

GAHC010008322018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/214/2018

MANOJ PRASAD
BARPETA STATION, BARPETA ROAD

VERSUS

THE GENERAL MANAGER
N.F. RAILWAY, MALIGAON, GUWAHATI

2:THE ESTATE OFFICER
N.F.RAILWAY
RANGIA
KAMRUP
ASSAM

3:THE SENIOR SECTION ENGINEER
WORKS
BARPETA ROAD
N.F. RAILWAY
BARPETA ROAD

4:SRI PRADIP KUMAR PRASAD
S/O. LATE RAMBABU PRASAD
R/O. BARPETA ROAD RAILWAY STATION
WARD NO. 5
P.O. AND P.S. BARPETA
DIST. BARPETA
ASSAM
PIN-781315

Advocate for the Petitioner : MR. U K GOSWAMI

Advocate for the Respondent : SC, NF RLY

Linked Case : WP(C)/218/2018

RAM NIWAS MISHRA
S/O LT. FULANA MISHRA
BARPETA STATION
BARPETA ROAD
DIST. BARPETA
ASSAM

VERSUS

THE GENERAL MANAGER
NF RLY
N.F. RAILWAY
MALIGAON
GUWAHATI -11.

2:THE ESTATE OFFICER
N.F. RAILWAY
RNGIA
KAMRUP
ASSAM

3:THE SENIOR SECTION ENGINEER
WORKS
BARPETA ROAD
N.F. RAILWAY
BARPETA ROAD

Advocate for : MR. U K NAIR
Advocate for : SC RAILWAY appearing for THE GENERAL MANAGER
NF RLY

Linked Case : WP(C)/216/2018

DEO NATH MISHRA
S/O- SRI LAL BACHAN MISHRA
BARPETA STATION
BARPETA
ASSAM

VERSUS

THE GENERAL MANAGER
NF RLY
N F RAILWAY
MALIGAON
GUWAHATI- 11

2:THE ESTATE OFFICER
N F RAILWAY
RANGIA
KLAMRUP
ASSAM

3:THE SENIOR SECTION ENGINEER WORKS
BARPETA ROAD
N F RAILWAY
BARPETA ROAD
PIN- 781315

Advocate for : MR. U K NAIR
Advocate for : SC N F RLY appearing for THE GENERAL MANAGER
NF RLY

Linked Case : WP(C)/551/2018

SMT. SIBANI RAHA ROY
W/O LT. BIRENDRA NARAYAN ROY
R/O BARPETA STATION
BARPETA ROAD
DIST. BARPETA
ASSAM

VERSUS

THE GENERAL MANAGER AND 2 ORS
N.F. RAILWAY
MALIGAON
GUWAHATI-11

2:THE ESTATE OFFICER
N.F. RAILWAY
RANGIA
KAMRUP
ASSAM

3:THE SENIOR SECTION ENGINEER
WORKS
BARPETA ROAD
N.F. RAILWAY
BARPETA
ROAD.

Advocates :

Petitioner in W.P.[C] no. 214/2018, : Mr. A. Chakrabarty, Advocate
W.P.[C] no. 214/2018 & W.P.[C] no. 214/2018

Petitioner in W.P.[C] no. 551/2018 : Mr. N. Alam, Advocate

Respondents : Mr. B. Sharma, Standing Counsel,
N.F. Railway

Date of Hearing, Judgment & Order : 08.08.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER

All the four writ petitions, instituted under Article 226 of the Constitution of India, have referred to a letter dated 25.10.2015 written by the respondent no. 3 whereby the petitioners were asked to arrange for shifting of their business to new locations, indicated therein, on or before 10.11.2015. The petitioners have instituted the writ petitions seeking, *inter alia*, a direction in the nature of mandamus to direct the respondent authorities to accept license fee from each of the petitioners for the new locations and to extend the agreements enabling the petitioners to complete the shifting works forthwith.

2. As the subject-matters of the four writ petitions are similar and are premised on the letter dated 25.10.2015 of the respondent no. 3, referred above, they are taken up together at the stage of admission for final consideration at the request of the learned counsel for the parties, who have submitted that exchange of pleadings between the parties is complete.

