EAST COAST RAILWAY

Office of the
Chief Commercial Manager
1st Floor, Rail Sadan
C.S.Pur, Bhubaneswar-17

Commercial Circular No.10(G)/2017 Date: 23.01.2017

Sub: Attachment order of Trains in execution of a decree or order.

****

A copy of Joint Secretary, Railway Board's letter No.2016/O & M/3/5 dated 13.12.2016 along with its enclosures on the above captioned subject is enclosed herewith for information and necessary action.

All concerned to note and act accordingly.

Authority: Railway Board's letter No.2016/TC-III/42/7 dated 28.12.2016.

Encl: As above (10 pages).

(P.K.Samal)
Dy. Chief Commercial Manager(FS)

No. CCM/FS/Misc/Pt.II Date:23.01.2017

All Station Managers/ Goods Supervisors/Commercial Supervisors /Siding Clerks / Booking Clerk in Charges / Weigh Bridge Clerks / Clerk in Charges / City Booking Agencies / Out Agencies.

Copy for information and necessary action to the:-

COM: ECoR/SER/SECR/NR/NFR/ER/SR/SCR/WR/NER/CR/SWR/NCR/NWR/WCR/ECR/KRly..**SDGM**/ECoR/BBS, **Chairman**/RCT/BBS,**Dy.CVO**/ECoR/BBS, **Dy.COM(FOIS)**/ECoR/BBS, **PO/RCT**/BBS , **CAO(FOIS)**/NDLS,**Audit officer**/BBS. Rates Section /CCM/ECoR/BBS –10 sets **DRM**: KUR,WAT,SBP/ECoR, **Sr.DOM**- KUR,WAT,SBP/ECoR, **CAO(FOIS)**, CRIS/NDLS**Sr.DCM** :KUR,WAT/SBP/ECoR. **Dy.CCM(Claims)**/E.Co.Rly, **FA & CAO**:E.Co.Rly, **FA & CAO(T)**/ECoR/BBS **Traffic Manager**: VZP, Paradeep Port Trust / Paradeep.

(P.K.Samal)
Dy. Chief Commercial Manager(FS)

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भारत सरकार Government of India
रेल मंत्रालय Ministry of Railway
(रेलवे बोर्ड) (Railway Board)

No.2016/O&M/3/5

Dated:- 13/12/2016

General Managers
All India Railways

Sub:-Attachment order of Trains in execution of a decree or order

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Recently, Train No. 12726 was attached as per District Court's Order dated 24.10.2016 at Harihar Station of MYS Division for not making enhanced compensation payment for land acquisition.

2. Such attachment orders were against Section 187 of The Railway Act,1989 which states as under:-

(1) "No Rolling Stock, machinery, plant, tools, fittings, materials or effects used or provided by a Railway administration for the purpose of traffic on its Railway, or its stations or workshops, shall be liable to be taken in execution of any decree or order of any court or of any local authority or person having by law the power to attach or distrain property or otherwise to cause property to be taken in execution, without the previous sanction of the Central Government.

(2) Nothing in sub-section (1) shall be construed to affect the authority of any court to attach the earnings of a railway in execution of a decree or order."

3. Accordingly, High Court of Karnataka has passed the following order(copy enclosed), which may be relied upon in handling similar situations wherein attachment orders of trains are issued:-

"It is necessary to direct the Execution Courts while considering such attachments against the Railways, shall keep in view of the provision contained in Section 187 of the Railway Act and refrain from issuing attachment orders for attachment of the Railway Engine, Bogies or other Railway Equipment which are in motion."

4. The abovementioned decision of Hon'ble High Court may kindly be communicated down the line to PHODs/DRMs/ADRMs for information and necessary action as deemed fit in such situations.

