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IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

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CWP-26580-2023 (O&M).
Date of Decision: 19.10.2024.

SMT. SANDEEP SAINI

... Petitioner(s)

Versus

UNION OF INDIA AND OTHERS

... Respondent(s)

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

Present: Ms. Dhivya Jerath, Advocate,
for the petitioner.

Mr. Hitesh Kumar Sammi, Central Govt. counsel,
for respondents No.1 and 3 to 5.

Mr. Saurav Verma, Addl. A.G. Punjab.

VINOD S. BHARDWAJ, J.

The core question that arises for consideration in the present case is about right of a land owner to a passage which is blocked due to construction of an underpass by the railways on an existing passage by raising a concrete retention wall.

2 Various writ petitions have been filed before this Court by the land owners espousing their grievances about denial of passage due to infrastructure projects undertaken by the Railways as well as National

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Highways Authority of India (hereinafter referred to as 'NHAI'). It is specifically pointed out that due to defective planning, the agencies fail to provide a passage to the land/properties leaving them unable to enjoy their property.

3 Prayer in the present petition is for issuance of a writ in the nature of mandamus for directing the respondents to consider the objections of the petitioner made in the representation dated 04.11.2023 (Annexure P-2) and not to proceed with the construction of Railway underpass at village Mauli, Tehsil Phagwara, District Kapurthala without considering the said objections and in violation of Land Acquisition Act, 1894 (although the Act stood repealed). Another prayer has been made to direct respondents No.3 to 6 to issue public notice before proceeding with the construction of the Railway underpass along with prayers to provide an alternate passage to the factory of the petitioner before proceeding with the construction of the Railway underpass and to compensate the petitioner at the prevailing market rates before using her land for the said construction.

4 Briefly summarized the facts of the present case are that the petitioner is the owner of the property near the Railway crossing Mauli, Tehsil Phagwara, District Kapurthala on which the underpass was to be constructed over an existing passage. The property of the petitioner is a factory of Purewell filter Limited, constructed on land comprised in Khewat No.418/405, Khatoni No.663, Khasra No.742/1 (0-14), 743/1/1 (0-13), 743/2/1/2 (0-11), 743/2/2/1 (0-12), total measuring 2 Kanal 10 marlas. The petitioner visited the office of respondents No.3- Divisional Railway

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Manager, Firozpur, Punjab (hereinafter referred to as 'DRM') and No.6-Deputy Commissioner, Kapurthala (hereinafter referred to as 'DC') multiple times, however, no details about the notices regarding the construction of Railway underpass were shared with the petitioner. The petitioner chanced upon to see the construction plan of the Railway underpass at Village Mauli, Tehsil Phagwara, District Kapurthala and was shocked to observe that the slope of the abovementioned Railway underpass cut into the front side of the factory of the petitioner while also encroaching upon the land of the petitioner to the extent of a few feet.

5 Since the easement rights of the petitioner were being gravely affected, she sent a legal notice dated 04.11.2023 to the DRM as well as the DC to stop the work of construction from being undertaken to her detriment. However, there was no response by the concerned respondents.

6 Hence, the present petition.

7 The matter came up for a preliminary hearing on 28.11.2023 when notice was issued to the respondents. State counsel accepted notice and prayed for time to file reply.

8 The same was not filed by the respondents despite the petitioner highlighting the grievance that respondents are expediting the construction of the Railway Under Bridge and avoiding filing of reply so as to defeat her right. It was also submitted that the working and functioning of the premises has been severely affected due to such activities.

9 The case was however adjourned to enable the Railways to file a reply. The same was filed on behalf of respondents No.3 to 5 through

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DRM Office, Ferozepur. It was stated therein that land of petitioner was being encroached and only the State Government land was being used for construction of the underpass and that an N.O.C. had been obtained from the office of the Deputy Commissioner, Kapurthala. It was averred that Railway Under Bridge was being constructed for larger public good. It was also stated that construction was undertaken after taking consent of the Panchayat about a straight underpass to avoid traffic accident and provide safe passage. It was also stated that no notice was required to be published as there was no acquisition of land. It was also stated that the underpass had been inaugurated by the Central Minister and new trains had also been announced on the said route. It was averred that the petitioner has not left vacant area in front of the factory premises.