3. In order to appreciate the contentions raised on behalf of the petitioners, it is appropriate to delineate the necessary facts pleaded in each of the four writ petitions, briefly, at first :-

3.1. W.P.[C] no. 214/2018 : In the year 1982, the respondent Railway authorities had provided a

license to one Late Chandi Prasad Mahajan, who was an uncle of the petitioner, to occupy a Railway plot numbered as Railway Plot no. 26, measuring 84 square metres, within the Barpeta Road Railway Station premises temporarily. According to the petitioner, the said license arrangement continued from the year 1982 onwards till the death of Late Chadi Prasad Mahajan and thereafter also, with due payment of license fee by the petitioner. The petitioner has claimed that since the initial license agreement, Late Chandi Prasad Mahajan and after his death, the petitioner had been in continuous occupation of the licensed Railway Plot no. 26 within the Barpeta Road Railway Station premises. It was in the year 2013, the petitioner was served with a notice of cancellation dated 25.10.2013 whereby he was asked to vacate the licensed Railway Plot no. 26. By the notice, the petitioner was informed that the licensed Railway Plot no. 26 was required for development of the circulating area of Barpeta Road Railway Station and as such, he was required to vacate the same by removing all the materials/structures within a period of 30 days from the date of receipt of the notice dated 25.10.2013.

3.2. W.P.[C] no. 216/2018 : A license agreement was entered into between the petitioner and the respondent N.F. Railway authorities in the year 1982 whereby the petitioner was granted a license for temporary occupation of a plot of land belonging to the respondent N.F. Railway for the period : 1982 – 1983. The area of land measured 30.00 square metres within the Barpeta Road Railway Station premises. The petitioner has claimed that he was in continuous occupation of the said licensed plot of land since the year 1982 by paying the annual license fee regularly. In the said licensed plot of land, the petitioner used to carry out his business of grocery shop. The petitioner, like the petitioner in W.P.[C] no. 214/2018, was served with a notice of cancellation dated 25.10.2013. It is the case of the petitioner that the last of the license agreements executed in favour of the petitioner was for the period from 01.04.2012 – 31.03.2013.

3.3. W.P.[C] no. 218/2018 : The license agreement was entered into between the petitioner and the respondent N.F. Railway authorities in the year 1982 whereby the petitioner was granted a license for temporary occupation of a plot of land belonging to the respondent N.F. Railway for the period : 1982 – 1983. The area of land measured 30.00 square metres within the Barpeta Road Railway Station premises. The petitioner has claimed that he was in continuous occupation of the said licensed plot of land since the year 1982 by paying the annual license fee regularly. In the said licensed plot of land, the petitioner used to carry out his business of grocery shop. The petitioner, like the petitioners in W.P.[C] no. 214/2018 & W.P.[C] no. 216/2018, was served with a notice of cancellation dated 25.10.2013.

3.4. W.P.[C] no. 551/2018 : The case of the petitioner is that there was a license agreement for temporary occupation of land executed between the father-in-law of the petitioner, Late B.B. Roy and the respondent N.F. Railway authorities for the year : 1942 – 1943. After the death of the father-in-law of the petitioner, a fresh license agreement was entered into between the husband of the petitioner, Late B.N. Roy and the respondent N.F. Railway authorities in the year 1981 whereby the petitioner's husband was granted license for temporary occupation of a plot of land measuring 84.00 square metres of licensed Railway Plot no. 24 within the Barpeta Road Railway Station premises. After the demise of her husband, it was the petitioner who had continued to carry on the business of grocery shop in the licensed Railway Plot no. 24 by paying the annual license fee regularly. The petitioner, like the petitioners in other three writ petitions, was served with a similar notice of cancellation dated 25.10.2013.

