

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2742 of 2011

Smt. Kusum Tiwari , wife of Shri B.N. Tiwari, aged about 73 years,
R/o Nirala Nagar, Bus stand, Bilaspur (Chhattisgarh) --- **Petitioner**

Versus

1. Senior Divisional Manager, South East Central Railway, Bilaspur, Chhattisgarh
 2. Divisional Railway Manager, South East Central Railways, Bilaspur, Chhattisgarh
- **Respondents**

For the Petitioner : Mr. Varun Sharma, Advocate

For the respondents : Mr. Prateek Sinha, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

12-09-2019

1. The present petition has been filed on the back ground claiming that the petitioner was a licensee of the Railways to run a betel shop at an area of 5 x 5 ft., admeasuring 25 sq.ft. The license was granted in the year 1980. Subsequently, on the allegation that the petitioner has encroached upon the land over and above the licensed area to the extent of 125 sq.ft, eviction order was passed by the Estate Officer under *The Public Premises (Eviction of Unauthorised Occupants) Act, 1971* on 28.01.1986 (Annexure P-4). The said order was subject of appeal before the District Judge and the District Judge by order dated 11.10.1996 dismissed the appeal, against which a petition was preferred in the year 1997.
2. It is contended on behalf of the petitioner that in similar nature of litigations were also commenced by the other occupants and as per Annexure P-12, several persons were called by the Railways

and 13 persons were settled and given alternate accommodation. However, the petitioner was left out. In the meanwhile, the writ petition was filed which was registered as W.P. 3170/1997 challenging the order passed by the the District Judge affirming the the Estate Officer's Order. In the said writ petition when the applications were filed to take certain documents on record along-with application for amendment, this Court by order dated 27.07.2009 dismissed the petition with a liberty to seek appropriate remedy taking into fact that the grounds of violation of Article 14 was raised needs consideration. Thereafter, one representation was filed before the Railways by the petitioner on 01.09.2009 that was kept pending and in the meanwhile, since the prayer for allotment of place was not decided, another writ petition bearing WPC No.381/2010 was preferred wherein this Court by order dated 27.01.2010 has directed the Railways to decide the representation of the petitioner which was pending with them for allotment of alternative area within a period of 4 weeks. The said representation was decided and eventually after the dismissal of representation vide Annexure P-1 dated 02.03.2010, the present writ petition is filed.

3. Learned counsel for the petitioner would submit that the petitioner was a licensee of the Railways and was carrying out her livelihood by running a shop under the license and like other shop keepers, when the petitioner was evicted or driven out, certain handful picked shop keepers were given privilege to accommodate them, however, the case of the petitioner was left out. He refers to the order dated 26.04.2013 wherein this Court has directed the Railways to make a specific submission as to whether few of the shop holders were only considered for allocation of alternate shops

and why the petitioner was left out. It is stated that though the Railways in compliance to this had filed a reply but on the whole failed to submit and suggest the actions on the part of them which defeats the principles of Article 14 of the Constitution of India as few of the shop keepers have only been given the privileges. Therefore, the petitioner may be allotted the alternate shop. Learned counsel also submits that the documents filed with the rejoinder would show that at the request of the Railways, the petitioner had filed the application and she was considered, but eventually nothing has transpired, therefore, the Railways be directed to provide alternate shop to the petitioner.

4. Per contra, learned Counsel for the Railways would submit that the petitioner was only a licensee that too for a period of 3 years, the license was given in the year 1980 and in the meanwhile, since the petitioner had unauthorisedly encroached upon certain additional part of the land, she was evicted, therefore, on the date of consideration to grant different shops to other shop holders, the petitioner was not in the zone of consideration as she had lost her possession.
5. Perused the document. It appears that number of litigations took place because of eviction of shop-holders. The records suggest that vide Annexure P-3, the petitioner has accepted the license to carry on business in the area of total admeasuring 25 sq.ft. The license was issued for a period of 3 years which commenced from 05th of April, 1980. The subsequent document (Annexure-4) which is an eviction order passed by the Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 shows that the petitioner was evicted for the reason that she had

encroached upon the Railway land which was total admeasuring 125 sqft, therefore, she was evicted. The said order was subject of challenge before the District Judge and the District Judge had dismissed the appeal, against which the petition was preferred before the High Court of M.P., bearing W.P. No.3169/1997 and another Writ Petition was filed which was registered as WP No.3170/1997 as the petitioner apart from 25 sq.ft. of licensed area, was evicted from the entire encroached area too, thereby at the same time, two petitions were filed.

6. The document filed along-with the petition (Annexure P-13) addressed to the Senior Divisional Railway Manager records the fact that in the year 1998, the entire area/shop/plot was vacated which was occupied by the petitioner including the licensed premises and encroached area. In the application, she had stated that she may be granted an area/land of 100 sqft. The said letter was addressed to the Railways on 22.08.2006. With respect to W.P.No.3170 of 1997 certain documents were placed on record along-with amendment petition by the petitioner. The said writ petition (W.P.3170/1997) was dismissed on 27.07.2009 with liberty to seek appropriate remedy. It is also informed that WPC No.3169 was also considered and dismissed with liberty to file another petition. The petitioner claims that out of the shop-keepers who were evicted, 13 were hand picked and were allocated leaving apart the petitioner. The subsequent petition when was filed bearing no. 381/2010 wherein that issue was also a point of litigation. This Court by order dated 27.01.2010 did not held the issue in favour of the petitioner, instead, the writ petition was dismissed on the ground that since the petitioner had already made an application for allotment of shop, the same may be

decided within a period of four weeks. The said representation for allotment of shop has been eventually cancelled by impugned order dated 02.03.2010 (Annexure P-1). The wording of the order rejecting the representation (Annexure P-1) purports that the case of the petitioner was not considered primarily for the reason that though she was allotted the area of 25 sqft., for a period of 3 years but she has unauthorizedly encroached the extra land of 125 sqft. It was also stated that when the shops were allotted to the other 13 persons in different locations in the year 2006, since the petitioner was not in possession of any part of the land, she was not considered. When the rejection letter is read along-with the letter of the petitioner itself which was filed on 22.08.2006, the petitioner herself admitted the fact that she vacated the area in the year 1998. Another letter/Circular dated 10.02.2005 was issued by the Govt. of India, Ministry of Railways vide Annexure R-5 which is placed on record by the Railways wherein it was made clear the ban has been imposed to grant temporary license of the Railway land to the private individual for establishing shops, stalls etc., which are not connected with the railways. It seeks that in terms of Board's Circular/Letter the said ban would continue. However, in exceptional cases the allotments may be made with prior approval of the Board and that too after public auction by open tenders the allotment may be made for generating the maximum revenue.

7. Therefore, in the facts and circumstances of the case, there is nothing on record to hold that the petitioner was in possession of the shop on the date when the other alleged shop-holders were settled/rehabilitated. In order to get the parity, the petitioner should have proved on facts that when the allotment was made to

13 shop holders, the petitioner was left out though she was in possession. Instead when the writ petition bearing W.P. No.381/2010 was filed which was predominantly on the ground of discrimination, there is no whisper about the fact of discrimination of allotments by violation of Article 14 of the Constitution of India. Instead, the petitioner confined these reliefs to get the representation decided which was eventually cancelled. Therefore, under the facts of this case, no relief can be granted to the petitioner. Accordingly, the petition is dismissed.

**Sd/-
(Goutam Bhaduri)
Judge**