

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

PRESENT:

THE HON'BLE JUSTICE RAVI KRISHAN KAPUR

WPA 18275 of 2004

With

IA No. CAN 2 of 2017

M/S Trigun Prasad Singh & Sons & Ors.

-Vs-

Union of India & Ors.

With

WPA 9690 of 2006

M/S Trigun Prasad Singh & Sons & Ors.

-Vs-

Chairman, Railway Board, Railway Bhawan

For the petitioners : Mr. Sandipto Bose
Mr. Achinta Sarkar

For the respondents : Mr. Sanajit Kumar Ghosh

Judgment on : 16.05.2025

Ravi Krishan Kapur, J.

1. By consent of the parties, both these writ petition i.e. WPA 18275 Of 2004 and WPA 9690 of 2006 were heard analogously.
2. All the petitioners are *inter-alia* engaged in the trading of stone chips, coal coke and fire wood and operate from licensed plots at Woodgola Sealdah, Railway Siding and Coal Depot Sealdah Sidings.
3. Briefly, the petitioners were allotted separate licences for plots of land belonging to the Railways initially for a period of 40 years and the same were renewed in 1985 for a period of one year only. Pursuant to the above, the petitioners had paid the licence fees in respect of their

respective licenses till the year 1985-86. In or about 1983-84, the respondent Railways requested the Land Acquisition Collector to assess the value of such plots and to fix the valuation of the same. Subsequently, the valuation was enhanced @ 10%. The enhancement was challenged by the plot holders in a prior writ petition C.R. No.4058 (W) of 1986 before this Court. By a judgment dated 5 September 1988, the writ petition was disposed of by directing the respondent Railways, to *inter-alia* act in accordance with law and a Survey Committee was appointed and directed to file a Report in this regard.

4. By a demand notice no. GL_165A/DEMAND NOTICE/ REVISED RATE/04 dated 16-17/8/2004, the respondent no.4, Senior Divisional Commercial Manager, Sealdah *inter alia* directed the petitioners to make payments of arrear licence fees and also terminated the licences in their favour and further demanded that the petitioners vacate their respective plots at Sealdah Railway Sidings. Subsequently, in an another writ petition being WP 9690 of 2006, the writ petitioners challenged the notices dated 8 December 2005 and 24 February 2006 respectively seeking arrear license fees including outstanding municipal taxes.
5. It is alleged by the petitioners that the impugned notices dated 16-17 August 2004, 8 December 2005 and 24 February 2006 have been issued in violation of the orders of Court passed in the earlier proceedings. It is further alleged that in issuing the impugned demands, the respondent Railway Board has acted contrary to their Guidelines. The respondent Railways have arbitrarily carried out the entire exercise of fixing the land value without disclosing the basis thereof. It is contended that, the Railways were not entitled to raise retrospective demands for licence fees

and were bound to follow the directions of the Court as laid down in *Divisional Railway Manager, Eastern Railway, Sealdah vs Kalighat Plot Holders Association & Anr (2006) 4 CHN 771*. In any event, any proposed enhancement of the license fee could only be prospective and not retrospective.

6. On behalf of the respondents, it is contended that the licences granted to the petitioners were almost 40 years ago and were purely on temporary basis. Admittedly, the same was last renewed in 1985-86 for a period of one year. WPA 9690 of 2006 has been filed by the same proprietorship and partnership firms who had filed the earlier proceedings in respect of the same licensed plots of land. Most of the licence holders who had been granted the original licence by the Railway Board, have either died or have illegally transferred their respective licensed plots in favour of third parties details whereof are unknown to the respondent Railways. The petitioners are also in violation of the terms and conditions of the letter of allotment dated 30 September, 1985. The petitioners had last paid their license fees as far back as in 2010 and have been unauthorizedly occupying their respective plots without making any payments of the same. It is further contended that the nature of business conducted on the respective plots of land has radically changed due to there being reduction in Railway traffic which has resulted in fall in revenue for the Railways. Notwithstanding the subsequent events, the petitioners have continued to be in unlawful possession of their respective plots. In such circumstances, the respondent Railways are justified in issuing the impugned notices.

7. It is also contended that the interim orders dated 28 September 2004 passed in WPA 18275 of 2004 was subsequently modified on 5 October 2004, whereby the petitioners were directed to make payments towards enhanced license fees from the year 2004-2005 and were further directed to make timely payments has been violated. In such circumstances, the petitioners are unauthorizedly in occupation of valuable land which belongs to the Railways and continue to commercially exploit the same. There is no Scheme of the Railways to provide alternative accommodation to the petitioners. In any event, the aggregate dues payable on account of outstanding rental arrears is Rs.1,85,22,715/- till March 2024.
8. The primary issue for consideration is whether the Writ Court can interfere with the policy decision of the respondent Railways. The scope of judicial review and interference in policy matters is well defined. The Courts do not assume the role of an Appellate Authority when it comes to the decisions of the government nor does the Writ Court examine the suitability or appropriateness of a policy. The Court also does not also advise the executive on how to formulate such decisions. Judicial review is limited and restricted to the decision making process alone.
9. The Railway Board is well within their legal rights to demand the license fees payable by the petitioners. As a government utility, the respondent Railway Board is obligated to ensure financial sustainability and cannot be commercially imprudent. Any decision made pertaining to seeking arrear license dues is a policy decision which is exclusively within the domain of the competent authority, i.e., the Railway Board. Such a decision cannot be characterised as arbitrary or unreasonable, so long as the same has been made in accordance with law [*Lala Ram v. Union of*

India, (2015) 5 SCC 813; Kalighat Railway Plot-holders Association and Ors. (Supra)].

