



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

**LPA No. 175 of 2025(O&M)
Date of Decision: 03.07.2025.**

Union of India and others

.....Appellants

Versus

Smt. Sandeep Saini and others

..... Respondents

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Hitesh Kumar Sammi, Central Government Counsel
for Union of India-appellant with Mr. Dushyant Singh, Sr.
Divisional Engineer-I, Ferozepur, Northern Railway.

Ms. Divya Jerath, Advocate
for respondent No.1 (through video conferencing).

Mr. R.S.Pandher, Addl.AG., Punjab.

LISA GILL, J.

CM-409-LPA of 2025.

Heard.

For the reasons mentioned in the application as well as
arguments addressed, delay of 04 days in filing the present appeal is
condoned subject to just exceptions.

Application is accordingly disposed of.

LPA No. 175 of 2025.

1. Prayer in this appeal is for setting aside order dated 19.10.2024

passed by learned Single Bench, whereby CWP No. 26580 of 2023 filed by respondent No.1 has been allowed.

2. Brief facts necessary for adjudication of the matter are that abovesaid writ petition was filed by respondent No.1 with a grievance that passage to her property, whereupon a factory has been constructed, has been blocked due to construction of an underpass by the Railways on an existing passage by raising of a concrete retention wall.

3. Respondent No.1/writ-petitioner is admittedly owner of the property as is detailed in the writ petition as well as impugned order dated 19.10.2024. A factory has been constructed upon the land in question. It was pleaded by writ petitioner that she visited office of respondent No.3-Divisional Railway Manager, Ferozepur, Punjab as well as that of the Deputy Commissioner, Kapurthala, a number of times, but no detail about any notice regarding construction of Railway underpass was shared with writ petitioner. It is further pleaded that she however happened to come across the construction plan of the Railway underpass at village Mauli, Tehsil Phagwara, District Kapurthala and much to her surprise found that slope of the Railway underpass in question, cut into the front side of her factory while also encroaching upon land of writ petitioner to the extent of a few feet. Being aggrieved writ petitioner served legal notice dated 04.11.2023 upon the Divisional Railway Manager, Ferozepur, Punjab as well as Deputy Commissioner, Kapurthala seeking halting of the construction work being undertaken to her detriment. When no response was received, CWP No.26580 of 2023 was filed by her. After much delay, reply was filed on behalf of respondents No.3 to 5 i.e., appellants No. 2 to 4 in the present appeal, with the averment that no encroachment was being carried out on anyone's land including that of the writ petitioner and that it is

only the land of the State Government which is being used for construction of the underpass/Limited Height Subway (LHS) and that No Objection Certificate (NOC) had been obtained on 10.04.2023 from the office of Deputy Commissioner, Kapurthala. It was further pleaded by the appellants that Railway underpass was being constructed for larger public good and this construction had been undertaken after taking consent of the concerned village Panchayat for construction of a straight underpass to avoid traffic accidents and ensure safe passage. It is also the case of appellants that there was no need for issuance of any notices as no land was being acquired for construction of the said underpass. Underpass in question was stated to have been inaugurated by a Minister of the Central Government with some new trains also announced on the said route. It was also pleaded by the appellants that the writ petitioner had in-fact not left vacant area in front of her factory premises. Claim of inauguration of the underpass etc., was actively disputed by the writ petitioner.

4. Learned Single Bench in order to determine the factual position appointed a Local Commissioner vide order dated 15.03.2024. Report dated 20.03.2024 was submitted by the Local Commissioner according to which as per initial construction plan of the underpass which was proposed and passed was U-shape one along the Railway Track. Upon hue and cry being raised by a few villagers, the Railway underpass plan was shifted from land of the Railways to area of the road which was in front of the petitioner's factory. The Court queries as posed in order dated 15.03.2024 were answered in the report dated 20.03.2024 as under:-

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

"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.

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.”

