

LICENSING OF LAND AT
WADI BUNDER TO A FIRM

MINISTRY OF RAILWAYS
(RAILWAY BOARD)

PUBLIC ACCOUNTS
COMMITTEE
1988-90

HUNDRED AND SEVENTY SECOND
REPORT

EIGHTH LOK SABHA



LOK SABHA SECRETARIAT
NEW DELHI

HUNDRED AND SEVENTY-SECOND REPORT

PUBLIC ACCOUNTS COMMITTEE (1989-90)

(EIGHTH LOK SABHA)

LICENSING OF LAND AT WADI BUNDER
TO A FIRM

MINISTRY OF RAILWAYS
(RAILWAY BOARD)

[Action Taken on 88th Report (Eighth Lok Sabha)]



Presented in Lok Sabha on 20 July, 1989

Laid in Rajya Sabha on 20 July, 1989

LOK SABHA SECRETARIAT
NEW DELHI

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C O N T E N T S

	PAGE
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE	(iii)
INTRODUCTION	(v)
CHAPTER I Report	1
CHAPTER II Recommendations and observations that have been accepted by Government	4
CHAPTER III Recommendations and observations which the Committee do not desire to pursue in the light of the replies received from Government	9
CHAPTER IV Recommendations and observations replies to which have not been accepted by the Committee and which require reiteration	11
CHAPTER V Recommendations and observations in respect of which Government have furnished interim replies	13

APPENDICES

I	Statement showing classification of the action taken notes furnished by the Government	17
II	Conclusions and Recommendations	18

PART II

Minutes of Sitting of Public Accounts Committee held on 12 July, 1989	23
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COMMITTEE ON PUBLIC ACCOUNTS

(1989-90)

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- 1. Shri G. L. Batra—*Joint Secretary*
- 2. Shri K. K. Sharma—*Deputy Secretary*
- 3. Shri A. Subramanian—*Senior Financial Committee Officer*

INTRODUCTION

1. The Chairman of Public Accounts Committee as authorised by the Committee, do present on their behalf this Hundred and Seventy-Second Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 88th Report (8th Lok Sabha) on "Licensing of Land at Wadi Bunder to a firm".

2. In their earlier Report the Committee had observed that on 28-3-1988 M/s. Kirit Enterprises had filed in the Court photostat copies of certain orders recorded on the file by the then Minister of Railways even though the order was neither issued nor marked to the Party. The Railway Board were unable to explain to the Committee how the Party could have access to the file so as to take the photostat copy of the order and produce it before the Court. The Committee had desired that the Ministry of Railways should investigate how the Party managed to obtain a copy of the note for production in the Court and take appropriate action against those responsible for the lapse. In the present Report the Committee have regretted that the Ministry in their Action Taken Note have not thrown any light in the matter. They have reiterated that the matter should be investigated and action taken against the persons found responsible.

3. The Committee have observed that as on 31-10-86 M/s. Kirit enterprises were liable to pay Rs. 85.74 lakhs to the Railways. The Committee have desired that action taken by the Ministry for speedy recovery of the outstanding dues may be intimated to them.

4. The Committee considered and adopted this Report at their sitting held on 12 July, 1989. Minutes of the sitting form Part II of the Report.

5. For facility of reference and convenience, the recommendations' observations have been reproduced in the Appendix to the Report.

6. The Committee place on record their appreciation of the assistances rendered to them in the matter by the office of the Comptroller and Auditor General of India

NEW DELHI:

19 July, 1989

28 Asadha, 1911 (S)

P. KOLANDAIVELU

Chairman,

Public Accounts Committee.

CHAPTER I

REPORT

This Report of the Committee deals with the action taken by Government on the Committee's recommendations and observations contained in their 88th Report* on Licensing of Land at Wadi Bunder to a firm.

2. The Committee's Report contained 11 observations/recommendations. Action Taken Notes have been furnished by Government in respect of all the recommendations. These have been broadly divided into four categories as shown in Appendix-I.

3. **The Committee desire that final replies to the recommendations in respect of which only interim replies have so far been furnished should be submitted to them expeditiously after getting the same duly vetted by Audit.**

4. The Committee will now deal with action taken by Government on some of their observations/recommendations.

Production of an order in a file in a Court of Law

(Sl. No. 4, Para 1.41)

5. In their earlier Report, the Committee pointed out that M/s. Kirit Enterprises filed on 28-3-1985 in the Court an affidavit accompanied by photostat copies of the orders recorded by the Minister on a file even though the order was neither issued nor marked to the party. The Committee noted with anguish that the Railway Board was unable to explain as to how the party could have access to the file so as to take the photostat copy of the order and produce it before the Court.