4. It is the common case of all the petitioners that when the respective licensed Railway plot of land was given to them for temporary occupation, the same were low lying ones and the petitioners had to fill up the same with earth by spending money from their ends to bring the plots to a position to run their businesses therefrom. The notice of cancellation dated 25.10.2013 was followed by a notice dated 06.06.2014 from the Estate Officer, N.F. Railway, Rangia in Form-A, issued in exercise of the powers under sub-section [1] and clause [b][ii] of sub-section [2] of Section 4 of the Public Premises [Eviction of Unauthorised Occupants] Act, 1971 ['the Public Premises Act', for short]. By the said notice dated 06.06.2014, the Estate Officer called upon the noticees to show cause and to appear before him on 30.06.2014 in the office of the DRM[W]/Rangia, N.F. Railway for personal hearing. The noticees were also asked to bring all the evidence in support of the cause shown along with them and to place them before him at the time of personal hearing. It is the case of the petitioners that on receipt of the notices in Form-A, they submitted their written replies showing causes and they also personally appeared before the Estate Officer. After submission of the replies by the petitioners and after affording them some kind of personal hearing, the Estate Officer passed Orders, all dated 21.07.2014, separately in respect of each of the four petitioners under sub-section [1] of Section 5 of the Public Premises Act. In the Orders dated 21.07.2014, the Estate Officer, N.F. Railway, Rangia had observed that the petitioners were unauthorized occupants of the plots of lands, indicated therein, in the vicinity of Barpeta Road Railway Station. With such observations, the petitioners were asked to vacate the respective premises within 15 [fifteen] days from the date of publication of the Order dated 21.07.2014 and it was observed

that in the event of refusal or failure to comply with the Orders within the stipulated time-period, they would be liable to be evicted from the said premises, if necessary, by the use of such force, as might be necessary.

5. Aggrieved by the Orders dated 21.07.2014 passed by the Estate Officer, N.F. Railway, Rangia under sub-section [1] of Section 5 of the Public Premises Act, all the four petitioners preferred statutory appeals individually before the Court of learned District Judge, Barpeta under Section 9 of the Public Premises Act. The said appeals were registered and numbered as Misc. Eviction Appeal no. 02/2014 [Sri Manoj Prashad vs. General Manager, N.F. Railway and another]; Misc. Eviction Appeal no. 01/2014 [Shri Deonath Mishra vs. The General Manager, N.F. Railway and another]; Misc. Eviction Appeal no. 04/2014 [Sri Ram Niwas Mishra vs. General Manager, N.F. Railway and others]; and Misc. Eviction Appeal no. 03/2014 [Smti. Sibani Raha Roy vs. The General Manager, N.F. Railway and another]. The said four appeals preferred by the petitioners came to be dismissed by the Court of learned Additional District Judge, Barpeta, Assam by four separate judgments, all dated 18.12.2017. After dismissal of the appeals preferred by the petitioners on 18.12.2017, the Estate Officer, N.F. Railway, Rangia served notices dated 09.01.2018 upon the petitioners individually whereby they were asked to vacate the Railway lands/premises within a period of 7 [seven] days from the date of receipt of the notice on the premise that they were in unauthorized occupation of the same. It was informed that in the event of refusal or failure to comply with the notice dated 09.01.2018, they would be liable to be evicted from the said Railway lands/premises, if necessary, by the use of such force, as might be necessary.

6. It is pursuant to the afore-stated sequence of events, the petitioners have preferred these four writ petitions under Article 226 of the Constitution of India.

7. I have heard Mr. A. Chakrabarty, learned counsel for the petitioners in W.P.[C] no. 214/2018, W.P.[C] no. 216/2018 & W.P.[C] no. 218/2018; Mr. N. Alam, learned counsel for the petitioner in W.P. [C] no. 551/2018; and Mr. B. Sharma, learned Standing Counsel, N.F. Railway for all the respondents.

8. The petitioners have contended that when they preferred the appeals before the learned appellate court, the learned appellate court while admitting the appeals, had ordered, in the interim, that the respondent Railway authorities should not carry out any eviction operation until further orders.

