

Form J(1)

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Constitutional Writ Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

WPA 1028 of 2022

**Santosh Mallick
Vs.
The State of West Bengal & Ors.**

For the petitioner	: Mr. Partha Pratim Roy Mr. Tathagata Biswas
For the State	: Mr. Subir Kumar Saha, AGP
For the respondent NHA1	: Ms. Supriya Singh
For respondent No.6	: Mr. Supratick Syamal Mr. Alokesh Dalai Ms. Smita Sinha Mitra
For the respondent No.8	: Mr. Srijib Chakraborty Mr. Debaki Nandan Maity Mr. Hillol Saha

With

**WPA 1228 of 2022
Rabindra Nath Sarkar
Vs.
The Union of India and Ors.**

For the Petitioner	: Mr. Srijib Chakraborty Mr. Debaki Nandan Maity Mr. Hillol Saha
For the State	: Mr. Bikramaditya Ghosh
For the respondent No.8	: Mr. Partha Pratim Roy

Mr. Tathagata Biswas

For the respondent NHAI : Ms. Supriya Singh

**For the respondent No.9 : Mr. Supratick Syamal
Mr. Alokesh Dalai
Ms. Smita Sinha Mitra**

**For the Union of India
: Mr. Sudipto Kumar Mazumdar, Ld. DSGI
Mr. Sourab Kar**

**Heard On : 6th February, 2023
Judgment On : 10th February, 2023.**

Bibek Chaudhuri, J.

Both the above mentioned writ petitions are heard together because the principal dispute is with regard to entitlement of compensation/award upon land acquisition between two alleged owners of the acquired land.

One Santosh Mallick, petitioner of WPA 1028 of 2022 has approached this Court under Article 226 of the Constitution praying for issuance of a writ of mandamus commanding the respondent authorities and each one of them to forthwith pass a reasoned order in respect of hearing conducted on 16th December, 2021 on the basis of the petitioner in accordance with law granting/disbursing 50% of the total compensation amount in favour of the petitioner in respect of the land acquired by the National High Way Authority.

It is the case of the petitioner that one Parsahnath Sarkar was the original owner in respect of 200 decimal of land by virtue of purchase

sometimes in the year 1973-74. The said Parsahnath Sarkar recorded his name in the Record of Rights. Parsahnath Sarkar died leaving behind two daughters namely, Khuki Bala Sarkar and Sova Rani Sarkar (Mallick). Sova Rani is the mother of the petitioner. After the demise of Parsahnath Sarkar, Khuki Bala Sarkar and Sova Rani inherited the entire share of Parsahnath Sarkar jointly as their *ejmali* property. Marriage of Sova Rani was solemnized with one Anil Kr. Mallick. In the said wedlock, petitioner was born on 11th July, 1977. After the death of Sova Rani and her husband the petitioner inherited 50% share in the property left by her mother. At the time of death of Sova Rani the petitioner was minor. On or about 26th June, 1988 the father of the petitioner and Khuki Bala executed a deed in favour of one Bitan Debi and transferred certain property. In the recital of the said deed No.5454 dated 26th June, 1988, relationship between Anil Kumar Mallick and Khuki Bala Sarkar was stayed and thereby relationship between the petitioner and Khuki Bala Sarkar was established. After the demise of his mother, petitioner was brought up by his aunt Khuki Bala. Subsequently, in order to grab the entire property Khuki Bala denounced her relationship with the present petitioner. It is the further case of the petitioner that while he along with Khuki Bala Sarkar were not joint possession of the said property, National Highway Authority of India acquired 60 decimals of land by virtue of acquisition process but the said Khuki Bala along with her son Rabindra Nath Sarkar falsely

presented a claim before the authority concerned by the strength of some forged documents that they are the only legal heirs of Parsahnath Sarkar, since deceased. Petitioner came to know that the entire compensation amount in respect of the acquired land and structure was paid to Rabindra Nath Sarkar, son of Khuki Bala Sarkar. The petitioner further states that on 14th September, 2017 the petitioner made an objection against the award in connection with L.A.P No.18/9-10 and LA Case No.9/12-13 in respect of RS plot No.3493 corresponding to LR plot No.3855 and RS plot No.3525 corresponding to LR plot No.3860, RS plot No.3525, corresponding to LR plot No.3874 and some other plots of which the petitioner claimed 50% share along with Khuki Bala Sarkar by dint of inheritance in order to deprive the petitioner Rabindra Nath Sarkar got a forged deed of gift executed by Khuki Bala Sarkar in respect of entire property of Parsahnath Sarkar.

Rabindra Nath Sarkar, son of Khuki Bala Sarkar, since deceased has filed WPA No.1228/2022 stating, inter alia, that her mother Khuki Bala Sarkar transferred 64 decimal of land to the petitioner by executing a deed of gift which was duly registered on 24th May, 2017 and accepted by the petitioner comprising of RS dag No.3515 (LR dag No.3850), RS dag No.3516 (LR dag No.3856), RS dag No.3517 (LR dag No.3856), RS Dag No.3525 (LR dag No.3874), RS dag No.3493 (LR dag No.3855), RS dag No.3494 (LR dag No.3852), RS dag No.3492 (LR dag No.3854), RS dag No.3491 (LR dag No.3797) under mouza Ulladabri within police

