

05/02/2021
Item Nos. 3 & 4 DL
Court No.38
S. DE

Through Video Conference

W.P.A. 10503 of 2019

Portside Estate Limited & Anr.

-Vs-

Union of India & Ors.

With

W.P.A. 7168 of 2020

IA No. CAN/1/2020

Mr. Abhrajit Mitra, Sr. Advocate
Mr. Rajshree Kajaria
Mr. Satadeep Bhattacharyya
Mr. Saptarshi Mukherjee
...for the petitioners

Mr. Subhankar Chakraborty
Mr. Saptarshi Bhattacharjee
...for the Metro Railway

Mr. Uttam Kumar Mazumder
Mr. Bhaskar Seth
...for the respds. nos. 9 & 10.

Mr. Prabal Mukherjee, Sr. Advocate
Ashok Kumar Jena ...for the respds. No.6.

Leave is granted to the learned advocate-on-record for the petitioners in W.P.A. 7168 of 2020 to correct the group number mentioned on the presentation sheet.

W.P.A. 10503 of 2019 is a writ petition challenging a notification for acquisition of the petitioners' land for the purpose of the Metro Railway Project. Certain interim orders have been passed in that writ petition which are still subsisting.

In the course of implementation of the project in question, the Metro Railway Authorities came to realise that they do not require the entire 957.054 sq. mtrs. of land proposed to be acquired but only required 532.926 sq. mtrs. of land. When the petitioners requested for return of possession of the balance land which the Metro Railways did not require, it was contended on behalf of the Metro Railways that under the relevant statute there is no provision for release of the land acquired. A Court order would be necessary for the Metro Railways to return possession of the land that it did not require for the project in question.

Accordingly, the second writ petition being 7168 of 2020 was filed.

I have heard learned counsel for all the parties including Mr. Mukherjee appearing for the Kolkata Port Trust.

Since there is no dispute regarding the fact that the Metro Railway Authorities require only 532.926 sq. mtrs. of land out of 957.054 sq. mtrs. of land, and the Metro Railway Authorities are prepared to return possession of the balance land measuring about 424.128 sq. mtrs. to the petitioner company, I do not see any reason why I should not direct the Metro Railway Authorities to do so.

None of the other appearing parties has any objection to such an order being passed. However, Mr. Mukherjee, learned senior advocate, representing Kolkata Port Trust expresses his apprehension that while returning possession of the portion of the petitioners' land not required by the Metro Railways, the land belonging to Port Trust which is adjacent to and abutting the land of the petitioners may be encroached upon. I do not think there is any basis for such apprehension. Needless to say, land of Kolkata Port Trust will not in any manner be affected.

In the result, both the writ petitions are disposed of by directing the Metro Railway Authorities to return vacant possession of 424.128 sq. mtrs. of land to the petitioners in terms of prayer 'B' of W.P.A. 7168 of 2020. This should be done within four weeks from date after demarcating the land to be returned to the petitioners. Such demarcation is to be done in the presence of representatives of the petitioners, Metro Railways as well as the Kolkata Port Trust. The Metro Railways shall give notice of a reasonable period to the petitioners as also to the Kolkata Port Trust prior to undertaking the exercise of demarcation of the land in question. Return of possession of the land to the petitioners will also be done in the presence of the representatives of the aforesaid parties.

Apart from the issue of return of the land not required by the Metro Railways to the petitioners, I have not gone into any other issue in these two writ petitions and all such issues remain open.

W.P.A. 10503 of 2019 and W.P.A. 7168 of 2020 are disposed of along with the connected application being IA No. CAN/1/2020.

There will be no order as to costs.

Urgent certified copy of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

(Arijit Banerjee, J.)