

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

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 4846 of 2023

**Hemanta Kumar Das
Vs.
Union of India & Ors.**

With

WPA 4985 of 2023

**Tapas Kumar Ghosh
Vs.
Union of India & Ors.**

With

WPA 4986 of 2023

**Prabir Kumar Ghosh
Vs.
Union of India & Ors.**

For the petitioners : Mr. Ujjal Ray

For the State in WPA 4846 : Mr. Chadi Charan De, AGP
of 2023 and WPA 4985 of : Mr. Anirban Sarkar
2023

For the State in WPA 4985 : Mr. Soumitra Bandyapadhyay
of 2023 : Mr. Subhasish Bandyapadhyay

For the respondent no. 11 : Ms. Rini Bhattacharyya

Heard on : 20.06.2025

Judgment on : 20.06.2025

PARTHA SARATHI SEN, J.:

1. Since the identical set of facts and identical questions of law are involved in the instant three writ petitions, this Court proposes to dispose of the instant three writ petitions by a common judgment.
2. Learned advocate for the writ petitioners filed three separate exceptions to the supplementary affidavits as filed by the respondent no. 11/authority in connection with the instant three writ petitions.
3. Let the three exceptions as filed today on behalf of the writ petitioners be taken on record.
4. By filing the instant three writ petition the writ petitioners have prayed for issuance of the appropriate writ/writs against the respondents/authorities more specifically; against the respondent no. 2 for quashing of the orders dated 28.08.2022 whereby and whereunder the writ petitioners' claim for having job in lieu of acquired land has been turned down.
5. In course of his submission Mr. Ray, learned advocate appearing on behalf of the writ petitioners at the very outset draws attention of this Court to paragraph no. 2 of the reports as submitted by the respondent no. 11 and as affirmed on 20.11.2023. It is submitted by Mr. Ray that from the averments made in paragraph no. 2 of the said report dated 20.11.2023 it would reveal that it is the specific case of the respondent no. 11/authority that the declaration under Section 20E (1) was published in the Gazette of India on 14.07.2016

under Section 20E (2) of the Railways (Amendment) Act, 2008 (hereinafter referred to as the 'said Act of 2008').

6. At this juncture, Mr. Ray draws attention of this Court to Section 2 of Act 30 of 2013 which deals with the application of the Act of 2013. It is submitted by Mr. Ray that in view of the provision of Section 2 (2) (a) there cannot be any doubt that the provisions of Act 30 of 2013 applies to the land acquisition which is subject matter of the instant *lis*. It is further submitted by Mr. Ray that from the copy of the order under challenge as passed by the respondent no. 2/authority it would reveal that the respondent no. 2/authority being the competent authority passed the award as per provisions laid down in the Act 30 of 2013.
7. In course of his submission Mr. Ray took me to Chapters IV and V of the Act 30 of 2013. It is submitted by Mr. Ray that Sections 26 to 30 of the Act 30 of 2013 deals with the subject of determination of market value of land by the collector, determination of amount of compensation, parameters to be considered by collector in determination of award, determination of value of things attached to land of building and award of solatium. At this juncture, Mr. Ray requests this Court to peruse Schedule 1 of Act 30 of 2013. It is submitted by Mr. Ray that the first Schedule of Act 30 of 2013 clearly indicates as to how and on the basis of what factors

compensation would be determined by the collector including the amount of solatium.

8. In his next limb of submission Mr. Ray contends that Chapter V of the said Act of 2013 deals with rehabilitation and resettlement award. At this juncture, Mr. Ray again draws attention of this Court to the second Schedule of Act 30 of 2013. It is submitted by Mr. Ray that the second Schedule is the enabling provisions for the collector for taking into account the factors for determination of rehabilitation and resettlement award. It is thus submitted by Mr. Ray that the determination of rehabilitation and resettlement award under Chapter V of Act 30 of 2013 is independent and the same is no way related to the determination of the compensation and award of solatium as has been dealt with in Chapter IV of the Act 30 of 2013.
9. At this juncture, Mr. Ray draws attention of this Court to the serial no. 4 of the second Schedule of Act 30 of 2013 which deals with 'choice of annuity or employment'. It is submitted by Mr. Ray that in the event the serial no. 4 of the second Schedule of Act 30 of 2013 is read along with the provision of Section 31 of the Act 30 of 2013, the only logical conclusion that can be drawn is that the appropriate Government is duty bound to ensure that the affected families are provided with the three options as has been mentioned in Clauses (a), (b) and (c) of Column no. 3 of the self-same serial.

