

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

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 3419 of 2025

**Nanney Khan & Anr.
Vs.
The State of West Bengal & Ors.**

With

WPA 4469 of 2025

**Md. Faisal Hussain
Vs.
The State of West Bengal & Ors.**

For the petitioner in WPA 3419 of 2025 & private respondent no. 16 in WPA 4469 of 2025	:	Mr. Rwitendra Banerjee Mr. Shibasis Chatterjee Mr. Sandip Kundu
For the petitioner in WPA 4469 of 2025	:	Mr. Sarwar Jahan Mr. Gourav Das Mr. Amit Bikram Mahato Mr. Aditya Bikram Mahata
For the State in WPA 3419 of 2025	:	Mr. Ayan Banerjee Mr. Amrita Lal Chatterjee
For the State in WPA 4469 of 2025	:	Mr. Soumitra Bandopadhyay Mr. Ram Chandra Gucchait
For the respondent nos. 10 & 11 in WPA 3419 of 2025 & respondent no. 11 in	:	Mr. Dinabandhu Chowdhury Mr. Aritra Bhattacharya Mr. Shivam Debnath

WPA 4469 of 2025		Mr. Dibyo Mukherjee
For the respondent no. 50 in WPA 3419 of 2025 & respondent no. 10 in WPA 4469 of 2025	:	Mr. Supratim Dhar, Sr. Adv. Ms. Susmita Chatterjee Mr. Anujit Mukherjee Ms. Priyanka Jana Mr. Rishabh Ahmed Khan
For the respondent nos. 35 of 41 in WPA 3419 of 2025 & respondent nos. 39 to 45 in WPA 4469 of 2025	:	Mr. Chittapriya Ghosh Ms. Aiswarjya Gupta Ms. Priyanka Saha
For the respondent nos. 12 & 25 in WPA 3419 of 2025 & respondent nos. 14 & 28 in WPA 4469 of 2025	:	Mr. Debjit Mukherjee Ms. Susmita Chatterjee Mr. Kaustav Bhattacharya
For the NHAI in WPA 3419 of 2025	:	Ms. Manika Roy Ms. Ankita Chowdhury Mr. Atanu Sur
For the NHAI in WPA 4469 of 2025	:	Mr. Subrata Bhattacharya
Heard on	:	02.04.2025, 08.04.2025, 28.04.2025 & 29.04.2025
Judgment on	:	01.05.2025

PARTHA SARATHI SEN, J.:

1. This Court has heard the learned advocates for the contending parties at length in support of and against the instant two writ petitions.
2. The instant writ petitions are now taken up for passing appropriate order.
3. At the very outset, it is pertinent to mention herein that since in the instant two writ petitions the order no. 4 dated 27.11.2024 as passed by the Additional District Magistrate (LA) & Competent

Authority of Land Acquisition Officer, CALA, Purulia the respondent no. 4 herein is under challenge and in view of the fact that as the identical questions of facts and laws are involved in the instant writ petitions, this Court proposes to dispose of the instant two writ petitions by this common judgment.

4. By filing the instant two writ petitions, the writ petitioners have prayed for issuance of appropriate and/or writs against the respondent authorities more specifically against the respondent no. 4 for quashing and/or setting aside the order dated 27.11.2024 as passed by the respondent no. 4 whereby and whereunder the said respondent no. 4 authority has made an order of apportionment of compensation in respect of plot no. 786 in Mouza Belguma, J. L. No. -41 in connection with L.A. Case no. 21 of 2015/NH-32 under NH32 project work in accordance with provisions of Section 3H (3) & (4) of the National Highways Act, 1956 (hereinafter referred to as the said "Act of 1956")
5. In course of his submission, Mr. Rwitendra Banerjee, learned advocate appearing on behalf of the writ petitioners in WPA 3419 of 2025 and the private respondent no. 16 in WPA 4469 of 2025 at the very outset draws the attention of this Court to the provisions of Section 3G, 3H and 3I of the said Act of 1956. At this juncture Mr. Banerjee, took me to the copy of the order no. 4 dated 27.11.2024 as has been annexed at page 81 and 82 in WPA

3419 of 2025. It is submitted by Mr. Banerjee that on perusal of the said order under challenge it would reveal that the respondent no. 4 authority had practically acted as a Civil Court while discharging his obligation under Section 3H (3) of the said Act of 1956.

