

10.07.2026
Item No.12
Ct. No.19
RP

WPA/15363/2026
GITA DAS AND ORS
VS
UNION OF INDIA AND ORS.

Mr. Samim Ahammad
Ms. Ambiya Khatun
Mr. Danisuddin Abbasi
Ms. Reshma Khatun
Mr. Md. Nasimul Haque
..... For the Petitioners
Mr. Nilanjan Bhattacharjee, Sr.SC
Ms. Joyita Dhar Chakraborty
Mr. J.R. Dhar
.....For the State
Mr. Dhiraj Trivedi, Ld. ASGI
Ms. Rashmi Bothra
.....For the Railways/U.O.I.

1. The contending parties are represented by their respective learned counsel.
2. Affidavit-of-service filed in Court today be kept on record.
3. At the time of hearing, Ms. Ambiya Khatun, learned advocate for the petitioners undertakes to file deficit court fees within three working days.
4. In course of his argument, Ms. Ambiya Khatun submits before this Court that in terms of Prayer – ‘b’ of the instant writ petition, leave may be granted to the writ petitioners to move the instant writ petition in representative capacity. To substantiate his contention, Ms. Ambiya Khatun took me to paragraph nos.1 and 2 of the instant writ petition.

5. It is submitted by Ms. Ambiya Khatun that it has been specifically averred in the instant writ petition that the present writ petitioners are in settlement at and around **Ghunirkhal, Bhadreshwar** Railway Station, North 24 Parganas and the writ petitioners have approached this Court for the reliefs since they have same and common interest.
6. It is further submitted by Ms. Ambiya Khatun that on perusal of the impugned notice that copy of which has been annexed at page **35** of the instant writ petition. It would reveal that on account of issuance of such impugned notice, a large number of persons, who are the Hawkers at Ghunirkhal, **Bhadreshwar** Railway Station are going to be affected and, as such, such leave has been prayed.
7. In course of his submission Ms. Ambiya Khatun took me to Rule 12 of the Rules of High Court at Calcutta Relating to Applications under Article 226 of the Constitution of India ("Rules", in short).
8. It is submitted by Ms. Ambiya Khatun that on perusal of the Rule 12 of the said Rules it would reveal that the said Rule prescribes that where leave is asked for making an application in a representative capacity, there must be a distinct prayer to that effect. It is submitted by Ms.

Ambiya Khatun that Prayer – ‘b’ of the instant writ petition is that distinct prayer.

9. In his next limb of submission, Ms. Ambiya Khatun also requests this Court to look to the provision of Order 1 Rule 8 of the Code of Civil Procedure. It is submitted by Ms. Ambiya Khatun that on perusal of the Order 1 Rule 8 of the C.P.C., it would reveal that it is the intention of the legislature that where there are numerous persons having the same interest in one suit one or more of such person may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of all persons so interested.
10. It is further submitted by Ms. Ambiya Khatun that Order 1 Rule 8(1) of the Code of Civil Procedure further postulates that in the event, such some interest of numerous persons can be shown, the Court shall grant permission to sue or defend or grant permission to the plaintiff or the defendant on behalf of all.
11. It is, thus, submitted that appropriate relief may be granted in terms of Prayer – ‘b’ of the instant writ petition by granting leave, as prayed for.
12. In course of his submission, Ms. Ambiya Khatun places reliance upon a judgment dated 02.07.2026 as passed by the Hon’ble Division Bench in ***M.A.T. 1071 of 2026 (Kartick***

Chandra Dutta & Ors. Vs. Union of India & Ors.).

13.It is submitted that in the said intra-Court appeal, the Hon'ble Division Bench based on the self-same facts and circumstances granted leave to sue in a representative capacity.

14.Per contra, Mr. Trivedi, learned ASG appearing on behalf of the respondent authorities also places his reliance upon the said Rules, more specifically, on Rule 12, Rule 53 and Rule 59 thereof.

15.Mr. Trivedi also requests this Court to look to the provision of Order 1 Rule 8 of the Code of Civil Procedure.