10. It is pertinent mention herein that Clause (a) of Column no. 3 of Serial no. 4 deals with arrangement for a job in the relevant project to at least one member per affected family, Clause (b) of the self-same serial provides for onetime payment of Rs. 5 lakhs per affected family and Clause (c) of the self-same serial provides for payment of Rs. 2,000/- per month per family for 20 years with appropriate indexation to the consumer price index for agricultural labours.
11. At this juncture, Mr. Ray further draws attention of this Court to page no. 32 of the instant writ petition being a copy of the memo dated 23.05.2015 as issued by the Ministry of Railways (Railway Board) addressed to the respondent no. 11/authority. It is submitted by Mr. Ray that from the said memo dated 23.05.2015 it would reveal that the Railway Board had approved the entitlement matrix for Dedicated Freight Corridor in accordance with the provisions of the Act 30 of 2013. It is further submitted by Mr. Ray that from the enclosure to the said memo dated 23.05.2015 it would reveal further that the Railway Board has practically adopted the provisions of the second Schedule in verbatim which would be evident from page nos. 36 to 38 of the instant writ petition.
12. It thus submitted by Mr. Ray that the respondent no. 2/authority while passing the order dated 28.09.2022 has failed to consider the true spirit of the Act 30 of 2013 *vis-à-vis* the said memo dated 23.05.2015 including its annexures. It is further submitted by Mr.

Ray that in the supplementary affidavit the respondent no. 11/authority had also relied upon the self-same memo dated 23.05.2015.

13. Drawing attention to page no. 23 of the instant writ petition being a copy of the memo dated 11.11.2019 as issued by the Ministry of Railways addressed to General Manager of all the Zonal Railways it is submitted by Mr. Ray that from the said memo dated 11.11.2019 it would reveal that it has been communicated to all the General Managers of the Zonal Railways that the Ministry of Railway had withdrawn its earlier policy of offering appointment in railways to the affected land losers. It is submitted by Mr. Ray that the respondent no. 11/authority cannot be permitted to take advantage of the said memo dated 11.11.2019 since the said memo has got no retrospective effect.
14. It is thus submitted by Mr. Ray that in view of the clear legislative mandate as embodied in Act 30 of 2013 there cannot be any justification on the part of the respondent no. 2/authority to deprive the writ petitioner from his entitlement of job on account of acquisition of the land of the writ petitioner. It is thus submitted that appropriate relief/reliefs may be granted to the writ petitioner in terms of the prayers made in the instant writ petition.
15. Per contra, Mr. De, learned Additional Government Pleader appearing for the respondent State and its functionaries, submits

before this court that it is undisputed that the entire acquisition proceeding has been completed as per the provision of Railways Act, 1989 (hereinafter referred to as 'the said Act of 1989' for short) as has been amended under the Railways (Amendment) Act, 2008. In course of his submission Mr. De draws attention of this court to Section 20F of the said Act of 1989. It is submitted by Mr. De that Section 20F of the said Act of 1989 deals with the determination of the amount payable as compensation on account of acquisition of land by the competent authority.

16. It is further submitted by Mr. De that Section 20F(6) of the said Act of 1989 clearly postulates that in the event the amount of compensation as determined by the competent authority is not acceptable by either of the parties, the amount would be determined by the arbitrator to be appointed by the Central Government.
17. It is further submitted by Mr. De that Section 20F(6) of the said Act of 1989 is almost equivalent to Section 3G(5) of the National Highways Act of 1956. It is thus submitted by Mr. De that on account of availability of alternative and efficacious remedy the instant writ petition is not maintainable.
18. Ms. Bhattacharya, learned advocate appearing for the respondent no.11 while adopting the argument of Mr. De, draws attention of this court to the supplementary report as affirmed on 11.06.2024 and as submitted by the respondent no.11 authority. It is submitted by Ms.

