

(2011) 09 AP CK 0031

In the Andhra Pradesh High Court

Case No : Writ Petition No. 21509 of 2011 and 21962 of 2011

P. Ram Babu and Others

APPELLANT

Vs

Union of India and The Assistant Divisional Engineer
(Settlement), East Coast Railway, Waltair, Visakhapatnam-4

 Bomidi Lakshmi Ramana and Others Vs Union of India
and Others

RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Companies Act, 1956 — Section 3
Constitution of India, 1950 — Article 14, 21
Easements Act, 1882 — Section 52, 54, 60, 61, 62
Land Acquisition Act, 1894 — Section 17(4)
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 18(3), 2, 3,
4, 4(1)
Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 — Rule 5
Transfer of Property Act, 1882 — Section 106

Citation : (2011) 09 AP CK 0031

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : P.B. Vijay Kumar in Writ Petition No. 21509 of 2011 and Sri K.V. Subrahmanya Narusu in Writ Petition No. 21962 of 2011, for the Appellant; R.S. Murthy, SC for Railways Counsel for the Respondent Nos. 1 and 2 in Writ Petition No. 21509 of 2011 and Counsel for the Respondent Nos. 1, 2, 3 and 5 in Writ Petition No. 21962 of 2011 Sri. P. Gangarami Reddy Counsel for the Respondent No. 3 in Writ Petition No. 21509 of 2011 and Counsel for the Respondent No. 4 in Writ Petition No. 21962 of 2011, for the Respondent

Judgement

Nooty Ramamohana Rao

1. Both these writ petitions can be dealt with together and decided as they arise out of the same set of facts and also seek identical relief.

2. There are 43 petitioners in W.P. No. 21509 of 2011, while there are 12 in W.P. No. 21962 of 2011. The respondents are the same and they are Ministry of

Railways and its Officials, representing the Union of India.

3. Visakhapatnam is a prominent city on the eastern coastline of our Country having a very busy Rail Network. Indian Railways have granted licenses in favour of several persons on varying dates between 1970 - 1980 allowing each of them to occupy land of an extent of 100 square feet belonging to it, lying at the Railway Under Bridge locality nearby the Railway Station at Visakhapatnam. Necessary license deeds for temporary occupation of Railway land have been executed. Condition No. 3 of the said license deed clearly stipulated that the land can only be occupied for the purpose for which it is allotted. Condition No. 5 specifically sets out that the Government grants the temporary occupation of the land for a period of 3 years only. Condition No. 7 preserved the power to the Government, by issuing a notice at any time to the occupier of its intention, to resume possession of the land and the occupier was required to vacate the land and remove all his materials and buildings therefrom and restore the land to its original state within 30 days after the receipt of notice. Condition No. 16 has spelt out that all notices to be given on behalf of the President of India and all other actions to be taken on his behalf may be given or taken on his behalf by the DEN - Waltair of the South Eastern Railway (Divisional Engineer - Waltair). When the Assistant Divisional Engineer, Waltair, acting for D.R.M. (Engineering) of East Coast Railway, Waltair issued notice on 05-07-2011 withdrawing the temporary licenses with immediate effect and requiring the petitioners to restore the land to its original state within 30 days of receipt of the said notice, the present writ petitions are instituted.

4. Heard Dr. P.B. Vijay Kumar and Sri K. Sairam, Learned Counsel for the writ petitioners and Sri R.S. Murthy, the learned Standing Counsel for the Railways.

