

39 DT 18.10.2023

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA

M. A. No. 22/2023/EZ
IN
O.A. No. 06/2016/EZ

In the matter of:
Subhas Datta

..... Applicant
-Versus-

State of West Bengal and Others

... Respondents

Affidavit-in-reply on behalf of the Respondent No.3 to the counter
Affidavit of the Respondent No.4, the District Magistrate, Howrah.

INDEX

Sl. No.	Particulars	Page Nos.
1.	Affidavit in reply of the Respondent No.3 Against the counter Affidavit of the respondent No. 4.	1- 9
2.	Annexure R-4	10
3.	Annexure R-5	11
4.	Annexure R-6	12 - 24

Filed by:

Santosh K. Pandey
Santosh Kumar Pandey
Advocate

Calcutta High Court
Mob No. 9433182985



18 OCT 2023

AFFIDAVIT-IN-REPLY ON BEHALF OF THE RESPONDENT No.3
TO THE COUNTERAFFIDAVIT OF THE RESPONDENT NO.4, THE
DISTRICT MAGISTRATE, HOWRAH.

I, Rewti Raman Roy son of Shri Ram BrikshPrasad, aged about
49 years, by faith-Hindu, by occupation- Railway Service, working for
gain at Principal Chief Engineer's Office, South Eastern Railway, Head
Quarters, 11, Garden Reach Road, Kolkata - 700 043 do hereby
solemnly affirm and say as follows :

1. I am Deputy Chief Engineer/Station Development & Works in
South Eastern Railway, Head Quarters, Kolkata. The Respondent No.
3 has been served a copy of the counter affidavit filed in M. A. No.
22/2023/EZ IN O.A. No. 06/2016/EZ affirmed on 10.10.2023 by the
District Magistrate/Howrah (hereinafter referred to as "the said
affidavit"). I am competent and have been duly authorized to affirm
this affidavit on behalf of the respondent No. 3.

2. I have thoroughly read the said affidavit and have understood
the meaning, purport and scope thereof. Save what are the matters of
the record and will substantiate therefrom I deny and dispute each
and every allegation made in the said affidavit as the same is set out
herein and denied and disputed in seriatim.



Rewti Raman

18 OCT 2023

3. With reference to paragraphs 1 to 4 of the said affidavit, read with Annexure R-1 and R-2 thereto, save what are the matters of the record I deny and dispute each and every allegation made in the said paragraphs 1 to 4 of the said affidavit.

4. With reference to clauses (i), (ii) and (iii), Sub-paragraphs a, b, c and d of Paragraph 5 of the said affidavit read with Annexures R-3 and R-4 thereto, Save what are the matters of the record, I deny and dispute each and every allegation made in the said clauses (i), (ii) and (iii), sub paragraphs a, b, c and d of paragraph 5 of the said affidavit.

It is denied and disputed that the KMDA authority has prepared any DPR (Detailed Project Report) as alleged in the said affidavit as no approved copy of the said DPR has been delivered to the Railway Authorities on behalf of the Respondent No.3 till date. It is further denied and disputed that the works on waste stabilization Pond (WSP), Sewerage Treatment Plant (STP) and Garland Drain could not started due to lack of grant of permission and waiver of land lease and Way Leave charges from the Railway Authorities. I say that by the final order dated 04.07.2022 passed by the Hon'ble National Green Tribunal, Special Bench, the original Application No.06/2016/EZ was disposed of by directing as follows:



Shyam Narayan Pandey

18 OCT 2023

- (a) Municipal corporation Howrah may take steps in the light of observations in para 10 above to set up necessary STP along with Garland Drain within four months to prevent discharge of untreated sewage into the lake by incurring cost from its own sources initially and sorting out its claim against the Railways separately.
- (b) Cost of STP may be first borne by the State and its claim in respect to monetary liability of the Railway may be sorted out separately at appropriate forum in accordance with law.
- (c) The Railway may provide land for the purpose of setting up of STP subject to the property remaining the Railway property without prejudice to its claim for user charges for the said land.
- (d) Railways may take steps to remove encroachment within three months from the periphery of the lake to the extent of area falling in its jurisdiction in accordance with law.
- (e) The District Administration may provide necessary assistance for such eviction as per law. If any dispute arises in this regard, it will be open to the concerned parties to remedy the same at appropriate forum in accordance with law.

Railway in its counter affidavit affirmed on 22.09.2023 has clearly

stated that it had requested the Concerned State authorities to depute Officers for Joint Inspection and demarcation of land for the purpose



Shyam Narayan Pandey

18 OCT 2023

of construction of WSP, STP and Garland drain around Santragachi Jheel. Further, Railway requested the Respondent No.4, the District Magistrate/Howrah for providing necessary assistance for removal of encroachments around the Santragachi Jheel. But no step was taken by the said concerned State authorities for removal of encroachments. I say that the Respondent No.4 and other Concerned Respondent authorities cannot modify the Order dated 04.07.2022 passed by the Hon'ble National Green Tribunal, Special Bench.

I say that the Railway by its letter dated 07.10.2023 in reply to the letter dated 06.10.2023 of the Department of Urban Development and Municipal Affairs, the Respondent No. 2 herein, fixed a Joint Site Inspection on 10.10.2023 at 1 PM and further stated therein that after Joint Inspection detailed sketch plan duly signed by all representatives will be processed by the Railway by issuing NOC for construction of waste stabilization pond.

A copy of the said letter dated 07.10.2023 is annexed hereto and marked as R-4.

