the Single Judge behind the back of the appellants and/or the other residents of Budh Nagar J.J. Colony; (iii) that the right to be heard of the appellants and other residents of Budh Nagar J.J. Colony has been violated, causing them great inconvenience and compelling them to travel for long; (iv) that the alternate routes are not positioned in a manner to provide optimum facilitation to the residents of Budh Nagar J.J. Colony, given the social, economic milieu of poor residents and particularly in the prevalent scenario when means of communication and transport are inaccessible; (v) the appellants and other residents of Budh Nagar J.J. Colony cannot be forced to use the alternative routes by constructing an unauthorized wall just to alleviate the petty unsuitability of respondent No.1/writ petitioner; and, (vi) the appellants and other residents of Budh Nagar J.J. Colony have a right of passage and which is being deprived. The appellants, in the appeal, have invoked several constitutional provisions and referred to several judgments contending that the basic rights of the appellants and other residents have been violated.

10. We have considered the aforesaid contentions.

11. It is not in dispute that the passage claimed to have been used by the appellants and by the other residents of Budh Nagar J.J. Colony, is by crossing the Railway Track. We have thus enquired from the counsel for the appellants, the right of the appellants or any other residents of Budh Nagar J.J. Colony, to make a passage for going from one point to another, over the railway track and the law applicable in this regard.

12. The counsel for the appellants has neither studied the said aspect nor looked up law in this regard.

13. The counsel for the Railways, on inquiry informs that though it has been held in *Mohd. Quamuddin and Ors. Vs. Union of India* 2015 SCC OnLine Del 10229 that Railways cannot be mandated to build walls parallel to the railway tracks passing through residential colonies, but otherwise Section 147 of the Indian Railways Act, 1989 prohibits trespass over railway tracks, which are railway property. It is thus the contention of counsel for the railways that none is permitted to trespass over the railway tracks, even if to avail of a shorter passage, from one point to another.

14. The counsel for the DDA, besides drawing our attention to Sections 18 and 19 of the Indian Railways Act, has also drawn attention to the *Damodar Mishra vs. The East Coast Rail* AIR 2015 Ori 62 (DB), *Prabir Kumar Das vs. State of Odisha*

MANU/OR/0290/2012 (DB) and *Shyam Naik vs. General Manager East Coast Railway* AIR 2012 Ori 38 (DB).

15. Section 18 of the Indian Railways Act empowers the Central Government to require that boundary marks or fences be provided or renewed by a railway administration for ‘a railway’ or any part thereof and to require the railway administration to erect suitable gates, chains, bars, stiles or hand-rails at the railway crossings and to require persons to be employed by railway administration to open and shut gates, chains or bars. Section 2(31) of the Act defines a ‘railway’ as including all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway, all lines of rails, used for the purposes of, or in connection with the railway. Section 19 of the Indian Railways Act provides that where the Railway Administration has constructed lines of rails across public road at the same level, the State Government or the local authorities maintaining the road, may at any time, in the interest of public safety, require the railway administration to take the road either under or over the railway by means of a bridge or arch with convenient ascents and descents and other convenient approach, instead of crossing the road, on the level.

16. Section 147 of the Act provides punishment with imprisonment for a term, which may extend to 6 months, or with fine which may extend to one thousand rupees, or with both, for entering upon or into any part of a Railway without lawful authority and also empowers the railway to remove any such

person from the railway or railway property. As aforesaid, per Section 2(31) of the Act, railway track is railway property. Thus, crossing over a railway track would attract Section 147 of the Railways Act.

17. We have thus enquired from the counsel for the appellants that since according to the appellants, the impugned order affects their right of crossing the railway track at the point where the respondent No. 1/writ petitioner has been permitted to build a wall stopping the access of the appellants and other residents of Budh Nagar J.J. Colony from over the railway track into the colony of Naraina Vihar, the appellants have to first satisfy us that they are entitled in law to so enter the colony of Naraina Vihar by crossing the railway track. We have pointed out the counsel for the appellant that as per the provisions aforesaid, none can enter upon any part of a railway which includes a railway track and thus, none has a right to cross a rail line; once it is so, the right claimed by the appellants and other residents of Budh Nagar J.J. Colony does not exist.

18. The counsel for the appellants has no answer.

19. Reports of casualties while crossing such railway tracks, which are to be found between several residential localities in the city, are not unknown. In *Mohd. Quamuddin* (supra), compensation for loss of life while crossing a railway track was claimed averring that the railway, in spite of knowledge of

residents of nearby colonies including children frequently crossing the railway track, had not taken adequate measures ensuring the safety of the said residents. It was held, (i) that under Section 18 of the Railways Act the obligation to erect the gate would arise only when a direction to the said effect is issued by the Central Government; (ii) where a public highway crosses the railway line, the degree of care to be taken by railway administration ought to be greater than that required for an accommodation crossing; (iii) it may be necessary to erect a gate if the rush of traffic is heavy; on the other hand if the traffic be insignificant or negligible, it may not be necessary to erect a gate; and, (iv) no hard or fast rule can be laid down; there is no obligation on the railways to fence the entire length of the railway tracks and non-fencing of the railway tracks cannot *ipso fact* amount to negligence or a failure to take care on the part of the railways.

20. Here, it is not the case of the appellants that there is any passage designed or built by the civic authorities or by the railways, across the railway track, for crossing over from Budh Nagar J.J. Colony to Naraina Vihar Colony. If at all the said railway track is being crossed, on a daily basis, by thousands of residents of the colony of Budh Nagar J.J. Colony, as claimed, the same is an illegality and an offence under the Railways Act. The grievance thus of the appellants in this appeal is that they are being stopped from committing an illegality.

