

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No. 5086/2007

Khairipura Binaki Mangalwari Premnaagar Niwasi Action Committee
and others vs. The Union of India and others.

Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's
Orders.

Mr. Z.A.Haq, Advocate for the petitioner.
Mr. R.G.Agrawal, Adv. For R-1 and 3.
Mr. N.W.Sambre, Govt. Pleader for R-2,5, and 8.
Mr. R.O.Chhabra, Adv. For R-4.
Mr. S.K.Mishra, Adv. For respondent no.6.

CORAM : S.A.BOBDE & MRS. MRIDULA BHATKAR, JJ
DATE : 06.10.2010

All the parties have stated that the idol in the temple has been relocated to another temple and the structure from which the idol was removed has been demolished.

Mr. Haq, the learned counsel for the petitioner states that there is a possibility that the area which has become free may be encroached upon. However, Mr. Chhabra, learned counsel states on instruction from Mr. Pasebande, the Executive Engineer who is present in the court that the NIT will tar the area for the purpose of service road within a period of two weeks from today and will put it to use. The statement on behalf of the

Executive Engineer Mr. Pasebande is accepted.

Mr. Haq further contended that the respondents Railways should not be allowed to close the railway crossing permanently merely because a fly over is constructed since the large section of people use the said railway crossing. The learned counsel relies on the report of the Deputy Commissioner of Police, Nagpur City dated 11.9.2006 which is on record at Annexure No. 14. Mr. Sambre, learned Government Pleader states that the Deputy Commissioner of Police has accepted that the railway crossing should be kept open and that the Deputy Commissioner of Police after making survey given the detailed reasons why it should be kept open.

Mr. Agrawal, the learned counsel for railways, however, submits that 43 trains pass over the railway track at that point every day and that it is very difficult for the Railways to manage this crossing.

Prima facie, the task of the Railways does not seem to be incapable of performance. Indeed they have been properly maintaining the crossing for about half century. However, if for some reason, the crossing has become unmanageable for the Railways, the Railways must themselves provide some alternative such as Railway Over-bridge which they have provided in many crossings. However, Mr. Agrawal, the learned counsel is not in a position to make a statement in this regard and seeks time to obtain instructions whether

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the Railways would prefer to construct a over bridge at the point of crossing or continue to keep the railway crossing open as before.

Stand over to 27.10.2010.

Steno copy is granted.

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