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IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

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CWP-3706-2024 (O&M).
Date of Decision: 20.05.2024.

PURUSOTTAM DAS KAPIL

.. Petitioner

Versus

UNION OF INDIA AND OTHERS

... Respondents

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

Present: Dr. Anmol Rattan Sidhu, Senior Advocate, with
Ms. Sandhya Gaur, Advocate,
for the petitioner.

Mr. Ashish Chaudhary, Senior Panel Counsel,
for respondent No.1/Union of India.

Mr. Raghujeet Singh Madaan, Advocate,
for respondents No.2 and 3/NHAI.

VINOD S. BHARDWAJ, J. (ORAL)

The petitioner, who is owner of 04 kanals of land situated in village Sakiri, Tehsil Ballabgarh, District Faridabad, along the National Highway, has approached this Court seeking prohibition and restraining the respondents from constructing Foot Over Bridge (hereinafter referred to as 'FOB') in front of the gate of the property of the petitioner.

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2 It is submitted that a representation dated 10.02.2024 had been submitted by the petitioner against construction of the FOB in question and that he would be satisfied if a decision may be taken thereupon.

3 Learned Senior counsel for the petitioner contends that respondents-National Highways Authority of India, had started construction of FOB for providing access to the school on the other side. He contends that the petitioner is running a business of transportation and his trucks which are loaded and unloaded are parked in the plot where the FOB is being established and that the construction of the said FOB is likely to cause hazard and expose the school children to danger of being hit or run over by any in-going/outgoing truck. He submits that the gradient of the FOB can be lowered towards the other side and that he is ready and willing to bear all costs and expenses that may have to be so incurred.

4 On notice, the respondents/NHAI filed its reply. It has been informed by the counsel for the respondent/NHAI that in so far as the construction of the FOB is concerned, the same is already complete. It is submitted that construction of the FOB was initiated after inviting bids vide NIT dated 03.07.2023 and that the Letter of Award (LOA) was issued in favour of M/s SEC Buildtech Private Limited. The pre-construction activities were carried out by the Contractor prior to the commencement of the construction of the FOBs. It is further submitted that in so far as the representation of the petitioner is concerned, an Independent Engineer i.e. M/s L.N.Malviya Infra Projects Pvt. Ltd. deliberated on objections and suggestions raised by the local people against the construction of FOB and

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on consideration of the same, concluded that the change in the location of the FOB would not be in the public interest. The Independent Engineer therefore, requested for the support and assistance from the local administration for execution of the work of FOB. The request submitted by the petitioner vide representation dated 10.02.2024 was also dealt with and the same was forwarded to the Independent Engineer as well as to the Concessionaire on 14.02.2024 for examining the same. In furtherance thereof, the Independent Engineer vide letter dated 19.02.2024 informed the NHAI that the location of the FOB, against which the representation was made by the petitioner, was finalized after inspecting the site with the Concessionaire as well as the Police Department and that the location of the FOB is finalized after considering numerous aspects including crossing point; traffic; pedestrian traffic; convenience of user public and accident prone areas etc. The matter was nonetheless reconsidered by associating the Police Department. A consensus was reached that in case the location of FOB is shifted, its use and utility will be minimized.

5 Counsel for the respondent further refers to the essential documents i.e. the drone survey conducted by the respondent-NHAI in the month of October 2023 with respect to the plot in question with a width of 44.5. It is also reflected that no front boundary wall or gate existed or was installed at that time. The school falls on the other side. The petitioner has appended the photographs of the site as Annexure P-1 which shows that the above said construction had been raised after the commencement of the work of FOB. The boundary wall in the said photograph has been freshly

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plastered and as per the photograph available on page No.42 (Annexure R-2/7), the height of the gate is about 2 feet over and above the surface level. It is incomprehensible as to how the said plot could be used for ingress and egress of the trucks since there is no scope or gradient for entering or exiting the said plot. Apparently, the said boundary wall and installation of the gates has been undertaken by the petitioner only for the purpose of institution of the present writ petition. The gate has been installed at the said site so as to make a case for shifting of the aforesaid FOB. The same being an attempt on the part of the petitioner to seek change of the location of the FOB and to give an impression as if the gate in question had always been in existence, which was known to the petitioner to be incorrect.

6 It is further pointed out that if the contention of the petitioner is to be accepted and the FOB is lowered towards the other side, the gradient would tilt and shift the exit/entry point along the electric pole thus exposing the children to a greater danger.

7 The contention of the petitioner that shifting of gradient of the FOB towards the other side would be inconsequential was thus found to be unfeasible at this juncture.

8 No other argument has been raised.

9 I have heard learned counsel appearing for the respective parties and have also gone through the documents appended along with the present petition. It is well settled position in law that the laying of infrastructure is the prerogative of the NHAI. It is not for this Court to substitute the assessment of the independent engineer with its own opinion

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and to direct shifting of amenities. Moreover, the objections raised by the petitioner have already been considered by the respondent authorities and they have sought report not only from the Concessionaire but have also indulged in a consultative process with the traffic police and they found that shifting of the gradient of the FOB towards the other side would not be feasible and would not be in the best public interest.

10 Writ Court does not sit as a Court of appeal on the decision so taken by the respondents authorities after taking into consideration all the relevant circumstances. It is also noticed that shifting of the entry/exit point on the other side would amount to take the slope along electric line and pole. Safety of children and commuters thus cannot be put to a peril only to safeguard commercial interest of the petitioner more-so when photographs show that the property was in no actual use or even the gate has been installed only some days before filing of the petition. Besides, the Engineer also appeared before the Court and stated that there are pillars of the over-bridge/metro and followed by a road intersection, hence, shifting is not feasible. He has referred to the Google image to support his submission.

11 I find that the present writ petition deserves dismissal at this stage for the reason that the prayer of the petitioner had been duly considered and was found unacceptable not only from the feasibility point of view of the respondents but also for the reason that the entire foundation of the case of the petitioner hinges on the existence of the gate, which such construction was raised by the petitioner after commencement of the work

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of the FOB. I find that this is a mischievous attempt on the part of the petitioner to employ in a litigation.

12 The present writ petition is accordingly dismissed, at this stage. However, the dismissal of the present writ petition shall not operate as a bar against the petitioner to move an appropriate representation before the respondents for the said prayer, in the event of any change of circumstances.

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13 Since the main case itself has been decided, the present application seeking preponement of the date of hearing and stay of the construction of the Foot Over Bridge also stands disposed of accordingly.

May 20, 2024.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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