Such interim stay orders were in operation till the disposal of the appeals. It was during the pendency of the appeals when the said interim orders were in operation, the respondent no. 3 issued the letter dated 25.10.2015 to all the four petitioners whereby the petitioners were advised to arrange for shifting from their earlier licensed plots of land to a new location, as indicated therein, within 10.11.2015. The letter dated 25.10.2015 indicated that the same was issued as per the advice of the higher officials at site and shifting to the new locations would be necessary for the Railway authorities to carry out the development works in the circulating area of the Barpeta Road Railway Station premises. The petitioners have contended that after receiving the letter dated 25.10.2015, they started works for construction of structures in the locations indicated in the letter dated 25.10.2015 immediately and in course of time, completed the construction works within 10.11.2015 so as to carry out somehow their respective businesses from the new locations. When the petitioners approached the respondent authorities to deposit the license fee in respect of the re-located premises, the same were not received by the respondent Railway authorities without citing any reason. The fact of issuance of the letter dated 25.10.2015 was also brought to the notice of the appellate court by the petitioners. It was submitted before the appellate court by the parties that the parties were in the process of arriving at settlement in respect of the matter outside the Court. That the parties were discussing the matter for settlement outside the Court were reflected in the Orders, dated 19.12.2015, 14.02.2017 and 28.03.2017 respectively. When it was informed to the appellate court that the parties could not arrive at a settlement the appellate court proceeded with the appeals and after hearing the learned counsel for the parties, delivered its judgments on 18.12.2017.

9. Mr. Sarma, learned Standing Counsel, N.F. Railway has contended that the arrangement between the petitioners and the respondent Railway authorities were purely license arrangements in respect of the plots of land under reference, which belong to the Railway. Since the license arrangements came to be cancelled as far back as in the year 2013 with the issuance of the notices of cancellation, all dated 25.10.2013, and with the challenge made thereto, having attained finality with the dismissal of the appeals, preferred by the petitioners herein, by judgments, all dated 18.12.2017, it is not open for the petitioners to contend for extension of those license agreements in the absence of any challenge to the said judgments under Article 227 of the Constitution of India. It is his contention that any order passed by an incompetent authority as regards shifting cannot bind the owners of public premises. Since the respondent no. 3 is not an authorized person to decide about allotment of any public premises or for grant of any license in respect of any public premises belonging to the N.F.

Railway, the claims made by the petitioners on the basis of the letter dated 25.10.2015 are clearly not sustainable in law.

10. I have given due consideration to the contentions advanced by the learned counsel for the parties and have also carefully gone through the materials brought on record by the parties through their pleadings.

11. There is no dispute to the fact that the petitioners herein were served with the notices of cancellation dated 25.10.2013 whereby the license arrangements by dint of which they were occupying those plots of lands came to be determined. It is also not in dispute that the plots of land are within the Barpeta Road Railway Station premises and they belong to the N.F. Railway. It was after termination of the license arrangements, the Estate Officer, N.F. Railway, Rangia served the notices under sub-section [1] read with Clause [b][ii] of Section 4 of the Public Premises Act on 06.06.2014 upon the petitioners stating **inter alia** that they were in unauthorised occupation of the public premises mentioned in the schedules therein. Three grounds were mentioned in the said notice issued in Form-A :-*firstly*, that the plots of land in question were Railway lands; *secondly*, that the petitioners were unauthorisedly occupying those plots of lands; and, *thirdly*, that the Railway authorities required those plots of lands for development works. The copies of the licence agreements, appended to the writ petition, specifically indicated that the license agreements were for temporary occupation of land only. A provision was contained in Clause 20 of the license agreements to the effect that the Railway shall be entitled at any time to give notice to the licensee of its intention to resume possession of the land and subject to the provisions contained herein the licensee shall have to vacate the land, remove all materials and building belonging to the licensee and restore the land to the Railway within 30 days of receipt of such notice. The license agreements provided for an annual license fee. It was made clear therein that no other land than the ones shown in the agreements were to be occupied and the licensed plots of land could only be occupied for the purpose for which they were allotted. With the issuance of the notices of cancellation, the license arrangement that existed between the petitioners and the N.F. Railway came to an end. With such termination of the license arrangements, the petitioners came to fall within the category of unauthorised occupants as they became persons without licenses.