DA:-As above

(V. Vaidehi)
Joint Secretary/Railway Board

Copy to:-

CRB, FC, ME, MRS, MS, MT, MTR

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05/12

22H88/16 (1)

N.S.S-Gowda

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 15TH DAY OF NOVEMBER 2016
BEFORE
THE HON'BLE MR. JUSTICE A.S. BOPANNA
WRIT PETITION NO 11136 / 2016 (LA-RES)
C/W WP.No. 11137, WP.No.11146/2016 & WP.NO.11148/2016

WRIT PETITION NO 11136 / 2016 (LA-RES)

Petitioner:

UNION OF INDIA
REPRESENTED BY THE ASSISTANT DIVISIONAL ENGINEER
SOUTH WESTERN RAILWAY, CHITRADURGA, KARNATAKA 577501.
By Sri N S SANJAY GOWDA, ADV.,
Vs

Respondents:

1 KRISHNAREDDY
SINCE DEAD BY LRS
(a)SHARADAMMA, AGED MAJOR,
(b)VENGUGOPAL REDDY, AGED MAJOR,
(c)DHANANJAYA REDDY, AGED MAJOR,
(d)MURALIDHAR, AGED MAJOR,
(e)DORESWAMY, AGED MAJOR,
(f)RADHA, AGED MAJOR,
2 THIMMA REDDY, AGED ABOUT MAJOR,

ALL ARE RESIDING AT TOPARAMALIGE VILLAGE,
CHITRADURGA TALUK, CHITRADURGA-577 501.

3 THE SPECIAL LAND ACQUISITION OFFICER
CHITRADURGA-577 501.

AGA FOR R3, SMT. SPOORTHY HEGDE ADV., FOR R1(A) TO R1(F)

WRIT PETITION NO 11137 / 2016 (LA-RES)

Petitioner:

UNION OF INDIA
REPRESENTED BY THE ASSISTANT DIVISIONAL ENGINEER
SOUTH WESTERN, RAILWAY, CHITRADURGA, KARNATAKA 577501
By Sri SANJAY GOWDA N S., ADV
Vs

Respondents:

1. NAGAMMA
SINCE DEAD BY LRS
(a) VEERABHADRAPPA Since dead by LRs
(i) GIRIJAMMA, WIFE OF VEERABHADRAPPA, AGED MAJOR
(ii) JAYAMMA
WIFE OF VEERABHADRAPPA, AGED MAJOR,
(iii) MAHALINGAPPA
SON OF VEERABHADRAPPA, AGED MAJOR,
(iv) VEERESH
SON OF VERABHADRAPPA, AGED MAJOR,
(v) DIVIJA
DAUGHTER OF VEERABHADRAPPA, AGED MAJOR,
(vi) PUSHPALATHA
DAUGHTER OF VEERABHADRAPPA, AGED MAJOR,

HIGH COURT OF KARNATAKA BENGALURU

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(vii) CHANDRAPPA
SON OF VEERABHADRAPPA, AGED MAJOR,
(viii) ARUNA
DAUGHTER OF VEERABHADRAPPA, AGED MAJOR,
2 NAGAMMA
SINCE DEAD BY LRS,
(a) SHIVALINGAMMA
DAUGHTER OF CHIKKANNA, WIFE OF MAHALINGAPPA, AGED MAJOR,
3 SHANTHAMMA
WIFE OF CHIKKANNA, AGED MAJOR
RESIDING AT KATAPPANAHATTY VILLAGE,
NEAR NEELAKANTESWARA TEMPLE, PAVAGADA ROAD TOLL GATE
CHALLAKERE TOWN, CHITRADURGA DISTRICT
KARNATAKA STATE 577522
4 THE SPECIAL LAND ACQUISITION OFFICER
CHITRADURGA, CHITRADURGA DISTRICT
KARNATAKA STATE-577522

SMT. SPOORTHY HEDGE NAGARAJA ADV., FOR R1(I), TO R1(VIII), R2(A), R-3

WRIT PETITION NO 11146 / 2016 (LA-RES)

Petitioner:

UNION OF INDIA
REPRESETNED BY THE ASSISTANT DIVISIONAL ENGINEER,
SOUTH WESTERN RAILWAY CHITRADURGA
KARANTAKA-577501
By Sri N S SANJAY GOWDA., ADV

Vs

Respondents:

1 HOTTENNA
SINCE DEAD BY LRS,
(a) NAGAMMA
DAUGHTER OF ERANNA, AGED MAJOR,
(b) AJJAIAH
SON OF HOTTEPPA, AGED MAJOR,
(c) GOWRAMMA
WIFE OF NAGANNA, AGED MAJOR,
(d) CHIKKAMMA
WIFE OF HOTTEPPA, AGED MAJOR,
(e) MAHALINGAPPA H S
SON OF HOTTEPPA, AGED MAJOR,

ALL ARE RESIDING AT KATAPPANAHATTY VILLAGE,
NEAR NEELAKANTESWARA TEMPLE,
PAVAGADA ROAD TOLL GATE CHALLAKERE TOWN,
CHITRADURGA DISTRICT, KARANTAKA STATE-577 501

2 THE SPECIAL LAND ACQUISITION OFFICER
CHITRADURGA, CHITRADURGA DISTRICT,
KARNATAKA STATE-577501.

SMT. SPOORTHY HEGDE NAGARAJA ADV., FOR R1(A) TO (C) & R1(E).

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WRIT PETITION NO 11148 / 2016 (LA-RES)

Petitioner:

UNION OF INDIA
REPRESENTED BY THE ASSISTANT DIVISIONAL ENGINEER
SOUTH WESTERN RAILWAY, CHITRADURGA,
KARNATAKA -577501

By Sri N S SANJAY GOWDA, ADV.,

Vs

Respondents:

1 SRI K VEERANNA
SON OF KANUMAIAH, MAJOR,
AGRICULTURIST, CHALLAKERE, CHITRADURGA
KARNATAKA STATE 577501
2 THE SPECIAL LAND ACQUISITION OFFICER
CHITRADURGA, KARNATAKA STATE 577501.

Whereas, a Writ Petition filed by the above named Petitioner under Article 226 & 227 of the Constitution of India, has been registered by this Court.

Read the Interim order granted on 01.04.2016 in WP.No.11136/16 and 29.03.2016 in WP 11137/2016 and WP.No.30.03.2016 11146/2016 and 31.03.2016 in WP. 11148/2016.

After hearing, the Court made the following :

: ORDER :

(COPY OF THE ORDER DATED 15/11/2016 IS ENCLOSED SEPARATELY)

Ne

HIGH COURT OF KARNATAKA * BENGALURU *

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ASBJ:
15.11.2016

W.P.No.11136/2016
W.P.No.11137, 11146 &
W.P.No.11148/2016

ORDER IN W.P.NO.11136/2016

Sri Spoorthy Hegde, learned counsel to accept notice for respondents No.1(e) and (f) as well. Hence service is complete. The objection raised on IA-II/2016 is complied by serving a copy. Hence the application be taken on record.

ORDER IN W.P.NO.11148/2016

Learned Government Advocate to accept notice for respondent No.2.

Steps for service on respondent No.1 in two weeks. Learned Government Advocate seeks time to file objections.

HIGH COURT OF KARNATAKA * PEENGALURU *

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ORDER IN W.P.Nos.11136/2016,11137, 11146 & 11148/2016

Learned counsel for the petitioner in the meanwhile would contend that in the cases herein the amount has been paid and the execution proceedings may not survive at this juncture. However, since the award passed by the reference Court itself is an issue before this Court to consider whether such enhancement of compensation in the absence of beneficiary would be justified, he would also bring to the notice of this Court that even in such cases where the petitioner who is a beneficiary of the acquisition is not made party and the enhancement is granted and the execution is levied for recovery of the amount, adverse ex-parte orders contrary to law are passed. It is pointed out that the provision as contained in Section 187 of the Railways Act has imposed certain restrictions on the execution of the decree or order to the said extent without the previous sanction of the Central

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Government. In that light, it is pointed out that the grievance that is put forth in the instant petitions is also with regard to the manner in which the Executing Courts have been issuing attachment warrants to attach the Railway engine which is in service on the track which not only causes hardship to the petitioner but also to the traveling public including disruption of other trains on such track.