5. Sri P.B. Vijay Kumar, who led the arguments has contended that the petitioners or their predecessors in interest have been granted licenses for carrying on small-time business activity and they have been carrying on the authorized business activity only for the past more than three decades and they have also spent considerable amount of their savings for improving upon the land and they are all depending upon the income generated by carrying on the business in the licensed premises and without providing for an alternative site, the petitioners cannot be thrown out suddenly by the respondent authorities. The Learned Counsel would further submit that the notice of termination has been issued by the Assistant Divisional Engineer, whereas the license clearly stipulated that it is the Divisional Engineer, Waltair, who has to serve any such notice. Therefore, the notice issued by the Assistant Divisional Engineer on 05-07-2011 is issued by an incompetent agency and for this reason alone, the said order dated 05-07-2011 shall be struck down. It is also further contended that without following a fair procedure the petitioners cannot be thrown out or ejected from the licensed premises, as any such action will have an impact upon their quality of living and it would also amount to arbitrary action on the part of the respondents. In that sense, the fundamental rights, guaranteed to the petitioners

under Articles 14 and 21 of our Constitution, are violated. Further, there is a large extent of land available with the Indian Railways at Visakhapatnam, which is mostly lying unutilized and, therefore, the attempt made to eject the petitioners from the premises in question is an arbitrary and unjust act of the Railways. They ought to have found out a suitable alternative site for relocating the petitioners before seeking them to be evicted from the premises in question. It was next contended that right-behind the premises, licensed to the petitioners, there was still some more vacant land left belonging to the Railways and if the Railways genuinely need and desire the land in question for a public purpose, they could have achieved the said objective by asking the writ petitioners to occupy the available land by moving backwards from the premises in question and, instead, they were sought to be thrown out completely. The Learned Counsel would further submit that resort to the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (henceforth referred to as "the Public Premises Act"), has got to be made by the respondents and they cannot unilaterally seek to evict the petitioners.

6. Sri K. Sairam while adopting the arguments of Dr. P.B. Vijay Kumar, would further submit that the respondents have, in fact, made an attempt in the recent past to convert the leasehold into a permanent one in favour of the petitioners herein and they have also obtained their consent, but however, without pursuing the said idea to its logical conclusion, they have abandoned the said course, more, with a view to cause undue hardship to the petitioners. He would further submit that the petitioners all hail from socially and economically weaker sections of the society and they need to be extended necessary encouragement to enable them to eakout their living with honor. They should not be subjected to the present kind of hostile treatment.

7. Per contra, Sri R.S. Murthy, learned Standing Counsel, would contend that all the petitioners are not licensees in fact and only a handful of them are either the licensees or their family members. Most of these petitioners have occupied the Railway premises by entering into a commercial deal or an understanding with the original licensees. They have no right, of any manner, to continue to occupy the premises after the period of license is expired. Further, the licensed premises are lying adjoining to a very important circulation area proximately close to Visakhapatnam Railway Station. Visakhapatnam Railway Station has been expanding its activities to provide for passenger amenities to the satisfaction of the commuting public. Further, for rendering effective services, the Railways also need to expand its own offices and establishments. Therefore, a genuine desire of the Railways to put the land in question to effective utilization cannot be construed as an arbitrary or fanciful notion on their part. This apart, with the manifold increase in passenger and freight operations at Visakhapatnam Railway Station, the available circulation area is increasingly coming under severe stress. Therefore, to ease the congestion, the commercial premises sprung up on the road adjoining the circulation area need to be got cleared. Therefore, the action of the Railways is rooted in larger public interest and the attempt of the

petitioners to malign the actions of the Railways should not be tolerated. The learned Standing Counsel has also produced before me the 55 original license deeds in support of his contention that the grant made was only a limited grant.

8. In this factual back drop, the question that requires to be answered is, as to the right of the petitioners to continue to occupy the land in question, long after the period of license has expired.

