

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

Present:

The Hon'ble Justice Partha Sarathi Sen

**WPA 22039 of 2012
With
CAN 1 of 2015 (Old No. CAN 11703 of 2015)**

**Jalaluddin Sk.
Vs.
The Chief Medical Officer, (Health Department)
Murshidabad & Ors.**

For the petitioner : Mr. Sk. Anwar Ali

For the State : Mr. Soumitra Bandyopadhyay
Mr. Priyabrata Batabyal

Heard on : 18.09.2024

Judgment on : 18.09.2024

PARTHA SARATHI SEN, J.:

1. Learned Advocate for the writ petitioner files his exception/affidavit-in-opposition against the report filed by the respondent no. 1. Let the same be taken on record.
2. By filing the instant writ petition the writ petitioner has prayed for issuance of a writ of mandamus commanding the respondents to

consider the representation of the writ petitioner as submitted on 30.11.2011 with the respondent no. 1 authority for payment of adequate compensation after acquiring the land of the writ petitioner which is being used as a pathway for the egress and ingress of Bhairabatala sub-centre along with other ancillary reliefs.

3. In support of his contention learned Advocate for the writ petitioner at the very outset draws attention of this Court to the Annexure P1 (page nos. 13 and 14 of the writ petition) being the photocopy of registered deed of conveyance dated April 25, 1997 whereby and whereunder the writ petitioner purchased 0.07 decimal of land in Bata Plot no. 514/1353 in Mouza – Giria in District – Murshidabad from his vendor one Nanda Kumar Das. It is further submitted that from page nos. 15 and 16 of the writ petition being a copy of LR&ROR it would reveal that the name of the writ petitioner was duly mutated in respect of the aforesaid plot of land. It is submitted that immediately after purchase of the aforementioned plot of land the petitioner came to learn that a substantial portion of his land is being used as a pathway to the aforementioned health sub-centre and accordingly under cover of his letter dated 15.01.2010 he requested the LA Collector, Murshidabad, the respondent No. 4 herein and the Pradhan of Giria Gram Panchayat for taking steps for acquiring the land in question which is being used as a pathway and for payment of adequate compensation.

4. It is the grievance of the petitioner that his representation dated 15.01.2010 was not considered favourably by the State authorities and finding no other alternative he approached this Court by filing WP 11296(W) of 2010. Drawing attention to page nos. 21 to 24 of the writ petition it is submitted that by an order dated 04.04.2011 the said writ petition was disposed of with the following direction:

“After having heard the learned Counsel in support of the Application and the Respondents-State and on considering the position we feel this is essential a question of investigation of fact and the Writ Court would not be in a position to evaluate the same. Accordingly, the same is disposed of with a direction upon the Respondent no. 1 to dispose of the Representation (Annexure – P/3) within a period of seven days from the date of communication of this order upon giving opportunity of hearing to the Petitioner and such other parties he may deem fit and proper and by way of a speaking order the result of such hearing be communicated.

Further, it is directed that in the event such acquisition is found to be not in, order, necessary steps as known to law, shall be taken without further reference made.”

5. In course of his submission, learned Advocate for the writ petitioner draws attention of this Court to the order dated 17.06.2011 as passed by LA Collector, Murshidabad. It is submitted that while passing the said reasoned order the LA Collector has practically

avoided to answer the grievance as made by the writ petitioner and the LA Collector, Murshidabad has not also come to a specific finding as to whether any portion of the plot no. 514/1353 in Mouza – Giria under P.S. – Raghunathganj, District – Murshidabad is being used as a pathway for the Bhairabtala sub-centre or not.

6. It is thus submitted that it is a fit case for allowing the instant writ petition directing the respondent authorities to acquire the land of the writ petitioner and to pay appropriate compensation in accordance with law with interest and solatium.
7. *Per contra*, learned Advocate for the State draws attention of this Court to the report dated 06.05.2024 as filed by the respondent no. 1, i.e., C.M.O.H., Murshidabad. It is submitted on behalf of the State that from the said report it would reveal that Bhairabtala sub-centre is situated not on the disputed plot of land and on the contrary the same is situated on a separate plot of land which was donated by a group of seven persons in the year 1976. It is further submitted that the approach road to the said sub-centre is the only pathway for egress and ingress to the said sub-centre and there is no other alternative route or pathway for getting entry in the said sub-centre.
8. While refuting such contention, learned Advocate for the writ petitioner draws attention of this Court to the order dated 17.06.2011 as passed by LA Collector, Murshidabad as has

annexed to the exception as filed by the writ petitioner today in Court.

