

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.9804 of 2023

Decided on: 16.07.2026

Sunil Kumar

.....**Petitioner**

Versus

Baddi Barotiwala Nalagarh Development Authority and Anr.

.....**Respondents**

Coram

Ms. Justice Jyotsna Rewal Dua

Whether approved for reporting?¹

For the Petitioner: Mr. Ashwani Sharma, Sr. Advocate
with Mr. Ishan Sharma, Advocate.

For the Respondents: Mr. Anup Rattan, Advocate General
with Ms. Seema Sharma, Deputy
Advocate General, for respondent No.1.

Respondent No.2 ex-parte.

Jyotsna Rewal Dua, Judge

Heard and considered the case file.

2. Petitioner is permanent resident of village and
Post Office Mandhala, Tehsil Baddi, District Solan, H.P. As
per case set up in the writ petition:-

2(i) Petitioner's land in Village Mandhala is adjacent
to the Government land, which also leads to Shiv Temple,

¹Whether reporters of print and electronic media may be allowed to see the order? Yes.

situated in the said village; Respondent No.2-Sh. Amar Nath son of Sh. Gopal Chand installed a gate at a distance of about 300 mtrs from the temple on the path existing over the Government land. Because of installation of the gate by respondent No.2, obstruction has been caused to the petitioner in accessing his property; The path in question is situated on the Government land; It was constructed by the Baddi Barotiwala Nalagarh Development Authority (BBNDA); The gate so installed by respondent No.2 over the path, at a distance of 300 mtrs. from the temple, was without any reason or justification whatsoever; With this grievance, petitioner represented on 06.10.2022 to the concerned Authorities for removal of the obstruction, to enable him to have free access to his land.

2(ii) The Assistant Town Planner, Baddi Barotiwala Nalagarh Development Authority, issued a show cause notice on 09.03.2023 under Section 38 of the Himachal Pradesh Town & Country Planning Act, 1977 (the Act in short) to respondent No.2 for his having encroached upon the Government land/path by affixing gate without permission of the Competent Authority and obstructing the thoroughfare. This was followed by notice dated 22.03.2023, issued under Section 39(1) of the Act, directing

respondent No.2 to remove the gate from Government land and for restoring the land as it existed before such development. Since no further action was taken in the matter by the Competent Authority, petitioner preferred another representation on 10.05.2023, requesting respondent No.1 to take further action in the matter in accordance with law.

2(iii) It appears that some proceedings were conducted into the complaint made by the petitioner. After considering material on record, the Chief Executive Officer of respondent No.1 on 16.06.2023, in exercise of powers under Section 39(1)(6)(b) of the Act ordered removal of iron gate erected on public path/road from its existing location with further direction to erect the same at a convenient site near to the temple for protection of temple and its surrounding area.

2(iv) Petitioner's grievance is that aforesaid order dated 16.06.2023, which was passed in accordance with law and redressed his grievance, was withdrawn by respondent No.1 on 10.08.2023. Feeling aggrieved, he has instituted this writ petition.

3. Looking to the nature of the dispute involved in

the writ petition, it was observed in the order dated 06.08.2025 passed in this writ petition that it would be in the interest of everyone to have the matter amicably resolved rather than leaving it upon the Court as in case of non-resolution of the dispute, the Court would be bound to decide the matter strictly as per law. Observation was also made that concerned officials will take into consideration that none should be allowed to take the law in his hand on the pretext of hurting religious sentiments; Religion cannot be allowed to be used as a tool to subvert the legal process.

When the matter was next taken on 14.10.2025, learned Additional Advocate General, on the strength of instructions received from the Chief Executive Officer, BBNDA, Baddi, requested for constitution of a Resolution Committee under the Chairmanship of Deputy Commissioner, Solan, alongwith Superintendent of Police Baddi, the Chief Executive Officer, BBNDA, Baddi and officials of the local administration as members of the Committee for taking suitable action in the matter. The Committee was accordingly constituted by the Court with the Deputy Commissioner, Solan as its Chairman and the Superintendent of Police Baddi, the Chief Executive Officer, BBNDA, Baddi and Sub Divisional Magistrate, Baddi, as its

members. The Committee was to take suitable corrective action in the matter by associating the petitioner as also other interested parties for amicable resolution of the issue.