6. In its action taken Report, the Ministry of Railways has simply stated that the observations of the Committee have been "noted".

7. **The expectation behind the observation of the Committee was that the Railway Board would investigate how the party could have access to an office note which was not issued to the party and take appropriate action against those responsible. The Committee regret to note that the reply of the Ministry does not throw any light whether this aspect has been examined or not. The Committee desire that the Ministry should investigate how the party managed to obtain a copy of the note for production to the court**

* 88th Report (8th Lok Sabha) on Paragraph 20 of the Advance Report of the Comptroller and Auditor General of India for the year 1982-83, Union Government (Railways)—Central Railway.

and take appropriate action against those responsible for the lapse. The Committee also desire that the results of the investigation and the action taken against those responsible for the lapse may be intimated to the Committee.

Steps for Prevention of Encroachment of Unlawful Holding

(Sl. No. 6, Para 1.44)

8. In their earlier report the Committee had desired that suitable amendments to the existing Railway Act should be enacted in respect of licensing of railway lands so that encroachment/unlawful holding on, of the Railway property can be terminated expeditiously.

9. While noting the observation of the Committee, the Ministry in their action taken note has intimated that it has proposed amendments of Public Premises (Eviction Act) for consideration and action by Ministry of Urban Development. According to the Ministry, Section 152 of Railway's Bill 1986, which is in lieu of the existing Section 122 of the Indian Railways Act, 1890 provides for imprisonment upto six months and a fine upto Rs. 500 in case of trespass and refusal to desist from trespass upon or into Railway property and for removal of such persons from the railway is under consideration of the Select Committee of the Parliament. The Ministry has further stated that they are also considering a suggestion for prevention or demolition of structures put up by the encroachers on railway land as a further amendment to proposed Section 152 of Indian Railways Bill, 1986.

10. The Committee desire that they may be kept informed of the findings of the Select Committee of Parliament on the proposals made in this regard.

Steps for speedy recovery of outstanding dues

(Sl. Nos. 8 and 9, Paras 1.48 and 1.49)

11. Taking note of the position that outstanding dues against M/s. Kirit Enterprises upto 31-10-1986, as claimed by the Railways, amounted to Rs. 82,73,198 (excluding liquidated damages after 31-5-1986), the Committee recommended that the Railways should defend its case for determination of the licence fees on the basis of the original agreements and that the Railways should make concerted efforts for recovery of the huge arrears of dues from the party. The Committee also recommended that in order to safe-guard the Railway's interests the Central Railway Administration should at least insist on bank guarantee from the party before contesting the case in the court of Estate Officer/City Civil Court, Bombay.

12. In its action taken note the Ministry of Railways has stated that in the court of the Estate Officer, the Railways has been insisting on the point that the party must provide security towards the claims of the Railways and that as a result, the Estate Officer passed an interim order for the party to deposit Rs. 53 lakhs towards the arrears. According to the Ministry the party had moved the city civil court on 5-12-1986 against payment of Rs. 53 lakhs and the case was adjourned. The party had also moved the high court on 5-12-1986 against the claim of Rs. 53 lakhs and also for granting him stay against proceedings of the Estate Officer. The Ministry has concluded its reply with the observation that on 31-8-87, the case was withdrawn by M/s. Kirit Enterprises with the permission of the Hon'ble court and that final outcome of the case and recovery would be advised in due course.

13. It seems to the Committee that with the withdrawal of the case from the High Court, the party has become liable to deposit forthwith sum of Rs. 53 lakhs with the Estate Officer. It is not clear whether the sum has since been deposited with the Estate officer and in case the deposit has not been made what action has been taken. The Committee may be informed of the action taken by the Ministry of Railways for speedy recovery of outstanding dues of Rs. 85.74 lakhs against M/s. Kirit Enterprises upto 31-10-1986.

CHAPTER II

RECOMMENDATIONS AND OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

1.22 The Committee are informed that on 21 December, 1983, M/s. Kirit Enterprises made a representation direct to the Minister for Railways for review of licence fee and renewal of Lease Agreement for a further period of 30 years. The party did not choose to file their application before the Central Railway Administration or before the Railway Board.

