

**PUBLIC ACCOUNTS COMMITTEE
(1978-79)**

(SIXTH LOK SABHA)

EIGHTY-SIXTH REPORT

**UNAUTHORISED OCCUPATION OF
RAILWAY LAND**

**MINISTRY OF RAILWAYS
(RAILWAY BOARD)**

[Para 37, of the Report of the Comptroller and Auditor General of India for the year 1975-76, Union Government (Railways) relating to Unauthorised Occupation of Railway Land]

Presented in Lok Sabha on _____

Laid in Rajya Sabha on _____



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PART II*

Minutes of the sitting of the Public Accounts Committee held on :—

28-3-1978

30-3-1978

11-8-1978

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(1978-79)

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SECRETARIAT

1. H. G. Pranjpe—*Joint Secretary.*
2. Shri T. R. Ghai—*Senior Financial Committee Officer*

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Eighty-Sixth Report of the Public Accounts Committee (Sixth Lok Sabha) on paragraph 37 of the Report of the Comptroller & Auditor General of India for the year 1975-76, Union Government (Railways) relating to Unauthorised Occupation of Railway Land.

2. The Report of the Comptroller & Auditor General of India for the year 1975-76, Union Government (Railways) was laid on the Table of the House on 13th June, 1977. The Public Accounts Committee (1977-78) examined this paragraph at their sittings held on the 28 and 30 March, 1978. The Public Accounts Committee (1978-79) considered and finalised this report at their sitting held on 17 August, 1978. The Minutes of the sitting form Part II* of the Report.

3. A statement containing conclusions/recommendations of the Committee is appended to this Report (Appendix VIII). For facility of reference these have been printed in thick type in the body of the Report.

4. The Committee place on record their appreciation of the commendable work done by the Chairman and the Members of the Public Accounts Committee (1977-78) in taking evidence and obtaining information for this Report.

5. The Committee also place on record their appreciation of the assistance rendered to them in the examination of this paragraph by the Comptroller and Auditor General of India.

6. The Committee would also like to express their thanks to the Chairman and Members of the Railway Board for the cooperation extended by them in giving information to the Committee.

NEW DELHI;
August 23, 1978.
Bhadra 1, 1900 (S).

P. V. NARASIMHA RAO,
Chairman,
Public Accounts Committee.

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REPORT

Audit Paragraph

Northern Railway—Unauthorised occupation of railway land.

1.1. The Public Accounts Committee (1963-64) in its thirteenth Report had commented upon a case reported in paragraph 36 of Audit Report (Railways), 1963, about encroachment of railway land and non-payment of rent thereof. Facts already reported and further developments are briefly mentioned below.

1.2. A firm in New Delhi encroached on railway land by constructing a permanent structure in 1942. The encroachment was regularised by the Railway Administration by licensing an area of 1,666 sq. yards to the firm. It further encroached on 2,866 sq. yards of railway land in December, 1943, which was also regularised in March 1945. After relinquishing some area, the firm executed an agreement in January 1947 for 1,152 sq. yards at an annual rent of Rs. 2,074. In July 1950, the firm sublet a portion of land to another sister concern in violation of the agreement and also further encroached on land measuring 2,246 sq. yards. It built thereon a factory with roads etc. In February 1962 the firm communicated its willingness to pay rent for the land in its possession on the basis of the old agreement and also suggested negotiations for the sale of the land. The Railway Board decided in November 1962 that arrears of rent should be recovered at 6 per cent of the lease hold value of the land and after the firm paid the rent fixed in that manner, the land should be leased to it for a further period of 20 years, the rent being assessed at 6 per cent of present-day value of land, subject to revision every five years to accord with the prevailing market price. The firm was asked by the Railway Administration in December, 1962 to accept these terms and to pay Rs. 2,04,815 Rs. 1,06,037 towards arrears of rent of 12½ years from 1st July 1950 to 31st December 1962 (excluding Rs. 10,372 already paid by it), Rs. 49,374 as ad-

vance rent for one year from 1st January 1963 and an equal amount towards security deposit and Rs. 30 as preliminary charges for a fresh agreement. The firm paid only Rs. 1,06,037 and made a counter proposal for outright sale of the land to it without agreeing for a fresh lease for a further period of 20 years from 1st January 1963.

1.3. In accordance with the terms of settlement between the Railway Board and the firm reached in 1963, the land was leased for a period of 10 years from 1st January 1963 subject to the condition that for the first five years the rent would be recovered at the rate of 6 per cent annually of land value of Rs. 186 per sq. yard and the rent would be liable to reassessment with reference to the market value of land every five years as per rules governing lease of railway land to outside parties. This was brought to the notice of the Public Accounts Committee by the Railway Board in July 1964.

1.4. The agreement embodying the settlement arrived at earlier for the lease of land measuring 2,743 sq. yards, for a period of 10 years from 1st January 1963 was, however, executed with the firm as late as May 1969. In accordance with this agreement the firm was required to pay rent at the rate of Rs. 30,611.88 per annum (based on 6 per cent of land value of Rs. 186 per sq. yard) for the period 1st January 1963 to 31st December 1967 subject to its enhancement by the Railway Administration every five years on the basis of 6 per cent per annum of revised valuation of land lease to be fixed in consultation with the Land and Development Officer, Delhi or other Civil authorities empowered to assess the valuation of the land. In December 1967 the Railway Administration revised the rent at the rate of Rs. 98,748 per annum (based on 6 per cent of land value of Rs. 600 per sq. yard as assessed by the Ministry of Works and Housing, New Delhi) for the period 1st January 1968 to 31st December, 1972. According to the agreement, the firm was bound to pay the fee at the enhanced rates as fixed by the Railway "on receipt of a notice of 15 days." The firm did not pay rent at the revised rate for the latter spell and deposited rent for the period upto end of December, 1971 at the rate of Rs. 30,611.88 per annum. The Rail-

way Administration terminated the lease with effect from 31st December 1972 after serving a notice on 15th July 1972; but the firm continues (December 1976) to occupy the land and, on 1st July 1975, encroached upon an additional area of land measuring 117.33 sq. yards.

1.5. The Railway Administration stated (January 1977) that on the representation of the firm the additional area under encroachment was re-verified and was found to be 84 sq. yards. The firm vacated it on 17th May 1976 and a bill for Rs. 8,876 on account of rent for this area of land was preferred on the firm on 8th November, 1976.

1.6. It may be added that an application was filed before the Estate Officer under the Public premises (Eviction of Unauthorised Occupants) Act No. 40 of 1971 only in July 1975. The case is still (January 1977) pending with the Estate Officer as the hearings fixed on eight dates during November, 1975 to December 1976 had been postponed. In the meantime, Rs. 17.20 lakhs have become due against the firm on account of (a) arrears of rent for the period 1st January 1968 to 31st December 1972, (b) rent for unlawful retention and encroachment of land during January 1973 to June 1976 and (c) interest on arrears of rent.

[Paragraph 37 of the C&AG Report for the year 1975-76, Union Government (Railways)]

General

1.7. A private firm of New Delhi—M/s Oriental Building and Furnishing Co. Pvt. Ltd. encroached on Railway land on various occasions in 1942 and 1943 and constructed permanent structures on it. These encroachments were subsequently regularised by the Railway Administration. After relinquishing some area the firm executed an agreement in January 1947 for 1152 sq. yards at an annual rent of Rs. 2,074. In July, 1950 the firm sublet a portion of the land to another sister concern M/s Pure Drinks (Coca-Cola) New Delhi in

violation of the agreement and further encroached on a land measuring 2246 sq. yards and built thereon a factory with roads etc. The agreement was terminated in June 1951. The filing of a civil suit was considered inadvisable by the Railway Administration on the ground that it would be very lengthy and expensive. It was after a lapse of more than two years in June, 1953, that the Senior Deputy General Manager of the Railways could be appointed as the "competent authority" under the Government Premises (Eviction) Act, 1950. Even after the "competent authority" was appointed an application for eviction was submitted to him by the Railway Administration only in September, 1954, after a further delay of more than a year. After protracted correspondence with the firm which took a further period of nearly two years the "competent authority" ordered their eviction in June, 1956. The firm appealed to the Chairman, Railway Board, who was the appellate authority under the Act, and he stayed the eviction order in July, 1956, till the appeal was finally decided. Thereafter, the matter remained under correspondence between the Railway Board and the Railway Administration, and in the meantime the Government Premises (Eviction) Act, 1950, was declared *ultra vires* by the High Courts in 1957. A new Eviction Act was promulgated by Government in 1958 but notices under this Act for vacation of the land and payment of damages were served by the Railway Administration only in October, 1959 again after a delay of one year. Proceedings under the Act were started in January, 1960, but were again stayed in February, 1962, on the orders of the Chairman, Railway Board. In February 1962, the firm communicated its willingness to pay rent for the land in its possession on the basis of the old agreement and also suggested negotiations for the sale of the land. The Railway Board decided in November 1962 that arrears of rent should be recovered at 6 per cent of the lease hold value of the land and after the firm paid the rent fixed in this manner, the land should be leased to it for a further period of 20 years, the rent being assessed at 6 per cent of present-day value of land, subject to revision every five years to accord with the prevailing market price. In December 1962, the Northern Railway offered these terms to the firm for acceptance in toto and demanded a total payment of

Rs. 2,04,815 towards the arrears of rent for a period of 12½ years, advance rent for one year, security deposit and other charges. The firm paid only a sum of Rs. 1,06,037 to cover the arrears of rent upto 31 December 1962 and made counter proposals for outright sale of the land without agreeing to fresh lease for a further period of 20 years from 1 January 1963. The Public Accounts Committee (1963-64) considered this case in their Thirteenth Report (3rd Lok Sabha). The Committee then had observed, "the whole episode spread over a period of more than twenty years has left a painful impression on the Committee. It reflects credit neither on the firm nor on the Railway Board and Railway Administration. The firm made a series of encroachments on the Railway land and violated agreements, but the Railway Administration proved quite ineffective in preventing the party from making these encroachments and violating agreements from time to time. There were reluctance and inordinate delays in applying whatever remedies legal or administrative were available to them. Whether it was mere incompetence or worse required to be fully enquired into and responsibility fixed."

1.8. In their 32nd Action Taken Report (3rd Lok Sabha) on this subject, the Public Accounts Committee (1964-65) had observed "The Committee are unable to accept that the case had been dealt with on the most appropriate lines. They consider it unfortunate that the matter was not dealt with firmly and with promptness both in the Railway Administration and the Railway Board. They trust that such cases will be scrupulously avoided in future."

1.9. Commenting on encroachment of Railway lands, the Committee in the same Report (32nd) had observed, "... unless the staff who fail to keep in proper watch are suitably dealt with, the situation would hardly be controlled."

1.10. Drawing attention to these past observations, the Committee desired to know if any action had been taken against the staff who defaulted in this instant case in their duties. The Chairman, Railway Board stated during evidence:

"We have not been able to trace any correspondence indicating the action taken against any particular individual in this particular case."

He further stated that "attempts were made to regularise it in 1963, in a meeting."

1.11. Explaining the position further, the Ministry of Railways in a written note have stated:—

"The Railway land occupied by M/s Oriental Building and Furnishing Co. and M/s Pure Drinks (Coca Cola) New Delhi was regularised through an Agreement dated 9-5-1969 which was effective from 1-1-1963 upto 31-12-72. As has already been explained in replies to the various questions submitted to the Committee during the hearings and earlier, the matter was under continuous discussion and correspondence with the firm from January 1973 to July 1975. When in spite of all efforts, no amicable settlement could be arrived at, eviction proceedings were initiated against them. Ministry of Railways would, therefore, submit that there has been no default on the part of any Railway staff in this particular case."

Management of Railway lands

1.12. The Committee asked as to what arrangements existed for the protection of Railway lands from unauthorised occupation, the Ministry of Railways have in a note stated:

"The Engineering Supervisory staff such as Permanent Way Inspector etc., Works Inspector etc. are responsible for keeping a watch on the vacant railway land within their jurisdiction. While periodically going round their area of responsibility, they have to ensure that no encroachments have taken place on railway land. Each Supervisor is also responsible for maintaining an encroachment register for his section and to make entries therein about any encroachment noticed by them during their periodical inspection or which are brought to their knowledge through other sources.

As soon as any encroachment is noticed for the first time, the Supervisors try to persuade the party to remove such encroachment and in case they fail, a report is lodged by them with the local civil/government Railway police. They also simultaneously report the matter to the Assistant Engineer who serves a notice on the encroaching party and in case the unauthorised encroachment is not removed within a reasonable time, then the Assistant Engineer starts the proceedings against them under the

Public Premises (Eviction of unauthorised occupants) Act.

The above procedure applies equally to all categories of vacant Railway land.”

1.13. Asked about the accountability of officials watching against encroachment, the Member Engineering during evidence stated:

“We have got a form of certificate* which is being issued by the permanent way inspectors and inspector of works at regular intervals to the Divisional Engineer certifying whether any further encroachments have taken place in addition to the ones which have already been reported. So there is a system of accountability.”

1.14. The Committee desired to know the statutory provisions that existed about the management and protection of Railway land. In reply, the Ministry of Railways have furnished relevant extracts from Indian Railway Code for the Engineering Department and Indian Railway Way and Works Manual which are reproduced in Appendix I.

1.15. The Committee asked about the total strength of inspecting staff (category-wise) who were deployed to detect/check encroachment of Railway land in Delhi. In reply, the Ministry of Railways in a note have stated:

“Staff are not posted exclusively to detect/check encroachment of railway land in Delhi Area. As per Indian Railway Way and Works Manual and Engineering Code, the Inspector of Works, the Permanent Way Inspector and other Engineering Supervisory Staff are to keep a watch during their routine inspections for unauthorised occupation of railway land in addition to their normal duties. As soon as any encroachment comes to their notice during such inspections, they are expected to get them vacated with the help of the local Police if necessary and also report the matter to their Assistant Engineer without delay.”

*I certify that I have inspected the railway land-fencings and boundary stones on any section during the year ending...and that they are in accordance with the land plans. There have been no encroachments except at the following kilometrages (mileages) that have been reported upon *vide* reference given against each. I further certify that missing wire fencing and/or boundary stones at the kilometrages (-Miles) shown below have been replaced.

No. Date. Permanent Way Inspector/Works Inspector.

As stated above looking after vacant railway land forms a part of the wide range of official duties assigned to them

Break-up of inspectors in Delhi Area are as follows:—

Permanent Way Inspectors/Assistant Permanent Inspectors	19
Inspector of Works/Assistant Inspector of Works	38
Sub-overseer Mistries/Permanent Way Mistries and Land Control Inspectors	36
Assistant Engineers	5
Senior Divisional Engineers/Division Engineers	6
TOTAL	<u>104</u>

1.16. Asked as to how many times during the year 1976 and 1977, the officers of the Railway Administration had inspected the sites of the railway land in Delhi for this purpose, the Ministry in a note have stated:

“So far as Railway Officers are concerned they have also to keep a watch for encroachments during their routine inspections of Railway colonies and other areas in their jurisdiction and take immediate steps with the police help or through Public Premises (Eviction of Unauthorised Occupants) Act to get such encroachments, if any, removed.

Periodical inspections of officers during 1976 and 1977 were as follows:—

	<u>1976</u>	<u>1977</u>
Senior Divisional Engineers/Divisional Engineers	150	209
Assistant Engineers	259	187

1.17. The Committee desired to know the total area of land owned by the Railways in Delhi near the railway lines, encroached by residential colonies and that lying vacant and the details of such areas under unauthorised occupation. The Ministry of Railways in a note have furnished the following details:—

“Particulars of land owned by the Railway in Delhi area are as follows”:

- (i) Area near the railway lines (this includes railway land on either side of

the railway track, railway land in the bed of Jamuna River near the old and new Jamuna Bridges)	1,360 hectares.
(ii) Area covered by residential colonies	313 „
(iii) Area lying vacant (this includes the isolated plots at various locations in Delhi Area)	45 „

The following are the details of the area under each of the above categories now lying under unauthorised occupation:

(i) Area under unauthorised occupation near the railway lines	70 hectares.
(ii) Area under unauthorised occupation in residential colonies	1 hectare
(iii) Area under unauthorised occupation on vacant plots	Nil

Out of the encroachments at (i) and (ii) above, the break up is as follows:

- (a) 55 hectares is in the bed of old Yamuna Bridge which was given for cultivation to Delhi Peasants Cooperative Society and is in unauthorised occupation since June 1976 as they had not vacated the land after the expiry of their lease period on 31-5-1976. Eviction orders have since been passed in this case.
- (b) About 10 hectares is in the bed of New Yamuna Bridge which is under unauthorised occupation since December 1971. Eviction orders against the party were passed by Estate Officer on 4-10-1976. The party has gone in appeal against this order. The case is *sub judice*.
- (c) Rest of the area including 1 hectare under (ii) is in isolated pockets consisting of jhuggies and jhonpries which have been constructed on railway land from time to time since about 1948.

1.18. It will be seen from above that out of a total of 71 hectares of unauthorised occupations about 16 hectares of land continued to be under unauthorised occupation covering a period of about 3 decades. In this connection, the Committee desired to know the reasons as to why the Railway Administration was unable to get back encroached land all these years, the Chairman, Railway Board during evidence stated:

“We have to follow the law. In a large number of cases we have had evictions and taken possession. It is not that the encroachments are left unattended or uncared for, but it is a very time consuming process. In between in this

particular case there have been arguments and counter arguments. Some delays there have been, there is no doubt about it."

