

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CO 4037 of 2024

The Estate Officer Adra South Eastern Railway & Ors.
Vs
Murgeswari Teoyar Alias Laxmi Teoyar.

For the Petitioners : Ms. Debjani Ghoshal.

For the Respondent : None.

Hearing concluded on : 07.07.2025

Judgment on : 18.07.2025

Shampa Dutt (Paul), J.:

- 1.** The writ application has been preferred against an order dated 15th March, 2024 passed by the learned Additional District Judge, 3rd Court Purulia in Appeal no. 20 of 2016.
- 2.** Vide the order under challenge the learned Additional District Judge, in appeal set aside the order dated 21.04.2016 passed by the Estate Officer, Adra Division, South Eastern Railway in connection with case no. E/L/244/PRR/2013.
- 3.** The Court further directed the petitioners herein to restore the possession of the licensee in the said public premises within a specified period and hence the writ application.

4. The petitioners' case is that C.S. Raju (since deceased), husband of the Private Respondent entered into an agreement with the Senior Divisional Commercial Manager, South Eastern Railways being Petitioner No.2 to run a South Indian Stall at the Purulia Railway Station on 24/1/2002 for the period from 13/04/2000 to 12/04/2005 at an annual license fee of Rs. 27320/-.
5. The Senior Divisional Commercial Manager, South Eastern Railways vide No. a letter No. C-120/Catg/Policy/ADA/05 by a letter dated 11/4/2005 extended the contractual agreement with C.S. Raju (since deceased) for a further period of 6 months. The said Agreement came to an end on 12.10.2005. After 12/10/2005 the license was not renewed by the husband of the petitioner.
6. C.S. Raju expired on 31/1/2008 and this was informed to the Private Respondent authorities by the petitioner vide a letter dated 14/2/2008.
7. The petitioner by an application dated 14/2/2008 to the Group General Manager of Indian Railway Catering and Tourism Corporation Ltd. prayed for transfer of license of the South Indian Stall which was in the name of the petitioner's husband to the petitioner's name.
8. On 29/10/2010, the south Indian Stall was handed over to IRCTC of the Indian Railways on "as is where is basis, without any agreement, operating on payment of license fee revised from time to time.

9. The Private Respondent filed a writ petition being WPA No.9671 of 2012 in the Hon'ble High Court praying for transfer of license of the South Indian Stall in the name of the writ petitioner.
10. The Court vide an Order dated 17/5/2012 directed the Private Respondent to file an application before the petitioner authorities and directed that if such application is filed, the petitioner authorities shall dispose of the application by a speaking order.
11. The Divisional Railway Manager vide an Order dated 6/9/2012 rejected the Private Respondent's prayer for transferring the license of South Indian Stall in the name of the Private Respondent as no extension was granted to Shri C.S. Raju (since deceased), the husband of the petitioner after 12/10/2005.
12. The Private Respondent filed a writ petition being WPA No. 21155 of 2012 challenging the Order dated 6/9/2012 in the Hon'ble High Court and the said writ petition was disposed of, vide an Order dated 13/12/2012, setting aside the Order dated 6/9/2012 and directing the railway authorities, more particularly petitioner No. 3 to re-consider the claim of the Petitioner for transfer of license with proper reasoned order.
13. The petitioner in compliance with the Order dated 13/12/2012 passed a reasoned Order on 7/3/2013 that the petitioner is ready to consider for transfer/renewal of the license of South Indian Stall, Purulia Railway Station Platform-I in the name of the Private Respondent for a period of 1 year subject to payment of revised license fee and fulfillment of terms and conditions as per Catering-

Policy-2010. The petitioner asked the Private Respondent to execute the agreement within ten days from receipt of the letter and to pay a sum of Rs. 1,83,540/- as license fee.

- 14.** The Private Respondent challenging the said order dated 7/3/2013 moved a writ petition being No. 11323 of 2013 before this Hon'ble High Court.
- 15.** The petitioner No.1 on 6/2/2014 passed the eviction order whereby ordering the Private Respondent and all the persons in possession of the South Indian Stall, Purulia Railway Station Platform-I to vacate within 15 days from the publication of the Order.
- 16.** The Private Respondent filed an Appeal being No. 6 of 2014 before the Additional District Judge 1st Court Purulia against the Order dated 6/2/2014 passed by the Estate Officer, being the Petitioner No. 1.
- 17.** The Hon'ble High Court by an Order dated 11/2/2014 in WPA No.11323 of 2013 directed the Private Respondent to deposit Rs.1,00,000/-within a fortnight. The Private Respondent deposited Rs. 1,00,000/- (Rupees One lakh).
- 18.** The Additional District Judge 1st Court Purulia in the Appeal No. 6 of 2014 by an Order dated 20/4/2015 remanded the case to the Estate Officer, South Eastern Railway, Adra Division for hearing the case afresh by giving opportunity to both the sides to adduce evidence including opportunity to cross examination witnesses and pass an Order, afresh.

