IN THE HIGH COURT AT CALCUTTA

(CONSTITUTIONAL WRIT JURISDICTION)

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 23959 of 2026

Rajib Chakraborty & Ors.
-Versus-
Union of India & Ors.

For the Petitioners : Mr. Debjit Mukherjee
Ms. Dipanwita Ganguly
Ms. Susmita Chatterjee
Mr. Kaustav Bhattacharya.

For the Union of India. : Mr. Nani Gopal Chakraborty
Mr. Subit Mazumder.

Heard on : 01.10.2026

Judgment on : 01.10.2026

Partha Sarathi Sen, J.:-

1. The subject matter as involved in the instant writ petition is the notice dated 21.07.2026 as issued by the respondent no.6 authority addressed to the writ petitioner no.3. By issuing the notice dated 21.07.2026, the writ petitioners terminated the temporary licence agreement in respect of allotment of a railway

commercial plot/shop at BZN Railway Station in South Eastern Railway.

2. At the time of hearing Mr. Mukherjee, learned advocate appearing for the writ petitioners submits before this Court that the writ petitioner nos.1 and 2 along with the petitioner no.3 are equally aggrieved with the impugned notice in view of the fact that on the basis of the said impugned notice, the railway authorities are making an attempt to dispossess the writ petitioners from their settled possession. Drawing attention to page Nos.19 A, 20 to 22 and 23 of the instant writ petition, it is submitted by Mr. Mukherjee that the present writ petitioner no.3 came into possession of the property-in-question over the railway property on the basis of a licensee agreement dated 11.09.1973 and thereafter the writ petitioner no.3 regularly paid licence fee to the railway authority as would be evident from the annexures to the writ petition.

3. It is further argued by Mr. Mukherjee that upon execution of similar licence agreement in favour of the predecessors-in-interest of the writ petitioner no.1 and 2, the said predecessors-in-interest of the writ petitioner nos.1 and 2 came into possession of the railway property as licensees and after their demise, the writ petitioner nos.1 and 2 are also in settled

possession of their respective plots/shops in the selfsame railway station.

4. Drawing attention to page no.45 being a copy of notice dated 01.09.2000 addressed to one Kanailal Chakraborty, since deceased, the predecessors-in-interest of the writ petitioners as issued by the railway authority, it is submitted that on earlier occasion too, a similar attempt was made by the railway authority to dispossess the predecessors-in-interest of the writ petitioner no.1 and such action was assailed by the said predecessors-in-interest of the writ petitioner no.1 by filing a writ petition before this High Court wherein this High Court granted interim order. It is, however, submitted by Mr. Mukherjee that subsequently on account of withdrawal of the said notice by the railway authority and on account of acceptance of enhanced licence fee from the predecessors-in-interest of the writ petitioner no.1, the said writ petition became infructuous and, accordingly, the predecessors-in-interest of the writ petitioner no.1 did not proceed in the earlier round of litigation.

5. It is further submitted by Mr. Mukherjee that from page no.62 onwards, it would reveal that the writ petitioner nos.1 and 2 went on depositing the licence fee even after death of their predecessors-in-interest who were the original licensees in

respect of their respective plots/shops over the railway property in the aforementioned railway station namely; BZN Railway station in South Eastern Railway.

6. At this juncture, Mr. Mukherjee places his reliance upon the following three reported decisions:

   (1) 2005 SCC OnLine Cal 394: (2006) 2 Cal LJ 193 **(G. Phalaguna & Ors. Vs. The General Manager & Ors.)**

   (2) The judgment dated 11.08.2022 as passed by a co-ordinate Bench of this Court in WPA 22570 of 2016 **(M/s. South Bengal Automobiles and another Vs. Union of India and others)**.

   (3) 2024 SCC OnLIne Cal 1748 **(Sipra Maity and Others Vs. General Manager, South Eastern Railway and Others)**.

7. It is submitted by Mr. Mujkherjee that in the case of G. Phalaguna (supra) a Co-ordinate Bench of this Court while interpreting Section 147 of the Railways Act, 1989 categorically observed that though Section 147(2) of the said Act empowers the railway servant to remove an unauthorized occupation at any railway land, however, such removal cannot be done without initiating a requisite proceeding under the provisions of the West Bengal Premises (Eviction of Unauthorized Occupants) Act, 1971 (the “Act of 1971” in short).

8. It is thus, submitted by Mr. Mukherjee that since the railway authority by issuing the impugned notice made an endeavour to evict the writ petitioners without initiating a valid proceeding either under the Act of 1971 or under the said Act, the said notice cannot stand in the eye of law and the same may be quashed.

