

Biswa Ranjan Bose Vs. General Manager, Eastern Railway and ors.

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Court : Kolkata

Decided On : May-31-1990

Reported in : (1991)2CALLT53(HC)

Judge : Susanta Chatterji, J.

Acts : [Constitution of India](#) - Articles 14 and 226

Appeal No. : C.R. No. 2850(W) of 1981

Appellant : Biswa Ranjan Bose

Respondent : General Manager, Eastern Railway and ors.

Advocate for Def. : P.K. Ghosh and ;Aloke Kumar Ghosh, Adv.

Advocate for Pet/Ap. : A.K. Sarkar, Adv.

Judgement :

Susanta Chatterji, J.

1. The present Rule is heard alongwith C. R. No. 10129 (W) of 1981 (S.S. Nayar & Company v. General Manager, Eastern Railway and Ors.), C.R. No. 6116 (W) of 1981 (S.K. Banerjee & Co. P. Ltd. v. General Manager, Eastern Railway and Ors.) and CO. No. 14075 (W) of 1986 (Ambika Prasad Shaw and Ors. v. Union of India and Ors.). Since common questions of fact and law are involved in all the case's,

the learned Lawyers appearing for the respective parties have agreed for analogous hearing of all the 4 (Four) matters.

2. The petitioners were allotted different plots at Chitpur Railway Siding for unloading and accommodating consignments carried by Railways. They have prayed for issuance of a Writ of Mandamus commanding the respondents to resume and continue booking and placement of wagons by can calling, recalling and rescinding the impugned orders, notices and steps for taking possession of the petitioners' plots without taking recourse to the proceedings of law. It is stated that the petitioners were enjoined to execute respective agreements for use and occupation of the plots in question and at the time of execution of agreement, the petitioners were subjected to licence fee, municipal taxes, demarcation fee and security deposit. The petitioners were, however, surprised to find the demand of the enhanced licence fee and took steps to interfere with the possession of the petitioners and being aggrieved by and dissatisfied with the impugned acts, omissions and commissions, the petitioners have come to this Writ Court Seeking reliefs on the ground that the impugned charges and/or implement for use of railway land must have quid pro quo or co-relationship with the fees collected and cost of services rendered and there being additional cost incurred by the Railways in allowing 'such use of premises over and above the charges so increased are unwarranted and uncalled for. It is stated in details that the respondents being under statutory and contractual obligations to book, carry and place wagons consignments to the petitioners' plots and their responsibility as common carrier/bailee having not to terminate till wagons are placed at the destination plot within the boundary of Railway Station, refusal and/or denial of the said statutory facilities to the petitioners and allowing the same to Some other traders either under power from superior authority or under the terms of the impugned agreement offend mandatory provisions of law inter alia Section 3(4), 27, 58, 72, 77(5) of Railways Act, Rules 123, 134 and 145 of Goods Tariff. It is further challenged that the plots in question being demarcated separate holding are not to be taxed by the Local Authorities.

3. The writ petitions are challenged by (he Railway Authorities by filing affidavit-in-opposition. It is disclosed that as per procedure prevalent at the material period,

Railway Land (Plots) were allotted by way of licence, to the parties and those were subject to revision on five yearly basis @ 6% of market value of land as may be assessed by the Local Revenue Authorities and notices to that effect were issued to all plot-holders in Chitpur Area including the petitioners. Thereafter, a meeting was held with the Senior Divisional Engineer, Sealdah on. 17th November 1980 where a resolution was passed to increase the annual valuation of land to be arrived by 10 per cent simple annual appreciation of the existing valuation and all plot holders in Chitpur including the petitioners were duly informed by noticed about the proposed increase of rate of licence fee etc. On such enhancement, the petitioner took recourse to law and an interim order was passed by the Hon'ble High Court but the petitioners stopped payment of licence fee at the old rate. It is denied that fees realized by the Railway Administration from the allotted plot holders for the siding enjoyed by them in law is levied in the form of tax under Article 269 (c) & (d) as alleged or at all. It is asserted that the Railway Administration realized licence fee from the plot holders in terms of the agreement. The Municipal Tax realized in proportionate to the plots used by the petitioners as the plots in questions are portions of the entire Railway Sidings which have been assessed for consolidated rates livable under the Calcutta Municipal Act. It is placed on record that the Railway Administration can lawfully enhance the licence fee of the Railway siding plots on the basis of the enhanced market price of the plot. The assessment at the interval of the 5 (five) years is being made in accordance with extant rule and the licence fee is imposed on the basis of the market value of land so assessed. It is further stated that the restrictions have been imposed on the ground of administrative convenience and the same are reasonable.

