

G. Phalaguna and ors. Vs. the General Manager and ors.

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Court : Kolkata

Decided On : Aug-05-2005

Reported in : (2005)3CALLT404(HC)

Judge : Jayanta Kumar Biswas, J.

Acts : Public Premises (Eviction of Unauthorised Occupants) Act, 1971; ;[Railways Act, 1989](#) - Sections 2(31), 147, 147(1) and 147(2); ;[Constitution of India](#) - Article 21

Appeal No. : W.P. No. 14515(W) of 2005

Appellant : G. Phalaguna and ors.

Respondent : The General Manager and ors.

Advocate for Def. : L.K. Gupta, Adv. for Respondent Nos. 1 to 4

Advocate for Pet/Ap. : Ashoke De and ;Md. Kalam, Advs.

Disposition : Petition dismissed

Judgement :

Jayanta Kumar Biswas, J.

1. Six persons have joined together in this writ petition seeking a mandamus directing the respondents (South Eastern Railway Authorities) not to evict the

occupants of a piece of railway land without initiating proceeding under provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

2. The petitioners claim that they are the office bearers of an association (not claimed to be registered) formed by the occupants of the land, commonly known as 'the old settlement area' within P.S. Kharagpur Town in the district of Medinipur (West). They want leave to sue in representative capacity.

3. On the admitted facts I am going to indicate presently, and for the reasons which are leading to rejection of the writ petition, I see no scope to make any order regarding the petitioners' prayer to permit them to sue in representative capacity.

4. Advocate argues that though the occupants, stated to be there from the year 1964, have no established right to occupy any part of the land concerned and reside therein, the railway authorities are not entitled or empowered to evict or remove them from any part thereof, without following the due process of law; - that is to say, without initiating appropriate proceeding under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

5. He cites to me the Apex Court decision in Bishan Das and Ors. v. State of Punjab and Ors., : [1962]2SCR69 , and two unreported single bench decisions of this Court dated November 6, 1998 given by Satya Brata Sinha, J. (as his Lordship then was) in C.O. No. 20228(W) of 1993 (Mahendra Kumar and Ors. v. Union of India and Ors.), and October 12, 2001 given by Arun Kumar Mitra, J. in CO. No. 20707(W) of 1993 (Sri Rudal Singh and Ors. v. Union of India and Ors.).

6. Advocate for the respondents says that in view of provisions of the [Railways Act, 1989](#), Section 147 [or removing the petitioners and other occupants of the area which is admittedly a railway land, there is absolutely no reason to initiate any proceeding under the 1971 Act, when the admitted position is that the petitioners and other occupants of the area have no right whatsoever to occupy any part of the land for any purpose whatsoever.

7. I find that advocate for the railway authorities is right in his submission. Section 147(2) of the [Railways Act, 1989](#) provides, 'Any person referred to in Sub-section

(1) may be removed from the railway by any railway servant or by any other person whom such railway servant may call to his aid.'

8. Any person, referred to in Sub-section (1) of Section 147 of the [Railways Act, 1989](#), is he who. '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.' The word 'railway,' as defined by Section 2(31) of the [Railways Act, 1989](#), includes, 'all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway.'

9. When provisions of Section 147(2) of the [Railways Act, 1989](#) clearly empower the railway servant to remove an unauthorized occupant of any railway land, in my view, there is absolutely no scope or reason to say that without initiating a requisite proceeding under provisions of the 1971 Act, the railway authorities are not entitled or empowered to evict or remove the petitioners and other occupants of the land or any part thereof.

10. In the Apex Court decision cited to me it was found that the occupants there were in bona fide occupation of the premises in question; and in this context it was held by their Lordships that such occupants could not be evicted by an executive fiat. The proposition explained in that case has no manner of application to the present case.

11. It seems to me that none of the two single bench decisions cited to me have also any kind of application to this case. Not only in those cases advocates for the authorities, of their own accord, informed the Court about the intention of their clients to initiate proceedings under provisions of the 1971 Act, but those decisions were also given without considering provisions of Section 147(2) of the [Railways Act, 1989](#).

12. In my view, in the face of the clear and unambiguous provisions of Section 147(2) of the [Railways Act, 1989](#), there is no scope at all to hold that without initiating necessary proceeding against all the occupants of the area under provisions of the 1971 Act, the railway authorities would not be entitled or empowered to evict or remove all or any of such unauthorised occupants.

13. By employing Article 21 of the [Constitution of India](#), as has been sought by advocate for the petitioners, neither the scope of provisions of Section 147(2) of the [Railways Act, 1989](#) can be enlarged or curtailed, nor can a fundamental right of the unauthorised occupants be canvassed and enforced. In my opinion, Courts must not encourage perpetuation of illegal activities of citizens in the name of protection of their fundamental right under Article 21.

14. For these reasons I am unable to give any relief to the petitioners. The writ petition is accordingly dismissed without any order for costs.

Copy of this Judgment and order, duly authenticated by the A.R.(C) or A.C.O., shall be supplied to advocates for the parties, on the usual undertakings.

Urgent certified xerox copy of this Judgment and order shall be supplied to the parties, if applied for.

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