11. After the notices were served upon the petitioners asking them to appear before the Estate Officer, N.F. Railway in person and to answer all material questions connected with the matter along

with the evidence the noticees intended to produce in support of their respective claims, the petitioners appeared before the Estate Officer for personal hearing and also submitted their written replies showing cause. It was after affording personal hearing to the petitioners and after examining the records, the Estate Officer, N.F. Railway issued the Orders dated 21.07.2014 upon the petitioners in exercise of the powers conferred on him under sub-section [1] of Section 5 of the Public Premises Act asking them to vacate the said public premises within 15 [fifteen] days of the date of publication of the Order providing further that in the event of refusal or failure to comply with the Order within the period specified, the petitioners would be liable to be evicted from the said public premises, if need be, by the use of such force, as might be necessary. The petitioners had thereafter, availed the remedy of appeal under Section 9 of the Public Premises Act by preferring appeals before the learned District Judge, Kamrup.

12. As per Section 2[c] of the Public Premises Act, ‘premises’, **inter alia**, means any land. ‘Public premises’ has been defined in Section 2[e] of the Public Premises Act and it **inter alia** means any premises belonging to, or taken on leased or requisitioned by, or on behalf of the Central Government. As per Section 2[g] of the Public Premises Act, ‘unauthorised occupation’, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and it includes the continuance in occupation by any person of the public premises after the authority [whether by way of grant or any other mode of transfer] under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. Indisputably, the licensed plots of land in the case in hand are within the areas of the Barpeta Road Railway Station premises.

12.1. Section 4 of the Public Premises Act has provided for issue of show cause notice against order of eviction and Section 5 thereof relates to eviction of unauthorized occupants. Section 4 and Section 5 have provided as under :-

“4. Issue of notice to show cause against order of eviction.—

[1] If the estate officer has information that any person is in unauthorised occupation of any public premises and that he should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing within seven working days from the date of receipt of the information regarding the

unauthorised occupation calling upon the person concerned to show cause why an order of eviction should not be made.

[1A] If the estate officer knows or has reasons to believe that any person is in unauthorised occupation of the public premises, then, without prejudice to the provisions of sub-section [1], he shall forthwith issue a notice in writing calling upon the person concerned to show cause why an order of eviction should not be made.

[1B] Any delay in issuing a notice referred to in sub-sections [1] and [1A] shall not vitiate the proceedings under this Act.

[2] The notice shall—

[a] specify the grounds on which the order of eviction is proposed to be made; and

[b] require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises,—

[i] to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not 5 [later than] seven days from the date of issue thereof, and

[ii] to appear before the estate officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.

[3] The estate officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

5. Eviction of unauthorised occupants.—

[1] If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under sub-clause [ii] of clause [b] of sub-section [2] of Section 4, the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer shall make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order but not later than fifteen days from

the date of the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises:

Provided that every order under this sub-section shall be made by the estate officer as expeditiously as possible and all endeavour shall be made by him to issue the order within fifteen days of the date specified in the notice under sub-section [1] or sub-section [1A], as the case may be, of section 4.

[2] If any person refuses or fails to comply with the order of eviction 3 on or before the date specified in the said order or within fifteen days of the date of its publication under sub-section [1], whichever is later, the estate officer or any other officer duly authorised by the estate officer in this behalf [may after the date so specified or after the expiry of the period aforesaid, whichever is later, evict that person] from, and take possession of, the public premises and may, for that purpose, use such force as may be necessary:

Provided that if the estate officer is satisfied, for reasons to be recorded in writing, that there exists any compelling reason which prevents the person from vacating the premises within fifteen days, the estate officer may grant another fifteen days from the date of expiry of the order under sub-section [1] to the person to vacate the premises.