21. Once it is so, there appears to be no illegality in the

impugned order which can affect any right of the appellants or anyone else. We may mention that cases for recovery of compensation are filed against the railways for not taking steps to prevent people from crossing over the railway tracks even though the same is illegal, once the said illegality is rampant and to the knowledge of the railways. The judgments of the High Court of Orissa referred to by the counsel for the DDA are also of award of compensation against the railways for not building the wall or gate, preventing access to level crossing having heavy traffic.

22. The counsel for the appellants however repeatedly states that there was no wall where the respondent No. 1/writ petitioner under the garb of the order of the court is seeking to build the wall.

23. We have however enquired from the counsel for the appellants that even if it be so, once the appellants or anyone similarly situated or other residents of the area had no right in law to cross over the railway tracks, committing an offence, how can the appellants be heard to complain that their right of passage is being affected. In fact, in law there never was any right of passage. Even if the passage has been used for decades as argued by the counsel for the appellants, once the use was/ is illegal, amounting to an offence, no amount of the time for which the passage may have been used, would make the same legal.

24. We have also reminded the counsel for the appellants, that the Nr DMC claimed before the Single Judge that the wall in fact

was built in the year 2013 and in the face of such official record, how in a writ jurisdiction the disputed question whether the wall existed or not, can be adjudicated.

25. We have yet further enquired from the counsel for the appellants that if at all the appellants have a right to cross over from their locality to the locality of Naraina Vihar, at the point where the wall is being constructed, whether not the right if any of the appellants is to seek the remedy of construction of a overhead bridge at the said point. The counsel for the appellants is reminded that the courts have often been approached for such reliefs. Attention is drawn to ***Mange Ram & Ors. vs. UOI & Ors.*** 188 (2012) DLT 196, of a Division Bench of this Court of which one of us (Rajiv Sahai Endlaw, J.) was a member and SLP(C) No. 7687/2012 titled as ***Mange Ram Jain Vs. Chief Sec., Ministry of Railways & Ors.*** preferred whereagainst was dismissed in *limini* on 20th February 2012. Attention of the counsel for the appellants is also invited to the dicta of the Division Bench of this Court in ***Rakesh Saini Vs. Union of India*** MANU/DE/1574/2003, also holding that where a Railway line crosses a busy road at such a point that the incoming train is not visible, it is the duty of the railway authorities to arrange for the safety of the passers.

26. In ***Union of India vs. United India Insurance Company Ltd.*** (1997) 8 SCC 683 and in ***Union of India Vs. Lalman*** MANU/MP/0147/1953; ***Swarnalata Barua Vs. Union of India*** AIR 1963 GAU 117; ***Ramesh Chandra Dutt vs. Union of India***

AIR 1965 PAT 167 (DB); *Yatayat Nigam vs. Union of India (UOI)* AIR 1983 RAJ 17; and *Sajeeda Begum Vs. Divisional Railway Manager (Safety), S.E. Railways and Ors.* MANU/OR/0236/2004(DB) also, the view is that the railway and civic authorities though not having a statutory duty under the Railways Act to build a wall along the railway track, under the General Law have a duty of care and to prevent people from, though illegally, endangering themselves. It thus follows that it is the duty of the railways and the civic authorities to, even though residents have no right to cross over the railway track, take measures to prevent residents of nearby localities from straying over the railway track or making it a habit to enter the railway property or to create a passage over it.

27. The counsel for the appellants states that if a wall is built, the appellants will be denuded, also from claiming a safe passage across the railway track at the subject point, either through the overhead bridge or otherwise.

28. It is not as if by the impugned order the appellants or the other residents of Budh Nagar J.J. Colony have been prohibited from entering the Naraina Vihar colony or their right of movement through the said colony has been restricted. However, since for exercising the said right of movement they have to cross over a railway track and which is illegal, the appellants cannot be granted permission to commit an illegality in exercise of right to access the colony of the Naraina Vihar. The class divide sought to be agitated,

has no relevance in this regard. We may however remind the counsel for the appellants that the right of Resident Welfare Associations to install entry gates and to regulate entry into the colony, has been subject matter of several other litigations in the Courts.

29. The counsel for the appellants has not been able to give us any answer of the right if any of the appellants to cross over the railway track, thereby violating Section 147 of the Indian Railways Act and committing an offence. All that is said is that the residents of the colony have been doing so for the last 55 to 60 years and the respondent No.1/writ petitioner in collusion with the other respondents stole a march over the appellants and other residents of Budh Nagar J.J. Colony, taking advantage of the prevalent Covid-19 pandemic and which has nothing to do with the matter, since the state of affairs as prevalent today has been prevalent for the last several decades.

30. The appeal has thus no merit and is dismissed but clarifying that the impugned order would not come in the way of the appellants or any other resident of Budh Nagar J.J. Colony approaching the authorities concerned or any other fora or court for the relief of constructing a overhead bridge or otherwise providing a safe passage from the Budh Nagar J.J. Colony towards Naraina Vihar Colony, making it further clear that in the representation if any or the proceeding or litigation so filed, the respondent No. 1/writ petitioner G Block Resident's Welfare Association (Regd.)

shall also be made a party and have a right of being heard.

31. The appeal is disposed of.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**ASHA MENON
(JUDGE)**

JULY 07, 2020
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