

Judgment reserved on: 23.11.2021
Judgment delivered on: 20.01.2022

Court No. - 29

Case :- WRIT - C No. - 30869 of 2021

Petitioner :- Anoop Kumar Mishra

Respondent :- State Of U P And 8 Others

Counsel for Petitioner :- Vijay Kumar Rai, Ajit Singh, Arvind Kumar

Counsel for Respondent :- C.S.C., Gaurav Dhama, Rajnish Kumar Rai

Hon'ble Pritinker Diwaker, J.

Hon'ble Ashutosh Srivastava, J.

The writ petitioner, who claims to be a resident of village Puresoordas, Pargana Jhunsi, Tehsil Phoolpur, District Allahabad (Prayagraj) has approached this Court seeking issuance of a writ of mandamus commanding the respondents to demolish the constructions over the Plot No.752 and other plots detailed in para 7 of the writ petition totaling 13 in number and having area 13.875 hectares stated to be recorded in the name of Railways and remove the encroachment from the plots in question.

We have heard the counsels for the parties at length and have also perused the record.

The counsel for the petitioner has filed documents to establish that the plots are the properties of the Railways. The photographs brought on record depict the extent of the encroachment over the Railway land.

It is contended by the counsel for the petitioner that land belonging to the Indian Railways has been encroached upon a fact which is known to the officials of the Indian Railways and yet no action has been taken by them to remove the said encroachers.

This court perceives encroachment over the Railway land as a menace/hindrance to development which ultimately results in the average Indian citizen being deprived of better amenities and experiences. This Court is also mindful of the numerous directions and orders that the Hon'ble Apex Court has passed and in such circumstances, even though the petitioner has not instituted a PIL, this Court exercising its extraordinary powers vested in it under Article 226 of the Constitution of India treats the instant Writ-C, as a Writ PIL and proceeds to entertain the same.

The Hon'ble Apex Court in the case of ***Jagpal Singh and others Vs. State of Punjab and others, reported in 2011 (11) SCC 396*** has taken a judicial notice that since independence, in large part of the country, unscrupulous persons using muscle powers, money power and political influence have systematically encroached on public utility land. The Court has also observed that this has been done with the active connivance with

the State Authorities and local power vested interest and goondas. The Apex Court deprecated the action of the State Authorities either in allotting the public utility land in favour of a person or in permitting an encroacher to occupy such public utility land. It relied upon its earlier decision in ***M.I. Builders (P) Ltd. Vs. Radhey Shyam Sahu, 1999 (6) SCC 464***; where the Hon'ble Supreme Court ordered restoration of a park after demolition of a shopping complex constructed at the cost of over Rs.100 Crores.

The counsel for the petitioner has placed reliance on a Division Bench decision of the Patna High Court in the case of ***Deepak Kumar Vs. The State of Bihar and others***, passed in ***C.W.J.C. No. 3754 of 2009 on 27.01.2010***, wherein directions were issued to the Railways Administration to take concrete steps to free the Railway land from any kind of encroachment and if any fresh encroachment takes place shall immediately inform the police authorities/other district authorities and all authorities shall work in harmony to see that all encroachment is removed. A copy of the decision dated 27.01.2010 passed in C.W.J.C. No.3754 of 2009 has been filed as Annexure No.2 to the writ petition.

Recently, the Apex Court in ***SLP (Civil) Diary No.(s) 19714 of 2021*** arising out of final judgment and order dated 19.08.2021 passed in Writ Petition (PIL) No.222 of 2014 by the High Court of Gujrat at Ahmedabad (***Utran Se Besthan Railway Jhopadpatti Vikas Mandal Vs. Government of India and others with Diary No.(s) 23559 of 2021***) had the occasion to consider an issue regarding encroachment over land belonging to the Western Railways. The Apex Court vide its order dated 16.12.2021 while upholding the decision of the High Court rejecting the Writ PIL against the proposed action of demolition by Western Railways and considering the plea to provide suitable rehabilitation in lieu of the premises occupied by the concerned persons on the railway property has issued directions requiring the railways to issue notices to the illegal occupants/encroachers asking them to vacate the respective premises and on failure of such occupants to vacate, initiate appropriate action to forcibly dispossess them by taking assistance of the local administration and police force. The essence of the directions are that the railway land must be prevented from being encroached upon.