10 The above claim of inauguration of the underpass was disputed by the petitioner on the hearing fixed on 15.03.2024. Hence, in order to determine the factual ground position, a Local Commission was appointed by this Court vide order of even date.

11 A report dated 20.03.2024 was filed by the Local Commission before this Court. The operative part of the report reads thus:-

“3. That the Local Commissioners reached the spot at around 11:25am and perused the following record produced by the Petitioner's representative i.e.:

<i>Ann.LC-2-(Sale Deed)</i>	<i>20.12.2019</i>
<i>Ann.LC-3-(Jamabandi)</i>	<i>2020-2021</i>

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<i>Ann.LC-4-(Sale Deed)</i>	<i>16.04.2018</i>
<i>Ann.LC-6-(Jamabandi)</i>	<i>2015-2016</i>

That the above mentioned record was cross checked/verified with the "Naksha Aks Shijra brought by the Revenue officers.

4. That the Plan for construction of underpass was also produced by the representative of Railways/Contractor and the same was perused by the Local Commissioners.

*5. That at around 12:00 PM the ETS (Electronic Total Station) machine was assembled at the spot to start the Demarcation and the Halqa Kanungo started searching for a reference point, Since "Murabba-bandi of the village was not done yet, the kanungo could not find out a reference point and hence the demarcation of the spot with ETS Machine was not conducted.
(detailed report of Halka Kanungo and Patwari in this regard is annexed herewith as Annexure LC-6)*

6. That around 1:30PM Local commissioners requested Halka Kanungo and Patwari for conducting physical demarcation of the Spot i.e. for 2 Kanal and 10 marla, Khasra number 742/1(0-14), 743/1/1(0-13), 743/2/1/2(0-11), 743/2/2/1(0- 12) Khata number 405/648 owned by Sandeep Saini (Petitioner) village Mauli, Tehsil. Phagwara, Dist. Kapurthala, Punjab under supervision of the Local Commissioners.

7. Thereafter the Local Commissioners requested the revenue officers to demarcate the road of village Jamalpur which is situated in front of the Spot/Factory of the petitioner, which was demarcated. That according to "Naksha Aks Shijra" this road is

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22.5 feet wide and after conducting the demarcation of this road the width comes out to be 22.5 feet and hence no encroachment was found out on the road by the Petitioner and the detailed report regarding the same is annexed herewith as Annexure LC-6.

8. That few villagers were also gathered and assisted the LC. That after conducting the demarcation, it is brought into light that counsel for railways suffered a statement before this hon'ble court that a 12 feet passage is present between factory and already existing road. However it is made clear after conducting the demarcation of already existing road and factory it is made clear that neither the 12 feet passage is present in the revenue record nor physically present at the spot

9. That during examining the revenue records and the Railway records, it is brought into light that the railway has around 111 feet wide Railways Land along with passage on both sides at Village Mauli. That initially the construction plan of underpass was proposed and passed in the area which was available with the Railway and it was proposed in "U" shape along the Railway track. Thereafter, few villagers raised hue and cry and the railway underpass plan was shifted from Land of the Railways to the area of the road which is in front of the Petitioner's factory.

10. That after inspection of the spot from all sides & perusing the documents produced by both the sides and as per Revenue Officer's demarcation report the local commissioners make following observations:

A. With regard to Hon'ble Court's Query:

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"whether there is any passage adjacent to the road/underpass to be constructed?"

Local Commissioners finding:

It is submitted that there is NO provision of passage adjacent to the road/underpass to be constructed.

B. With regard to Hon'ble Court's Query:

"whether any encroachment has been made on the passage adjacent to the already constructed road?"

Local Commissioners finding:

It is submitted that there is NO encroachment made by the petitioner on the passage adjacent to the already constructed road, As per revenue records the Petitioner's Factory/building is constructed on the land in name/ownership of the petitioner.

