

Item No.2
22.07.2024
Court. No. 9
GB/S.Biswas

W.P.A. 18248 of 2024

Chandannagar Station Area Hawkers Co-operative
Society Limited, represented by Sri Debabrata Dey

Vs.

The Union of India & Ors.

*Mr. Supratim Laha,
Mr. Sumanta Biswas,
Mr. Bikash Shaw,
Mr. S.N. Islam*

...for the Petitioner.

*Mr. Ashoke Kumar Chakraborty, Ld. ASGI, Sr. Adv.
Mr. Kumar Jyoti Tewari,
Ms. Sayani Roy Chowdhury,
Mr. Tirtha Pati Acharyya*

...for the UOI.

1. Affidavit-of-service filed in Court today, is taken on record.
2. The petitioner is a cooperative society. It is alleged that its member have been running business from railway land since long. The writ petition has been filed challenging a notice issued by the competent authority requiring the unauthorized occupants on railway land in and around the Chandannagar railway station to vacate such land, failing which the authority reserved the right to drive.
3. It is contended by the petitioner that the notice was issued without hearing the petitioner and without following the order of a learned coordinate Judge. It is further contended that Section 147 of the Railways Act, 1989 could not be imported in the instant case. The question as to whether the said section would prevail over the provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 or

not, is pending before the Hon'ble Division Bench in another matter.

4. The learned advocate further submits that a hearing was not granted. Thus, the order suffers from the vice of violation of the principles of natural justice. Relying on Page 115 of the writ petition, it is contended that some time was prayed for by the petitioner at the hearing, but the same was not granted. Further reliance has been placed on Page 47, which indicates that the authority also had a plan to grant lease or licence of land or shops in the shopping complexes to existing shopkeepers. Thus, the members of the petitioner's society, being the existing shopkeepers, should be allowed to retain their occupied portions in compliance of the proposal which has been put forward by the Divisional Engineer (3), Howrah in the communication dated April 11, 2005.
5. The learned Additional Solicitor General represents the railway authorities and submits that Section 147(2) of the Act permits the railways to remove any person from railway land, if such person has come in possession thereof either unlawfully or had entered lawfully, but continued to use the premises or occupy the same unlawfully, that is, beyond the period for which such permission to use the land had been granted.
6. It is next contended that a cooperative society has come before this Court without any details as to who exactly were the members likely to be affected by the impugned notice. The railways also does not recognize the petitioner as a

cooperative society which was granted permission to be registered as a society for such hawkers. It is next contended before this Court that the order had been passed on the basis of a liberty granted by a learned coordinate Bench in WPA No.19791 of 2023 dated October 16, 2023. The said order cannot be challenged on merits, as admittedly, there are encroachers on railway's land. The learned Additional Solicitor General submits that the learned coordinate Bench was also pleased to hold in WPA No.22570 of 2016 that the provisions of Section 147 of the Railways Act were intra vires the Constitution.

7. Under such circumstances, the question which falls for determination is whether the notice which is impugned, could have been issued by the railway authorities.
8. Aggrieved by a similar notice which reads as follows, the petitioner filed WPA No.19791 of 2023.

“As per the order of competent authority, eviction of unauthorized structures will be held on 03.04.2023 at Chandannagar station and it's circulating area. All encroachers are requested to vacate their position. Otherwise action will be taken as per extant rules.”

9. The said writ petition was disposed of by a learned coordinate Bench with the following directions:-

“12. Hence, WPA No.19791 of 2023 is disposed of directing the railway authorities to consider and dispose of the representation dated June 2, 2023 annexed at page 77 of the writ petition, upon giving a hearing to the petitioner-cooperative society and its members.

13. The said disposal shall be in accordance with law. While so disposing of the representation, the respondent authorities shall ascertain as to who are the actual occupiers of the property-in-question and members of the cooperative society-in-question.

14. In the event the outcome of the consideration goes against the petitioner and its members, the railway authorities shall only be permitted to evict the members of the petitioners and other occupants by taking recourse to due process of law, under the available relevant Statute in that regard.

15. It is made clear that in the event the railway authorities have given any notice or acted in terms of the decision to drive out the petitioner and its members without due process of law, such action of the railway authorities stands set aside by this order.

16. However, nothing in this order shall prevent the railway authorities to evict the petitioner and/pr its members in due process of law.”

10. Thus, the impugned decision was taken by the authority on the basis of the order of His Lordship and the railway authorities, upon hearing the petitioner, came to the following conclusion:-

“During investigation the premises of Chandannagar Railway Station areas, it was found that there are so many unauthorized occupiers who captured the Railway land for their business purposes. In this regard the competent authority of Railway has issued the eviction notice dated 10.03.2023 and the Chandannagar Station area hawkers Co-operative Society Ltd has Challenged to the eviction notice by the WPA No- 19791 of 2023 The Hon'ble High Court/ Calcutta has disposed of the case vide its order dated 16.10.2023 by directing the Railway Authority to consider and dispose the petitioner's representation dated 02.06.2023.

