

**(2024) 01 CAL CK 0071**  
**In the Calcutta High Court**  
**Case No : W.P.A. No. 27441 Of 2023**

Dulal Chandra Kundu

APPELLANT

Vs

Union Of India And Others

RESPONDENT

**Date of Decision :** 25-01-2024

**Acts Referred:**

Public Premises (Eviction of Unauthorized Occupants) Act, 1971 — Section 2(c), 2(g)

**Citation :** (2024) 01 CAL CK 0071

**Hon'ble Judges :** Sabyasachi Bhattacharyya, J

**Bench :** Division Bench

**Advocate :** Sagar Bandyopadhyay, Pourush Bandyopadhyay, Niladri Banerjee, Deepankar Thakur, Ram Chandra Agarwal, Krishna Das Poddar, Sabbyasachi De

**Final Decision :** Allowed

## Judgement

Sabyasachi Bhattacharyya, J

1. The petitioner is a septuagenarian running a book stall from the Habra Railway Station platform on and from the year 1977 under the Eastern Railway. On June 11, 2004, vide Commercial Circular No. 19 of 2004, a Book Stall Policy was promulgated by the Indian Railways under which the petitioner continued to run his stall. Subsequently, vide Commercial Circular No. 61 of 2017 date September 5, 2017, a Multi-Purpose Stall (MPS) Policy was adopted by the Railways. Clause 5 of the same stipulated the tenure of allotment of all MPS to five years at all categories of stations subject to fulfillment of mutually agreed terms and conditions. It was further mentioned that there shall be no extension and renewal of the MPS units. However, the licensee can participate in the fresh bid, if otherwise eligible.

2. Clause 11.1 stipulates that no new allotment, renewal, extension of the book stall/table as specified therein would be done by the Railways as of then and all the existing stalls/trolleys, etc., shall be allowed for conversion into MPS as per the provisions of the Policy.

3. Clause 11.3 stipulates that the existing book stalls/tables as specified therein shall be given an option to convert to MPS subject to payment of licence fee as quoted by the prospective bidder for similarly placed MPS units at the station/platform. The tenure of five years shall commence from the date of conversion of existing stall into MPS.

4. The petitioner's stall was converted and the petitioner continued to run the same. However, the licence of the petitioner ended on August 31, 2023. The petitioner deposited extended licence fee of Rs. 6631/- as per the Rules for the period of 90 days with effect from September 01, 2023 to November 29, 2023. Wishing a renewal of the licence, the petitioner expressed his agreement in that regard, for a renewal from November 30, 2023 for a period of five years till December 29, 2028.

5. However, on November 24, 2023, the Assistant Commercial Manager, on behalf of the Senior Divisional Commercial Manager, Eastern Railway, Sealdah wrote to the petitioner that as per the Railway Board's guidelines and approval of Competent Authority, 90 days' extension had been granted after completion of the five years' tenure from March 25, 2020, to June 22, 2020 due to Covid Pandemic and lastly, the MPS licence was extended till November 29, 2023. But it was reiterated that the same would expire on November 29, 2023 and the petitioner was requested to remove his belongings to vacate the MPS and close it on and from November 30, 2023. The petitioner was advised to remove the structure within seven days from the date of receipt of the letter, threatening legal action as per extant provision without further reference on the failure of the petitioner to do so.

6. The petitioner wrote on December 01, 2023 requesting the Railway Authorities to recall its letter and reiterating his offer of extension. The petitioner, being aggrieved by the Notice dated November 24, 2023, also preferred the present writ petition. The Railway Authorities, however, evicted the petitioner despite such challenge without due process of law. The petitioner seeks a status quo ante in view of the high-handed action of the Railway Authorities without following due process of law.

7. Learned counsel for the petitioner cites *State of West Bengal and others Vs Vishnunarayan & Associates (P) Ltd. and another*, reported at (2002) 4 SCC 134 for the proposition that in the absence of specific statutory provision a person cannot be evicted on the ground of public interest by force by the State without following due course of law.

8. Learned counsel for the petitioner submits that the petitioner could at best be evicted by due process of law upon initiation of proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as "the 1971 Act") but was forcibly ousted from the disputed property.

9. Learned counsel appearing for the Railway Authorities argues that unless drastic steps were taken to free the Railway platforms from encroachers, the

functioning of Railway and public interest would be frustrated. It is argued that the petitioner's stall was a temporary construction and as such did not come within the purview of the 1971 Act. In any event, it was the incumbent duty of the petitioner in terms of the licence agreement to vacate the premises upon expiry of the same. Having not done so, the Railway Authorities rightly evicted the petitioner. Learned counsel contends that sufficient notice was given to the petitioner to vacate the stall, but the petitioner paid no heed to the same.

10. It is further argued that the matter pertains to Government Policy and the court ought not to readily interfere with the same. The MPS Policy of 2017 clearly contains the provision that allotment of MPS units shall be made only for five years without there being any extension or renewal of the said units. The licensee/petitioner, it is argued, can always participate in the fresh bid, if otherwise eligible.

11. Learned counsel for the respondent no. 5, the IRCTC, echoes the contentions of the Railways.

12. The moot question for consideration is whether the Railway Authorities could forcibly evict the petitioner without following due course of law.