C. With regard to Hon'ble Court's Query:

"whether on completion of the underpass, the petitioner shall have any passage to his factory or not?"

Local Commissioners finding:

It is submitted that on completion of the underpass, the petitioner will have NO passage to his factory, since the Main Gate of the factory will overlay on the side wall of the underpass on completion and Petitioner's factory's main gate will open on the dug-out underpass, leaving No Passage for the Petitioner's factory.

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That after perusing the above mentioned Revenue & other records and with assistance of the above mentioned persons the Final Report is hereby submitted by the under signed Local Commissioners before this hon'ble Court.”

12 Photographs of the construction work being undertaken and being at an initial stage of digging were also appended.

13 Vide order dated 03.04.2024, copy of the Local Commission report was ordered to be supplied to respective parties to enable them to file objections, if any. No objections were however filed by any of the parties.

14 Notwithstanding that the matter was pending adjudication and awaiting response, counsel for respondent-Railways made a statement about completion of the Railway Under Bridge on the hearing fixed for 20.04.2024.

15 The said statement was recorded and the Deputy Commissioner, Kapurthala, was directed to file the affidavit as to whether the Revenue Department had examined the availability of the alternative passage before granting NOC. The order dated 20.04.2024 reads thus:-

“Learned counsel appearing for respondents No.1 and 3 to 5, on instructions from Mr. Sujit Kumar, Sr. Section Engineer (Railways), Phagwara, informs that the construction of the underpass has already been completed and the said construction has been undertaken only after obtaining NOC from the District Collector-cum-Deputy Commissioner, Kapurthala. He contends that it was for the State of Punjab-Revenue Department to satisfy itself as to whether any

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access/passage was available to the property adjacent to the site under construction and that the work had been undertaken by the Railways only after seeking necessary clearance/NOC from the State authorities.

Before proceeding any further in the matter, it is imperative that an affidavit be called for from the Deputy Commissioner, Kapurthala, as to understand the facts taken into consideration before issuing NOC and as to whether the Deputy Commissioner had also undertaken into account the existence of any possible passage to the premises which lies adjacent to the underpass constructed by the Railways. He shall also give details of the existing passage for approaching the property in question and in case, if there is no passage existing at site, he shall file details as to the mode in which he purposes to provide such passage.

Let the necessary affidavit be filed by the Deputy Commissioner, Kapurthala, within a period of three weeks from today.

Copy of this order be handed over to the learned State counsel for ensuring compliance and be also sent to the Deputy Commissioner, Kapurthala for expeditious response.

Adjourned to 10.05.2024.”

16 The matter was adjourned to 18.05.2024 when counsel for the State of Punjab undertook to file the affidavit and the Court was apprised that steps were being undertaken to resolve the impasse. Period of 06 weeks was sought. Case was thus adjourned to 05.07.2024 for enabling resolution of the dispute. Replies on behalf of respondents No.2 and 6 were filed on

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the said date. The same were supplied to the counsel for the petitioner and hearing of the case was adjourned to 23.07.2024.

17 Reply by way of short affidavit of Harjeet Singh Sandhu, Joint Secretary, Department of Housing and Urban Development, on behalf of respondent No.2, as well as affidavit of Amit Kumar Panchal, IAS, Deputy Commissioner, Kapurthala, Punjab for and on behalf of respondent No.6, were filed on 04.07.2024. The respondent No.2 washed its hands off by submitting that it was never a part of approval for construction of the Railway Under Bridge or of any Committee and never participated in any decision making process for the same. It was also apprised that the Deputy Commissioner, Kapurthala had constituted a Committee for suggesting options/remedies for redressal of the grievance of the petitioner after noticing all existing site conditions and that the same was being examined.