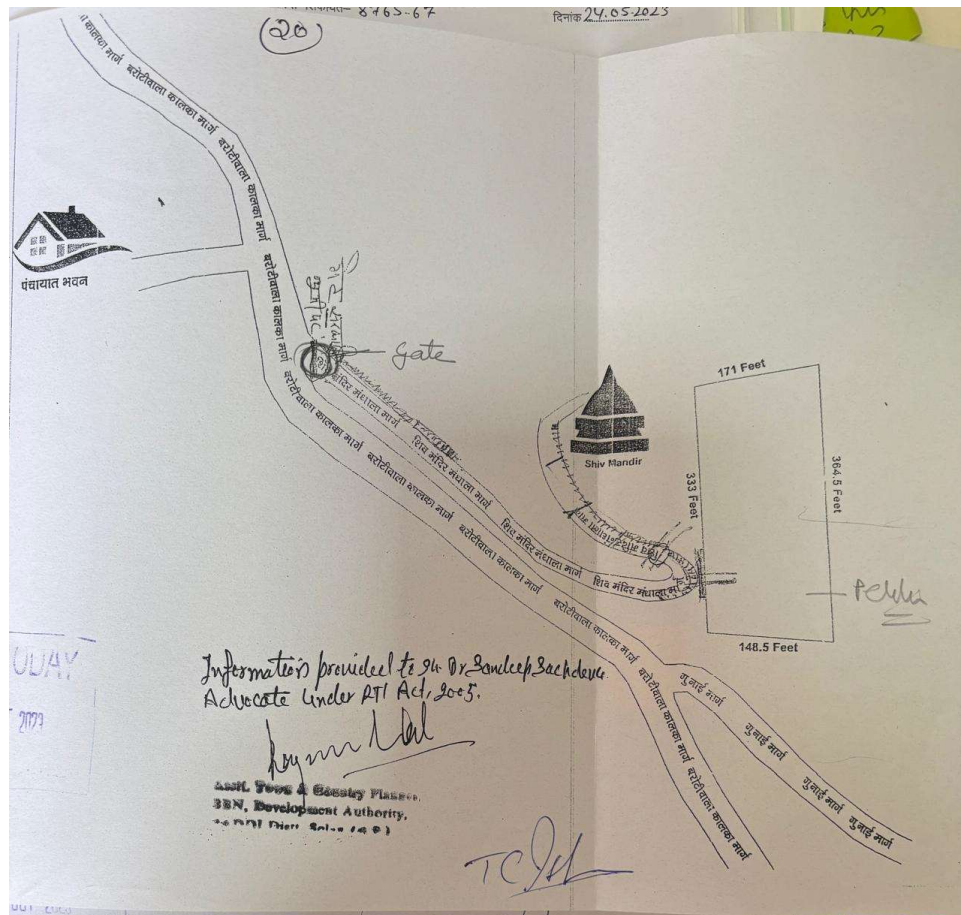
4. The aforesaid Committee furnished its report dated 11.12.2025. In terms of the report, the site was inspected, the affected parties as also the villagers, who remained present on the spot were heard. After verifying the factual position and the existing use of the road, the Sub Divisional Magistrate, Baddi recommended “the erected gate structure may remain in place, however, the shutters of the gate may either be removed or permanently fixed by keeping the passage open for vehicular traffic.”

A separate compliance affidavit on behalf of the Deputy Commissioner, Solan, has also been filed. It notices the grievances of the petitioner that he owns private land approximately 100 mtrs away from the gate; He often faces difficulty in commuting to his land as shutters of the gate are frequently found closed. The Deputy Commissioner, Solan in the compliance affidavit recommended as under: -

“6. That keeping in view the aforementioned facts the Chairman and the member of the committee are of the considered view that it would be in the fitness of

things that the erected gate structure may remain in place, however to ensure free and uninterrupted movement, the shutters of gate shall either be removed or permanently fixed in an open position thereby keeping the passage open for vehicular traffic.”

5. At page 20 of the paper-book, a rough depiction of the site has been provided as under:-



It is not in dispute that path depicted in the aforesaid map is on Government land. The gate has been constructed by respondent No.2 on the Government land-

path that leads not only to the temple, but also to the property of the petitioner. Petitioner's property is situated nearer to the gate and before the location of the temple. The temple is at a distance of about 300 mtrs. from the location whether the gate is presently installed. The documents on record do not dispute the genuineness of the grievance of the petitioner as because of the construction of the gate at its current location, he faces difficulties time and again in accessing his property. Due credence is required to be given to the concern raised by learned Senior Counsel for the petitioner that in case the gate is allowed to be remain as it is, its closure in future in turn causing harassment to the petitioner, cannot be ruled out. It is also an admitted position that the gate has been installed unauthorizedly over the Government land. If there is any need of gate, it should be positioned in the vicinity of temple area, rather than on public land far away where it infringes upon rights of others. Erection of gate on Government land at a distance of 300 mtrs away from the temple premises serves no purpose. Instead, it creates direct hinderance and unlawfully obstructs petitioner's right of unhindered access to his property.

In view of genuine grievance of the petitioner,

the documents on record, admitted factual position and also keeping in view the report furnished by the Committee constituted by this Court under order dated 14.10.2025, it has to be held that the order passed by the Chief Executive Officer, BBNDA, Baddi on 16.06.2023 was just and in accordance with law. In terms of this order, the gate erected on the path was to be removed from its current location for its installation near the temple. This order also resolved the security issues of the temple in question. The gate at its current location is required to be removed for its installation in near vicinity of the temple in such a manner that egress and ingress of the of the petitioner to his property is not blocked in any manner.

In view of above, this writ petition is disposed of with following directions:-

- (i) The shutters of the gate at its current location shall forthwith be removed permanently.
- (ii) In case the gate is considered necessary to be installed, the installation will not be more than 50-75 mtrs away from the temple and after obtaining all sanctions /approvals in accordance with law.

Respondent No.1-Sub Divisional Magistrate Baddi, District Solan, shall ensure compliance of this

order.

Office of learned Advocate General to apprise
passing of this Order to the concerned Authority.

The writ petition is accordingly disposed of.

Pending miscellaneous application(s), if any,
also to stand disposed of.

July 16, 2026
R.Atal

Jyotsna Rewal Dua
Judge