

(2006) 09 CAL CK 0037

In the Calcutta High Court

Case No : MAT No. 2312 of 2002, CAN No. 8930 of 2002 and COT No. 2984 of 2006

Divisional Railway Manager, Eastern Railway

APPELLANT

Vs

Kalighat Railway Plot-holders Association and Another

RESPONDENT

Date of Decision : 21-09-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2006) 4 CHN 771 : 110 CWN 1078

Hon'ble Judges : Prabuddha Sankar Banerjee, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : R.N. Das, Asit Kumar Banerjee and P.K. Ghosh, for the Appellant; Ratnaka Banerjee and Aparajita Rao, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.—This mandamus appeal is at the instance of the Union of India and is directed against order dated 10th August, 2001 passed by a learned Single Judge of this Court by which His Lordship allowed a writ application filed by the respondents and directed the appellant, the railway authority, to issue fresh demand notice for the purpose of realisation of the licence-fees involved therein and to determine the licence-fees in terms of the circular dated August 29, 1995 being Annexure "X" to the affidavit-in-opposition subject to the condition that enhancement of the licence-fees should be made once in five years and not in every year.

2. Being dissatisfied, the railway authority has come up with the present mandamus appeal and at the same time, the writ petitioners have also filed a cross-objection alleging that the learned Single Judge ought to have held that the licence-fees could not be claimed at the enhanced rate with retrospective effect from an earlier date.

3. The facts giving rise to filling of the present mandamus-appeal may be

precised thus:

(a) Kalighat Railway Plot Holders Association and its Secretary were the writ petitioners. By Annexure "A" to the writ application, the writ petitioners have set out the details of the plots of land occupied by the members of the petitioners' association which according to them are held by them on licence under Eastern Railway. Names of 22 licensees with plot numbers were specified in Annexure "A". The licensees, according to the writ petitioners, have been using the said plots of land in connection with the business of various natures, like, dumping of stone chips, coal, cement etc. by raising structures and/or erecting stalls in the plots.

(b) The main controversy in the writ application was with regard to the increase of annual licence-fees. The writ petitioners questioned the notices, 12 in number collectively marked as Annexure "H", by which the railway authorities have demanded payment of arrear-dues in respect of the revised licence-fees with effect from April 1, 1986 up to 1996-97. The licence-fees determined for the respective years have been specified and after deducting the amount paid towards licence-fees by the respective licensees for the period from 1986-87 to 1996-97, the balance amount arrived at has been determined and consequently, claimed.

(c) By those notices, respective licensee was informed that the revision of licence-fees had been under active consideration since 1st April, 1986 at the rate of 10 per cent per annum as fixed by the railway-board which had already been intimated to the petitioners vide demand notice for the year 1995-96. According to the railway authority, since L.A. Collector had furnished the land-valuation of the area in question and the standing committee of the railway approved the same, the petitioners were required to pay the arrear-dues within the time specified therein.

(d) According to the writ petitioners, such revision of licence-fees was unjust and was liable to be set aside on the ground of violation of Article 14 of the Constitution of India. Moreover, according to the writ petitioners such revision of licence-fees with retrospective effect from a day ten years ago is totally arbitrary.

(e) In the affidavit-in-opposition filed on behalf of the appellant, it was contended that the members of the association as shown in Annexure "A" were not the authorised licensees and only those persons or concerns whose names appeared in the said list against the serial Nos. 2, 3, 6, 8, 10, 15, 19 and 22 were the authorised licensees whose licences had been renewed and the modified demand notices for payment of the enhanced rate had been served only upon those eight persons. It was, therefore, contended that other members mentioned in the list appearing as Annexure "A" to the writ-application had no locus standi to move the writ application since their licences had been cancelled in the year 1987.

(f) It was further contended in the affidavit-in-opposition that the licence-fees for

the commercial plots had been revised with retrospective effect from 1st April, 1986 as per Railway Board's circular dated August 29, 1995 by increasing 10 per cent land valuation every year and by taking 6 per cent thereof as the licence-fees per annum per cottah. As regards the land-valuation, it was asserted in the affidavit-in-opposition that the same was obtained from the Land Acquisition Collector, West Bengal and the standing committee as nominated for the purpose had approved the same and charged the enhanced rate through the demand notices issued to the 14 authorised plot-holders in the month of June, 1996.

(g) The learned Single Judge on consideration of the materials on record came to the conclusion that generally, the policy-decision taken by a State cannot be interfered with in a writ application, but according to His Lordship, if it is found that the policy can be successfully attacked on the ground of mala fide, unreasonableness, arbitrariness or unfairness, a Writ Court can set aside such policy-decision and in arriving at such conclusion. His Lordship relied upon the decision of the Supreme Court in the case of *M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others*, .