1.23 The Committee are further informed that on 6 January, 1984, the Hon. Minister ordered that the case should be investigated by a competent officer of the Railway Board and made the following endorsement:—

“Enclosed representation from M/s Kirit Enterprises Refrigeration Pvt. Ltd. This complaint is coming to me over and over again. I remember to have asked Chairman, Railway Board to look into the matter earlier. Whatever treatment we give to others—it should be uniform for all. It is highly improper to make discrimination against any particular person or group. If the terms and conditions for allowing occupation of railway land in a particular area are fixed, the same should be common for all occupants. Varying standards are highly prejudicial against norms of administrative impropriety. Keeping this in view, Chairman should cause a thorough look into the matter over again by deputing competent officers from the Railway Board as local officials seem to have failed to make out convincing and just treatment in the case. As the matter has been dragging quite for a long time, it will be proper to settle the issues expeditiously.”

1.24 The Committee is at a loss to understand the purport of the order by the Hon'ble Minister as the order presumes and assumes many facts and factors which are not at all warranted. It is obvious that the party had been making repeated representations which were obviously false and one sided. There is an assumption that the Railway had made discrimination against the party and favoured someone else. Had a report been called from Central Railway there would not have been any chance to assume discriminatory treatment to the party.

[S. Nos., 1, 2 and 3, Paras 1.22 to 1.24 of 88th Report of PAC (1986-87)
VIII Lok Sabha]

Action taken

1.22 The position is factually correct. The observations of the Committee have been noted.

1.23 The position is factually correct. The observations of the Committee have been noted.

1.24 The facts of the case, as obtained from the Central Railway Administration from time to time, were available on the file. In fact, earlier on 8-7-83, M.R. had observed that the cold storage of the firm was in the heart of the town very near V.T. Station and that it was not surprising that Rs. 12,000 per 100 sq. m. per annum was charged from Kirit Enterprises and this could not be considered high due to its location, when compared to that of Tata, HSL/SAIL, Nathani Steel Stockyards which are situated in suburbs of Bombay. In fact, he had further observed that there was every case for re-assessment of the land lease at all these locations by the Chief Engineer and the FA & CAO of Central Railway with immediate effect and that the lease amounts could be very much higher than what were being charged from Kirit Enterprises and simultaneously from the other three steel stock-yards mentioned, as well.

The above position, clearly shows that the agreement rates were not high. Need for a further reference to Central Railway was not felt as the issue of reasonableness of rates had been examined repeatedly in the past in Board's office in consultation with Central Railway.

This has been seen by Audit.

(S. K. N. Nair)

Executive Director (Accounts)
Railway Board.

[Ministry of Railways (Rly. Bd)'s case No. 87/W2/LM/18/75]

Recommendation

1.42 Here it is relevant to point out that the original agreement stipulated that the firm should vacate the land by December, 1982. Altogether the firm has been squatting on the property from the year 1980. The firm took possession of the Railway property under dubious circumstances, as was found by the CBI by a malodorous deal, which resulted in a obvious loss of Rs. 10 lakhs to the Ministry of Defence as assets worth Rs. 10 lakhs were sold out for Rs. 1 lakh and odd only. He executed an agreement with the Railway agreeing to pay Rupees six thousand for the first two months. He has obviously beguiled the Central Railway as he did the Ministry of Defence, only for the purpose of enabling him to take possession of the

property with avowed intention of not paying the stipulated rent, perhaps with full confidence in himself that he would be able to use his influence to bend the Railway Administration to accept the terms convenient to him.

It is quite appropriate here now to recall the sequence of events—the property was leased to the firm in January, 1980; the firm paid licence fee for the first quarter; the Central Railway administration filed an eviction case in September, 1981 for non-payment of arrears of Rs. 12.82 lakhs upto September, 1981 in the Court of Estate Officer; in June, 1982, the party filed a Misc. Appeal in Bombay City Civil Court against eviction orders of the Estate Officer and stay order was granted; meanwhile the party made representation in December, 1983 to the Hon'ble Minister of Railways; the case was investigated by a competent officer of the Railway with conclusion reached in February, 1984 that no discrimination has been done with M/s Kirit Enterprises; the party made further representation in October, 1984 to the Hon'ble Minister of Railways for out-of-court settlement of the case, etc. The terms of out-of-court settlement were spelt out in the Chamber of Minister on 20 November, 1984 and the Railway Board and the Central Railway were directed to accept the out-of-court settlement. It is pertinent to point out that this was contrived when the initial lease period of three years had already expired. There was a change in the incumbancy of the Minister of Railways in January, 1985. Immediately, thereafter the Central Railway as well as the Railway Board reconsidered the entire matter and the orders of out-of-court settlement issued by the previous Minister were cancelled. In fairness, it must also be stated that the extract of the notes, which is at Appendix II, shows that the Members of the Railway Board resisted the out-of-court settlement proposed from the very beginning.