1.19. When asked in how many cases during the last five years Railway Administration had evictions carried out and taken possession of land on different Railways, the Ministry of Railways have furnished the following details:

Zonal Railways	Number of encroachments removed year-wise					Total
	1973	1974	1975	1976	1977	
Central	343	382	5,076	4,250	365	10,416
Eastern	235	57	1,702	12,286	2,398	16,678
Northern	589	660	4,203	3,355	2,364	11,171
North Eastern	400	417	1,537	435	179	2,968
Northeast Frontier	322	452	4,056	8,406	1,400	14,735
Southern	178	197	98	931	259	1,663
South Central	330	282	260	568	172	1,559
South Eastern	258	582	9,648	1,182	653	12,323
Western	252	231	680	429	4,638	6,230
TOTAL	2,907	3,260	27,207	31,842	12,527	77,743

1.20. The audit paragraph points out that the far continued (December 1976) to occupy the land and on 1 July, 1975, encroached on an additional area of land measuring 117.33 sq. yards. The Committee asked as to when the Railway Administration came to know of the encroachment in July, 1975 and what steps were taken to get the illegal encroachment vacated. The Ministry of Railways in a written note have stated:

"The additional encroachment by the firm on railway land, contiguous to the plot already under the occupation, came to the Railway's notice on 1-7-1975 when details of the area under the firm's occupation were being collected for starting eviction proceedings against the party for non-payment of arrears of rent. The approximate area as reported then was 117.33 sq. yds., which on subsequent further verification was found to be only 84 sq. yds. After preparing the plan and other details of this additional encroachment the firm was given a notice by the Railway on 15-4-1976 for vacation of the plot and payment damages. The firm vacated the area on 17-5-1976."

1.21. Asked if the encroachment of Railway land by M/s. Oriental Building & Furnishing Co. and Pure Drinks (Coca-Cola) in 1975 was brought to the notice of higher authorities by the supervisors while furnishing certificates, the Ministry of Railways (Railway Board) in a note dated 24 July, 1978 have stated: „

“The encroachment of railway land by M/s. Oriental Building and Furnishing Co. and Pure Drinks (Coca-Cola) in 1975 was not shown in the certificates furnished by the supervisors...”

1.22. About the steps taken to prevent further encroachment of adjoining railway land by the firm, the Ministry have, in their note, added:

“Central Vigilance is being kept for ensuring that there is no further encroachment of railway land by the firm. Fencing has been provided and pillars fixed demarcating railway land clearly.”

1.23. The Committee asked about the justification for renting the land to a private company and desired to know why the land was not utilised for constructing office or residential accommodation for Railways, the Chairman, Railway Board during evidence stated:

“As per the Master Plan this area was reserved for flatted factories, not for any regular factory or houses. So, at that stage it was thought that it could be leased as there was no use for this particular land immediately.”

1.24. The Committee pointed out that after the finalisation of Master Plan in 1957, there had been many changes in it and enquired if in this context the Ministry of Railways ever suggested to the Works & Housing Ministry to consider changes in the Master Plan so far as the use of this particular land was concerned. The witness stated:

“It was considered that it was not required. So, it was not done. At that stage it was never thought that we should use that land. Because, the very fact that in 1963 the then administration decided to give it on 20-year lease, first for ten years and extendable by another ten years, shows that it was not then required. The decision was taken on 1-1-63. It was to be given on lease and the rent to be re-assessed after every five years. Tacitly it was agreed that it will be a ten-year agreement.”

1.25. According to Audit Paragraph the Railway Administration asked the firm in December 1962 to pay arrears of rent from 1 July.

1950 to 31 December, 1962 and also advance rent at revised rate as well as security deposit for one year from 1 January, 1963. The firm paid arrears of rent on the basis of the old agreement and made a counter proposal for outright sale of the land to it without agreeing for a fresh lease for a further period of twenty years from 1 January, 1963.

1.26. The Audit para further states that the Railway Board and the firm arrived at a settlement in 1963 to lease land for a period of ten years from 1-1-1963. The Committee were informed during evidence that the Railway Board stipulated three conditions to the firm *viz.*

1. The land could not be sold.
2. The agreement would be for a period of ten years which could be extended for a further period of ten years if there was no termination of agreement in between.
3. Occupation fee would be worked out on the basis of the valuation of Rs. 186 per sq. yard and not Rs. 200 per sq. yard as was originally intimated by Northern Railway but was disputed by the firm.

1.27. Asked if the firm accepted these conditions, the Member Engineering, Railway Board during evidence stated:

"Yes Sir."

The Committee have been informed by the Ministry of Railways that the letter advising the Railways' intention to lease the land and enunciating the terms and conditions for such lease was signed by them Additional Member (Finance), Railway Board and issued to the firm on 21 June, 1963 and a further clarification to this was issued on 25 June, 1963 (Appendices II & III).

1.29. When asked about the position of the case before the issue of the letter of intent, the Ministry of Railways have stated:

"In brief the position was as follows:

A plot of Railway land in Connaught Place area was licensed to the firm and the licence agreement was valid upto 30-6-1950. In July 1950, it was learnt that the firm had sublet a portion of the land to another sister concern *viz.* M/s Pure Drinks (New Delhi) Pvt. Ltd. and had also encroached on some more area. Notices for vacating the Railway land under occupation which, at that time measured 3,398 sq. yards, were served by the Railway Administration in November 1950 and April 1951 but with no result.

Filing of a civil suit for recovery of rent was considered in advisable by the Railway Administration on the ground that it would be long drawn and expensive. In the circumstances, eviction proceedings against the firm under the Government Premises Eviction Act, 1950 were initiated in 1954 before the competent authority, viz., the Senior Deputy General Manager, Northern Railway. The competent authority ordered the eviction of the firm from the railway land in June, 1956. Thereupon, the firm appealed to the Chairman, Railway Board (the appellate authority under the Act) who in July 1956, stayed the eviction order till the appeal was finally disposed of. While this appeal was pending before the then Chairman, Railway Board, the Government Premises Eviction Act, 1950, was struck down. The new Public Premises Eviction Act was promulgated by the Government in 1958 and a fresh notice under this Act for eviction from the railway land and payment of damages was served on this firm in October, 1959, and the proceedings under the Act were re-started in January 1960. They were, however, stayed in February, 1962, as the firm made certain proposals for amicable settlement including possible sale of land to them.

The Railway Board, after much deliberation, decided to settle this case on the following terms which were spelt out in the letters dated 21st and 25th June, 1963:

- “(i) That the rent applicable for the period from 1st January, 1963 would be calculated at 6 per cent of the valuation of Rs. 186 per sq. yard for the land in question.
- (ii) The Railway land in question would be leased to a limited period of 10 years beyond 31st December, 1962, with a provision for automatic extension for another 10-year period, if the lease was not terminated by either party by notice before the expiry of the first 10 years; and
- (iii) Other normal conditions governing lease of railway land to outside parties would apply e.g., reassessment of market value of land every five years for determining the rental payable, lessee not being permitted to put up any permanent structures on the plot of land, etc.”

Execution of Agreement

1.30. The Committee pointed out that it was decided in 1963 to lease the land to M/s. Oriental Building and Furnishing Co. and a letter of intent was issued at that time. But the actual agreement

was signed with them only in 1969, i.e., after a period of six years. The Committee desired to know the reasons for abnormal delay in the finalisation of the agreement. The Ministry of Railways in reply have furnished a chronological history of the case from 1-1-1963 to 9-5-69 (the date on which agreement was signed) as under:

<i>Date</i>	<i>Event</i>
10-1-1963	The party sent a cheque amounting to Rs. 1,06,307.43 towards arrears of rent from 1-6-1950 to 31-12-1962 (Rs. 270 was paid extra by the firm). The firm also suggested that the land should be sold to them in order to avoid future controversy.
5-2-1963	The Northern Railway referred the matter to Board for decision regarding acceptance of the cheque and whether the present day value mentioned in Board's letter refers to the present day leasehold value or the present-day free-hold value. On the same date the Railway Board called for the remarks of the Railway on a proposal from party for sale of land to them instead of 20 years lease.
5-4-1963	Railway advised to encash the cheque and inform the party that Government are not agreeable to sell the land that the cheque was being accepted towards Government's claim for damages for use in occupation under Section 7 of the P.P.E. Act, 1958.
8-4-1963	Northern Railway Headquarters advised the Divisional Superintendent, Delhi to take action accordingly.
24-4-1963	Divisional Superintendent, Delhi, advised the firm that the cheque sent by them has been adjusted as part of the claim against them and that their request for sale of land to them is not acceptable to the Administration.
1-6-1963	The firm was asked to call on Additional Member (Finance) for discussion about an amicable settlement of the matter.
12-6-1963	The firm's representative met the Additional Member (Finance).

Date	Event
21-6-1963	<p>The firm was written under the signature of Additional Member (Finance) that:</p> <ul style="list-style-type: none"> (i) the land cannot be sold to them; (ii) the agreement will be for a period of ten years which can be extended for a further period of ten years, if none of the parties terminate the agreement in between; and (iii) the occupation fee will be worked out on the basis of the valuation at Rs. 186 per sq. yard and not Rs. 200 per sq. yard as was originally intimated by the Northern Railway and which was challenged by them.
3-7-1963	<p>Divisional Superintendent, Delhi, requested the firm for executing the agreement and to make arrangements for depositing the licence fee, security deposit etc.</p>
11-7-1963	<p>All the files concerning this case, both of Division and Headquarters Office, were sent to the Board's Office.</p>
14-1-1964	<p>Files returned by the Board's office.</p>
28-3-1964	<p>Northern Railway were advised by the Land and Development Officer that <i>w.e.f.</i> 1-7-1963, the land value in Connaught Place area has been increased to Rs. 600 sq. yard. Northern Railway, therefore, made a reference to the Board to find out as to whether the agreement should be finalised on the basis of land value of Rs. 186 per sq. yard or Rs. 600 per sq. yard.</p>
26-3-1965	<p>Board advised the Railway that the rate of Rs. 186 per sq. yard may be continued for a period of five years from 1-1-1963 to 31-12-1967.</p>
	<p>NOTE: From March 1963 to October 1964, the files were busy in connection with preparation of briefs for Audit para and action taken on PAC's observations.</p>

<i>Date</i>	<i>Event</i>
29-10-1965	A site plan prepared after detailed verification and sent to the party for their signature as a token of their acceptance.
7-12-1965	The plan was received back duly signed by the party.
5-1-1966	Delhi Division asked the party to send a copy of their resolution authorising the Director to execute the agreement on behalf of the firm.
14-1-1966	A copy of the resolution was received.
16-3-1966	D.S. Delhi sent a draft agreement and plan for approval and certain clarifications to the Northern Railway Headquarters.
12-5-1966	Some further information was required by the Headquarters.
22-7-1966	The information was submitted to Headquarters.
December 1966	The Headquarters asked for original plan and tracings of the land.
2-2-1967	The plan was returned to the Division for some corrections by the Northern Railway Headquarters.
29-5-1967	The plan was received from the Division duly corrected.
29-7-1967	The Northern Railway returned the plan and agreement duly vetted to the Division.
17-8-1967	Divisional Office sent the draft agreement to the party with request to get the same typed on a proper stamped paper and return the same duly signed.
19-10-1967	The firm was reminded to submit the agreement duly signed.
18-11-1967	The representatives of the company wrote for a discussion.

<i>Date</i>	<i>Event</i>
22-12-1967	The company was informed that the licence fee has to be revised from 1-1-1968.
1-1-1968	The matter was discussed with the company's representatives wherein they desired that certain changes may be made in the agreement.
29-2-1966	The Division wrote to the Headquarters advising the changes desired by the party. The changes were desired in clauses—General, Clause 2, 4, 6, 7, 8, 9, 16, 18 and 19.
11-4-1968	The agreement was returned to the Division agreeing to the changes in some of the clauses.
14-6-1968	The representatives of the company could not be contacted upto 22-5-1968 as the party was out of India and on 14-6-1968 they again raised some objection to the draft agreement.
24-9-1968	Firm advised that revised rate for land rent will be based on land valuation of Rs 600 per sq. yard.
17-10-1968	After discussion by the Railway with their Law Officer and others, it was decided to hold discussions with the party and the party was advised to attend GM's office on 24-10-1968.
1-11-1968	The meeting which could not be held on 24-10-1968 at a request from the firm was held on 1-11-1968 wherein the party requested change in certain clauses
22-1-1969	A meeting was held with Shri Daljit Singh, firm's representative at the Northern Railway Headquarters.
16-4-1969	Further discussion with the Director of the firm in the Northern Railway Headquarters.
1-5-1969	The agreement was signed by the party.
9-5-1969	Divisional Superintendent signed the agreement.

1.31. It will be seen from above that avoidable correspondence was going on between the firm and Railway authorities during the years 1963 to May 1969 when the agreement was finally signed. It

is significant to note that from March 1963 to October 1964 there was complete lull in dealing with the case as according to the Ministry "the files were busy in connection with the preparation of briefs on Audit para and action taken on PAC observations."

1.32. At the instance of the Committee, the Ministry of Railways have furnished a copy of the agreement executed with the firm (*viz.*, M/s. Oriental Building and Furnishing Co. Ltd.) which is at Appendix IV.

Fixation of rent and recovery of Government dues

1.33. The Audit para point out that in accordance with the agreement executed with the firm in May 1969, the firm was required to pay rent at the rate of Rs.30,611.88 per annum (based on 6 per cent of land value of Rs 186 per sq. yard) for the period 1st January, 1963 to 31st December, 1967 subject to enhancement by the Railway Administration every five years on the basis of 6 per cent per annum on revised valuation of land lease to be fixed in consultation with the Land and Development Officer, Delhi or other Civil authorities empowered to assess the valuation of the land. In December, 1967, the Railway Administration revised the rent rate of Rs. 98,742 per annum (based on 6 per cent of land value of Rs. 600 per sq. yard as assessed by the Ministry of Works and Housing, New Delhi) for the period 1st January, 1968 to 31st December, 1972. However, the firm did not pay the rent at the revised rate for this period and deposited rent for the period upto December, 1971 at the old rate of Rs. 30,611.88 per annum. When asked about the reasons for it, the Member Engineering, Railway Board during evidence stated:

"The party in their letter of 21st June, 1969 asked for reduction in the licence fee as the land was being used for factory purposes and the rent should be fixed by the L&DO accordingly. They were not accepting these rates."

1.34. Asked if rates in terms of the agreement were to be fixed to the satisfaction of the firm, the witness replied:

"It was not so. According to the agreement the rate was fixed by the L&DO and that was final. As far as L&DO was concerned, he had also separate rates for temporary allotments, residential buildings, commercial buildings, etc. All these rates are there in various schedules. The other

party was all the time urging that the payment on the basis of Rs. 600 per sq. yard was on the high side."

1.35. The Committee desired to know the steps taken during the period 1968 to 1971 for the recovery of rent at the enhanced rate, viz., Rs. 98,748 per annum. In reply, the Ministry of Railway furnished a chronology of events from 1968 to 1971 as under:

Date	Event
22-12-1967	The firm was advised that the licence fee for the premises would be revised <i>w.e.f.</i> 1-1-1968 based on the market value of the land as on that date which would be intimated to them in due course. The firm was required to pay the rent at the revised rate <i>w.e.f.</i> 1-1-1968.
23-12-1967	The firm sent a cheque for Rs. 30,611.88 towards advance rent for the year 1968 at the old rate. It would appear that this amount was sent before the firm received the Railway's letter dated 22-12-1967. This cheque was encashed in part payment of railways claims.
24-9-1968	The firm was advised that with effect from 1-1-1968 the annual licence fee was enhanced from Rs. 30,611.88 to Rs. 98,748 based on revised market value of the land at Rs. 600 per sq. yard. The firm was asked to pay Rs. 68,136.12 (Rs. 98,748—Rs. 30,611.88) towards the balance of arrears of rent for 1968 and an equal amount towards balance security deposit, the total amounting to Rs. 1,36,272.24.
31.10-1968	The firm disputed this demand stating that the value of Rs. 600 per sq. yard was for land where multi-storeyed construction was allowed. They also submitted that as no such construction was permitted in their case, the land rent should be lower.
2-11-1968	The above point was referred by the Railway to the Land and Development Officer (L&DO) of Ministry of Works and Housing for clarification.

<i>Date</i>	<i>Event</i>
12-12-1968	The firm sent a cheque for Rs. 30,611.88 towards advance rent for the year 1969 which was also encashed in part payment of railways claim.
3-3-1969	L&DO replied confirming that the market rate for land in the area was Rs. 600 per sq. yard if the land was used for commercial purposes.
22-3-1969	The Railway wrote to the firm confirming the market value of Rs. 600 per sq. yard and asked them to pay the total arrears due, at this rate.
4-4-1969	The firm reiterated their original objections for the revised valuation based on Rs. 600 per sq. yard for the land and requested for downward revision.
18-4-1969	Railway advised the firm that the revised rate of Rs. 600 was fixed in consultation with the L & DO and hence could not be altered. The firm was asked to pay the arrears without delay.
21-5-1969	The firm was reminded once again to pay the arrears of the licence fee due to the railway.
29-5-1969	The firm once again objected stating that different rates were to be applied depending upon the land use. They, therefore, requested the railway to find out from L & DO the rate for land for factory use.
17-6-1969	The firm was given 15 days notice to pay the arrears of licence fee failing which they were advised that further action would be taken against them for recovery of the amount besides eviction from railway premises through legal means.
21-6-1969	The firm once more reiterated their earlier demand for reducing the licence fee as the land was put to factory use and not for multi-storeyed construction.

