

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

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CWP-11002-2022 (O&M)
Date of Decision: 22.07.2024

GRAM PANCHAYAT THROUGH ITS
AUTHORIZED PERSON SAJJAN KUMAR

... Petitioner

VERSUS

UNION OF INDIA AND OTHERS

... Respondents

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

Present: Mr. Harkaran Singh, Advocate
 for the petitioner.

 Mr. Lalit Attri and Mr. Sunil Kumar Sharma,
 Advocates for respondents No.1 and 2.

 Ms. Niharika Sharma, AAG, Punjab
 for respondents No.3 and 4.

VINOD S. BHARDWAJ, J. (ORAL)

CM-9460-CWP-2022

This is an application for seeking stay on the work of closing of railway crossing number C-44, 45 and 46 on Bathinda-Shri Ganga Nagar Railway line during the pendency of the present petition.

Since the main petition is being taken up for final hearing and shall be decided today itself, the instant application is disposed of as having been rendered infructuous.

MAIN CASE

Prayer in the present petition is for directing the General Manager, Northern Railways and Deputy Commissioner, Fazilka for taking action on the

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representation dated 25.04.2022 (Annexure P-3) expeditiously and further for staying the work of closing of Railway Crossing No.C-44, 45 and 46 on Bathinda-Shri Ganga Nagar railway line.

Learned counsel for the petitioner has argued that the Gram Panchayat and the residents of village Raipura, Tehsil Abohar, District Fazilka are aggrieved of closing of the railway crossings/gates bearing No.C-44, 45 and 46 as a result whereof they are unable to access the constituency of Baluana and National Highway Abohar-Malout Road, Market, Petrol Pump and way to other villages. A representation was submitted by them to the Sub Divisional Magistrate, Abohar and they have thereafter been repeatedly visiting the office of the Sub Divisional Magistrate, Abohar praying that their access be not closed, however, no decision has been taken on the said representation. It is argued that in the event of the railway crossings being closed, villagers as well as students of the village would suffer irreparably as most of the students use the passage to go for their studies to village Kerekhara and Dhaba Kokrian via Chanan Khera and Baluana.

Reply dated 02.09.2022 on behalf of the respondents No.1 and 2 had been filed, wherein it has been stated as under:-

“1. That as per the Railway Policy, Ministry of Railway has targeted to eliminate all manned level crossings by the year 2025 on Indian Railway by following ways: -

- (a) By providing limited height subway*
- (b) By Road Overbridge*
- (c) By merging of level crossing with nearby existing manned level crossing/ROB/LHS*



(d) By direct closure

2. That regarding this project, Railway Authorities approached Gram Panchayat Kera-Khera for elimination of manned level crossing no.C-44 by merging it with B1-45 situated about 1.54 Km away from C-44. These level crossings are situated on Bathinda - Sri Ganganagar Rail Link between Railway Station Pakki-Abohar. Thereafter, the Railway Authorities vide letter dated 05.04.2021 approached Deputy Commissioner Fazilka to accord No Objection Certificate by constructing merger road within railway boundary at its own expenses.

3. That Deputy Commissioner Fazilka after following due procedure, has given No Objection Certificate vide its letter dated 17.08.2021. Thereafter the Railway Administration started merger road work in the month of January, 2022 and completed in the month of April, 2022 as per the consent given by the District Administration.

4. That after the completion of merger road work, the Railway Authorities tried to close manned level crossing no.C-44 but due to the agitation of Bharti Kissan Union Ekta Sidhupur and Rail Roko Protest at C-44, said level crossing could not be closed. The Railway Administration met SDM Abohar and it was assured by the SDM Abohar that level crossing may be closed amicably after holding meeting between the parties.

5. That a meeting was held in the office of Divisional Railway Manager, Ambala with State Officials, Kissan Unions and Railway Officials. It is worthwhile to mention here that in this meeting, agitators even could not explain why this level crossing no.C-44 may be kept open.

6. That it is relevant to mention here that at the said location due to high water table of 12, the limited height subway is not



feasible and due to less TVU (Train Vehicle Unit) of C-44 manned level crossing, Railway Over Bridge is also not possible to construct by spending large amount of Rs.50 Crore approximately. The only way to close C-44 manned level crossing was by way of merger.

7. That the Railway Authorities project to close C-44 manned level crossing was started only after getting consent of the Civil Administration and for that purpose the ADC, Fazilka issued no objection certificate for elimination of level crossing no.C-44 by merging it with level crossing no.B1-45, on the condition that all the expenses of this merger will be borne by Railway Authorities. The said no objection was issued by the Local Administration after getting consent from Gram Panchayat Kera -Khera and Block Development and Panchayat Officer, Fazilka, which is evident from the letter no.2080 DC-1/DA dated 17.08.2021 (Annexure R-1) after recommendations of SDM Abohar vide letter no.370/SADAK-2 dated 22.07.2021, a true translated copy of the letter dated 22.07.2021 is annexed herewith as Annexure R-2. It is clearly mentioned in the letter dated 22.07.2021 issued by SDM Abohar to Deputy Commissioner Fazilka that the Gram Panchayat Kera-Khera has no objection for closing manned level crossing no.C-44 by merging it with B1-45. It is also mentioned in the said letter that in this regard the office of SDM Abohar received resolution no.1 dated 07.07.2021 passed by Gram Panchayat Kera Khera, wherein they have no objection if the said gate is closed but after completion of the work, the members of Gram Panchayat, Kissan Unions are unnecessarily obstructing the work of railway authorities.

