

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.11204 of 2014
Date of Decision:22.04.2016

Urban Estate Welfare Association

. . . .Petitioner

Versus

Union of India and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.S.S. Rangi, Advocate,
for the petitioner.

Mr.Saurav Kumar, Advocate, for
Dr.A.K. Bansal, Advocate,
for respondent No.1.

Mr.Sanjiv Bansal, Advocate, and
Dr.Puneet Kaur Sekhon, Advocate,
for respondent No.2.

RAKESH KUMAR JAIN, J.

This petition is filed by an association seeking a writ in the nature of mandamus, directing respondents No.1 & 2 to provide Proposed Pedestrian Underpass (PUP) at CH 228 + 558 for focal point in Rajpura City/Town as originally provided in the Master Plan of Six Lane National Highway-1.

The grievance of the residential colonies, located on the left side of NH-1, is that in the absence of the PUP as provided in the Master Plan, they would not have access to the Rajpura City/Town.

The stand taken by respondents No.1 & 2 is that it has been entrusted with the task of widening of the National Highways by four laning/six laning and due to the increase of traffic along

with the Panipat-Jalandhar Section of NH-1 from KM 96 to KM 387.100, need was felt to widen the said highway along with the said section. The National Highway Authority approached MORTH regarding its proposal of six laning of NH-1 and after receiving the relevant approvals from MORTH, National Highway Authority entered into a concession agreement on 9.5.2008 with respondent No.3 for the project of six laning of Panipat-Jalandhar Section of NH-1 in the State of Haryana and Punjab, which was to be executed as BOT (Toll) on DBFO pattern. As per the provisions of the agreement, the concessionaire was responsible for surveys, design validation, financing, procurement, construction, commissioning, operation and maintenance of the project assets at its own risk including toll collection during the concession period of 15 years which also includes the construction period. The widening of the National Highway includes the construction of service roads, major and minor bridges (on main carriage way and on services roads), flyovers, railway over bridges, vehicular underpasses, PUP, exit/entry vehicle ramps etc. for controlling the access to the maximum extent possible and the cost of the project was recovered by the Concessionaire by collecting toll during the concession period. One of the clauses of the concession agreement provides for constructing PUP in front of the Focal Point approach road at Rajpura town but Clause 16 of the said agreement allowed “change of scope” of the work. It is alleged that there were various representations/recommendations from several entities and persons to provide an exit in the form of a ramp from the main highway to the right hand side of the highway at KM 228.50 so that

the industries located nearby and the people of the Urban Estate were not put to any hardship in the absence of any nearby approach. The exit ramp was recommended by the independent engineers to the Project Director, Project Implementation Unit, Ambala to the National Highway Authority vide their letter dated 27.10.2009 and while accepting the recommendation directed the Project Director, PIU, Ambala to execute the construction of the exit ramp at KM 228.550 and since the original proposed PUP and the exit ramp are at the same location, they were incompatible because of technical and safety reasons and the location of the proposed PUP was shifted just 500m (towards the Ambala end of the highway) from the earlier proposed location of the PUP in accordance with the procedure specified in the concession agreement. The PUP, in its new location, not only caters to needs of the pedestrians of the earlier proposed location, but also to pedestrians at its new location. It is also averred that in compliance of the order dated 9.10.2013 passed in CWP No.22446 of 2013 and with a view to further facilitate and benefit the pedestrians, a decision was taken by the National Highway Authority on 3/5.12.2013 to construct a pedestrian subway in place of the earlier proposed location of the PUP because the pedestrian subway was compatible with the exit ramp. The National Highway Authority in order to cater the need of the vehicular traffic had also simultaneously got constructed through its concessionaire, a Vehicular Under Pass (VUP) at 227.274 KM and a flyover at 228.706, close to the location of the exit ramp and earlier proposed location of the PUP. The VUP and the flyover cater to the needs of

the local vehicular traffic crossing the main highway from one end to another. It is also averred that the construction of the exit ramp, shifting of the location of PUP just 500 metres from its earlier proposed location and the proposed construction of the pedestrian subway in the earlier proposed location of the PUP would not compromise with the safety of the pedestrians rather it would be enhanced manifold.

Learned counsel for the petitioner has emphatically stressed upon the construction of the PUP at the construction of exit ramp as per the plan prepared by the National Highway Authority whereas, learned counsel for the National Highway Authority has given the aforesaid reasons for shifting the PUP 500 metres from the proposed exit ramp because of its incapability and traffic hazardous. He has also shown the photographs of the location to the Court from which it can be easily gathered that the PUP at the confluence of the exit ramp is not possible as it would be a cause of accidents. In any case, the petitioner has been not only given the two PUP but also an underpass by the respondents and thus there is no cause of action to maintain this writ petition.

Accordingly, I do not find any reason to interfere in this petition and hence, the same is hereby dismissed.

22.04.2016*Vivek***(RAKESH KUMAR JAIN)
JUDGE**