

01.12.2023
Sl. No.31
pkd

**IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
[Appellate Jurisdiction]**

MAT 197 OF 2023

IA NO: CAN/1/2023, CAN/2/2023

PRABHU PRASAD
-VS-
UNION OF INDIA AND ORS.

Mr. Biplab Kumar Sengupta
Mr. Kumar Shantanu
Mr. Rahul Ghatak ...for appellant.

Mr. Sudipto Kumar Mazumdar, Ld. DSGI
Mr. Ajoy Kumar Singhania
Mr. Sourab Kar ...for N.F. Railway.

Mr. Joyjit Choudhury, Ld. AAG
Mr. Subin Kumar Saha
Mr. Momenur Rahman
Ms. Bedarshuti Bose
Ms. Rima Sarkar ...for State.

The appeal is at the behest of a person who was not a party to the writ petition in which the impugned order was passed.

Appellant claims to be a contractor of a vendor.

Despite repeated requests to the learned advocate for the appellant to produce a document establishing an iota of right to occupy a railway property, repeatedly, no document was placed before us to suggest any right, let alone establish it.

The contention of the appellant is that, the writ petition was filed by the Union of India without making the appellant as a party respondent in the writ petition. There is

an appeal pending before the learned District Judge being Misc. Appeal no.37 of 2021 under the provisions of section 9 of the Public Premises [Eviction of Unauthorized Occupants] Act, 1971. There, according to the learned advocate appearing for the appellant, the railway Authorities are seeking adjournment.

Learned advocate appearing for the appellant submits that in view of the pendency of the appeal, no order of eviction should be passed. The impugned order directing the police Authorities to evict the occupier from the railway station should be kept in abeyance till the dismissal of the appeal. An opportunity should be granted to the appellant to file a supplementary affidavit disclosing all the papers used.

State and the Railway Authorities are represented.

The appellant before us was not a party respondent in the writ petition in which the impugned order was passed.

By the impugned order, from which, the appellant seeks to prefer an appeal, the learned single Judge directed the District Magistrate, Jalpaiguri and police officials to ensure that, no breach of peace occurs while there is an operation of the railways evicting all hawkers and unauthorized vendors at New Jalpaiguri railway station on December 1, 2023.

Since, the appellant claims to be occupying the railway property at Jalpaiguri, we deem it appropriate to grant leave to the appellant to prefer the appeal.

Appeal is taken up for hearing as the date of eviction is today.

As noted above, the appeal is directed against an order passed by the learned single Judge. The order is dated October 3, 2021. It was passed in a writ petition filed at the behest of the Union of India and particularly the Railway Authorities. Number of persons were made party respondents in such writ petition. The appellant before us is not one of them.

The impugned order directs the District administration as also the police Authorities to assist in the eviction of hawkers and unauthorized vendors at the New Jalpaiguri Railway Station.

Learned Additional Advocate General submits that, the jurisdiction of the State GRP is limited to within the railway properties and it does not translate outside the railway properties.

Learned Deputy Solicitor General submits that, the eviction process is on. New Jalpaiguri station is vexed with unauthorized hawkers and vendors and that they should be removed from the public property, in public interest.

The appellant before us, suffered an order of eviction under the Act of 1971. Appeal was carried therefrom being Misc. Appeal no.37 of 2021 by the appellant. The appeal court did not grant any stay of the order of eviction. The appeal is pending since 2021.

The appellant is not in a position to place before us any right to occupy the railway property.

In such circumstances, we are not minded to interfere with the impugned judgment and order passed by the learned single Judge.

CAN/1/2023 and CAN/2/2023 along with MAT 197 of 2023 are dismissed without any order as to costs.

It is clarified that the State will ensure law and order issues both inside and outside the railway station and will deploy appropriate personnel both of the administration and the police to ensure that the eviction drive takes place as directed by the impugned order.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)