9. The earliest definition in English Law of the term easement described it as a privilege that one neighbor hath of another, by writing or prescription, without profit, as a way or sink through his land, or such like. Ancient history of Hindu Law and Mohammedan Law had recorded the codified rules of easements in various ancient works. With a view to reform the Indian laws, efforts were put in and as a result of the examination by the Indian Law Commissions consisting of Sir Charles Turner, Mr. Justice West and Mr. Whitley Stokes, ultimately the Indian Easements Act, Act 5 of 1882 has been enacted to define precisely the law relating to easements and licenses. The simplest form to understand the easement is to set out that, it is merely a right annexed or appurtenant to land to utilize other land of different ownership in a particular manner or to prevent the true owner of such other land from utilizing his land in a particular manner or to do something or require something not to be done thereon. In other words, an easement is a prohibitive or restrictive right of enjoyment. For an easement to exist, there must be two tenements one the dominant and the other servant owned by two different persons. The piece of land in respect of which an easement is enjoyed is called the dominant tenement, and that over which the right is exercised is called the servant tenement. An easement is essentially a land locked right. All easements therefore lie in grant. No right of an easement can exist independently unless the same has been granted by a deed or word.

10. Thus, easement is recognized as a burden on the owner or occupier of a servant heritage. In juxtaposition, a bare license which does not allow profits arising therefrom, to be shared, confers upon the grantee no property in the land. The grantee has a mere right of possession for achieving the object or purpose of the grant. A bare license whether granted by deed or not and whether it is backed by consideration or not, is revocable.

11. Section 52 of the Indian Easements Act, defined "license" as, where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property. It is manifestly clear that every license originates in a grant made by one person in favour of another or a definite number of other persons. By implication a license cannot be granted to a fluctuating body of persons who will not be answering the expression of definite number of other persons. Most importantly, what has been granted was only to do something which would in the absence of such grant be unlawful to be done by the other persons. Equally important to notice is the fact that the person to

whom the grant is made, does not acquire any right whatsoever, including easementary right or any interest in the property. It can, therefore, be deduced that a grant, which is called license merely authorized the person or persons to whom the grant is made, a right of possession for enjoyment and hence such a right is not juridical possession but amounts to mere occupation. Possession being a legal concept, one of the most essential ingredients of it is the specification of the actual period of time granted for such occupation. Therefore, a bare license, without anything more is always revocable at the will of the licensor, since the grant itself is limited by a period of time, and the payment of license fee does not by itself create an interest in the licensed property. Consequently, mere acceptance of the license fee even for the periods subsequent to the revocation of the license would not amount to acquiescence of the possession of the licensee. It merely amounts to fictional or unreal extension of the period of license without in any manner affecting the rights of the owner from securing eviction of the person or persons to whom the grant is initially made. In law, grantor or the licensor is always liable to be treated to be in possession of the land in question all through the subsistence of the license and even beyond. Hence, it would be open to the licensor to reenter the premises and reinstate himself once the period of license granted by him expires. This power to re-enter or to reinstate himself is conditioned by not using more force than is actually necessary. As per Section 54 of the Easements Act, the grant of a license may be express or implied from the conduct of the grantor, and Section 60 of the said Act sets out the circumstances when a license can be revoked and Section 61 sets out that such a revocation can be express or even implied. Section 62 listed out nine circumstances when a license is deemed to be revoked.

12. Of them, Clause (c) clearly discloses that a license is deemed to be revoked when it has been granted for a limited period and the said period expired. Thus, it becomes evident that a license granted for a limited period is deemed to have been revoked upon expiry of the period of grant. Section 63 recognized that, where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property. What would be the reasonable time required for achieving these objectives is therefore dependent upon the facts and circumstances prevailing in each case. No hard and fast rule can be prescribed in this regard. Section 64 recognized the right of the licensee, when he was evicted without any fault of his by the grantor before he has fully enjoyed, under the license, the right which he was granted, to recover compensation from the grantor, for the breach of the grant.

13. It is also appropriate, right at this stage, to notice that the Indian Parliament to provide for eviction of unauthorized persons from the public premises, enacted the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (henceforth for brevity referred as "Public Premises Act"). The legislative history concerning this legislation has been succinctly narrated in paragraphs 6 to 9 of the Judgment rendered by the Supreme Court in *Ashoka Marketing Ltd. and another Vs. Punjab*

National Bank and others,

14. It would be appropriate to notice that the expressions "Estate Officer", "Premises" and "unauthorized occupation" have been defined in Section 2(b), 2(c) and 2(g) of the Public Premises Act in the following terms:

(2)

(b) "estate officer" means an officer appointed as such by the Central Government u/s 3;

(c) "premises" means any land or any building or part of a building and includes,
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(i) the garden, grounds and outhouses, if any, appertaining to such building or part of a building, and

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof

(g) "unauthorized occupation", in relation to any public premises, means the occupation, by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises 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 for any reason whatsoever.