18 In the reply by respondent No.6 factual aspects were not disputed. Relevant part of the reply by the Deputy Commissioner, reads thus:-

“6. That, as per the report received from the above mentioned committee and perusal of the office record the said NOC was issued in response to Letter No.W/27 dated 27.02.2023 sent by Northern Railway O/o Assistant Divisional Engineer seeking NOC for closure of level crossing so they proposed for eliminate L-Xing and take sanction of ROB/RUB at their headquarter level. It is pertinent to mention that the above said letter states that as per Railway Board guidelines State Government's NOC is required for closure of the level crossing. In this regard, letter dated 15.03.2023 was forwarded

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to Executive Engineer, PWD Kapurthala by ADC (D) Kapurthala for taking necessary action regarding issuing of the required NOC. In response to above said letter Executive Engineer, Const. Div. 2. PWD Kapurthala vide letter no.2568 dated 31.03.2023 submitted a report to ADC(D) Kapurthala. Based on the report received, office of the Deputy Commissioner Kapurthala vide letter No.51 dated 10.04.2023 issued the required NOC subject to the condition that the office has no objection as 100% cost of construction will be borne by the railway department and as these ROB/RUB are feasible at the site. It is also pertinent to mention that in the letter no. W/27 dated 27.02.2023, the railway department did not share any detailed Layout or General Arrangement drawings depicting alignment or feasibility. A true copy of the letter dated 15.03.2023 is being annexed herewith as ANNEXURE R-6/2.

7. That the above constituted committee while carefully examining the record available pertaining to this matter has observed that the layout/design of RUB for level crossing was approved at the level of Railway Department at the later stage on 12.05.2023 i.e., after issuance of the aforesaid NOC by office of Deputy Commissioner, Kapurthala. To study the existing ground situation, the committee has examined the maps and Revenue record pertaining to this site along with other relevant available records and based on the ground situation, it has been observed that the said constructed RUB is situated on the link road connecting the village Mauli and G.T. road. After the construction of a retaining wall for this R.U.B. has resulted in the closure of the approach from the link road to the factory. Further, as per point no. 11 in the CLU letter

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issued by the Chief Town Planner PUDA to M/s Foundry Engineering Cluster (the premises that is adjoining the property of the petitioner), the industry was required to leave a widening strip of 18'-9". This same widening strip is now being utilized for commuting purposes by the petitioner. Annexure-R-6/3.

8. That, the committee has submitted a detailed report dated 23.06.2024, wherein the committee has mentioned that there is a road connecting GT road to village Mauli of 4 karmas having metaled width of 10 feet and this road was the only approach connecting M/s Purewell Filters. After the construction of the Retaining wall, this route was closed, and now M/s. Purewell Filters does not have any connecting approach with the Link Road. The committee has concluded that the only possibility of giving passage to the petitioner now) is to use the strip already being used for ingress and egress by the petitioner on temporary basis. If this existing 18' 9" road widening strip is merged with the area adjacent to the retaining wall, the total area of the strip approximately comes to 21' 9". The copy of the detail report of committee dated 23.06.2024 is being annexed herewith as Annexure -R-6/4.

9. That from the above, it is evident that as per the report of the committee and the situation at the said site, Sub Divisional Magistrate of Phagwara conducted a meeting with the representative of The Foundry and General Engineering Cluster to discuss all related matters. Following the meeting, the cluster Secretary Sh. Mukhinder Singh has agreed in point no. 2 of his letter dated 22-06-2024 to provide the same

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passage already being used on temporary basis to M/s Purewell Filters for a period of 4 months. ANNEXURE R-6/5

10. That, the office of the answering respondent has made every possible earnest effort to resolve the issue. In this regard several meetings with the members of the committee and railways officials have been conducted. Also, the office of the deponent has taken up the matter in the right earnest with the Divisional Regional manager, Ferozepur for finding a permanent solution. A copy of the letter is annexed herewith as ANNEXURE R-6/6. Further, for the resolution of the grievance of the petitioner, this matter has also been taken up with Secretary, PWD, Punjab. A copy of the letter is attached as ANNEXURE R-6/7. In response to the letter of the deponent the Department of PWD B&R, Chandigarh in its letter dated 03/07/2024 attached as ANNEXURE R-6/8 has stated as under:

i. The project of the construction of RUB along with its approaches at L-Xing no.80 was executed fully by the Department of Railways and 100% cost of construction of this project was borne by the Department of Railway for elimination of L-Xing no.80. Further, Department of Railways had submitted that the construction of RUB is feasible at the above location and the construction of RUB and its approaches was carried out by Department of Railways at their own level and no Drawing/General Arrangement was ever shared or approved or were vetted by the Punjab Public Works Department. Further the construction was not carried out under any supervision or guidance of Punjab Public Works Department.