5. No objections were filed by any of the parties to report dated 20.03.2024 submitted by the Local Commissioner. Statement about completion of the Railway under-bridge was made by the counsel for the appellants before learned Single Bench on 20.04.2024 upon which Deputy Commissioner, Kapurthala, was directed to file an affidavit as to whether Revenue Department had examined the availability of alternate passage to petitioner's land before granting NOC. Order dated 20.04.2024 passed by learned Single Bench is reproduced in para 15 of impugned order dated 19.10.2024 and is not being reproduced for the sake of brevity. After various

adjournments being afforded, short affidavits of Mr. Harjit Singh Sandhu, Joint Secretary, Department of Housing and Urban Development and of the Deputy Commissioner, Kapurthala were filed on 04.07.2024 in compliance of order dated 20.04.2024. Stand taken by State of Punjab was that it was never a part of the approval for construction of Railway under-bridge or of any committee and was not a participant in the decision-making process for the same. It was further stated in the affidavit of the Joint Secretary, Department of Housing and Urban Development that Deputy Commissioner Kapurthala had constituted a committee for suggesting options and remedies for redressal of grievance of the petitioner after noticing the factual position. Relevant portion of the affidavit filed by Deputy Commissioner, Kapurthala, is reproduced in para 18 of impugned order dated 19.10.2024, again taking a stand that construction of the underpass was not carried out under any supervision or guidance of the department of the State. Railway Department, it is stated did not share any detailed layout or general arrangement drawings depicting alignment or feasibility thereof. It is specifically stated in this affidavit that construction of a retaining wall for the R.U.B which is situated on the link road connecting Village Mauli and G.T Road, has resulted in the closure of the approach from the link road to writ petitioner's factory. Reference was made to a temporary arrangement which was arrived at for providing passage to the writ petitioner at the mercy of another adjoining land owner.

6. Learned Single Bench vide order dated 23.07.2024 referred the matter to the Chief Secretary, Punjab, for examination thereof in a holistic manner being dissatisfied with the completely evasive approach of the authorities. The anguish expressed by learned Single Bench while directing the Chief Secretary Punjab to find out a workable solution in the peculiar

situation which had arisen, reads as under:-

“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 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 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.”

7. Affidavit dated 11.09.2024 was filed by Secretary Public Works, Government of Punjab on behalf of the Chief Secretary, Government of Punjab in compliance of the abovesaid order. Yet again the specific stand taken by State of Punjab was that the general arrangements drawings had been changed by Railway Department at a later stage without informing the State and that the Railway underpass was supposed to be constructed in U-shape but Railway authorities without informing the State constructed a straight underpass. In order to avoid such situations arising in future, it was stated that detailed instructions had been issued in this regard to all Deputy Commissioners of the State of Punjab in this regard.

8. Learned Single Bench upon examining the issue in detail concluded that the authorities had acted in an absolutely apathetic manner due to which a citizen had been deprived of the right of passage to her property. It is duly noted in the impugned order dated 19.10.2024, that despite acceptance of the factum of no passage being left for the writ petitioner to her property, no steps whatsoever were taken by the authorities to remedy the same despite a number of opportunities having been provided by Court. State of Punjab, it was noted had even issued the NOC to Railways to raise construction and had taken a stand that NOC was granted for the underpass which was U-shaped and that Straight Railway under-bridge has however been constructed by the Railway authorities without any intimation to them. Railways on the other hand took a stand that

straight railway under-bridge was constructed as it was more feasible without a dispute that initial plan was indeed a U shaped Railway under-bridge. It was further noted that there is nothing to indicate that the Railways ever informed the State authorities or that the State authorities were even slightly vigilant about the construction of the underpass in the manner as done despite objections being raised by the writ petitioner in this regard. Conduct of the authorities which rendered rights of the writ petitioner under Article 300-A of the Constitution of India nugatory was deprecated. In order to balance public and private interests, authorities were directed to take necessary steps to provide alternate passage to the writ petitioner or to pay admissible compensation as per law for infringement of her rights within a period of six months from receipt of copy of the order. Costs of Rs.5,00,000/- was imposed upon Railways to be deposited with PGIMER Poor Patient's Welfare Fund, Chandigarh and cost of Rs.1,00,000/- to be paid to writ petitioner.

9. Aggrieved therefrom, present appeal has been filed by the Railway Authorities.

10. It is pleaded in the grounds of appeal that the costs of Rs.6,00,000/- has been imposed upon the Railways without any justification or any ground as the Railway under-bridge has been constructed by the Authorities after obtaining prior NOC from the office of the Deputy Commissioner. Moreover, Railways do not have any authority to acquire land of any individual, therefore there is no question of Railway authorities acquiring any land for alternate passage or releasing any compensation to the writ petitioner. It was submitted that under-pass has been constructed on the land of the State Government itself. It was stated that even as per report dated 23.06.2024 submitted by the Committee constituted by Deputy

Commissioner, Kapurthala, the only possibility of giving passage to the writ petitioner is to use the strip already being used by her for ingress and egress on a temporary basis and that it is for the State of Punjab to take steps to acquire the particular land in order to remove grievances of the petitioner. It was submitted that it was the State of Punjab which had totally failed to carry out its duty, therefore the Railway authorities cannot be blamed for the same and liability if any has to be borne by the State of Punjab. It was thus prayed that this appeal be allowed and impugned order be set aside insofar as cost has been imposed upon the Railway Authorities and that liability to provide alternate passage or to pay admissible compensation to the writ petitioner should be fastened only upon the State of Punjab.

