

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Sandip Kumar De

MAT 1294 of 2025

Alok Chakraborty and others
Vs.
Union of India and others

For the appellants : Mr. Partha Sarathi Bhattacharya, Snr. Adv.,
Mr. Shahan Shah,
Ms. Iqra Rahaman

For the respondent
nos.1 to 6, 10, 11 & 13 : Mr. Debajyoti Deb,
Mr. Debashish Basak
:

Heard on : 03.09.2026

Judgment on : 03.09.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal assails an order passed by the writ court whereby the appellants' writ petition, challenging an eviction notice issued by the railway authorities, was dismissed.
2. Learned senior counsel appearing for the appellants argues that on two earlier occasions, the appellants had moved writ petitions against similar notices. In the first instance, the notice was stayed and the

railway authorities were directed to consider the representation of the appellants. Subsequently, the appellants, who represent the hawkers in a railway property at Chandanpur, were given a hearing, upon which an order was passed against them, which was again assailed before the writ court. The second writ petition culminated in an order whereby the railway authorities were directed to give another opportunity of hearing to the appellants and to pass a reasoned order.

3. Pursuant thereto, the respondent authorities passed a speaking order on October 17, 2023, wherein it was categorically observed that the appellants could not submit authentic documents for doing their business on premises of the railway land at Chandanpur Railway Station areas. It was further observed that the Railway authority had not given permission to the appellants for registration of the cooperative society named Chandanpur Bazar Railway Premises Shopper Cooperative Society Limited (the present appellant no.2).
4. Without permission of the Railway, it was observed, the Government of West Bengal had no right to issue the registration certificate for business on railway premises at Chandanpur Railway station areas for those petitioners.
5. Thereafter, on August 01, 2025, an eviction cum show cause notice was issued by the railway authorities, which was assailed before the learned Single Judge.
6. Learned senior counsel for the appellants argues that, although couched as a show cause notice, the impugned notice dated August 01, 2025 did not give any opportunity of hearing to the appellants but

directed the members of the appellants society to peacefully remove all their structures, allegedly unauthorized, from railway land outright, failing which an eviction programme was scheduled on August 18, 2025.

7. Learned senior counsel argues that by dint of the said notice, all norms of natural justice have been squarely violated.
8. Learned senior counsel next argues that the procedure as enumerated in Sections 4 and 5 of the West Bengal Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short, "the 1971 Act") are mandatorily to be adhered to before evicting the members of the appellants. However, no steps were taken under the said statute by the Railway authorities, thereby vitiating the impugned notice.
9. Learned senior counsel argues that although Section 147 of the Railways Act, 1989 (for short, "the 1989 Act") may authorize the Railway authorities to remove trespassers, the appellants cannot be labelled as rank trespassers.
10. In support of such contention, learned senior counsel places reliance on a communication dated February 21, 2006 by the Divisional Engineer (ARBN)/Howrah to the Chief Promoter of the Chandanpur Bazar Railway Premises Shoppers' Cooperative Society Ltd. (appellant no.2 herein) to the effect that the Railway authorities requested the appellants to submit proper documents regarding the formation of the registered cooperative society to the Railway authorities. It was admitted in the said document that the same was issued in connection with an application made by the appellants proposing to

do business on spareable railway land on cooperative basis in the vicinity of Chandanpur Railway Station.

11. Thus, by asking for proper documents regarding the formation of a registered cooperative society, in principle, the Railway authorities had acceded to the request of formation of a cooperative society and doing business on the railway premises, subject only to such registration. It is submitted that such registration was subsequently obtained and, as such, the members of the appellants are lawful occupiers of the railway property concerned.
12. Learned counsel appearing for the railway authorities places reliance on a judgment dated July 22, 2024 passed by a learned Single Judge of this Court in WPA 18248 of 2024 where, under similar circumstances, it was held that under Section 147 of the Railways Act, 1989, the Railway authorities are permitted to remove trespassers/encroachers from railway property even without taking resort to the 1971 Act.
13. Learned counsel further argues that the said judgment was challenged before a Division Bench which, vide judgment dated August 21, 2024, upheld the decision of the learned Single Judge and dismissed the appeal. The matter went up to the Hon'ble Supreme Court which, by its order dated March 28, 2025, also affirmed the orders passed by the learned Single Judge as well as the Division Bench, holding that the Bench did not see any illegality in the eviction order issued by the Railway authorities for removing the

encroachment from their land, including the shops run by the petitioner-society or its members therein.