1.44 The Committee are happy to note that Railways have since issued orders banning commercial leasing of plots which are not connected with the working of Railways. However, if necessary, suitable amendments to the existing Railway Act be enacted in respect of licensing of railway lands so that encroachment/unlawful holding on, of the Railway property can be terminated expeditiously.

[S. Nos. 5 & 7 paras 1.42 & 1.44 of 88th Report of PAC (1986-87)
VIII Lok Sabha]

Action taken

1.41 The observations of the Committee have been noted.

1.42 The observations of the Committee have been noted. It is submitted that while licensing the land to the party, Railway's interests were fully safeguarded by way of adequate contractual provision.

There was no valid and subsisting licence agreement since Railway Administration issued notice to the Party, terminating the agreement with effect from 31st August, 1981 and asking it to vacate the premises and, since then, the party was treated as an encroacher and eviction proceedings pursued in the Estate Officer's court. The Estate Officer's court also passed eviction orders on 19th May, 1982, which could not be executed due to stay order dated 29.6.82 granted by the Bombay City Civil Court.

1.44 The observations of the Committee have been noted. Amendments of Public Premises (Eviction Act) have been proposed by Ministry of Railways for consideration and action by Ministry of Urban Development.

Section 152 of the Railway's Bill 1986, which is in lieu of the existing Section 122 of the Indian Railway Act 1890 provides for imprisonment upto six months and a fine upto Rs. Five hundred in case of trespass and refusal to desist from trespass upon or into Railway property and for removal of such persons from the railway, is under consideration of the Select Committee of the Parliament.

It is felt that the amended section of the bill, when passed could possibly be made use of in the case of encroachments on railway lands. This is under examination.

A suggestion to provide for prevention/demolition of structures put up by the encroachers on railway land as a further amendment to sec. 152 of Indian Railway Bill 1986 is under consideration. If possible, the same will be moved as a further amendment to the proposed Section 152 of the Railway Bill 1986, if Sec. 152 can become applicable in cases of encroachment.

This has been seen by Audit.

(S. K. N. Nair)
Executive Director (Accounts)
Railway Board

[Ministry of Railways (Rly. Bd)'s case No. 87/W2/LM/18/75]

Recommendation

1.50 Definite plan should be drawn up for use of land for operational requirements of the Railways. The Committee would like to be apprised of the action taken in this regard. The whole episode suggests that the system of leasing Railway lands immediately required for Railway use needs total revamping to ensure that lands not surplus to the requirements of the Railways, but not under use for Railway purposes are economically exploit-

ed without allowing any one to gain undue hold over it. The Committee cannot refrain from recalling another case of unauthorised occupation of Railway land at Delhi by a soft drink manufacturer noticed by them earlier, and come to the conclusion that the Ministry of Railways have failed to take measure to improve their land management. The Committee hope that this will be done now without any further delay.

[S. No. 8, 9 & 10 paras 1.48 to 1.50 of 88th Report of PAC (1986-87)
8th Lok Sabha].

Action taken

1.50 The observations of the Committee have been noted. The vacant railway land is kept for future developmental needs. The operational plans such as construction of new lines, doubling, staff quarters, workshops, operational buildings etc. are drawn up from time to time as per requirement of railways and availability of resources for taking up such work. In the intervening period, the land has perforce to be kept vacant. However, to safeguard the land from encroachments and to exploit economically, in the meanwhile, large-scale afforestation on railway lands it being taken up. Licensing of land for purposes unconnected with Railways' working has been stopped, as experience has shown that it is difficult to get back such land in time, when again required for operational needs of the Railways.

The case of eviction of M/s. Oriental Building and Furnishing Co. Ltd. New Delhi from railway land and recovery of Railway's dues is also being pursued in the court vigorously.

Detailed position in regarding to this case has been given in the action taken note on the recommendations of the P.A.C. in para 1.73 of 54th Report of P.A.C. 8th Lok Sabha 1986-87, (copy attached) Since 21.3.85, 19 dates have been fixed in the High Court of Delhi.

The final outcome of the case and recovery of dues will be advised to P.A.C. in due course.

This has been seen by Audit.

