



IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

WPA 3928 of 2024

Raja Basu &Ors.

-Vs-

The State of West Bengal and Ors.

For the Petitioner: Mr. Saptangsu Basu, Sr. Adv.,
Mr. Prosenjit Mukherjee, Adv.,
Mr. Arghya Kamal Das, Adv.,
Ms. Suman Biswas, Adv.

For the respondent nos. 1 and 3: Mr. Guddu Singh, Adv.

For the State: Mr. Chandi Charan De, AGP.,
Mr. Anirban Sarkar, Adv.

For respondent no.14: Mr. Pratap Basu (in person).

For respondent no. 15: Ms. Abantika Garai, Adv.

Hearing concluded on: 01.08.2025.

Judgment on: 06.08.2025.

PARTHA SARATHI SEN, J. : –

1. By filing the instant writ petition, the writ petitioners have prayed for issuance of appropriate writ/writs against the respondents/authorities more specifically against the Senior Divisional Engineer, (East), South Eastern Railway Kharagpur (hereinafter referred to as the said 'Engineer' in short), for cancellation and/or quashing and/or set aside the reasoned order dated 31.01.2024. By the said order under challenge dated 31.01.2024 the said Senior Divisional Engineer directed the present writ



petitioners who are the private respondent nos. 11 to 13 in WPA (P) 89 of 2023 as well as all unauthorized occupants of the premises situated on CS/RS nos. 2195 and 2196 corresponding to LR plot nos. 2207 and 2208 respectively, Mouza Duillya under P.S Sankrail, District Howrah to vacate the said premises within 15 days from the date of publication of the said order under challenge.

2. It is pertinent to mention herein that the said engineer passed such order pursuant to the judgement and order dated 09.10.2023 as passed by a Division Bench of this Court presided over by the Hon'ble The Chief Justice in a public interest litigation being WPA (P) 89 of 2023 at the instance of one Sri Pratap Basu who is the respondent no.14 herein.

3. At the time of hearing Mr. Basu, learned Senior Advocate appearing on behalf of the writ petitioners at the very outset draws attention of this Court to page no.115 of the instant writ petition being a copy of gazette notification dated 26.10.1961. It is submitted by Mr. Basu that from the said notification it would reveal that a notification under Section 4 of Act I of 1894 was published which includes the aforementioned two plot numbers. Attention of this Court is also drawn to page no.117 of the instant writ petition being a copy of the gazette notification dated 18.09.1963 showing publication of declaration of acquisition under Act I of 1894 of various lands including the aforementioned two plots of land.

4. At this juncture Mr. Basu took me to page no.167 of the instant writ petition being a copy of tabular statement. It is submitted by Mr. Basu from such tabular statement it would reveal that 01 Decimal each



being part of the aforementioned two plots were subject matter of LA case no. 14 of 1963-64 in respect of which possession have been taken by the State and delivered to the requiring body being the Railway Authority in respect of aforementioned Mauja Duillya.

5. Drawing further attention of this Court to page nos. 168-169 of the instant writ petition it is further submitted that from the said two pieces of paper it would reveal that part of aforementioned two plots were subject matter of proceeding under Section 11 of Act I of 1894. Drawing attention of this Court to page nos. 170-171 of the instant writ petition it is further submitted by Mr. Basu that under Sl. No. 140 it would reveal that in respect of 0.02 acres of land being doba and danga in the aforementioned two plots compensation was paid for acquisition of land to the the then raiyat of the said plots of land.

6. It is thus submitted by Mr. Basu that from the aforementioned materials it would reveal that though land acquisition process under Act I of 1894 was initiated in respect of the aforementioned two plots of land in its entirety however, only 01 + 01 totaling to 02 decimals of land were in fact acquired and compensation was disbursed in respect of the said 02 decimals of land only.

7. Drawing attention to Section 11 A of Act I of 1894 it is further submitted by Mr. Basu that Section 11A of the said Act I of 1894 clearly mandates that the collector shall have to make an award within a period of 2 years from the date of publication of the declaration and in the event no such award is made within the stipulated period the entire proceeding



for the acquisition of the land would lapse. It is thus submitted by Mr. Basu that in view of such clear legislative mandate there cannot be any hesitation to hold that the land acquisition process as initiated under Act I of 1894 stood lapsed on account of the non-publication of the award in respect of remaining portions of the aforementioned two plots of land.

8. Drawing attention to page nos. 39 to 54 being a copy of registered deed of conveyance dated 22.10.2014 it is submitted by Mr. Basu that the writ petitioner no.3 purchased 7 decimals of land in RS Dag no. 2195 corresponding to LR Plot no. 2207 and 5 Decimals of land in RS Dag no. 2196 corresponding to LR plot no. 2208 totaling to 12 Decimals of land in the aforementioned two plots of land for a valuable consideration from the recorded owners of the said two plots and thus by no stretch of imagination it can be said that the writ petitioner no.3 is a post vesting purchaser of the portions of the aforementioned two plots of land.