12.2. Section 5A provides for removal of unauthorized constructions, etc. whereas Section 5B deals with demolition of unauthorized constructions. By the provisions contained in Section 5C, the Estate Officer has been empowered to seal unauthorized constructions. Section 6 has provided for disposal of property left on public premises by unauthorized occupants. Section 7 contained provisions empowering the Estate Officer to require payment of rent or damages on account of use and occupation of public premises. In view of the provisions contains in Section 8, an Estate Officer shall, for the purpose of holding any inquiry under the Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit in respect of certain matters like summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of documents, and any other matter which may be prescribed. Section 9 has provided for the remedy of appeal from every order of the Estate Officer made in respect of any public premises under Section 5 or Section 5B or Section 5C or Section 7 to an Appellate Officer who shall be the District

Judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years' standing as the District Judge may designate in this behalf. It has prescribed the period of limitation for filing such appeals and also laid down that an appeal shall be disposed of by the Appellate Officer as expeditiously as possible. By Section 10, finality has been attached to orders by stating that, save as otherwise expressly provided in the Act, every order made by an Estate Officer or Appellate Officer under the Act shall be final and shall not be called in question in any original suit, application or execution proceeding and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act.

13. Reverting back to the facts of the cases in hand, it is found that the petitioners herein or their predecessors-in-interest were only licensees of the public premises belonging to the respondent N.F. Railway. The term, 'license' has been defined in Section 52 of the Indian Easements Act, 1882. According to Section 52 of the Indian Easements Act, where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license. While a lease is a transfer of an interest in a specific immovable property, license is a bare permission, without any transfer of any interest. It is settled that only a right to use the property in a particular way or under certain terms are given to the occupant while the owner retains the control or possession over the premises results in a license being created; for the owner retains legal possession while all that the licensee gets is a permission to use the premises for a particular purpose or in a particular manner and but for the permission so given the occupation would have been unlawful.

14. The definition of the expression, 'unauthorised occupation' contained in Section 2[g] of the Public Premises Act is in two parts. As has been observed by the Hon'ble Supreme Court of India in **Ashoka Marketing Limited and another vs. Punjab National Bank and others**, [1990] 4 SCC 406, in the first part the said expression has been defined to mean the occupation by any person of the public premises without authority for such occupation. It implies occupation by a person who has entered into occupation of any public premises without lawful authority as well as occupation which was permissive at the inception but has ceased to be so. The second part of the definition is inclusive in nature and it expressly covers continuance in occupation by any person of the public premises after the authority [whether by way of grant or any other mode of transfer] under which he was allowed to occupy the

premises has expired or has been determined for any reason whatsoever. This part covers a case where a person had entered into occupation legally under valid authority but who continues in occupation after the authority under which he was put in occupation has expired or has been determined. The words 'whether by way of grant or any other mode of transfer' in the second part of the definition are wide in amplitude and would cover a lease because lease is a mode of transfer under the Transfer of Property Act. The definition of unauthorized occupation contained in Section 2[g] of the Public Premises Act would, therefore, also cover a case where a person has entered into occupation of the public premises legally as a tenant under a lease but whose tenancy has expired or has been determined in accordance with law.

15. It has been held by the Hon'ble Supreme Court of India in **Life Insurance Corporation of India vs. Nandini J. Sah and others**, reported in [2018] 15 SCC 356, that the Appellate Officer while exercising power under Section 9 of the Public Premises Act, does not act as a persona designata but in his capacity as a pre-existing judicial authority in the district [being a District Judge or judicial officer possessing essential qualification designated by the District Judge]. Being part of the district judiciary, the judge acts as a court and the order passed by him is an order of the subordinate court against which remedy under Article 227 of the Constitution of India can be availed on the matters delineated for exercise of such jurisdiction. It has been concluded that the order passed by the District Judge as an Appellate Officer under Section 9 of the Public Premises Act is an order of the subordinate court and a challenge thereto must necessarily proceed only under Article 227 of the Constitution of India and not under Article 226 of the Constitution of India. Noticeably, the petitioners have chosen not to challenge the judgments passed by the Court of learned Additional District Judge, Barpeta, all dated 18.12.2017, passed as the Appellate Officer under Section 9 of the Public Premises Act in Misc. Eviction Appeal no. 01/2014, Misc. Eviction Appeal no. 02/2014, Misc. Eviction Appeal no. 03/2014 and Misc. Eviction Appeal no. 04/2014 under Article 227 of the Constitution of India. In the instant four writ petitions filed under Article 226 of the Constitution of India, the petitioners have chosen not to challenge the judgments passed by the Court of learned Additional District Judge, Barpeta, all dated 18.12.2017, passed under Section 9 of the Public Premises Act in Misc. Eviction Appeal no. 01/2014, Misc. Eviction Appeal no. 02/2014, Misc. Eviction Appeal no. 03/2014 and Misc. Eviction Appeal no. 04/2014. As a result, the termination of the license arrangement that existed between the petitioners on one hand and the respondent N.F. Railway authorities on the other hand earlier have attained finality in the absence of any challenge in so far as the plots of lands, earlier licensed to the petitioners, are