- 19.** The Eviction Order was passed on 29/10/2015 by the Estate Officer, Adra to evict the petitioner from the South Indian Stall in the Purulia Railway Station –I.
- 20.** The Private Respondent filed a writ petitioner being WPA 540 of 2016 challenging the eviction Order dated 29/10/2015). The Court by an Order dated 21/1/2016 directed the Private Respondent to pay Rs. 1,83, 540/- to the petitioner and the petitioner shall not take any steps to evict the Private Respondent till disposal of the writ petition. The Private Respondent deposited the said amount and the Court by an Order dated 9/2/2016 directed the petitioner to pass an order after hearing the Private Respondent.
- 21.** The petitioner No.1 after hearing all the parties and by an Order dated 21/4/2016 directed the Private Respondent and all persons who may be in occupant of the South Indian Stall in the Purulia Railway Plat form I to vacate the said premises within 15 days from passing of this Order. The petitioner served the eviction order dated 21/4/2016 to the Private Respondent.
- 22.** The Private Respondent filed an appeal to the estate officer Order dated 21/4/2016 before the Learned Additional District Judge, Purulia. The appeal was registered as Appeal No. 20 of 2016. The Learned Additional District Judge Purulia granted interim stay order and it was extended time to time.
- 23.** The petitioner states that the Private Respondent filed an application for extension of interim order on 27/6/2018 but neither the petitioner nor the Private Respondent were present at

the time of call as such the interim order was vacated. An application for restoration of interim Order was filed by the Private Respondent on 30/6/2018. The said application was moved without informing the petitioner. The petitioner had no knowledge that such an application had been filed. The Learned Additional District Judge by an Order dated 30/6/2018 restored the interim order in the Appeal No. 20 of 2016. The petitioner having no knowledge of the restoration of the interim stay in the Appeal No/20/2018 executed the order of the Estate Officer dated 21/4/2016 and evicted the Private Respondent from the South Indian Stall, Purulia Railway Station-I.

- 24.** The petitioners state that the Learned Additional District Judge after hearing both the parties by an Order dated 15th March 2024 set aside the Order dated 21/4/2016 passed by the petitioner No.1 and directed the petitioner to restore possession within 30 days from the date of passing the order.
- 25.** A written note along with the list of dates has been filed on behalf of the petitioners. It is the case of the petitioners that as there was no agreement between the parties extending the license, the petitioners were not bound under the law to extend the license afresh.
- 26.** It is further stated that as the Private Respondent failed to pay the requisite license fee and as there was no agreement granting license to the petitioners, they are not entitled to get a license in their favour.

- 27.** It is further stated that the learned Additional District Judge has erred in setting aside the order of the Estate Officer and directing restoration of possession of the Private Respondent.
- 28.** In the present case, it appears that by virtue of several directions of the High Court, in writ applications filed by the Private Respondent, her possession was protected.
- 29.** The appropriate authority in this case initiated recovery proceedings in accordance with law and decided the case by passing a reasoned order in compliance with the direction of the High Court.
- 30.** The order of eviction has been passed in an eviction proceedings which was instituted after revocation of the license and was done by due process of law.
- 31.** There is no case of any title in the property having accrued in favour of the Private Respondent as the license was in respect of a public premises being a railway platform.
- 32.** The Estate Officer vide his order dated 21.04.2016 conducted the proceedings under Section (1) of Section 5 of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971.
- 33.** The Estate Officer finally with the following reasons directed eviction of the Private Respondent from the premises:-

