

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

**W.P.A. 21268 of 2019
With
CAN No. 1 of 2020
With
CAN No. 2 of 2020
With
CAN No. 3 of 2020**

**Sri Santosh Kumar Bhuinya
Vs.
The State of West Bengal & Ors.**

For the Petitioner:	Mr. Joy Saha, Adv. Mr. Subhojit Saha. Mr. Ishan Saha
For the State:	Mr. Soumitra Bandyopadhyay, Adv. Mr. Subasis Bandyopadhyay, Adv.,
For the Respondent No. 9:	Mr. Sirsanya Bandyopadhyay, Adv. Mr. Arka Nag, Adv.,
For the NHAI:	Mrs. Monika Roy, Adv.,
Hearing Concluded on:	07.02.2022
Date:	11.02.2022

SUVRA GHOSH, J. :-

1. The contention of the petitioner, in a nutshell, is that the predecessor-in-interest of the petitioner, Smt. Padmavati Bhuinya acquired right, title and interest in respect of Plot No. 1121 in Mouza:- Kalikakhali, District:- Purba

Medinipur by virtue of a deed of gift executed in her favour by one Shyama Charan Bhuinya on 19th July, 1950 and after demise of Padmavati Bhuinya on 24th September, 1979 the petitioner being her sole heir and legal representative, inherited the said property and has been in possession of the same since then.

2. By a letter dated 1st December, 2017 the Special Land Acquisition Officer, Tamluk, Purba Medinipur confirmed that the plot in question being no. 1121 was not acquired by the State. The petitioner was not aware that a portion of the said plot was illegally encroached upon by the State authorities and the existing Nandakumar-Digha road constructed thereon. On or about 25th March, 2018 the respondent authorities once again started filling up the land illegally for which a writ petition being W.P. No. 4630 (W) of 2018 was filed by the petitioner. By an order dated 3rd September, 2018, a coordinate Bench of this Court directed the petitioner to submit a comprehensive representation before the respondents ventilating his grievances which was to be considered by the respondents within four weeks from receipt thereof. Upon non compliance of the said order, a notice of contempt was issued on 29th November, 2018 following which the petitioner was informed that the respondents would try to complete the process of land acquisition at the earliest. Notification issued by the respondents on 19th May, 2019 indicated that Plot No. 1121 was not acquired and proposal for acquiring the same was initiated. The representation submitted by the petitioner was dismissed by the concerned authority upon recording mere presence of the petitioner at the hearing

though the petitioner was not granted an opportunity of hearing by the authority.

3. Learned counsel appearing on behalf of the petitioner has submitted written notes of argument in addition to oral argument canvassed by him wherein it is stated that the gazette notification dated 11th August, 1949 does not include the disputed plot. The State respondents have initially stated vide letter dated 1st December, 2017 issued by the Special Land Acquisition Officer, Tamluk that the disputed plot was not acquired. Subsequently, by a letter dated 18th December, 2018 issued by the Executive Engineer, National Highway Division No. II it was indicated that the disputed plot was missed out from the bulk land acquisition proposal and process to acquire the same was initiated by the department. The said fact is reiterated by the Chief Engineer, National Highway Wing in his letter dated 16th May, 2019.
4. Challenging the legality of the order impugned passed by the Executive Engineer, National Highway Division No. II, dated 30th August 2019, learned counsel has submitted that the Executive Engineer is not authorised to determine right, title and possession of any person in respect of a property as has been done by him in the order impugned. It is not in dispute that the petitioner is the owner of the land in question. Despite admission of the State authorities that the plot was utilised without the acquisition and acquisition proceedings was initiated, the Executive Engineer has completely misdirected himself in requiring the petitioner to prove his title without considering the earlier admission made by the State.

5. In the record of rights, the plot is found to be in existence and has been recorded as “chhut’ after deleting the earlier recordings. The Mouza map also demonstrates existence of the said plot and therefore it cannot be said that the plot does not exist and is deemed to be “chhut” plot. The petitioner has claimed compensation with regard to an area of 1.65 decimals in Plot No. 1121 which has been illegally encroached upon by the respondent authorities and has also sought an order of injunction restraining the respondent authorities from utilising/encroaching upon the disputed plot any further, the plot not being the subject matter of any requisition/acquisition proceedings. In support of his contention, learned counsel has placed reliance on the judgment of the Hon’ble Supreme Court in *Narasamma & Ors. v/s. State of Karnataka and Ors.* reported in (2009) 5 SCC 591.
6. Placing reliance on the affidavit used on behalf of the sixth respondent, learned counsel for the respondents has submitted that the plot in question is shown as “chhut’ plot in both KB&LR plot information. The order impugned demonstrates that Plot No. 1121 has merged with Plot No. 1071/1390 and Plot No. 1071/1390 classified as Nayanjuli with an area of 2.72 acres has been recorded in favour of the Works and Building Department, Government of West Bengal renamed as Public Works Department who has been in possession of the said land. The LR record of rights is also in favour of the Public Works Department and Plot No. 1121 is non-existent. Learned counsel further submits that the petitioner’s claim

cannot be entertained in view of the fact that the plot in question does not exist and is included in PWD land.