<i>Date</i>	<i>Event</i>
16-7-1969	The railway replied confirming their original valuation and amount of licence fee and stated that the payment was being unnecessarily delayed, which amounted to breach of the terms of agreement.
16-10-1969	Divisional Supdt., Delhi wrote to the General Manager, Northern Railway, New Delhi stating that the firm did not pay the railway dues and asked whether they should initiate proceedings under the Public Premises Eviction Act for eviction and recovery of damages.
22-12-1969	The firm sent a cheque for Rs. 30,611.88 towards advance licence fee for the year 1970. This cheque was also encashed in part payment of railway claims.
8-6-1970	After considering the request of the firm in all its aspects, the firm was replied by the General Manager that the value of Rs. 600/- per sq. yard adopted for computing the licence fee was in order and the firm should pay the arrears without further delay.
21-8-1970 7-10-1970	The firm was again reminded to clear up the arrears as the payment of licence fee according to Agreement was to be made in advance.
20-10-1970	The firm once again reiterated their earlier stand objecting to the amount of licence fee demanded by the railway.
25-11-1970	To avoid further waste of time in correspondence, the firm was asked to send a representative for discussions with railway officials.
1-12-1970	A cheque for Rs. 30,611.88 was received towards advance rent for 1971 in part payment of railways claims.
4-12-1970	Discussions took place between the firm's representative and the railway officials.
18-12-1970	The firm wrote a letter confirming the gist of discussions and reiterated their earlier stand that the licence fee demanded by railway from 1-1-1968 was very much on the high side.

<i>Date</i>	<i>Event</i>
8-11-1971	The railway once again wrote to the firm to clear the arrears of Rs. 3.41 lacs failing which they were informed that action to terminate the licence would be initiated.
6-11-1971 25-11-1971	The firm again objected to the rate of land valuation and requested for discussion with the Divisional Supdt., to sort out matters.
8-12-1971	The firm was advised that there was no need for further discussions as the matter had been adequately clarified. The firm was further advised that they were instructed to pay all the dues before 30-11-1971 and as they had failed to do so the administration reserved the right to take appropriate action.
11-12-1971	The firm again wrote to Divisional Superintendent stating that the valuation of Rs. 600/- per sq. yard was for permanent allotment of land for commercial purposes permitting multi-storeyed construction. As this was not the position in their case, they requested for a review to reduce the rent suitably.
1-2-1972	Firm once again represented to the Divisional Superintendent for the reduction of the licence fee and enclosed a letter from L & DO stating that the land value in Connaught Circus area for temporary allotment for office, Cottage Industries and fuel depots was Rs. 225/- per sq. yard.
15-2-1972	The matter was referred by the Division to the Northern Railway Headquarters Office.
1-3-1972	The Divisional Supdt. was advised by the Headquarters Office to deal with the case on merits.
23-6-1972	Instructions were issued by Northern Railway, Headquarters Office to the Division to issue notice of termination of the agreement with the firm as the firm was persistently refusing to pay the revised licence fee with effect from 1-1-1968.

<i>Date</i>	<i>Event</i>
15-7-1972	The firm was given by the Divisional Supdt. a notice of termination of the agreement effective from 31-12-1972.
30-12-1972	As the termination notice was served on the firm, cheques received from them towards payment of licence fee for the years 1972 and 1973 were returned to them by the railway.

1.36. It would be seen from above that the firm was advised on 24-9-1968 that the annual licence fee had been enhanced from Rs. 30,611.88 to Rs. 98,738 w.e.f. 1-1-1968. The Committee desired to know the reasons for delay in informing the firm of the revised amount of licence fee. The Member Engineering during evidence stated:

“...The delay in informing could be attributed to the fact that there had been correspondence between the party and the Division, in regard to the changes suggested in certain clauses of the agreement and changes which were suggested had a vital bearing on the question of rates also.”

1.37. It is seen that the firm was given a notice on 17 June 1969 to pay the arrears of licence fee failing which, they were advised that further legal action would be taken against them for recovery of the amount besides eviction from railway premises. However, according to Audit para, an application under the Public Premises (Eviction of Unauthorised Occupants) Act, No. 40 of 1971 was filed only in July 1975. Asked as to how it took six years to issue a legal notice, the Chairman, Railway Board, during evidence stated:

“From the file, I can only say that there was a protracted correspondence up and down going on and that no definite decision to evict them was taken.”

1.38. The Committee asked if the witness agreed that unnecessary delay had been caused in this case. The witness replied:

“To that extent, that is true.”

1.39. It will be further seen from chronological events given above that on 6 October 1969, Divisional Superintendent, Delhi wrote to the General Manager, Northern Railway, New Delhi stating that the firm did not pay the railway dues and asked whether they should initiate proceedings under the Public Premises Eviction Act for eviction and recovery of damages. Asked as to what action was taken on this letter, the Ministry of Railways in a written note have stated:

“On receipt of the letter from the Divisional Superintendent, the Headquarter on 28-10-1969, called from Divisional Superintendent Office the particulars of rent paid by the party upto that time.

These details were collected and submitted by the Division on 3-2-1970.

Between 5-2-1970 and 10-2-1970, the following notings were recorded on the file:

(i) *Noting by Engineer-in-Chief (G) Northern Railway on 5-2-1970:*

‘This is a difficult case and the problem is ticklish. I am not in favour of taking any precipitate action till such time all the aspects have been examined (quickly) and we have also heard and known the view point of other party without prejudice.

Please find out if their representative is here and can come to Baroda House conveniently next week. Ring up and find out.’

(ii) *Noting by Land Control Officer, Northern Railway:*

‘Shri Daljit Singh, Managing Director of the firm has informed on phone that he will attend this office at 11.00 hours on 16-2-1970 please.’

This was marked to Engineer-in-Chief who recorded on 10-2-1970 as under:

‘O.M. Bring the file before he is due to come please.’

On 25-2-1970, the Northern Railway Headquarters asked the Delhi Division to submit copies of the correspondence exchanged by them with the Land and Development Officer. In the same letter, Division was also asked to submit a copy of the objections raised by the firm. On 22-4-1970,

the Delhi Division furnished copies of the following correspondence exchanged with Land and Development Officer:

- (i) Division's letter No. 473-W/842/71 Pt. II(Wi) dated 2-11-1968 addressed to Prakash Narain, Land and Development Officer, Ministry of Works and Housing.
- (ii) Reply received from Land and Development Officer *vide* his No. L.11-3-6(13)/69, dated 3-3-1969.

Regarding the specific issue raised by Divisional Superintendent Delhi Division, of initiating action against the firm under the Public Premises (Eviction of Unauthorised Occupants) Act, no directive appears to have been given by Headquarter Officer to the Division. Since Public Premises (Eviction of Unauthorised Occupants) Act was declared *ultra vires* by Allahabad High Court in January 1969, perhaps, the Railway Headquarter Office might have had some reservations about initiating action under this Act in Delhi area. The new Public Premises (Eviction of Unauthorised Occupants) Act came into existence sometime in 1971."

1.40. Asked as to when the General Manager, Northern Railway Headquarters replied to the Division's letter dated 6 October 1969, the Member Engineering during evidence stated:

"It was answered on 8-6-1970."

1.41. Asked if there was any justification for replying after one year, the Chairman, Railway Board stated:

"The delay is not fully justified."

1.42. Copies of the letter dated 6-10-1969 written by the Divisional Supdt., Delhi to General Manager, Northern Railway and the reply sent by the General Manager on 8-6-1970 are at Appendix V.

1.43. It will be seen that the General Manager, Northern Railway's letter dated 8-6-1970 is merely a reminder addressed to the firm for payment of dues and its copy has been endorsed to the Division. The endorsement does not contain any direction to the Division to initiate eviction proceedings against the firm.

1.44. Though the Divisional Superintendent had written to General Manager on 6-10-1969 for initiating proceedings against the firm under the Public Premises Eviction Act for eviction and recovery of damages, the Northern Railway Headquarters had sent only instructions to the former on 23-6-1972 to issue notice of termination of the agreement. When asked to clarify, the Chairman, Railway Board, during evidence stated:

"We are only doing according to whatever the file shows. The actual agreement was upto 1-1-1973. It was perhaps thought by everybody that the firm would agree to do it and should do it. This is what we can judge. Otherwise, there is nothing on the file. There have been up and down representations at all levels."

1.45. It would be relevant to mention here that even before the agreement was signed with the firm, the Deputy Minister of Railway on the basis of certain complaints having been received by him regarding allotment of land, recorded the following note on 14-7-1968:

"I have received certain complaints regarding the allotment of land to Coca Cola proprietors in New Delhi by the Railway.

Please submit a full report along with the relevant files."

On the note submitted to him the Deputy Minister of Railways recorded the following minute on 9-10-68:

"The lease should be terminated in 1972. Minister of Railway may kindly see this case where a lot of manoeuvring seems to have taken place.

Sd/- Rohan Lal Chaturvedi.
9-10-68.

I agree.

Sd/- C. M. Poonacha,
21-10-68".

1.46. Asked as to why a legal notice for the eviction of the party was not issued, the witness stated:

"They had a factory on the major portion of the land. The railway line is in front of it and the railway did not immediately require it. So whatever we could get out of it, we could get out of it. This is one of the parameters."

1.47. The Committee enquired if this was Railway Board's opinion. The Chairman, Railway Board stated:

"As far as we could see from the papers the land was not required. Even now we are not immediately in need of the land. That is the position."

1.48. Pointing out that in the agreement signed in 1969 there was a specific provision that if the firm did not make the payment according to the recommendations of the L&DO, lease could be terminated, the Committee desired to know as to why lease was not terminated after 1969 when the firm was not paying the rent. The Chairman, Railway Board during evidence stated:

"There were a number of representations as stated. At that stage the Northern Railway Headquarters had sent all the cases to Railway Board to be shown to Minister and second time again to be shown to another Minister."

1.49. The Committee pointed out that when the firm had refused to pay the licence fee on the basis of land value assessed by L&DO and the Minister had ordered in October, 1938 that the lease be terminated by 1972 how was it that the Railway Administration finalised and signed an agreement in May, 1969 with the party leaving monetary part of the agreement nabalous and thus permitted the firm to continue for a period of ten years. The Member Engineering, Railway Board, during evidence replied as under:

"The point is that as far as this agreement is concerned, though it has taken five years, it has been finalised very carefully after taking all factors into account. In our opinion it is an ideal agreement which has been drawn up for lease of land in the Indian Railways. The agreement has been scrutinised by the firm and each word of the agreement was being questioned. In fact, the firm was trying to say that the draft agreement used the word 'licensee' instead of 'lessee' and all these things were going on. Finally, it was fortunate that the agreement was signed in 1969. Had the agreement not been signed in 1969, today the position would have been very difficult."

1.50. Elaborating the point further, the Chairman, Railway Board stated during evidence:

"This agreement is ratifying the Letter of Intent. Nothing more than that. The same clauses were there and in fact

we have added more specific clauses that you will have to pay the revised rent as well as the question of sticking to the decision of the Land and Development Authorities rates, etc. As far as the agreement is concerned, the legal position is quite strong and without that agreement we would have been very much in a pliable position now."

1.51. The Committee asked if it was a fact that at the time of signing of the agreement the rate of Rs. 600/- was under dispute. The Chairman, Railway Board during evidence stated: "Yest that has been disputed." The Committee further questioned that if it were so then why this was not settled then and necessary provisions made specifically to that effect in the agreement. The Ministry of Railways in a written note have stated:

"As regards inclusion of rate of Rs. 600/- in the Deed, it may be mentioned that in 1969 the position was that there was no written agreement with the party and the basis of all transactions upto that stage was the letter of intent given to the party in June 1963. The Administration was, therefore, keen to bind the party with a signed agreement.... A clause specifying the rent from 1-1-1968 on the basis of the land value of Rs. 600/- per sq. yard could not be introduced in the agreement as this rate (Rs. 600/- per sq. yard) which was, for the first time, advised to the party on 24-9-1968 was disputed by him and the Railway Administration felt that if a new element of dispute was introduced at that stage (in 1968-69), the party might delay signing of the agreement further."

1.52. The Committee enquired that when it became evident that the firm was not paying the dues why action was not taken to recover the same. The Chairman, Railway Board, explained:

"Because the rate was disputed and the matter was under discussion at the highest level of the Railways. This is what we can say."

1.53. The Committee asked if it was a fact that at the signing of the agreement there was nothing with respect to the occupation money that was to be paid on that date, i.e. there was no agreement on that aspect. The witness replied:

"No Sir. The agreement regarding that is itself a separate issue. A clause is contained in that agreement."

1.54. Clarifying the point further, the Chairman, Railway Board stated:

“This particular agreement started in 1963. Already it was six years late. We had signed this draft agreement to be effective from 1963. Meanwhile on the rate part of it there was no agreement. As you earlier pointed out, writing to the railways was also done on that basis. The rate was treated as a separate question from the draft agreement. The clause was provided for enhancement of the rate. Such a clause was there. Perhaps, at that time the ramification of it was not thought of.”

1.55. The Committee enquired that when the party was not agreeing to the valuation at the rate of Rs. 600/- per sq. yard as revised by L&DO then what were the compelling factors to execute an agreement with the firm. The witness replied:

“There was no difficulty. The agreement was for the period starting from 1-1-1963. It took six years to finish. The rates were being dealt with separately.”

1.56. The Committee pointed out that in spite of the Railway Administration's advice to the firm that the rates had been revised from 1-1-1968, the firm sent the same amount of Rs. 30,612 for each period. Asked about the reasons for it, the witness stated:

“Sir it is a part payment. They never disputed about it.”

1.57. The Committee emphasised that it was not the case that the firm did not had any money to pay, the Chairman, Railway Board maintained:

“No Sir, it is a part payment.”

1.58. The witness further replied in affirmative when asked if the receipts issued by the Railways indicated that it was a part payment.

1.59. The Committee desired to have the copies of the receipts issued by the Railways to the party in token of the payments having been received, the witness stated:

“We shall give you that information. It is a part payment.”

1.60. However, in a subsequent note, the Ministry of Railways have stated:

“The records of the Chief Cashier, Northern Railway in respect of money receipts issued during the period 1963-71

have been destroyed due to efflux of time. In terms of the relevant rules, such records are preserved for a period of 1½ years. It may be mentioned that when money receipts are issued by the Cash Office of the Northern Railway, the amount received in cash or cheque is only indicated in the money receipts without any stipulation whether the payment so received is a part payment or a final payment."

1.61. The Committee were further informed that the letters issued to the firm acknowledging receipts of cheques received from the firm for the years 1968, 1969 and 1970 mentioned that the amounts were accepted as part payments.

1.62. The Committee enquired that when the party made part payment for a given year, was that amount credited towards the rent of that year in which payment was received or was it credited against the arrears outstanding. The Chairman, Railway Board stated:

"When the second amount was paid we had written to them saying that we have received the amount and we have added the balance to the arrears. We went on adding the cumulative total."

1.63. To a question whether on the date of the agreement it was agreed between the Railways and the firm that the amount to be paid was to be @ Rs. 600 per sq. yard, the witness stated:

"It was a disputed matter right from the beginning."

1.64. When asked as to why clause 19 of the agreement about arbitration was not then invoked, the Member Engineering, Railway Board, stated:

"Right upto 1974, the triangular correspondence between the firm, Railways and the L&DO was there."

1.65. Clarifying the point further, Chairman Railway Board, stated:

"Asking for arbitration by the administration is unusual. Normally, it is asked for by the contractors."

He further added:

"The officials tried their best. But there were circumstances which prevented us from taking action, even on 1-1-1973. There were pressure tactics; there is no doubt about it."

1.66. Asked to state the action taken by the Railway Administration against the party for the continued illegal occupation of the land after the termination of the lease viz. 31st December, 1972 till July, 1975, the Ministry of Railways in a note have furnished the following chronology of events:

"A chronological order of events is enclosed. From this it would be seen that action was taken by the Administration for recovery of arrears and also for initiating eviction proceedings against the firm. It may be noted that these proceedings involved ascertaining of legal opinion at different stages and coordination amongst the Railway Ministry, Northern Railway Headquarters, Delhi Division and the L&DO of Works & Housing Ministry.