The Chandannagar Station area hawkers Co-operative Society Ltd has no right to form a Society for Business on Railway Land without permission from Railway and also the authority of State Govt. of West Bengal have no right to issue Registration of Chandannagar Station area hawkers Co-operative Society Ltd for their business on Railway premise without "No objection Certificate" from the Indian Railway.

According to the Hon'ble High Court/Calcutta order dated 16.10.2023 the competent authority of Railway ie, Divisional Engineer(1)/Eastern Railway/Howrah has given a reasonable opportunity of hearing vide the letter dated 25.10.2023 and also letter dated 31.10.2023. The petitioner with Society members have attended to the respective Railway authority office on 03.11.2023 at about 13.00 PM for reasonable hearing. During hearing the petitioner with Society members did not submit authentic document for business on Railway land on 03.11.2023. Hence as per the Hon'ble High Court/Calcutta's order

dated 16.10.2023 they must evict their unlawfully occupied station areas for the development of Chandannagar Railway Station in the Scheme of Amrit Bharat.

At the time of hearing it was also stated by the competent official that after completion of the development Chandannagar Railway Station areas in the Scheme of Amrit Bharat, there will be provisions for doing business in the Station areas as per Railway guideline, for which one can apply in front of the particular authority by fulfilling the rules and criteria.

At the time of hearing it was also stated by the competent official that after completion of the development of Chandannagar Railway Station area in the Scheme of Amrit Bharat, there will be provisions for doing business in the Station areas as per Railway guidelines, for which one can apply in front of the particular authority by fulfilling the rules and criteria.”

11. It appears from the communication made by the petitioner to the Divisional Engineer (I) Howrah Division dated October 31, 2023 that a notice of hearing was given to the petitioner which was received on the day the matter was fixed. Another notice was issued on November 3, 2023 via Whatsapp. Although, the society indicated that their representative would be present on the date of hearing, but they had prayed for some time in the communication. On November 6, 2023, the order was passed.
12. It was opined that Chandannagar was a historical place and had heritage value. The Indian railway authorities had selected the Chandannagar station, and had decided to develop the land around the railway station under the Amrit Bharat Scheme.
13. During enquiry and investigation it was found that many unauthorized occupiers had been running business from railway land. Eviction notice was issued on March 10, 2023. The eviction notice was challenged by the petitioner. The

High Court disposed of the said writ petition directing the authorities to consider and dispose of their representation.

14. The petitioner made a representation. They were given notices, but they wanted further time for hearing although, the members attended the hearing. It was also indicated in the order impugned that the cooperative society could not have been formed without permission from the railways and the Government of West Bengal. The authority was of the view that reasonable opportunity of hearing had been granted to the petitioner. The members of the society had attended the railway office on November 3, 2023 at 13 hours, for the hearing. During hearing, the members could not submit any document in support of their business from the railway land. Hence, the order of eviction was passed.
15. However, it was categorically stated in the said order that after completion of the development of the railway station area under the Amrit Bharat Scheme, there will be a provision for grant of lease or licence of the lands or shops for business purpose and anyone can apply to the railway authorities for grant of such lease or licence, upon satisfying the eligibility criteria as per the guidelines.
16. The plea of the petitioner that its members required more time to convince the railways of their desire to continue on the land in question, cannot be a ground to keep the matter pending at the end of the railway authorities, for an unlimited period. Two notices were given. The members of the petitioner appeared and made their submissions. They

could not produce any documents in support of their business. His Lordship had directed that the eviction should be in accordance with law, upon hearing the petitioner. The provisions of Section 147 of the Indian Railways Act, 1989, had been upheld in various judgments of this court. The section does not provide any particular procedure to be followed for removal of encroachers/trespassers. The fact that a hearing was afforded, is in due compliance of the principle that no one can be evicted except by due process of law. The special statute empowers the railways to remove encroachment and the authority has acted in accordance with such provision.