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ii. It would have been appropriate that the Department of Railways should have planned the access to the stakeholders during the planning stage or at the time of execution of the project. Had there been any assistance or support which would have been required from the District Administration or Public Works Department, Punjab that should have been highlighted, which was not done.

iii. At this state it is felt that Department of Railways should provide permanent access to M/s Purewell Filters at their own level."

11. That Consequent to this, the office of the deponent has again taken up this matter with the Divisional Railway Office, Ferozepur vide letter no 1737/MA dated 03.07.2024 is attached as ANNEXURE R-6/9."

19 Dissatisfied with the evasive and non-committal approach of the authorities, this Court vide order dated 23.07.2024, referred the case to the Chief Secretary, Punjab for examination of the issue in a holistic manner. The relevant part of the order dated 23.07.2024 is extracted hereunder:

"A peculiar situation arises for consideration before this Court where the interest of the land owners/farmers are in conflict with the projects of development undertaken by the Railways. The construction of vehicular underpasses on the rural metaled public passages/road has resulted in lack of access to the

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farmers/landowners, whose land abuts the said passage. The concrete retention wall that has been constructed has blocked the access of the landowners. Even though this Court directed the Collector to look into the same and suggest a workable solution but there has been little respite. Such situation(s) all being brought before this Court regularly in numerous cases. The instrumentalities of the State have not been traveling beyond an exchange of correspondence and shifting of responsibilities. Rather than bringing their heads together in a concerted effort to find a solution, the focus is on who would be responsible. So much so, it was suggested during the arguments by the State counsel that the construction of Railway underpass has been carried out without State approval. The suggestion seems implausible as the passage is a State road and it would not have been possible to dig the same without approval of the State agencies. Besides, the Local Commissioner appointed by this Court also submitted a report about an efficacious proposal which ought to have been followed, but the same was conveniently ignored. The civil administration seemingly is clueless about the ground situation or has apparently granted approvals without calling for a spot inspection report about the existing situation and the probable difficulties. Before the problem escalates to the entire State, it is high time that the matter needs to be considered at the highest level of the Government.

Let the facts of this case be put up before the Chief Secretary, Punjab, for examination of the said issue in a holistic manner and to find out a workable solution to the same along with redressal of the grievance espoused by the petitioner herein before this Court. Affidavit on behalf of the

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Chief Secretary, Punjab, be filed before this Court on or before the next date of hearing.

Adjourned to 11.09.2024.

Copy of this order be given to learned State counsel under the signatures of the Court Secretary of this Court for necessary communication to the Chief Secretary, Punjab.”

20 Subsequently, a short affidavit of Priyank Bharti, IAS Secretary Public Works, Government of Punjab dated 11.09.2024 was filed on behalf of Chief Secretary, Govt. of Punjab in lieu of the order dated 23.07.2024 on 11.09.2024. The relevant part of the affidavit is extracted hereunder:

*“1. That it is submitted that in light of the order dated 23.07.2024 passed by this Hon’ble Court, a meeting was held by Chief Secretary with Divisional Railway Manager, Northern Railways, Firozpur, Chief Engineer, MRTS (Mass Rapid Transport System), Northern Zone, Railways and Deputy Commissioner, Kapurthala. The true copy of Minutes of the meeting dated 05.09.2024 is annexed along with as **Annexure R-1**.*

2. That in the meeting dated 05.09.2024, the Chief Secretary has raised a query to the officials of the Railways that as per the report dated 20.03.2024 of the Local Commissioner appointed by this Hon’ble High Court vide order dated 15.03.2024 in the present petition, the Railway Under Bridge/Limited Height Subway was to be constructed in “U” Shape, then how the same was constructed in straight shape. It is pertinent to mention here that the in reply to the said query, it was stated by the Chief Engineer, Railways, that usually the

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Railway Under Bridge/Limited Height Subway are in straight shape for the convenience of the local public to ease the movement of machinery and equipment used for agricultural and industrial purposes.