I strongly object to the statement made in Clause (ii) and subparagraph (b) of paragraph 5 of this said affidavit. Wherein, on behalf of the Respondent No.2 this has been alleged that encroachments along the banks of water body would not be any hindrance to the execution of the said projects. I say that the encroachers around



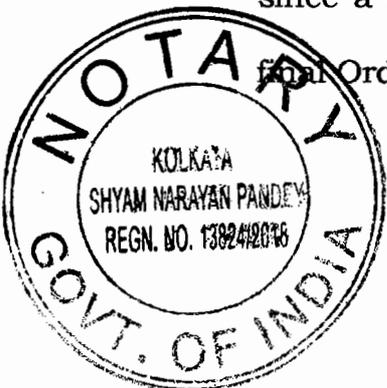
Shyam Narayan Pandey

18 OCT 2023

Santragachi Jheel are mostly polluting the lake by discharging their sewerage in the lake and their numbers are gradually increasing. I further say that the allegations made in Clause-C of paragraph 5 of the said affidavit are not bonafide. I say that the Respondent No. 2 has not taken honest step in inviting tender for construction of the said Projects. It is surprising that the KMDA on behalf of the Respondent No.2 had invited tender for construction of the said projects without ascertaining the requirement of the land for construction of the said projects. I with respect to Clause-(d) of paragraph 5 for the said affidavit say that the Respondent authorities being the Respondent Nos.2, 4 and 5 cannot modify the final Order dated 04.07.2022 passed by the Hon'ble National Green Tribunal Special Bench and any resolution taken in variation of the said Order dated 04.07.2022 of the Hon'ble National Green Tribunal Special Bench would be null and void.

(5) With reference to paragraph 6 and its sub-paragraphs a, b, and c and Clauses (i) and (ii) of the said Affidavit read with R-5 & R-6 thereto, I deny and dispute each and every allegation made in said paragraph. I say that the Santragachi Jheel has not been cleaned since a long time. Moreover, it has not been cleaned after the said

final Order dated 04.07.2022.



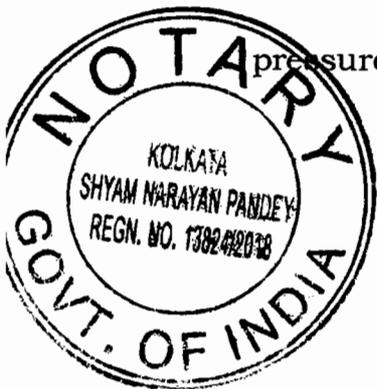
Shyam Narayan Pandey

18 OCT 2023

(6) With reference to paragraph 7 and its sub-paragraphs a, b, c, d and e and its Clauses (i), (ii) and (iii) of the said affidavit, I say that in terms of the request of the district administration and Police authorities for providing sufficient advance notice before fixing any date for removal of encroachments preferably after Durga Puja, Kali Puja and Diwali, the Railway by its letter dated 09.10.2023 to the District Magistrate/Howrah being the Respondent No.4 hereinfixed and informed the date on 20.11.2023 at 11.00 hrs. for eviction drive of the encroachers from the Railway lands besides Santragachi Jheel. A copy of the said letter is annexed hereto and marked as annexure – R-5

Save as aforesaid I deny all other allegations made in said paragraph 7 of the said affidavit.

(7) With reference to paragraphs 8, 9 and 10 of the said affidavit read with Annexures R-7 thereto, I deny and dispute each and every allegation made in the said paragraph. I say that Annexure R-7 being the Pendrive has not been supplied to the Railway. I further say that the Respondent No.4 is deliberately trying to modify the Order dated 04.07.2022 by not taking proper and sufficient steps for eviction of unauthorised encroachers beside the Santragachi Jheel under the pressure from superior.



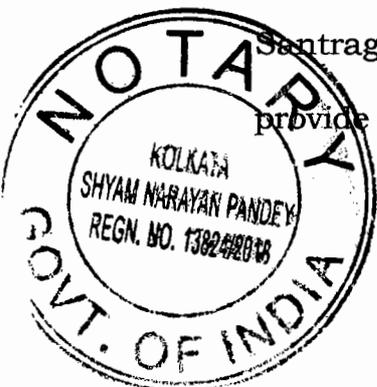
Shyam Narayan Pandey

18 OCT 2023

It is denied and disputed that the encroachers polluting the water body of a smaller area. I further say that eviction of unauthorised encroachers has been ordered by the Special Bench of the Hon'ble National Green Bench Tribunal of its Order dated 04.07.2022 and the said order cannot be modified except by an order of the Apex Court passed in Appeal if any. Save as aforesaid I deny and dispute all other allegations made in the said paragraphs 8, 9 and 10 of the said affidavit.

(8) In the facts and circumstances stated above, I submit that the Concerned Respondent No.2 be directed to provide the sketch and area of the land required for construction of the said projects and after the measurement of the required area of land is provided to the Railway, The Railway will assess its charges for use of land as provided in master circular on policy for Management of Railway land dated 04.10.2022. A copy whereof is annexed hereto and marked as annexure R- 6.

(9) I further submit that the respondent No.4 be directed to consider the letter dated 09.10.2023 for providing assistance on 20.11.2023 at 11.00 hrs. for eviction of unauthorized encroachers besides Santragachi Jheel and in the event of any change of the said date to provide a convenient date to the Railway for the said purpose.



Shyam Narayan Pandey

18 OCT 2023

(10) The statements made in Paragraphs 1 to 7 of the forgoing affidavit are based on record which I verily believe to be true and correct and those made in paragraphs 8 and 9 thereof are my humble submissions before this Hon'ble Tribunal.

Prepared in my office.