14. Learned counsel appearing for the Railway authorities also cites the judgment of another learned Single Judge of this Court, reported at *2006 (2) Cal LJ 193 (G. Phalaguna vs. General Manager)*, where it was categorically observed that in the face of the clear and unambiguous provisions of Section 147(2) of the 1989 Act, there is no scope at all to hold that without initiating necessary proceeding against all the occupants of the area under provisions of the 1971 Act, the Railway authorities would not be entitled or empowered to evict or remove all or any of such unauthorized occupants. It was further observed that by employing Article 21 of the Constitution of India, as had been sought to be done by the petitioners therein, neither the scope of the provisions of Section 147(2) of 1989 Act can be enlarged or curtailed, nor can a fundamental right of the unauthorized occupants be canvassed and enforced.
15. Learned counsel next relies on the judgment of *Subrata Ghosh vs. Union of India and others*, rendered by a learned Single Judge of this Court as well, reported at *2019 (2) CHN 62*, where the self-same principle was reiterated.
16. It is further contended by the Railway authorities that the communication dated February 21, 2006 was merely an insistence by the railway authorities for documents regarding registration of the appellant no.2-cooperative society to be produced by the appellants

for the purpose of processing the application of the appellants for doing business.

17. It is further submitted that from a communication dated January 09, 2007 issued by the Assistant Registrar of Cooperative Societies, Hooghly to the Divisional Railway Manager, Howrah Division, Eastern Railway, it would be evident that the Assistant Registrar of Cooperative Societies requested the Railway authorities to issue a 'no objection' certificate for running/using necessary land to the appellant no. 2 society after registration, thereby admitting that the same was required prior to such registration from the end of the Assistant Registrar, Cooperative Societies, Hooghly.
18. It is submitted that no such permission or 'no objection' was ever issued by the Railway authorities, thereby invalidating the registration of the cooperative society granted to the appellants.
19. It is further submitted that the principles of natural justice have to be seen in proper perspective. In the present case, ample opportunity of hearing was given to the appellants on an earlier occasion, which culminated in the speaking order dated October 17, 2023, whereby all claims of rights of the appellants to the railway property were turned down. It is further argued that although a writ petition was preferred against the said speaking order, no interim order of stay was passed in connection therewith.
20. Thus, it is argued that the impugned notice was rightly sustained by the learned Single Judge.

21. On a perusal of the ratio laid down in *Subrata Ghosh (supra)* as well as *G. Phalaguna (supra)*, it is found that this Court has repeatedly interpreted Section 147 of the 1989 Act and construed the same to override the provisions of the 1971 Act in respect of railway properties.
22. The order of the learned Single Judge in WPA 18248 of 2024 was also affirmed by a Division Bench and ultimately by the Hon'ble Apex Court, the latter having found that there was no illegality in the eviction order issued by the Railway authorities for removing the encroachment from their land, including shops run by the petitioner-society therein or its members.
23. Section 147 of the 1989 Act is set out hereinbelow:

“147. Trespass and refusal to desist from trespass.—

(1) If any person enters upon or into any part of a railway without lawful authority, or having lawfully entered upon or into such part misuses such property or refuses to leave, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such punishment shall not be less than a fine of five hundred rupees.

(2) Any person referred to in sub-section (1) may be removed from the railway by any railway servant or by any other person whom such railway servant may call to his aid.”

24. Sub-section (2) thereof, in no uncertain terms, provides that any person referred to in sub-section (1) may be removed from the railway

by any railway servant or by any other person who such railway servant may call to his aid.

25. Section 2(31) of the 1989 Act defines “railway” to mean a railway, or any portion of a railway, for the public carriage of passengers or goods and includes all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway etc.
26. In the present case, it is an admitted position that the subject land belongs to the railway authorities, thus coming within the purview of the expression “railway” as used in Section 147(2) of the 1989 Act.
27. Thus, Section 147 squarely applies to the instant case.
28. As noted above, sub-section (2) of Section 147 relates the power of removal of the railway authorities to persons referred to in sub-section (1). Sub-section (1), in turn, includes any person who, having lawfully entered upon or into any part of a railway property, refuses to leave.
29. Whereas sub-section (1), in respect of such persons, provides for monetary penalty and imprisonment, sub-section (2), on the other hand, gives the additional power to the Railway authorities to remove such persons from the railway land. Section 147(2) does not contain any statutory prerequisite even to issue a notice before doing so.
30. However, even if we construe sub-section (2) of Section 147 to include a right of hearing, the said chapter has already been exhausted in respect of the appellants in the present case. In the earlier round of litigation, the initial eviction notice was set aside, which culminated in a subsequent order deciding the representation of the appellants.