(S. K. N. Nair)
Executive Director (Accounts)
Railway Board

[Ministry of Railways (Rly. Bd)'s case No. 87|W2|LM|18|75]

CHAPTER III

RECOMMENDATIONS AND OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN THE LIGHT OF THE REPLIES RECEIVED FROM GOVERNMENT

Recommendation

1.51 In this connection, the Committee would like to reiterate their earlier recommendation contained in para 1.69 of their 54th Report (Eighth Lok Sabha), which is reproduced below:—

“1.69 In their note to the Committee, the Ministry of Transport (Department of Railways) have suggested the following three major steps to check and prevent encroachments:—

- (i) Amendment of the Public Premises (Eviction of Unauthorised Occupants) Act to give more effective judicial powers to the Estate Officers so that their direction to summon police help is an obligation under the law and not a simple direction which may or may not be complied with.
- (ii) The relevant Act should be amended to give powers to the Railway Magistrates for eviction of encroachers.
- (iii) Separate posts of Estate Officers with minimum supporting organisation may be created on the Zonal Railways to deal full time with the encroachment cases instead of nominating Engineering Officers as Estate Officers in addition to their normal duties/functions.

The Committee feel that the proposal of the Department of Railways for delegation of more powers to the Estate Officers in regard to giving magisterial authority to summon police, assistance and powers to Railway Magistrates for eviction of encroachments, being in the interest of preventing effectively the encroachments of public premises, merit serious consideration. The Committee recommend that the proposals should be examined by the Government in all aspects and implemented, if found feasible.”

[S. No. 11, para 1.51 of 88th Report of PAC (1986-87)
VIII Lok Sabha]

Action taken

The proposal regarding amendment of Public Premises (Eviction of Unauthorised Occupants) Act 1971 to vest the powers of Magistrates on the Estate Officer etc. was referred to the Ministry of Urban Development who have advised that they have considered the matter in detail, in consultation with the Ministry of Law, Department of Legal Affairs, and feel that no useful purpose would be served by conferring powers of Executive Magistrates on Estate Officers.

This has been seen by Audit.

Sd/-
(S. K. N. Nair)
Executive Director (Accounts)
Railway Board
.9.1988

Ministry of Railways (Rly. Bd)'s case No. 87|W2|LM|18|75 &
73|W2|14|13]

CHAPTER IV

RECOMMENDATIONS AND OBSERVATIONS REPLIES TO WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Recommendation

1.41 The Committee are informed that the Railway Board met on 9th November, 1984 and as directed by the Minister for Railways considered the representation of M/s. Kirit Enterprises for out-of-court settlement of their case, renewal of Licence Agreement and settlement of the lease rent. The Railway Board submitted their recommendations against out-of-court settlement of the case. These recommendations of the Railway Board were not acted upon at that point of time.

The Committee, however, observe from the affidavit filed by the party in the City Civil Court, Bombay that a meeting was held in the Minister's Room, where the Minister had passed the following orders which were reproduced by the party as part of affidavit.

- “(1) The party Kirit Enterprises, should un-conditionally withdraw their existing case which they have filed in the court.
- (2) Kirit Enterprises, must pay rental at the rate of Rs. 6,000 per 100 sq. metres per year for the entire period as an interim measures pending further decision with regard to the higher rental of Rs. 12,000 per 100 sq. metres. This amount at the rate of Rs. 6,000 per 100 sq. metres must be paid for the entire period for which payment is still due to the Railways.
- (3) The same court will decide what will be the fair price of rental for the covered and uncovered area irrespective of the agreement signed with the Railways.
- (4) In the meantime, it is ordered by me that the party could be allowed to continue in the area occupied by them for a period of 5 years after the withdrawal of their Court case.”

Thus the party was enabled to defeat and delay the just claim of the Central Railway to recover possession of the land and also amount of rent due from the party. The party filed on 28-3-1985 an affidavit accom-

panied by photostat copies of the orders of the Minister made on a file. Though the order was not issued to the party nor marked to the party, the Committee are very much pained to find that the party was able to get a photostat copy of the order and produce it before the court. The Railway Board was unable to explain as to how the party could have access to the file so as to take the photostat copy of the order and produce it before the court.

[S. Nos. 4, 5 & 6 para 1.41 of 88th Report of PAC (1986-87)
VIII Lok Sabha]

Action taken

1.41 The observations of the Committee have been noted.

This has been seen by Audit.

(S. K. N. Nair)
Executive Director (Accounts)
..Railway Board

[Ministry of Railways (Rly. Bd)'s case No. 87|W2|LM|18|75]

CHAPTER V

RECOMMENDATIONS AND OBSERVATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES

Recommendation

1.43 After bestowing very anxious consideration to the issues involved in this matter, the Committee have come to the painful conclusion that at that point of time M/s. Kirit Enterprises were shown undue consideration. There was clearly an attempt to help the firm to hold on to Railway property to the detriment of the interest of Railways and general public. The land grab was actively aided and abetted by extreme indulgence to this firm. In the opinion of the Committee, neither in equity nor in law M/s. Kirit Enterprises were entitled to hold on and be in possession of the property after admittedly committing breach of the condition of agreement and after being ordered to be evicted by the Estate Officer. The Committee recommend that immediate action must be taken by Central Railway to get this matter cleared before the Estate Officer/City Civil Court, Bombay.