Santosh K. Pandey
Advocate

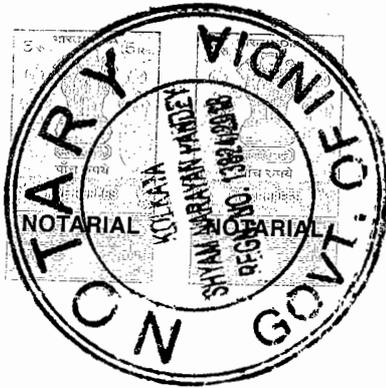
Sanjay Kumar

DEPONENT

Identified by me

Santosh K. Pandey
Advocate

En. No. WB/753/2008



Solemnly Affirm & Declare
Before Me on Identification
of Ld. Advocate

Shyam Narayan Pandey

SHYAM NARAYAN PANDEY
NOTARY, GOVT. OF INDIA
REGN. NO. 13824/2018

18.10.2023

18 OCT 2023



साकेत कुमार, आई आई एम ई
वरिष्ठ मंडल अभियंता (पूर्व)

SAKET KUMAR, IRSE
Sr.Divisional Engineer (East)

खड़गपुर मंडल

दक्षिण पूर्व रेलवे

खड़गपुर - 721301

Kharagpur Division

South Eastern Railway

Kharagpur - 721301

Tele : BSNL 03222-259250, Fax-03222-259250

Rly : 080-62226, Fax : 62226

Contact No. : +91 9002081202

E mail : srdeneastkpg@gmail.com

क्रमांक : W/L-CELL/SRC-JHEEL/23/45

दिनांक : 07.10.2023

To
The Senior Special Secretary,
Department of Urban Development and Municipal Affairs,
Govt. of West Bengal

Sub: NOC for Construction of Waste Stabilization Pond at the Santragachi Jheel in compliance with the order passed by honorable NGT.

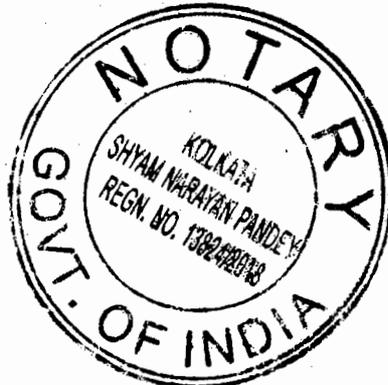
In compliance with the order passed by Hon'ble NGT in M.A. 22/2023/EZ in O.A. No. 06/2016/EZ (Subhas Dutta-Vs- State of West Bengal &Ors), proposal for issuing NOC for construction of Waste Stabilization Pond at Santragachi Jheel in the Railway Land has been received. To finalize the detailed location and identify the exact dimension of land required for which NOC is being sought by state government, a joint site inspection has been planned on 10.10.2023 at 13-00 hrs between the representatives of Railway and State government.

You are requested to send your representative for the joint inspection on 10.10.2023 at 13-00 hrs at Santragachi for joint site visit with Railway. From Railway side Mr.Pulak Roy (Assistant Divisional Engineer/Santragachi - Mob 9002081219) will co-ordinate for joint survey.

After joint inspection detail sketch duly signed by all representatives will be processed for issuing NOC for construction of Waste Stabilization Pond. For any query in this regard you may kindly contact with undersigned (Saket Kumar-Sr.DEN/E/KGP, Email- srdeneastkpg@gmail.com Mob 9002081202).


Sr. Divl. Engineer/East
S E. Railway, Kharagpur.

Copy to: PS to DRM KGP for kind information please.



No. W/L. Cell/SRC - Jheel

To
The District Magistrate
New Collectorate Building
7, Rishi Bankim Chandra Road
Howrah, PIN - 711101

Sub: Removal of all unauthorised encroachments from the Railway Lands besides Santragachi Jheel for proper preservation of the Santragachi Jheel as per the Order of The Hon'ble National Green Tribunal.

Ref: (i) Minutes of Joint Inspection and Meeting was held on 03.10.2023 at your conference hall at Howrah.
(ii) Hon'ble The National Green Tribunal, Eastern Zone Bench's Order dated 24.08.2023 passed in Misc. No. 22/2023/EZ in connection with the Special Bench's final order dated 04.07.2022 passed in Original Application No 06/2016/EZ.
Sri Subhas Datta VS State of West Bengal & Others

In pursuance to the Minutes of Joint Inspection & Meeting dated 03.10.2023 in your conference hall at Howrah and the Hon'ble The National Green Tribunal, Eastern Bench's Order dated 24.08.2023 passed in Misc. No. 22/2023/EZ in connection with the Special Bench's Final Order dated 04.07.2022 passed in Original Application No. 06/2016/EZ, it is intimate to your kind notice that the eviction of all unauthorised encroachments besides the Santragachi Jheel is ultimate necessity for following up all the directions of the Hon'ble Tribunal as well as preservation of ecological balance of the Santragachi Jheel and its surrounding area properly.

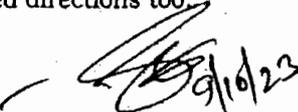
Since long, Railway authorities are trying to evict those encroachers & all the necessary proceedings from Railway authorities have already been completed, but the same could not been materialized and/or executed due to non-availabilities of the Local Police assistance for maintaining the Law & Order situations under norms.

That as per resolutions taken in the Minutes of Joint Inspection & Meeting dated 03.10.2023 under ref. (i) above, one Eviction Drive from this end is fixed on **20th November, 2023 at 11.00 hrs.** i.e. after completion of upcoming festive season such as Durga Puja, Laxmi Puja & Kali Puja.

However, if you are not agreed to such eviction drive dated 20th November 2023, may kindly fix another suitable date of eviction from your end and kindly intimate to the undersigned for next course of action from this end please.