9. Drawing attention to page nos. 55-57 being the copies of some RS ROR in respect of the aforementioned two plots of land Mr. Basu draws attention of this Court to Clauses 57 and 59 of chapter 4 of the compendium (vol. I) containing instructions, orders, circulars and notifications issued by the Board of Revenue, Land and Land Reforms Department, Commercials and Instructions Department, Directorate of Land Records and Service, West Bengal and Ors. relating to mutation of names in record of rights. It is submitted by Mr. Basu that Clause 57 of chapter 4 deals with application for mutation while Clause 59 of the self same chapter of the said compendium deals with enquiry and verification.



10. It is further submitted by Mr. Basu that on careful perusal of the aforementioned two clauses it would reveal that in respect of the portions of the aforementioned two plots of land mutation has been effected in the name of the writ petitioner no.3 upon fulfilling the criteria of the said two clauses including enquiry and verification and thus the finding in the reasoned order under challenge dated 31.01.2024 as made by the said engineer that the writ petitioners are unauthorized occupiers of the said two plots of land are contrary to the truth.

11. It is further submitted by Mr. Basu that from page no.60 of the instant writ petition it would reveal further that on the application of the writ petitioner no.3 being the owner of the portions of the aforementioned two plots of land, the jurisdictional BL & LRO, Sankrail allowed the application for conversion of the nature of land from doba to bastu and only thereafter the writ petitioner no.3 after obtaining sanction plan from the local body raised a building with the aid and assistance of the petitioner nos. 1 and 2 pursuant to a development agreement as annexed at page nos. 65 to 109 of the instant writ petition.

12. In course of his argument Mr. Basu places his reliance upon the reported decision of ***Panchu Molla vs. State of West Bengal and Ors.*** reported in ***1980 (2) CLJ 1 : 1984 (1) CHN 208*** as decided on 07.05.1980 wherein a co-ordinate bench of this Court expressed the following views:-

“When the State Government has mutated the name of the petitioner as a tenant and has accepted rents from him as a tenant, the State



Government cannot treat the said land as a vested land and settle the same to other persons. Even assuming that the right of the vendor of the petitioner had vested in the State of West Bengal but because of its subsequent acts it cannot turn round and say that the land has vested. It must be held that the State Government has recognized the tenancy right of the petitioner in respect of the land in question.”

13. It is submitted by Mr. Basu that the case of the present writ petitioners are identical with the facts and circumstances of the reported decision of **Panchu Molla (supra)** and therefore the writ petitioners are entitled to the reliefs as prayed for in the instant writ petition.

14. Placing his reliance upon the reported decision of **Indore Development Authority vs. Manoharlal and Ors. reported in (2020) 8 SCC 129** it is further argued by Mr. Basu that from paragraph no. 366.3 of the reported decision of **Indore Development Authority (supra)** it would reveal that the Hon'ble Supreme Court expressly held that the deemed lapse of land acquisition proceeding under Section 24 (2) of Act XXX of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act of 2013, the possession of land has not been taken nor compensation has been paid. It is thus argued by Mr. Basu that the finding of the said engineer in the reasoned order under challenge regarding vesting of the aforementioned two plots of land in its entirety is thus absolutely faulty and has got not leg to stand on.



15. Per contra, Mr. Pratap Basu, the respondent no.4 who appeared in person before this Court in course of his argument draws attention of this Court to page nos. 114 to 120 of the affidavit-in-opposition as filed by him and as affirmed on 03.10.2024 being a copy of memo dated 23.11.2015 as issued by the State Assistant Public Information Officer and Additional Land Acquisition Officer (G) Howrah together with its enclosures. It is submitted by Mr. Basu that he had received the said memo dated 23.11.2015 on the basis of a RTI application as made by him. It is further submitted by Mr. Basu that from page no.120 being a copy of field area statement it would reveal that RS Dag no. 2195 was acquired in its entirety that is to the extent of 7 Decimals and RS Dag no. 2196 was also acquired in its entirety i.e. to the extent of 5 decimals totaling to 12 decimals of land.

16. In course of his argument Mr. Basu again draws attention of this Court to page nos. 17-18 of the affidavit-in-opposition as filed by him being a copy of memo dated 23.11.2015 as issued by the State Assistant Public Information Officer and Additional Land Acquisition Officer (G) Howrah, pursuant to his application under RTI Act. It is submitted by Mr. Basu that from such memo dated 23.11.2015 it would reveal that in R.S 2195, 6 Decimals of land and in RS Dag 2196, 4 decimals of land were acquired under Defence of India Rules for widening Andul Road.

