

20.08.2024

**Sl. No.16.
Ct. No. 551
sg**

WPA/8753/2009

**Swaran Kumar Agarwala
Vs.
Union of India & Ors.**

Mr. Debabrata Saha Roy,
Mr. Neil Basu,
Mr. Sankha Biswas,
....for the petitioner.

Ms. Chandreyi Alam,
Ms. Runu Mukherjee,
....for the respondents.

1. In this writ petition the subject matter of challenge is a notice of demand dated 25.03.2009 for a sum of Rs. 48,509/- by the respondent Railway authority from the writ petitioner in respect of license fee for the year 2008-09.
2. From the materials as placed before this Court, it reveals that admittedly the writ petitioner and the respondent Railway authority entered into a leave and license agreement dated March 17, 1986 in respect of land no. 35/L-L annexed with the said agreement for the purpose of erecting a structure for storing timber.
3. Materials have been placed before this Court that such license was year to year basis on payment of requisite license fees as charged by the Railway authorities.

4. The grievance of the writ petitioner is that by issuing a notice dated 12.12.2008 the respondent authority demanded a license fee of Rs. 15,558/- for the period of 2008-09 which has been duly paid by the writ petitioner. It is the case of the petitioner that all on a sudden by issuing a fresh notice dated 25.03.2009 a demand was made by the respondent authority for the sum of Rs. 48,509/- towards the license fee for the self-same period that is 2008-09. It is submitted that the subsequent demand of the respondent authority as raised on 25.03.2009 is coercive since the respondent authority being a licensor cannot demand license fee twice for the self-same period in respect of the self same licensed portion.
5. In Course of his argument Mr. Saha Roy, learned Counsel for the writ petitioner submits further before this Court that on comparative study of annexure P-8 and P-9 that is; the copies of the demand notices dated 12.12.2008 and 25.03.2009 it would reveal that languages of the two demands are identical except the quantum of demand. It is, thus submitted that the second demand for the sum of Rs. 48,509/- as made by the respondent authority vide; their demand notice dated 25.03.2009 is harassing and is violative of principles

of natural justice and therefore the same may be quashed by issuing appropriate writ.

6. Per contra Ms. Alam, learned Counsel appearing for the respondent Railway Authority at the very outset draws the attention of the Court to the page 11 of the affidavit-in-opposition being a copy of the policy dated 10.02.2005 regarding licensing of Railways land for commercial plots of lands and the annual fee payable by a licensee. It is submitted that in the said policy it has been elaborately mentioned as to how the license fee in respect of the licensed land are to be assessed year to year basis that is; on the basis of the land value of the licensed land.
7. It is, thus submitted on behalf of the respondent Railway authority that the policy as made out by the respondent Railway authority cannot be held to be unconstitutional since the respondent Railway authority had not violated the principle of natural justice while assessing the value of the licensed land. It is submitted further that the notice under challenge was raised on the basis of the increased land value of the licensed land.
8. Mr. Saha Roy, learned Counsel for the writ petitioner however, denied such contention.

9. On perusal of the entire materials as placed before this Court, it appears to the Court that the respondent authority being a licensor has every right to increase his license fee but respondent authority being an authority Article 12 of the Constitution of India is expected to act within the periphery of the Constitutional provisions and the Laws governed for the activities of the Railways
10. On comparative study of the annexure P-8 and P-9 that is the copies of the demand notices dated 12.12.2008 and 25.03.2009 it appears to this Court and as discussed (supra), the language of the aforesaid two notices are found to be identical and both the notices categorically mentioned that the license fee was demanded for the self-same period that is from 2008-09 in respect of the self same licensed land. In the impugned notice dated 25.03.2009 this Court finds no whisper that the earlier demand notice dated 12.12.2008 was claimed provisionally and the latter impugned notice was issued on the basis of the revised valuation.
11. Such being the position this Court considers that the subsequent notice dated 25.03.2024 is absolutely vague and the writ petitioner being a licensee cannot be permitted to be charged

twice for the self-same period without assigning any cogent reasons in the said notice.

12. As a result the instant writ petition succeeds.

13. The demand as made by the respondent authority letter dated 25.03.2009 hereby stands quashed and cancelled.

14. Before parting with it is however, made clear that this Court while disposing the writ petition has not entered into the legality, validity of the policy dated 10.02.2005 as has been annexed with the affidavit-in-opposition and thus the respondent authorities are at liberty to impose revised/new license fee upon the writ petitioner in respect of the licensed land even for the self-same period or for the subsequent period, if the law permits.

15. With the aforementioned observation the instant writ petition is disposed of along with all connected pending applications.

16. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(Partha Sarathi Sen,J.)