Bhattacharya that page 4 of the said supplementary affidavit that it has been specifically averred on affidavit that the subject land was acquired for DFCCIL Project which is planned on Public Private Partnership (PPP) model and thus creation of job in such section does not fall within that provision. It is further submitted by Ms. Bhattacharya that it is also the specific case of the respondent no.11 that in absence of any employment generation in the project of respondent no.11 authority, the relief as sought for by the writ petitioner in the instant writ petition cannot be granted and thus the instant writ petition is liable to be dismissed.

19. For effective adjudication of the instant lis, this court at the very outset proposes to look to the provision the Act 30 of 2013. Undoubtedly Act 30 of 2013 was brought into force with effect from 01.01.2014.
20. Some of the Sections of Act 30 of 2013 are quoted hereinbelow in verbatim.

“2. Application of Act. –

(1)

(2) The provisions of this Act relating to land acquisition, consent, compensation, rehabilitation and resettlement, shall also apply, when the appropriate Government acquires land for the following purposes, namely, :-

(a) for public private partnership projects, where the ownership of the land continues to vest with the

government, for public purpose as defined in sub-section (1):

(b) for private companies for public purpose, as defined in sub-section (1).

(3)

“27. Determination of amount of compensation.—The Collector having determined the market value of the land to be acquired shall calculate the total amount of compensation to be paid to the land owner (whose land has been acquired) by including all assets attached to the land.

28. Parameters to be considered by Collector in determination of award.—In determining the amount of compensation to be awarded for land acquired under this Act, the Collector shall take into consideration—

firstly, the market value as determined under section 26 and the award amount in accordance with the First and Second Schedules;

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops and trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition

injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change;

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 19 and the time of the Collector's taking possession of the land; and

seventhly, any other ground which may be in the interest of equity, justice and beneficial to the affected families.

29. Determination of value of things attached to land or building.—(1) *The Collector in determining the market value of the building and other immovable property or assets attached to the land or building which are to be acquired, use the services of a competent engineer or any other specialist in the relevant field, as may be considered necessary by him.*

(2) The Collector for the purpose of determining the value of trees and plants attached to the land acquired, use the services of experienced persons in the field of agriculture, forestry, horticulture, sericulture, or any other field, as may be considered necessary by him.

(3) The Collector for the purpose of assessing the value of the standing crops damaged during the process of land acquisition, may use the services of experienced persons in

the field of agriculture as may be considered necessary by him.

30. Award of solatium.—(1) *The Collector having determined the total compensation to be paid, shall, to arrive at the final award, impose a “Solatium” amount equivalent to one hundred per cent. of the compensation amount.*

Explanation.—For the removal of doubts it is hereby declared that solatium amount shall be in addition to the compensation payable to any person whose land has been acquired.

(2) The Collector shall issue individual awards detailing the particulars of compensation payable and the details of payment of the compensation as specified in the First Schedule.

(3) In addition to the market value of the land provided under section 26, the Collector shall, in every case, award an amount calculated at the rate of twelve per cent. per annum on such market value for the period commencing on and from the date of the publication of the notification of the Social Impact Assessment study under sub-section (2) of section 4, in respect of such land, till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

31. Rehabilitation and Resettlement Award for affected families by Collector.—(1) *The Collector shall pass Rehabilitation and Resettlement Awards for each affected family in terms of the entitlements provided in the Second Schedule.*

(2) The Rehabilitation and Resettlement Award shall include all of the following, namely:—

(a) rehabilitation and resettlement amount payable to the family;

(b) bank account number of the person to which the rehabilitation and resettlement award amount is to be transferred;

(c) particulars of house site and house to be allotted, in case of displaced families;

(d) particulars of land allotted to the displaced families;

(e) particulars of one time subsistence allowance and transportation allowance in case of displaced families;

(f) particulars of payment for cattle shed and petty shops;

(g) particulars of one-time amount to artisans and small traders;

(h) details of mandatory employment to be provided to the members of the affected families;

(i) particulars of any fishing rights that may be involved;

(j) particulars of annuity and other entitlements to be provided;

(k) particulars of special provisions for the Scheduled Castes and the Scheduled Tribes to be provided:

Provided that in case any of the matters specified under clauses (a) to (k) are not applicable to any affected family the same shall be indicated as “not applicable”: Provided further that the appropriate Government may, by

notification increase the rate of rehabilitation and resettlement amount payable to the affected families, taking into account the rise in the price index.”