concerned. With such attainment of finality, the petitioners are no longer authorized occupants of those plots of lands, situated within the Barpeta Road Railway Station premises. Thus, the petitioners cannot claim for continuance of their occupation in respect of those plots of lands within the Barpeta Road Railway Station premises. In such view of the matter, the contention of the petitioners to extend the earlier license arrangements cannot be acceded to.

16. The only other aspect which has fallen for consideration is whether any new license arrangement had been created because of the letter dated 25.10.2015 issued by the respondent no. 3. By the letter dated 25.10.2015, the petitioners were advised to arrange for shifting from their earlier licensed plots of lands to new locations, indicated therein, by completing the shifting work within 10.11.2015. It has been contended by the respondent Railway authorities that the respondent no. 3 had no power, authority and jurisdiction to issue the letter dated 25.10.2015 and the respondent no. 3 issued the same without the knowledge/approval from the competent authority. Completion of structures at the new locations, as claimed by the petitioners, has been seriously disputed by the respondent Railway authorities stating that the petitioners stopped the construction of structures at the new locations as soon as they came to know that the respondent no. 3 had issued the letter without any authority and jurisdiction and without the knowledge/approval from the competent authority. From the materials on record, it transpires that during the pendency of the appeals before the learned District Judge, the parties had made efforts to settle the matter outside the Court. When the matter could not be settled outside the Court, the respondent authorities filed an application in Misc. Eviction Appeal no. 04/2014 informing that the matter could not be settled outside the Court due to policy issues and urgent requirement of upgrading the Barpeta Road Railway Station from D-category Station to B-category Station. The contentions put forth by the respondents Railway authorities are to the effect that the earlier licensed plots of lands were required for the development of the circulating area of the Barpeta Road Railway Station as, in the meantime, the volume of traffic in the said Railway Station had increased many-fold and the Station had to deal with about 11,00,000 passengers per annum. According to the Railway authorities, those licensed plots of lands were required clearance for construction of parking areas for the vehicles of the passengers within the Barpeta Road Railway Station premises, a purpose which is formed the welfare of the entire public at large.

17. The respondent Railway authorities have further contended that the practice of temporary licensing of Railway lands to private individuals have been discontinued since the year 2005. In view

