

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 10285 of 2023

**Sipra Maity & Ors.
Vs.
General Manager, South Eastern Railway & Ors.**

With

W.P.A. 10286 of 2023

**Noor Begum & Ors.
v/s.
General Manager, South Eastern Railway & Ors.**

With

W.P.A. 10287 of 2023

**Sadhana Ganguly & Anr.
v/s.
General Manager, South Eastern Railway & Ors.**

For the Petitioners:

Mr. Chinmoy Pal, Adv.,
Mr. Archan Dutta, Adv.

For the State:

Mr. Sanajit Kr. Ghosh, Adv.,
Ms. Amrita Pandey, Adv.,

Hearing Concluded on:

07.02.2024

Date:

21.02.2024

SUVRA GHOSH, J. :-

1. Since the fact as well as law involved in the three writ petitions are similar, all of them are taken up for consideration together and proposed to be disposed of by a common judgment.
2. The notice of eviction issued by the Divisional Engineer (HQ), South Eastern Railway, Kharagpur on 22nd March, 2023 is assailed in the writ petitions.
3. It is contended on behalf of the petitioners that plot of land was allotted in favour of the petitioners by the respondents by virtue of allotment letters issued in 1979 and the petitioners constructed shop rooms in the said plots at their own expenses. The respondents authority issued a notice upon the licensees on 31st December, 1997 directing them to deliver vacant possession of the plot in question in favour of the authority and restore the same to its original state on the ground that the plot was required by the railways for expansion of station, circulating area, etc. The notice was impugned by the licensees and by an order passed on 12th May, 1998 in W.P. 2997 of 1998, a co-ordinate Bench of this Court set aside the notice upon submission made by the Railway Authority before the Court that the notice be set aside with absolute liberty to the railways to seek recovery of possession of the property in question in accordance with law. Such liberty was granted to the respondents by the Court in the order. The petitioners have paid occupation charges/license fees to the authority till 2022 for the period 2022-23 prior to expiry of which the notice impugned was issued. Some of the petitioners applied for change of ownership of the plot allotted

to them which was entertained by the authority which directed the petitioners to clear all outstanding dues including interest thereon and pay conversion charges equal to one year's occupation fee. Though the notice impugned was not served upon the petitioners in accordance with law, the respondents are trying to evict them from the plot in question on the anvil of such notice which is illegal and arbitrary. Learned counsel for the petitioners has placed reliance upon in *South Bengal Automobiles and Ors v/s. Union of India and Ors.* reported in Manu/WB/1230/2022; *Panchkuian Road Refugee Vyapar Sangh and Ors. v/s Delhi Metro Rail Corporation and Ors.* reported in 130 (2006) DLT 553; *Senior Divisional Commercial Manager and Ors. v/s. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association and Ors.* reported in (2016) 3 SCC 582; *Dollar Industries Limited and Others v/s. Estate Officer, Kolkata Port Trust and Others* reported in Manu /WB/0705/2021 in support of his contention.

4. Speaking for the Railways, learned counsel for the respondents has submitted that the plot occupied by the petitioners is required by the railways for the purpose of implementation of the Amrit Bharat Station Scheme which aims at modernisation/development of railway stations including passengers' safety and other amenities. The petitioners do not possess any valid license agreement and are occupying railway property without any lawful authority. Though some of the petitioners were granted license by the railways, they were renewed only for a period of five years, such period having expired prior to May, 2020. The licenses were not renewed thereafter. The notice of eviction was issued in the greater interest

of the public at large and was duly served upon the petitioners by affixing the same in the plot in question. Since there are several unauthorized occupants on railway property it was not possible to serve individual notices upon them. The petitioners being aware of the said notice cannot deny knowledge of the same. The license agreement demonstrates that the administration shall at any time be at liberty to suspend temporarily or terminate the agreement notwithstanding that the licensee may have executed any work of a permanent or temporary character and incurred expenses in the execution thereof and the licensee shall not be entitled to any damage or compensation by reason of such suspension/termination. The agreement further says that it can be terminated upon serving one month's notice in writing to the licensee.

5. Learned counsel submits that the notice impugned has been issued by the authority in terms of the liberty granted by this Court and as such, the petitioners who are merely unauthorized occupiers of railway property deserve to be vacated therefrom for the sake of larger public interest. Also, section 147 of The Railways Act, 1989 contemplates removal of trespassers who have either entered upon railway property without lawful authority or having lawfully entered, refuses to leave. Learned counsel has relied upon the authorities in Bindu Devi v/s. General Manager, Eastern Railways & Ors. reported in M.A.T 603 of 2017; Ram Dour Barui @ Ram Deo Barui and Others v/s. Union of India and Others reported in M.A.T. 545 of 2022 and Ultra tech Cement Ltd and Another v/s. Union of India and Others reported in A.P.O. 192 of 2014 in support of his contention.

6. The allotment letters issued by the respondents in favour of some of the petitioners demonstrate that the railway reserves the right to terminate the license at a short notice without payment of any compensation for structure built on the plot. In other words, the allotment letter mandates issuance of a short notice upon the occupiers prior to termination of license. According to the respondents, the petitioners or most of them are occupying railway property in an unauthorized manner since there was either no license granted to them for the purpose or such license has expired long back. Record reveals that the respondents have accepted occupational charges from the petitioners till the period 2022-23. The notice impugned was issued on 22nd March, 2023.
7. It is trite law that even an unauthorized/illegal occupier of a premises should be vacated therefrom only by taking recourse to law. Therefore even if it is held that the petitioners are occupying the plot in question illegally either without a license being granted to them or after expiry of the license, law mandates service of notice upon them preceding their eviction from the property. Earlier notices identical to the notice impugned were served upon some of the licensees on 31st December, 1997 and the said notices were set aside by a co-ordinate Bench of this Court vide order passed on 12th May, 1998 in W.P. 2980 of 1998 upon granting liberty to the Railway Authorities to seek recovery of possession of the property in question in accordance with law. In fact, the earlier notices which were set aside by this Court were on a better footing since they were served upon individual lessees. The notice

herein is a general notice affixed on the plot and not served upon any individual lessee.