17. It was not incumbent upon the authority to give as many hearings as the petitioner desired. Further, none of the encroachers have come forward, who are allegedly the members of the society and affected by the order impugned. The fact that there are encroachers, is not disputed. A Co-ordinate Bench in the matter of Subrata Ghosh vs. The Union of India in WP No.28553 (W) of 2014, had held that a person in unauthorized occupation of any railway land shall be treated as trespasser and Section 147 of the Railways Act, 1989 gets attracted. However, His Lordship was of the view that while enforcing Section 147 of the said act, the principles of natural justice should be observed. His Lordship relied on the decision of Dhurjati Prosad Das vs. Union of India reported in 2013 5 CHN 93. The relevant paragraphs are quoted below:

“The father of the petitioner, Late Gopal Chandra Ghosh was a licensee of Railway land being no.4 at Gobardanga Railway Station. Late Gopal Chandra Ghosh was in possession of such plot since 1963. Late Gopal Chandra Ghosh died on October 31, 2005. The allotment in favour of Late Gopal Chandra Ghosh was for loading and unloading of rail-borne and wagon-load traffic. The same appears from the agreement executed between Late Gopal Chandra Ghosh and the Railway Authorities. Late Gopal Chandra Ghosh apparently was conducting a sweet meat shop at such plot. By a letter dated September 4, 2014, the Divisional Commercial Management called upon the Station Manager to evict the petitioner. The Station Superintendent by a letter dated September 10, 2014 called upon the petitioner to vacate the subject plot and to remove his materials. The Railways employed Section 147 of the Act of 1989 to do so. The petitioner approached the writ court. An interim order was passed on September 3, 2015. Subsequently, the Railway Authorities evicted the petitioner.

The petitioner has contended that, the Railway Authorities ought to have invoked the provisions of the Act of 1971 for his eviction. Such a contention has been considered in G. Phalguna (supra). The writ petition in G. Phalguna (Supra) was also a licensee of a Railway property. G. Phalguna (supra) has held that, Section 147(2) of the Act of 1989 empowers the Railway to remove an unauthorized occupant of any Railway land. It has held that there was no scope or reason as to why a person (sic proceeding) under the Act of 1971 was required to be initiated for evicting an unauthorized occupant. The scope of Section 147 of the Act of 1989 has been considered in Dhurjati Prosad Das (supra). It has considered Section 147 of the Act of 1989 and held as follows :-

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‘17. The provision refers not only to eviction from railway properties of persons entering upon any railway property without lawful authority, but also to removal of persons who refuse to leave and property having lawfully entered thereupon. For the purpose of the present matter, the two sub-section can be telescoped to recognize such part of the provision as is relevant here:

‘If any person ... having lawfully entered upon ... any part of a railway ... misuses such property or refuses to leave, ...(such) person ... may be removed from the railway by any railway servant or by any other person whom such railway servant may call to his aid’

18. Section 2(31) of the Act defines ‘railway’ to mean, inter alia, any portion of a railway and includes all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway. Thus, Section 147 of the Act can be perceived to be the law as enacted by the Parliament for a person to be evicted

from any railway property. The question that arises as to whether a person who has entered upon a railway property as a licensee but who continues in occupation beyond the tenure of the licence or the termination thereof can be evicted therefrom on the strength of such provision. The ancillary issue is as to whether the State or any instrumentality of the State may forcibly evict a licensee whose tenure has expired by referring to a provision of law though the provision may not expressly recognise the use of force for the purpose of eviction.

19. There is no absolute rule that the State may not evict a person from government premises without obtaining a decree therefor. The general law that requires the lessor or an owner of a property to evict even a trespasser therefrom only in accordance with law, requires a decree to be obtained for the purpose of eviction; but if a special law is applicable, such provision may be resorted to. Such special law may be the Act of 1971 in respect of public premises covered thereby or State laws in respect of the premises specified thereunder, like the 1976 Act in this State. As long as there is a valid law that permits eviction of a person from a property, the general law would no longer apply to the case. The validity of Section 147 is not questioned by the petitioner, its efficacy and applicability in the present case is only doubted.

20. There does not appear to be any charter to read Section 147 of the Railways Act to imply that a railway servant would merely request a licensee in occupation of the railway property; and, be powerless if such person politely declined the invitation. Section 147 of the Act permits eviction by force and merely because the magic word 'force' is not used therein cannot be a ground to emasculate the provision.

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A licensee subject to the revocation of such licence can be evicted. The eviction however has to be in due course of law. By due course of law, one understands that, the process by which a person who has entered into the premises lawfully as a licensee, and upon termination of such licence stands as a trespasser, is evicted by a method recognised by law. If there is a statute governing the process of eviction, then, due course of law will mean that, possession can be recovered by taking recourse to such statute. According to the petitioner, the Act of 1971 operates in this field and that, Section 147 of the Act of 1989 has no manner of application. The interplay between Section 147 of the Act of 1989 and the provisions of the Act of 1971 has been considered in *G. Phalguna (supra)* and *Dhurjati Prosad Das (supra)*. As noted above, there is no material on record to a view contrary to those expressed therein. Moreover, the Courts have consistently allowed eviction of licensees as that of the petitioner to be evicted from railway property under Section 147 of the Act of 1989. Section 147 of the Act of 1989 is a due course of law