11. Learned counsel for respondent No.1 has vehemently opposed the appeal while submitting that not only has the right of writ petitioner under Article 300-A of the Constitution of India been infringed but her right to livelihood is also being affected due to no passage being available to her property. It was submitted that the temporary private arrangement which writ petitioner had availed of by generosity of some of the neighbours was also being stopped. Dismissal of appeal was sought.

12. Learned counsel for State has reiterated the stand as taken by it before the learned Writ Court.

13. We heard learned counsel for the parties at length and have carefully perused the file as well as file of CWP No. 26580 of 2023, which was called for separately as the entire paper-book has not been filed by appellants. Affidavits filed on behalf of the State of Punjab and on behalf of the Chief Secretary along with the report submitted by the Committee constituted by the Deputy Commissioner are not appended with the appeal. Be that as it may, it is a matter of record and accepted position that ingress

and egress to writ petitioner's property has been blocked due to construction of the Railway under-bridge as detailed in the foregoing paras. With equal vehemence the Railway and State Authorities have been trying to palm off the responsibility upon each others shoulders without any attempt to resolve the issue at hand. Perusal of the file reveals that various opportunities had been afforded by learned Single Bench to the Authorities to take necessary steps to remedy the grievance of writ petitioner. However, the Railway Authorities have taken an obstinate and obdurate stand that the Railway under-pass has been correctly constructed and an NOC was taken from the State of Punjab and that in respect to any land which has to be acquired or any compensation paid, it is for the State of Punjab to take necessary steps. Even before us, a similar stand has been taken. At this stage, it is relevant to refer to the observation of learned Single Bench in respect to the arrogance, highhandedness and rigidity displayed by the Railway Authorities which reads as under:-

“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.”

14. It is to be noted that even in present proceedings opportunity was afforded to the appellants since January 2025 to take necessary steps but it is still bureaucratic hurdles and perceived difficulties which are presented before us by appellants without the slightest of sensitivity to the grievance of writ petitioner/respondent No.1 which is admitted.

15. We find absolutely no illegality, infirmity or perversity in the impugned order dated 19.10.2024 which has been correctly passed by the learned Single Bench. In-fact, we find that instead of taking remedial steps and provide access to property of the writ petitioner, appellants are unnecessarily contesting the matter in an absolutely irrational manner. It is pertinent to note that in a surprising manner a plea has been raised in present appeal that it was always a straight underpass which was planned. Such a stand is clearly belied by the averments in preliminary objections raised by appellants in the written statement filed by them before learned Writ Court wherein it is stated that village Sarpanch and other members submitted a written request for constructing the straight underpass. Moreover, no objection whatsoever had been filed to report dated 20.03.2024 submitted by the Local Commissioner appointed by learned Single Bench, wherein it is reflected that initially construction plan was of a U-shape under-pass. Such plea is thus not only unsubstantiated but is reflective of the obstinate, unyielding and stubborn approach of the appellants. Even as of now the effort is to wash of its hand of any responsibility and still cause road blocks in affording legitimate relief to the writ petitioner. Reference by learned counsel for the appellants to various communications by the Railway Authorities to State Authorities and their reply regarding Northern Railways

having to follow due process under Railways Act 1989 is of no avail whatsoever to appellants. The same is in-fact reflective of recalcitrant and stubborn approach of the authorities, which in our considered opinion calls for imposition of further cost.

16. No other argument was raised.

17. Keeping in view the facts and circumstances as above, this appeal is dismissed being devoid of any merit with further cost of Rs.1,00,000/- to be paid to writ petitioner/respondent No.1 by the appellants in addition to the one as imposed by learned Single Bench. Pending application(s), if any, stand(s) disposed of accordingly.

**(LISA GILL)
JUDGE**

**(SUDEEPTI SHARMA)
JUDGE**

July 03, 2025.
s.khan

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