station Mainaguri. The said land was duly recorded in the name of the mother of the petitioner. Amongst the said land, RS dag No.3525, 3515 and 3493 was inherited by the mother of Rabindra Nath and she purchased RS dag No.3516, 3517 and 3594. Acquisition proceeding was carried out over dag No.3515, 3516, 3517, 3525 and 3493. It is further submitted by the petitioner that the Special Land Acquisition Officer issued a notice to the petitioner under Section 3H(2) of the National Highway Act, 1956 for payment of compensation. Petitioner duly received the compensation amount in accordance with the said notice. It is further submitted by the petitioner in the instant writ petition that he previously filed an application under Article 226 of the Constitution challenging arbitral award dated 16th November, 2017 rejecting application under Section 3G (5) of the National Highways Act, 1956. The said writ petition was as WP 13630 (W) of 2018 and it was disposed of by a Coordinate Bench of this Court vide order dated 23rd August, 2018 thereby quashing/setting aside the order dated 16th November, 2017 and further please to observe that the arbitrator appointed under the National Highways Act would proceed with the arbitral proceeding and published the award within four months from the date of communication of the order after affording an opportunity of hearing to all interested parties. Following the aforesaid order of the Hon'ble High Court at Calcutta the learned Arbitrator passed an order fixing the base rate of the land at Rs.10909100/- per acre and in respect of Bastu

clarification of land at Rs.16363637/- per acre with interest at the rate of 9% per annum on the enhanced amount from the date of the award. The National Highway Authority of India assailed the said arbitral award by filing an application under Section 34 of the Arbitration and Conciliation Act before the learned District Judge, Jalpaiguri which was registered as Misc Case No.6 of 2019. The petitioner and all other land losers also challenged the arbitral award dated 6th December, 2018 which was registered as Misc Case No.13 of 2014. The learned District Judge by an order dated 13th September, 2021 upheld arbitral award dated 6th December, 2018 with further direction to the competent authority to award solatium and additional interest in accordance with Central Government Notification No.NH11011/30/2015-LA dated 28th December, 2017. National Highway Authority challenged the said order passed by the learned District Judge under Section 34 of the Arbitration and Conciliation Act by filing two miscellaneous appeals before the Hon'ble High Court. A Coordinate Bench of this Court was pleased to direct that the land losers would be entitled to receive compensation at the base rate which was agreed to be paid by National Highway Authority of India except Solatium and interest. The petitioner made a representation before the said Land Acquisition Officer on 13th January, 2022 praying for disbursement of compensation in favour of him but the respondent authority did not pay any attention to the said representation. Subsequently, the petitioner came to know that the

petitioner of WPA 1028 of 2022 filed an objection claiming that his mother Sova Rani Sarkar is also the legal heir of Parsahnath Sarkar and after the death of Sova Rani he is entitled to get proportionate compensation as per his share. The Special Land Acquisition Officer took up the objection submitted by Santosh Mallick for hearing passed the following order:- As this is the matter legal heir dispute arise in between the two parties, hence, the matter may be referred to the learned Government Pleader of the District, Jalpaiguri for his legal opinion. The petitioner submits that Santosh Mallick is an imposter having no relationship with Parshanath Sarkar. The said Parsahnath Sarkar had no daughter in the name of Sova Rani Sarkar. Documents filed by the said Santosh Mallick cannot be admitted in evidence and Santosh Mallick, private respondent herein filed the objection only to avail compensation illegally on the basis of some forged and fictitious documents. Thus, the petitioner has prayed for issuance of writ in the nature of mandamus, commanding the respondent No.7 to disburse the enhanced account of compensation to the petitioner.

The respective private parties have filed affidavit-in-opposition and affidavit-in-reply in WPA 1028 of 2022 which are practically the replication of their writ petition. Having heard the learned Advocate for the parties, and on careful perusal of the entire materials on record it appears to this court that the dispute between the two petitioners of the above mentioned writ petition should have been made private

respondents in the respective writ petitions filed by the other party relates to an issue as to whether Sova Rani Sarkar was the daughter of Parsahnath Sarkar or not and whether on the death of Sova Rani, Santosh Mallick inherited the share in respect of the property of Parsahnath Sarkar by way of inheritance.

This dispute cannot be resolved by the competent authority. When the claim of title over a piece of land or property is under dispute the Civil Court is the competent authority to determine the issue. Therefore, both the writ petitions are disposed of directing the competent authority to refer the matter to the learned District Judge, Jalpaiguri, invoking the provision of Section 3H(4) of the said Act of 1956 and the learned District Judge shall dispose of such matter preferable within six months but not later than 12 months from the date of reference. The above direction is made by virtue of the decision of the Division Bench of this Court in the case of **Dilip Kumar Dutta vs. State of West Bengal & Ors** reported in **(2018) 4 CHN 9**.

The respondent No.4 in WPA 1028 of 2022 and respondent No.7 in WPA 1228 of 2022 are directed to refer the dispute to the learned District Judge, Jalpaiguri for decision within two weeks from the date of communication of this order.

The writ petition of WPA 1228 of 2022 namely, Rabindra Nath Sarkar is directed to deposit the compensation amount in respect of 14 decimal of acquired land before the learned District Judge, Jalpaiguri to

contest the reference and the learned District Judge shall deposit such amount in any interest bearing account of an nationalized bank till the date of disposal of the reference and on conclusion of the reference the said amount shall be directed to be paid to the person who is entitled in accordance with law.

The writ petition is accordingly disposed of on contest however, without any costs.

(Bibek Chaudhuri, J.)