

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

277

CWP-13117-2022
Date of Decision: 12.12.2022

MOHINDER SINGH

... Petitioner

VERSUS

UNION OF INDIA AND ORS.

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Amit Jhanji, Sr. Advocate with
Mr. Siddharth Bhukkal, Advocate and
Ms. Zaheen Kaur, Advocate for the petitioner.

Mr. D.K. Singal, Advocate
for respondents No.1 and 2.

VINOD S. BHARDWAJ, J. (ORAL)

The present petition has been filed under Articles 226/227 of the Constitution of India, 1950 for issuance of a writ in the nature of Certiorari for quashing/setting aside the impugned order dated 28.05.2022 (Annexure P-17) issued by respondent No.1 – i.e. General Manager (Tech) of the Project Director, National Highway Authority of India (hereinafter to be referred as 'NHAI') whereby the representation submitted by the petitioner for constructions of pedestrian foot-over bridge has been rejected.

Briefly summarized, the facts of the present petition are that the petitioner is owner of property measuring 06 kanal and 18 marla vide sale deed dated 29.09.2004 situated at village Chak Hakim, G.T. Road, Phagwara, District Kapurthala. The petitioner has constructed a boundary wall alongwith the service lane and also constructed shops in part of the above mentioned land whereas the balance land is being used as a Farmhouse. The respondent-NHAI has entered into concessionaire agreement with M/s Soma Isolux, NH-1 Tollway Pvt. Ltd. for construction of 6 laning project of the Panipat –

Jalandhar section of NH-1 and as per the provisions of the said agreement, construction of foot-over bridge was proposed at Chak Hakim, G.T. Road, Phagwara at KM-356.840.

Learned counsel for the petitioner contends that the aforesaid foot-over bridge was proposed to be shifted to KM-277 as is evident from the communication dated 13.7.2020 (Annexure P-5), wherein the recommendation of the Independent Engineer after site inspection by him has been duly noticed. Recommendation was accordingly made to the Commissioner to shift the two numbers of foot-over bridges including the one proposed at KM-356.840 to the revised location of KM-277 near Gulzar University, Khanna.

Learned counsel for the petitioner contends that thereafter vide letter dated 07.04.2022 (Annexure P-10), the respondents have referred about the foot-over bridge at KM-356.700 without assigning any reason with regard to the suitability of the said site. He contends that the respondents had decided to raise a construction of foot-over bridge at KM-356.840 in the original concessionaire agreement as well as in the revised suggestion at KM-277 and that the petitioner had no objection to any of the said sites. However, the installation of the foot-over bridge at KM-356.700 is an arbitrary decision, which is not backed by any field survey or feasibility study by the respondents and should thus be restrained from commissioning.

Written statement on behalf of respondents No.1 and 2 has been filed through Veerendra Singh, Project Director, National Highways Authority of India. The relevant extract of the said reply is reproduced hereinafter below:

“3. That with regard to Right of Way (ROW) at chainage No. 356.700 is concerned, the same is 39 Meter on the left side of NH. i.e. from Panipat to Jalandhar Side and is 29 Meter on Right side

i.e. from Jalandhar to Panipat side. The property of the petitioner falls on the right side i.e. Jalandhar to Panipat side of the section of National Highway. There are boundary pillars of the NHAI which had already been installed near to the site so as to prove the fact that the National Highway has been constructing the foot over bridge in their own land with the ROW of NHAI and not on the property of the petitioner.

4. *That Insofar as the present site is concerned, one Guru Ravi Dass Gurudwara has been there in the immediate vicinity of the said site in addition to cross roads which causes lot of cross foot fall on the said ROW through the same was not permissible to public to cross the same. Thus, area of the said site has been identified as accident prone area. Accordingly, at the time of execution of concession agreement dated 09.05.2008, the construction of foot over bridge was proposed at the aforesaid site. In light of the aforesaid, the site at Ch. 356.700 was examined and found that the construction of the foot over bridge would cater the public at large for crossing the National Highway, which would avoid the accidents.*

Moreover, demand for immediate erection of the foot over bridge was impressed by the local residents through local Administrative Authorities of their area. In this regard, the Sub-Divisional Magistrate, Phagwara vide its letter No.10/Supdt dated 04.01.2021 had intimated answering respondent No.2 that local residents of the disputed structure had been pressing hard for immediate completion of this structure and failure of which would create law & order issue. Hence, the construction of the said foot over bridge would be in the overall welfare and interest of the public at large.

5. *That accordingly, the construction of the foot over bridge, had been done at the site in question, which falls within the Right of way (ROW) of National Highway meaning thereby that the land, where the construction of foot over bridge is be installed, is*

of NHAI .e. vested with Govt. of India, by virtue of Notification Issued vide by the Govt of India, through Ministry of Road Transport and Highways having S.O. No. 1191 (E) dated 03/12/2001 and the petitioner has got no such right, title and concerned with the site, where the foot over bridge had been installed/ constructed. The land on which the above said foot over bridge had been constructed belongs to the NHAI only and NHAI is having ample power to do any work on the same without any hesitation, for the public at large and safety, the personal interest of any individual have to give way to the public interest and safety at large.