3. It is brought to the kind notice to this Hon'ble Court that on one side Divisional Railway Manager submitted that the cost of Land Acquisition is always the integral part of these types of projects, however on the other side Divisional Railway Manager in the present case stated that the Land Acquisition will be difficult at this stage because the Land Acquisition for this Railway Under Bridge/Limited Height Subway was not the integral part of the project.

4. That it is submitted that later it came to light that the General Arrangement Drawings has been changed by the Railways Department at a later stage without informing the State and it is worth to mention here that the Railways Authorities should have acted as per the report of Local Commissioner dated 20.03.2024, but however, the Railway Authorities were reluctant to do so and Local Commissioner clearly stated in their report dated 20.03.2024 report that the underpass was proposed to be constructed in "U" shape but in the present case the Railways Authorities constructed straight underpass without informing the State.

*5. That it is pertinent to mention here that the Railways Authorities mentioned in their request letter that the 100% cost of work shall be borne by the Railways for elimination of level crossing forming part of Railway's priority as per the modified policy and the said fact is clearly mentioned by them in the letter dated 15/3/2023, which is annexed along with as **Annexure R-2.***

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6. That it is submitted that in order to ensure that such problems do not arise in future, detailed instructions have been issued by the answering respondent to all the Deputy Commissioners of the State of Punjab with the approval of Chief Secretary. The copy of instructions is placed at **Annexure R-3.**

7. That it is further brought to the kind notice of this Hon'ble Court that the Railways in their own communication dated 15/11/2022 also clearly stated that the construction of the above said level crossing is clearly feasible. The true copy of letter dated 15/11/2022 is annexed along with as **Annexure R-4.**"

21 Learned counsel for the respondent-State of Punjab relied on the above affidavit and averred that the Railway Authorities did not act as per the report of the Local Commissioner and went on to construct the underpass in straight shape without informing the State and after changing the General Arrangement Drawings at a later stage. However, he also went on to state that the Govt. of Punjab has issued guidelines/instructions for dealing with cases pertaining to construction of Road Over Bridge (ROB)/Railway Under Bridge (RUB)/Limited Height Subways (LHS) in the State of Punjab vide Memo No. E-723483-PWDCEH-17012/31/2024/454 dated 10.09.2024 and that the Railway Authorities would now be required to comply with the guidelines/instructions issued by the Govt. of Punjab. He, thus, prayed for dismissal of the writ petition qua the answering respondent in light of the above statements.

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22 Learned counsel for the petitioner controverted the same and argued that the petition be allowed considering the admission of the Railway authorities and that the acquisition of land for building Railway underpass was not in accordance with law and violated petitioner's easement rights.

23 No other argument has been raised or any judgment cited by the counsel for the parties.

24 I have heard learned Counsel for the parties and have gone through the documents appended along with the present petition.

25 The aforesaid sequence of events and the undisputed facts establishes that the respondent railways resorted to construction of Railway Under Bridge without any basic prudence and application of mind. It is a classic case of mindless bureaucratic planning and hastened execution of an inherently flawed project to truncate rights of a citizen. Even half an effort at reasoned and positive approach towards practical ground reality and challenges would have nipped the problem. The complete lack of acumen and rationality is heightened by an arrogance to display sovereign power to complete the project, despite the issue being highlighted and the problem being pointed out in the writ petition. The respondents were thus apprised of the issue but chose to file a wrong affidavit about inauguration of the Railway Under Bridge by the Minister, a fact which stands demolished from the report of the Local Commission. The approach reflected high headedness and rigidity instead of wisdom to accept the flaw and make amends. Thus, forcing litigation and harassment to a citizen.

