

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

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CWP-14613-2012 (O&M)
Date of Decision: 11.05.2023

GURBAX COLONY RESIDENT ASSO. AND ORS.

... Petitioner

VERSUS

UNION OF INDIA AND ORS.

... Respondents

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

Present: Mr. Sanjeev Manrai, Senior Advocate with
Mr. S.P. Garg, Advocate for the petitioner.

Mr. S.P. Jain, Addl. Solicitor General of India with
Ms. Saigeeta Srivastava, Advocate for respondents
No.1 & 2- Union of India.

Mr. Pankaj Mulwani, DAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

The present petition has been filed by the residents of one Gurbax Colony for seeking issuance of directions to the respondents to provide access to the residents of the colony to the road which is the only source of commutation for the residents of Gurbax Colony and Balmiki Colony to the rest of the town of Kalka and to direct the Railways to provide Railway over bridge for the commutation for the residents of the said colonies.

Briefly summarized, the facts of the present case are that the petitioners who are residents of Gurbax Colony situated in Kalka claim the said colony to be inhabitant by more than 200 families. The said colony is adjacent to another colony namely Balmiki Colony. The grievance of the petitioners is that respondent No.1 and 2 i.e. the Union of India as well as the Divisional

Railway Manager, Ambala Cantt. Ambala had barricaded the passage leading towards the access of the houses of the residents of Gurbax Colony. It is contended that the petitioners have been residing in the said colony for the last more than 10-15 years and have been duly paying all statutory taxes and charges claimed by the respective Agencies and Instrumentalities of the State. The colony in question has been constructed as per the by-laws of the Municipal Council and after seeking necessary approvals for the constructions of the residential houses. It is averred that there is a street connecting the Gurbax Colony with the Kalka City and the pillars have been raised by the respondents-Railways which obstruct the residents of the colony from commuting within the Kalka City. A representation dated 09.05.2011 was submitted to the Sub Divisional Magistrate, Kalka for providing a permanent passage to facilitate the movements of the residents of the colony. The same was claimed to have been endorsed by the Sub Divisional Magistrate, Kalka to the Secretary, Municipal Corporation Kalka for inquiring into the matter and submission of report. A similar representation was also submitted to the Divisional Railway Manager, Northern Railway, Ambala Cantt. Ambala on 07.07.2011 praying for providing level crossing or constructing a Railway over bridge. It was also alleged that the residents of the colony have to pass through 12 feet wide street which passes over the railway line in order to access the public amenities like school, hospitals and the markets for the purpose of having any meaningful existence. Despite the submission in the said representations, the level crossing and/or Railway over bridge had not been constructed by the Railways and/or the State Government due to which the hardships of the residents of the said colonies have been compounded.

A reply had been filed by Manita Malik, HCS, SDM, Kalka on behalf of respondent No.3, wherein it was stated that the feasibility plan providing any additional/alternative mode of commutation is to be provided by the Railways taking into consideration the site conditions and problems of the inhabitants and that the same being a part of the railway property, the respondent No.3 i.e. the State of Haryana does not have much control.

A separate short written statement was also filed on behalf of the respondents No.1 and 2 through the Sr. Divisional Engineer-III of Northern Railway, Ambala Division, Ambala. It was pointed out in the abovesaid short written statement that the assertions made by the petitioners are incorrect and that one Railway over bridge connecting Kalka City with old Kasoli Road exists, which is hardly at a distance of 500 meters from the disputed Rasta coming from Adarsh Nagar. It is also stated therein that another level crossing exists at a distance of 600 meters from the disputed Rasta towards the Army area. It has also been stated that the Railway Track has got a deep curve at the disputed juncture and it would thus not be appropriate to provide any railway over bridge/level crossing. The officials of the Northern Railway contend that the demand of the petitioners is unjust and that they have wrongly portrayed absence of any access for commuting with rest of the town whereas they have alternative access at two points within a distance of 1 kilometer on either side.

Notwithstanding the same, the response also refers to Section 19(2) of the Railways Act, 1989, as per which the Local Authority/State Government may send a proposal to construct/maintain the over bridge/under bridge at their own expenses. It was also pointed out that the colony in which the petitioners are residing was an unauthorized colony and approval to the said colony was granted only on 17.12.2004.

Replication to the written statement filed on behalf of respondents No.1 and 2 was filed by the petitioners, wherein they reiterated the submissions made in the writ petition. It was further stated that the officials are not providing the access on account of the personal vendetta and the grievances of the petitioners are not being appropriately considered and redressed. It is averred that the old Kasoli Road which was constructed by the Britishers is at the distance of 600 meters from the disputed Rasta and cannot be used by the residents of the Gurbax Colony and that there is a thick population in and around the Gurbax Colony making it unfeasible for the residents of the colony to seek access to the old Kasoli road level crossing.