Therefore keeping these aspects in view, I am of the opinion that pending consideration of the question urged in this petition, it is necessary to direct that the Executing Courts while considering such attachment against the Railways shall keep in view the provision contained in Section 187 of the Railways Act and refrain from issuing attachment orders for attachment of the Railway Engine, Bogies or such other Railway Equipments which are in motion. It is however made clear that the Executing Court by this order shall not feel restrained to issue any

HIGH COURT OF KARNATAKA BENGALURU

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other sort of orders for recovery of the amount to the decree holders before it including the attachment of other properties belonging to the Railways which also include office equipments, furniture and the like.

The respondents may file their objections in three weeks.

List thereafter.

Sd/
JUDGE

COPY

akc/

Assistant Registrar
High Court of Karnataka
Bengaluru 560 001

22/11/16

23/11

TRUE COPY
Section Officer
High Court of Karnataka
Bengaluru-560 001
23/11

(9)

a) The date on which it is ready 16/11/16
b) The date on which stamps and di charges are called for 23/11
c) The date on which the charges and add charges are intimated 23/11
d) The date on which the copy is ready 23/11
e) The date of notifying that the copy is ready for delivery 23/11/16
f) The date on which copy is delivered to the applicant 20/11/16

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रजिस्ट्री सं॰ डी॰(डीएन)127/88 REGISTERED No. D(DN)127/88

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 1
PART II—Section 1
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं॰ 29] नई दिल्ली, सोमवार, जून 5, 1989/ज्येष्ठ 15, 1911
No. 29] NEW DELHI, MONDAY, JUNE 5, 1989/JYAISTHA 15, 1911

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।
Separate paging is given to this Part in order that it may be filed as a separate compilation

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 5th June 1989/Jyaistha 15, 1911 (Saka)

The following Act of Parliament received the assent of the President on the 3rd June, 1989, and is hereby published for general information:—

THE RAILWAYS ACT, 1989

No. 24 OF 1989

[*3rd June, 1989.*]

An Act to consolidate and amend the law relating to Railways.

BE it enacted by Parliament in the Fortieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Railways Act, 1989. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. In this Act, unless the context otherwise requires,— Definitions.

(1) "authorised" means authorised by a railway administration;

(2) "carriage" means the carriage of passengers or goods by a railway administration;

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Taxation on railways for advertisement.

185. (1) Notwithstanding anything to the contrary contained in any other law, a railway administration shall not be liable to pay any tax to any local authority in respect of any advertisement made on any part of the railway unless the Central Government, by notification, declares the railway administration to be liable to pay the tax specified in such notification.

(2) The Central Government may at any time revoke or vary a notification issued under sub-section (1).

Protection of action taken in good faith.

186. No suit, prosecution or other legal proceeding shall lie against the Central Government, any railway administration, a railway servant or any other person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made thereunder.

Restriction on execution against railway property.

187. (1) No rolling stock, machinery, plant, tools, fittings, materials or effects used or provided by a railway administration for the purpose of traffic on its railway, or of its stations or workshops, shall be liable to be taken in execution of any decree or order of any court or of any local authority or person having by law the power to attach or distrain property or otherwise to cause property to be taken in execution, without the previous sanction of the Central Government.

(2) Nothing in sub-section (1) shall be construed to affect the authority of any court to attach the earnings of a railway in execution of a decree or order.

Railway servants to be public servants for the purposes of Chapter IX and section 409 of the Indian Penal Code.

45 of 1860.

188. (1) Any railway servant, who is not a public servant within the meaning of section 21 of the Indian Penal Code, shall be deemed to be a public servant for the purposes of Chapter IX and section 409 of that Code.

45 of 1860

(2) In the definition of "legal remuneration" in section 161 of the Indian Penal Code, the word "Government" shall, for the purposes of sub-section (1), be deemed to include any employer of a railway servant as such.

Railway servants not to engage in trade.

189. A railway servant shall not—

(a) purchase or bid for, either in person or by an agent, in his own name or in that of another, or jointly or in shares with others, any property put to auction under section 53 or section 54 or section 65 or section 90; or

(b) in contravention of any direction of the railway administration in this behalf, engage in trade.

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