

Lala Ram (D) by L.Rs. and Others Vs Union of India (UOI) and Another

Court: Supreme Court of India

Date of Decision: Jan. 24, 2013

Acts Referred: Constitution of India, 1950 " Article 38, 39

Citation: (2013) 2 AD 591 : (2013) AIRSCW 885 : (2013) 2 ALD 141 : (2013) 2 AWC 1800 : (2013) 1 CGBCLJ 248 : (2013) 2 JT 297 : (2013) 2 RCR(Civil) 73 : (2013) 1 SCALE 740 : (2013) 1 Supreme 540 : (2013) 3 WLN 10

Hon'ble Judges: V. Gopala gowda, J; Balbir Singh Chauhan, J

Bench: Division Bench

Advocate: Altaf Ahmad, P.H. Parekh, Anil Makhija, Lalit Chauhan, Pallavi Sharma and Faisal Sherwani, for Parekh and Co, for the Appellant; Chandra Bhusan Prasad, Vikas Bansal and Shreekant N. Terdal, Anil Katiyar, for the Respondent

Final Decision: Allowed

Judgement

B.S. Chauhan, J.

These appeals have been preferred against the impugned judgment and order dated 13.8.2001, passed by the High

Court of Delhi at New Delhi in Writ Petition Nos. 349, 2812-2814 and 2822 of 1989 by way of which, the High Court dismissed the said writ

petitions challenging the notice dated 25.5.1987, issued by the Divisional Railway Manager, Northern Railway, calling upon the Appellants to pay

the licence fee for the railway property in their use, at the enhanced rate, and also letter dated 29.7.1987, terminating licences to operate the shops

in question and to vacate the premises for failing to deposit outstanding dues on account of non-payment of licence fee.

2. Facts and circumstances giving rise to these appeals are that:

Each of the Appellants is a licensee of the shops in dispute admeasuring 4.22 sq. yards upto 100 sq. yards situated at Qutub Road, Sadar Bazar,

Delhi which have been in their occupation since pre-independence. As per the Appellants, there has been previous litigation in respect of this very

land and the same became evacuee property under the Administration of Evacuee Property Act, 1950 and was taken over by the Custodian. The

Appellants, being licensees of the shops, have regularly been paying the license fee to the Railways, at rates which were mutually agreed upon and

have also been increased in the past. In 1977, the said licence fee was increased to Rs. 21 per sq. yards per annum, while earlier, it was fixed at

only Rs. 18 per sq. yards per annum. The Appellants received a notice dated 7.8.1980 from the Respondents-Railways Authorities, about

increase in the licence fee from Rs. 21 per sq. yards to Rs. 270 per sq. yards per annum. Representations made by the Appellants' association

were considered by the Hon'ble Railway Minister and order dated 26.9.1980 was passed, staying the auction thereof, with a further direction to

examine their grievances. The Hon'ble Railway Minister further considered the representation of the Appellants' Association and observed that the

auction of the said shops was not reasonable. He also stated that the revision in license fee was excessive and expressed his opinion with respect

to reconsidering the whole case and increasing the license fee by 5% to 10%. The Railway Administration, after considering the case of the

Appellants, again passed an order dated 25.5.1987 to enhance the license fee @ Rs. 270 per sq. yards with retrospective effect from 1.11.1980.

The Appellants' Association had been making representations since receiving the aforementioned notice for enhancement dated 25.5.1987, and

ultimately filed writ petitions before the High Court which have been dismissed. Hence, these appeals.

3. Shri Altaf Ahmed, learned Senior counsel appearing for the Appellants has submitted that once the enhanced license fee had been disapproved

by the Hon'ble Railway Minister and the matter was reconsidered in light of the observation made by the Hon'ble Minister stating that the said

enhancement was excessive and that the license fee could be enhanced by 5% to 10%, the notice impugned was unreasonable and arbitrary.

The Ministry of Urban Development issued guidelines dated 14.1.1992 as how the license fee could periodically be revised. Therein, it was

provided that the standard license fee should be determined as per the provisions of the Rent Control Act applicable to a State. In the instant case,

the Delhi Rent Control Act is applicable, and therefore, the standard license fee as provided therein ought to have been calculated. The Delhi Rent

Control Act was amended in 1963, making it applicable to the premises belonging to the Government as well.

The Respondents have filed an affidavit before this Court on 5.9.2002, giving a particular mode of calculation and even if the same is applied, the

enhanced license fee would not be enhanced to this extent, and the High Court has erred in not deciding any issue raised by the Appellants and in

dismissing the writ petitions in a cursory manner. Thus, the said appeals deserve to be allowed. Being a welfare state, it is the duty of the State to

provide shops at nominal license fee.

4. Per contra, Shri Chandra Bhushan Prasad, Learned Counsel appearing for the Respondents, has submitted that the Appellants have been

enjoying the said property at nominal license fee. The property is situated in a very busy market of old Delhi. The area of the shops varies from

4.22 sq. yards to 100 sq. yards. Therefore, considering the geographical situation of the shops, alongwith the other facilities provided to the

Appellants, such enhanced license fee is, in fact, nominal. The High Court has rightly dismissed their writ petitions and no interference is called for.

