

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

M.A.T. 1071 of 2026
IA No: CAN 1 of 2026

Kartick Chandra Dutta and others
Vs.
Union of India and others

For the appellants /writ petitioners	:	Mr. Bikash Ranjan Bhattacharya, Sr. Adv. Mr. Samim Ahammed Mr. Arka Maiti Ms. Ambiya Khatun Ms. G. Pervin Ms. Reshma Khatun Md. Nasirul Haque
For the railway/UOI	:	Mr. Dhiraj Trivedi, Ld. DSGI Mr. Kumar Jyoti Tiwari, Sr. Adv. Ms. Debjani Ghosal Mrs. Anamika Pandey Mrs. Sarda Sha
For the State	:	Mr. Nilanjan Bhattacharjee, Snr. Standing Counsel Ms. Jayita Dhar Chakraborty Mr. Joy Ranjan Dhar
Heard on	:	02.07.2026
Judgment on	:	02.07.2026

Sabyasachi Bhattacharyya, J.:-

1. Affidavit-of-service filed in court today be kept on record.
2. The present challenge has been preferred to an order whereby, in a writ petition challenging a notice dated 7/8 July, 2026, the learned Single Judge stayed the operation of the said notice, restricting such order, however, only to the thirteen writ petitioners.
3. Learned senior counsel appearing for the writ petitioners/appellants contends that the limited scope of the present challenge is that the operation of stay of the notice should have been extended not only to the writ petitioners but also to all other similarly placed persons, falling in the category of hawkers on the concerned railway platforms.
4. Learned senior counsel places reliance in particular on the averments made in paragraph nos. 1 and 2 of the writ petition from which the present appeal arises, where it has been pleaded that the petitioners appear before the Writ Court as representative members of a much larger body of similarly situated persons and that the writ petition is preferred on behalf of all members of a Trade Union representing the interests of such persons.

5. Learned senior counsel appearing for the writ petitioners/appellants further points out that the learned Single Judge, despite being *prima facie* satisfied of the necessity to pass an order of stay, restricted the benefit of the said order, without assigning any particular reason therefor, only to the thirteen writ petitioners.
6. Learned senior counsel further submits that leave under Rule 12 of the Writ Rules need not necessarily be granted at the outset and may be issued at any stage of the proceeding.
7. As such, the argument of the respondents-Railway authorities regarding no such leave having been granted by the Writ Court could not have deterred the Writ Court from passing the interim order of stay in respect of all other similarly placed persons as well.
8. It is also contended by the writ petitioners/appellants that the issue as to whether, in such cases, Section 147 of the Railways Act, 1989 or the relevant provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 would apply, is at present *sub judice* before a Larger Bench, thus giving rise to a *prima facie* arguable case in respect of the writ petition, all the more justifying the interim order being extended to all similarly affected persons.

9. Learned DSGI, appearing on behalf of the respondents/Railway authorities, contends that in the writ petition, the present appellants have merely pleaded that they are affiliated to the Centre of Indian Trade Unions (CITU) and all of them produced their Union membership cards as hawkers operating at the Madhyamgram Railway Station, on its platforms.
10. However, the impugned notice applies to persons of different categories, some of whom might be rank squatters on the platforms or the adjacent lands, whereas others might have already left the Railway premises altogether.
11. In the absence of any specific challenge to the impugned notice by the said others, the prayer for extending the stay order to such an indeterminate body of persons would not be tenable in the eye of law.
12. Learned DSGI places reliance on the provisions of Rule 12 and Rule 53 of the Writ Rules of this Court and argues that grant of leave to sue or be sued in a representative capacity is a *sine qua non* for the purpose of treating a writ petition to be in representative capacity.
13. Since no such prayer was specifically pressed at the time of hearing before the learned Single Judge and/or granted by the said Court, it is argued that the very premise of the prayer for

extension of the interim order to the non-writ petitioners is baseless.

- 14.** Learned DSGI also places reliance on the provisions of Order I Rule 8 of the Code of Civil Procedure and argues that the broad contours of the same are applicable, by dint of Rule 53 of the Writ Rules, also to writ proceedings.
- 15.** It is next argued by learned DSGI that the respondents-Railway authorities have been taking steps to remove unauthorized encroachers from Railway properties and the impugned notice is a part of such general eviction drive.
- 16.** It is submitted that the said encroachments have acquired the proportion of a recurring menace and the daily commuters suffer miserably due to the encroachment on the platforms.
- 17.** In such context, learned DSGI cites *Maniyar Iliyaz alias Shaik Riyaz and another vs. P. Ayyappan and others*, reported at 2026 SCC Online SC 1162, where the Hon'ble Supreme Court recognized the right to walk as a fundamental right under Part III of the Constitution of India held the same to be integral to the right to movement guaranteed under Article 19(1)(d), read with Articles 19(1), sub-clauses (a), (b) and (c), as well as Article 21 of the Constitution of India.
- 18.** Learned DSGI further cites *Ayaubkhan Noorkhan Pathan vs. State of Maharashtra and others*, reported at (2013) 4 SCC 465,

