

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

WPA 407 of 2019

Terai Tea Company Limited & Anr.
-versus
State of West Bengal & Ors.

Mr. Jagriti Mishra
... For the petitioners

Mr. Hirak Barman
Mr. Momenur Rahman
... For the respondent nos.1 to 4

Ms. Supriya Singh
... For respondent no.5

The writ petitioner no.1 is a tea company holding land on lease under the State Government in terms of the provisions of the Estate Acquisition Act, 1953. The writ petitioners claim that plot nos.110, 113, 114 and 116 as shown in pages 80 and 81 of the affidavit-in-opposition are leasehold plots of the Bagdogra Tea Estate. It is contended that the respondent Asian Highway Authorities intended to acquire these plots of land and had issued necessary notification. It is the case of the petitioners that in the event the land is acquired, the procedure under the National Highways Act, 1956 has to be followed. The authorities have not followed such provisions and are attempting to take possession of such land.

The respondent nos.1 to 4 submit that so far as plot nos.110, 113, 114 and 116 are concerned, there is no

dispute. The due assessment of compensation has been made and it is under process of being disbursed. The respondent nos.1 to 4 complain of an encroachment by the petitioner/Bagdogra Tea Estate in respect of a particular land of the National Highway at 563rd kilometers of National Highway-31, right side towards Bihar More, opposite side of army campus. The respondent nos.1 to 4, therefore, directed the petitioner/Bagdogra Tea Estate to remove the plantation and the barbed wire fencing on such land alleged to have been encroached.

At the request of the petitioner/Bagdogra Tea Estate, joint measurement was attempted twice and ultimately it took place on 4th December, 2018 which reveals that encroachment has taken place in respect of a portion as stated in the notice dated 26th September, 2018 and appears as Annexure "R-2" at page 34 of the affidavit-in-opposition of the respondent nos.1 to 4.

This fact is disputed by the petitioners. The petitioners say that there has been no encroachment and the land which the respondent nos.1 to 4 allege to be National Highway land and encroached by the petitioner/Bagdogra Tea Estate is actually a part of the tea estate owned by the petitioners. The respondent nos.1 to 4 ought to make survey and evaluation of the tea bushes and shed trees on the strip of the land which they say to have been encroached by the petitioner/Bagdogra Tea

Estate and only after depositing of compensation, the possession of the said land can be taken.

The petitioners invite the respondent nos.1 to 4 to show any document which will establish that the land alleged to be encroached belongs to the National Highway Authority. According to the petitioners, the land of the National Highways can be obtained by four modes and they should have the document by which they claim to be the owner of the plot of land said to have been encroached upon by the petitioners. The petitioners, however, do not show the documents by which they claim to be the owner of the plot of land which is alleged to have been encroached upon.

This leads to a disputed question of fact so far as the encroachment is concerned. The writ Court does not have the mechanism to go into the disputes relating to the title and measurement. The writ petition, therefore, is dismissed.

It is, however, made clear that the respondent nos.1 to 4 shall as expeditiously as possible disburse the compensation which relates to the undisputed portion of land comprised in plot nos.110, 113, 114 and 116 which have been acquired.

There shall be no order as to costs.

(Arindam Mukherjee, J.)