17. It is thus submitted by Mr. Basu that for the sake of argument even if it is accepted that by virtue of notification under Section 4 and declaration under Section 6 of Act I of 1894 as passed in the years 1961



and 1963 only 2 decimals of land were acquired in the aforementioned two plots of land even then the writ petitioner no.3 cannot claim his ownership over the remaining 10 decimals of land in the said two plot of land in view of the fact the said 10 decimals of land were acquired long back under Defence of India Rules.

18. It is thus submitted by Mr. Basu that from the materials as placed before this Court there cannot be any hesitation to hold that the writ petitioners are the unlawful encroachers of the aforementioned two plots of land and thus they are not entitled to the reliefs as prayed for and on the contrary an appropriate order may be passed against the respondent/authorities for eviction of the writ petitioners as well as of the other encroachers, if there be any, in the said two plots of land.

19. Mr. Dey, learned AGP appearing on behalf of the respondent nos. 4 to 7 while supporting the case of the respondent no.14 submits before this Court that from page no.55 of the instant writ petition being a copy of LR ROR standing in the name of writ petitioner no. 3 it would reveal that the total area of the said two plots of land is 0.12 acre:12 decimal. It is further submitted by Mr. Dey that it is the specific case of the respondent nos. 4 to 7 that in the said two plots of land 2 decimals of land i.e. 1 Decimal each from the said two plots of land were taken possession and delivered to the respondent body being the Railway Authority.

20. In course of his argument Mr. Dey has handed over a copy of page no. 997 of the Calcutta gazette as published on 13.05.1943. It is submitted by Mr. Dey that from the said copy of the gazette notification it



would reveal that the said two plots of land along with other lands in village Duillya was acquired under Rule 75-A (2) Defence India Rules.

21. It is thus submitted by Mr. Dey that in view of such gazette notification there is hardly any scope to disbelieve the information supplied to the private respondent no.14 under cover of memo dated 23.11.2015 as has been annexed at page nos. 17 and 18 of the affidavit-in-opposition of the respondent no.14.

22. Mr. Dey thus submits that it is a fit case for dismissal of the instant writ petition.

23. Mr. Singh appearing on behalf of the Railway Authorities supports the contention of Mr. Dey. He also submits that the instant writ petition is liable to be dismissed.

24. On careful consideration of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties it appears to this Court that it is undisputed that in the aforementioned two relevant plots of land 2 decimals of land were acquired under Act I of 1894 in between the year 1961-1963.

25. Sufficient materials have been placed before this Court that in respect of the said 2 decimals of land compensation has been duly paid to the the then recorded owner of the same.

26. It is equally undisputed that the total area of the said two plots of land is 0.12 acre:12 decimals of land.

27. Admittedly the writ petitioner no.3 purchased 12 decimals of land in the said two plots of land by executing a deed of conveyance dated



22.10.2014. The writ petitioner no.3 therefore mutated his name in the record of right and on his application the classification of land of one of such two plots was changed from doba to bastu.

28. In course of his argument Mr. Basu was very vocal by placing reliance upon Clauses 57 and 59 of chapter 4 of the aforementioned compendium which deals with the mutation of the names in the records of right. It has been argued by Mr. Basu that in absence of any material to show that such mutation has been affected violating the mandates of the said two clauses there is hardly any scope to come to a finding that the writ petitioners more specifically; the writ petitioner no.3 is an unlawful occupier of the aforementioned two plots of land.

29. This Court is in respectful disagreement with the submission of Mr. Basu inasmuch as it is settled position of law that a mere entry of record of right neither creates nor extinguishes title.

30. It is equally settled position of law that a record of right is at best considered to be a document of possession. It is pertinent to mention herein that it is not disputed that the writ petitioners are not in possession of the aforementioned two plots of land.

31. The moot question which arises for consideration before this Court as to whether the possession of the writ petitioners in the aforementioned two plots of land are lawful and justified.

32. Admittedly, on behalf of the writ petitioners sufficient materials have been placed to substantiate that though in between the year 1961-1963 land acquisition took place in respect of the said two plots of land as



per the provisions of Act I of 1894 but such land acquisition stood lapsed for non-publication and disbursement of award under Section 11 A of Act I of 1894. It was thus argued on behalf of the writ petitioners that in view of such lapse of acquisition proceeding the right, title and interest of the writ petitioner no.3, the aforementioned two plots of land ought not to be doubted and therefore the findings of the said engineer in his reasoned order dated 31.01.2024 is faulty.