[S. No. 6 para 1.43 of 88th Report of PAC (1986-87 VIII Lok Sabha]

Action taken

1.43 Party had been making representation to the Railway Minister for further licensing of the Railway land for 30 years and also offering to withdraw the court case, in case the licence is renewed at reduced licence fee as desired by them. No doubt, the representations of the party were examined from time to time, but the fact remains that the licence was already terminated since 31 August, 1981 and the case was being pursued in the Estate Court for eviction of the party from railway land (which was under unauthorised occupation, after the Railway had terminated the licence in August 1981 for non-compliance of the terms of agreement executed by the party with the Railway) as also for recovery of Railway's outstanding dues.

In the meanwhile, as per Railway Minister's orders, out-of-court settlement was attempted in 1984. But, as per orders of the Railway Minister in January 1985, this was dropped and, since then Railway has been vigorously pursuing the cases in both Bombay City Civil Court and High Court and a close watch is being kept.

The position of case in the Estate Officer's court has been given in reply to para 1.48. The position regarding case in Bombay City Civil Court has been given in para 1.49. As regards the case in the High Court the same came for hearing on 31-8-87 when the Advocate of M/s Kirit Enterprises opted to withdraw the case which was allowed by the Hon'ble court. The position has been given in para 1.49.

Final outcome of the case and recovery of dues will be advised to P.A.C. in due course.

This has been seen by Audit.

[Ministry of Railways (Rly. Bd)'s case No. 87|W2|LM|18|75]

Recommendation

1.48 The Committee note that the Bombay City Civil Court on the appeal of M/s. Kirit Enterprises had passed an order remanding the case back to the Estate Officer for rehearing and recording evidence and considering whether a compromise had been arrived at. The Court of the Estate Officer is seized of the matter. The Estate Officer has passed an interim order on 22-11-1986 for payment of Rs. 53 lakhs towards the arrears of licence fee as against Railway's claim of Rs. 80 lakhs with interest upto 31-5-1986. However, the party has moved the City Civil Court for granting stay order against the interim order of the Estate Officer. The Committee recommend that Railway Administration should defend the case for determination of the licence fee to be levied on M/s. Kirit Enterprises after 1-4-1980 on the basis of the terms and conditions stipulated in the original agreement entered into by the party with the Railway Administration.

1.49 The Committee note that outstanding dues against M/s. Kirit Enterprises upto 31-10-1986 as claimed by the Railway amount to Rs. 82,73,198/- (excluding liquidated damages after 31-5-1986). There is apparent failure of the Railways in the battle of wits which has permitted the party to exploit legal remedies to stall payment of huge sums of money due to the Railways. The Committee recommend that the Railways should shed the laxity and make concerted efforts for recovery of these huge arrears of dues from the party. In order to safe-guard the Railway interests the Central Railway Administration should have at least insisted on bank guarantee from the party before contesting the case in the court of Estate Officer/City Civil Court, Bombay. If, necessary, they should go in appeal to the higher Court, to nullify the delaying tactics followed by the party to perpetuate their hold on the prime land of the Railways.

[S. Nos. 8 and 9, paras 1.48 and 1.49 of 88th Report of PAC (1986-87
8th Lok Sabha)]

Action taken

1.48 The observations of the Committee have been noted. The Estate Officer passed an interim order on 21-11-1986 directing M/s. Kirit Enterprises to make payment of Rs. 53 lakhs towards arrears of licence fee to the Railways as purely a deposit or give a bank guarantee in favour of the Court before 5-12-1986.

M/s. Kirit Enterprises filed an appeal against the above order in the Bombay City Civil Court on 5-12-1986. They also filed a writ petition in the Bombay High Court on 9-1-1987 against the order of the Estate Officer on the plea that certain documents were not being shown to them for which Railway Administration had claimed privilege and got stay on the proceedings in the Estate Court. The position of cases in City Civil Court and Bombay High Court has been given in para 1.49. The case came up for hearing in the High Court on 31-8-1987 when the Advocate of M/s. Kirit Enterprises opted to withdraw the case, which was allowed by the Hon'ble Court. Thereafter the case was fixed for hearing in the Estate Officer's court on 15-10-1987. On this day the party asked for adjournments as their advocate was not able to attend the Estate Court. The Estate Court fixed as 6-11-1987 as next date of hearing. The hearing was conducted on 6-11-1987 which continued on 11-11-1987 and further fixed for 13-11-1987. Vigorous action is being taken to defend the case for recovery of licence fee as per terms and conditions stipulated in the original agreement.

