

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2429 of 2021

- Lal Chandra Agrawal S/o Late Raghunath Prashad Agrawal Aged About 47 Years R/o Village Silyari, P.S. Dharsiwa, Tehsil And District Raipur Chhattisgarh.

---- Petitioner

Versus

1. Union Of India Through The Secretary, Ministry Of Railway Federation Of Railway Officer's Association Office, 256-A, Rail Bhavan, Raisina Road, New Delhi - 110001.,
2. South East Central Railways Through Office Of Sr. Sec. Engineer (Works) / Bhatapara, Raipur Chhattisgarh.,
3. Divisional Railway Manager Office Raipur, Nh 200, Shrinagar, Raipur, Chhattisgarh 492014.,
4. State Of Chhattisgarh Sub Divisional Officer (Revenue) Raipur, District Raipur Chhattisgarh.,
5. The Tehsildar (Revenue) Raipur, District Raipur Chhattisgarh.
6. The Patwari Halka No. 85 Village Gram Panchyat Silyari Sub Tehsil Dharsiwa District Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Mohit Kumar, Advocate
For Respondent-Railways	:	Mr. R.K. Gupta, Advocate
For Respondent- State	:	Mr. R.K. Bhagat, Dy. G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

15.09.2021

Heard

1. The instant writ petition has been filed by the petitioner for the following reliefs:-

“1 This Hon'ble Court may kindly be pleased to quashed the order dated 11.6.2021 (Annexure P/1) and restrain the respondents from taking any coercive action including the demolishing the property of the petitioner.

2 This Hon'ble Court may kindly be pleased to direct the respondents railway authorities to respect their own undertaking given before this Hon'ble Court vide order dated 09/02/2021.

3 Any other relief/order which may deem fit and just in the facts and circumstances of the case including award of the cost of the

petition may be given.”

2. The case of the petitioner is that he is the owner of the land bearing Khasra No. 801/19 admeasuring area 0.081 Hectares at Silyari and the owner of a shop admeasuring 2,000 square feet which is also situated at Silyari. On the said land, a house and the shop have been constructed which is adjacent to the Railway line. The petitioner is in occupation of the said land and enjoying the lawful possession for the last 40 years.
3. As per the petitioner, the inspection was carried out by the Railways on 04.02.2021 and without giving any notice to the petitioner, his house was being marked and the pole was installed. On an enquiry being made, it was revealed that it was done for widening of the road as the shortage of the land occurred because of the third railway line which has been placed there. It is further stated that on the earlier round of litigation in WPC No. 920/2021, it was contended on behalf of the respondent authority that the demolition of the house of the petitioner is not proposed nor the pole is implanted inside the premises and if any acquisition is required, that would be made according to the due process of law. However, subsequently again, the demarcation is being carried out, therefore the petitioner is proposed to be forcefully evicted by demolition of his premises otherwise than in due course of law and the Railways should stop the proceeding.
4. The respondent- Railways, who is the main contesting party, have filed their return. In para 5 of the return, it has been pleaded that the issuance of the impugned notice has been made prior to initiate an eviction proceeding before the State Officer under The Public Premises (Eviction of Unauthorised Occupants) Act 1971 [hereinafter referred to as 'Act of 1971'] and there is no proposal of the demolition in respect of the said land. It is further submitted that if the notice is issued by the competent authority, then at the subsequent stage,

the petitioner may show that the land belongs to him before the State Officer and no prejudice would be caused.

5. Heard the learned counsel for the parties.
6. Since the statement has been made by the respondent-Railways in their affidavit and the reply that they are not going to demolish the house of the petitioner or forcefully evict the petitioner, the apprehension of the petitioner is settled at rest. The petitioner claims that he is the owner of certain land for which the respondent-Railways has made a marking and the respondent-Railways claims otherwise that the marking, where it is made, belongs to Railways. Therefore, it is a disputed question of facts. In such case, at the threshold, it cannot be conclusively held that the land belongs to the petitioner or to the Railways as it is a issue which is to be settled after evidence is adduced. The respondent-Railways in their reply have stated that they have proposed and intended to issue a notice under the Act of 1971, therefore the apprehension of the petitioner at this stage that forceful demolition would be carried out is without any justification.
7. In view of such statement made by the respondent-Railways, if the subsequent notices are issued under the Act of 1971, then it would be open for the petitioner to establish the fact that the land for which the notices are issued belongs to the petitioner. If it is so established, the competent authority would pass the order accordingly and shall decide the case in accordance with law.
8. With the aforesaid direction/ observation, the writ petition stands allowed to the above extent.

Sd/-
(Goutam Bhaduri)
Judge