

13.05.2024
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Ct. no. 652
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CO 3288 of 2017

**General Manager, South Eastern Railway & Ors.
Vs.
Smt. Jaya Kar & Anr.**

Mr. Sukumar Bhattacharya ...for the Petitioners

Mr. Tapas Mukherjee
Mr. Mohan Kumar Putatunda
Mr. Abhinaba Chatterjee
....for the Opposite parties

This application has been preferred against an order dated 16th December, 2016 passed by the learned Additional District Judge, 2nd Court, Uluberia in Misc. Appeal no. 21 of 2016.

The petitioner's contention is that the opposite party no. 1 herein as plaintiff filed a Title Suit being no. 222 of 2016 for a declaration that the plaintiff is lawful occupier as being licensee as per written notice dated 14.2.2013 and also for permanent injunction restraining defendant nos. 1 to 5 from disturbing his peaceful possession and enjoyment in running cycle stand in respect of the scheduled noted property. In the said suit, the opposite party no. 1 also took out an application under Order XXXIX rule 1 and 2.

The Railway Authority as defendant filed their objection to the said application and the learned Trial court, after considering the submissions made by the

parties, was pleased to reject the said prayer for injunction. Challenging the propriety of the said order, the opposite party no. 1 herein preferred an appeal being Misc. Appeal no. 21 of 2016 before the court below and the learned court below by the impugned order was pleased to allow interim injunction by directing the parties to maintain status quo over the said cycle stand till disposal of the Misc. appeal.

Being aggrieved by that order, Mr. Bhattacharya, learned counsel for the petitioner submits that the court below has passed a blanket order without considering the fate of such order. In fact, the court below, without securing interest of the Railway Authority and without asking for paying any occupational charges, had granted entire relief sought for in the suit by the impugned order which is illegal. He further submits that the learned court below has passed the order mechanically without considering the fact that the agreement between the plaintiff and the Railway Authority, has been terminated by efflux of time and as such, the question of giving protection to the opposite party/plaintiff does not arise. He further submits that the court below did not consider that the status of the opposite party after the expiry of licence period is no better than a trespasser and as such, he is not entitled to get any protection from the Court. In fact, the court below failed to understand the true

purport of the order passed by this High Court in WP 6419(W) of 2016. He further submits that the court below failed to appreciate that as per order of the competent authority, a joint proceeding was initiated to evict unauthorized cycle stand construction on 21.8.2016 and vacant land of the said cycle stand was handed over to the authorized contractor who was awarded the tender on the basis of open tender process but thereafter the opposite party no. 1 herein had forcibly occupied the property. Accordingly, he has prayed for setting aside the order impugned.

In this context, he relied upon paragraph 11 of the judgment of **Bank of Maharashtra Vs. Race Shipping & Transport Co. Pvt. Ltd. And another**, reported in **(1995) 3 SCC 257**;

ii) **Developer Group India Private Limited vs. Surinder Singh Marwah and others** reported in **(2023) 7 SCC 814**;

iii) **Atma Ram Properties (P) Ltd. Vs. Pederal Motors (P) Ltd.** reported in **(2005) 1 SCC 705**.

Mr. Mukherjee, learned counsel for the opposite parties submits that the order passed by the court below is a reasoned order and court below was of clear view that there are several propositions, the genuineness of which are to be tested only in the main suit and he further held that whether Mabud Khan

came to possess by virtue of any lawful tender or not is a question to be decided in the main suit. Accordingly, the court below rightly came to a finding that without adjudging legality and validity of the alleged tender process by the Railway Authority, the issue cannot be resolved and till then, the parties should maintain status quo over the cycle stand as on that date.

He further submits that from the order passed by this High Court dated 12.4.2016 in W.P. 6419(w) of 2016, it reflects from the submissions of South Eastern Railway that they proposed to issue a fresh tender notice for long term settlement of the cycle stand but presently they are in a settlement only for three months. Accordingly, this court directed the Railway Authority to issue tender notice for long term settlement and the opportunity was given to plaintiff to offer her candidature in terms of such tender notice. However, documents available in the record reveals that prior to aforesaid order passed by High Court, a letter was issued to the Station Manager on 15.3.2016 and thereafter, a termination notice was also issued on 29.3.2016 to the opposite party no. 1 herein. Accordingly, the court below rightly came to a finding that it has not yet been ascertained whether the plaintiff was cheated when the settlement was made in favour of Mabud Khan or not. He further submits that the person who is in long term possession in the

property by way of licence, such licence should be renewed by the Railway Authority in his favour.

In this context, he relied upon paragraphs 27 and 28 of the judgment of Apex court, in the case of **Senior Divisional Commercial Manager & Ors. Vs. S.C.R. Caterars, Dry Fruits, Fruit Juice Stalls Welfare Association & Anr. Civil Appeal no. 618-620 of 2016 dated 29th January, 2016.**

I have considered the submissions made by both the parties. From the order impugned, it appears that the impugned order was passed as an interim measure by the court below without disposing main Misc. Appeal which is pending since 2016.

In such view of the matter, this court is of the view that the Misc. appeal is required to be disposed of at the earliest, so that the final hearing of the suit may be expedited.

Having considered the facts and circumstances of the case, the court below is directed to dispose of the Misc. appeal being no. 21 of 2016 within a period of twelve weeks from the date of communication of the order. The petitioners are restrained from dispossessing the opposite party no. 1/plaintiff from the suit cycle stand without taking due process of law till disposal of the Misc. appeal.

C.O. 3288 of 2017 is thus disposed of and the interim status-quo passed in the impugned order thus

stands modified. However, it is made clear that I have not gone into the merits of the injunction application and all questions including the issue of payment of occupational charges shall be kept open for adjudication by the court below and the court below shall dispose of the Misc. appeal after giving opportunity to both the parties to contest, without being influenced by any observations made herein.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)