The final outcome of the case and recovery of dues will be advised to P.A.C. in due course.

1.49 The correct amount which is outstanding upto 31-10-1986 against M/s. Kirit Enterprises is Rs. 85,73,902.97 including liquidated damages of Rs. 29,77,986.61.

With regard to the other point that Railway have failed in the battle of wite and shown laxity, it may be stated that the Railways had always taken prompt action at every stage and engaged competent and reputed lawyers to counsel and defend the case. A brief description of the efforts made by the Railways is as under:—

During the period 1982-1985, while the case was in City Civil Court, the party had tried their best to bring pressures from all corners and influence the decisions but the Railway had stood firmly and ultimately

the honourable City Civil Court remanded the case back to the Estate Officer in December, 1985.

In the court of the Estate Officer, the Railway has been insisting on the point the party must provide security towards the claims of the Railways and, as a result, the Estate Officer passed an interim order for the party to deposit Rs. 53 lakhs towards the arrears (without interest).

The party had moved the City Civil Court on 5-12-1986 against payment of Rs. 53 lakhs. The case in the City Civil Court was adjourned on 19-1-1987, 5-2-1987, 26-2-1987, 12-3-1987, 25-3-1987, 3-4-1987, 15-4-1987, 17-6-1987, 3-7-1987, 17-7-1987, 4-8-1987, 24-8-1987, 16-9-1987, 8-10-1987, 16-10-1987, 30-10-1987 and 20-11-1987 and is still going on.

The party had also moved the high court on 5-12-1986 against payment of 53 lakhs and also for granting him stay over the proceedings of the Estate Officer as he has been denied inspection of certain documents, which were considered as privileged documents by the Railway Administration. The High Court had granted stay on 13-1-1987 over the proceedings of of Estate Officer. Thereafter, the Railway had decided to engage special counsel in addition to the standing counsel, Shri K. R. Bulchandani, to file an appeal to the Division Bench. The appeal was prepared in consultation with Shri D. R. Dhanuks, Special Counsel and filed on 12-3-1987. The appeal was heard on 15-4-1987 and admitted and the Administration was directed by the Honourable High Court to file Notice of Motion alongwith affidavit. The Notice of Motion and the Affidavit were filed on 13-7-1987. The case in the High Court came up for hearing on 24-8-1987, but adjourned to 31-8-1987. On this day the matter was argued at length and the advocate of M/s. Kirit Enterprises opted to withdraw the case, which was allowed by the Hon. Court.

The final outcome of the case and recovery of dues will be advised to P.A.C. in due course.

This has been seen by Audit.

Sd./-
(S. K. N. NAIR),
Executive Director (Accounts),
Railway Board.

[Ministry of Railways (Rly. Board) case No. 87|W2|LM|18|75]

APPENDIX 1

(i) Observations/Recommendations that have been noted/accepted by Government :

Sl. No. 1, 2, 3, 5, 7, and 10.

(ii) Observations/Recommendations which the Committee do not desire to pursue in the light of the replies received from the Government :

Sl. No. 11.

(iii) Observations/Recommendations replies to which have not been accepted by Committee and which require reiteration :

Sl. No. 4.

(iv) Observations/Recommendations in respect of which Government have furnished interim replies :

Sl. No. 6, 8 and 9.

APPENDIX II

Statement of Recommendations/Observations

Sl.. No	Para Nos.	Ministry/Deptt. Concerned.	Recommendations/Observations
1	2	3	4
1	3	Railways	<p>The Committee desire that final replies to the recommendations in respect of which only interim replies have so far been furnished should be submitted to them expeditiously after getting the same duly vetted by Audit.</p>
2	5-7	-do-	<p>In their earlier Report, the Committee pointed out that M/s. Kirit Enterprises filed on 28-3-1985 in the Court an affidavit accompanied by photostat copies of the orders recorded by the Minister on a file even though the order was neither issued nor marked to the party. The Committee noted with anguish that the Railway Board was unable to explain as to how the party could have access to the file so as to take the photostat copy of the order and produce it before the Court.</p> <p>In its action taken Report, the Ministry of Railways has simply stated that the observations of the Committee have been "noted".</p> <p>The expectation behind the observation of the Committee was that the Railway Board would investigate how the party could have access to an</p>

office note which was not issued to the party and take appropriate action against those responsible. The Committee regret to note that the reply of the Ministry does not throw any light whether this aspect has been examined or not. The Committee desire that the Ministry should investigate how the party managed to obtain a copy of the note for production to the court and take appropriate action against those responsible for the lapse. The Committee also desire that the results of the investigation and the action taken against those responsible for the lapse may be intimated to the Committee.

