

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

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 17431 of 2023

**Smt. Aloka Mukherjee & Ors
Vs.
The State of West Bengal & Ors.**

For the Petitioners: Mr. Amit Pan, Adv.,
Mr. Madan Mohan Roy, Adv.

For the NHAI: Ms. Monika Roy, Adv.
Ms. Shrinjita Ray, Adv.

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

For the Proforma Respondent: Ms. Tanusri Santra, Adv.

Hearing Concluded on: 16.01.2024

Date: 02.02.2024

SUVRA GHOSH, J. :-

1. The order passed by the Special Land Acquisition Officer, Paschim Bardhaman, on 2nd May, 2023 is assailed in the writ petition.
2. The writ petition has a chequered history.
3. The writ petitioners claim to have acquired right, title, interest and possession of the plots in question along with the proforma respondent and submit that portion of the plots measuring about 9.62 acres was

acquired by the State for the purpose of construction of National Highway-2 through Asansol town by a proceeding being L.A. Case No. 5R of 1965-66 and compensation was paid in lieu of the same to the predecessors-in-interest of the writ petitioners and the proforma defendant. By subsequent acquisition cases being L.A. Case No. 88R of 1965-66 and No. 39R of 1970-71 initiated under the West Bengal Land (Requisition and Acquisition) Act, 1948, an area of about 0.97 acres and 522 acres was acquired and compensation paid to the predecessors-in-interest. Land measuring 84.19 acres was forcibly taken over from the petitioners without initiating any proceeding for the purpose of construction of flyover connecting National Highway-2 and GT Road within Mouza Asansol without paying any compensation to the petitioners for the same. The construction has been completed. Several writ petitions were filed by the petitioners before this Court claiming compensation and despite directions of this Court, the respondent authorities turned down the prayers of the petitioners each time. Finally by an order passed on 11th January, 2023 in WPA 19050 of 2019, this Court directed the concerned authority to revisit the case of the petitioners as made out in the representation submitted by them and pass a reasoned and speaking order within a stipulated timeframe upon affording reasonable opportunity of hearing to all the interested persons including the petitioners. Pursuant to the said order, the order impugned was passed rejecting the claim of the petitioners.

4. Learned counsel for the petitioners has submitted that though some portions of the plots in question including sub-soil rights were vested in the State under Section 4/5 of the West Bengal Estates Acquisition Act, 1953 and in terms of Section 29 of the Act vide notification published on 4th November, 1954, the record of rights issued in favour of the predecessors of the petitioners suggests that their names were recorded in respect of the plots in question under the West Bengal Estates Acquisition Act, meaning thereby that the plots were allowed to be retained by the predecessors, the said record of rights being acknowledged by the authority.
5. Notice under Section 3 (1A) of the West Bengal Land (Requisition and Acquisition) Act, 1948 was served upon the predecessors-in-interest of the petitioners for requisition of the plots in question and the land was acquired by virtue of a notification issued under Section 4 of the Act on July 26, 1974.
6. In the order passed on 18th August, 2023, the Special Land Acquisition Officer and L.A. Collector, Burdwan, held that the erstwhile owner Sushil Kumar Mukherjee, since deceased, obtained mining lease of land vested under the Estates Acquisition Act for 99 years on 1st December, 1989 and upon closure of the mining, the lessee should have recorded the surface right in his name. The order records vesting of all the sub-soil rights and refuses the prayer of the applicant on the ground that the petitioners therein failed to submit any document to substantiate the raiyati khatian.

7. Learned counsel submits that issuance of notification under the 1948 Act indicates that though sub-soil right in respect of the plots was vested in the State, the petitioners/their predecessors continued to have right, title and interest in respect of the surface land. The residential building of the petitioners known as 'Seba Smriti' in R.S. plot no. 2542 was taken over by the State in acquiring the land. The petitioners have prayed for compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
8. Learned counsel has placed reliance on the authority in Smt. Sawarni v/s. Smt. Inder Kaur and others reported in AIR 1996 Supreme Court 2823 in support of his contention.
9. Challenging the maintainability of the writ petition, learned Counsel for the respondents has submitted that the writ petition is not maintainable before this Court since the plots in question were resumed by the State upon termination of the lease granted to the predecessors of the petitioners in terms of Section 29 of the West Bengal Estates Acquisition Act, 1953. Learned counsel has taken this Court to the order passed by the Special Land Acquisition Officer, Burdwan on 16th July, 2009 wherein it is stated that the plots in dispute including sub-soil rights therein held by the predecessors-in-interest of the petitioners vested in the State free from all encumbrances, under Section 5 of the West Bengal Estates Acquisition Act, 1953. The lease granted to them was terminated for failure to do any prospecting or development work at any point of time since the date of vesting and possession was taken over by the State

Government. The plots having been resumed under the Act of 1953, the petitioners were at best entitled to claim compensation under the provisions of the said Act. The petitioners, therefore, cannot be said to be in possession of the surface area of the land and are not entitled to any relief in the writ petition.