“.....In view of the above after going through the papers placed before me and oral evidence recorded and arguments I find that the Divisional Railway Manager has consider to transfer/renew the license

vide order dtd.7/8.3.2013 in favour of O.P for further period of 01(one) year subject to payment of revised license fee and fulfillment of terms and conditions as per catering policy-2010 and further advised to make payment of license fee six months in advance @ RS.1,83,540/-per annum and execute the agreement within 10 days from the receipt the letter dtd.7/8.3.13.But the opposite party neither deposited requisite amount Rs.1,83,540/- nor executed license agreement with Rly. Administration as per order dtd. 7/8.3.13 Passed by the Rly. authority. But she filed Writ Petition before Hon'ble High Court Calcutta and no stay order passed in the said case. Ultimately Smt. Murgeswari Tewar deposited RS.1,83,540/- on 01.02.16 as per direction of Hon'ble High Court Calcutta order dtd.9.2.16 passed in W.P.No.540(w) of 2016 which amount may be account for license fee of one year i.e from Mar' 2013 to Feb' 2014. As such Opposite party failed to produce any valid documents i.e authority or license agreement or permission issued by the petitioner Railway to occupy the public premises is question. I am satisfied that the opposite party Smt. Murgeswari Tewar @ Laxmi Teoyar is in unauthorized occupation of the public premises mentioned in the scheduled given below and she should be evicted from

the said public premises on the radical ground that she has no agreement with Railway Administration since 12.04.2005 to till date. Whenever Railway Administration charged license fees for South Indian Stall O.P has filed Writ petition before Hon'ble High court Calcutta one after another to avoid payment of license fee and implementation of eviction order immediately. It is observed that other tenants/stalls of the same Railway premises are carrying on business with valid agreement with Railway Administration.

Now therefore in exercise of the power conferred me under sub. section(1) of section 5 of the public premises (eviction of unauthorized occupants) of Act-1971 I hereby order the said Smt. Murgeswari Tewar @ Laxmi Teoyar and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within 15 (fifteen) days of the publication of the order. In the event of refusal of failure to comply with this order within the period specified above, the said opposite party Smt. Murgeswari Tewar and all the other persons concerned are liable to be evicted from the said premises, if needed be by use of such force as may be necessary.

SCHEDULE-I

South Indian Stall at Purulia Station P.F No.1 Post.

Purulia, Dist. Purulia (W.B).

SCHEDULE-II

The North by - Platform No.1

The South by - Water Booth and Station Building

The East by - Platform No.1 & Track line.

The West by - Boundary wall.

**Sd/-
Estate Officer
S.E. Railway Adra”**

34. In appeal, the learned Appellate Court **though** accepted the fact that the Private Respondent was evicted from the premises when the order of stay by the Appellate Court was not in force, directed restoration of possession in view of the fact that the interim order of stay was subsequently restored, in respect of the order of the Estate Officer directing eviction of the Private Respondent and recovery of possession.

35. The relevant finding of the Appellate Court is at Paragraph 25 of the judgment:-

“25. Next, it is relevant to note here that the revised license fee of Rs.1,83,540/- was demanded by the Railway Administration concerned in respect of the public premises for the period from March 2013 to February 2014 and undisputedly the present Appellant has deposited the said amount of money with the Railway Administration concerned on 01-02-2016 as per the

direction of the Hon'ble High Court at Calcutta. There is no quandary to the fact that even if the said amount of money is adjusted with the aforesaid period as per the claim of the respondents, it is germane to note here that there was no further demand of license fee from the present Appellant by the Railway Administration concerned for any other period after February 2014. When there was no further demand of license fee from the present Appellant in respect of the said public premises after the period from March 2013 to February 2014, how come the present Appellant be expected to deposit any further licence fee to the Railway Administration concerned in respect of the said public premises.....”

- 36.** And the Court finally came to the decision that the order of the Estate Officer was not in accordance with law being erroneous, perverted and baseless and thus set aside the said order.
- 37.** There has been prolonged litigations between the parties since the death of the original licensee, the husband of the Private Respondent in the year 2008 and the Private Respondent has continued to be in possession of the public premises since 2008 till her eviction in 2018, by virtue of several orders passed by the High Court granting protection to the Private Respondent to continue being in possession of the public premises on payment of requisite license fee from time to time but there has been no

agreement of licence or license granted in favour of the Private Respondent.

38. Section 105 of the Transfer of Property Act, 1882 defines:-

“105. Lease defined.—A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined.—The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.”

39. License is defined under Section 52 of the Indian Easement Act:-

“52. “License” defined.—Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful and such right does not amount to an easement or an interest in the property, the right is called a license.”