where the Hon'ble Supreme Court laid down the proposition that a stranger cannot be permitted to meddle in any proceedings unless he satisfies the authority/Court that he falls within the category of aggrieved persons. Only a person who has suffered or suffers from legal injury can challenge the act/actions/order etc. in a court of law.

- 19.** A “legal right”, it was held, means an entitlement arising out of legal rules and may be defined as an advantage or a benefit conferred upon a person by the rule of law.
- 20.** It was further elaborated that the expression “person aggrieved” does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, be necessarily one whose right or interest has been adversely affected or jeopardized.
- 21.** Taking a cue from the said judgment, learned DSGI argues that the persons who have not come before this Court ought not to be given the benefit of the order of stay.
- 22.** Upon taking into consideration all the facets of the arguments advanced before us, we find that the writ petitioners/appellants have categorically pleaded in the first two paragraphs of the writ petition that they are seeking to act in representative capacity as members of a much larger body of similarly situated persons.

- 23.** Such category of persons has been identified in the writ petition as hawkers vending their fares on Railway platforms.
- 24.** Although the writ petitioners/appellants have pleaded membership of a particular Trade Union, the same pales into insignificance in view of the larger claim of representing a body of persons who are similarly situated as the writ petitioners/appellants.
- 25.** Order I Rule 8 of the Code of Civil Procedure contemplates a litigation filed on behalf of “numerous persons having the same interest” in one suit.
- 26.** As per the sub-clauses of the said Rule, one or more of such persons may, with the permission of the Court, sue or be sued or may defend the suit on behalf of or for the benefit of all persons so interested.
- 27.** Thus, the parameter which is a *sine qua non* to come within the fold of Order I Rule 8 of the Code, which by necessary implication is applicable via Rule 53 of the Writ Rules to writ petitions as well, is that the other persons sought to be represented but not before the Court are required to stand on equal footing and have the same interest in the outcome of the litigation as the persons who are before the Court.
- 28.** Rule 12 of the Writ Rules merely stipulates that the prayers of the petition shall distinctly state the particular writ or order or

directions which the petitioners requires to be issued and where leave is asked for making an application in a representative capacity, that there must be a distinct prayer to that effect.

- 29.** From the prayer portion of the writ petition, we find that prayer (b) thereof clearly seeks leave to move the writ petition in representative capacity, thus satisfying the yardsticks stipulated in Rule 12.
- 30.** However, even on a wider perspective, Order I Rule 8 of the Code of Civil Procedure, through the route of Rule 53 of the Writ Rules of this Court, is also applicable in the present case inasmuch as, in terms of the pleadings in the writ petition, which stands uncontroverted as of now in the absence of any pleadings to the contrary at the *ad interim* stage, the writ petitioners/appellants claim to represent a larger body of similarly situated persons.
- 31.** Thus, the very fact that the learned Single Judge entertained the writ petition and granted *ad interim* relief on the basis of *prima facie* satisfaction regarding the purported illegality/invalidity of the impugned notice, on the basis of the averments and prayers made in the writ petition, signifies that there was a tacit acceptance of the proposition that the writ petitioners also represent other similarly situated persons affected by the notice.
- 32.** Even otherwise, since the subject-matter of the present appeal also encompasses a challenge to the impugned order, to the

extent that similar benefit of stay has not been given to other similarly placed persons than the appellants, it is well within the jurisdiction of this court to consider whether such leave ought to have been granted or was fit to be granted.

- 33.** In view of the above discussions, we are of the *prima facie* opinion that the writ petitioners deserve to be granted such leave, although not specifically enumerated in the impugned order, in view of the larger ramifications of the impugned notice vis-à-vis other persons similarly placed as the appellants, who would also be directly affected by the notice.
- 34.** Another aspect of the matter cannot also be overlooked.
- 35.** It is the impugned notice which itself (although unintentionally), unifies the writ petitioners with other similarly situated persons affected by the said notice.
- 36.** Since the notice addresses an indeterminate and generic body of admittedly heterogeneous persons without specifying their respective status or even the identities of the noticees, such omnibus nature of the notice precludes its effect from being segregated between persons of different status vis-à-vis the railway property.
- 37.** From a bare perusal of the notice, which speaks of an “unauthorized structure” being its target, it transpires that it is

not addressed to a specific person but is structure-specific rather than person-centric.