This Court is saddened by the attitude of indifference adopted by the officials of the Indian Railways, some of whom are under a direct mandate to keep encroachments under check. There is a special enactment which enables the Railways to protect its property i.e. its statutory and public trust obligation. It was open to the concerned authority to invoke the provisions of the special enactment including the Public Premises Act. For

that, the Estate Officers should have moved into action in right earnest at the earliest opportunity. Even that option is not being invoked for reasons best known to the authorities. Besides, the Railways maintains a Railway Police Force whose services could be utilized to safeguard the railway property wherever it is situated. The Court has been apprised that the railways has issued the Indian Railways Works Manual. Chapter VIII of the IRWM deals with acquisition, management and disposal of land. Clause 813 deals with the verification of land boundaries. Clause 813(b) of the IRWM casts a duty on every Section Engineer to prevent or remove any encroachment that might have taken place. Further, Clause 813 (d) provides that the Section Engineer is also required to maintain a land boundaries verification register where details of encroachments are to be entered and the register itself is to be verified and countersigned by an Assistant Engineer. Clause 814 of the IRWM lays down elaborate procedure for removal of encroachments. The Clauses 813 and 814 of the IRWM are being reproduced here under:-

"813 Verification of Land Boundaries

a) *Vide Para 1048 of the Indian Railway Code for the Engg. Deptt. (1993 Edition) every Zonal. Railway Administration is responsible for the demarcation and periodical verification of the boundaries and maintenance of proper records in connection with land in the possession of that Railway.*

b) *The Section Engineer (Works/P.Way) is responsible for maintaining railway land without any encroachments or development of easement rights. He should endeavour to prevent and remove encroachments, as and when they arise and where removal of encroachment is possible without referring to PPE act. In case where he is not able to remove them, he should report the cases to the Assistant Engineer, who will on receipt of such reports take immediate measures to remove the encroachments. Particular care is required to prevent encroachment on railway land situated above tunnels and below bridges especially Road over/Under bridges.*

c) *The Section Engineer (Works/P.Way) shall inspect and maintain the Railway land boundaries between stations and at unimportant stations. The Section Engineer (Works) shall inspect and maintain the land boundaries at important stations and staff colonies.*

d) *Maintenance of land boundaries verification Register-*

Railways should maintain printed registers on the lines of Bridge Registers as at Annexure 8.1 (a) & (b) in the attached format showing "Details of Encroachments" and "Details of the Missing Boundary Stones" and action taken thereon. The entries in the register should be certified by the Section Engineer/(Works/P.Way) of the respective sections and verified/inspected by the Asstt. Engineer./DEN/Sr.DEN or other higher officers from time to time. The registers should have adequate pages so that record of inspection and verification of land boundaries for a period of 15 years can be accommodated in the register. Separate registers should be maintained for each Section Engineer (Works/P.Way)'s jurisdiction.

A certificate on the following proforma should be given by the Section Engineer once a year which is to be verified and countersigned by AEN with regard to correct demarcation of land boundaries.

Certificate for Land Boundaries verification is given below:

LAND BOUNDARIES VERIFICATION CERTIFICATE

Year-----Section-----Kms. -----to-----PWI/IOW
 ----- Sub Division----- Division ----- I,-----
 PWI/IOW certify that I have inspected the railway land fencings and boundary stones on my section during the year ending ----- and that they are in accordance with certified the/land plans. There have been no encroachments except at the following kilometerages that have been reported upon vide reference given against each.