for evicting a trespasser. S. L. Kapoor (supra), Basudeo Tiwari and Prakash Ratan Sinha (supra) have held that where, the statute does not expressly oust the applicability of the principles of natural justice then, the action taken by the authorities must adhere to such principles at the pain of such actions being declared as null and void for non-adherence of such principles. It is settled law that, principles of natural justice should not be mindlessly applied to strike down every administrative action when, no fruitful purpose would be subserved by affording the so called aggrieved person with a right of audience. In the present case, the petitioner was issued a notice of termination requiring the petitioner to vacate the subject plot. The notice is dated September 10, 2014. The petitioner had 48 hours to react to such notice. The petitioner made a representation with regard thereto on September 11, 2014. Principles of natural justice do not mean that, the aggrieved person has to be given a right of audience. Allowing the aggrieved person to submit a representation is sufficient compliance of the principles of natural justice. In the facts of the present case, the representation dated September 11, 2014 contains nothing which allows any reasonable person to take a view contrary to what the Railways took with regard to eviction of the petitioner.

18. Thus, the applicability of Section 147 of the Railways Act has been upheld in various decisions which have been discussed in the matter of Subrata Ghosh (supra). Secondly, in WPA 22570 of 2016 also, the applicability of Section 147 of the act has been accepted by the learned Co-ordinate Bench. What was referred was the question whether in case of eviction from a building owned by the railways, the Act of 1971 would be applicable or not. Such reference has no connection to the issue involved in this writ petition. The area from which the eviction being made, are railway lands appertaining to a railway station. The relevant portions of the decision in WPA 22570 of 2016 are quoted below:

“58. Seen in such perspective, the jurisdiction of Section 147(2) is evident, since the Railways convey goods and citizens across the country and is an essential service.

In fact, the railways have often been referred to as the 'backbone of the Indian economy'. Thus, in order to save the penal clause in sub-section (1) of Section 147 becoming toothless, sub-section (2) also incorporates the essential ancillary right of removal of a trespasser.

59. However, nothing has been provided in the Railways Act specifically in respect of eviction of occupants (unauthorized or otherwise) in buildings which are Railway properties and may or may not be appurtenant to railway tracks or within the compound and in the vicinity of such land, as in the present case. It transpires from the pleadings that the property in dispute is situated near the bus stand and may very well be in the vicinity of the Railway station, but there is nothing to indicate that it falls within the definition of 'railway' as provided in Section 2(31) of the 1989 Act.

64. If a rational interpretation is lent to Section 147, there is no cause for declaring the same to be ultra vires the Constitution, being violative of Article 14 and/or violative of the principle audi alteram partem, a cardinal tenet of natural justice.

67. The answer, as indicated earlier, lies in the 1971 and 1962 Acts respectively, in respect of premises and lands as defined in the said Acts. Since those acts are indeed special statutes in respect of unauthorized occupants and the modalities and incidents of their eviction, as opposed to the Railways Act, 1989, which exclusively governs matters relating to Railways, which fall within the Union List of the Seventh Schedule of the Constitution of India."

19. Under such circumstances, this court does not find any reason to interfere with the decision of the authorities. Moreover, the railway authorities have already allowed such persons who have been in unlawful occupation to approach them after completion of project under the scheme for licence/lease, etc. in the shopping complexes etc. This indicates that the authority has considered the question of livelihood and has decided to permit persons to run their business on certain terms and conditions, from the

developed complex, and upon compliance of eligibility criteria. The decision has been taken by the railways in public interest and for greater good. The Amrit Bharat Scheme is an mission of the Indian Railways to redevelop 1275 stations, nationwide. The work is to be achieved in a phased manner. The project was introduced in February 2023. In September, 2023, phase 1 started. The scheme aims at enhancement of facilities at the stations, with modern infrastructures, including food plazas, city centres etc. The purpose is to foster more comfortable experience for the passengers. Encroachers cannot remain on railway land forever. The law permits the railway authorities to remove them under Section 147 of the Act. The so called members of the petitioner are admittedly trespassers/encroachers.

20. It has also been clearly held by this court that all that was required for the railway authorities to do, was to ensure that the affected parties are heard. In this case, the members of the society were before the authority. Whether the arguments made by the members were to their satisfaction or not, is not the concern of the railways. The individual members of the society may approach the railways authorities with their prayer for grant of lease or licence in respect of the complexes or stalls or land which will be available, once the project is completed. Such prayer shall be considered at the appropriate stage, upon giving due weightage to the issue of livelihood, as also the duration

of such occupation. Evidence in respect of such occupation shall be produced by the individual applicants at the relevant stage.

21. As the persons who are allegedly running their business need some time to make alternative arrangement, the railway authority shall not initiate the drive before August 31, 2024.

22. Accordingly, the writ petition stands disposed of.

23. All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)