Date	Event
1-1-1973	The firm reiterated to Divisional Superintendent their earlier stand that the value of the land in question for temporary purposes was only Rs. 300/- per sq. yd. and not Rs. 600/- as adopted by the Railway. They requested the Railway to re-examine the matter so that the balance amount due to the Railway could be paid by them in three months' time and the existing arrangements continued. A copy of this letter was given to the Chairman, Railway Board and they asked for an interview with him. A Railways' representative was sent by the Division to take over the premises from the firm but the Director of the firm informed him that as they had represented the matter to Deputy Minister for Railway on 23-12-1972 and to the Chairman, Railway Board, on 1-1-1973 the Railway should await the outcome of those representations. Hence the Railway could not take over the premises on that day. The firm's representative met the Chairman, Railway Board on 1-1-1973 and represented the case to him. In that meeting the firm stated that they were prepared to pay the extra amount required at the rate fixed by the L&DO.
3-1-1973	The Railway was advised:— (i) The lease may be extended for a period of three months upto 31-3-1973;

Date	Event
	<ul style="list-style-type: none"> (ii) The licence fee may be charged on the basis of Rs. 300/- per sq. yd. (provisional value); and (iii) The Railway should take immediate action to settle the land value with the Land and Development Officer.
22-1-1973	<p>G.M./N. Rly's letter dated 20-1-73 to the Railway Board <i>inter-alia</i> stating that extension by three months would mean that the original notice of termination issued on 15-7-1972 would stand cancelled and the agreement would stand extended automatically for another period of 10 years from 1-1-1973.</p> <p>G.M. suggested that the Railway could consider a separate lease agreement with the party with new terms and desired to know as to what should be the licence fee to be charged. It was pointed out by the General Manager that as per undertaking given to the PAC in July, 1964, the land value for the purpose of assessing the rent could not be less than Rs. 600/- per sq. yd. from 1-1-1968.</p>
31-1-1973	<p>L&DO's D.O. letter to Northern Railway <i>inter-alia</i> stating that the clarification sought with regard to valuation of Rs. 200/- and Rs. 186/- per sq. yd. respectively was being referred to the Ministry.</p>
12-2-1973	<p>A meeting was held in Board's office with G.M., Northern Railway and FA&CAO when it was decided as under:—</p> <ul style="list-style-type: none"> (i) To prepare a statement of the case for discussion in consultation with Joint Secretary & Legal Adviser. (ii) To contact Land & Development Officer to get lease value of the Railway land for the period 1-1-1968 to 31-12-1972 and from 1-1-1973 onwards.

Date	Event
	(iii) To discuss with the firm the question of temporary extension keeping in view the legal complications in entering into a fresh agreement.
13-2-1973	The Northern Railway again wrote to L&DO <i>inter alia</i> asking for the ratio corresponding to Rs. 186 per sq. yd.
17-2-1973	L&DO replied that the matter was still under consideration.
5-3-1973	The Railway issued a reminder to the L&DO on the same date when L&DO replied that the matter was still under consideration.
16-3-1973	Board wrote to the Northern Railway, enclosing minutes of the meeting held in Board's office on 12-2-1973 and requesting the Railway to expedite by personal contact the information from L&DO regarding land value.
28-3-1973	Chief Engineer, Northern Railway advised that they were unable to obtain the necessary details of land rent from the L&DO office in spite of several reminders as the matter was under examination.
10-4-1973	Chief Engineer, Northern Railway advised that they held discussions with Shri Daljit Singh but it was not possible to resolve the issue about the rate of the lease and sought Board's further directive.
17-4-1973	Northern Railway HQ again reminded L&DO.
29-5-1973	The Railway advised the firm that the matter was still under examination.
7-6-1973	Joint Secretary and Legal Adviser opined as under:—
	"It is noticed that the Railway Administration is intending to enter into a separate licence agreement from 1-1-1973 onwards. Since the continued"

Date	Event
	<p>occupation of the land by the firm beyond 31-12-1972 is proposed to be regularised through a fresh licence agreement, it is not considered desirable to enter into litigations for the rent to be charged for the period upto 31-12-1972 and hence an overall settlement of the entire issue would obviously be the best solution."</p>
11-6-1973	Northern Railway again reminded that L&DO.
15-6-1973	<p>Ministry of Works & Housing were addressed to advise the rate applicable to land in Connaught Place area from 1-1-1968 onwards corresponding to the land value of Rs. 186/- per sq. yard prevalent in 1962-63.</p>
27/28-6-1973	<p>L&DO in his DO letter addressed to Northern Railway intimated <i>inter alia</i> as follows:</p>
	<p>"This office assess the land value for the purpose of fixation and calculation of various increases in the lease rent charges damages etc. in respect of leases granted by Government or to be granted by the Government. If your intention is to estimate the market value of land in various localities in Delhi, the right source would be District Revenue authorities."</p>
20-7-1973	<p>Board reminded the Joint Secretary, Ministry of Works & Housing to expedite information called for by them <i>vide</i> Board's letter of 15-6-73.</p>
22-8-1973	<p>L&DO wrote to Northern Railway, <i>inter alia</i>, advising that the land rate in Shankar Market for commercial purposes is Rs. 600/- per sq. yard with floor area ratio 1:4. The Railway Ministry might determine the land value according to the merits of the case. He, however, advised that this rate had since been enhanced to Rs. 1000/- per sq. yard with F.A.R. 1:2.5.</p>
31-8-1973	<p>Board again reminded Joint Secretary, Ministry of Works & Housing.</p>

Date	Event
12-10-1973	Reply received from L&DO advising that the lease hold rights from 1-7-63 in Connaught Place area were as follows:—
Period	Residential Commercial
1-7-63 to 27-3-66	Rs. 100/- Rs. 300/-
28-3-63 to 14-1-72	Rs. 200/- Rs. 600/-
15-1-72 to date	Rs. 200/- Rs. 1000/-
22-10-1973	A further clarification from L&DO Office stating that:—
	<ul style="list-style-type: none"> (i) Annual ground rent @ 5 per cent of the lease hold value per sq. yd. for residential purposes. (ii) Annual ground rent @ 5 per cent on 1½ times of the residential value of the land per sq. yd. for office and cottage industries. (iii) For other business purposes 5 per cent per annum on two times of the residential value per sq. yd.
5-11-1973	Board again reminded Ministry of Works & Housing.
1-2-1974	As the fixation of licence fee based on the land value was the main point of contention between the firm and the Railway, a decision was taken to hold a meeting with the Ministry of Works & Housing to sort out the matter.
8-5-1974	A meeting was held in the Railway Board's office with the Land and Development Officer of Ministry of Works & Housing, when the question of land value was discussed.
18-5-1974	Information was received from the L&DO stating that the land leased out to the firm should be treated as

Date	Event
	for commercial purposes, for which the following land value would be applicable:—
from 1-1-68	Rs. 600/- per sq. Yd.
from 1-1-73	Rs. 1000/- per sq. Yd.
14-11-1974	L&DO was addressed by the Railway to indicate whether any land in this locality had been licensed by them for commercial/residential purposes without putting permanent structures.
15-2-1975	L&DO replied in the negative.
27-5-1975	The Railway Board directed the Northern Railway to take action against the firm for recovery of arrears of rent upto 31-12-72 and for eviction and recovery of damages for occupation of the area from 1-1-73.
10-7-1975	The Railway initiated proceedings against the firm under Public Premises (Eviction of unauthorised Occupants) Act, 1971."

1.67. It will be seen from the chronology of events given above than on 3rd January, 1973, the Railway was advised that the lease might be extended for a period of three months upto 31-3-1973; the licence fee might be charged on the basis of Rs. 300/- per sq. yard (provisional value) and the Railway should take immediate action to settle the land value with the Land and Development Officer. The Committee desired to know as to who had suggested this course of action. The Member Engineering explained:

"This letter was issued by the Railway Board in pursuance of the note recorded by the Chairman, after Sardar Swaran Singh rang up, on 1-1-73. The Board made it clear in the letter to the Northern Railway that the licence fee should be charged at Rs. 300 per sq. yd. as provisional value and the railway again should fix it in consultation with L&DO."

1.68. The Committee, while pointing out that the agreement had expired in December 1972, asked as to why the party was not immediately removed from the Railway land. The witness replied:

"A railway representative was sent by the Division to the spot to take the possession. Then he was told that the matter had been referred to the Minister."

1.69. Asked if it was a sufficient ground not to evict the party from unauthorised occupation, the Chairman, Railway Board informed the Committee that "on the first itself he (the party) got stay order from the Chairman."

1.70. Asked as to what were the orders recorded by the Chairman, Railway Board, the Member Engineering stated:

"It is like this:

"Sardar Swaran Singh, Minister for External Affairs rang me on date and told me that the lease of land to M/s. Oriental Building and Furnishing Co. (P) Ltd., who are bottling Coca Cola, has been terminated with effect from yesterday (31-12-1972). He said that this had been dealt with when he was Railway Minister and it had been settled that the lease should be for a period of 20 years. Ultimately, the agreement provided for a lease of 10 years, subject to extension by agreement on both sides. He requested that this matter may be looked into and dealt with against the background mentioned above. He spoke to me in the absence of the Minister of Railways, who is out on tour.

Shri Daljit Singh, Director, M/s. Oriental Building & Furnishing Co. (P) Ltd., saw me in this connection later and said that he would be prepared to pay the extra amount required to bring up the payment to the rate fixed by the Land and Development Officer.

I have advised the G.M. Northern Railway that three months' extension may be given to him to enable this case to be dealt with carefully. He should be permitted to pay the rate of Rs. 300/- as decided by the Land & Development Officer and also to make payment of the difference between the rate paid by him and the rate fixed by the Land & Development Officer."

1.71. The Committee enquired how the figure of Rs. 300 was arrived at. The witness replied:

"It is the figure which the firm was saying should be charged being 1½ times the residential value."

1.72. Asked if the then Chairman of the Railway Board was justified in giving this type of order, reducing the rent and extending the lease by another three months, the witness replied:

“He received a telephone message from Mr. Swaran Singh Who was the Minister of Railways at the time when it was decided.”

1.73. He further stated that a letter in pursuance of Chairman's orders was written to the Northern Railway on 3-1-1973. He added that it was the G.M., Northern Railway who on the 20th of January 1973, wrote to us saying that “we should not extend it for a period of three months because it would lead us into complications. It would mean an extension for a period of 10 years and until this question was allowed to settle, we should charge Rs. 600/- from them.”

1.74. The audit para states that the additional area which on re-verification was found to be 84 sq. yards (against 117-33 sq. yards mentioned earlier) encroached by the firm had been vacated on 17 May 1976 and that a bill of Rs. 8876 on account of the rent for this area of land was preferred on the firm on 8 November, 1976. The Committee desired to know the basis on which the bill for Rs. 8876/- was preferred on the firm and whether the firm had since paid the amount. The Ministry of Railways in a note have stated:

“The bill for Rs. 8876/- was preferred on the firm on the basis of 12 per cent per annum (as damages) on the land value @ Rs. 1,000/- per sq. yd. for the period from 1-7-75 to 17-5-76. The firm has not paid this amount so far and has disputed the valuation of land and also the rate of 12 per cent. In subsequent discussions on 22-6-77 the firm indicated that they were prepared to pay a lump-sum of Rs. 4478/- in full and final settlement for this encroachment. This is currently under examination by the Railway.”

Eviction Proceedings

1.75. According to Audit Paragraph an application was filed before the Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, No. 40 of 1971 only in July, 1975 and the case was still (January 1977) pending with the Estate Officer as the hearings fixed on eight dates during November 1975 to

December 1976 had been postponed. Enquired about the present position of the case the Ministry of Railways in a note have stated:

“The Railway had initiated eviction proceedings against the firm under Public Premises Eviction (Act) 1971, on 10-7-75 and the Estate Officer started trying the case on 11-11-75. While the proceedings in the court of the Estate Officer were in progress, the firm filed a suit in the Delhi High Court on 11-5-1977 under section 20 of the Indian Arbitration Act and also an application for stay from evicting the firm. The Delhi High Court passed orders on 30-8-77 restraining the Union of India from evicting the party till further orders. They also took up for consideration the party’s request for arbitration under clause 19 of the lease agreement. The next hearing of the case in the High Court is posted for 25-4-1978.

“In view of the above, the eviction proceedings in the Court of Estate Officer stand adjourned sine die w.e.f. 13-12-77”.

1.76. It would be observed from above that the eviction proceedings against the firm were initiated as early as 10 July, 1975. However the case could not be decided in the court of the Estate Officer till 30 August 1977 when the Delhi High Court passed orders restraining the Government from evicting the party. Asked about the unusually long time taken by the Estate Officer in giving his verdict the Ministry of Railways have furnished the following chronological history of the case:

Date	Event
10-7-1975	Divisional Engineer/New Delhi filed an application before the Estate Officer requesting the Estate Officer to pass orders under section 4 and 7 of the Act for: <ul style="list-style-type: none"> <li data-bbox="453 1295 613 1323">(i) Eviction. <li data-bbox="444 1354 1073 1419">(ii) Recovery of arrears of rent for the period 1-1-1968 to 31-12-1972 (including interest). <li data-bbox="438 1446 1073 1541">(iii) Recovery of damages from 1-1-1973 to the date of vacation and restoration of the premises in question to the Railways.
31-7-1975	Shri M. S. Arora, the then Estate Officer issued notices to the party under section 4 and 7 of the Act.

Date	Event
28-8-1975	Party filed objections to the said notices saying that they were lessees as per agreement dated 9-5-1969 providing lease for ten years with automatic extension for another ten years. It was contended that matter regarding revision of lease money had been pending for some time. A copy of Divisional Superintendent's letter No. 473-W/842, dated October 1974 was enclosed saying it to be self explanatory and dues payable by them were asked for.
2-9-1975	Shri M. S. Arora the then Estate Officer fixed hearing on 30-9-1975.
24-9-1975	A reply to the objections filed by the party vide his petition dated 28-8-1975 was filed by the Union of Indfa saying that lease had been terminated with effect from 31-12-1972 and that Divisional Superintendent's letter dated October 1974 did not confer any right on the party to continue occupation in view of the condition in the said letter "if renewal is due prior to 1-11-74."
30-9-1975	Shri M. S. Arora, Estate Officer retired on 30-9-75 and no proceedings were carried out.
1-10-1975	Shri Gosain Lal the present Estate Officer took over charge and fixed hearing of the case of 11-11-1975.
11-11-1975	The respondent did not appear before the Estate Officer though Land Control Inspector from Railway's side attended the court. The case was fixed for next hearing on 15-12-1975.
15-12-1975	Shri A. N. Sharma, Railway Advocate from the Railway's side and Shri Daljit Singh, Managing Director of the respondent company attended the court. The respondent stated that he had made a request to the Divisional Superintendent for referring the matter to the General Manager for arbitration under clause 19 of the lease agreement dated 9-5-69 and requested for time. The case was, therefore, adjourned to 12-1-1976.

Date	Event
12-1-1976	The party requested for time and case was adjourned to 9-2-1976.
9-2-1976	Railway Advocate and party attended the court but party again requested for time. The case was, therefore, adjourned to 23-2-1976.
23-2-1976	Divisional Superintending Engineer, Railway Advocate and Land Control Inspector attended the court when Shri Daljit Singh respondent again requested for adjournment on the plea that they had requested Divisional Superintendent for referring the matter to General Manager for arbitration. The court asked him to make the request in writing which he refused and left the court saying that he was going to the General Manager. He came back after some time and made a written request for adjournment. The case was adjourned to 29-3-1976.
29-3-1976	Railway Advocate attended the court with two witnesses for getting their statements recorded but the party again gave an application for adjournment which was opposed by the Railway Advocate but the Estate Officer adjourned the case to 3-5-1976.
3-5-1976	Railway Advocate attended the court alongwith one witness when party (Shri Daljit Singh) again made an application for adjournment which was granted by the Estate Officer, fixing the next date of hearing as 2-6-1976.
2-6-1976	Railway Advocate and Land Control Inspector attended the Court. Party again made a request for adjournment which was acceded to and the case was fixed for next hearing on 6-7-1976.
6-7-1976	Railway Advocate and Land Control Inspector attended the court. Party again made a request for adjournment and the case was adjourned to 4-8-1976.
4-8-1976	Railway Advocate and Land Control Inspector attended the court when party again made request for

Date	Event
	adjournment. The court granted it as last chance and asked the Railway to produce evidence on next date which was fixed as 6-9-1976.
6-9-1976	Railway Advocate and one witness attended the Court. Party again made a request for adjournment which was granted and case was fixed for 5-10-1976.
5-10-1976	The respondent again made a request for adjournment saying that his request for arbitration was still under consideration by the Railway Administration. This was strongly opposed and the court was requested to record evidence by the Railway. Statement of one witness was recorded and the case was fixed for remaining evidence on 3-11-1976. Respondent did not cross examine him.
3-11-1976	An Assistant from Ministry of Works and Housing was summoned to prove market value of land in question but he did not attend. The case was adjourned to 15-11-1976.
15-11-1976	Case was adjourned as the Estate Officer was busy in some case of Moradabad.
20-12-1976	A witness from Ministry of Works and Housing attended but his statement was not recorded as the respondent was not present. The case was fixed for hearing on 17-1-1977.
17-1-1977	Railway Advocate attended the court when the respondent stated that they requested the Railway Board for referring the matter for arbitration. The case was adjourned to 28-2-1977, for Railway's evidence.
28-2-1977	The respondent requested for adjournment on the plea that he had to attend some important meeting of the Delhi Productivity Council at 15.45 hours. The Estate Officer adjourned the case to 18-4-1977.

