

(2004) 03 RAJ CK 0040

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1456 of 1990

Man Structurals Ltd. and Another

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 09-03-2004

Acts Referred:

Citation : (2004) 3 RCR(Civil) 408 : (2004) 2 RCR(Rent) 32 : (2004) 2 RLW 1324 : (2004) 2 WLC 736

Hon'ble Judges : Asok Parihar, J

Bench : Single Bench

Advocate : Mahendra Singh, for the Appellant; Manish Bhandari, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Parihar, J.—Since on same set of facts similar relief has been prayed for in both the writ petitions, on joint request of the counsel for the parties, both the writ petitions have been heard together and are being decided by this common order.

2. In both the writ petitions exactly same prayers have been made, which are reproduced hereasunder:-

"a) To restrain the respondents from pulling any obstruction in their egress from and the access to the gateway to the factory and stock yard through the two roads one leading from the gate to the level crossing and another leading to city through the Railway colony.

b) To declare that the two roads are public ways and that the petitioners, members of the staff and the public coming there for having business dealing with them have a right to use the same.

c) The respondents may be directed to remove any obstruction if the same are placed on the road before or after filing of the writ petition and keep the level

crossing in the same way in which the same was on or before the impugned notice dated 26th Feb. 1990 was issued by the respondents to M/s Man Industrial Corporation Ltd.

d) To declare that the action of the respondents in closing the roads for not making the payment is illegal, unauthorised and unconstitutional.

e) Any other appropriate writ, order or direction which may be considered just and proper in the facts and circumstances of the case may also be passed in favour of the petitioner."

3. The dispute appears to have arisen by a notice dated 26.2.1990 issued to M/s Man Industrial Corporation Ltd., Jaipur by respondent No. 2. The notice was issued in reference to some letter of Steel Authority of India. It had been mentioned in the notice that due to non-deposit of the dues, the use of the Railway siding provided to the said company has been stopped w.e.f. 10.11.1987. The above company had been directed to deposit a sum of Rs. 75852.70 paise within 15 days, failing which, the roads on the land of the railways shall be closed. Anticipating stoppage of use of roads existed on the land belonging to the railway, the petitioners have filed the present writ petitions with the prayers as already referred above.

4. The averments made in the writ petition has been denied by the respondents. It has been submitted that after decision of the revenue disputes the land had already been entered in the name of the railways in the revenue record. Existence of public road or path-way have been denied on the land in question. It has been submitted that earlier the road was provided to facilitate residents living in the railway colony, however, after closure and demolition of the railway colony there was no question of providing public way or road on the land belonging to the railways.

5. After having considered the submissions of learned counsel for the parties, I have carefully gone through the material on record.

6. There is no dispute that the land on which the alleged roads exist belong to the railways. The recovery notice as issued by the respondent No. 2 dated 26.2.1990 have not been and could not be challenged by the petitioners. It has also not been submitted on behalf of the petitioners that there is no other alternate way or passage for the staff and members of the petitioners. There is nothing on record even to suggest that the Railway authorities had agreed to provide free use of the roads situated on the land belonging to the Railways for the staff or members of the petitioners or even the public at large. Public authorities like the Railways always have a right to regulate the use of their land. While doing so there may be so many considerations including safety and security of the Railway properties. No interference is called for by courts in such matters. It is the total discretion of the owner of the land to allow the use of road/passage/path, however, that does not create any easementary right for the persons using such passage. Even if there is any right this court cannot decide

such issues under its writ jurisdiction moreso, when there is nothing on record to show total absence of any alternate road/path for the staff and the members of the petitioners or even public at large. It is for the railway authorities to allow traffic on the roads or passage in the interest of the public at large, however, there may be so many circumstances, considerations and exigencies for the authorities to take a decision on the same. This court cannot curtail such discretion.

7. After having considered entire facts and circumstances, I find no ground for any interference of this court in the present writ petitions. The same are dismissed accordingly as having no merit.