40. The Supreme Court in *Joseph Severance and Ors. vs Benny Mathew and Ors.*, in Civil Appeal No. 3818 of 2000, decided on 23.09.2005, the Court held:-

“7.The correct position in law is that the licensee may be the actual occupant but the licensor is the person having control or possession of the property through his licensee even after the termination of the licence. Licensee may have to continue to be in occupation of the premises for sometime to wind up the business, if any. In such a case licensee cannot be treated as a

trespasser. It would depend upon the facts of the particular case. But there may be cases where after termination or revocation of the licence the licensor does not take prompt action to evict licensee from the premises. In such an event the ex-licensee may be treated as a trespasser and the licensee (licensor?) will have to sue for recovery of possession. There can be no doubt that there is a need for the **licensor to be vigilant**. A licensee's occupation does not become hostile possession or the possession of a trespasser the moment the licence comes to an end. The licensor has to file the suit with promptitude and if it is shown that within reasonable time a suit for mandatory injunction has been filed with a prayer to direct the licensee to vacate the premises the suit will be maintainable.

14.

8. The respondent was a licensee, and he must be deemed to be always a licensee. It is not open to him, during the subsistence of the licence or in the suit for recovery of possession of the property instituted after the revocation of the licence to set up title to the property in himself or anyone else. It is his plain duty to surrender possession of the property as a licensee and seek his remedy separately in case he has acquired title to the property subsequently though some other person. He need not do so if he has acquired title to the property from the licensor or from someone else lawfully claiming under him, in which case there would be clear merger. The respondent has not surrendered possession of the property to the appellant even after the termination of the licence and an institution of the suit. The appellant is, therefore, entitled to recover possession of the property. We accordingly allow the appeal with costs throughout and direct the respondent to deliver possession of the property to the appellant forthwith failing which it will be open to the appellant to execute the decree and obtain possession."

- 41. In the present case,** admittedly the petitioner's husband was the original licensee. **A license is neither transferable nor heritable right.** It is a personal right granted to a specific person. On the demise of the said licensee, the right of license in respect of that right extinguishes.
- 42.** The license in the present case is admittedly not an irrevocable license.
- 43.** A revocable license like in the present case can be terminated at any time, there being no transfer of interest.
- 44.** A license in respect of a public premises like in the present case which was granted by the Indian Railways is normally granted by way of following certain procedures/process including inviting applications by publications in the newspapers etc. and the public in general is entitled to apply for the same, which the authority has the right exclusively to grant as per terms and conditions laid down for grant of such license by the organisation.
- 45.** In the present case, admittedly the Private Respondent prayed for grant of license in her favour after the original licensee expired. Her right was protected by the Court from time to time for a period of more than 10 years.
- 46.** The petitioners herein being the licensor instituted appropriate proceedings for eviction and decided the case against the Private Respondent directing her to vacate the premises.
- 47.** The total procedure of eviction was carried out in accordance with law and as per the rights vested with the licensor.

- 48.** The Appellate Court vide the order under challenge has come to the erroneous finding that the eviction was not in accordance with law. In a case for eviction of a licensee, no notice is required prior to institution of the suit for eviction. The suit itself acts as the notice for eviction.
- 49.** The licensor is at liberty to decide as to whose license shall be renewed, who shall be granted fresh license or when a license is not to be continued. Such rights cannot be infringed by the Courts, which if done shall clearly be against the principle of natural justice unless the same is done, without due process of law.
- 50.** In the present case, admittedly there is no fresh license granted in favour of the Private Respondent. The license fee paid by the Private Respondent relates to the period, when the Private Respondent remained in possession of the public premises and has been adjusted accordingly by the licensor. The possession of the Private Respondent was protected by the Courts on the direction that she pays the license fees which though paid subsequently was accepted by the licensor and adjusted for the relevant period.
- 51.** After the expiry of the said period in possession, there is no fresh license granted by the licensor/petitioners in favour of the private respondent and as such it is clear that there is no relationship of a licensor and a licensee between the parties in this case, since the last license fee paid by the private respondent as directed by the

Court was adjusted. As such there is no existence of any license in favour of the Private Respondent issued by the Railways in respect of the railway stall.

52. The order under challenge passed by the learned Additional District Judge, 3rd Court Purulia in Appeal No. 20 of 2016, thus **being not in accordance with law is set aside.**

53. CO 4037 of 2024 is allowed.

54. All connected application, if any, stands disposed of.

55. Interim order, if any, stands vacated.

56. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)