33. On further careful consideration of the entire materials as placed before this Court it appears to this Court that the argument as advanced by Mr. Basu as discussed in the forgoing paragraphs is not at all tenable in view of the fact both from the private respondent no. 14 as well as from the side of the respondent/State more specifically from respondent nos. 4 to 7 sufficient materials have been placed in R.S Dag no.2195, 7 decimals of land and RS Dag 2196, 5 Decimals of land were acquired under Rule 75-A (2) of Defence of India Rules as evident from page nos. 119 and 120 of the affidavit-in-opposition of the private respondent no.14 as well as from copy of the relevant gazette notification as placed before this Court on behalf of the respondent/State i.e. respondent nos. 4 to 7. It further appears to this Court that in paragraph no.7 of the affidavit-in-opposition as filed by private respondent no.14 the said private respondent no.14 made a specific averment to that effect which is supported by affidavit.

34. On perusal of the affidavit-in-reply against the affidavit-in-opposition of the private respondent no.14 it appears to this Court that



the writ petitioners have made an evasive denial of such averment and practically had not dealt with such pleading.

35. At the time of hearing, on behalf of the writ petitioners no material could be placed before this Court that the land acquisition process in respect of the aforementioned plots of land as initiated under rule 75-A(2) of the Defence of India Rules stood vitiated and/or lapsed.

36. In considered view of this Court the reported decisions as cited by Mr. Basu, learned Senior Advocate are distinguishable from the facts and circumstances of the instant case and this Court has thus got no hesitation to hold that the said two reported decisions are no-way helpful to the writ petitioners.

37. In view of the discussion made hereinabove this Court has got no hesitation to hold that the present writ petitioners are unlawful encroachers in respect of the RS Dag no.2195 corresponding to LR Plot no. 2207 and RS Dag no. 2196 corresponding to LR no.2208, in Mauja Duillya under P.S Sankrail, District Howrah.

38. This Court thus finds no merit in the instant writ petition.

39. Accordingly, WPA 3928 of 2024 is thus dismissed.

40. Consequently, the order under challenge dated 31.01.2024 as passed by the Senior Divisional Engineer (East), South Eastern Railway Kharagpur is hereby affirmed.

41. Considering the fact that the present writ petitioners have illegally encroached Railway property without any lawful authority and even thereafter made vexatious prayer before this Court, this Court imposes a



cost of Rs. 2 lacs each upon the three writ petitioners totaling to Rs. 6 lacs.

42. Since the private respondent no.14 in WPA (P) 89 of 2023 acted as a whistle blower and considering the fact for pursuing series of litigations over the years he had to expend a lot, this Court directs the writ petitioners to pay cost of Rs. 2 lacs to the private respondent no.14 within 15 working days from today and the remaining cost of Rs.4 lacs is/are to be deposited with the SLSA, West Bengal also within 15 working days from today. The Member Secretary, SLSA is hereby directed to credit the said sum of Rs. 4 lacs as would be deposited by the writ petitioners to the credit of the victim compensation scheme.

43. It is further ordered that in the event the writ petitioners and/or their men and agents and/or their successors-in-interest including any other occupiers of the said two plots of land do not vacate either in full or in part the respondent no.2/authority and/or his nominated person and/or any authorized personnel of the Railway Authority shall initiate appropriate proceedings in accordance with law including the proceedings under Sections 5, 5A, 5B, 5C, 6 and 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 as well as under Section 147 of the Railways Act, 1989 forthwith and shall come to a logical conclusion of the same within 90 working days from the date of communication of the server copy of this judgement.

44. The time limits as fixed by this Court are mandatory and peremptory.



45. Learned advocate for the Railway Authority is hereby requested to communicate the server copy of this order to the respondent no.2/authority for his immediate compliance.

46. Similar liberty is given to the private respondent no.14 to communicate the server copy of this Court to the respondent no.2/authority.

47. The respondent no.2/authority is hereby directed to act on the basis of the server copy of this order.

48. With the aforementioned observation WPA 3928 of 2024 is thus disposed of.

49. Interim orders, if there be any, stand hereby vacated.

50. All pending interlocutory applications if there be any, stand hereby disposed of.

51. Before parting with it is further directed that in the event the Estate Officer under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 passes an order of eviction of the present writ petitioners as well as of other occupants if there be any, from the said two plots of land, such order shall have to be implemented with the aid and assistance of respondent no.6/authority as well as by the Superintendent of Police (Rural) District Howrah by deploying sufficient police personnels.

52. Department is directed to forward a copy of this judgement to the District Magistrate, Howrah as well as to S.P (Rural) for their information, record and compliance.



53. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(PARTHA SARATHI SEN, J.)

Later

1. After pronouncement of judgement in WPA 3928 of 2024 Mr. Mukherjee, learned advocate appearing on behalf of the writ petitioners has prayed for limited stay of the operation of the judgement as passed today.

2. Such prayer is considered and is rejected.

(PARTHA SARATHI SEN, J.)