

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

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Date of decision: 22.02.2023

(1) **CWP-28143-2018**
JOGA SINGH & OTHERSPetitioners

VERSUS

UNION OF INDIA AND OTHERSRespondents

(2) **CWP-9233-2019 (O&M)**
RAJWINDER KAURPetitioner

VERSUS

UNION OF INDIA AND OTHERSRespondents

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

Present:- Mr. Manoj Kaushik, Advocate
for the petitioners.

Mr. Nishad Ahuja, Advocate and
Mr. H.S. Oberoi, Advocate
for respondents No.1 to 3.

Mr. Vishnav Gandhi, DAG, Punjab
for respondents No.4 & 5.

VINOD S. BHARDWAJ, J. (Oral)

This order shall dispose of two writ petitions bearing
CWP-28143-2018 titled “*JOGA SINGH & OTHERS VERSUS UNION
OF INDIA AND OTHERS*” and **CWP-9233-2019** titled “*RAJWINDER
KAUR VERSUS UNION OF INDIA AND OTHERS*” by a common
judgment.

The present petitions have been filed for seeking issuance of directions to the respondents to consider the petitioners' claim under Section 17 & 19 of the Railways Act, 1989 for constructing an over bridge at Railway Crossing No. 65 situated at village Mangian (Dera Baba Nanank), District Gurdaspur in **CWP-28143-2018** and for constructing of an over bridge at Railway Crossing No. 50 situated at village Hardorawal (Dera Baba Nanank, District Gurdaspur), on the Amritsar-Dera Baba Nanak Railway Line in **CWP-9233-2019** so as to remove the difficulties of the villagers/farmers and to enable them to take their agricultural equipment and implements on to the other side of the Highway, where their fields are situated.

Written statements on behalf respondents No.1 to 3 had been filed wherein the respondents have specifically submitted as under:

“That the Petitioners are not coming to this Hon'ble Court with clean hands in as much as he has concealed/mis-represented vital facts and are presenting a totally distorted picture before this Hon'ble Court. The main demand of the Petitioners in the present writ petition is for a direction to the respondents to consider the demand of the petitioners for constructing an over bridge at railway level crossing No. 65 (at village Mangian) instead of constructing the proposed railway underpass at the spot as the same would result in practical difficulties the villagers/agriculturists because this is the sole passage/way to the agricultural land of the villagers and their agricultural equipment (such as Combines, Threshers, Tractor-trolleys) would not be able to pass through the proposed underpass. In this respect, it is submitted that the as per requisition of the State Governments and consequent policy made by the Central Government all unmanned level crossings are to be

*eliminated in the country. Accordingly, level crossing No. C-65 (AT VILLAGE Mangian) is also to be eliminated. The criteria for elimination is based upon traffic density on these level crossings. The traffic density on this level crossing No. C-65 is very low i.e. T.V.U. (Train Vehicle Unit) of this level crossing is 624 only. As per policy level crossings having such low density of traffic are to be eliminated straight away without giving any alternate path. However, since there is agricultural land on both sides of the railway track, Railway Department has considered practically this fact and has decided to construct an under pass at railway's own cost. The under pass will be constructed with minimum 4.0 mtr X 4.0 mtr. path. Agricultural machinery i.e. tractor, trolleys can pass through this opening. Regarding drainage of rain water, two Rain water harvesting tanks will be provided along with intercepting drains. The bed level of these tanks will be below the bed level of under pass and two bores will be provided in each tank so that accumulated water should go underground by these bores, If this subway is not constructed, the level crossing No. 65 may have to be closed without giving any crossing. No objection certificate from SDM/DBNK, in this regard, has already been taken vide his letter No. 814, dated 17.8.2017. A true translated copy of the said letter No. 814, dated 17.8.2017, is attached herewith as **Annexure R-1.***

Similar response has also been filed in CWP-9233 of 2019. The relevant extract reads thus:-

“2. That the petitioner has not approached this Hon'ble Court with clean hands in as much as he has concealed/ mis-represented vital facts and are presenting a totally distorted picture before this Hon'ble Court. The main demand of the petitioners in the present writ petition

is for a direction to the respondents to consider the demand of the petitioners for constructing an over bridge at railway level crossing No.65 (at Village Mangian) instead of constructing the proposed railway underpass at the spot as the same would result in practical difficulties to the villagers/ agriculturists because this is the sole passage/ way to the agricultural land of the villagers and their agricultural equipment (such as combines, Threshers, Tractor trolleys) would not be able to pass through the proposed under-pass. In this respect, it is submitted that as per requisition of the State Governments and consequent policy made by the Central government all unamned level crossings are to be eliminated in the country. Accordingly, level crossing No. C-65 (At village Mangian) is also to be eliminated. The criteria for elimination is based upon traffic density on these level crossings. The traffic density on this level crossing No. C-65 is very low i.e. T.V.U. (Train Vehicle Unit) of this level crossing is 624 only. As per policy level crossing having such low density of traffic are to be eliminated straight away without giving any alternate path. However, since there is agricultural land on both sides of the railway track, Railway Department has considered practically this fact and has decided to construct an under pass at Railway's own cost. The under pass will be constructed with minimum 4.0 mtr X 4.0 mtr. Path. Agricultural machinery i.e. tractor, trolleys can pass through this opening. Regarding drainage of rain water, two rain water harvesting tanks will be below the bed level of under pass and two bores will be provided in each tank so that accumulated water should go underground by these bores. If this subway is not constructed, the level crossing No.65 may have to be closed without giving any crossing. No objection certificate from SDM/DBNK, in this regard, has already been taken vide his letter No.814,

*dated 17.08.2017. A true translated copy of the said letter No.814, dated 17.08.2017, attached herewith as **Annexure R-1.***

It is thus evident that the Railway Department has considered the difficulties being faced by the petitioners and decided to construct an underpass to enable agricultural equipments & implements of reasonable dimensions to be taken to the either side of the National Highway.

In view of the aforesaid, learned counsel appearing on behalf of the petitioner submits that present petition has been rendered infructuous.

Disposed of as having been rendered infructuous.

All the pending miscellaneous applications, if any, are also disposed of.

(VINOD S. BHARDWAJ)
JUDGE

FEBRUARY 22, 2023

Vishal sharma

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