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In their earlier report the Committee had desired that suitable amendments to the existing Railway Act should be enacted in respect of licensign of railway lands so that encroachment/unlawful holding on. of the Railway property can be terminated expeditiously.

While noting the observation of the Committee, the Ministry in their action taken note has intimated that it has proposed amendments of Public Premises (Eviction Act) for consideration and action by Ministry of Urban Development. According to the Ministry, Section 152 of Railway's Bill 1986, which is in lieu of the existing Section 122 of the Indian Railway Act, 1890 provides for imprisonment upto six months and a fine upto Rs. 500 in case of trespass and refusal to desist from trespass upon or into Railway property and for removal of such persons from the railway is under consideration of the Select Committee of the Parliament. The Ministry has further stated that they are also considering a suggestion for prevention or demolition of structures put up by the encroachers on rail-

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way land as a further amendment to proposed Section 152 of Indian Railway Bill 1986.

The Committee desire that they may be kept informed of the findings of the Select Committee of Parliament on the proposals made in this regard

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Railways

Taking note of the position that outstanding dues against M/s. Kirit Enterprises upto 31-10-1986, as claimed by the Railways, amounted to Rs. 82.73198 (excluding liquidated damages after 31-5-1986), the Committee recommended that the Railways should defend its case for determination of the licence fees on the basis of the original agreements and that the Railways should make concerted effort for recovery of the huge arrears of dues from the party. The Committee also recommended that in order to safe-guard the Railway's interests the Central Railway Administration should at least insist on bank guarantee from the party before contesting the case in the court of Estate Officer/City Civil Court, Bombay.

In its action taken note the Ministry of Railways has stated that in the court of the Estate Officer, the Railways has been insisting on the point that the party must provide security towards the claims of the Railways and that as a result, the Estate Officer passed an interim order for the party to deposit Rs. 53 lakhs towards the arrears. According to the Ministry the party had moved the city civil court on 5-12-1986 against payment of Rs. 53 lakhs and the case was adjourned. The party had

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also moved the high court on 5-12-1986 against the claim of Rs. 53 lakhs and also for granting his stay against proceedings of the Estate Officer. The Ministry has concluded its reply with the observation that on 31-8-1987, the case was withdrawn by M/s. Kirit Enterprises with the permission of the Hon'ble court and that final outcome of the case and recovery would be advised in due course.

It seems to the Committee that with the withdrawal of the case from the High Court, the party has become liable to deposit forthwith the sum of Rs. 53 lakhs with the Estate Officer. It is not clear whether the sum has since been deposited with the Estate Officer and in case the deposit has not been made what action has been taken. The Committee may be informed of the action taken by the Ministry of Railways for speedy recovery of outstanding dues of Rs. 85.74 lakhs against M/s. Kirit Enterprises upto 31-10-1986.

PART II
MINUTES
MINUTES OF THE 3RD SITTING OF THE PUBLIC ACCOUNTS
COMMITTEE HELD ON 12-7-1989

The Committee sat from 1400 hrs. to 1500 hrs. in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Shri P. Kolandaivelu—*Chairman*

MEMBERS

Lok Sabha

2. Shri Abdul Hannan Ansari
3. Shri Chhitubhai Gamit
4. Shri Mohd. Ayub Khan
5. Maj. Gen. R. S. Sparrow
6. Shrimati Usha Rani Tomar
7. Shri Vir Sen

Rajya Sabha

8. Shri Rameshwar Thakur
9. Shri Surender Singh

SECRETARIAT

1. Shri G. L. Batra—*Joint Secretary*
2. Shri K. K. Sharma—*Deputy Secretary*
3. Shri A. Subramanian—*Senior Financial Committee Officer*

REPRESENTATIVES OF AUDIT

1. Shri R. Parameswar—*Addl. Dy. C & AC*
2. Shri S. B. Krishnan—*Director (Reports)*
** ** **
** ** **

2. Shri K. Jayaraman—*JDA (Railways)*

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**	**	**

4. Then the Committee took up for consideration the Draft Action Taken Report on the 88th Report of the PAC (8th Lok Sabha) regarding Licensing of land at Wadi Bunder the Action Taken Report was adopted.

5. The Committee authorised the Chairman to incorporate in the report's other minor modifications/amendments arising out of factual verification of the same by Audit in respect of these Reports. The Committee also authorised the Chairman to present these Reports to the House.

The Committee then adjourned.