Date	Event
18-4-1977	Parties attended the court but the witness from Land and Development Officer did not attend. The case was adjourned to 4-5-1977.
4-5-1977	Two witnesses from Land and Development Officer to prove market value were examined by the Railway and the case was fixed for evidence by the Respondent on 17-5-1977.
17-5-1977	The respondent filed an application before the Estate Officer that he had filed a petition under section 20 of the Arbitration Act at Delhi High Court and that High Court had issued notice to the Union of India regarding application for injunction restraining Union of India from dispossessing him. It was also stated that High Court had fixed 26-7-1977 for hearing of the case. He made a request for adjournment to await for order of the High Court. The Estate Officer passed an order that proceedings could not be pending unless the respondent brought stay orders from the High Court. He, however, directed the party to bring the stay order by 31-5-1977 or produce his evidence on that day.
31-5-1977	<p>The respondent did not bring any evidence but made two applications. in one of them he requested the Court to send for the following letters in original:</p> <p>(1) Letter No. 195/G dated 7-11-1972 from Engineer-in-chief Northern Railway to Land and Development Officer.</p> <p>(2) Land and Development Officer letter No. L-2-3-6(13)/68 dated 28-11-1972 addressed to Shri P. N. Chopra, Engineer-in-Chief, Northern Railway.</p> <p>The court directed the Railway to produce the documents on 7-6-1977.</p> <p>In the other application, the party requested for fixing some date for cross-examination of the three witnesses produced by the Railway. The court observed that full opportunity was given to the respondent for cross-examination when statements</p>

Date	Event
	were recorded in his presence. Filing of such application at a very late stage is merely to delay the proceedings. The application was rejected. Next hearing was fixed on 7-6-1977.
27-6-1977	Railway Advocate attended the court and filed objections to the application by the respondent dated 31-5-1977. The Estate Officer directed the railway to produce the documents on 27-6-1977.
	An application moved by the party for summoning certain records from Land and Development Officer was strongly opposed by Railway Advocate and was rejected by Estate Officer. The case was fixed for next hearing on 27-6-1977.
27-6-1977	Copy of letter No. W-195 G dated 7-11-1972 by Engineer-in-Chief G. Northern Railway to Shri D. L. Gupta, Engineer Officer Land and Development Officer's office was filed. The respondent requested for adjournment due to death of his counsel and that he was to engage another counsel. The case was therefore, adjourned to 18-7-1977.
18-7-1977	Shri R. K. Juneja, Counsel for the party filed medical certificate for sickness of Shri Daljit Singh and got the case adjourned to 4-8-1977.
4-8-1977	An application by the party was filed for production of 15 documents by the Railway.
16-8-1977	Documents, in question, were produced.
25-8-1977	One letter was summoned from New Delhi Municipal Committee which was accepted as correct by the Railway Advocate and the case was fixed for remaining evidence by the party on 31-8-1977 and for arguments on 2-9-1977.
31-8-1977	The Counsel for the party explained before the Estate Officer that Delhi High Court had passed orders on 30-8-1977 restraining Union of India from evicting the party till further orders. This had been done on

Date	Event
	application for 'stay' filed by the party at Delhi High Court in a suit filed by them under section 20 of Arbitration Act. Estate Officer directed the party to file a copy of the said order of Delhi High Court on 28-9-1977.
28-9-1977	The respondent did not attend the court on 28-9-1977. The Estate Officer adjourned the case to 17-10-1977, Land Control Inspector learnt on 1-10-1977 from the Estate Officer that party had filed copy of the High Court order dated 30-8-1977.
17-10-1977	The case was adjourned to 1-12-1977 because a certified copy of the High Court dated 30-8-1977 was yet not available with the Division. Law Officer was reminded to send the copy for examination by the Railway Advocate conducting this case before the Estate Officer.
1-12-1977	Railway Advocate was not present. The case was, therefore, adjourned for next hearing on 13-12-77.
13-12-1977	Railway filed an application for adjournment of the case <i>sine die</i> in view of High Court order dated 30-8-1977. The case was adjourned <i>sine die</i> .

1.77. It would be observed from the above chronology that the eviction proceedings were prolonged by seeking adjournment of hearing on one pretext or the other. The Committee enquired if the Ministry of Railways ever protested before the Estate Officer. The Member Engineering during evidence stated:

"We cannot write to him officially from the Northern Railway asking him to expedite the case because it is laid down by the Ministry of Law that he will not take any instructions...."

1.78. However, it is evident from the above chronology that the Railways have never but once opposed the adjournment of hearing only on 5-10-1976 during all the years.

1.79. At the instance of the Committee, the Ministry of Railways furnished a copy of the stay orders granted by the High Court in 1977 which is reproduced at Appendix VI.

1.80. Asked about the latest position of the case in the High Court, the Ministry of Railways (Railway Board) have in a note dated 24-7-1978 stated:

"The hearings fixed for 25-4-1978 and 5-5-1978 were adjourned by the High Court to 14-7-78 on the request of the petitioner although the adjournment was opposed by the Railway Advocate. The hearing fixed from 14-7-1978 has been further postponed to 14 August, 1978 for framing of issues."

1.81. It would be observed from the stay order that the stay was granted by the High Court with reference to a letter issued by the Divisional Supdt., Northern Railway, New Delhi to the party on 26 October, 1974 regarding the revision of the licence fee for the premises occupied by it (Appendix VII). Asked about the circumstances under which this letter was issued, the Ministry of Railways have stated:

"...this letter was issued inadvertantly to the party."

1.82. Elaborating the point, Member, Engineering Railway Board during evidence stated:

"It was a general letter issued to all licences and lease-holders in his Division in the Delhi area saying that since there is a revision of rent likely to take place, you will be liable to pay the revised rent. Unfortunately, a copy of this letter went to this firm also because firm's name was in the Index Register of the names of all the lease-holders and licencees who had land in that area...."

1.83. Asked as to how the name of the party continued to be in the index Register in October, 1974 when the agreement with the party had expired on 31-12-1972, the Ministry of Railways in a written note have stated:

"The existing practice is to enter the name of the party in the index register maintained for all lease holders and licencees, and delete the same only after the party has cleared all the arrears. In this particular case the lease had expired on 31-12-72 and notice of termination was also given. But since the party had not cleared his outstanding dues, the name continued to remain on the register. It was our anticipation that the party would come round and settle the issue amicably and pay up all dues

to the Railway. From records, it would appear that notice letter dated 10/74 for revision of licence fee was issued inadvertently to the party after the termination of Agreement on 31-12-1972."

1.84. The Committee desired to know if the responsibility for this lapse had been fixed and action taken against the erring officials. The Ministry of Railways have stated:

"Enquiries are being conducted to ascertain as to who was responsible for issue of that letter. However, the Ministry of Railways respectfully submit that there was no deliberate malafide in the issue of the letter dt. 10/74."

1.85. The Committee note that M/s Oriental Building & Furnishing Co. (Pvt.) Ltd. encroached on Railway land situated in one of the most prestigious area of New Delhi on various occasions in 1942 and 1943. The encroachments were subsequently regularised by the Railway Administration and an agreement was executed with the firm in 1947. The firm again encroached on land measuring 2246 sq. yds. in 1950 and sub-let a portion of land to another sister concern—M/s Pure Drinks (Coca-Cola), New Delhi. The agreement was terminated in 1951. Eviction orders were given in June, 1956 by the "competent authority" under the Government Premises (Eviction) Act, 1950, but were stayed by the appellate authority (Chairman, Railway Board) in July, 1956. After a new Eviction Act was promulgated by Government in 1958 notices for vacation of the land and payment of damages were served by the Railway Administration in October, 1959, but proceedings under the Act were again stayed on the orders of Chairman, Railway Board in February, 1962. The above subject was then considered by the Public Accounts Committee (1963-64) and the Committee in their 13th Report had adversely commented on the failure of the Railway Administration to check encroachments and violation of agreements entered into between the Railways and the encroaching party from time to time. From the Audit paragraph now under examination and the further information gathered by the Committee, the Committee are constrained to point out that there has been no change in the position from what was reported to them about 15 years back but rather it has worsened. It is painful to learn from the Ministry of Railways that the last encroachment by the firm was detected for the first time on 1 July, 1975 when details of the area already under the firm's unauthorised occupation were being collected for starting eviction proceedings for non-payment of arrears of rent. Surprisingly, this encroachment was not shown in the certificates furnished by the

Supervisors. The Committee fail to understand as to why encroachment was not detected earlier by the Engineering Supervisory Staff such as Permanent Way Inspectors and Works Inspectors who, under the Indian Railway Code for Engineering Department and Indian Railways Way and Works Manual are responsible for keeping watch on vacant Railway land and are required to ensure that there is no encroachment on Railway land within their jurisdiction. It is also therefore doubtful whether periodic certificates furnished by these officers in terms of instructions contained in para 3720, Chapter XXXVII of Indian Railway Way and Works Manual and the encroachment registers maintained by them contained any useful and pertinent information.

1.86. Besides the above case, the Committee note that in Delhi area alone 71 hectares of Railway land is under unauthorised occupation. Eviction orders are stated to have been passed in the case of 65 hectares and the rest of the area falling under isolated pockets continues to be under unauthorised occupation since as early as 1948. The Committee also note that during the last 5 years (1973 to 1977) the various Railway Administrations had evictions carried out and taken possession of land in as many as 77,743 cases, the incidence being the highest in Eastern Railway (16,678), followed by Northeast Frontier Railway (14,735) and South Eastern (12,323). But if the fate of eviction in the instant case of M/s Oriental Furnishing Co. (Pvt.) Ltd. and the extent of actual non-eviction in Delhi is any indication, the Committee feel that the extent of encroachment on Railway land must be very large. That in spite of the officers of the Engineering Department being required to keep a watch on encroachments during routine inspections, they could not detect additional encroachments by M/s. Oriental Furnishing shows that the inspection machinery is woefully lacking. The Committee would, therefore, like to know the number of encroachments and the area encroached upon as on 31 December, 1973, 1974, 1975, 1976 and 1977 in each Zonal Railway and the specific steps taken from year to year to get these formerly made encroachments vacated and to stop them in future. The Committee would also like to know in how many cases the staff and officers responsible for negligence have been penalised and the amount of penalty realised from the encoachers. The Committee apprehend that unless stringent and timely measures are taken for protection of the land and the defaulting officers are dealt with sternly for negligence of their duties, the encroachments might pose serious problem to future development of railway lands.

1.87. The Committee note that in the instant case in the Master Plan of Delhi finalised in 1957 the piece of Railway land in question

adjoining railway lines near Connaught Place area of New Delhi was reserved for flatted factories. However, after the finalisation of Master Plan many changes were made in it by the Ministry of Works and Housing. Nevertheless, the Ministry of Railways did not consider it proper to approach the Ministry of Works and Housing to alter the land use of this piece of Railway land in the Master Plan so that the land could be beneficially utilised by the Railways. Whether it did not strike to the Ministry of Railways at all or it was considered impracticable is an unanswered question. The Committee cannot help gain the impression that serious thought was not given to put the valuable land to optimum use. Instead of making any serious efforts to get the land vacated after its first unauthorised occupation, the Railway authorities chose the easy and convenient course of regularising the encroachments on the grounds that the land was not required by the Railways for its purposes. The initial lapse enabled the firm to gain foothold on Railway land for further encroachments on the adjacent land. The Committee would like the Ministry of Railways to consider whether this land can be put to some use particularly when the Minto Bridge Station is situated very closely.

1.88. In February, 1962, the firm communicated its willingness to pay rent for the land in its possession on the basis of the old agreement (which was terminated in 1951) and also suggested negotiations for the outright sale of the land. The Railway Board decided in November, 1962 that arrears of rent should be recovered at 6 per cent of the lease hold value of the land and after the firm paid the rent fixed in that manner the land should be leased to it for a further period of 25 years, the rent being assessed at 6 per cent of present day value of land, subject to revision every five years to accord with the prevailing market price. The firm was asked by the Railway Administration in December, 1962 to accept these terms and to pay Rs. 2,04,815. The firm paid only Rs. 1,06,037 and made a counter proposal for outright sale of land to it without agreeing for a fresh lease for a further period of 20 years from 1 January, 1963. A settlement was reached between the Railways and the firm in 1963 and a letter of intent was issued in June, 1963. However, the agreement leasing the land to M/s Oriental Building and Furnishing Co. was actually executed in May, 1969.

1.89. The Committee are distressed to note that the Ministry of Railways took six years to execute a simple agreement which, in the words of the Chairman, Railway Board himself 'is ratifying the Letter of Intent. Nothing more than that'. During all these six years file had been moving up and down without any definite decision emerging. Precious time was lost in unnecessary and avoidable correspondence. The consequence was that in the absence of

any legal instrument, the Railway Administration was helpless all these years to take any legal action against the firm for recovery of dues etc. The Committee are greatly concerned at the lax and perfunctory manner in which the whole case had been handled in the Ministry of Railways. The Committee cannot help observing that there is serious lacuna in the functioning of Railway Organisation in such matters.

190. The Committee are surprised to note that the agreement executed with the firm in 1969 leasing the Railway land for ten years from 1963 to 1972 neither specified the amount nor the rate of licence fee to be charged by the Railways for the five years from 1-1-1968. In fact, a vague clause was inserted in the agreement that "the occupation money provided for in the lease agreement shall be liable to be enhanced by the Railway Administration every five years on the basis of 6 per cent per annum of revised valuation of land lease to be fixed in consultation with the Land & Development Officer Delhi..." It is interesting to note that land lease rates calculated on the basis of Rs. 600 per sq. yard effective from 1-7-1963 to be applied in this case from 1968 onwards had already been advised to the Ministry of Railways by the Land & Development Officer, Ministry of Works and Housing as early as 28 March, 1964, but in the Ministry of Railways advised the amount to the private firm only on 24 September, 1968. The Committee do not find any substance in the argument that the amount or rate of occupation money 'could not be specified in the agreement as the rate was disputed by the party and the Railway Administration felt that if a new element of dispute was introduced at that late stage (1968-69), the party might delay the signing of the agreement'. The Committee feel that since the question of rate was disputed it was all the more necessary that this matter should have been amicably resolved before finalisation of the agreement. The Committee are also not impressed by the argument that the delay in informing the rate/amount to the firm 'could be attributed to the fact that there had been correspondence between the party and the Division in regard to the changes suggested in certain clauses of the agreement and changes which were suggested had a vital bearing on the question of rates also'. In fact, the Committee are led to the impression that the Ministry of Railways itself did not take the revised land lease valuation very seriously. The Committee are inclined to conclude that it was a deplorable lapse on the part of Railway Administration to conclude agreement even after nego-

tiating the matter for long 6 years without settling the issue of occupation money for the period 1 January, 1968 to 31 December, 1972. This lapse ultimately proved detrimental to the interests of the Railways. Interestingly, the Ministry of Railways woke up suddenly in 1969 and appeared to be more enthusiastic than the other party to execute the agreement as early as possible. It was also sheer negligence that the firm was advised of the revised valuation of land lease effective from 1 January, 1968 as late as 24 September, 1968, more particularly when the Ministry of Railways knew it since 1964. The Committee are of the opinion that had the settlement about the revised valuation of land lease been arrived at, with the firm in time and made part of the Agreement, the later litigations could have been avoided. Whether the lapses were under pressure from above or under influence from outside, the matter needs to be probed thoroughly.

1.91. The Committee are disturbed to note that though a notice was served on the firm on 17 June, 1969 to pay the arrears of licence fee failing which legal action would be taken against them for recovery of the amount besides eviction from Railway premises, yet the application under the Public Premises (Eviction of Unauthorised Occupants) Act of 1971 was filed as late as in July, 1975, i.e., after a period of six years. The Committee are informed that all these years protracted correspondence had been going on up and down and no definite decision to evict the party was taken. The Committee see no grounds for the Ministry of Railways to drag on negotiations with the firm when a decision had been taken to initiate legal action against them. The Committee are not at all impressed by this line of reasoning and is of the view that there is more to it than what meets the eye. This is a glaring case where the party had made substantial amounts of wrongful gains at the expense of public exchequer and this could not have been possible without collusion on the part of some Railway officials. It appears that the competent authority at the higher level shirked the responsibility and avoided taking concrete and conclusive decision in this regard. The Committee take a serious note of it and urge the Ministry of Railways to fix responsibility for this grave and costly lapse.

1.92. The Committee further note that the Divisional Superintendent, Delhi Division, wrote to the General Manager, Northern Railway Headquarters office on 6 October, 1969 stating that the party [Oriental Building and Furnishing Co. and Pure Drinks (New Delhi)].

Pvt. Ltd.] had not cleared the Railway dues amounting to Rs. 2,35,020.24 pertaining to the balance of 1968 and licence fee for the year 1969 and asked whether they should initiate action against the party under the Public Premises Act for eviction and recovering the dues as damages. The Northern Railway Headquarters replied this letter on 8 June, 1970 but on the specific issue raised by the Divisional Superintendent of initiating action against the firm, no direction was given by the Headquarters Office to the Division. The Committee view it seriously and are inclined to believe that the basic issues raised by the Divisional Superintendents were obviously side-tracked for reasons best-known to the competent authority. The Committee find that the Northern Railway Headquarters miserably failed not only in giving specific directions on the issue but they took avoidably long time also in replying the Divisional Superintendent's letter. The Chairman, Railway Board, himself admitted that the delay is not fully justified. The Committee would like the Ministry of Railways to fix responsibility on the delinquent officers and apprise the Committee in this behalf.

1.93. The Committee note that the Ministry of Railways enhanced the lease rent of the land to Rs. 98,748 per annum for the five years from 1st January, 1968 to 31st December, 1972 on the basis of revised lease land valuation at the rate of Rs. 600 per sq. yard as determined by the Land and Development Officer, Delhi. However the firm continued to pay the lease rent at the rate of Rs. 30,611.88 per annum on the basis of pre-revised valuation of Rs. 186 per sq. yard. The Ministry of Railways maintained that it was a part payment. The Committee are unable to share this view of the Ministry.