Similarly, the expression "public premises" has been defined in the following terms in Section 2(e):

"public premises" means-

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction or Unauthorized Occupants) Amendments Act, 1980, under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of,-

(i) any company as defined in section 3 of the Companies Act, 1956, in which not less than fifty-one per cent, of the paid up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company.

(ii) any corporation (not being a company as company as defined in section 3 of the Companies Act, 1956 or a local authority) established by or under a Central Act and owned or controlled by the Central Government.

(iii) any University established or incorporated by any Central Act.

- (iv) any Instituted incorporated by the Institutes of Technology Act, 1961.
- (v) any Board of Trustees constituted under the Major Port Trusts Act, 1963.
- (vi) the Bhakra Management Board constituted u/s 79 of the Punjab Reorganization Act, 1966 and that Board as and when re-named as the Bhakra-Beas Management Board under sub-section (6) of section 80 of that Act.
- (vii) any State Government or the Government of any Union Territory situated in the National Capital Territory of Delhi or in any other Union Territory.
- (viii) any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924); and

Section 3 of the Public Premises Act, empowers the Central Government to appoint an Estate Officer, by way of a notification and such person is required to be a Gazetted Officer of the Government. Section 4(1) granted power to the Estate Officer, if he is of the opinion that any persons are in unauthorized occupation of any public premises and that they should be evicted, the Estate Officer shall issue, in the manner provided therein, a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made. Further, a minimum of seven days time should be accorded for responding to the show cause notice. Further, the notice must specify the date on which one is required to appear before the Estate Officer along with the evidence, which they intend to produce in support of their cause. The manner of service of notice has been provided in Sub Section (3) thereof. Section 18 of this Act, conferred power on the Central Government to make Rules for carrying out the purpose of this Act and accordingly, the Public Premises (Eviction of Unauthorized Occupants) Rules, 1971 (for short "the Public Premises Rules"), have been framed. Rule 5 thereof specifies that if the person to whom the notice was issued desires to be heard through his representative he should authorize such representative in writing and the Estate Officer shall record the summary of the evidence tendered before him. It is further set out that the summary of such evidence and any relevant documents filed by him, shall form part of the record of the proceedings. Section 5 of the Act conferred power on the Estate Officer upon considering the cause shown by the person and after considering the evidence produced by him and after personal hearing, if any, given and if the Estate Officer is satisfied that the public premises are in unauthorized occupation, the Estate Officer may pass an order of eviction. u/s 9 of the said Act, an Appeal against the order of the Estate Officer has been provided to the District Judge of the District in which the public premises are situated.

15. From a reading of the provisions of the Public Premises Act, it is clear that the licensees have no right or title or interest in the land. Their possession over the land is a mere permissible occupation. After expiry of the period of license and in the absence of it's renewal, their occupation becomes unauthorized. Holding on to the possession after the period granted expired becomes untenable, and such an occupier is liable to be evicted from the said premises.

Since the land comprises of public premises, invocation of provisions contained under s 4 and 5 of the Public Premises Act amounts to taking recourse to law only. The Public Premises Act is a special piece of legislation enacted for securing speedier eviction of unauthorized occupants from public premises. The main theme around which this enactment is woven is the protection of the larger public interest and preserving the authority and integrity of the public premises owned by or belonging to the Government. Unlike in a case of a dispute between two private parties, in which case whosoever seeks relief against the other must necessarily resort to and subject the dispute for adjudication to the ordinary jurisdiction of a Civil Court, but, where by a statutory exercise of power for securing eviction or ejection of an unauthorized occupant is conferred upon a select agency like an Estate Officer of the Railways, it is that authority who has been clothed with the necessary power to order for eviction or ejection, as could be done ordinarily by a Civil Court.