The matter was taken up on 06.05.2014 when this Court directed the petitioners as well as officials from the Railways to appear before the Sub Divisional Magistrate, Kalka on 13.05.2014 so that the problem could be sorted out regarding grant of access to the petitioner. In compliance to the said order dated 06.05.2014, a counter affidavit was filed by R.P. Singh Sr. Divisional Engineer, Northern Railway, Ambala Cantt. apprising that the Sub Divisional Magistrate, Kalka recommended the Railway Department to construct a level crossing at the existing passage and that a fresh survey was thereafter carried out pursuant to the letter dated 02.07.2014 sent by the Sub Divisional Magistrate, Kalka. A detailed report dated 29.08.2014 was thereafter submitted. The recommendations of the said report are as under:

- “i) That level- crossing cannot be opened keeping in view the Railway Board Instructions issued vide letter No. 2013/CE-IV/ROB-LX 2013-2014 dated 4.7.2013 and letter No.2014/CE-IV/LX/122 dated 24.7.2014.*
- ii) Technically and practically, existing passage/ unauthorized road cannot be provided with level crossing because of the nature/ topography of the area being sharp turn/ loop shape of the Railway Line which obstructs the visibility of vehicular and rail traffic as on such a sharp curve if level*

crossing is provided, it may lead to a serious accident which may disrupts road and Rail traffic and even may cause loss of human lives.

- iii) Access can be given to the Petitioner/ occupants of the Gurbax Colony by connecting the dead end of lane of Gurbax Colony near Railway Km 1/19 to level crossing No. 2C at Railway Km 1/7-8 by constructing a road in Army area about 3.05 meter wide just adjacent to boundary wall between Railway area and Army area. Length of road will be merely about 600 meter. There is no building etc of army near boundary wall so it will be easier to construct road. (Site plan Annexure R-1 is attached with the report).*
- iv) Access can also be given towards the existing Railway over-bridge, through existing lane which at some places is to be widened and at one place 30 numbers of steps are to be converted into ramp of suitable gradient as shown in the site plan Annexure R-2 attached with the report.*
- v) If the options No.(iii) & (iv) are not acted upon then the only way out is construction of Railway Over- bridge for which under the provisions of Railway Act 1989, the entire expenditure will have to be borne by the State Govt./ Local authorities. For this proposal should come from State Govt. to construct the road as a deposit work and then base on actual survey and after approval of Northern Railway Head Qtrs office, the cost of construction will be advised to state Govt. which entirely shall be borne by the State Govt.”*

It was thus submitted that in view of the peculiar topography, providing of level crossing at the disputed juncture is not technically feasible and is also impractical.

During the further proceedings before this Court, the respondents/ State Administration was called upon to submit a report as regards any progress made in the matter.

Pursuant thereto, a separate short reply by way of affidavit of Mukul Kumar, Deputy Commissioner, Panchkula was also filed, wherein it was averred that Sub Divisional Magistrate, Kalka had been directed vide letter dated 13.10.2017 to report to his office regarding any progress made pursuant to the meeting of 2014, whereupon a joint report was submitted by Sub Divisional Magistrate, Kalka on 16.10.2017. The officials of Railways, the

representatives of the Gurbax Colony Residents Association had participated in the meeting and discussed the problem in detail. The site was also visited and it was agreed that the access be given to the petitioners only by means of constructing a railway over bridge at the site. A request for construction of railway over bridge was to be made by the State Government and/or the Local Authority. It was reported that the work would be a deposit work and all expenses would be borne by the State Government and/or the Local Authority. Feasibility of the construction of railway over bridge was to be examined only upon receipt of such request of the State Government and/or the Local Authority. It was informed that despite the aforesaid report, no railway over bridge had been constructed at the site. It was thus informed that the area being within the jurisdiction of Municipal Corporation, Panchkula, the request for such railway over bridge was to be submitted by the Local Authorities. However, vide letter no.15646 dated 06.12.2017, the Municipal Corporation, Panchkula informed that the land at the site belongs to the Railway Department and not to the Municipal Corporation, Panchkula and therefore, the construction of railway over bridge can only be done by Railway Authorities and no separate request is required to be submitted by the State Government and/or Local Authority.

