

21.08.2024
Item No.25
gd/ssd

MAT/1603/2024
CHANDANNAGAR STATION AREA HAWKERS
COOPERATIVE SOCIETY LTD.
VS
UNION OF INDIA AND ORS.
IA NO: CAN/1/2024

Mr. Soumya Majumdar,
Mr. Supratim Laha,
Mr. Sumanta Biswas,
Mr. Bikash Shaw
..for the Appellant.

Mr. Ashoke Kumar Chakraborty, ld. ASGI,
Mr. Kumar Jyoti Tewari,
Ms. Sayani Roy Chawdhuri
..for the Respondents.

1. This intra court appeal by the unsuccessful writ petitioner is directed against the order dated 22.07.2024 in WPA 18248 of 2024.

2. The said writ petition was filed challenging an order passed by the railway authorities dated 06.11.2023.

3. As could be seen from the order there was earlier round of litigation and the writ petition was disposed of by order dated 16.10.2023 to consider the representation which was filed by the petitioner dated 02.06.2023 after giving reasonable opportunity of hearing to the petitioner in accordance with law.

4. In compliance with the said direction, an opportunity of hearing was given by the Divisional Engineer of Eastern Railway, Howrah.

5. After the parties were heard the order dated 06.11.2023 has been passed holding that huge railway lands are lying under the railway station and amenities are to be provided for the movement of train passengers and other railway lands have scattered and they are required for being utilized for future purpose and, therefore, permission was declined for conducting any business either permanent or temporary basis on railway station area and it was held that the writ petitioners have no right to encroach the railway land unlawfully for their business purposes.

6. The learned Single Bench has elaborately considered the matter and taken note of the submissions made on either side.

7. The learned Single Bench has also noted that a similar notice which was impugned in the writ petition was challenged in WPA 19791 of 2023 which writ petition was disposed of by this court wherein it was held that in the event the outcome of the consideration goes against the writ 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.

8. This has been done and enquiry was conducted in which the authorized representatives of

the Society participated and thereafter the order has been passed.

9. It needs to be noted that the members of the Cooperative Society cannot be treated to be an unauthorized occupant rather they are trespassers of railway land and in terms of Section 147(2) of the Railways Act, 1989 they are entitled to be removed by the appropriate authority of the railway administration.

10. In the instant case an opportunity has been granted pursuant to the directions issued by this court and the authorized representative of the Society was heard and thereafter the order has been passed.

11. In the writ petition in paragraph 4 the appellant/Society has admitted that during the period 2004-05 the hawkers had applied before the authorities including the Divisional Railway Manager, Eastern Railway seeking permission to conduct business by putting up construction over and above the vacant unused places within the Chandannagar Railway Station Compound.

12. This admission is very vital which could disentitle the appellant to take a contrary stand at this juncture. In other words, the appellant has admitted that the property is a railway land and probably at that time was lying vacant. The members of the appellant/Society have no semblance of any legal right

to encroach upon the railway land and thereafter claim that they should be allowed to continue in occupation.

13. All aspects of the matter have been carefully dealt with by the learned Single Bench and ultimately the writ petition has been dismissed.

14. Thus, we find no ground to interfere with the order passed by the learned Single Bench.

15. The learned Single Bench while dismissing the writ petition directed the railway authorities not to initiate the eviction drive before 31st August, 2024.

16. Considering the same, we extend the time till 17th September, 2024.

17. The occupants of the railway lands are directed to peacefully remove the encroachments and vacate from the area failing which the railway administration is entitled to remove all the trespassers and all the encroachers for which purpose the Superintendent of Police of the district shall afford necessary police protection on a request made by the railway authorities.

18. Accordingly appeal fails and dismissed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)