6. It is also submitted by Mr. Banerjee that under Section 3I of the said Act of 1956, the power of the competent authority to act like a Civil Court is very much limited inasmuch as, the said Section 3I clearly specifies the peripheries within which the said competent authority can act as a Civil Court.
7. It is further submitted by Mr. Banerjee that by no stretch of imagination it can be said that Section 3H(3) & (4) of the said Act of 1956 empowers the competent authority who is the respondent no. 4 herein, to determine the dispute which is essentially within the domain of principal civil court of original jurisdiction.
8. In course of his submission, Mr. Banerjee also draws attention of this Court to page nos. 50 to 54 of the instant writ petition (WPA 3419 of 2025) being a copy of certified copy of the judgment as passed in a suit for partition being Partition Suit no. 129 of 1962, which was decreed in preliminary form by the jurisdictional subordinate Judge.
9. Attention of this Court is also drawn to page nos. 59-69 of the instant writ petition being a copy of plaint of title Suit No. 91 of

2020 as well as the copy of the order of withdrawal of the said suit as passed by the Court of Civil Judge (Senior Division), Purulia in connection with an application under Order 23 Rule 1 of the CPC.

10. It is also submitted by Mr. Banerjee that in the event, the contents of the said preliminary decree, the contents of the order of withdrawal of Title Suit No. 91 of 2020 and the order which is under challenge before this Court are looked together it would reveal that the respondent no. 4 authority while making the order of apportionment had practically made an attempt to go into the title of the parties claiming award in connection with a land acquisition proceeding and, therefore, the said authority has exceeded its limit as imposed by law and, therefore, said action of the said authority becomes amenable to writ jurisdiction and subject to scrutiny in judicial review.
11. In course of his submission, Mr. Banerjee places his reliance upon the reported decision of ***Vinod Kumar & Ors. Vs. District Magistrate, Mau & Ors.*** reported in ***2023 SCC Online Sc 787 : AIR 2023 SCC 337.***
12. It is submitted by Mr. Banerjee that while deciding the case of Vinod Kumar (supra), the Hon'ble Apex Court has occasioned to scrutinize the scope of Section 3H of the said Act of 1956 and in doing so it has been specifically held that in case of a dispute as to the apportionment of the awarded amount, the principal Civil Court

of original jurisdiction has been empowered to determine the same. It is submitted by Mr. Banerjee that in view of such, the WPA 3419 of 2015 may be allowed by granting relief to the writ petitioner in terms of the prayers made in the instant writ petition.

13. In course of his submission, Mr. Sarwar Jahan, learned advocate appearing on behalf of the writ petitioner in WPA 4469 of 2025 practically adopted the argument of Mr. Banerjee, learned advocate appearing on behalf of the writ petitioners in WPA 3419 of 2025.
14. Mr. Chittapriya Ghosh, learned advocate appearing on behalf of the respondent nos. 35-41 in WPA 3419 of 2025 and the respondent nos. 39-45 in WPA 4469 of 2025 supports the contention of Mr. Banerjee and Mr. Sarwar Jahan. It is submitted by Mr. Ghosh that since order under challenge dated 27.11.2024 has been passed by the respondent No. 4 authority in view of the provision of Section 3H (3) and (4) of the said Act of 1956 and since the said order under challenge is violative of the statutory provisions, by no stretch of imagination it can be said that the order under challenge is arbitrable under Section 3G(5) of the said of 1956 since by the order under challenge no effort has been made by the respondent no.4 authority to determine the amount of compensation as payable to the parties and on the contrary an effort has been made for apportionment of the awarded amount in a manner contrary to the settled provisions of law and, therefore,

there cannot be any doubt to hold that such action of the respondent no. 4 authority is not amenable to writ jurisdiction.

15. In his next limb of submission, Mr. Ghosh also draws the attention of this Court to the order under challenge dated 27.11.2024. It is submitted by Mr. Ghosh that for the sake of argument even if it is accepted that in the first part of the said order under challenge, the respondent no. 4 authority has reproduced the versions of the judgment and decree as passed in Title Suit No. 129 of 1962 but in the later part of the said order the respondent no. 4 authority had practically nullified title of his clients by ignoring the existence of several deed of conveyances especially when before the respondent no. 4 authority no document could be placed to the effect that either those title deeds have been cancelled or have been declared null and void by virtue of a decree of a competent Court of law.
16. It is thus submitted by Mr. Ghosh that instant two writ petitions may be allowed.
17. *Per contra*, Mr. Debjit Mukherjee, learned Counsel appearing on behalf of the respondent nos. 12-25 in WPA 3419 of 2025 and respondent no. 14-18 in WPA 4469 of 2025 in course of his submission draws attention of this Court to various paragraphs of the instant writ petition. It is submitted by Mr. Mukherjee that from the pleadings of the instant two writ petitions it would reveal

that the subject matter of the acquisition wherein the order of apportionment was passed by the respondent No. 4 authority pertains to the suit for partition being Title Suit No. 129 of 1962.