9. It is further submitted by Mr. Mukherjee that in the case of **South Bengal Automobiles & Anr**.(supra), a Co-ordinate Bench of this Court though noticed the Section 147 of the said Act stands scrutiny of constitutionality and legality and is intra vires Constitution, however, considering the fact that three Hon'ble Single Judges of this Court have taken a contrary view, the said Co-ordinate Bench sent the matter to the Hon'ble Chief Justice of High Court at Calcutta for constituting a Larger Bench to answer the reference on the question.

> " ***Whether, under Section 147 of the Railways Act, 1989, the railway authorities can evict an unauthorized occupant of property owned by the Railways without resorting to the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, alternatively The West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962".***

10. It is submitted by Mr. Mukherjee to the best of his knowledge that the Larger Bench has not yet answered the reference.

11. It is further argued by Mr. Mukherjee that in the case of **Sipra Maity** (supra), another Co-ordinate Bench of this Court while considering the legality, validity and correctness of a notice of eviction as issued by the jurisdictional Divisional Engineer of a railway authority considered the judgment of **G. Phalaguna** (supra), **South Bengal Automobiles** (supra) and came to a finding that the Larger Bench has not decided reference as made in the case of South Bengal Automobiles (supra) and thus, while disposing of such writ petition set aside the notice impugned therein giving liberty to the railway authority to take appropriate steps for eviction of the writ petitioners, if required in accordance with law.

12. It is submitted on behalf of the writ petitioners that in the facts and circumstances as involved in the instant writ petition and in the light of the decisions of the three separate Co-ordinate Bench of this Court, the instant writ petition may be allowed by granting appropriate relief/reliefs to the writ petitioners in terms of the prayers made in the instant writ petition.

13. Mr. Chakraborty, learned advocate appearing on behalf of the railway authority at the very outset raises the point of maintainability of the instant writ petition at the instance of the writ petitioner Nos. 1 and 2.

14. It is argued by Mr. Chakraborty that the writ petitioner nos. 1 and 2 have no locus standi to challenge the impugned notice since the impugned notice is not directed against them.

15. In his next limb of submission Mr. Chakraborty took me to page 20 of the instant writ petition being a copy of the deed of licence dated 11.09.1973 as has been executed by and between the railway authority and the respondent no.3.

16. It is submitted by Mr. Chakraborty that on perusal of the copy of the said agreement it reveals that the railway authority issued a licence in respect of a particular plot having area of 1000 Sq. Ft. in favour of the writ petitioner no. 3 for stacking straw for movement by railway and such licence was limited to three years wherein the railway authority reserved his right to resume the possession and right of re-entry within 30 days.

17. It is submitted by Mr. Chakraborty that on perusal of the impugned notice dated 21.07.2026 it would reveal that the railway authority had simply terminated the licnece in respect of the writ petitioner no. 3 which is very much within the right of a

licensor, therefore, there cannot be any occasion to interfere with the said impugned notice.

18. In course of his submission Mr. Chakraborty places reliance upon the judgment and order passed by this Court on 25.09.2026 in WPA 24984 of 2026 (***Jayadul Islam Khan Vs. Union of India & Ors.***), the judgment and order dated 08.03.2017 passed in WPA 29780(W) of 2016 (***Subodh Pramanik Vs. The Union of India & Ors.***) and the judgment and order dated 08.03.20217 passed in W.P. No. 29956 (W) of 2016 (***Motiur Rahaman Khan Vs. the Union of India & Ors.***) by another Co-ordinate Bench of this Court.

19. It is submitted by Mr. Chakraborty that in similar situation the said Co-ordinate Bench as well as this Court on an earlier occasion declined to grant relief to the writ petitioner.

20. This Court has meticulously gone through the entire materials as placed before this Court. This Court has given due consideration over the submissions of the learned advocate for the contending parties. Since Mr. Chakraborty at the very outset raised the point of maintainability of the instant writ petition at the instance of the present writ petitioner nos. 1 & 2, this Court proposes to decide the said question first.

21. On careful perusal of the impugned notice dated 21.07.2026 it appears that the notice of termination and/or

cancellation of lience/temporary allotment was directed to writ petitioner no.3 only. On being asked by this Court Mr. Mukherjee, admitted that no such notice was served upon the writ petitioner nos. 1 & 2, though it was argued by Mr. Mukherjee that on the strength of the impugned notice, the railway authority is making an attempt to evict the writ petitioner nos. 1 & 2 from their settled possession in the aforementioned railway station. From the materials as placed before this Court, it appears that it is the specific case of the writ petitioners that there separate licences have been issued in favour of the writ petitioner no. 3 and the predecessors-in-interest of the writ petitioner nos. 1 & 2.