(h) Ultimately, His Lordship came to the conclusion that in the present case, the method of assessment of valuation was arbitrary, inasmuch as, where the State is a tenant, it has issued guidelines with regard to reassessment of original rent of private building hired by the Central Government and there, according to such guidelines, revision should be made after every five years. His Lordship, thus, came to the conclusion that there was no basis for enhancement of 10 per cent of the land-valuation every year in a case where the State was the landlord. His Lordship, accordingly, quashed those demand of enhancements and held that the railway authority should adopt the policy of enhancement of licence-fees not every year but at the interval of every five years.

4. As indicated earlier, being dissatisfied, the railway authority has come up with the present mandamus appeal and cross-objection has been filed by the writ petitioners claiming specific direction not to realise licence-fees with retrospective effect.

5. Mr. Das, the learned senior Advocate appearing on behalf of the appellant vehemently contended before us that in a case of this nature where the State has, after taking into consideration the various factors, made a policy-decision of increasing the licence-fees at the rate of 10 per cent per year according to the existing valuation of the land assessed by the Land Acquisition Collector and fixed 6 per cent of such valuation as the licence-fees, the same should not be interfered with by a Writ Court. Mr. Das contends that there was no mala fide intention on the part of the railway authorities in adopting the said procedure and the same is applicable to all the railway-lands where this type of licence has been granted. Mr. Das further contends that the said policy-decision cannot be said to be arbitrary merely because where the State is a tenant it has a different guidelines with regard to the reassessment of original rents of private buildings hired by the Central Government. In one of such Memoranda dated September 1,

1982, the Government of India, Directorate of Estates stated that the CPWD should on the expiry of five years from the date of original assessment or the date of issue of original order whichever is later reassess the same and after every five years, enhance the rent. According to Mr. Das, that principle cannot be applicable to the railway-property involved herein which is vacant land and which has been let out for business purpose. In other words, Mr. Das contends that the guidelines in respect of premises where the Central Government is tenant cannot be same in respect of assessment of land given by one of the department of the Government for the purpose of realisation of licence-fee for a different purpose.

6. Mr. Banerjee, the learned Advocate appearing on behalf of the writ petitioners, on the other hand, supported the order passed by the learned Single Judge and in addition, contended that there cannot be any enhancement of the licence-fees with retrospective effect and thus, prayed for clarification of the order passed by the learned Single Judge to that effect.

7. After hearing the learned Advocate for the parties and after going through the materials on record we find that in the case before us, the decision taken by the railway authority to assess valuation by fixing 6 per cent of the land-value and by enhancing the land-value at the rate of 10 per cent every year cannot be said to be arbitrary and this was not a fit case giving direction upon the railway authority to change its policy-decision by adopting a policy fixed by the Court.

8. We, however, find substance in the contention of Mr. Banerjee, the learned Advocate appearing on behalf of the respondents that in case of licence granted to different licensees even if any policy-decision is taken to enhance the licence-fees at a reasonable rate by following a settled principle, that should be given prospective in operation from the date of publication of such notification to the licensee. There is no dispute that in this case the new policy-decision was conveyed to the licensee in the year 1996 whereas the same was given effect to from a date, 10 years earlier. In our view, that is not permissible. Once the licensor expresses his intention to enhance the licence-fees, the licensee has a right to take decision whether he will retain the licence or should vacate the property. If new rate of licence-fees is not acceptable to the licensee, he is free to vacate the property; but by imposing new licence-fees at an enhanced rate from an anterior date, the licensee is deprived of that opportunity and, thus, the owner cannot enforce upon them the enhanced rate of licence-fees from an earlier date.

9. As regards the decision of the Supreme Court in the case of Ugar Sugar Ltd. (supra), relied upon by the learned Single Judge, we find that said decision rather lays down that the policy-decision take by the State should not be interfered with in the writ jurisdiction unless the said decision is tainted with malice or is arbitrary. In the case before us. we do not find any mala fide intention on the part of the railway in formulating the new policy. The railway authority is required to maintain its properties and in the process of such maintenance, if it takes a decision for steady increase of rent every year based

on valuation of the land from its licensees who would use the property for business-purpose, meaning making profit by utilising the same, such policy cannot be labelled as an arbitrary one justifying interference in the writ jurisdiction.

10. We, therefore, set aside the order passed by the learned Single Judge and approve the policy-decision taken by the railway authority subject to the condition that such decision will be effective from the date of communication of the decision to the licensee and not from an earlier point of time.

11. The mandamus appeal is, thus, allowed to the extent mentioned above. Similarly, the cross-objection filed by the respondents is also allowed to the extent indicated above, e.g. that the policy-decision of enhancement of licence-fees would be applicable prospectively and that the railway authority is free to realise the excess amount from the date of communication of the decision to the licensees, namely, June, 1996.

12. We make it clear that we have not gone into the question as to whether all the members of the writ petitioners as mentioned in Annexure-"A" to the writ application are still holding as the licensees as the said question was not decided by the learned Single Judge and such question was also not pressed before us.

13. In the facts and circumstances, there will, however, be no order as to costs.

Prabuddha Sankar Banerjee, J.

14. I agree.