DETAILS OF ENCROACHMENTS.

Date of Inspection	Location	Description of encroachments	Action taken	Referen ce	Initials of Inspection officers	Remar ks
1	2	3	4	5	6	7

I further certify that wire fencing and/or boundary stones are available at all locations except at the Kilometerages shown below for which action to replace the same is indicated against each location.

DETAILS OF MISSING BOUNDARY STONES

Date of Inspection	Location	Description of encroachments	Action taken	Initials of Inspection officers	Remarks
1	2	3	4	5	6

1. I certify that railway boundaries are demarcated correctly and that there are no encroachments, except those listed above.

2. Certified that land plans pertaining to the above mentioned PWI/IOW -----are available with him except the following.

Asstt. Engineer/

DE./Sr.DEN/

Chief Engineer/General

e) During his inspections, the Assistant Engineer should ensure that Railway boundaries are demarcated correctly and that there are no encroachments. In cases where he cannot prevail on the parties to remove the encroachments, he must report the facts with particulars to the Divisional Engineer who will take up the matter with local authorities.

814 Removal of Encroachments -a) New encroachments shall be got removed promptly under provisions of section 147 of Railway Act 1989. For old encroachments where party is not amenable to persuasion for removal of such encroachments, action should be taken under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act 1971. Encroachment of railway land by railway staff also constitutes grave misconduct on their part and is 'good and sufficient reason' for imposition of major penalty after following the procedure laid down in the Discipline and Appeal Rules.

b) When an encroachment is in the process of building up, it should be removed then and there.

c) Where the encroachments are of a temporary nature in the shape of jhuggies, jhopries and squatters and where it may be difficult to take action under PPE Act the same may be got removed in consultation and with the assistance of local civil authorities.

d) Every year, at the close of financial year, detailed survey of encroachments must be made under the following categories :-

i) CATEGORY-A Encroachments by outsiders removal of which requires action under Public Premises Eviction (PPE) Act.

ii) CATEGORY- B) Encroachments by outsiders which do not require action under PPE Act (e.g. temporary occupation of land by hawkers, using Railway land for cattle, cow dung, refuse etc.)

iii) CATEGORY- C) Encroachment by Railway staff in the form of temporary huts etc.

iv) CATEGORY-D) Encroachment by Railway staff who have been allotted railway accommodation, by way of additions to the structures, unauthorised use of land for cultivation etc.

Note: Category "A" encroachment is of the hard type and Category "B", "C" & "D" encroachments are of the soft types.

e) The Section Engineer (Works) should maintain details of encroachments in a register showing their incidence and removal with necessary details as given in Annexure 8.2 (Encroachment Inspection Register).

One page of this register shall be allotted to each encroachment. A scale plan of the encroachment shall be provided on the facing side.

Once a case is opened the entries should not be discontinued unless and until the encroachment is removed. A note to that effect should be made in the register. The frequency of inspection of encroachment shall be at least once in 3 months.

Section Engineer (Works) shall give a certificate in the following proforma, once in three months, which shall be verified and countersigned by the AEN.

"I.....Section Engineer (Works) certify that I have inspected the Railway land in my section during the quarter endingand there have been no encroachments except at the locations shown in this register, that have been reported upon vide references given against each."

sd/-

Section Engineer (Works)

AEN should submit every month the summary of the status of removal of encroachments to the Divisional Engineer.

Monthly progress regarding additions and removal of encroachments, filing eviction cases and their progress in court of Estate Officer, in Civil Courts etc. should be submitted by Divisions to Head Quarter.

Encroachment plans to scale shall be made for every encroachment. These encroachment plans along with details of encroachment as per Annexure 8.2 should be checked and signed by Section Engineer (Works)/AEN. Records of such encroachment plans should be kept in the Divisional office and these encroachment plans should be handed over and taken over by Section Engineer (Works)/AENs at the time of change of charge.