22. In view of such, this Court holds that there cannot be any joinder of cause of action for which the present writ petitioners can join together and file a single writ petition.

23. It further appears before this Court that the impugned notice is directed against the respondent no. 3 only and as such, there cannot be any occasion to be prejudiced by the writ petitioner nos. 1 & 2 on account of issuance of such notice.

24. In view of such, this Court is constrained to hold that the instant writ petition is not at all maintainable at the instance of the writ petitioner nos. 1 & 2 and **the same is dismissed** as **against the writ petitioner nos. 1 and 2**.

25. The next question arises for consideration before this Court as to whether on the basis of facts and circumstances as involved in the instant writ petition, the writ petitioner no. 3 is at all entitled to the relief as prayed for. Admittedly, several materials have been placed before this Court that the respondent no. 3 was/is a licensee in respect of an area of 1,000 Sq. Ft. in the aforementioned railway station under the railway authority.

26. It further appears to this Court that initially the said licence was for three years, however, materials have been placed before this Court that even after expiry of three years the railway authority accepted the licence fee from the respondent no. 3.

27. In view of such, there cannot be any hesitation to hold that the initial licence as has been granted on 11.09.1973 was extended time to time.

28. At this juncture, if I look to the impugned notice dated 21.07.2026 it appears to this Court that the railway authority more specifically; the respondent no. 6 authority as licensor terminated the licnece as granted to the writ petitioner no. 3 with immediate effect and directed the writ petitioner no. 3 to quit, vacate and deliver the vacant possession to the railway authority.

29. It thus, appears to this Court that by issuing the said notice dated 21.07.2026 the railway authority terminated the

licence of the writ petitioner no.3 which in considered view of this Court is within the right of a licensor since a licensor has every right to terminate the licence at his own discretion.

30. At this juncture, Mr. Mukherjee in course of his argument places much reliance upon Section 147 of the Railways Act, 1989 and it has argued by Mr. Mukherjee that the reference over Section 147 is yet to be disposed of by the Larger Bench of this Court.

31. This Court at this stage proposes to look to Section 147 of the Act of 1989 which reads as follows:-

> "*147.* ***Trespass and refusal to desist from trespass.***
>
> *(1) If any person enters upon or into any part of a railway without lawful authority, or having lawfully entered upon or into such part misuses such property or refuses to leave, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both:*
>
> *Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such punishment shall not be less than a fine of five hundred rupees.*

(2) Any person referred to in sub-section (1) may be removed from railway by any railway servant or by any other person whom such railway servant may call to his aid."

32. Keeping in mind the aforementioned legislative provision, if I look to the impugned notice dated 21.07.2026 it appears to this Court that in the said notice there is no whisper regarding the invocation of power by the Railway authority under Section 147 of the Act of 1989.

33. It rather appears to this Court that by issuing the impugned notice the Railway authority though terminated the license of the writ petitioner no.3 but it made no venture to remove the writ petitioner no.3 from his settled possession unlawfully.

34. In view of such, this Court considers that the reported decision of G. Phalaguna (supra), South Bengal Automobiles (supra) and Sipra Maity(supra) to the extent of the interpretation of Section 147 of the Act of 1989 have got no manner of application in the instant writ petition.

35. It further appears to this Court that the three judgments of this Court as cited from the side of respondent authorities are also distinguishable inasmuch as in the case of ***Subodh Pramanik Vs. The Union of India & Ors.*** *and in the*

case of ***Motiur Rahaman Khan Vs. the Union of India & Ors.*** *the r*ailway authority issued notice of eviction finding that the licensed plots were issued for the purpose for which it was not given and the in the case of **Jayadul Islam Khan** (supra), this Court has noticed that the writ petitioner has got no locus standi to challenge the impugned notice as he is not a licensee under the Railway authority.

36. Coming back to the factual aspects as involved in the instant writ petition, it once again appears to this Court that by issuing the impugned notice, the railway authority merely cancelled the licence as granted to the writ petitioner which in considered view of this Court within the power of the Railway authority and thus, this Court finds no illegality in such notice.

37. Admittedly in the last paragraph of the writ petition, the railway authority asked the present writ petitioner to quit, vacate and deliver up the vacant possession of the aforementioned property in favour of the Railway authority which in considered view of this Court by no stretch of imagination can be construed that the Railway authority is going to evict the writ petitioner no.3 by any illegal and/or irregular means and/or without due course of law.

38. In view of such, this Court thus finds no merit in the instant writ petition. The instant writ petition is **dismissed**.

39. There shall be no order as to costs.

40. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Partha Sarathi Sen, J.)

B.P. G [AR (C)]
SM [AR(C)]