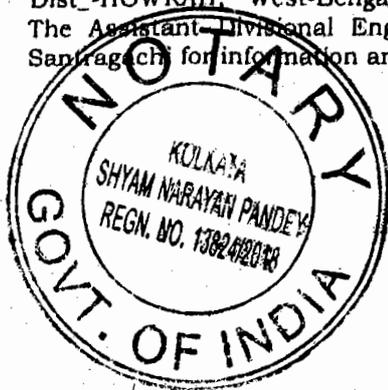
In view of the above, you are requested to kindly look into the matter and extend your kind co-operation by your concerned department to provide sufficient local police assistance to get vacate the said railway lands in question for proper preservation of ecological balance of the Santragachi Jheel as well as to maintain the Hon'ble NGT's valued directions too.

Thanking you.


Divl. Rly. Manager (Engg)
S. E. Railway Kharagpur

Copy to

- (i) The OS (G) of DRM/KGP for kind information of DRM.
- (ii) The CE (G)/GRC for kind information & necessary action please.
- (iii) Dy. CE/SD/GRC for information & necessary action please.
- (iv) The Commissioner, Howrah Municipal Corporation, 4, Mahatma Gandhi Road, Howrah - 711101 for kind information please.
- (v) The Deputy Commissioner of Police (South), The Great way-SRC, P.O-Santragachi, Dist -HOWRAH, West-Bengal-711302 for kind information please.
- (vi) The Assistant Divisional Engineer, Santragachi and Sr. Section Engineer (Works), Santragachi for information and immediate necessary action.



Divl. Rly. Manager (Engg)
S. E. Railway Kharagpur

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
RAILWAY BOARD)

No.2021/LML/25/5

New Delhi, Dated 04.10.2022

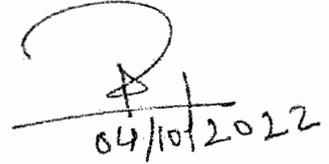
The General Managers,
All Zonal Railways & Production Units.

Sub: Master Circular on 'Policy for Management of Railway Land'.

To enable integrated development of infrastructure aligned with PM Gati Shakti framework and to attract more cargo to rail, the extant policies for leasing, licensing and Right of Way (ROW) of railway land have been simplified. The detailed guidelines on 'Policy for Management of Railway Land' superseding all previous policies/guidelines/instructions on the subject of lease / license/Way Leave (Right of Way) are enclosed as **Annexure**.

This issues with the approval of Board (MI, MO&BD, MT&RS, MF and CRB&CEO).

DA: As above.



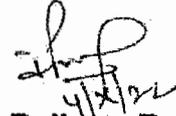
(Pankaj Tyagi)
Executive Director/Land & Amenities
Railway Board

No. 2021/LML/25/5

New Delhi, dated 04.10.2022

Copy forwarded for information to:

1. The Principal Financial Advisor (PFA), All Indian Railways.
2. The Principal Director of Audit, All Indian Railways.
3. The Deputy Comptroller & Auditor General of India (Railways), Room No. 224, Rail Bhawan, New Delhi.



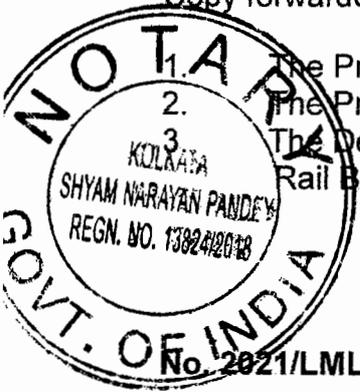
for Member (Finance), Railway Board

No. 2021/LML/25/5

New Delhi, dated 04.10.2022

Copy for kind information to:

1. Advisor(MR), EDPG(MR), EDPG/MoSR(D), PS/MoSR(D), OSD(MR), OSD/Co-ordination(MR).
2. Chairman & CEO, Member (O&BD), Member (Finance), Member (Infra.), Member (T&RS), DG(RPF), and Secretary Railway Board, New Delhi.



3. AM (Traffic), AM(C), AM/L&A, AM/Works, Adv. (Vig.), EDF(X), EDTC(Rates), EDTT(M), EDTT(S), EDTT(F), ED(Plg.) EDT(PPP), EDV(T), EDF(C), DTT(Coord), OSD/Chairman &CEO, OSD/Member (O&BD), Co-Chairman/TMIR, Chairman and Convener/AGE and DTC(R)/ Railway Board, New Delhi.
4. Director General, RDSO, Manak Nagar, Lucknow.
5. Director General, National Academy of Indian Railways, Vadodara.
6. Managing Director, CRIS, Chanakyapuri, Near National Rail Museum, New Delhi.
7. Managing Director, DFCCIL, Pragati Maidan, New Delhi.
8. The Principal Chief Engineers, All Zonal Railways.

[Handwritten signature]
4/1/20

[Handwritten signature]
4/1/20



Policy for Management of Railway Land

(Leasing/ Licensing/Way Leave Facilities on Railway land)

1 Introduction

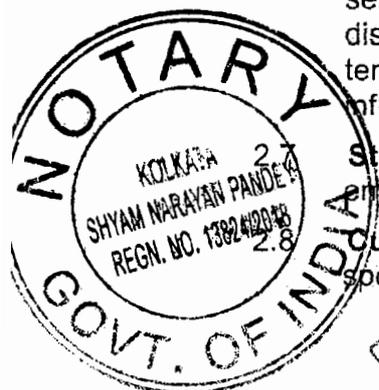
- 1.1 To enable integrated development of infrastructure aligned with PM Gati Shakti framework and to attract more cargo to rail, the extant policy for leasing, licensing and Right of Way (ROW) of railway land has been simplified.
- 1.2 The policy shall be applicable to land on which Railway has any right, title or interest.
- 1.3 This policy shall be applicable for grant of lease/license/way leave permissions for all the cases under consideration, new cases and renewal of cases.
- 1.4 This policy shall supersede all previous policies/ guidelines/ instructions on the subject of lease / license/Way Leave (Right of Way).