In fact, the company had disputed the very basis of fixation of lease rent at the rate of Rs. 98,748 per annum and was not willing to pay the revised lease rent. The Committee would like to be informed of the basis on which the Railway Administration had decided to accept part payment, as the agreement did not provide for it. The Committee feel that this initial mistake in accepting the part payment in clear violation of the agreement by the firm helped the latter to enter into unending correspondence with the Railway authorities to the disadvantage of the Railways.

1.94. The Committee are concerned to note that the Ministry of Railways failed to invoke clause 19 of the agreement about arbitration when the firm disputed the revised valuation of land lease as determined by the Land and Valuation Officer. The reasoning put

forth by the Ministry of Railways that right upto 1974, the triangular correspondence between the firm, Railways and Land and Development Officer was there and that asking for arbitration by the Administration was unusual is meaningless. The Committee take a serious view of the lapse on the part of Railway Administration. It is a pity that the firm which encroached on the Railway land, refused to pay the lease rent, went on enjoying the precious land and yet the Railway Administration failed in applying whatever legal remedies were available to them for eviction of encroachment and realisation of Government's dues. No action appears to have been taken even to consult the Ministry of Law at any stage though the Ministry was associated with the issue for over 35 years. This weak-kneed policy of the Railway not only helped the firm in prolonging their unauthorised stay on the Government land year to year, but also emboldened them to hold over the payment of Railway dues which according to the Audit have piled upto Rs. 17.20 lakhs (June 1976).

1.95. Another disquieting feature which has come to the notice of the Committee during evidence is that after the termination of lease on 31 December 1972, the Chairman, Railway Board, on the basis of a telephonic message from the then Minister of External Affairs, had advised the General Manager, Northern Railway, that the lease might be extended for a period of 3 months upto 31 March 1973. The lease fee might be charged on the basis of Rs. 300 per sq. yard (provisional value) and the Railways should take immediate action to settle the land value with the Land and Development Officer. The Committee feel that these instructions would have wide repercussions had the General Manager, Northern Railway, not intimated to the Railway Board that "we should not extend it for a period of 3 months because it would lead us into complication. It would mean an extension for a period of 10 years. Until this question was allowed to settle we should charge Rs. 600 from them." The Committee are inclined to believe that whenever the party feared any action it came forward with fresh representation directly or through high-ups, without any sincere intention to settle the issue. Approaching the Minister of External Affairs and thus putting pressure on the Railway Board is one of the tactics adopted by the firm. The Committee are constrained to observe that this does not bring credit to the firm nor to the Railway Board.

1.96. The Committee are distressed to note that the eviction proceedings initiated against the firm on 10 July 1975 under the Public Premises Eviction Act could not be finalised by the Estate Officer till 30 August 1977 when the firm got stay orders from the Delhi High Court restraining the Government to evict the party from Railway land till further orders. The hearings were adjourned eight times during November 1975 to December, 1976. The Committee would like the Ministry of Railways to examine whether the repeated grant of adjournments were on bonafide consideration and the attitude taken by the Railway Administration in this matter. They would also desire that responsibility be fixed for the costly lapse and appropriate steps be taken.

1.97. The Committee note that the firm obtained stay orders in 1977 from the Delhi High Court restraining the Railways from evicting the firm from the Railway land. It is interesting to note that the stay orders were granted on the basis of a letter dated 26 October 1974 written by the Railway Administration to the firm stating that the licence fee for the railway premises had to be revised from 1st of November 1974 and that the firm was required to pay the railway dues at the revised rates which would be advised separately. The Committee are greatly perturbed to note as to how such a letter could be sent in 1974 to the firm with whom the agreement had already expired on 31-12-1972. The Committee regret that the name of the firm continued to be on the Index Register alongwith the names of all other lease holders and licencees as on 26 October 1974 though the firm was neither lease holder nor licencee on that date. The Committee are not convinced with the reasoning that the letter had been sent inadvertently. Since enquiries are being conducted by Railway Administration in this episode, the Committee would like to be apprised of the action taken against those who are found responsible for this grave mistake.

1.98. The Committee are surprised to note that the Railway Administration did not prefer any appeal from the order of the Delhi High Court. Nor was any proper legal opinion taken as to whether such appeal should be preferred.

1.99. The Committee find that their observations on the subject in their 13th Report (3rd Lok Sabha) are very relevant even now—15 years later. The very same firm and its associates have made encroachment and violated the terms of the agreement. There have

been unexplainable disinclination and inordinate delays on the part of Railway Administration in taking recourse to administrative and legal remedies available to them, resulting in heavy accumulation of dues to the Railways. The whole episode requires to be probed in depth by a high powered Committee with a view to fixing responsibility for the lapse on the part of the various authorities. Since the decisions in this case were taken by the Railway Board itself, the Committee desire that such investigation should be entrusted to a high powered body, independent of the Railway Board.

1.100. The Committee does not approve of the practice of the Railway Administration of negotiating with illegal occupants without taking proper steps for immediate ejection against such illegal occupants. The present case is an example of numerous similar cases where Railway lands which are often very valuable are being wrongfully and illegally enjoyed by unauthorised occupants and trespassers. The Committee is of the opinion that such misuse of Railway property becomes possible not merely because of negligence and lapses on the part of some Railway officials and other employees but also because of actual collusion and connivance by them with ulterior motives. If immediate action for ejection is taken at the earliest possible opportunity then the presumption for such malafides on the part of such Railway employees can be negated. Negotiations with such illegal occupants should be frowned upon because their result is generally to make the proceedings long drawn which is to the continuing advantage of the illegal occupants and designing employees."

NEW DELHI;
August 23, 1978.
Bhadra 1, 1900 (S).

P. V. NARASIMHA RAO.
Chairman,
Public Accounts Committee.

APPENDIX I

(Vide para 1.14)

Extracts from Indian Railway Code for the Engineering Department

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CHAPTER VI

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607. *Management of Land.*—The Engineering Department or the department which has custody of the land, is responsible for seeing that it is made use of to the best advantage. In particular if a portion of the land is not immediately required for the use of the railway, it should be considered whether it can be leased or licensed at a proper rental to outsiders with adequate safeguards for resuming possession as and when required. (see also paragraphs 807—820).

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CHAPTER VIII

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803. *What Custody Implies.*—It is the duty of every Railway Administration to preserve unimpaired the title to all land in its occupation and to keep it free from encroachment. Where, however, the management of any land has been accepted by a State Government (see paragraph 810) this duty will devolve on that authority during the period of such management. With a view to obviate any litigation, accurate land plans of all railway lands should be maintained and boundaries adequately demarcated and verified therewith at regular intervals.

* * * * *

806. *Supplementary Rules Relating to Custody of Land.*—General Managers will be responsible for drawing up supplementary rules to ensure in respect of land other than that managed by a State Government, (a) that records of title are safely preserved and kept

up-to-date; (b) that boundaries are periodically inspected; and (c) that any encroachments found are promptly reported and dealt with. These duties should ordinarily devolve on the authority entrusted with the management of the land, though it may be desirable to reserve the actual institution of all ejection suits to one authority (preferably the Engineering Department). No legal proceedings in this connection may be entered upon without the sanction of the General Manager.

* * * * *

807. All Railway land should be managed on commercial lines, and each Railway Administration should endeavour to develop the resources of, and put to profitable use, any areas in its occupation which, though not eligible for disposal (see paragraph 823) are lying idle and can be put to profitable use. Such land is referred to hereinafter as "available" land.

Note.—In regard to the small space of land required by the Postal Department for the installation of post boxes in railway premises, the use of the necessary land, where agreed to by the Railway Administration, may be permitted free of any rent or charges, as the Postal Department have agreed to shift their letter boxes when called upon to do so.

* * * * *

809. *Responsibility for Management.*—The engineering, or any other Department of the Railway decided on by the General Manager at his discretion, will be responsible to him for the management on these terms of all land in the occupation of the Railway. The management of available land may be entrusted also to (a) a State Government, or (b) Station Committees. All land made over for management under (a) or (b) above should be properly demarcated and accurate land plans thereof furnished to the State Government or the Station Committee, as the case may be.

* * * * *

811. *Management by Station Committees.*—Station Committees may, at the discretion of the General Manager and on terms to be prescribed by him, be given the management of all or any portion of the land under their jurisdiction.

812. *Method of Management.*—To enable management to be conducted on commercial lines, Railway Administrations are permitted to grant to outsiders or other Departments, under a lease or license, rights and facilities in respect of “available” land for such purposes, whether or not connected with Railway working, as they may deem suitable.

813. The leasing or licensing of “available” land agreeably to these rules for purposes connected with the working of the Railway (e.g., Bulk Oil Installations; Warehouses, Wharfs or other premises for storing goods on receipt from the Railway after arrival or before being made over to the Railway for despatch; Shops for Station Vendors; schools for the children of railway employees; & c. & c.) does not require a reference to a State Government or other authority; but, in the case of land leased or licensed for other purposes, the State Government or other authority concerned should be consulted whenever the contingent circumstances are as such as to render it relevant or advisable, particularly if the alienation is of a quasi-permanent nature.

813-A. When the Railway land is leased or licensed for a purpose not connected with the working of the Railway, no permanent structures should be allowed to be constructed on such lands.

Note.—Permanent structures may be allowed to be constructed by the Railwaymen’s Co-operative Consumer Societies and Co-operative Credit Societies at the discretion of the General Managers on land proposed to be leased or licensed to such bodies on long term basis, in case the land is not required for Railway purposes in the foreseeable future subject the provisions of Para 819-E.

814. The leasing or licensing of Railway land for religious or education purposes or the granting of permission for the erection on railway land of praying platforms or of new structures to be used for religious purposes or the modification or extension of existing structures, will require the sanction of the Railway Board.

815. In addition to the lease or license of land itself, rights pertaining thereto, such as grass-cutting, grazing, fruit’ fishing; mooring, ‘c.’, may be let out by Railway Administrations.

816. The method by which land is managed by a State Government will be decided by that authority, subject only to the conditions on which such management is undertaken.

817. *Lease and License.*—A Lease presents certain difficulties in that there is a danger of accrual of occupancy rights. Nevertheless, if the added security of tenure given thereby is likely to result in an appreciably enhanced rental, its employment should be seriously considered. A License, on the other hand, merely confers on the licensee the right subject to certain restrictions, to use the allotted land for the purpose of operations specified, and creates no tenancy therein. These instruments must be executed only on behalf of the President and by the authorities competent to do so (cf. Appendix II, Indian Railway Code for the Stores Department).

* * * * *

841. Every Railway Administration is responsible for the demarcation and periodical verification of the boundaries, and the maintenance of proper records in connexion therewith of all land in the possession of that Railway.

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Extracts from Indian Railways Way and Works Manual

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CHAPTER XXXVII

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3720. *Verification of land boundaries.*—(a) *Vide* Para 841-E, "every Railway Administration is responsible for the demarcation and periodical verification of the boundaries and maintenance of proper records in connection therewith of all land in the possession of that Railway."

(b) The Permanent Way/Works Inspector is responsible for maintaining the railway land boundaries and for reporting any encroachments that may occur as soon as they are noticed, to the Assistant Engineer who will on receipt of such reports take immediate measures to remove the encroachments.

Particular care is required to prevent encroachment on railway land situated above tunnels.

(c) The Permanent Way Inspector shall inspect and maintain the railway land boundaries between stations and at unimportant stations.

The Works Inspector shall inspect and maintain the land boundaries at important stations and staff colonies.

(d) The Permanent Way Inspector|Works Inspector should submit by the prescribed date a certificate to the Assistant Engineer, endorsed to Divisional|District Engineer for information, in the following form each year:—

“I certify that I have inspected the railway land-fencings and boundary stones on my section during the year ending and that they are in accordance with the land-plans. There have been no encroachments except at the following kilometrages (mileages) that have been reported upon *vide* reference given against each. I further certify that missing wire fencing and/or boundary stones at the kilometrages (mileages) shown below have been replaced. No..... Date..... Permanent Way Inspectors/Works Inspector”.

(e) During his inspections the Assistant Engineer should ensure that railway boundaries are demarcated correctly and that there are no encroachments. In cases where he cannot prevail on the parties to remove the encroachments he must report the facts with particulars to the Divisional/District Engineer who will take up the matter with the Local Authorities.

* * * * *

3723. *Leasing or licensing.*—(a) Rules for the management of land are contained in paras 807-E to 821-E.

(b) Railway land may be leased or licensed with due regard to the provisions in paras 817-E to 821-E on terms decided upon by the Administration for such purposes as cultivation, the stacking of merchandise, erection of depots, storage of petroleum or other mineral oil in bulk or in tins or barrels, grazing of cattle, sale of trees or natural products and fishing in tanks. Plots leased or licensed should be of a fair size. Strips of land between stations should not be leased or licensed as this may lead to numerous cases of encroachment.

Land should not be leased or licensed for cultivation in any areas where Local Acts make it difficult to evict cultivators; reference should be made to the competent legal authority in all cases of doubt.

(c) All leases or licences should be covered by agreements, directives as issued by the Railway Board being adhered to.

(d) Proposals involving leasing or licensing of land for the erection of religious buildings such as temples or mosques or modification or extension to existing structures, should be carefully considered and the matter referred to the Railway Board *vide* para 814-E. The application should be invariably accompanied by a clear statement that the land is reasonably certain never to be required for railway purposes.

(e) In the case of railway land required for military purposes, rent on both the cost of land and buildings that may be allotted should be charged as decided upon by the Administration

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APPENDIX II

(vide para 1.27)

(COPY)

Registered A.D.

GOVERNMENT OF INDIA

MINISTRY OF RAILWAYS

(Railway Board)

No. 62-WII/LE/4

New Delhi, June 21, 1963

To

The Oriental Building & Furnishing
Co. Private Ltd.,
'M' Block, Connaught Circus,
New Delhi.

SUBJECT:—*Licensing of railway land in Delhi to (a) Oriental Building & Furnishing Co. (b) Pure Drinks—Coca Cola.*

Dear Sirs,

With reference to your letter No. I-R-12 of 6th May, 1963, addressed to the Minister of Railways, your Shri Daljit Singh called on the undersigned on 12th June, 1963, in response to a letter dated 1st June, 1963, addressed to you and inviting a representative for discussions to settle this matter.

2. At the aforesaid interview it was made clear that the Ministry of Railways do not propose to sell any portion of this plot of land and that they desired the leasing of this land to be limited to a period of 10 years beyond 31st December, 1962, but providing for an automatic extension for another 10-year period if the lease is not terminated by either party by notice to be provided—before the expiry of the first 10 years.

3. It was also explained to Shri Daljit Singh by the undersigned that the Divisional Superintendent, Northern Railways, Delhi's letter of 24th April, 1963, addressed to you was merely couched in the requisite legal language to convey a position that subsists until the matter is regularised by a formal fresh lease to be signed by you to cover the period from 1st January, 1963 onwards. This did not, however, convey that the Railway Administration would take recourse to eviction proceedings if, as Shri Daljit Singh conveyed to the undersigned on 12-6-1963, the Railway's terms and conditions are acceptable to you. There is also a further condition that will have to be accepted by you, namely that advance rent for one year will have to be immediately paid under the terms of the new lease commencing from the 1st January, 1963 and an equal amount towards security deposit together with the fee necessary to cover any relaxation for these terms can only be considered if and when the preliminary charges for the fresh agreement. It has been verified that under the existing terms and conditions, all parties who have taken Railway's premises on lease are required to pay both advance rent for a year and an equal amount as security deposit; any relaxation for these terms can only be considered if and when a general notification in this respect is made.

4. It was further represented by Shri Daljit Singh at the interview of 12-6-63 with the undersigned that the annual rental of Rs. 49,374 had been incorrectly computed on the basis of lease hold market value of land in the area as assessed by the land and Development Officer, Delhi (Rs. 200/- per sq. yard) increased by 50 per cent which would be necessary only when sale value is to be determined. It was further represented that the Land and Development Officer's letter of 3rd April, 1962 to the Divisional Superintendent, Northern Railway, had indicated this market value of Rs. 200/- per sq. yard in respect of land for commercial purposes if multi-storeyed construction is permitted whereas in the present case the Railway's terms of lease will not permit such construction. It has since been ascertained by the Divisional Superintendent, Northern Railway, Delhi, from the Land and Development Officer, Delhi, that lease hold market value of land in this area, if not used for multi-storeyed construction is Rs. 186/- per sq. yard; on this basis the rental due from you at 6 per cent will now be calculated by the

Northern Railway Administration. That Administration is accordingly being requested to finalise the lease with you and to accept the requisite payments from you to cover the fresh lease that will be signed by you.

Yours faithfully,

Sd/-

(C. T. VENUGOPAL)

*Additional Member, Finance,
Railway Board.*

No. 62-W11/LE/4

New Delhi, dated 21st June, 1963.

Copy for information to Shri G. P. Bhalla, General Manager-Northern Railway, with reference to subject covered by correspondence resting with Shri S. P. Lal, S.D.G.M's D.O. letter No. 27-DLI-PPEA-HQ 59 dated 27th March, 1963, to Director, Civil Engineering, Railway Board.