However, since the said decision was unreasoned, the appellants had moved the writ court again, which directed a reasoned/speaking order to be passed upon hearing the representation of the writ petitioners/appellants, pursuant to which a speaking order was passed.

31. By such speaking order dated October 17, 2023, all claims of right to the subject property made by the appellants were categorically turned down by the Railway authorities.
32. Even if a challenge has been preferred thereto, till date, there is neither any stay order nor any order setting aside the same.
33. Even independently, we do not find that any document indicating any iota of right, title and interest of the appellants or their members to possess the railway property has been produced by the appellants, either before the writ court or before this Court.
34. The communication of the Railway authorities dated February 21, 2006 was only a request, that too, on the application of the appellants to do business on railway property, for submission of “proper documents” regarding formation of a registered cooperative society “for taking necessary action” at the end of the railways.
35. Hence, there was no assurance contained in the letter that even if such a registration was done or documents in that regard produced, a right would be conferred automatically on the appellants to possess the railway property. Such insistence of the Railway authorities on production of documents regarding formation of registered cooperative society would only be the first step for the appellants to cross the

threshold of consideration of their request for doing business on the railway property. *Per se*, such request was not any sort of assurance to the appellants that their application for carrying on business on railway property would be granted.

36. Even otherwise, as rightly submitted by learned counsel for the Railway authorities, the Assistant Registrar of Cooperative Societies, Hooghly categorically admitted by his letter dated January 09, 2007 that a 'no objection' certificate was mandatorily required from the Railways for registering a cooperative society on railway property. There is nothing on record to indicate that any such 'no objection' certificate was ever issued by the Railway authorities; yet the cooperative society was granted registration. Such exercise itself was vitiated, being in contravention of law and existing norms.
37. That apart, mere formation of a cooperative society does not automatically confer a right on such society to possess railway property in any manner whatsoever, without any tacit or express consent on the part of the Railway authorities, which is completely missing in the present case.
38. The principle of *audi alteram partem*, which is an integral part of natural justice, when applicable to administrative action, is also to be subjected to the test of prejudice. In the present case, by the speaking order dated October 17, 2023, the Railway authorities had already come to a reasoned conclusion, upon giving ample opportunity of hearing to the appellants, to the effect that the

appellants have no right of possession of the railway property-in-question.

39. Thus, it does not lie in the mouth of the appellants that infinite number of opportunities of hearing have to be given to them, in which regard a conclusive decision has already been taken by the Railway authorities upon giving such opportunity to the appellants.
40. Thus, even if a right of hearing could otherwise have been carved out in Section 147(2) of the 1989 Act, such exercise has already been exhausted in the present case.
41. In such view of the matter, the law is well-settled that not even any notice is required for evicting trespassers/unlawful occupants from railway premises and such action can be taken by the Railway authorities through any railway servant or by any other person who such railway servant may call to his aid, without taking resort to the provisions of the 1971 Act.
42. Accordingly, we find that the learned Single Judge was justified in dismissing the writ petition of the appellants, whereby the eviction notice dated August 01, 2025, directing all encroachers to vacate peacefully by removing their unauthorized structures with belongings from railway land within a particular period, was assailed.
43. Although the expression “eviction cum show cause notice” was used to caption the said notice, the phrase “show cause notice” in the said caption was a surplusage, the notice merely being one to make aware the encroachers that they would be removed from the said property

within the purview of Section 147(2) of the 1989 Act. Thus, we do not find any illegality in the impugned order.

44. Accordingly, MAT 1294 of 2025 is dismissed on contest, thereby affirming the impugned judgment and order dated August 08, 2025 passed in WPA 18067 of 2025.
45. However, keeping in view the plight of the appellants and their members, who have been vending their fares from the concerned railway property since long, we grant further time of 90 days from this date to the appellant no.2 and its members to vacate the concerned railway premises.
46. In the event the appellants and their members do not so vacate, it will be open to the Railway authorities to take appropriate steps for their removal.
47. There will be no order as to costs.
48. Urgent Photostat certified copies of this judgment and order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Sandip Kumar De, J.)