13. A perusal of the relevant provisions of the 1971 Act, in particular Section 2(g), shows that "unauthorized occupation" in relation to public premises has been defined to be the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined by any reason whatsoever. In the present case, the petitioner's licence tenure had expired when the authorities illegally ousted him.

14. Thus, the petitioner falls within the second limb of "unauthorized occupation" as defined in the 1971 Act. His occupation was originally by way of a grant and the petitioner continued in occupation even after expiry of the same.

15. "Premises" has been defined in Section 2(c) to mean any land or any building or part of a building, inclusive of gardens, grounds and outhouses pertaining to the same and any fittings affixed to the building or part of a building for beneficial enjoyment thereof.

16. In the present case, the annexures to the writ petition clearly show that vide communication dated February 20, 1976 by the Public Relations Office of the Eastern Railway, the petitioner was accorded permission to open a book stall at the Habra Station on the terms and conditions mentioned in the office letter dated July 29, 1975.

Importantly, it was mentioned that "the structure" of the stall should conform to the plan approved by the Deputy Superintendent, Eastern Railway, Sealdah. Thus, the petitioner's stall was not a temporary shack built in a make-shift manner but a full-fledged structure conforming to a plan approved by the Deputy

Superintendent, Eastern Railway.

17. Again, Annexure P-2 to the writ petition is a correspondence by the Eastern Railway in reference to the petitioner's application to run the stall. Clause 2 thereof stipulates that the petitioner is to furnish a proper plan of the said plot/stall indicating location of the building prepared by a competent Engineering authority as well as electrical wiring diagram for proposed light, fan, plug points, etc. to be wired up by a licensed electric contractor at the petitioner's cost (Emphasis supplied).

18. Clause 4 of the said communication spoke about the location of the switch room to be constructed with bricks at the petitioner's cost for fixing board and meter which should be indicated in the plan, provided the walls of the building are not of bricks. (Emphasis supplied)

19. A perusal of the said communication in its totality leaves no manner of doubt that the stall was described as the Railway Authorities themselves as a "building", thus, coming within the purview of Section 2(c) of the 1971 Act, which brings buildings within the fold of "premises". Hence, the argument of the Railway Authorities that the petitioner does not come within the purview of the 1971 Act is a myth and not tenable in the eye of law.

20. In such situation, the petitioner's position was, at the worst, that of an unauthorized occupant under the 1971 Act.

21. The proposition laid down in Vishnunarayan & Associates (supra) cited by the petitioner is, thus, squarely applicable as a State functionary cannot evict a person by force even on the ground of public interest. Hence, the super-structure of the argument of the Railways, citing public interest as a pretext to brutally oust the septuagenarian petitioner from his stall, running over decades, crumbles.

22. Insofar as the argument of Policy decision is concerned, the petitioner does not refute the MPS policy at all; rather, he seeks to take advantage of the same. Clause 5 stipulates the tenure to be a maximum of five years without extension or renewal but provides that the licensee can participate in the fresh bid, if otherwise eligible. In the present case, nothing has been produced by the respondents to show that they have invited any further bids to enable the petitioner to participate as a bidder, even though otherwise eligible. Without doing so, for some unintelligible reason which defies reasonableness, the respondents acted in a palpably high-handed manner, adopting a modus operandi unsuitable in civilized society, that too by a State operative, in throwing out the petitioner and sealing his stall, which he had been running since 1977 and was his only source of livelihood.

23. In the absence of any tender, the petitioner suffers from a "Dog in the manger" policy adopted by the Railway Authorities, since the petitioner can neither continue as a licensee of his stall, nor participate in a fresh tender legitimately.

24. Thus, read in proper perspective, nothing in Clause 5 of the MPS Policy of 2017 adopted by the respondents confers authority on the respondents to unlawfully oust the petitioner or any other stall holder under the said Scheme even after the expiry of his/her licence.

25. In view of the above observations, the high-handed action of the respondents in forcibly evicting the petitioner from his MPS unit does not withstand the scrutiny of judicial review.

26. The reliefs originally sought were primarily to quash the eviction notice given by the respondents to the petitioner. However, in view of subsequent action taken by the respondents, which is a continuation of the same course of events, the reliefs sought are hereby moulded to grant complete relief to the writ petitioner.

27. Accordingly, WPA No. 27441 of 2023 is allowed on contest, thereby setting aside the notice dated November 24, 2023, which is a general notice and not in consonance of the 1971 Act, and directing the respondents to immediately restore the possession of the disputed MPS unit to the petitioner, positively within a fortnight from date, by restoring the stall to its original condition as it stood on the date of ouster of the petitioner, immediately prior to such ouster.

28. The respondents, however, will be at liberty to initiate proceedings in accordance with law under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 against the petitioner but shall remain restrained from disturbing the peaceful possession and running of business of the petitioner in any manner till a valid order of eviction is obtained in law.

29. During the entire tenure of such possession of the petitioner, the petitioner shall go on paying occupation charges at the rate at which he was paying for the present, subject to enhancement by notice in writing by the respondent-authorities keeping in parity with the occupation charge of other equivalent and similarly placed MPS units on the same platform.

30. Nothing in this order shall preclude the petitioner from participating in any fresh tender, if floated by the Railway Authorities for allotting MPS units or the stalls on the platform of the said Railway Station, if the petitioner is otherwise eligible.

31. There will be no order as to costs.

32. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.