4. The learned Advocate appearing for the petitioner has made a lengthy argument trying to justify the locus standi of the writ petitioner and to the maintainability of the writ petition and also the various facts for effective adjudication of the matter in dispute in order to grant relief of the petitioner as prayed in support of his contention.

5. It is argued on behalf of the petitioners that there cannot be imposition of municipal rates and taxes and in fact, the Railways are collecting municipal taxes

which they are paying to the Municipal Corporation. The Railways have no liability to pay tax to Corporation. Besides, the payment of licence fee cannot be equated as terminal charges and the District Traffic Superintendent has no authority to increase the licence fee unilaterally. In support of the case of the petitioners, the attention of the court has been drawn to a fact that there must be appreciation of the theory of quid pro quo and the Railway Authorities without rendering any Services cannot ask for the enhanced licence fees in the manner as done in the present case.

6. The learned Counsel appearing for the Railway Authorities has mainly argued that no writ lies on the basis of any agreement and special facilities are being given to the petitioners inasmuch as the plots have been allotted to the petitioners wherefrom goods can be booked to and from respective plots and the agreement shows that there will be periodical increase of licence fees and in the event the petitioners are not willing to pay the same, they should vacate the plots instead of remaining in the plots without paying the licence fees. It is claimed that there must be no arbitrary enhancement of the licence fees. On the contrary, the licence fees have been increased as per direction of the Railway Board and the amount of increase has been determined by the Heads of the Department jointly. The entire proceedings have been annexed to the affidavit-in-opposition. Much emphasis has been laid to the fact that the Railway Board is authorised to increase the licence fees.

7. Having considered the materials on record in depth and considering the lengthy Submissions made on behalf of the respective parties, it appears to this Court that the petitioners are in occupation of the respective plots by virtue of separate agreements. As per the terms of agreement, the petitioners are supposed to pay licence fees. This agreement is nothing but a contract. There cannot be in law to increase the fees unilaterally unless it is provided in the agreement itself. The proposed increase of fees as made in the instant case is not warranted by the agreement and there may not be any demand on the basis of the direction of the Board as sought to be admitted by the Railway Authorities in the case of the petitioners. It is upto the Railway Authorities to initiate proper proceedings in accordance with law to determine the agreement and to ask the

petitioner/petitioners to quit and vacate. Unless, there is unequivocal offer and acceptance to conclude a contract to raise licence fees, the Railway Authorities are not entitled to demand any increase of licence fees on the basis of the direction of the Railway Board. Any act done and/or caused to have been done by the respondent Railway Authorities to demand more licence fees beyond what has been stated stipulated in the respective agreement is wholly unwarranted and uncalled for.

8. The contention of the petitioner as to make out a case of quid pro quo as to the demand of the taxes by treating as service charges is wholly misconceived and untenable in law, the respective plots are open to payment of Municipal taxes and if the same is levied in accordance with law. The petitioners are not permitted to avoid the payment of the same by filing the writ petition. All the contentions raised by the petitioners in this regard are not sustainable in law and those are accordingly negative. It is, however, made clear that any assessment of Municipal Taxes has got to be made in the manner as provided in the Statute itself and before any such assessment the petitioner/petitioner are entitled to have an opportunity to raise objection and the assessment will have to be made by complying with all the provisions as attracted in this behalf.

For the foregoing reasons, the writ petitions are allowed in part to this extent that the Railway Authorities are not entitled to increase the licence fees unless the same is arrived at by way of a bilateral contract in accordance with law. The petitioners are, however, liable to pay all Municipal Taxes to be paid to the Calcutta Municipal Corporation upon proper assessment of the same in accordance with law. The Rules are thus disposed of as indicated above. There will be no order as to costs.