9. After careful consideration of the entire materials as placed before this Court and after hearing the learned Advocates for the contending parties it appears that before this Court the writ petitioner has produced prima facie documents to substantiate that he has title and possession over 0.07 decimal of land in plot no. 514/1353 by production of copy of the title deed and copy of the relevant ROR which are admittedly documents of title and possession respectively.
10. At this juncture if I look to the order dated 17.06.2011 as passed by LA Collector, Murshidabad it would reveal that the hospital gate was constructed on the plot no. 514/1353 and a pathway is there on the self-same plot which is being used by the hospital authority and local people for egress and ingress to Bhairabtala sub-centre. This Court further finds that the LA Collector, Murshidabad under cover its order dated 17.06.2011 came to a finding that the writ petitioner was never in possession over 9.90 decimal of land over plot no. 514/1353. The said LA Collector also found that the health department never forwarded any proposal for acquisition or requisition of the land on plot no. 514/1353.
11. As rightly pointed out by the learned Advocate for the writ petitioner that the LA Collector, Murshidabad under cover of its

order dated 17.06.2011 made no venture at all to come to a specific finding as to whether the pathway as has been used by the hospital authority and the public at large for egress and ingress to Bhairabtala sub-centre is situated on the purchased portion of plot no. 514/1353.

12. In considered view of this Court the said adjudication is very much necessary in view of the fact that before this Court the writ petitioner has produced his title deed over 0.07 decimal of land in respect of the aforementioned plot and he has also produced the copy of the relevant RSROR to substantiate his possession over the purchased portion of his land.
13. In the backdrop of the aforementioned discussion this Court thus set aside the order dated 17.06.2011 as passed by LA Collector, Murshidabad. This Court thus directs the A.D.M.(L.R.), Murshidabad to take appropriate steps for coming to a logical finding as to whether the pathway used for egress and ingress to Bhairabtala sub-centre and the new gate of the said sub-centre falls within the purchased portion of land of the writ petitioner in plot no. 514/1353 in Mouza – Giria.
14. The A.D.M.(L.R.), Murshidabad is further directed to come to a finding as to whether the gate which has been constructed over the aforementioned plot of land encroaches the purchased portion of the writ petitioner in plot no. 514/1353 in Mouza – Giria.

15. The A.D.M.(L.R.), Murshidabad is further directed to make an enquiry as to whether the vendor of the writ petitioner had at all any marketable title in respect of the purchased plot of land measuring about 0.07 decimal in plot no. 514/1353 in Mouza Giria.
16. The A.D.M.(L.R.), Murshidabad is also directed to come to a logical finding with regard to the aforementioned three points by making field enquiry in presence of the petitioner and/or his authorized representative and also by physical verification of the title deed of the writ petitioner as well as previous chain deeds in respect of the subject plot of land and, thereafter, he shall pass a reasoned order after giving due opportunity of hearing to the writ petitioner and/or his authorized representative in this regard.
17. It is further ordered that in the event, the A.D.M.(L.R.), Murshidabad finds that any portion of the plot of land as purchased by the writ petitioner is either being used as a pathway for ingress and egress of Bhairabtola sub-centre or for construction of a gate in front of the said pathway, the District Magistrate cum Collector, Murshidabad shall take appropriate steps for acquiring the said portion of the land on behalf of CMOH, Murshidabad in accordance with law and shall, thereafter, disburse appropriate compensation to the writ petitioner.

18. It is further directed that the entire process of field verification, hearing and passing of reasoned order by A.D.M.(L.R.), Murshidabad shall have to be concluded within a period of three months from the date of communication of this order.
19. With the aforementioned observations, the instant writ petition being **WPA 22039 of 2012** along with all interim applications is hereby disposed of.
20. The A.D.M.(L.R.), Murshidabad is directed to act on the server copy of this order.
21. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(PARTHA SARATHI SEN, J.)