of issuance of the Master Circular dated 10.02.2005 by the Railway Board, which is the highest policy making authority of Indian Railways, there has been a ban of temporary licensing of Railway lands to private individuals for the purpose of setting up shops, commercial offices, vending stalls, clinics, etc. not connected with the Railway working. The Master Circular has further stipulated that only in exceptional cases, such licensing is to be done with the prior approval of the Railway Board and the license fee must be fixed by resorting to public auction/open tender process for getting the maximum revenue. The Master Circular has further prescribed that licenses of existing licensees, not connected with the Railway working, may, however, be renewed from time to time so long as the land is not required by the Railway for its own purpose but on new terms and conditions indicated in the Master Circular. It is pertinent to mention herein that during the pendency of these four writ petitions, the petitioners had contended that they were not permitted to shift to the alternative/new locations, earlier offered to them. By an interim order dated 26.02.2018, the petitioners were allowed to shift to the alternative/new locations, by making it clear that such shifting of the petitioners to the alternative/new locations would be a purely temporary arrangement and shall not create any right or interest in their favour over the land. The occupation of the alternative/new locations by the petitioners was made subject to further orders. By annexing a Plan with its affidavit, the respondent Railway authorities have stated that an exercise is being undertaken to upgrade and develop the Barpeta Road Railway Station. The respondent Railway authorities have stated that the places where the shops of the petitioners had been shifted in terms of the interim order dated 26.10.2018, are now urgently required by the Railways on account of the proposed construction of an Officers' Rest House and for their own use. The petitioners have not paid nor the respondent Railway authorities have accepted any license fees from the petitioners since the year 2014 and they are incurring losses of a huge amount of revenue in view of unauthorized occupation of the petitioners. The petitioners have not brought anything to dislodge the contention of the Railway authorities that the respondent no. 3 had no power, authority and jurisdiction, in the absence of any approval/permission from the Competent Authority, to allot any plot of Railway land or to grant license to any person to occupy any Railway land. It cannot be accepted that the letter dated 25.10.2005 and the consequent shifting to the alternative/new locations have created any license arrangements between the petitioners and the respondent Railway authorities. The statute, that is, the Public Premises Act has empowered the competent authority to act in the public interests and as owners of the plots of lands, the competent authority in the respondent Railway is entitled to deal with the Railway lands [Public Premises] in greater public interests. The respondent Railway authorities have asserted that there is urgent requirement of the plots of lands under reference herein for development of

the Barpeta Road Railway Station premises and for construction of an Officers' Rest House in terms of the Plan prepared. As has been found out, the Railway Board by the Master Circular dated 10.02.2005, had already stopped the policy of temporary licensing of Railway lands to private individuals for the purpose of setting up shops, commercial offices, vending stalls, clinics, etc. not connected with the Railway working. Admittedly, the petitioners were running grocery shops. The Master Circular of the Railway Board permits temporary licensing of Railway premises only till the time the Railway premises are not required for its own use. It has been held by the Hon'ble Supreme Court of India in **Jiwan Dass vs. Life Insurance Corporation of India and another**, reported in [1994] 3 SCC 694, that an owner is entitled to deal with his property in his own way profitable in its use and occupation. It has been observed that under the Public Premises Act, the public authorities have been given wide powers to determine any tenancy 'for any reason whatsoever' and it is not permissible to cut down the width of the powers by reading into it the reasonable and justifiable ground for initiating action for cancelling any license arrangements. It has been further held that a public authority is equally entitled to use the public property to the best advantage as a commercial venture and as an integral incidence, ejection of a tenant/licensee is inevitable. So, the doctrine of livelihood cannot indiscriminately be extended to the area of commercial operation. Having regard to the aforesaid position of law, the refusal on the part of the respondent Railway authorities to grant any permission to the petitioners in the form of a license within the Barpeta Road Railway Station premises on the ground that the areas of land are required for development in greater public interest and for its own use cannot be termed as unjust and arbitrary.

18. In view of the discussion made above and for the reasons assigned therein, the writ petitions are found to be devoid of any merit. The writ petitions are, therefore, liable to be dismissed and they are accordingly dismissed. Interim orders, if any, are recalled.

19. In the course of hearing, a submission has been advanced on behalf of the petitioners that the respondent Railway authorities have permitted some other persons to run their businesses in certain parts within the Barpeta Road Railway Station premises. The said submission has been categorically denied from the sides of the respondent Railway authorities. As nothing has been pleaded on the said aspect nor any materials have been brought on record in support of such claim, this Court is not in a position to decide on the said aspect due to lack of materials. The main contention advanced on behalf of the respondent Railway authorities is that the practice of temporary licensing of Railway lands to private individuals have been discontinued since 2005 in view of the Master Circular dated 10.02.2005

and in the event any decision is taken for such kind of licensing as an exceptional case, the same would be only by public auction/open tender process. Thus, this Court can only observe, considering that the petitioners had earlier enjoyed license arrangements under the respondent Railway authorities for a considerable period of time for the purpose of their livelihood, that if at any point of time in future, the respondent Railway authorities take any decision to grant licenses within the Barpeta Road Railway Station premises, they would take into consideration the case of the petitioners about permitting them to take part in such public auction/open tender process.

JUDGE

Comparing Assistant