5. We have considered the rival submissions made by Learned Counsel for the parties and perused the record.

6. The High Court has taken judicial notice of the facts and surrounding circumstances, considered the geographical situation of the suit properties

and held as under:

For a similarly situated shop if it was owned by a private persons, the rental/licence fee would have been much more. The mere fact that the

Railway is a State Enterprise does not mean that.... on the premises in occupation of the Petitioner and other persons. State enterprise must not

look elsewhere for funds. It must generate funds through the activities which are undertaken by it for providing services to the public at large. It

cannot be expected to run in deficit..... Since the action of the first Respondent is reasonable, we decline to interfere with the aforesaid

enhancement.

7. We are of the considered opinion that no fault can be found with the aforesaid observations and no interference is required. The enhanced

license fee cannot be held to be unreasonable or arbitrary, and as warranting any interference by a court of equity.

8. Undoubtedly, the enhanced license fee being 13 times, the earlier license fee amount seems excessive, and such an observation was also made

by the Hon"ble Railway Minister in order dated 11.4.1981, but the enhanced license fee would be illusory if the same is compared with the

prevailing license fee in the said market as applicable to private shops. A welfare state must serve larger public interest. ""Salus Populi Suprema

lex"", means that the welfare of the people is the supreme law. A state instrumentality must serve the society as a whole, and must not grant

unwarranted favour(s) to a particular class of people without any justification, at the cost of others. However, in order to serve larger public

interest, the State instrumentality must be able to generate its own resources, as it cannot serve such higher purpose while in deficit. Merely

because the Appellants have been occupying the suit premises for a prolonged period of time, they cannot claim any special privilege. In the

absence of any proof of violation of their rights, such concession cannot be granted to them.

Welfare State means:

9. A welfare state denotes a concept of government, in which the State plays a key role in the protection and promotion of the economic and

social well-being of all of its citizens, which may include equitable distribution of wealth and equal opportunities and public responsibilities for all

those, who are unable to avail for themselves, minimal provisions for a decent life. It refers to ""Greatest good of greatest number and the benefit of

all and the happiness of all"". It is important that public weal be the commitment of the State, where the state is a welfare state. A welfare state is

under an obligation to prepare plans and devise beneficial schemes for the good of the common people. Thus, the fundamental feature of a Welfare

state is social insurance. Anti-poverty programmes and a system of personal taxation are examples of certain aspects of a Welfare state. A

Welfare state provides State sponsored aid for individuals from the cradle to the grave. However, a welfare state faces basic problems as regards

what should be the desirable level of provision of such welfare services by the state, for the reason that equitable provision of resources to finance

services over and above the contributions of direct beneficiaries would cause difficulties. A welfare state is one, which seeks to ensure maximum

happiness of maximum number of people living within its territory. A welfare state must attempt to provide all facilities for decent living, particularly

to the poor, the weak, the old and the disabled i.e. to all those, who admittedly belong to the weaker sections of society. Articles 38 and 39 of the

Constitution of India provide that the State must strive to promote the welfare of the people of the state by protecting all their economic, social and

political rights. These rights may cover, means of livelihood, health and the general well-being of all sections of people in society, specially those of

the young, the old, the women and the relatively weaker sections of the society. These groups generally require special protection measures in

almost every set up. The happiness of the people is the ultimate aim of a welfare state, and a welfare state would not qualify as one, unless it strives

to achieve the same. (See also: 293652 ; 293377 and 294937

10. The High Court has observed that the letter/notice dated 7.8.1980, enhancing the rate of license fee remains unchallenged, and therefore, the

application of notice dated 25.5.1987, with retrospective effect is justified. This finding is not factually correct.

Notice dated 7.8.1980, enhancing the license fee was received by the Appellants, and representations were filed by them through their

Association, raising all their grievances to the effect that during a period of 30 years, the license fee paid by them had been enhanced about 15 to

20 times, without any justification and hence, they demanded justice. The same were considered by the then Railway Minister, and orders dated

26.9.1980 and 11.4.1981 were passed by him, observing that the license fee may be revised after every 5 years on the basis of justice and equity.

Certain interim relief was also granted. Thus, in view of the above, we are of the opinion that the aforesaid demands should not have been made to

apply with retrospective effect from the year 7-8-1980.

In view of the above, the appeals succeed and are allowed partly, to the extent that notice dated 25.5.1987 must not be applied retrospectively,

i.e., w.e.f. 7-8-1980. However, the enhanced license fee may be recovered from the Appellants from the said date in accordance with law.

With these observations, the appeals stand disposed of. Interim order passed earlier stands vacated.

CA Nos. 268-279, 263-266 & 248-262 of 2003

The abovesaid Civil Appeals stand disposed of in terms of the judgment passed in Civil Appeal Nos. 243-247 of 2003.