8. Learned counsel for the respondents has drawn the attention of the Court to the term “notice” as defined in Mitra’s Legal & Commercial Dictionary, fifth edition by A.N. Saha. According to the said definition “a person is said to have notice of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it. Notice is not the same as knowledge. Notice is a word which involves that knowledge may be imparted by notice, but notice and knowledge are not the same thing, although loosely one sometimes talks as if to act with notice and to act with knowledge were indeed the same.” In other words, notice and knowledge cannot be said to be synonymous and a person having knowledge of a certain fact cannot be said to have been served with a notice of the fact. Therefore even if it is held that the petitioners had knowledge of the notice impugned which was affixed in the plot in question, it does not necessarily indicate that it was served upon them in accordance with law.
9. Section 147 of The Railways Act, 1989 provides for removal of any person from railway property if the person enters upon the property without lawful authority, or having lawfully entered, refuses to leave. The issue as to whether the railway authorities can evict an unauthorized occupant of property owned by the Railways without resorting to the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 or alternatively the West Bengal Public Land (Eviction of Unauthorized

Occupants) Act, 1962 has been referred to a Larger Bench by a coordinate Bench of this Court by an order passed on 11th August, 2022 in W.P.A. no. 22570 of 2016. The decision of the Larger Bench is awaited.

10. In the said backdrop, the limited scope for adjudication in the present writ petitions is as to whether the notice impugned dated 22nd March, 2023 is legal, valid and sufficient so as to evict the petitioners from the plot in question.
11. In the words of the Hon'ble Supreme Court in Panchkuian Road Refugee (supra), "If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. the possession of a lessee, even after the expiry or its earlier termination is judicial possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law." The allotment letters issued by the respondents in favour of some of the petitioners demonstrate the right of the railway authority to terminate the license "at a short notice". Clause 15 of the usual licensee agreement relied upon by the respondents also demonstrates that the agreement can be suspended or terminated by the authority upon service of one month's notice in writing upon the licensee. Therefore the policy decision of the railways mandates service of notice in writing upon the occupants, whether legal or unauthorized, prior to their eviction.
12. The respondents have placed reliance on Commercial Circular No. 20/2017 with regard to catering policy 2017 issued by the Government of India,

Ministry of Railways, Railway Board on 27th February, 2017 which deals with management and method of operation of catering service in the railways. Learned counsel for the respondents has referred to two judgments of this Court which deal with renewal of license under the catering policy of 2010/2017. The petitioners have also referred to the authority in Senior Divisional Commercial Manager and Others (supra) which deals with applicability of the provisions of the catering policy, 2010. The said issue not being the subject matter of the present writ petitions, the *ratio decidendi* laid down in the authorities has no manner of application in the present cases.

13. Also, another judgment relied upon by the petitioners in Dollar Industries Limited and Others (supra) deals with settlement of tenancy by the Port Trust Authority under tender cum auction procedure on long term lease under the scheme of right of first refusal which is not the matter in issue in the present applications.
14. Learned counsel for the respondents has taken this Court to a license agreement executed in favour of one Shipra Maity in November, 2012, clause 22 of which records that in the event of any dispute or difference arising between the administration and the licensee as to the meaning of or application of any of the terms of the agreement or as to the rights, duties and obligation of the parties, the same shall be referred for arbitration. In the case in hand, since according to the respondents, the notice impugned has been issued upon unauthorized occupants of the property and not in terms of the lease agreement, the arbitration clause set out in the agreement is not applicable herein.

15. Even at the cost of reiteration, this Court is inclined to hold that since identical individual notices issued earlier were set aside by this Court with liberty to the respondents to act in the matter of seeking recovery of possession from the petitioners in accordance with law, the respondents ought to have served individual notices upon the petitioners for recovery of possession of the plot in question and not affixed general notice in the plot. Even if it is held that the petitioners had knowledge of the said notice, the notice can under no stretch of imagination be presumed to be served upon them. As discussed earlier, knowledge of a fact not being synonymous with notice, knowledge of the notice cannot be said to be service of notice upon the petitioners. The respondents have in fact failed to avail of the liberty granted by this Court in the order passed on 12th May, 1998 in W.P. 2980 of 1998.
16. True, the Amrit Bharat Station Scheme launched by the railways for the benefit of the public at large stands on a higher pedestal than individual interest. If the railway property occupied by the petitioners is required for the purpose, the same may be recovered in accordance with law and not arbitrarily or beyond the tenets of law.
17. In the light of the observation made hereinabove, the writ petitions are allowed.
18. The notice impugned dated 22nd March, 2023 is set aside.
19. Liberty is granted to the respondents to take necessary steps for eviction of the petitioners from the plot in question, if required, in accordance with law.

However, it is pertinent to mention that whether “eviction in accordance with law” shall mean resorting to the provisions of the 1971 Act or the 1962 Act (as referred to earlier) shall be decided by the Larger Bench in the reference made before it.

20. There shall however be no order as to costs.
21. Since no affidavit is invited, the allegations contained in the writ petitions are deemed not to be admitted.
22. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)