16. As a true owner of the land, Indian Railways are entitled to put the land to most productive use. No one, including the petitioners, has any right to oppose such an action. It is not for a licensee or an unauthorized occupant to determine as to how much of an extent of land or the premises should be put to use by the true owner and or to what extent the interests of the licensees can be accommodated by the true owner. A licensee or an unauthorized occupant of the premises has no such right in equity. Nor can he lay a claim for allotment of an alternative site. Similarly, as to whether the unauthorized occupant should be ejected from the premises in question immediately or not is also dependent upon the nature of the urgency involved for the true owner to reinstate himself on to the premises. A larger public interest must be sub-served in priority and preference to the private rights of individuals. No person can object a true owner putting the land to as effective a use as is conceived by the true owner. Particularly when institutions like the Indian Railways seek to undertake an expansion of existing project or seek to undertake execution of a new project for serving the larger public interest, it stands to good sense that no hindrance should be caused to such a proposal. The over run of costs all due to delay of non-availability of the essentially required land is too well known. Courts are required to be exceedingly be cautious with the over run of the project costs as they will spill over to the peril of the tax payer. Therefore, no impediment should be caused for the execution of projects undertaken by the Railways. I have, therefore, no hesitation to reject the plea of the petitioners that without making available an alternative site, the petitioners cannot be ejected from the premises once licensed to them.

17. Further, in cases of public interest and if there is a genuine urgency to take possession of land owned by private individuals, state can legitimately take recourse to the provision contained in Sub-section (4) of Section 17 of the Land Acquisition Act. Thus, a true owner can as well be dispossessed of his land, depending upon the genuine urgency of the matter, without conducting the requisite enquiry. In comparison to a true owner, where does a licensee stand in

the matter of being ejected from the land held by him under a license? Clearly a licensee cannot offer any valid or substantial objection when the public premises are required urgently for a public purpose.

18. The Learned Counsel has strenuously submitted that the notice dated 05-07-2011 has been issued by the ADE, which is contrary to Condition No. 16 of the license, which required any such notice to be served only by the DEN - Waltair Division of South Eastern Railway. A portion of the former South Eastern Railway has since been formed as East Coast Railway. There is also a change of designation of the DEN as Divisional Railway Manager (Engineering). Besides that, a mere look at the notice dated 05-07-2011 issued to the petitioners clearly discloses that the ADE (Sett) WAT signed for DRM (ENGG) E. Company Rly/ Waltair. Therefore, the decision to issue the notice is not that of the ADE, but it is that of the DRM (Engineering), which the new designation is assigned to the former DEN - Waltair. The ADE has merely signed the proceedings for and on behalf of the DRM (Engineering), Waltair. For convenience and for purpose of attending to several ministerial acts, authorizations would be granted as a matter of course in favour of the subordinate officers. The principal decision would be taken by the competent authority. That decision will either be communicated or will be given effect to or implemented under the signature of some other authority or officer, but however, the communication will clearly indicate that a particular officer is acting "for" and on behalf of the competent authority. In the instant case, the notice dated 05-07-2011 clearly bears the expression "for DRM (ENGG) E. Company Rly / Waltair". It is, therefore, more than clear to me that the ADE is merely seeking to communicate and give effect to the decision taken by the DRM (Engineering), Waltair. Hence, the contention regarding the lack of power in the hands of the ADE (Sett) is rejected.

19. Further, if the petitioners are able to demonstrate satisfactorily and successfully the damage suffered by them, all due to the breach of the license, in terms of Section 64, relief to secure damages was always available to them. Such a remedy is more than an equitable remedy.