2 Permitted uses of railway land under this policy:

- 2.1 **General:** All activities connected with railway working and activities which will promote Railway's cargo service shall be permitted.
- 2.2 **Cargo Terminals:** Cargo Terminals shall be permitted in accordance with the extant Gati Shakti Cargo Terminal Policy issued by Ministry of Railways vide letter no. 2021/TC(FM)/18/23 dated 15.12.2021 as amended from time to time.
- 2.3 **Cargo related facilities:** All activities which use railways as a mode of transport for at least one direction of movement, e.g. warehouses, storage facilities, silos, tanks, conveyer belt, decanting facilities, and other enabling facilities for cargo like rail/road weigh bridges, truck parking, etc. shall be permitted.
- 2.4 **Passenger facilities:** Railway land shall be permitted for passenger facilities as per the policies issued by Railway Board from time to time.
- 2.5 **Renewable Energy and other Activities required for railway's :** Sewage Treatment Plants (STPs), Water Recycling Plants (WRPs)/Water Treatment Plants, Renewable Energy any other such facility, etc. shall be permitted
- 2.6 **Infrastructure for public service utilities:** Infrastructure for all public service utilities viz. electricity, gas, water supply, telecom cable, sewage disposal, drains, optical fiber cables (OFC), pipelines, roads, flyovers, bus terminals, regional rail transport, urban transport and any other such infrastructure shall be permitted.

Staff amenities: Legacy scheme like Grow More Food Scheme to Railway employees to prevent encroachment of railway land shall be permitted.

Cultural, Social and Sports Activities: Activities for cultural, social and sports will be permitted for short term period not exceeding four months.



[Handwritten signature]
4/12/22

[Handwritten signature]
4/12/22

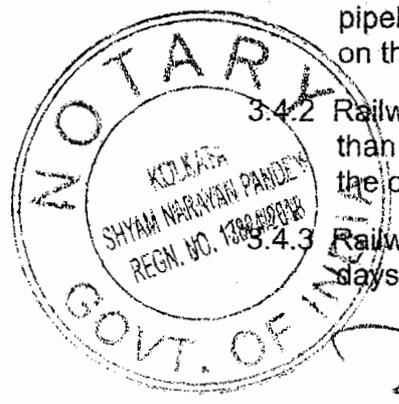
- 2.9 **Government Bodies/Department:** Railway land shall be permitted for infrastructure activities of Government Bodies/Department for their own use.
- 2.10 **Social Infrastructure:** Hospitals selected through a transparent policy and Kendriya Vidyalaya through Kendriya Vidyalaya sangathan.
- 2.11 **Land entrusted to RLDA:** Commercial development of surplus railway land entrusted to RLDA, in accordance with the Rules of RLDA, and the policies of the Ministry of Railway, shall be permitted.
- 2.12 **Rail Tel Corporation of India (RCIL):** For towers and other telecom infrastructure as per arrangement between Ministry of Railway and RCIL.

3 Application & Approval Process:

- 3.1 Transparent methods of competitive bidding as per instructions issued from time to time shall be followed for allocating land to new cargo related projects/facilities and renewable energy, water treatment, water recycling, sewage treatment plants, etc. for exclusive use of the railways. For critical infrastructure/public service utilities projects, railway land and right of way permission shall be accorded on the specific requirement of concerned Ministries/Department/agencies.
- 3.2 IR has developed an online approval system i.e. IR-LSPS (Indian Railways Lease License Processing System) for granting leasing/licensing of railway land. Similarly, IR has developed IR-RBCS (Indian Railways- Rail Bhoomi Crossing seva), an on line system, for way leave permissions on railway land. Application for grant of land leasing/licensing and way leave permissions shall be submitted on respective online portals only. Approval in all cases shall be granted online.
- 3.3 **Competent authority:** Divisional Rail Manager(DRM) shall be the competent authority to allot railway land on lease/license, way leave permissions, and subsequent renewal of lease/license/way leave agreements. For renewal cases, aspects like regular maintenance of assets connected with railway working, adherence to the commitments made in the lease/ license agreement, payment of dues on time etc. shall be examined.

3.4 Time frame for approval:

- 3.4.1 Railway shall ensure to accord permission for way leave for public utilities like electricity cables, telecom cables, optic fibre cables and water/sewage pipelines upto diameter of 300 mm within 15 days from date of registration on the online portal
- 3.4.2 Railway shall ensure to accord permission for way leave for activities other than stipulated under para 3.4.1, within 60 days from date of registration on the online portal.
- 3.4.3 Railway shall ensure to accord grant of land lease/license of cases within 90 days from date of registration on the online portal.



41/12/22

4/12/22

4 Market value of land

4.1 Market Value of railway land (MVL) shall be the prevalent circle rate/ready reckoner rate / guidance value of the railway land at the time of execution of the lease agreement, if available, otherwise prevalent circle rate/ready reckoner rate/ guidance value of surrounding land for similar classifications/activities shall be considered. For example, if surrounding land is classified as industrial use, then industrial rate shall be used.

Note: In case the notified circle rates of the current year is not available then last available circle rates/ ready reckoner rate/guidance value as notified by revenue authority or as decided by District Revenue Authorities shall be considered.

4.2 For cargo terminals, industrial rates, if specified in that State shall be considered. If not specified, then any other rate depending upon use of surrounding land as specified by State/ Revenue office shall only be considered.