8. That it is further submitted that elimination of manned level crossing no.C-44, is possible only by way of merging the said level crossing with nearby existing manned level crossing no B1-45



according to the reasons already mentioned above. For that purpose the Railway Authorities has already constructed more than 800 meter long bitumen road on the right side of the railway track within railway boundary with its own cost. For the kind perusal of this Hon'ble Court, the answering respondent is annexing the Map of the site, which is annexed herewith as Annexure R-3."

Counsel for respondents No.1 and 2 has specifically argued that the Gram Panchayat had itself passed the resolution and gave 'No Objection Certificate' (NOC) for construction of the merger road within the railway boundary at its own expenses. The NOC was also obtained from the Civil Administration as per the prescribed procedure and that the work of merger of road has already been completed by the railways. He further submits that there is no irreparable loss to any of the residents/students as an access has already been provided by an alternative route to the manned railway crossing at a distance of 800 meters. He contends that the proposal of the petitioner for a limited height subway is not feasible due to less train vehicle unit and that construction of Railway Over Bridge would also not be possible as there is no utility of spending an amount of Rs.50/-crores approximately on the construction thereof. He further submits that no replication controverting the specific factual assertions of the petition has been filed by the respondents.

Counsel appearing on behalf of respondents No.3 and 4 refers to the written statement filed by the Sub Divisional Magistrate, Abohar, wherein it has been averred that the issue in hand does not relate to them and is within the domain of Railways. It is specifically acknowledged that there is a separate



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access and the dispute is with respect to inconvenience caused due to the additional distance between the two crossings by 800 meters and that some portion of the constructed road is unfit for commuting while a portion thereof had not been properly metalled.

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.

The primary prayer of the petitioner for issuance of directions to the respondents to take a decision on the representation does not survive since the same has been considered already and the feasibility examined. The grievance espoused therein is that the railway crossings No.C-44, 45 and 46 between villages Kerekhara and Baluana be not closed. However, the petitioner has failed to refer to any statutory provision as well as any precedent judgment entitling the local residents to determine as to which crossings are to be permitted to run and which are to be closed. Taking note of the increasing accidents being caused along unmanned and manned railway crossings, a policy decision has been taken to do away with unmanned crossings and rationalize the manned crossing till alternative ways are worked out. The commuters are known to cross even manned crossing when gates are closed due to an approaching train. Besides, doing away with crossings saves a lot of traffic hassle as people do not have to wait for the train to pass. The said policy decision cannot be said to be arbitrary or illegal. The right of the commuters/residents is to an access, which such access has already been provided by the railways at its own cost. Besides, the specific case of the

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respondents is that the railways had initiated the process for elimination of manned railway crossing at site in accordance with its policies and after obtaining NOC from the Civil Administrator as well as after obtaining resolution from the concerned Gram Panchayat. Despite the same, the alternative demands raised by the petitioner have also been considered and the same have been found to be not feasible. The specific reference about the NOC having been issued by the Civil Administration after obtaining consent from the Gram Panchayat Kerekhara and from the office of Block Development and Panchayat Officer, Fazilka remained uncontroverted. On the basis of such assurance meted out by the respondents and the resolution passed, the Railways has incurred expenses and a metalled road has already been laid.

I do not find any legal ground existing for issuance of directions to the respondents to not close the manned railway crossing No.C-44, 45 and 46, more so when a conscious decision has already been taken by the respondents and an appropriate alternative remedy has been prescribed.

In matters relating to such safety related issues, the officials have undertaken a field study and have assessed the requirement. Unless the decision or the decision making process suffers from any illegality or perversity, High Court, in its power of judicial review, does not sit in appeal over a policy decision. A mere convenience cannot be portrayed as accrual of a right and an inconvenience cannot be claimed to be a denial/refusal of such right. In the absence of violation of any rights and the averments made by the Railways having remained uncontroverted, I find that no further directions, as prayed for by the petitioner, can be issued to the respondents.



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It is, however, made clear that as per the reply filed by respondents No.3 and 4, some portion of the alternative route/metalled road provided by the respondents-Railways is not motorable. The respondent-railways shall take appropriate steps to ensure that the alternative route/metalled road provided by the Railways at its own expenses is completed and is maintained motorable for the use, convenience and ease of the residents of the village(s) concerned.

The writ petition is accordingly disposed of in above terms.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

JULY 22, 2024
rajender

(VINOD S. BHARDWAJ)
JUDGE

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