As this pertains to paragraph 36 (in pages 31-32) of Audit Report, Railways, 1963, which will come up for discussion before the forthcoming Public Accounts Committee meetings scheduled for the dates 9th to 12th July, 1963, matters may now be finalised as indicated above, so that a categorical final report of action having been taken could be made to the Public Accounts Committee. The draft agreement should be vetted by the FA&CAO and Law Officer.

Copy for information to Shri G. B. Singh, Divisional Superintendent, Northern Railway, Delhi, with reference to his D.O. letter No. 473-W/842/71 Pt. II dated 13-6-63.

Sd/-

(C. T. VENUGOPAL)

*Additional Member, Finance,
Railway Board.*

APPENDIX III

(Vide Para 1.27)

Registered A.D.

(COPY)

GOVERNMENT OF INDIA

MINISTRY OF RAILWAYS

(Railway Board)

No. 62-WII/LE/4

New Delhi, dated 21st June, 1963.

To

The Oriental Building & Furnishing Co. Private Ltd.,
'M' Block, Connaught Circus,
New Delhi.

SUBJECT:—*Licensing of railway land in Delhi to (a) Oriental Building & Furnishing Co. (b) Pure Drinks-Coca-Cola .*

Re.:—Your letter No. 1-R-12 of 6th May 1963 to the Minister

REF.:—Your letter No. 1-R-12 of 6th May 1963 to the Minister for Railways agreeing, without reservation, to the usual terms for sale of lease of the railway land, as may be prescribed by the Railway; and your Shri Daljit Singh's interview with the Additional Member, Finance, Railway Board on 12th June 1963.

Further to Railway Board's letter of even number dated 21st June 1963, I am to add that the other normal conditions governing lease of railway land by outside parties will also apply, as was in fact made clear to your Shri Daljit Singh by the undersigned on 12th June 1963 (*e.g.* reassessment of the market value of land every five years, for determining the rental payable to the Railway, about which there should be no difficulty considering that the Land and Development Officer, Delhi, has been able to give the necessary figures readily on the present occasion, the lessee not being permitted to put up any permanent structures on the plot of land, etc.).

2. This position is made clear, so that there may be no room for any doubt or ambiguity.

Sd/-

(C. T. VENUGOPAL)

*Additional Member, Finance,
Railway Board*

No. 62-WII/LE/4.

New Delhi, the 25th June, 1963.

Copy for information to Shri G. P. Bhalla, G. M./N. Rly./Shri G. B. Singh, D. S./Delhi/N.R. in continuation of Board's endorsement of even number dated 21-6-63. This connects with G.M./Northern Railway's letter No. 195—W/20 of 31-5-63.

Sd/-

(C. T. VENUGOPAL)

*Additional Member, Finance,
Railway Board.*

APPENDIX IV

(Vide Para 1.32)

NORTHERN RAILWAY

AGREEMENT FOR USING RAILWAY LAND FOR STACKING OR STORING MATERIAL AND PARKING OF VEHICLES

Agreement No.—

Agreement by way of Lease made the 9th day of May, 1969 between the President of India, acting in the premises through the Divisional Superintendent of the Northern Railway Administration, New Delhi hereinafter called the 'Government' (which expression shall unless the context does not so admit include his successors and assigns) of the one part and Messers Oriental Building and Furnishing Co., (P) Ltd., Postal address (House/Station) Connaught Circus, New Delhi acting through its Director (hereinafter called "The Lessee") (which term shall unless the context does not so admit includes his successors and assigns) of the other part for the temporary use of land belonging to the Government. The Northern Railway Administration referred to above shall hereinafter be called the Railway.

Conditions under which the lessee temporarily uses land belonging to the Government situated at Connaught Circus, New Delhi containing an area of 2743 sq. yds. as shown in the Plan No. M-360/NDLS-1965 for the purpose of *stacking or storing materials and parking of vehicles.*

1. That no more land is to be used is shown on the Plan No. M-360 DLI attached to this lease.

No. M-360 DLI attached to his lease.

NDLS-1965

2. It is distinctly understood by the lessese that Government will retain full legal title, ownership, rights of access, inspection and control over the use and disposal of the land hereby temporarily leased and that the lease will only have the physical occupation of the land subject to the above mentioned rights of the Government and to the over-riding liability of quitting and restoring even the physical occupation.

3. That the land can only be used for the purpose for which it is allotted.

4. That the land is not to be assigned, transferred or sublet by the lessee nor shall be part with the actual possession thereof except on resumption by the Government. The use of the said premises by pure Drinks (New Delhi) Pvt. Ltd., associated concern will not be considered as assignment, transfer, subletting or parting with possession.

5. That the Government only agrees to give temporary occupation of the land and the lessee is liable to have this lease cancelled at any time upon such notice as is mentioned in clause 7.

6. That no building of any kind shall hereinafter be erected by the lessee without the previous permission in writing of the Divisional Superintendent, New Delhi of the Northern Railway or a duly authorised officer of the Railway. the general agreement of such building must also be approved by officer giving permission and such permission will in all cases, apply only to the erection of a building or buildings of a purely temporary character and all buildings erected by the lessee on the land occupied by him under this agreement shall for the purpose of this lease be regarded and treated as temporary buildings. No addition or alteration to such building or buildings including existing structures shall also be done by the lessee without such previous permission.

7. The lease of this land will be limited to a period of ten years beyond 31-12-1962 and will automatically extended for another ten years period if the lease is not terminated by either party on giving three calendar months previous notice in writing before the expiry of first ten years.

In the event of any breach of any of the terms and conditions contain herein by the lessee and his employees and/or servants, a 15 days notice will be served on the lessee. If the breach is not rectified during this period and/or the explanation submitted is not considered satisfactory, it shall be lawful for the Government any time to dertermine the agreement without being liable to any compensation whatsoever.

8. That nothing contained herein shall be construed or interpreted to create any tenancy in favour of the lessee or to create any right, title, interest, assessment, prescription grant whatsoever directly or indirectly in the land hereby leased to the lessee.

9. That the Government shall not be responsible for any loss or damage of any sort which may happen to the property of the lessee or to which the lessee may be put from whatever cause arising.

10. That the lessee shall at all times keep the Government and the Northern Railway and their employees indemnified against all losses, expenses, and damages which the said Government and the said Railway and their employees may become liable to pay or be put to from whatever cause arising in connection with the said land prior to its re-occupation by the said Railway.

11. That if the lessee shall die or be adjudicated an insolvent during the continuance of the lease hereby granted this lease shall absolutely cease and determine from the date of the death or adjudication, as the case may be of the lessee.

12. That the occupation money payable by the lessee to the Government shall be paid yearly in advance in the last week of December every year. For late payments the lessee shall be liable to pay interest. PROVIDED ALWAYS AND IT IS AGREED that if the lessee shall pursuant to any such notice by Govt. as provided in clause 7 have fully vacated the land before the expiration of the period for which occupation money shall have been paid in advance he shall be entitled to receive from the Government a proportionate refund of the amount in advance for the unexpired portion of such period.

13. The lessee shall deposit with the Government as security for the payment of any moneys which may at any time become owing by the lessee to the Government for occupation money or otherwise howsoever and also as a security for the due performance of the lessee's covenants in other respects a sum of equivalent to 12 months occupation money (fraction of a rupee being rounded to a rupee) subject to a minimum of Rs. 12/- which sum shall remain so depositing until the expiration of the period referred to in Clause 7 but shall not carry interest in favour of the lessee and the Government shall be entitled to retain the said deposit intact until the expiration of the said period and shall not be bound but shall nevertheless have option to apply the same or any part thereof in payment or discharge of any money owing from the lessee and shall be at full liberty to pursue and enforce any other remedies available for the recovery of any such money provided always that

if the Government shall ever elect to recoup itself out of the said deposit and the amount of deposit shall in consequences fall short of 12 months occupation money or the prescribed minimum the lessee shall forthwith make good the deficiency.

14. That the lessee shall be bound by the all rules and regulations regarding sanitation and otherwise which are already in force and which may hereafter be prescribed from time to time by the said railway governing the said land and such building as erected thereon with the previous permission mentioned in clause 6 herein before.

15. That the breach of any of the terms and conditions contained therein shall make the lease hereby granted liable to cancellation as per provision of clause 7.

16. Any notice hereunder shall be deemed duly served on the lessee if delivered or sent by post to his above mentioned address.

17. The lessee doth hereby agree to have taken for use temporarily from the 1st day of January 1963 for a period of ten years the plot of ground shown in the attached plan No. M-360-DLI
NDIS 1965 on the conditions stated above and doth further agree to pay occupation money for such temporary use of the said plot at the rate of Rs. 30611.88 ps. (Rupees thirty thousand Six hundred and Eleven and Paise eighty eight only) per year (payable in advance) Plus local cesses and taxes and all municipal rates and taxes if any (to be paid to the concerned authority direct). These charges are, however, liable to be enhanced as per clause 18 below.

18. That the occupation money provided for in the lease agreement shall be liable to be enhanced by the Railway Administration every five years on the basis of 6 per cent per annum or revised valuation of land lease to be fixed in consultation with the Land and Development Officer. Delhi and/or other Civil Authorities empowered to assess the valuation of land, and the lessee shall be bound to pay the fee at the enhanced rates as may be fixed by the Railway on receipt of a notice of 15 days.

19. That in case of any dispute arising between the parties with regard to the intent and meaning of this Agreement and subject matter referred to therein the same shall be referred to the sole arbitration of the General Manager, Northern Railway, or any other

officer of the Railway appointed by him, who shall conduct the proceedings in accordance with the provision of the Indian Arbitration Act 1940.

20. Subject as otherwise provided in this agreement all notice to be given on behalf of the president of India and all other action to be taken on his behalf may be given or taken on his behalf by the Divisional Supdts., New Delhi of the Northern Railway.

21. The lessee shall pay the cost of all stamping and execution of this agreement.

Witness.

Signature Sd/-

Divisional Engg.

East. No. Rly., New Delhi.

illegible

Sd/- Accountant,

Designation

SC:7/4.

for and on behalf of the President
of India.

Sd/- K. S. Rajan.

9/5/69.

Divisional Superintendent,

Northern Railway,

for Oriental Building and Furni-
shing Co.. Private Ltd.

Sd/- Daljit Singh Lessee.

for and on behalf of M/s. Oriental
Furnishing Co. (Pvt.) Ltd.

Connaught Circus, New Delhi.

APPENDIX V

(vide Para 1.42)

Northern Railway,
Divisional Office,
New Delhi.

No. 473-W/842/71-II (WI).

Dated 6/10/1969.

The General Manager (Engg.).

Northern Railway,
Baroda House, New Delhi.

Subject:—Licensing of Railway Land in Delhi to:—

(a) Oriental Building & Furnishing Co.

(b) Pure Drinks (New Delhi) Pvt. Ltd.,

Ref.:—Your letters No. 196-W/462Pt.II (WI/Land) dated 16-9-69 & 23/9/69.

In this connection kindly call for this office endorsements of even number dated 17/6/69 and 16/7/69. In spite of repeated requests the party has not cleared the Railway dues amounting to Rs. 235020.24 pertaining to the balance of 1968 and license fee for the year 1969. Kindly indicate if the action be initiated under the Public Premises Act for eviction and recovering the dues as damages.

Sd/-

for Divisional Superintendent,
New Delhi.

APPENDIX V

(Vide Para 1.42)

(COPY)

NORTHERN RAILWAY:
HEADQUARTERS OFFICE
BARODA HOUSE
NEW DELHI:
No. 196-W/642Pt.I(WI/Land)22.
Dated: 8-6-1970.

The Director,
Oriental Building &
Furnishing Co., Pvt. Ltd.,
Connaught Place,
M. Block,
New Delhi.

SUB.: Licensing of Railway Land near Minto Bridge, New Delhi.
Ref:—Your letter No. R/12/559 dated 21-6-69 to Divisional Supdt.,
Northern Railway, New Delhi.

The rate advised by Land and Development Officer, New Delhi
viz., Rs. 600/per Sq. Yd. holds good and will apply in this case,
unless it is revised by him. The amount due may please be paid
early as advised to you by D.S./Delhi under his letter No.
473-W/842/71 Pt.II dated 22-3-1969.

Sd/-

for General Manager Engg.

Copy forwarded to the Divl. Supdt., Northern Railway, New Delhi
for information and further necessary action in the matter in
reference to his office letter No. 473-W/842/71Pt.II dated 6-10-1969.

APPENDIX VI

(Vide para 1.79)

(Copy)

IN THE HIGH COURT OF DELHI AT NEW DELHI
(ORDINARY ORIGINAL CIVIL JURISDICTION)

I.A.No. 1616/77 in S. No. 363-A of 1977.

M/s. Oriental Building & Furnishing Co. Ltd., Connaught Circus,
New Delhi.Petitioner

V/s.

Union of India, through the Secretary,
Ministry of Railways, Rail Bhavan, New DelhiRespondent
I.A.1616/77

Application under Order 39 Rules 1 & 2 and Section 151 of the Code of Civil Procedure praying that till the decision of the application under Section 20 of the Arbitration Act filed in this Hon'ble Court, the respondent be ordered not to take any further proceedings for eviction before the Estate Officer against the applicant and not to make any attempt to dispossess the present applicant from the plot of land in suit.

This the 30th day of August, 1977.

Coram!—Hon'ble Mr. Justice Pritam Singh Safeer

Present:—Mr. S. N. Chopra for the plaintiff/applicant.

Mr. P. K. Jaitley for the defendant/respondents.

IA/1616/1977.

This application has been heard at great length. It has been preferred after the filing of a petition under section 20 of the Arbitration Act, which has been registered as a suit. Reliance was placed on item 19 in the agreement dated 9th of May, 1969, and the prayer made was that the matters in dispute between the

parties might be referred to arbitration. The prayer in this application is that till the disposal of the suit registered as suit No. 363-A of 1977 the respondents be restrained from taking any further proceedings for eviction of the applicants from a piece of land measuring 2743 sq. yards situated between the Oriental Building and Furnishing Co. Ltd. and the Railway Line, near Minto Bridge, New Delhi. The stand taken on behalf of the respondents depended upon the notice dated 15th July, 1972. That notice was addressed to the present applicant and dealt with the termination of the lease in their favour. It was stated in the notice that it had been decided by the Government to terminate the lease in respect of the land belonging to the Government situated at Connaught Circus, New Delhi, measuring 2743 sq. yds. as shown in plan No. M-360/NDLS-1965, leased out *vide* the agreement dated 9th of May, 1969. It was stated in the notice:—

“You are hereby served with clear three calendar months’ notice under Clause (7) of the above-said agreement and the lease of the above-said land shall stand terminated on 31st December, 1972.

You are requested to clear the land of all construction, etc., if any, and hand over vacant condition to the Assistant Engineer (Estates) New Delhi, representative of the Railway Admn. on the expiry of the period of the said lease.”

It is significant that the notice was issued on the 15th of July, 1972, and it fixed the period of termination of the lease. The lease was to come to an end on the 31st of December, 1972. I have been referred to the communication bearing No. 473W/842/71 bearing the dated 26th October, 1974. I have seen the original communication, which I am returning. Its photostat copy is on the record. It is addressed to the present applicant. It is stated therein:—

“It has been decided that the licence fee for the railway premises occupied by you has to be revised from 1st of November, 1974 depending upon the present day market value of the land assessed by the Ministry of Works and Housing or earlier, if renewal is due prior to 1st of November, 1974. You will be required to pay the railway dues at the revised rates, which will be advised separately”.

The communication was issued by somebody signing on behalf of the Divl. Supdt. Why was such a communication issued to the applicants if the lease in their favour stood terminated on 31st of December, 1972? If the lease stood terminated, no such communication should have been issued intimating that it has been decided to revise the licence fee to be paid by the applicants in respect of the disputed land in their occupation. The irresistible conclusion is that either the notice issued in 1972 was deliberately avoided or there was some decision which is not visible on the record not to cancel the lease and, therefore, the intimation was sent that it had been decided that the licence fee be revised as it may be payable w.e.f. the 1st of November, 1974. I hold that the communication dated 26th of October, 1974, sufficiently interferes with the notice issued in July, 1972, and a *prima facie* case is made out for restraining the defendants from evicting the applicants at present. Allowing the application, I hereby restrain the respondents from evicting the applicants till further orders. This application is disposed.

It has been urged that it was a matter for the Estate Officer to decide within the purview of the provisions contained in the Public Premises Eviction Act, 1971. The High Court exercises its extraordinary inherent jurisdiction in passing the order, which I have passed.

I.A.2386 of 1977 does not need any separate order and is covered by the order already made by me.

August 30, 1977.

Sd/- Pritam Singh Safeer
Judge

APPENDIX VII

(Vide para 1.81)

Registered A/D

Northern Railway

New Delhi dated 10/74

No. 473-W/842/71

The Director,

Pure Drinks,

Oriental Bldg. and Furnishing Co.;

Connaught Place,

New Delhi.

SUBJECT.—Provision of license fee of railway premises occupied by Oriental Building and Furnishing Co.; Ltd. Connaught Place, New Delhi.

Dear Sir,

It has been decided that the Licence fee for the Railway premises occupied by you has to be revised for 1st November, 1974 depending upon the present days market value prior to 1st November, 1974 of the land assessed by the Ministry of Works and Housing, earlier if renewal is due prior to 1st November, 1974.

You will be required to pay the Railway dues at the revised rates which will be advised separately.

Yours faithfully,

Sd/- (N. S. HIRANI),

For Divisional Supdt., New Delhi.

