

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

21 13.3.2025
Sc Ct. no.2

WPA 4792 OF 2025

Bikash Naha & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Amit Kumar Pan
Ms. Tanusri Santra.

.... For the Petitioners

Mr. Chandi Charan De, AGP
Mr. Anirban Sarkar.

.... For the Respondents
State

Mr. Satyajit Talukdar
Mr. Arindom Chatterjee.

.... For the Respondent
No.5/KMDA

Mr. Amit Kumar Pan, learned advocate appears for the petitioners.

Mr. Chandi Charan De, learned Additional Government Pleader appears for the respondents State.

Mr. Satyajit Talukdar, learned advocate appears for the respondent no.5, KMDA.

The petitioners submit that the land, described in the writ petition in **paragraph 2**, is an unacquired land of a huge chunk of land wherefrom the State had acquired a portion of it.

The portion of land being the subject-matter in this writ petition admittedly has not been acquired and is a

freehold land and not vested with the State in any manner, is admitted by the parties.

The land acquisition proceeding was initiated under the ***West Bengal Land (Requisition and Acquisition) Act, 1948*** (for short Act II) in the year ***1968-69***. The relevant notice under ***Sub-Section (1)(a) to Section 4*** of the ***Act II*** was issued on ***November 2, 1972, Annexure-P1 at page 11*** to the writ petition.

The parties admit that, the portion of land, which is the subject-matter of this writ petition, was not within the scope of the said notice.

The total chunk of land was ***47.25 acre*** out of which ***31.37 acre*** was acquired and the land in question in this writ petition was not within the said measurement of ***31.37 Acre***.

Pursuant to a registered Conveyance dated ***August 13, 2007, Annexure-P2 at page 12*** to the writ petition the petitioners purchased the said land. The vendor was one of the owners and land losers in respect of the said acquired land.

The parties also admit that, all the land losers in respect of the said ***31.37 acre*** of acquired land had received the due compensation and they have accepted it. One of such land losers who accepted compensation was the vendor who sold the subject land in the writ petition in favour of the petitioners.

Mr. Amit Kumar Pan, learned advocate appearing for the petitioners submits that, the land purchased by his clients was measuring about **3 cottah 24 sq.ft.** as per the Site Plan and the Schedule appended to the Conveyance.

Learned advocate for the petitioners further submits that, the petitioners intend to develop the land for which the petitioners are bound in law to obtain a sanctioned plan from the jurisdictional municipal corporation. He submits that, the moment petitioners will have to apply for obtaining the sanctioned plan, the petitioners are required to provide the detail of the land including its boundary. Accordingly, the petitioners requested the State acquiring authority to demarcate the acquired portion of the land so that in effect, the petitioners' land is segregated and properly demarcated to enable the petitioners to apply for obtaining sanctioned plan. The representation dated **January 20, 2025, Annexure-P3 at page 24** to the writ petition was submitted before the respondent no.2. The said representation has not yet been considered.

In view of the above, the instant writ petition has been filed with the following reliefs :

- (a) *A writ in the nature of Mandamus commanding the respondents to demarcate the acquired area of said Plot No.53 so acquired in connection with the said proceeding bearing Case No.LA-II/27 of 1968-69 to enable the petitioner to develop*

- the said land for his own use and occupation, forthwith;*
- (b) A writ in the nature of Certiorary calling upon the respondents to produce and/or caused to be produced relating to the case before this Hon'ble Court to do conscionable justice to your petitioners, upon perusing the same;*
 - (c) Rule NISI in terms of prayers (a) and (b) above;*
 - (d) An order directing the respondents to demarcate the acquired area of said Plot No.53 so acquired in connection with the said proceeding bearing Case No.LA-II/27 of 1968-69 to enable the petitioners to develop the said land for their own use and occupation, pending disposal of the instant writ application;*
 - (e) Ad-interim order in terms of prayer (d) above;*
 - (f) Costs and incidentals to this application may be paid by the respondent;*
 - (g) Such other and/or further order/orders be passed as to this Hon'ble Court may seem fit and proper."*

Mr. Satyajit Talukdar, learned advocate appearing for the respondent no.5, the requiring body submits that, when the notice was issued under **Sub-Section (1)(a) to Section 4** of the **Act II**, the owners of the land had a right to raise objection under **Section 5** of the **Act II**. However, the result is admitted that, the acquisition proceeding stood concluded since the original land losers have received due compensation.

Mr. Talukdar further submits that, once the compensation has been received by the land losers and the acquisition proceeding has come to its logical conclusion, the subsequent purchasers of the unacquired portion of land cannot question the acquisition process that, demarcation was not there. Since the compensation

has been received by the original land losers, it pre-supposes in law that, the acquisition stands concluded without any objection and the petitioners being the subsequent purchasers of an unacquired portion of land after about **50 years** cannot claim further demarcation of the land because unless demarcation was there, the acquisition would not have been completed and the original land losers would have raised their objections contemporaneously.

Mr. Talukdar submits that, **Page 20** to the writ petition, which is the Schedule of the land purchased by the petitioners from the relevant Conveyance, would show that, the proper boundary and demarcation was already in existence with the supporting Site Plan. Therefore, at this belated stage or at any stage whatsoever the petitioners have no right to claim for demarcation of the acquired portion of the land.

Mr. Talukdar further submits that, apart from **Sub-Section (1) to Section 3** of the **Act II** there is no other provisions for issuance of any further order for demarcation. Accordingly, he prays for dismissal of the writ petition.

Mr. Chandi Charan De, learned Additional Government Pleader appearing for the State has largely adopted the submissions of Mr. Satyajit Talukdar, learned advocate appearing for the respondent no.5. Additionally, referring to provisions laid down under

Section 9 of **Act II**, he submits that, unless proper demarcation is there, the State Government cannot proceed for requisition a particular land for the purpose of acquisition later on. Therefore, unless the acquired portion of the land was demarcated, the process could not have been initiated at all.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, save and except the contention of the petitioners that, the acquired portion of the land is required to be demarcated further, all other facts are admitted by the parties, as narrated above. The most stunning fact is that, in respect of the portion of the acquired land, the original land losers have received compensation. In such a situation, the law presumes that, the acquisition stood concluded in accordance with law. The demarcation of the acquired portion of the land is also an integral process which is included, *inter alia*, as a process of acquisition. The law is well settled that, without demarcation acquisition of a land is not complete. Therefore, when it is presumed in law that, the acquisition stands concluded, it presumes also in law that, demarcation was already there in respect of the acquired portion of land at the relevant point of time.

After considering the submissions of Mr. Amit Kumar Pan, learned advocate appearing for the petitioners, it appears to this Court that, the petitioners

might face a difficulty in the event they apply for sanction of plan for construction on their purchased land which is the subject-matter of this writ petition but admittedly beyond the acquired portion of land.

In such a situation, if the petitioners face any difficulty, the jurisdictional plan sanctioning authority shall consult the respondent no.5 first and then respondent no.3, if necessary, and then inform the fate of it to the petitioners in writing with reasons. In the event any assistance is sought for by the plan sanctioning authority, the respondent nos. 3 and 5 shall provide all assistance.

However, it is made clear that, this order shall not create any right or equity in favour of the petitioners, if the petitioners are otherwise found not to be eligible for the sanctioned plan in respect of the land in question in this writ petition, strictly in accordance with law.

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions, this writ petition, **WPA 4792 of 2025** stands ***disposed of***, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)