A copy of encroachment plan should be available with Section Engineer (Works) / AEN/DEN/Sr.DEN. Any encroachment added or removed should be reflected in the encroachment plan.

A copy of encroachment plan should be handed over by the AEN to SMs/RPF inspectors (where Section Engineer (Works) is not

headquartered).

814 (f) Steps to control the unauthorised use of Railway land.

Following further steps should be adopted to control the unauthorised use of railway land:-

(a) For any addition/alteration of a pucca structure, written sanction of the Divisional Engineer should be necessary. Any structure in which cement is used may be classified as pucca structure.

(b) For alteration /addition of any temporary structure, written sanction of AEN should be necessary.

(c) Plans for commercial plots at various stations should be approved jointly by Divl. Engineering and Commercial Officers and at site demarcation of the plots should be done with rail posts by Engineering Deptt. Whenever any commercial plot is licensed the Commercial Department should give a copy of the allotment letter to the Engineering Deptt. so that Section Engineer (Works) can ensure against any unauthorised use. The station Master should also have a copy of the approved plan of commercial plots at the situation. Station staff, including Commercial staff posted in Goods Sheds should firstly ensure that commercial plots are not misused and secondly, in case of any misuse and/or encroachment should immediately report it to the Engineering Deptt. for eviction and other action that may be necessary. This will also apply to the cases of any licensing for shops, tehbazari etc. in the circulating area and goods shed premises.

(d) To prevent imminent encroachments on vacant railway land, planting of suitable trees/ shurbs including quick growing thorny trees like Prosopis Juliflora (Vilayati Babul) should be adopted.

(e) Eviction process shall include interactions:-

(i) Identification of the existing encroachments.

(ii) Ensuring that all the cases under the PPE Act have been filed.

(iii) Estate Officers should expedite finalisation of the cases pending with them.

(iv) Action for possession in accordance with the extant orders where eviction orders are received.

(v) Mobilisation of help of Civil Authorities by formal/informal requests at different levels till the required assistance is forthcoming.

(vi) Cases directed to the courts to be pursued for early finalisation with the help of the Railway Advocates."

From the above, it is more than apparent that the railways administration has miserably failed in its duty to prevent encroachment over its land. We under the circumstances deem it fit to issue the following directions:-

- i) The railways authorities shall immediately issue notice to the occupants of the railways land asking them to vacate the land within three weeks of the notice being served on them.
- ii) If the occupants/encroachers fail to vacate the land despite notice having been served, it shall be open to the railway authorities to initiate appropriate action to forcibly dispossess such occupants/encroachers and demolish or remove the unauthorized structures raised by them by taking assistance of the local police force. The Superintendent/Commissioner of Police of the concerned

area is expected to ensure that adequate police force is deployed on the site and surrounding areas including protection to the officials/staff engaged in the demolition of the illegal structures and eviction process.

iii) The railways administration is expected to initiate civil/criminal action against the encroachers/unauthorized occupants on the railways properties at the earliest once it is brought to the notice of the concerned official of the railways.

iv) The Railways Administration as also the local administration and the State Government is expected to initiate appropriate action against the erring persons, including the officials of the concerned establishment for allowing and tolerating such encroachment and for not taking corrective action for removal of the encroachment at the right time.

v) The Railways Administration is also expected to initiate an enquiry to check the veracity of the land boundaries verification register so maintained and if everything is found to be in order, to ascertain as to why no steps were taken to remove the encroachments. The railway administration shall also ensure that no new encroachments are made on the areas that are being cleared by way of the order passed by this Court and ensure that any and every encroachment is duly reported in the land boundaries verification register and the requisite follow up action is taken at the earliest.

We hope and trust that the above directions would go a long way in ensuring that no similar case is instituted and the menace of railway land being encroached is finally put to rest.

With the aforesaid directions, the writ petition is **disposed of**.

Order Date :- 20.01.2022

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