The case in hand was taken up on 20.08.2018 when the following order was passed:

“List on 28.01.2019 to enable learned State to get instructions from Deputy Commissioner Panchkula with regard to Annexure R-5 colly filed with the counter affidavit to CM No. 8031-2014 on behalf of respondent No. 1 wherein it has been stated that the only option to give access to residents of Gurbax Colony is by

constructing a road over bridge. The request for construction ROB should be either made by State Government or Local Authority.”

An affidavit of Mukul Kumar, Deputy Commissioner, Panchkula dated 26.01.2019 was thereafter filed, wherein it was pointed out that on 27.12.2018 the Deputy Commissioner, Panchkula had convened a meeting of the representatives of Gurbax Colony alongwith the officials of Railways as well as Municipal Corporation, Kalka and the Public Works Department (Bridges and Roads), Haryana and they were directed to submit the feasibility report of construction of railway over bridge after a site visit. Vide letter dated 07.01.2019, a feasibility report was submitted by the Experts to the office of the Deputy Commissioner, Panchkula as per which the railway over bridge could not be constructed at Railway KM-2/O as there was no land available on the left side of the railway track for construction of approach road to the railway over bridge as the boundary wall of Ministry of Defence is at the end of the Railway Right of Way. Further, as per the said report, if railway over bridge is constructed, its slopes as well as curves will be too steep to construct which is not feasible as per Civil Engineering or any other standards. It was also submitted that the area does not fall under the jurisdiction of Municipal Corporation, Panchkula and that any further action in the matter is to be taken only by the Railways Department. The relevant extract of the said affidavit dated 26.01.2019 is reproduced hereinafter below:

“4 That it is respectfully submitted that the deponent convened a meeting to discuss the access to residents of Gurbax Colony by constructing a road over bridge with all the concerned officers and representatives of Gurbax Colony, Residents Association Matter was discussed in detail and it was decided that a feasibility report for the construction of road over bridge be sought from all the agencies including railways Accordingly the Commissioner, Municipal Corporation, Panchkula, Divisional Railway Manager, Ambala, Executive Engineer Constn Divin Hr. PWD B&R Br, Chandigarh were asked to submit the feasibility report of

construction of Road over Bridge after site visit True copy of proceedings of the said meeting held on 27.12.2018 under the Chairmanship of the deponent is appended here to as Annexure-A.

5. That vide letter No 212 dated 07.01.2019, The Executive Engineer Constn. Divn. Hr. PWD B&R Br., Chandigarh and vide letter No 07/Bridge/Land/KLK, dated 07.01.2019 the Senior Section Engineer (works) Northern Railway, Kalka submitted feasibility reports to the office of the deponent. True copies of which are annexed herewith as annexure B and C respectively.

6. That as per abovesaid reports it is not feasible to construct road over bridge at railway KM2/0. The reason is that no land is available on the left hand side of railway track for the construction of approach to road over bridge as the boundary wall of ministry of defense is at the end of Railway Right Of Way. As per Northern Railway report, if road over bridge is constructed its slopes as well as curves will be too steep to construct which is not feasible as per civil engineering or any other standards.

7. That vide letter No 734/OS, dated 15.01.2019 the Executive Officer, Municipal Corporation Panchkula submitted that the area is not under the jurisdiction of Municipal Corporation Panchkula and further action in the matter is to be taken by the Railway Department. True copy is annexed herewith as Annexure-D.

Even though the aforesaid affidavit had been filed way back in the year 2019, however, no counter disputing the aforesaid affidavit and/or report had ever been filed by the petitioners.

Learned counsel for the petitioner reiterates the submissions noticed above and contends that the residents of the Gurbax Colony are not being granted a feasible access to the other side of the railway track. He further contends that the residents have to thus face great difficulty to make an access to the amenities that fall on the other side of the railway crossing. He further submits that at initial stages, the assurance given to the petitioners was that construction of railway over bridge could be carried at the spot and the State Government was ready and willing to bear the cost of such construction and that now the respondent-Authorities have taken a summersault and are not wanting to bear the expenditure for construction of the railway over bridge at the site.

Learned counsel for the respondents No.1 and 2, however, contends that the petitioners have nowhere disputed the existence of two alternative accesses whereby they can cross over the railway line within a distance of 500 meters on either side. The said aspect has not been denied or disputed by the respondents in the replication filed by them. As a matter of fact, the petitioners in their replication have only said that the same are not convenient and are not feasible for the residents of the colony. He thus contends that the convenience of the petitioners cannot be the basis of providing an access. It is, however, further pointed out that notwithstanding the aforesaid challenges, the demand of the petitioners has already been considered and a technical committee had carried out the survey of the locality and also examined the feasibility of construction of railway over bridge. Upon consideration of the site inspection, topography and the assessment, the Committee came to a conclusion that even the railway over bridge/road over bridge cannot be constructed at the site and in the event of any such attempt is made, the curves will be so steep that they would defeat all structural and engineering requirements. In the absence of any challenge, the aforesaid report of the Experts needs to be accepted. There is no material on the basis whereof this Court may discard the report furnished by the Experts qua providing an access to the residents of the Gurbax Colony by means of construction of a railway over bridge.

