

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. 56 OF 2016

Shri Sanjay Baburao Suralake. ... Petitioner.
V/s.
Union of India and others. ... Respondents

Ms.Shakuntala S. Wadekar for the Petitioner.
Mr.T.J.Pandian for Respondent Nos.1 and 2.
Ms.Nisha Mehra, AGP for Respondent Nos.3 to 7.

CORAM : PRADEEP NANDRAJOG, C.J.
AND NITIN JAMDAR, J.

DATE : 31 July 2019.

P.C. :

Filed in public interest the grievance raised in the writ petition is to the closure of level crossing Gate No.62 at Wada-Murbad Road stated to be a road of vital public importance.

2. On 11 July 2016 declining a relief as prayed for, by way of an interim measure, the following order was passed:

“ *Parties through their counsel.*

2. Affidavit has been filed on behalf of respondent nos. 1 and 2 and the same be taken on record. Affidavit of Tahsildar Shahapur be also taken on record. According to the State Government as also the Railways, the

Central Government has approved the construction of Railway over bridge at Vashind across Kalyan Igatpuri station and it is included in the scheme of Central Road Fund in the year 2016-17 for which the administrative approval has also been granted. According to the Executive Engineer PWD vide office letter dated 27.5.2016, he has submitted "General Arrangement Drawing" of this work for approval and for grant of permission/sanction for construction of the bridge to Senior Divisional Engineer (NE) C.S.T. Mumbai. It has been stated that after necessary technical sanction, tender process will be completed upto December, 2016 and thereafter the work of construction of ROB will be started which will require at least two years.

3. It has been stated by the Railways in their affidavit dated 27.6.2016 that the level crossing gate is not in existence and is closed since decades and at this point of time, it is not possible or feasible to reopen the LC gate. According to Railways, the LC gate is closed since last 40 years and looking to the volume of traffic of railways and road traffic coupled with the poor visibility, it is not desirable and advisable as per high level safety committee to open the LC gate. It has been assured by the counsel for the railways that the proposal of ROB which has been forwarded by the State Government will be processed as early as possible and soon the necessary sanction would be accorded after examining the proposal.

4. We record the stand of the Railways as also of the State Government that they will make all endeavour to complete the process and start the work of construction of ROB as expeditiously as possible.

5. Learned counsel appearing for the petitioner though argued vehemently but has not disputed that since last more than 20 years the LC gate in question is

closed except for few weeks in the year 2002.

6. Keeping in view the aforesaid facts, we are of the view that it will not be appropriate and feasible to direct reopening of the LC gate which is closed since long. However, as observed earlier, we expect the Railway Authorities as also the State Government Authorities to act in coordination and start the construction of the ROB as early as possible.

7. At this stage the learned counsel for the petitioner points out that there is yet another LC gate in existence one km away from the present place. However, she submits that only one side of the gate is motorable and other side is not motorable. She submits that a detailed affidavit within two weeks showing the exact location of the gate and the problem which the commuters will face will be demonstrated in the said affidavit enabling the State Government and Railway Authorities to see the feasibility of allowing the commuters to cross the said LC gate to avoid inconvenience of travelling a long distance.

8. Learned counsel for the railways submits that the present under way bridge from which the water is flowing due to seepage of adjacent dam, shall be taken care of and the pumps for draining the water which have already been installed shall be made effectively workable so that except the monsoon, in other seasons the public at large can use the way.

9. We direct the Railway Authorities and the State Government Authorities to convene a joint meeting to see as to whether the problem of seepage of water which is coming in the under way bridge can be resolved or not. In the said meeting, the Railways to find out as to whether the LC gate at Km 80/12-13 towards Kasara side of Vasind Station known as Khatiwali can be made

available for vehicular traffic and whether the vehicles of the adjacent areas can approach to that level crossing. Let this meeting be convened within two weeks from today and outcome of the meeting and other action taken report about the progress of ROB be filed by the Railway as also by the State Government before the next date of hearing. List the matter on 22nd August, 2016.”

3. With the passage of time lot of water has flowed under the bridge.

4. A decision was taken to construct the railway over bridge at the intersection of the road and the railway line where the railway crossing Gate No.62 existed. ₹31.51 crore were sanctioned, out of which ₹21.84 crore was towards the construction of the railway over-bridge and the remainder towards acquisition of lands, shifting utility services, contingency charges and others.

5. After publishing a notice inviting tenders a contract was awarded to M/s.Eagle Infra India Limited at the cost of ₹21.84 crore. The stipulated date of completion being 31 December 2019.

6. The work appears to be behind the schedule set by the notice inviting tenders for the reason at present only pier work has been completed; slabs being yet to be loaded.

7. In the interregnum, traffic has been diverted from a pathway beneath the Waterway Bridge near Vasind Railway Station. The solution found by way of diverting the traffic may not be a very

happy solution for the reason the photographs show the road being very narrow beneath the Underway Bridge resulting in only one vehicle passing in a direction at a given point of time. But it cannot be helped. Today, the railway gate cannot be directed to be opened because on either side of the road at the gate, work is in progress to construct the railway over-bridge.

8. Terminating the proceeding in the public interest litigation, we direct the Superintending Engineering in-charge of the project to personally monitor the construction of the railway over-bridge so that it is ensured that the contractor completes the work as early as possible and preferably by the end of the current financial year.

NITIN JAMDAR, J.

CHIEF JUSTICE