APPENDIX VIII

Statement of Conclusions/Recommendations

Sl. No.	Para No. of Report	Ministry/Department	Recommendations
1	2	3	4
1	1.85	Ministry of Railways	<p>The Committee note that M/s Oriental Building & Furnishing Co. (Pvt.) Ltd. encroached on Railway land situated in one of the most prestigious area of New Delhi on various occasions in 1942 and 1943. The encroachments were subsequently regularised by the Railway Administration and an agreement was executed with the firm in 1947. The firm again encroached on land measuring 2246 Sq. Yds. in 1950 and sub-let a portion of land to another sister concern—M/s Pure Drinks (Coca Cola), New Delhi. The agreement was terminated in 1951. Eviction orders were given in June, 1956 by the “competent authority” under the Government Premises (Eviction) Act, 1950 but were stayed by the appellate authority (Chairman, Railway Board) in July, 1956. After a new Eviction Act was promulgated by Government in 1958 notices for vacation of the land and payment of damages were served by the Railway Administration in October, 1959, but proceedings under the Act were again stayed on the orders of Chairman, Railway Board in February, 1962. The above subject was then considered by the Public Accounts Com-</p>

mittee (1963-64) and the Committee in their 13th Report had adversely commented on the failure of the Railway Administration to check encroachments and violation of agreements entered into between the Railways and the encroaching party from time to time. From the Audit paragraph now under examination and the further information gathered by the Committee, the Committee are constrained to point out that there has been no change in the position from what was reported to them about 15 years back but rather it has worsened. It is painful to learn from the Ministry of Railways that the last encroachment by the firm was detected for the first time on 1 July, 1975 when details of the area already under the firm's unauthorised occupation were being collected for starting eviction proceedings for non-payment of arrears of rent. Surprisingly, this encroachment was not shown in the certificates furnished by the Supervisors. The Committee fail to understand as to why encroachment was not detected earlier by the Engineering Supervisory Staff such as Permanent Way Inspectors and Works Inspectors who, under the Indian Railway Code for Engineering Department and Indian Railways Way and Works Manual are responsible for keeping watch on vacant Railway land and are required to ensure that there is no encroachment on Railway land within their jurisdiction. It is also, therefore, doubtful whether periodic certificates furnished by these officers in terms of instructions contained in para 3720, Chapter XXXVII of Indian Railway Way and Works Manual and the

encroachment registers maintained by them contained any useful and pertinent information.

2 1.86

-do-

Besides the above case, the Committee note that in Delhi area alone 71 hectares of Railway land is under unauthorised occupation. Eviction orders are stated to have been passed in the case of 65 hectares and the rest of the area falling under isolated pockets continues to be under unauthorised occupation since as early as 1948. The Committee also note that during the last 5 years (1973 to 1977) the various Railway Administrations had evictions carried out and taken possession of land in as many as 77,743 cases, the incidence being the highest in Eastern Railway (16,678), followed by Northeast Frontier Railway (14,735) and South Eastern (12,323). But if the fate of eviction in the instant case of M/s Oriental Furnishing Co. (Pvt.) Ltd. and the extent of actual non-eviction in Delhi is any indication, the Committee feel that the extent of encroachment on Railway land must be very large. That in spite of the officers of the Engineering Department being required to keep a watch on encroachments during routine inspections, they could not detect additional encroachments by M/s. Oriental Furnishing shows that the inspection machinery is woefully lacking. The Committee would, therefore, like to know the number of encroachments and the area encroached upon as on 31 December, 1973, 1974, 1975, 1976 and 1977 in each Zonal Railway and the specific steps taken from year to year to get these formerly made encroachments vacated and to stop them in future. The Committee would also like to know in how many cases the staff and officers responsible for negligence

have been penalised and the amount of penalty realised from the encroachers. The Committee apprehend that unless stringent and timely measures are taken for protection of land and the defaulting officers are dealt with sternly for negligence of their duties, the encroachments might pose serious problem to future development of railway lands.

3 1.87 Ministry of Railways

The Committee note that in the instant case in the Master Plan of Delhi finalised in 1957 the piece of Railway land in question adjoining railway lines near Connaught Place area of New Delhi was reserved for flatted factories. However, after the finalisation of Master Plan many changes were made in it by the Ministry of Works and Housing. Nevertheless, the Ministry of Railways did not consider it proper to approach the Ministry of Works and Housing to alter the land use of this piece of Railway land in the Master Plan so that the land could be beneficially utilised by the Railways. Whether it did not strike to the Ministry of Railways at all or it was considered impracticable is an unanswered question. The Committee cannot help gain the impression that serious thought was not given to put the valuable land to optimum use. Instead of making any serious efforts to get the land vacated after its first unauthorised occupation, the Railway authorities chose the easy and convenient course of regularising the encroachments on the grounds that the land was not required by the Railways for its purposes. The initial

lapse enabled the firm to gain foothold on Railway land for further encroachments on the adjacent land. The Committee would like the Ministry of Railways to consider whether this land can be put to some use particularly when the Minto Bridge Station is situated very closeby.

4 1.88 -Do-

In February, 1962, the firm communicated its willingness to pay rent for the land in its possession on the basis of the old agreement (which was terminated in 1951) and also suggested negotiations for the outright sale of the land. The Railway Board decided in November, 1962 that arrears of rent should be recovered at 6 per cent of the lease hold value of the land and after the firm paid the rent fixed in that manner the land should be leased to it for a further period of 20 years, the rent being assessed at 6 per cent of present day value of land, subject to revision every five years to accord with the prevailing market price. The firm was asked by the Railway Administration in December, 1962 to accept these terms and to pay Rs. 2,04,815. The firm paid only Rs. 1,06,037 and made a counter proposal for outright sale of land to it without agreeing for a fresh lease for a further period of 20 years from 1 January, 1963. A settlement was reached between the Railways and the firm in 1963 and a letter of intent was issued in June, 1963. However, the agreement leasing the land to M/s Oriental Building and Furnishing Co. was actually executed in May, 1969.

82

5 1.89 -Do-

The Committee are distressed to note that the Ministry of Railways took six years to execute a simple agreement which, in the words of the Chairman, Railway Board himself 'is ratifying the

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Letter of Intent. Nothing more than that'. During all those six years file had been moving up and down without any definite decision emerging. Precious time was lost in unnecessary and avoidable correspondence. The consequence was that in the absence of any legal instrument, the Railway Administration was helpless all these years to take any legal action against the firm for recovery of dues etc. The Committee are greatly concerned at the lax and perfunctory manner in which the whole case had been handled in the Ministry of Railways. The Committee cannot help observing that there is serious lacuna in the functioning of Railway Organisation in such matters.

6 1.90

Ministry of Railways

The Committee are surprised to note that the agreement executed with the firm in 1969 leasing the Railway land for ten years from 1963 to 1972 neither specified the amount nor the rate of licence fee to be charged by the Railways for the five years from 1st January, 1968. In fact, a vague clause was inserted in the agreement that "the occupation money provided for in the lease agreement shall be liable to be enhanced by the Railway Administration every five years on the basis of 6 per cent per annum of revised valuation of land lease to be fixed in consultation with the Land & Development Officer Delhi...." It is interesting to note that land lease rates calculated on the basis of Rs. 600 per sq. yard effective from 1st July, 1963 to be applied in this case from 1968 onwards had already been advised to the Ministry of Railways by

the Land & Development Officer, Ministry of Works and Hopping as early as 28 March, 1964, but Ministry of Railways advised the amount to the private firm only on 24 September, 1968. The Committee do not find any substance in the argument that the amount or rate of occupation money 'could not be specified in the agreement as the rate was disputed by the party and the Railway Administration felt that if a new element of dispute was introduced at that late stage (1968-69), the party might delay the signing of the agreement'. The Committee feel that since the question of rate was disputed it was all the more necessary that this matter should have been amicably resolved before finalisation of the agreement. The Committee are also not impressed by the argument that the delay in informing the rate/amount to the firm' could be attributed to the fact that there had been correspondence between the party and the Division in regard to the changes suggested in certain clauses of the agreement and changes which were suggested had a vital bearing on the question of rate also'. In fact, the Committee are led to the impression that the Minister of Railways itself did not take the revised land lease valuation very seriously. The Committee are inclined to conclude that it was a deplorable lapse on the part of Railway Administration to conclude agreement even after negotiating the matter for long 6 years without settling the issue of occupation money for the period 1 January, 1968 to 31 December, 1972. This lapse ultimately proved detrimental to the interests of the Railways. Interestingly, the Ministry of Railways woke up suddenly in 1969 and appeared to be more

enthusiastic than the other party to execute the agreement as early as possible. It was also sheer negligence that the firm was advised of the revised valuation of land lease effective from 1 January, 1968 as late as 24 September, 1968, more particularly when the Ministry of Railways knew it since 1964. The Committee are of the opinion that had the settlement about the revised valuation of land lease been arrived at, with the firm in time and made part of the Agreement, the later litigations could have been avoided. Whether the lapses were under pressure from above or under influence from outside, the matter needs to be probed thoroughly.

7 1-91

Ministry of Railways

The Committee are disturbed to note that though a notice was served on the firm on 17 June, 1969 to pay the arrears of licence fee failing which legal action would be taken against them for recovery of the amount besides eviction from Railway premises, yet the application under the Public Premises (Eviction of Unauthorised Occupants) Act of 1971 was filed as late as in July 1975, i.e., after a period of six years. The Committee are informed that all these years protracted correspondence had been going on up and down and no definite decision to evict the party was taken. The Committee see no grounds for the Ministry of Railways to drag on negotiations with the firm when a decision had been taken to initiate legal action against them. The Committee are not at all

impressed by this line of reasoning and is of the view that there is more to it than what meets the eye. This is a glaring case where the party had made substantial amounts of wrongful gains at the expense of public exchequer and this could not have been possible without collusion on the part of some Railway officials. It appears that the competent authority at the higher level shirked the responsibility and avoided taking concrete and conclusive decision in this regard. The Committee take a serious note of it and urge the Ministry of Railways to fix responsibility for this grave and costly lapse.

8 I.92 Do.

The Committee further note that the Divisional Superintendent, Delhi Division, wrote to the General Manager, Northern Railway Headquarters office on 6 October 1969 stating that the party [Oriental Building & Furnishing Co. and Pure Drinks (New Delhi) Pvt. Ltd.] had not cleared the Railway dues amounting to Rs 2,350,20.24 pertaining to the balance of 1968 and licence fee for the year 1969 and asked whether they should initiate action against the party under the Public Premises Act for eviction and recovering the dues as damages. The Northern Railway Headquarters replied this letter on 8 June 1970 but on the specific issue raised by the Divisional Superintendent of initiating action against the firm, no direction was given by the Headquarters Office to the Division. The Committee view it seriously and are inclined to believe that the basic issues raised by the Divisional Superintendent were obviously sidetracked for reasons best known to the competent

authority. The Committee find that the Northern Railway Headquarters miserably failed not only in giving specific directions on the issue but they took avoidably long time also in replying the Divisional Superintendent's letter. The Chairman, Railway Board, himself admitted that the delay is not fully justified. The Committee would like the Ministry of Railways to fix responsibility on the delinquent officers and apprise the Committee in this behalf.

9 1.93

Ministry of Railways

The Committee note that the Ministry of Railways enhanced the lease rent of the land to Rs. 98,748 per annum for the five years from 1 January 1968 to 31 December 1972 on the basis of revised lease land valuation at the rate of Rs. 600 per sq. yard as determined by the Land & Development Officer, Delhi. However, the firm continued to pay the lease rent at the rate of Rs. 30,611.88 per annum on the basis of pre-revised valuation of Rs. 186 per sq. yard. The Ministry of Railways maintained that it was a part payment. The Committee are unable to share this view of the Ministry.

In fact, the company had disputed the very basis of fixation of lease rent at the rate of Rs. 98,748 per annum and was not willing to pay the revised lease rent. The Committee would like to be informed of the basis on which the Railway Administration had decided to accept part payment, as the agreement did not provide

for it. The Committee feel that this initial mistake in accepting the part payment in clear violation of the agreement by the firm helped the latter to enter into unending correspondence with the Railway authorities to the disadvantage of the Railways.

10 1.94

Do.

The Committee are concerned to note that the Ministry of Railways failed to invoke clause 19 of the agreement about arbitration when the firm disputed the revised valuation of land lease as determined by the Land and Valuation Officer. The reasoning put forth by the Ministry of Railways that right upto 1974, the triangular correspondence between the firm, Railways and Land and Development Officer was there and that asking for arbitration by the Administration was unusual is meaningless. The Committee take a serious view of the lapse on the part of Railway Administration. It is a pity that the firm which encroached on the Railway land, refused to pay the lease rent, went on enjoying the precious land and yet the Railway Administration failed in applying whatever legal remedies were available to them for eviction of encroachment and realisation of Government's dues. No action appears to have been taken even to consult the Ministry of Law at any stage though the Ministry was associated with the issue for over 35 years. This weak-kneed policy of the Railway not only helped the firm in prolonging their unauthorised stay on the Government land year to year, but also emboldened them to hold over the payment of Railway dues which according to the Audit have piled upto Rs. 17.20 lakhs (June 1976).

II 1.95

Ministry of Railways

Another disquieting feature which has come to the notice of the Committee during evidence is that after the termination of lease on 31 December 1972, the Chairman, Railway Board, on the basis of a telephonic message from the then Minister of External Affairs, had advised the General Manager, Northern Railway, that the lease might be extended for a period of 3 months upto 31 March 1973. The lease fee might be charged on the basis of Rs. 300/- per sq. yard (provisional value) and the Railways should take immediate action to settle the land value with the Land & Development Officer. The Committee feel that these instructions would have wide repercussions, had the General Manager Northern Railway, not intimated to the Railway Board that "we should not extend it for a period of 3 months because it would lead us into complication. It would mean an extension for a period of 10 years. Until this question was allowed to settle we should charge Rs. 600/- from them." The Committee are inclined to believe that whenever the party feared any action it came forward with fresh representation directly or through high-ups, without any sincere intention to settle the issue. Approaching the Minister of External Affairs and thus putting pressure on the Railway Board is one of the tactics adopted by the firm. The Committee are constrained to observe that this does not bring credit to the firm nor to the Railway Board.

12 1.96 -De-

The Committee are distressed to note that the eviction proceedings initiated against the firm on 10 July 1975 under the Public Premises Eviction Act could not be finalised by the Estate Officer till 30 August 1977 when the firm got stay orders from the Delhi High Court restraining the Government to evict the party from Railway land till further orders. The hearings were adjourned eight times during November 1975 to December, 1976. The Committee would like the Ministry of Railways to examine whether the repeated grant of adjournments were on bonafide consideration and the attitude taken by the Railway Administration in this matter. They would also desire that responsibility be fixed for the costly lapse and appropriate steps be taken.

13 1.97 -Do-

The Committee note that the firm obtained stay orders in 1977 from the Delhi High Court restraining the Railways from evicting the firm from the Railway land. It is interesting to note that the stay orders were granted on the basis of a letter dated 26 October 1974 written by the Railway Administration to the firm stating that the licence fee for the railway premises had to be revised from 1st of November 1974 and that the firm was required to pay the railway dues at the revised rates which would be advised separately. The Committee are greatly perturbed to note as to how such a letter could be sent in 1974 to the firm with whom the agreement had already expired on 31 December 1972. The Committee regret that the name of the firm continued to be on the Index Register alongwith the names of all other lease holders and

licences as on 26 October 1974 though the firm was neither lease holder nor licensee on that date. The Committee are not convinced with the reasoning that the letter had been sent inadvertently. Since enquiries are being conducted by Railway Administration in this episode, the Committee would like to be apprised of the action taken against those who are found responsible for this grave mistake.

14 1.98 Ministry of Railways

The Committee are surprised to note that the Railway Administration did not prefer any appeal from the order of the Delhi High Court. Nor was any proper legal opinion taken as to whether such appeal should be preferred.

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15 1.99 -Do-

The Committee find that their observations on the subject in their 13th Report (3rd Lok Sabha) are very relevant even now—15 years later. The very same firm and its associates have made encroachment and violated the terms of the agreement. There have been unexplainable disinclination and inordinate delays on the part of Railway Administration in taking recourse to administrative and legal remedies available to them, resulting in heavy accumulation of dues to the Railways. The whole episode requires to be probed in depth by a high powered Committee with a view

to fixing responsibility for the lapse on the part of the various authorities. Since the decisions in this case were taken by the Railway Board itself, the Committee desire that such investigation should be entrusted to a high powered body, independent of the Railway Board.

16 1.100 Ministry of Railways

The Committee does not approve of the practice of the Railway Administration of negotiating with illegal occupants without taking proper steps for immediate ejection against such illegal occupants. The present case is an example of numerous similar cases where Railway lands which are often very valuable are being wrongfully and illegally enjoyed by unauthorised occupants and trespassers. The Committee is of the opinion that such misuse of Railway property becomes possible not merely because of negligence and lapses on the part of some Railway officials and other employees, but also because of actual collusion and connivance by them with ulterior motives. If immediate action for ejection is taken at the earliest possible opportunity then the presumption for such malafides on the part of such Railway employees can be negated. Negotiations with such illegal occupants should be frowned upon because their result is generally to make the proceedings long drawn which is to the continuing advantage of the illegal occupants and designing employees.

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