- 38.** Construed in such fashion, it would only be appropriate that if the notice is at all stayed, it should be stayed as it is, being restricted only to a particular structure and not applicable to the entire railway properties.
- 39.** However, it would be dangerous to leave it at that, since the notice has a peculiar conundrum in-built in it.
- 40.** The very first sentence of the notice commences with the expression "This structure is unauthorized" but thereafter proceeds on a wider expanse, by asking an indeterminate and omnibus body of people to vacate "the railway premises", connoting thereby the entire property owned by the Railway in the vicinity of the notice.
- 41.** Since the order was issued by the Eastern Railway, Sealdah Division, by necessary construction, the purport of the notice would be to operate against all persons who are in occupation of the Railway premises, irrespective of their legal status vis-à-vis such premises.
- 42.** Thus, such single notice, intended to adversely affect a heterogeneous body of persons, apparently governed by distinct and separate statutory regimes, as per the very admission of the Railway Authorities, is *ex facie* invalid.

- 43.** However, we stop short of going further on this, since all observations made in the present order and in the impugned order are tentative, for the purpose of considering whether or not to grant *ad interim* relief.
- 44.** However, we cannot shut our eyes to the above aspect of the matter.
- 45.** Hence, it is not the writ petitioners who, by their prayer to apply in representative capacity, brings the persons affected by the notice under the same umbrella but it is the very impugned notice itself which so unifies the persons affected thereby, since the said notice simultaneously affects not only the writ petitioners but all other occupants of the Railway premises, without disclosing their specific identities – either individually or as classes.
- 46.** Hence, the core principles embodied in Article 14 of the Constitution of India prevent us from not extending the benefit of the stay granted in respect of the thirteen writ petitioners to all other similarly placed persons, being “similarly placed” on the anvil of the operation of the notice itself.
- 47.** In *Maniyar Iliyaz (supra)*, with respect, the Hon’ble Supreme Court did not deal with the issue as to which fundamental right will override the other - the right to livelihood or the right to walk – as such question did not crop up or was decided therein

at all. In our humble opinion, although both are facets of the larger right to life enshrined in the Constitution, the right to livelihood is a far superior right, prevailing over the right to walk, being much closer to the essence of the right to life.

48. Insofar as *Ayaaubkhan Noorkhan Pathan (supra)* is concerned, the Hon'ble Supreme Court was dealing in the said case with the question of locus standi in a writ petition. However, it is not the locus standi of the writ petitioners/appellants which is in contention in the instant case but their right to represent other similarly placed persons. The two concepts operate in entirely different paradigms. Once the Writ Court recognized the writ petitioners' locus standi *prima facie* by favouring them with an order of stay, there could not be any logical reason to deprive other similarly placed parties, equally affected by the impugned notice, from the benefit of similar relief, applying the yardstick of Article 14 of the Constitution, more so since the petitioners/appellants have pleaded representative capacity in the writ petition.

49. Hence, we hereby hold *prima facie* that since the impugned notice affects an indeterminate and omnibus body of unnamed persons, the benefit of the stay granted in respect thereof by the learned Writ Court cannot be restricted only to the thirteen writ

petitioners but has to be extended in equal measure to all other affected persons thereby as well.

50. The question as to whether Section 147 of the Railways Act, 1989 or the relevant provisions of the 1971 Act are applicable is best left to be determined at the final hearing of the writ petition.
51. Be that as it may, in the light our above discussions, we find that a sufficiently strong *prima facie* case has been made out for granting the benefit of stay of operation of the impugned notice dated 07/08.07.2026 not only to the writ petitioners/appellants but to all persons affected thereby.
52. Since the issues involved in the present appeal itself are identical with the interim application, we are deciding the appeal itself on the above considerations.
53. Accordingly, MAT 1071 of 2026 is partially allowed, thereby modifying the impugned order dated July 1, 2026 passed in WPA 14370 of 2026 to the extent that the stay of operation of the impugned notice dated 07/08th July, 2026 granted by the Writ Court shall extend to all persons affected by the said notice.
54. Needless to say, such protection shall be co-extensive with the interim order granted by the learned Single Judge and shall operate only till the next date fixed before the Writ Court.
55. CAN 1 of 2026 is also disposed of accordingly.

- 56.** There will be no order as to costs.
- 57.** Urgent certified copies of this judgment, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

ADSL-1

AK