10. Similarly, the respondent Railways as lessors are well within their rights to revoke the licence or take steps for eviction in accordance with law. It is well settled that a licensee does not acquire any right, title, or interest in the subject plots by virtue of the licence. The right of occupation conferred upon the licensee is purely permissive in nature and subsists only during the continuance of the licence. Upon revocation or termination thereof or upon initiation of eviction proceedings, the licensee cannot assert any legal right to remain in possession *ad infinitum*. The mere fact that the licensees have remained in occupation of the subject premises over an extended period of time does not, by itself, create any vested right, nor does it entitle them to claim any special privilege against the licensor. (*Corpn. of Calicut v. K. Sreenivasan, (2002) 5 SCC 361*).
11. Notwithstanding repeated orders of Court, the writ petitioners continue to remain and enjoy possession of the licensed plots, without making payment towards the license fees. The cause of action *vis-a-vis* arrear license fees is continuing and recurring. The petitioners are not only in violation of the orders of Court but are also in violation of the terms of the original license agreement and the letter of allotment dated 30 September 1985 issued in their favour. A forceful and unlawful occupation of public property does not confer any right in favour of a party. Moreover, any change of user by the petitioners may also have resulted in violation of the terms of the license agreement. The plots were allotted purely for the mutual benefit of the parties so that the petitioners could provide services for transportation *vis-a-vis* the Railways. However, in view of the changed

circumstances and the subsequent events, the commercial realities including the waste and mismanagement of Railway properties cannot be ignored.

12. By the impugned notice dated 16.08.2004, the petitioners were required to pay outstanding rentals. The respective licenses were also terminated by the respondent Railways. Repeated notices for payment of license arrears have been issued by the Railways. There is no illegality nor arbitrariness nor malice nor contravention of any law which warrants any interference. Merely because a licensee or a lessee claims that the increase in rent is disproportionate or wrongful does not justify interference by the Writ Court. There is nothing in the writ petitions which can be proffered as a challenge to why the respondent Railways should be restrained from taking appropriate steps in accordance with law to protect and preserve their immoveable properties. There can be no estoppel in such circumstances. None of the earlier writ petitions or the orders passed therein prohibit the issuance of the impugned notices or action taken in respect thereof.
13. The impugned notices seek rental arrears, termination of the respective licenses and proposed steps for taking of possession. At this stage, it is too nascent and premature for the Writ Court to interfere. True to games, that litigants play to scuttle the progress of any effective steps being taken in the eviction proceedings, the petitioners have since 2004 managed to thwart any action of the Railways. There is nothing in the decision making process initiated by the Railways which warrants any interference at all at this stage of the proceedings.

14. The Railway Authorities are well within their lawful rights to issue the impugned notices. It is a well settled that the licensor retains the authority to evict a licensee upon breach of any terms and conditions of the licence or upon the expiry of the licence period. It has been repeatedly reiterated by the High Courts and the Supreme Court that the Railways also have the power in appropriate cases to initiate civil or criminal actions against unauthorised occupants. The concept of a welfare State cannot be stretched to permit a section of society to unlawfully profiteer and commercially exploit land at the expense of the Railways. (*Lala Ram v. Union of India*, (2015) 5 SCC 813, W.P No. 28553 (W) of 2014 *Subrata Ghosh vs The Union of India*; W.P. 12581 (W) of 2012; APOT No. 109 of 2016 *Eastern Railway vs Lafarge India PVT. Ltd*; *G. Phalaguna And Ors. vs The General Manager* (2005)3CALLT404(HC) .

15. In an unreported decision in W.P No. 28553 (W) of 2014 *Subrata Ghosh vs. The Union of India*, it has been held as follows:

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.

16. In view of the fact that, the respondent Railways have acted within the bounds of their legal rights, there is nothing which can be described as arbitrary or capricious in their impugned actions. Accordingly, this Court

finds no reason to interfere with the impugned notices or any of the actions complained of.

17. In view of the above, WPA 18275 of 2004 with WPA 9690 of 2006 stands dismissed. All interim orders, stand vacated. All connected applications also stand disposed of. Liberty is granted to the respondent Railways to proceed and take all necessary steps in accordance with law.
18. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with all necessary formalities in this regard.

(Ravi Krishan Kapur, J.)

Later:

After pronouncement of the judgment, the petitioner prays for stay of operation of the order. The prayer for stay is considered and rejected.

(Ravi Krishan Kapur, J.)