4.3 In case of cargo terminals, if logistics industry is given a special status and discount is given in a state, then railways shall also give same discount in that state.

5 General Conditions:

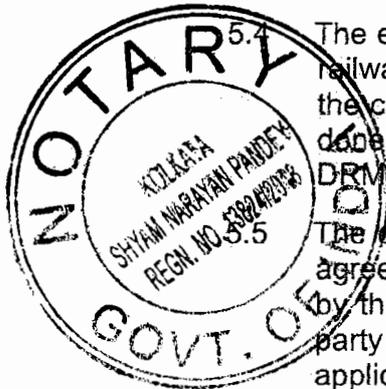
5.1 Cargo related activities can be taken up by any entity including railways, PSUs, existing container terminal operators, new container terminal operators, multi-modal logistics operators, industries, ports, mines and any other entity interested in carrying cargo on railway network.

5.2 Land ownership will continue to remain with Railways. No sub-lease/sub-license/ mortgage/transfer/relinquishment of railway land shall be permitted under this policy.

5.3 The lease/license of railway land shall not be granted to religious and political institutions, private individuals/entities (not connected with railway working) for setting up shops, commercial offices, vending stalls, clinics, schools (other than Kendriya vidyalaya) and tehbazari.

5.4 The execution of work for providing way leave facilities/ permission to cross railway track in railway area shall normally be done by the party except for the cases affecting safety of railway track for which execution work may be done by railway administration. The execution scheme shall be approved by DRM in all cases.

The cost on account of stamp duty charges, documentation, registration of agreements, GST, property taxes etc., as the case may be, shall be borne by the party for the facility permitted by the railway under this policy. The party shall be responsible for registration of agreement in terms of applicable laws.



[Handwritten signature]
4/11/22

[Handwritten signature]
4/11/22

6 **Tenure and Charges of grant of lease/license and way leave permissions:**

Tenure and rates for lease/license of railway land are detailed in Schedule 1, for way leave permissions (ROW) in Schedule 2 and for Metro/other Rail Systems in Schedule 3.

7 **Agreement:**

7.1 Before giving actual possession of the land or permission to start the work, lease/license/way leave agreement shall be executed between the Senior Divisional Engineer (authorised representative) of concerned railway division and the party seeking such rights without any exception.

7.2 Model Standard lease/license/way leave agreement will be issued by Railway Board.

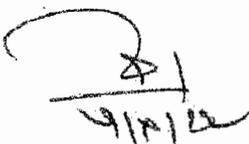
7.3 Records of all lease/license/way leave agreements shall be maintained by railway and will be uploaded on online portal of IR-LSPS & IR-RBCS. Original copy of executed lease/license agreements shall be kept with division with one copy of agreement to be maintained in zonal headquarters.

7.4 **Renewal of Lease/License/Way leave agreement:** On expiry of lease/license/way leave agreement, further renewal upto 35 years or for period as stipulated in the agreement can be done based on mutual agreement between railway and party. Market value of the land prevalent at the time of renewal shall be considered for deciding the lease/ license/way leave charges.

7.5 **Migration of existing lease/licenses/way leave permissions:**

7.5.1 Existing lease/license holders of Terminals/ Private Sidings/ Private Freight Terminals (PFTs): All entities currently using railway land for cargo activities will continue to be governed by railway's extant policies, i.e. annual lease/license charges @ 6% of MVL with annual escalation of 7% for the remaining lease/license period or 35 years or period as mutually decided whichever is earlier. The existing entities shall be given option to migrate to the new policy regime on transparent competitive bidding process as applicable for new cargo terminals provided there are no outstanding dues. In such cases, the right of first refusal shall be with the existing licensee/ lessee. For Terminals/Private Sidings/PFTs dedicated to one customer and where competition is not possible or existing entities who do not want to avail the option as above, the annual lease charges shall remain unchanged i.e. annual lease/license charges @ 6% of MVL with annual escalation of 7 %

7.5.2 Existing users of way leave: All existing way leave facility users shall be able to migrate to this policy regime only after expiry of period of existing way leave agreement and payment of all dues.







8. Dispute Resolution:

In case of any dispute arising in interpretation of the policy, land rates, land area, etc., a standing committee of three JAS/SG officers of Engineering, Finance and user department of concerned railway division shall examine all the issues and submit recommendations to the DRM whose decision shall be final and binding on all the parties.

9. Termination of Agreement:

In the event of any serious irregularity, grave breach of the terms & conditions of the agreement, any default, violation of the Railway Act, 1989, commission of any unlawful act which is not in line with good industry practices, railway administration may terminate the lease/license/ way leave agreement subject to the provisions in the agreement.

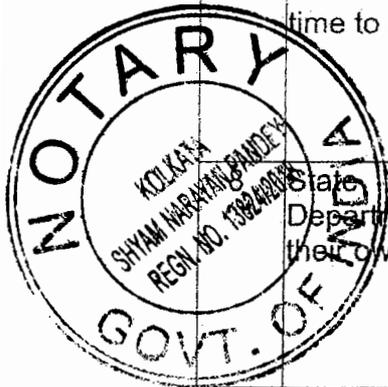
[Handwritten signature]
4/1/12

[Handwritten signature]
4/1/12



Schedule 1: Lease/license Tenure and charges :