7. Learned counsel appearing for the National Highways Authority of India submits that the National Highways Authority has no role to play in the matter as the land in dispute is under supervision and control of the State authorities.
8. I have considered the submissions made on behalf of the parties as well as on the law on the point.
9. It is not in dispute that the petitioner acquired title and possession in respect of the disputed property by virtue of inheritance from the erstwhile owner Padmavati Bhuinya who in turn, acquired the property by virtue of a deed of gift executed on 19th July, 1950. No step was admittedly taken by the petitioner for recording his name in the R.S and L.R. record of rights. Pursuant to an order of a coordinate Bench of this Court passed on 3rd September, 2018 in W.P. 4630(W) of 2018, the Executive Engineer, National Highway Division No. II considered the representation submitted by the petitioner before him and rejected the claim of the petitioner by the order impugned dated 30th August, 2019. Relevant portion of the order is set out:-

“In the instant case the Applicant couldn’t produce any copy of RoR recorded in favour of him or his predecessor in respect of the plot in question i.e. Plot No. 1121. No rent receipt in respect of the said plot after WB EA Act.- 1953 has been produced by the Petitioner. No copy of order

from any Ld. Civil Court declaring Right, Title & possession over the said plot has been produced by the applicant.

From the above facts and circumstances, it is crystal clear that there is no avenue to extend any relief to the petitioner by NH Division No. II. Rather, Building and Works Deptt, i.e. Public Works Department is the lawful possessor of the CS Plot No. 1121 of Mouza Kalikakhali, J.L. No. 91, PS-Nandigram, Dist,- Purba Medinipur as its name has been recorded in the RS RoR in Khatian No. 253 of the said Mouza and the amalgamated Plot No. 1071/1390 which includes CS Plot No. 1121 is recorded therein. It may also be noted that NH Division No. II is constructing & maintaining the roads in national interest.

In view of above, it may be concluded that NH Division No. II is constructing the road upon their own land as recorded in the finally published RS & LR RoR, the question of payment any compensation to the applicant does not arise. So, the application of Santosh Kumar Bhuinya got no merit for extending any relief on the contentions/or allegations raised by him.”

10. It appears from the letter issued by the Executive Engineer on 14th December, 2018 (annexure P-6 to the writ petition) that Plot No. 1121 was missed out from the bulk land acquisition proposal and the process of the acquisition of the same was being initiated by the department upon identification of the missing plots. The letter issued by the Chief Engineer National Highway Wing on 16th May, 2019 (P-7 to the writ petition) speaks

in tune with the earlier letter and indicates that the disputed plot along with other plots were left out during the earlier land acquisition proposal but acquisition of the plots was absolutely necessary for implementation of the project. Therefore it can be inferred that existence of Plot No. 1121 has been recorded/admitted by the said authorities as on 14th December, 2018 and 16th May, 2019. The plot has been subsequently recorded as “chhut” in the record of rights. It is admitted by the State respondents that the disputed plot has been amalgamated with Plot No. 1071/1390 and such amalgamated plot is recorded in the name of the Public Works Department. Therefore it can at best be said that Plot No. 1121 has lost its independent existence by virtue of its amalgamation with Plot No. 1071/1390 which again stresses on independent existence of the plot prior to such amalgamation.

11. The gazette notification under section 4 of the Act of 1894 dated 4th August, 1949 does not include Plot No. 1121. There is nothing on record to suggest that the plot was acquired by the State authorities prior to amalgamation pursuant to the letter dated 16th May, 2019 issued by the Chief Engineer, National Highway Wing or the procedure adopted for such amalgamation. Recording of the entire amalgamated plot including Plot No. 1121 in favour of the Public Works Department (PWD) is sufficient to indicate that the disputed plot belonging to the petitioner has been utilised by the State authorities, the said plot admittedly not being acquired by the State and as a consequence, no compensation being paid by the State to the petitioner in this regard. It is trite law that failure to

record the petitioner's name in the record of rights or the record of rights being in favour of the Public Works Department cannot be construed as denial of the petitioner's title as the record of rights does not confer title upon a person. [(2009) 5 SCC 591].

12. The KB&LR plot information records Plot No. 1121 as "chhut plot". The said record indicates that the plot was in existence and several recordings were deleted before recording the plot as "chhut". Deletion of the earlier recordings is not authenticated and the reason for such deletion not indicated.
13. The land in question admittedly having been utilised by the PWD without acquisition, the petitioner being the owner and occupier of the said land is entitled to compensation for the same.
14. Upon consideration of the entire gamut of the case, this court is of the view that the petitioner is entitled to relief in terms of prayers (E) and (G) of the writ petition.
15. The order impugned dated 30th August, 2019 is quashed/set aside.
16. Assessment of compensation and payment thereof to the petitioner in terms of prayer (E) be completed by the State authorities within two months from the date of communication of this order after affording reasonable opportunity of hearing to the petitioner.

17. Accordingly, the writ petition being W.P.A. 21268 of 2019 is allowed.
Connected applications being C.A.N. No. 1 of 2020, C.A.N. 2 of 2020, and
C.A.N. No. 3 of 2020 are disposed of.
18. There shall however be no order as to costs.
19. Urgent certified website copies of this judgment, if applied for, be supplied
to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)