18. At this juncture Mr. Mukherjee draws the attention of this Court to the copy of the certified copy of the decree as passed in Title Suit No. 129 of 1962. It is submitted by him that from the schedule of the said preliminary decree of partition as passed in Title Suit No. 129 of 1962 it would reveal that plot no. 563 , 564 and 566 along with other plots were the subject matter of the said deed of partition.
19. At this juncture, Mr. Mukherjee requests this Court to peruse the order no. 36 as passed in Title Suit No. 129 of 1962 whereby and whereunder in the said suit for partition, the subordinate Judge passed a preliminary decree. It is submitted by Mr. Mukherjee that on careful perusal of the order under challenge dated 27.11.2024 it would reveal that the respondent no. 4 authority had practically narrated the chain of events as has been discussed in order no. 36 of the said suit for partition and keeping in mind the outcome of the said preliminary decree, the respondent no. 4 authority had made an order of apportionment which is in tune of determination of shares as made in the said preliminary decree for partition. It is thus submitted by Mr. Mukherjee that the argument of the learned advocates for the writ petitioners and learned advocate for the

respondents who are supporting the writ petitions have got no leg to stand upon in view of the fact that the order under challenge is no way excessive in terms of the legislative provision under Section 3H of the said Act of 1956 read with Section 3I of the said Act of 1956.

20. In course of his submission Mr. Mukerjee places his reliance upon the two reported decisions of the Hon'ble Supreme Court in the case of ***Lt. Governor of Himachal Pradesh & Anr. Vs. Sri Avinash Sharma*** reported in ***(1970) 2 SCC 149*** and ***K. Vidya Sagar vs. State of U.P. and Ors.*** reported in ***(2005) 5 SCC 581***.
21. It is submitted by Mr. Mukherjee that in view of the proposition of law as decided in the reported decision of ***K. Vidya Sagar*** (supra) and ***Sri Avinash Sharma*** (supra) in the event the instant writ petition is allowed directing the respondent no. 4/authority to refer the dispute for the decision of the principal Civil Court of original jurisdiction that will be violative of the principle of *res judicata* since the matter in issue as would be involved in such reference has already been decided in the aforementioned partition suit.
22. In course of his submission Mr. Dinabandhu Chowdhury, learned Advocate appearing on behalf of the respondent nos. 10 and 11 in WPA 3419 of 2025 and respondent no. 11 in WPA 4469 of 2025 at the very outset draws attention of this Court to Section 36 of the Transfer of Property Act, 1882. It is submitted by Mr. Chowdhury

that on perusal of Section 36 of the Transfer of Property Act, 1882 it would reveal that the question of apportionment would arise only after determination of entitlement. In course of his submission Mr. Chowdhury has filed a copy of certified copy of the plaint of Title Suit no. 43 of 2024 as filed by the writ petitioners in the jurisdictional Court of Civil Judge, Senior Division at Purulia which is taken on record.

23. It is submitted by Mr. Chowdhury that from the prayer of the said suit which is essentially a suit for partition it would reveal that the plot in question of the instant writ petition is also the subject matter of the said suit wherein the respondent no. 4 in WPA 3419 of 2025 has been made party as one of the proforma defendants. It is submitted that in the instant writ petition the filing of the said Title Suit 43 of 2024 has been concealed and, therefore, the writ petitioner is not entitled to any remedy since issuance of writ is essentially discretionary in nature and is also based on equity.
24. It is further submitted by Mr. Chowdhury that after passing of the preliminary decree in Title Suit No. 129 of 1962 there cannot be any dispute with regard to the alleged title Md. Khan who is the predecessor in interest of the present writ petitioners and thus there cannot be any justification to interfere with the order under challenge since the respondent no. 4/authority while making an

order of apportionment has relied upon the findings of the decreetal Court only.

25. Drawing attention to page nos. 34 to 41 of the instant writ petition it is submitted by Mr. Chowdhury that from the prayer portion of the written submission as made before the respondent no. 4/authority it would reveal that the present writ petitioners have prayed for apportionment of award in terms of the certificate of a Mufti which is contrary to the law of the land especially after passing of the judgment in the reported decision of '***Vishwa Lochan Madan vs. Union of India and Others***' as passed in ***AIR 2014 SC 2957***.
26. This Court has meticulously gone through the entire materials as placed before this Court. This Court has given its anxious consideration over the submissions of the learned Advocates for the contending parties.
27. For effective adjudication of the instant *lis* this Court at the very outset proposes to look to the provision of Sections 3H and 3I of the said Act of 1956 which are quoted hereinbelow in verbatim:

“3H. Deposit and payment of amount.-

(1)

(2)

(3) *Where several persons claim to be interested in the amount deposited under sub-section (1), the competent*

authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5)

(6)

3-I. Competent authority to have certain powers of civil court.- *The competent authority shall have, for the purposes of this Act, all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-*

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) reception of evidence on affidavits;

(d) requisitioning any public record from any court or office;

(e) issuing commission for examination of witnesses.”