SN	Activity	Tenure upto	Charges
1(a)	New Cargo Terminals/sidings/Goods shed and other cargo related facilities etc.	35 years	Lease charges @1.5 % of market value of land per annum with annual escalation of 6%
1 (b)	Existing Cargo Terminals/sidings/ Goods shed etc.	35 years	Lease charges @6 % of market value of land per annum with annual escalation of 7%*
2	Renewable power plants, Sewage Treatment/Water Treatment Plants/ Water Recycling Plants and any such activity for exclusive Railway's use	35 years	Lease charges @ ₹ 1/-per sqm per annum
3	Social infrastructure such as hospitals through PPP and Kendriya Vidyalaya through Kendriya Vidyalaya Sangathan	60 years	Lease charges @ ₹ 1/- per sqm per annum
4	Infrastructure works for Public service utilities like electricity, gas, water supply, telecom cable, sewage disposal, optical fiber cable, pipelines, urban transport and any such infrastructure under PM Gati Shakti programme, if leasing of railway land is involved	35 years	Lease charges @1.5 % of market value of land per annum with annual escalation of 6%
5	BOOT Laundry	15 years	Lease charges @ ₹ 1/- per sq. m per annum
6	Other activities related with railway working not covered under 1 to 4 above	35 years	Lease charges @6 % of market value of land per annum with annual escalation of 6%
7	Passenger amenities related activities as amended from time to time	As specified in the Commercial policy circulars/ guidelines	Activity specific policy issued by Railway Board.
	State Govt/ Other Govt. Departments for activities for their own use	35 years	Lease charges of Upfront payment @ 99% of market value of land with nominal charges of @ ₹ 1000/- per annum further extendable for 35 years on nominal charges



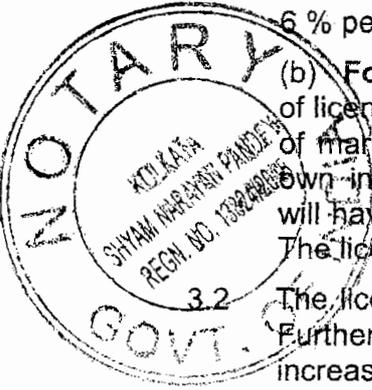
R/
4/12/22

[Signature]
4/12/22

SN	Activity	Tenure upto	Charges
9	Legacy scheme Grow More Food (upto 2 Hectare per employee)	2 years	License charges @ 1/4 th of the expected revenue
10	Cultural and sports activities (Temporary licensing)	4 months	License charges @ 6.0 % of market value of land per annum

Note:

1. Payment of land use can be done either annually or entire payable amount can be paid in advance on present value basis with discounting of future cash flows at rate of 7% per annum for the activities listed from SN (1) to (4) & (6) above.
2. * If existing entities operating Cargo Terminals/ sidings/ Goods shed etc. do not want to avail option for shifting to new cargo terminal policy under transparent competitive bidding process, then these existing entities will be permitted to enter into new lease agreement at 6% annual lease charges with annual escalation of 7%.
3. No fresh licensing of railway land for new establishment of shops, religious structures, private schools, etc. will be granted.
 - 3.1 (a) **For existing shops on railway land where license has expired or not yet renewed:** These shops will be auctioned for grant of license at reserve price of 10 % of market value of land per annum, provided land is not required for railways' own infrastructural and development need. However, existing licensee/owner will have the right of first refusal. The rent shall be increased @ 6 % per year. The license will be given for maximum tenure of 5 years.
 - (b) **For existing shop with valid license agreement:** These shops, on expiry of license tenure, will be given on license by auctioning at reserve price of 10 % of market value of land per annum, provided land is not required for railway' own infrastructural and development need. However, existing licensee/owner will have the right of first refusal. The rent shall be increased @ 6 % per year. The license will be given for maximum tenure of 5 years.
 - 3.2 The license fee of existing religious institutions will be @ ₹2,000/- per annum. Further, the area of existing religious structure shall not be permitted to increase in any case.
 - 3.3 The license fee for existing Govt./Govt. aided schools shall be levied @ ₹10,000/- per annum. However, license charges for existing private schools on railway land shall continue to be @ 6% of market value of land at 7 % annual increment.
4. For Staff Welfare organization including Handicraft centers, Railways social welfare organizations, Bharat Scouts and Guides license charges will be @ ₹2,000/- per annum.
5. Licensing of railway land including railway buildings (cost of building is to be suitably incorporated) for Rail Mail Service(RMS) shall be governed by Railway



[Handwritten Signature]
4/11/22

[Handwritten Signature]
4/11/22

board' instruction 2014/LML-II/18/6 dated 03.12.2014 & 73/ W2/3/8 dated 02.02.1979.

6. The usage of railway land related to Passenger amenities shall be activity specific policy issued by Railway Board (commercial dte.) as amended from time to time.
7. For the purpose of calculation of the cost of the land, area of land shall be calculated as followed:
 - 7.1 The minimum width of land shall be taken as 1m, thereafter in multiple of 1 m.
 - 7.2 The length of crossing shall be as actual, if less than 50 m, otherwise in multiple of 50 m
8. The minimum lease/license charges under activity at S.No. 4 shall be ₹10,000/-