20. The fact that, even in the absence of a renewal of the license, the petitioners have all been allowed to occupy the land in question would disclose that the Railways never intended to throw them out, without genuinely requiring the land. Therefore, the respondents have conducted in the matter fairly and reasonably. Hence, I have no hesitation to hold that the respondent Railway Authorities are not acting whimsically or arbitrarily in seeking eviction of the petitioners from the premises in question. The respondents are acting in furtherance of an objective for achieving larger public interest. The private interests of the petitioners are, therefore, liable to take a backseat to the demand of public interest. Further, if an attempt has been made in the past as to alter the nature of the occupation of the petitioners by the respondent Railways, it only speaks of the fairness of action on their part. The fact that they could not convert the occupation of the petitioners into a freehold, does not mean that the Railways are only intended to

cause hardship or harassment to the petitioners. Far from that, they might have made an attempt to convert the nature of occupation of the petitioners into a freehold if the same is otherwise permissible. When once they realize that the premises in question might be required later on for some other public purpose, their decision not to convert the occupation of the petitioners into a freehold one, cannot turn out to be an arbitrary decision on the part of the respondents.

21. I have no hesitation to reject the contention that the respondents ought to have relocated the petitioners instead of throwing them out completely. As a true owner, it is for the Indian Railways to put the land available with it to the most effective and productive use. Granting licenses for occupation of a portion of land belonging to the Railways is not a part of the job of the Ministry of Railways. They owe no such obligation towards anyone. The fact that there is some other land available right behind the premises in question also does not confer any right on the petitioners to pitch for any such adjustment or allotment or realignment. Further, the very invocation of the provisions contained in Sections 4 and 5 of the Public Premises Act, amounts to taking recourse to law for securing eviction of the petitioners herein. The Parliament contemplated such a provision considering it as a fair and reasonable procedure. It was specifically provided to secure speedier eviction of unauthorized occupants from public premises, duly avoiding the other time consuming and cumbersome procedure. The Public Premises Act, being a special and specific piece of valid legislation and action resorted to it cannot be described as arbitrary or whimsical or lacking in fairness in action. Therefore, no fundamental rights of the petitioners, much less guaranteed under Articles 14 and 21, can be said to be violated in the process.

22. Further, it is also contended that most of the petitioners are drawn from weaker sections of the society and if they are ejected from the premises in question they would be losing their right to eke out their living honorably. Ministry of Railways is not assigned the task of providing for sources of living based upon the wealth of its immovable properties. Vast extracts of lands are acquired and or possessed by Indian Railways to render them to be in readiness to undertake the task of ferrying passengers and the commercial freight from one place to another, at an affordable price. This is the primary objective of the Railways. They cannot be viewed as dispensers of State largesses for achieving all the policies enshrined in Part IV of our Constitution.

23. The learned Standing Counsel has placed reliance upon the Judgment of this Court in Regional Manager, APSRTC Vs. H.S. Sudhindra Aras, in support of his contention that no notice need be issued for terminating the license. I am afraid that the judgment cited supra does not lay down any such proposition of law. On the contrary, the learned Judge has pointed out in paras 6 and 7, the distinction between a "lease" and "license". In that context, the learned Judge, after noticing the provision contained in Section 106 of the Transfer of Property Act, has observed that the Easement Act does not provide for any separate procedure for cancellation of licenses. Therefore, the Judgment cited supra cannot be

understood as laying down the principle that no notice need be served on a licensee before the license is revoked. On the other hand, as was noticed supra, the Public Premises Act is a complete Code in itself, which provided for appropriate procedure to be adopted by the Estate Officer before seeking eviction of an unauthorized occupant of any public premises. Therefore, this procedure has got to be complied with before seeking eviction of any of the unauthorized occupants.

24. I do not find any merit in any of the other contentions canvassed on behalf of the petitioners. Hence, both the writ petitions stand disposed of, subject to the right of the respondents to take recourse to Sections 4 and 5 of the Public Premises Act for securing eviction of the petitioners. No costs.