Counsel for the respondent-State also reiterates the abovesaid stand and contends that the State Administration has explored all possibility of providing an additional access to the residents of the said colony and that the ground circumstances do not provide sufficient opportunity to the State

Administration to meet the demand. Consequently, the residents cannot be given an additional passage from the disputed site as has been sought for.

I have heard the learned counsel for the respective parties and have also gone through the documents appended alongwith the present petition with their able assistance.

Notwithstanding the fact that the colonies i.e. the Gurbax Colony and the Balmiki Colony may be densely populated, however, the questions of granting an additional access from the disputed junction has to be examined from the technical requirements. Repeated efforts have been made by this Court as well as the officials of the Railways in harmony with the State Administration to explore the possibility of providing an additional access for commuting to the residents of the colonies from the points of their choice. However, the technical feasibility having been assessed and examined by the Experts, the project in question was not found to be viable for execution.

Even though the learned counsel for the petitioner contends that the respondents have chosen not to proceed with the project on account of unwillingness to incur financial expenditure, the same is not a ground on the basis whereof, the Committee has rejected the feasibility of construction of railway over bridge. Rather, the same is purely on technical grounds and absence of sufficient land for the purposes of construction of railway over bridge. The respondents have reiterated their stand that the feasibility of the project is not being dropped on the basis of lack of finances, rather, the same is on account of lack of sufficient land which would be required for raising a railway over bridge/road over bridge. The report in question having not been disputed, even though the same filed way-back in 2019, this Court cannot sit as an Expert over the said report and come to any conclusion to the contrary or to

hold that notwithstanding the abovesaid report submitted by the Experts of the Railways, the PWB(B&R) Haryana as also the District Administration, railway over bridge yet ought to be constructed. The said aspect has to be best left to the Experts and in the absence of any such recommendation, the power of judicial review would not vest with the Court to substitute its own opinion for that of the Experts and to overrule the technical non-feasibility of construction of the railway over bridge/road over bridge.

Insofar as the second alternative demand of the petitioners for providing a level-crossing is concerned, the same was declined by the Experts on the ground that there are steep curves at the spot and that in the eventuality of providing a level-crossing at the spot, the same would endanger the safety of the local residents. No counter controverting the same has also been filed.

Convenience of the residents has to be differentiated from a right to grant access. Since the stand of the respondents has been that there are two alternative accesses for the facility of the local residents to cross over the railway line on either sides, which aspect has not been disputed, merely because an additional passage may add to the convenience is not to be considered as having no access at all. Convenience of the residents has to be examined on the basis of the technical feasibility of providing the additional passage. The lives of the residents and/or safety of Railways cannot be jeopardized or subjected to a greater risk under the garb of convenience.

The reference is made to the judgment of Supreme Court of India passed in the matter of **M/s N.G. Projects Limited Versus M/s Vinod Kumar Jain and others** bearing **Civil Appeal No.1846 of 2022 arising out of SLP (Civil) No.2103 of 2022** decided on **21.03.2022**. The relevant extract of the same is reproduced hereinafter below:

*“13. This Court sounded a word of caution in another judgment reported as **Silppi Constructions Contractors v. Union of India and Ors.**, reported as **2019 SCC Online SC 1133** wherein it was held that the Courts must realize their limitations and the havoc which needless interference in commercial matters could cause. In contracts involving technical issues, the Courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above, the Courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints to the movement and public sector undertakings in matters of contract. Courts must also not interfere where such interference would cause unnecessary loss to the public exchequer. It was held as under:*

“19. This Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of CP arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly till here and are amenable to the writ jurisdiction of superior courts, but after this discretionary power must be exercised with a great deal of restraint and caution.”

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23. The Court does not have the expertise to examine the terms and conditions of the present- day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues.”

In view of the above discussion, I find that there are no sufficient grounds for issuance of any directions to the respondents to provide an additional access/passage at the disputed junction. The present petition is accordingly dismissed. However, the dismissal of the present petition would not operate as a bar against the petitioners to pursue their remedies with the respondent-Authorities or with the Authorities exploring the possibility of finding amicable resolution of the instant dispute.

Dismissed.

(VINOD S. BHARDWAJ)
JUDGE

11.05.2023
rajender

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