

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4612 of 2021

1. Vijay Kumar Bhagat, aged about 55 years (Male), son of Babuji Bhagat resident of Ward No. 15, Simri Bakhtiyarpur, P.S. Simri Bakhtiyarpur, District- Saharsa- 852127.
2. Md. Firoz, aged about 53 years (Male), son of Md. Moin Uddin resident of High School Road, P.S. Simri, Bakhtiyarpur, Ward No.- 12, Simri Bakhtiyarpur, District- Saharsa- 852127.
3. Md. Harun, aged about 64 years (Male), son of Tasalim Uddin resident of Basti Ward No. 07, P.S. Bakhtiyarpur, District- Saharsa- 852127.
4. Naresh Prasad Jaiswal, aged about 62 years (Male), son of Kapildev Jaiswal resident of Maal Godwon Road, Simri, Bakhtiyarpur, Ward No. 12, P.S. Simri Bakhtiyarpur, District- Saharsa- 852127.
5. Jahangir, aged about 56 years (Male), son of Samsuddin resident of Maal Gudam, Road, Simri Bakhtiyarpur, District- Saharsa- 852127.
6. Md. Jahangir, aged about 64 years (Male), son of Moin Uddin resident of 49 Basti Simti, Bakhtiyarpur, Ward No. 07, Bakhtiyarpur, P.S. Simri Bakhtiyarpur, District- Saharsa- 852127.
7. Md. Sainul, aged about 60 years (Male), son of Md. Suleman resident of Bhatta Tola, Rani Bag, Simri Bakhtiyarpur, Ward No. 13, P.S. Simri Bakhtiyarpur, District- Saharsa- 852127.
8. Md. Abdul Jabbar, aged about 60 years (Male), son of Abdur Razzaq, resident of 014, Puraini, Near Pokhar, Ward No.- 02, Ghordaur, P.S. Puraini, District- Saharsa- 852127.
9. Shivnandan Raut, aged about 49 years (Male), son of Deep Narayan Raut resident of Bhoura, Ward No. 12, Bhauara, P.S. Simri Bakhtiyarpur, District- Saharsa- 852127.
10. Md. Illiyas, aged about 65 years (Male), son of Md. Mustak resident of Ward No. 8, P.S. Simri Bakhtiyarpur, District- Saharsa- 852127.

... .. Petitioner/s

Versus

1. The Union of India
2. The Union of India through the General Manager, East Central Railways, Samastipur, District- Samastipur.
3. The Divisional Railway Manager, East Central Railways, Samastipur



Division.

4. Assistant Divisional Engineer, East Central Railways, Samastipur.
5. Sr. S.E. (Works) Line, Eastern Central Railways, Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Pranav Kumar, Advocate with
Ms. Shrishti Singh, Advocate
For the Respondent/s : Dr. K.N.Singh, ASG

CORAM: HONOURABLE MR. JUSTICE RAJAN GUPTA
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJAN GUPTA)

Date : 22-12-2021

Heard learned counsel for the parties.

The present writ petition has been filed for quashing the notices dated 17.12.2019, 10.02.2020 and 08.10.2020 issued under the signature of Sr. SE (Works) Line, Eastern Central Railways, Samastipur and Assistant Divisional Engineer, East Central Railways, Samastipur by which retrospective revision in licence fees has been imposed on the petitioners unilaterally *qua* the railway shops of the petitioners in the railway premises, Eastern Central Railway, Samastipur Division.

Learned counsel for the petitioners at the outset has submitted that similar issue has been decided by a learned Single Judge of this Court in the case of **Raj Kumar Jha & Ors. vs The**



Union of India & Ors. (CWJC No. 9819 of 2016) by a judgment dated 21.03.2017 and it has been held that there cannot be an enhancement of rent with retrospective effect. Nonetheless, learned counsel for the petitioners submits that the petitioners are ready to approach the Railway authorities for redressal of their grievances and in fact they have also filed various representations before the Senior SE (Works) Line, Eastern Central Railways, Samastipur. It is further submitted that the petitioners are ready to deposit the entire amount of outstanding rent/licence fee on the existing rate subject to final decision being taken by the respondent authorities.

We have heard learned counsel for the parties and find that similar dispute was also involved in one other writ petition bearing **CWJC No. 18109 of 2018 (Vijay Sah vs. The Union of India & Ors.)**, which has been disposed off by an order passed by a learned Single Judge of this Court dated 04.11.2019 in the following terms:-

“Heard learned counsel for the petitioner and the Railways.

A counter affidavit has been filed on behalf of respondents-Railways.

Learned counsel for the petitioner submits that he is not required to file any rejoinder thereto and the matter may be heard and disposed off on the basis of materials available on the record.

After hearing learned counsel for the petitioner and learned counsel for the Railways and



upon perusal of the statements made in the counter affidavit, this Court is of the considered opinion that the petitioner has submitted a copy of representation as contained in Annexure '4' to the writ application to the General Manager, East Central Railway, Hajipur, Vaishal who will look into the grievance of the petitioner, shall examine all these issues raised by him and shall take an appropriate decision with an intention to amicably resolve the dispute in terms of the agreement. In case the dispute cannot be resolved amicably, the parties may invoke the relevant provision of the agreement which talks of resolution of dispute through arbitration. In this regard it has been submitted that although in Clause 24, the General Manager, East Central Railway has been named as “विवाचक” (Arbiter), now in view of the amendment of the Arbitration and Conciliation Act, 1996, he cannot act as Arbitrator. At this stage, this Court would only observe that in case the parties have, in terms of Clause 24, decided to get the matter resolved through arbitral process, it will be open for them to agree on the mode of appointment of the Arbitrator if occasion so arises. Till a decision is taken by the General Manager, East Central Zone, Hajipur on the representation of the petitioner, no coercive action shall be taken against him to forcibly evict from the premises.

The writ application stands disposed off.”

Having regard to the facts and circumstances of the case, we deem it fit and proper to dispose off the present writ petition with liberty to the petitioners to approach the General Manager, East Central Railways, Zonal Office, Hajipur, Vaishali by filing appropriate representation within a period of two weeks from today which shall be considered and disposed off within a period of four weeks thereafter by a reasoned and a speaking order, in accordance with law, by also taking into account the orders passed



by this Court in the case of **Raj Kumar Jha & Ors** (supra) and **Vijay Sah** (supra).

It is further directed that till a decision is taken by the General Manager, East Central Railways, Zonal Office, Hajipur, Vaishali on the representation of the petitioners herein, no coercive action shall be taken against the petitioners for forcibly evicting them from the premises/shops in question on the ground of non payment of the demand on the basis of revised licence fee. However, the petitioners shall be liable to pay the rent/licence fee on the pre-revised basis.

The writ petition stands disposed off in the aforesaid terms.

(Rajan Gupta, J)

(Mohit Kumar Shah, J)

P. Kumar

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