31
4/11/14

[Handwritten Signature]
4/11/14



Schedule 2: Way Leave (ROW) facilities

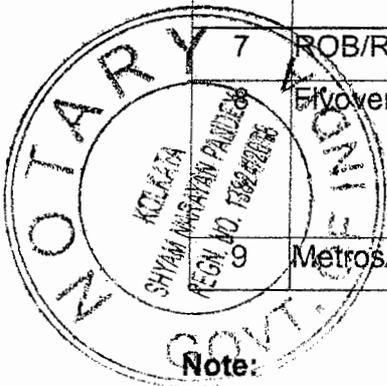
SN	Activity	Tenure upto	Way leave charges
1(a)	For underground public utilities like electricity cable, telecom cable, optical fibre cable and water/sewage pipeline up to diameter 300mm for railway land which includes track crossing (ROW)	35 years	One time fee of ₹1000/-
1 (b)	Public utility provider/any organization that provides and maintain the infrastructure for a public service like electricity, gas, water supply, telecom cable, sewage disposal, irrigation channels/canals subject to applicable regulations, etc	35 years	1.5 % of market value of land per annum with annual escalation of 6%
2	Passages up to one metre wide for individual households or agriculturists adjoining Railway line.	35 Years	One time fee of ₹ 6400/-
3	Water pipe line crossing for cultivation by individual farmer, electrical line crossing, water/sewage pipe lines and other crossings upto 300 mm dia. for individual house, shops.	35 Years	One time fee of ₹1000/-
4	Passage/road for vehicles, scooters etc. (i.e. between 1m to 3m wide) by individuals, housing societies, private firms, organizations	35 Years	1.5 % of market value of land per annum with annual escalation of 6%
5	Public road by local bodies/state Govt/ Govt/ Charitable institutions, welfare organizations up to 3 m width.	35 Years	1.5 % of market value of land per annum with annual escalation of 6%
6	Pipe conveyor/open conveyor system over RCC/PSC/Steel/ composite structure	35 Years	1.5 % of market value of land per annum with annual escalation of 6%
7	ROB/RUB in lieu of level crossings	N.A.	Nil
	Overcrossings/ ROB/Road Under bridges	35 Years	1.5 % of market value of land per annum with annual escalation of 6%
	Metros/RRTS/NHSRCL		As per Schedule 3

Note:

1. Payment of land use and ROW charges can be done either annually or entire payable amount can be paid in advance on present value basis with discounting of future cash flows at rate of 7% per annum.

21
4/1/22

21/1/22



2. In case of State Govt/Govt projects of public utilities having wider social implication or in some way advantageous to railways, the Divisional Railway Manager of concerned division may decide for way leave charges on case to case basis "as deemed fit" by relaxing laid down standards or reducing way leave charges on reciprocal basis with finance concurrence.
3. Any proposal for passage /roads for width more than 3 m shall be treated under lease.
4. Supervision charges in case of deposit work being undertaken by party himself for the way leave cases shall be 6.25 % of cost of work. No other charges except way leave charges will be applicable.
5. For request of way leave permission (ROW) having tenure less than a year, the way leave charges on prorated basis shall be levied.
6. In case of annual payment option, a security deposit (refundable after tenure) of two-year annual payment shall be deposited by the party.
7. The minimum way leave charges for activities specified at SN 1(b), 4,5,6,8 and 9 shall be ₹10,000/-.


4/11/22


4/11/22



Schedule 3 : Metro/RRTS/NHSRCL Crossings

SN	Activity/ Location	Tenure upto	New crossing Charges
1	On Ground	35 years	A. Within track portion- (not permitted) B. Beyond track portion – At 1.5% of market value of land with annual escalation at 6%
2	Overhead	35 years	1.5 % of market value of land per annum with annual escalation of 6%
3	Underground		
3.1	For depth up to 10 meter	Not permitted	
3.2	For depth from 10 m to 30 meter	35 years	1.5 % of market value of land per annum with annual escalation of 6%
3.3	for depth exceeding 30 metre	35 years	At ₹ 10,000/- per annum.
3.4	For station building or entry/ exit or circulating area	35 years	1.5 % of market value of land per annum with annual escalation of 6%

Note:

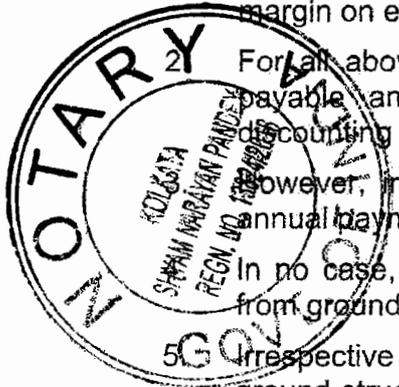
1. For the purpose of calculation of the cost of the land, area of land shall be calculated based on the width of land as below :
 - 1.1 Elevated Crossings: Width of land should be taken as superimposed width of overhead Metro structure plus 500 mm margin on either side.
 - 1.2 Underground Crossings: Width of land: D1 plus D2 plus 10 m plus 1 m where D1 & D2 are diameters (in metre) of tunnels passing beneath the Railway track considering 10 metre minimum clear spacing between tunnels and 500 mm margin on either side of the tunnel.

2. For all above cases, the charges shall be payable either annually or entire payable amount can be paid in advance on present value basis with discounting of future cash flows at rate of 7 % per annum

3. However, in case of annual payment option, a security deposit of two-year annual payment (refundable after tenure) shall be deposited by the party.

4. In no case, Metro crossing shall be permitted at a depth less than 10 metre from ground level to top of tunnel/underground structure.

5. Irrespective of the permission granted for underground, on ground or over ground structures for crossing of Metro Networks, all air/space rights shall rest with the Railways.



Handwritten signature and date: Suman, 11/12/20

Handwritten signature and date: Suman, 11/12/20

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA

M. A. No. 22/2023/EZ of 2023/EZ

IN

O.A. No. 06/2016/EZ

In the matter of:

Subhas Datta

..... Applicant

-Versus-

State of West Bengal and Others

... Respondents



Affidavit-in-reply on behalf of the
Respondent No.3 to the counter
Affidavit of the Respondent No.4

Advocate-on-Record
Santosh Kumar Pandey
Advocate
High Court, Calcutta
Room No.3, Ground Floor,
City Civil Court,
2 & 3, K.S. Roy Road,
Kolkata - 700 001
(M): 9433182985
Email:skp35663@gmail.com