16.It is submitted by Mr. Trivedi, learned ASG that Rule 53 of the said Rules clearly mandates that save and except as provided in the said Rules and subject thereto, the provisions of the Code of Civil Procedure in regard to the suits would be followed in all proceedings under Article 226 of the Constitution of India. At this juncture, attention of this Court is drawn to Rule 8(2) of the Code of Civil Procedure.

17.At this juncture, attention of this Court is drawn to Order 1 Rule 8(2) of the Code of Civil Procedure, it is argued by Mr. Trivedi that on careful perusal of the Order 1 Rule 8 (2) of the Code of Civil Procedure it would reveal that it is the intention of the legislature that prior to granting permission, the Court shall give notice

of the institution of the suit to all persons so interested either by personal service and in the event, personal service is found to be impracticable by public advertisement. It is, thus, submitted by Mr. Trivedi that in absence of service of notice, as contemplated under Order 1 Rule 8(2) C.P.C. as well as Rule 8(3) of the C.P.C., no leave may be granted.

18. In his next limb of submission, Mr. Trivedi took me to Rule 56 and Rule 59 of the said Rules under Chapter 2, which deals with Public Interest Litigation.

19. It is submitted by Mr. Trivedi that on careful perusal of Rule 56 and Rule 59 of the said Rules it would reveal that the writ petitioners have practically approached this Court basically for a Public Interest and therefore the writ petitioners ought to have approached before the Court, which has determination to entertain a Public Interest Litigation.

20. Mr. Trivedi submits that no case has been made out by the writ petitioners for granting leave to proceed with the instant writ petition in a representative capacity.

21. This Court has meticulously perused the entire materials on record, as placed before this Court, this Court has given due consideration over the submissions of the learned counsel for the contending parties.

22. For effective adjudication of the instant *lis*, this Court, at the very outset, proposes to look to Order 1 Rule 8 of the C.P.C., which is quoted hereinbelow in verbatim:-

“8. One person may sue or defend on behalf of all in same interest.”-(1) *Where there are numerous persons having the same interest in one suit,-*

(a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted, or defended under sub-rule (1), may apply to the Court to be made a party to such suit.

(4).....

(5).....

(6).....”

23. This Court also proposes to quote Rule 12 and Rule 53 of the said Rules, which are also quoted hereinbelow in verbatim:-

“12. The prayers to the petition shall distinctly state the particular Writ or orders or directions which the petitioner requires to be issued. Where leave is asked for making an application in a representative capacity, there must be a distinct prayer to that effect.

53. Save and except as provided by these Rules and subject thereto, the provisions of the Code of Civil Procedure (Act V of 1908) in regard to suits shall be followed, as far as it can be made applicable, in all proceedings under Article 226 and nothing in these rules shall be deemed to limit or otherwise affect the inherent power of this Court to make such orders as may be necessary for the ends of

justice or to prevent abuse of the process of the Courts.”

24. Keeping in mind, the aforementioned legislative provision and the Rules of this Court, if I look to the pleadings of the instant writ petition, more specifically, paragraph nos.3 and 4 of the instant writ petition it appears to this Court that it is the specific case of the writ petitioners that they are the members of a Trade Union and the present writ petitioners and many members of the said Trade Union are carrying on their business as Hawkers at Ghunirkhal, **Bhadreshwar** Railway Station.

25. At this juncture, if I look to the impugned notice in the perspective of the aforementioned pleadings it appears that the writ petitioners and the other Hawkers, who are claimed to be carrying on their business at Ghunirkhal, **Bhadreshwar** Railway Station have same and common interest and thus, this Court finds no difficulty to grant leave, as prayed for, in view of the fact, such a prayer has been made in terms of Rule 12 of the said Rules.

26. As rightly pointed out by Mr. Trivedi that Rule 53 of the said Rules prescribed that the provisions of the C.P.C. would be followed in a proceeding under Article 226 as far as practicable. However, the contention of Mr.