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26 Despite being an organization that had a good legal assistance and planning, it is evident that the State of Punjab as well as Railways showed total legal illiteracy and respect for citizen's rights and preferred to flex their muscles against an aggrieved who approached the Court.

27 The Constitution of India recognizes the right of an owner to be not divested of his rights and title except without authority of law. Even though, right to property is no more a fundamental right, however, its deprivation has to be compliant of the Constitutional protection provided under Article 300A of the Constitution of India.

28 In the process of enjoyment of the property, access to the same has also been recognized as an integral and inalienable right. Where a State action results in blockage or denial of an existing passage, Article 300A may be invoked to contend that it is an unlawful deprivation of rights over the property since usage and enjoyment thereof is dependent on availability of the passage.

29 Law also recognizes that if the landowner has no other access to his property, he may claim an easement by necessity.

30 The Courts have invoked the Constitutional Provision under Article 300A recognizing that an obstruction caused by the State effectively takes away a landowner's access without compensation and is thus a violation of the right to property. In exercise of its power of eminent domain, State is required to ensure that there is no infringement of said right.

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31 The Hon'ble Supreme Court recognized the inseparable relationship between the right of property and right to passage in the matter of **Tukaram Kana Joshi Vs. Maharashtra Industrial Development Corporation reported as (2013)1 SCC 353**, setting aside the action of Maharashtra Industrial Development Corporation and holding that restricting access to property is intrusive to property rights. Relevant part thereof reads thus:-

“9. The right to property is now considered to be not only a constitutional or a statutory right but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment, etc. Now however, human rights are gaining an even greater multifaceted dimension. The right to property is considered very much to be a part of such new dimension. (Vide Lachhman Dass v. Jagat Ram (2007) 10 SCC 448, Amarjit Singh v. State of Punjab (2010) 10 SCC 43, State of M.P v. Narmada Bachao Andolan (2011) 7 SCC 639, AIR 2011 SC 1989, State of Haryana v. Mukesh Kumar (2011) 10 SCC 404, AIR 2012 SC 559 and Delhi Airtech Services (P) Ltd. v. State of U.P (2011) 9 SCC 354, AIR 2012 SC 573)

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11. There is a distinction, a true and concrete distinction, between the principle of “eminent domain” and “police power” of the State. Under certain circumstances, the police power of the State may be used temporarily, to take possession of property but the present case clearly shows that neither of the said powers have been exercised. A question then

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arises with respect to the authority or power under which the State entered upon the land. It is evident that the act of the State amounts to encroachment, in exercise of “absolute power” which in common parlance is also called abuse of power or use of muscle power. To further clarify this position, it must be noted that the authorities have treated the landowner as a “subject” of medieval India, but not as a “citizen” under our Constitution.

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17. Depriving the appellants of their immovable properties was a clear violation of Article 21 of the Constitution. In a welfare State, statutory authorities are bound, not only to pay adequate compensation, but there is also a legal obligation upon them to rehabilitate such persons. The non-fulfilment of their obligations would tantamount to forcing the said uprooted persons to become vagabonds or to indulge in anti-national activities as such sentiments would be born in them on account of such ill-treatment. Therefore, it is not permissible for any welfare State to uproot a person and deprive him of his fundamental/constitutional/human rights, under the garb of industrial development.

18. The appellants have been deprived of their legitimate dues for about half a century. In such a fact situation, we fail to understand for which class of citizens the Constitution provides guarantees and rights in this regard and what is the exact percentage of the citizens of this country, to whom constitutional/statutory benefits are accorded, in accordance with the law.