6. *That moreover, it is apt to state herein that the property of the petitioner which falls on the National Highway does not have any authorized access towards the service lane of the National Highway, as prior access permission is required from highway administration under the provisions of Control on National Highway Authority of India (Land & Traffic) Act 2002. Neither, any permission till today has been obtained by the petitioner nor has been granted by the NHAI. Thus, the petitioner has no such right to approach this Hon'ble Court and consequently the present writ petition deserves to be dismissed in view of the submissions made above.”*

He has also referred to communication dated 30.08.2022 (Annexure R-4), as per which, construction of foot-over bridge at KM-356.700 is already complete and that any change is likely to add fiscal burden. Besides, no other person has any objection to the foot-over bridge at this site.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

Counsel for the petitioner has vehemently reiterated the facts noticed above and has argued that the change of the location of the foot-over bridge is arbitrary and without any field survey or recommendation. He further contends that the same has greatly diminished the value and utility of the property of the petitioner. It is urged that the foot-over bridge should be constructed at either of the sites i.e. the site contemplated in the agreement or as recommended by the Engineer and he has no objection to either of them.

Controverting the same, counsel for the respondent-NHAI contends that the submission of the learned counsel for the petitioner is fallacious and has no legitimate backing. The concessionaire agreement sites are only tentative and the actual suitability is assessed on real time basis and on taking stock of ground realities and the convenience of the largest segment, rival contesting claim and objections alongwith traffic plan. The status of foot-over bridge at KM-356.700 is thus as per the original plan only and such slight variation is based onsite suitability - being at a distance of 140 meters from the original tentative site. He further submits that the foot-over bridge has already been constructed and is operational at the above site.

The issue in question pertains to the construction of foot-over bridge and the location thereof. The original concessionaire agreement contemplates establishment/installation of foot-over bridge at KM-356.840 and the same has been finally established at KM-356.700. The stand of the respondent -NHAI is that the original proposals under the said agreement stipulated the foot-over bridge at KM-356.840 and such locations are tentative. The situs may change in accordance with the site conditions and the requirements. Taking into consideration the appurtenant circumstances and the demands raised by the residents and weighing the suitability thereof and

already extracted in the reply, the NHAI had installed the foot-over bridge at KM-356.700 within its own ROW and such installation of foot-over bridge cannot be challenged by the petitioner as no vested or accrued right of the petitioner has been violated in the said process. It should not be ignored that the issue with regard to the installation of the foot-over bridge/underpass etc. requires comprehensive study and expert report and that the suitability and feasibility of various sites or spots have been duly considered by the NHAI experts. As a matter of fact, the foot-over bridge has been legally retained as per the original concession agreement with slight variations in the situs for which no separate study is required to be conducted. The Hon'ble Supreme Court has already held in the matter of **Union of India Vs. Kushala Shetty and others** reported as **2011 AIR (SCW) 4460** as under:

“24. NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in

rarest of rare cases, the particular project, if it is found to be ex facie contrary to the mandate of law or tainted due to mala fides."

In addition to the above judgment, this Court has also held in the matter of '**Jatinder Singh and others Vs. Union of India**' bearing **CWP No.4431-2016 decided on 11.11.2022** that the issue with respect to the access on the National Highway and/or the passages are the subject matter of expert in which the High Court would not ordinary interfere in exercise of its powers of Judicial Review as such decisions have manifold impact including financial implications on public exchequer to be ultimately borne by the end-user. Convenience of an objector or residents of the locality cannot be the sole basis to issue directions to NHAI to carry out changes in its proposed plans and execution of the projects.

Moreover, the installation of the foot-over bridge is already complete and as such, the shifting of the aforesaid foot-over bridge is likely to cause greater inconvenience to the people in addition to incurring additional financial burden. I find no reason to interfere in the present case at this stage.

Besides, the petitioner has failed to refer to any technical or expert report on the basis whereof it may be said that the construction of the foot-over bridge at KM-356-700 is technically not viable or poses grave traffic hazard or that it does serve any end use. In the absence of any cogent and tangible material to dislodge the appraisal and decision of NHAI, it would not be appropriate for the High Court to suggest or direct any change of utility or public conveniences. All such decisions are based upon varied and multiple field reports and assessment and such satisfaction of the Authority should not be interfered with unless such a decision is capricious, illegal, technically unviable, poses greater traffic hazard and danger or violates any vested or

accrued right of the objector. Works of infrastructure are required for development and progress of the nation and no work would even be executed if all objections are to be accepted. Besides, there is no allegation of any motive or bias or illegality. The execution of work is within the ROW of the NHAI.

The present writ petition is accordingly, dismissed.

12.12.2022.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No