Trivedi that service of prior notice upon all persons interested is a *sine qua non* for granting leave, as prayed for, appears to be attractive in a first blush but on careful reading of Order 1 Rule 8 of the Code of Civil Procedure it reveals that Sub-Rule 2 of Order 1 Rule 8 clearly mandates that after permission is given under Order 1 Rule 8 (1), the Court shall direct the plaintiffs or the defendants, as the case may be, to give notice of institution of suit to all the persons so interested. It thus appears to this Court that the requirement of service of notice either by personal mode or by public advertisement comes into play after grant of permission and/or leave, as prayed for.

27. On perusal of the judgment as passed by the Hon'ble Division Bench in the case of ***Kartick Chandra Dutta & Ors. (supra)*** it appears that the Hon'ble Division Bench of this Court in similar facts and circumstances as well as in similar situation granted such leave.

28. In view of the discussion made hereinabove, this Court thus grants leave to the instant writ petitioners to move the instant writ petition in representative capacity.

29. In view of grant of such leave, this Court directs the writ petitioners to cause service of notice to the institution of the instant writ petition by a public advertisement within 15 working days from today in a daily Bengali newspaper having wide circulation in the State of West Bengal. The draft publication shall have to be approved by an officer, as would be nominated by the learned Registrar General, High Court at Calcutta. On the returnable day, the writ petitioner shall file the newspaper showing publication by way of supplementary affidavit.

30. By filing the instant writ petition the writ petitioners have prayed for issuance of appropriate writ/writs against the Railway administration not to take any coercive action in terms of the notice impugned, a copy of which has been annexed at Page No. **35** of the instant writ petition.

31. It is submitted on behalf of the writ petitioners that from the copy of the notice impugned it would reveal that the said notice is not a notice in the eye of law and by virtue of issuance of such notice the Respondent-Railway authority ought not to have taken any action which violates the fundamental right of

the writ petitioners as enshrined in Article 21 of the Constitution of India. It is, thus, submitted by the writ petitioners ad interim order of stay may be passed in respect of the notice impugned.

32. *Per contra*, Mr. Trivedi, learned ASG appearing on behalf of the Railway authority, candidly submits that no report has yet come forward in connection with the instant matter. It is further submitted before this Court that in this writ petition numbers of writ petitioner are restricted to **6** and they have no *locus standi* to occupy the Railway property and thus, they are not entitled to get any protection as prayed for and thus, no favourable order may be passed in favour of the writ petitioners or in favour of the unlawful occupiers of Ghunirkhal, **Bhadreshwar** Railway Station.

33. On careful perusal of the entire materials as placed before this Court and after hearing the contending parties, it *prima facie* appears to this Court that the subject-matter of the instant lis is more or less identical with WPA 12367 of 2026, WPA 12644 of 2026, WPA 12649 of 2026 and WPA 14536 of 2026, over which this Court in seisin and those matters are fixed for hearing on 14.07.2026.

34. It further prima facie appears to this Court that the outcome of the aforementioned four writ petitions, WPA 12367 of 2026, WPA 12644 of 2026, WPA 12649 of 2026 and WPA 14536 of 2026, will also take care of the fate of the instant writ petition.

35. In view of such, let this matter be listed on August 12, 2026, under the same heading.

36. Learned advocate for petitioners undertakes to supply a copy of the instant writ petition with all annexures to the learned advocate for Railway authority positively in course of this day.

37. On the adjourned day the Railway authority is directed to submit a report in the form of affidavit, after serving advance copy of the same to the learned advocate for the writ petitioners at least three days ahead.

38. Liberty is given to the learned advocate for the writ petitioners to file exception to such report also on the adjourned day.

39. Considering the urgency of the issue, let there be a stay of the operation of the impugned notice in respect of the present writ petitioners' alleged possession over the Railway property at Ghunirkhal, **Bhadreshwar** Railway Station and/or within vicinity area. It is specifically made clear that the Railway

authority shall not take any coercive action against the present **6** writ petitioners as well as other Hawkers, who are carrying on the business at Ghunirkhal, **Bhadreshwar** Railway Station till the next date, if not vacated or dispossessed in the meantime.

40. The department is directed to forward a copy of this order to the learned Registrar General, High Court at Calcutta for his compliance.

(PARTHA SARATHI SEN, J.)