10. Learned counsel for the National Highways Authority of India has submitted that construction of the National Highway involved in the present writ petition is not within the domain of the National Highways Authority of India and as such, the authority has no role to play herein.
11. At the very outset, I shall deal with the issue of maintainability of the writ petition. It is not in dispute that sub-soil rights in respect of the plots in question has been resumed by the State respondents under section 4/5 of the West Bengal Estates Acquisition Act, 1953 and in terms of section 29 of the Act. The vesting order is not under challenge in the writ petition. The petitioners rely upon the record of rights issued in their favour subsequent to the vesting, thereby suggesting that the plots in question were allowed to be retained by them. The petitioners have also placed reliance on the notification issued under section 3(1) of the West Bengal (Requisition and Acquisition) Act, 1948 dated 25th July, 1974 whereby the plots in question were requisitioned by the Government and utilised for construction of the flyover. According to the petitioners, the said notice would not have been issued if plots in question had been vested in the State prior to issuance of the notice. Since the vesting proceeding is not under challenge in the writ petition which seeks a

direction upon the respondents to initiate proceedings under The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and pay compensation to the petitioners in terms of the said Act, the writ petition is maintainable in its present form and prayer.

12. On merits, an earlier writ petition filed by the petitioners seeking similar reliefs, being W.P.A. 19050 of 2019 was disposed of by this Court by a judgment passed on 11th January, 2023. The issue has been elaborately discussed by this Court in the said judgment. Even at the cost of reiteration, the fact is required to be discussed for the purpose of adjudication of the present case.
13. Admittedly sub-soil right of the plots in question have been resumed by the State respondents. The petitioners claim to be owners of the surface rights whereas the respondents urge that the vesting/resumption includes the surface rights. The record of rights finally published in favour of the predecessors of the petitioners subsequent to vesting suggests that the plots in question were not included in the vesting proceedings and the predecessors were allowed to retain the same. The R.S. record of rights has been acknowledged by the authority in the preliminary enquiry report on North Muslia Colliery submitted by the Assistant Settlement Officer, Asansol. The case of the petitioners is further fortified by issuance of notification under section 3 (1) of the Act of 1948 by the State on 25th July, 1974 for construction of the flyover on a portion of the petitioners' land. Had the plots in question been vested in

the State, such notification would not have been issued. By issuing the notification under section 3(1) of the 1948 Act, the respondents have in fact admitted that the plots in question were not vested/acquired earlier. Significantly, no proceeding under section 44 (2a) of the West Bengal Estates Acquisition Act, 1953 was initiated by the State for revision of the entries in the record of rights issued in favour of the predecessors of the petitioners.

14. In the order impugned, the concerned authority has placed reliance on the L.R. record of rights which demonstrates that the plots in question are vested in the State and plot no. 2515 is recorded in favour of the National Highways Authority of India. The order is silent with regard to the documents on the basis of which the L.R. records were published. It is not trite law that mere recording in the record of rights does not create or extinguish title, nor has any presumptive value on title (Smt. Sawarni supra). There is also no explanation in the order as to under what circumstances the notification under section 3 (1A) of the 1948 Act was issued despite the State holding that the writ petitioners/ their predecessors were not the owners of the plots in question at the time of acquisition. Besides the L.R. record of rights, the legality and validity of which are disputed, the order does not record any finding to substantiate that the surface rights of the plots in question vested in the State in terms of the 1953 Act.
15. It is a fact that the Courts have held that the petitioners should establish their claim by producing relevant documents. In my considered

view, the R.S. record of rights and the notification under section 3 (1A) of the 1948 Act are sufficient to hold that the petitioners have right, title and interest in respect of the surface land of the plots in question which have been admittedly utilised by the State for construction of flyover.

16. In the order passed on 15th December, 2008 in W.P. no. 8199 (W) of 2004, a coordinate Bench of this Court held that if the petitioners established their claims with relevant documents, they were required to be paid compensation. The Court also held that in case the authority could not pay compensation to the petitioners of non-availability or non production of relevant record of rights, the same should be taken care of immediately since the writ petition had copies of the said R.S. records annexed. In other words, the Learned Court placed reliance on the R.S. record of rights filed by the petitioners in the earlier writ petition and observed that the authority could consider the same in determining compensation in favour of the petitioners.

17. It is not the case of the respondents that the proceeding under the 1948 Act was concluded within the stipulated time frame. The proceedings having lapsed and the land of the petitioners utilised by construction of the flyover, the petitioners are entitled to compensation under The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It is incumbent upon the State respondents to initiate proceedings under the 2013 Act and pay compensation to the petitioners in terms of the said Act upon granting

reasonable opportunity of hearing to the petitioners on the quantum of compensation and determination thereof.

18. Accordingly, the writ petition succeeds.
19. The order impugned passed by the Special Land Acquisition Officer, Paschim Bardhaman on 2nd May, 2023 is set aside.
20. The Special Land Acquisition Officer, Paschim Bardhaman, being the 4th respondent herein is directed to initiate proceeding under The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and take the proceeding to its logical conclusion upon payment of adequate compensation to the petitioners in terms of the said Act within three months from the date of communication of this order, upon affording reasonable opportunity of hearing to all concerned including the petitioners.
21. There shall however be no order as to costs.
22. Since no affidavit is invited, the allegations contained in the writ petition are deemed not to be admitted.
23. 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)