28. Keeping in mind the aforementioned legislative provisions and also keeping mind the propositions of law as decided in the various reported decisions as have been cited from the Bar, if I look to the factual aspects of this case it appears to this Court that while making an order of apportionment in respect of the award in

connection with acquired plot no. 786 the respondent no. 4/authority undoubtedly relied upon the judgment and order of preliminary decree as passed in Title Suit No. 129 of 1962. The said respondent no. 4/authority had dealt with the family trees of one Nasrat Ali Khan and thus gave a vivid description as to how title to the said acquired plot passes in favour of one Badrunessa Bibi and the said authority has practically relied upon the judgment and order as passed in Title Suit No. 129 of 1962 whereby a preliminary decree of partition was passed determining the shares of the parties. It thus appears to this Court that basically the respondent no. 4/authority had relied upon such determination of shares in making an order for apportionment which is under challenge in the instant writ petition.

29. It further appears to this Court that while arriving at its finding under cover of the said order under challenge dated 27.11.2024 the respondent no. 4/authority had also relied upon the order of withdrawal of Title Suit No. 91 of 2020 as has been instituted by Smt. Lakhi @ Lakshmi Mahato and Srimatya Beri Mahato as plaintiffs. However, from the relevant portion of the order under challenge (as available at paragraph no. 4 at page no. 82 of the instant writ petition) it appears to this Court that the respondent no. 4/authority made no attempt to come to a finding with regard to the effect of withdrawal of the said suit and on the contrary he

made an investigation and ultimately came to a finding that the said two plaintiffs of Title Suit No. 91 of 2020 had practically no shares in the said acquired plot by virtue of a sale through their power of attorney holder and in doing so in considered view of this Court the respondent no. 4/authority has transgressed its limit within the meaning of Section 3H of the said Act of 1956.

30. This Court also finds sufficient justification in the submission of Mr. Ghosh inasmuch as from the last portion of the order under challenge dated 27.11.2024, the respondent no.4 though took cognizance of execution of deeds of conveyance in favour of the family members of the Mahatos but he came to a finding that those deeds of conveyance as has been executed in favour of the Mahatos by their vendor, Badru Nesha has got effect in the eye of law in view of the fact that the said Badru Nesha (the vendor of the Mahatos) prior to execution of the deeds of conveyance in favour of the Mahatos had sold her entire property to others prior to 2005.
31. In doing so, this Court again considers that the respondent no.4 authority again crossed his limit within the meaning of Section 3H of the said Act of 1956 inasmuch as the respondent no.4 authority is not within his right under Section 3I to come to a finding as to whether any deed of conveyance is valid or *non est* in the eye of law.
32. As has been decided in the reported decision of **Vinod Kumar (supra)** that there lies a fine distinction between determining the

amount paid towards compensation and the apportionment of the amount which is why the legislature has thought it fit to confer powers upon the principal civil court of original jurisdiction to determine the dispute arising the apportionment of the amount.

33. In further considered view of this Court in the event, the proposition of law as decided in the case of **Vinod Kumar (supra)** is applied to the facts and circumstances of the instant case it appears to this Court that the respondent no.4 authority has failed to visualize the said thin line of distinction and thus exercised his jurisdiction which is not vested to him in terms of the provision of Section 3H of the said Act of 1956.
34. This Court is also in agreement with the submission of Mr. Ghosh that the order under challenge dated 24.11.2024 cannot be held to be arbitrable under Section 3G(5) of the said Act of 1956, in view of the fact that while passing the order under challenge, the respondent no. 4 being the competent authority has not passed any order determining the amount payable as compensation.
35. In view of such, the instant two writ petitions succeed and are hereby allowed.
36. Consequently, the order under challenge dated 27.11.2024 as passed by the respondent no.4 authority is hereby set aside.
37. Consequently, the respondent no.4 is hereby directed to refer the dispute to the jurisdictional principal civil court of original

jurisdiction forthwith within seven working days from the date of receipt of the server copy of this judgment.

38. Upon such reference, principal civil court of original jurisdiction shall, after ensuring service of notice upon all interested parties and upon giving adequate opportunity of hearing to them come to a logical conclusion of the same, positively within a period of 90 working days from the date of completion of service of notice upon all the interested persons.
39. The time limit as fixed by this Court is mandatory and peremptory.
40. Liberty is given to the learned advocates on record of the instant two writ petitions to communicate the server copy of this judgment to the respondent no.4 authority forthwith.
41. The respondent no.4 authority is directed to act on the server copy of this judgment.
42. Before parting with, it is however made clear that so far as the entitlement and/or apportionment of the award amongst the interested persons in respect of the acquired Plot No.786 in Mouza Belguma, this Court has not gone into the merit of the same and thus all points are kept open for deciding by the principal civil court of original jurisdiction upon reference.
43. There shall be no order as to costs.

44. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance of all requisite formalities.

(PARTHA SARATHI SEN, J.)