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32 Similar view had also been taken in the matter of **Bhimandas Ambwani Vs. Delhi Power Co. Ltd. (2013) 14 SCC 195.** Relevant part thereof reads thus:-

“14. The instant case is squarely covered by the aforesaid judgment in Tukaram case [(2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] and thus, entitled for restoration of possession of the land in dispute. However, considering the fact that the possession of the land was taken over about half a century ago and stood completely developed as Ms Ahlawat, learned counsel has submitted that a full-fledged residential colony of the employees of DESU has been constructed thereon, therefore, it would be difficult for Respondent 1 to restore the possession. In such a fact situation, the only option left out to the respondents is to make the award treating Section 4 notification as, on this date i.e. 12-2-2013 and we direct the Land Acquisition Collector to make the award after hearing the parties within a period of four months from today. For that purpose, the parties are directed to appear before the Land Acquisition Collector c/o the Deputy Commissioner, South M.B. Road, Saket, New Delhi on 26-2-2013. The appellants is at liberty to file a reference under Section 18 of the Act and to pursue the remedies available to him under the Act. Needless to say that the appellants shall be entitled to all statutory benefits.”

33 Hence, endeavour has always been to balance the public and private interests.

34 It is evident from the observations and judgments of the Hon’ble Supreme Court and different High Courts, referred to above that

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for the constitutional right to property to be meaningful, access cannot be denied except with the authority of law. Whether alternative passage is required to be provided or a compensation needs to be paid to the land owner.

35 Referring to the objection about the construction having been raised without permission or the vacant portion not being left, it is held that the same has no bearing on the prayer made before this Court. An access to be made available is not contingent upon the ultimate usage of the property. State cannot absolve itself of the obligation to provide an access on the pretext of user of the property. It has every right to take action against an owner for unlawful usage but cannot assuage its obligation under the said garb.

36 Further, it is also evident that the respondents acknowledge an obligation to provide a passage and also acknowledge that land of some other person is situated prior to the premises of the petitioner. Any temporary private arrangement by the petitioner to approach his property cannot be permitted to be claimed as an availability of access since the owner is left at the mercy of the neighbours to approach his property rather than having a vested defensible claim to the said passage.

37 Every prudent planning by a person of ordinary indulgence would reflect anticipation of such issues and redressal thereof at the commencement of the project itself. The steps proposed by State of Punjab are prospective and merely reiterates the loop-holes of the decision making process such as there being no land acquisition cost factored in; change of

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design by railways as well as absence of any proposal to redress the issue in hand.

38 Repeated opportunities were given to the Railways, District Administration as well as the State to solve the matter but authorities failed to display any resolute, requiring judicial intervention in an act displaying executive failure to make amends on being pointed out the wrong.

39 What further stuns the Court is the refusal on the part of State instrumentalities to acknowledge lapse or admit liability despite being confronted. The State of Punjab allowed NOC to raise construction against a public passage and has no solution even while alleging that the drawing has been changed later.

40 The Railways, on the other hand, have taken a stand that a straight Railway Under Bridge is more feasible even without disputing that initial plan was a 'U' shaped Railway Under Bridge and never chose to discuss the change with the field revenue staff.

41 Such attitude and response of the authorities has compelled this litigation which was otherwise avoidable. Rather, the problem has been aggravated by fast tracking of the work while gaining time on false pretext and false averments in the reply.

42 Such a conduct on the part of Railway Authorities, which renders the rights of the petitioner under Article 300-A of the Constitution nugatory, needs to be deprecated and dealt with sternly.

43 I find that it is a fit case for this Court to exercise its powers under Article 226 of the Constitution of India as the course of action

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followed by the respondent-Railway authorities suffers from the vice of illegality, impropriety as well as violates constitutional principles.

44 The present petition is accordingly allowed in light of the observations made above and by imposing a cost of Rs.5 lakhs on the Railways to be deposited with the PGIMER Poor Patients’ Welfare Fund, Chandigarh and a further cost of Rs.1 lakh to be paid to the petitioner. The respondent Railways shall be at liberty to effect recovery of the same from the official(s) found responsible for the lapse. They are further directed to take steps to provide an alternative passage to the petitioner or to pay admissible compensation, as per law, for infringement of rights of the petitioner. Let the needful be done within 06 months of receipt of a copy of this order.

45 Pending misc. application(s), if any, shall also stand(s) disposed of accordingly.

October 19, 2024.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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