21. At this juncture, this court proposes to look to Serial No.4 of the second schedule of Act 30 of 2013 which is also set out below:

Sl. No.	Elements of Rehabilitation and Resettlement Entitlements	Entitlement/Provision	Whether provided or not (if provided, details to be given)
(1)	(2)	(3)	(4)
4.	Choice of Annuity or Employment	The appropriate Government shall ensure that the affected families are provided with the following options: (a) where jobs are created through the project, 'after providing suitable training and skill development in the required field, make provision for employment at a rate not lower than the minimum wages provided for in any other law for the time being in force, to at least one member per affected family in the project or arrange for a job in such other project as may be required; or (b) one time payment of five lakhs rupees per affected family; or (c) annuity policies that shall pay not less than two thousand rupees per month per family for twenty years, with appropriate indexation to the Consumer Price Index for Agricultural Labourers.	

22. This court has meticulously perused 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. This court has also gone through the different provisions of the Act 30 of 2013 which are quoted in the foregoing paragraphs.
23. On perusal of Section 2(2) of the Act 30 of 2013, it reveals that Act 30 of 2013 applies in case of acquisition of land for Public Private Partnership (PPP) project. From the supplementary affidavit as filed by the respondent no.11 authority, it further reveals to this court that the stretch of land has been acquired on Public Private Partnership (PPP) model.
24. In view of such, this court has no hesitation to hold for the purpose of determination of compensation, rehabilitation and resettlement, the provision of Act 30 of 2013 is applicable which is further evident from the memo under challenge as issued by the respondent no.2 authority.
25. At this juncture, if I look to the title of the Act 30 of 2013, it reveals to this court that the legislatures in Section 1 clearly mandate that Act 30 of 2013 would be called 'Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013'. It thus appears to this court that while enacting Act 30 of 2013, the legislatures have put stress not only on fair

compensation but also in case of transparency in rehabilitation and resettlement on account of land acquisition.

26. It further appears to this court that determination of compensation under Section 27 and award of solarium under Section 30 of Act 2013 finds its place in Chapter IV whereas Section 31 which deals with rehabilitation and resettlement award finds its place in Chapter V.

27. On careful reading of the aforementioned sections as quoted supra together with first schedule and second schedule of the Act 30 of 2013, it reveals to this court that the object of Act 30 of 2013 is not only for determination and disbursement of compensation but also for rehabilitation and resettlement of the land losers.

28. On behalf of the respondent State as well as the respondent no.11, much stress was placed under Section 20F(6) of the said Act of 1989. It has been strenuously argued by Mr. De and Ms. Bhattacharya, learned advocates for the State and respondent no.11 respectively that in the event the land loser is aggrieved with the amount of compensation, his remedy lies before the arbitrator.

29. In considered view of this court, such submissions as have been advanced from the respondent State as well as the respondent no.11 are not acceptable inasmuch as Section 20F(6) of the said Act of 1989 clearly indicates the forum where an aggrieved party shall have to approach, if the amount of compensation is not acceptable to him.

30. However, the subject matter of the instant writ petition is quite different inasmuch as the writ petitioner has approached before this court not on account of inadequacy of compensation but on account of refusal by the respondent no.2 to rehabilitate and resettle him in terms of the provision of Section 31 read with Serial No.4 of the second schedule of the Act 30 of 2013.
31. In course of her argument, Ms. Bhattacharya also put much stress upon the memo dated 11.11.2019 wherein the Railways Board under Ministry of Railways had adopted a decision for withdrawal of the earlier policy. This court is of considered view that such memo dated 11.11.2019 is no way helpful either to the respondent no.11 or to the respondent State, more specifically to the respondent no.2 authority inasmuch as it is the statutory mandate of Act 30 of 2013 to take steps for rehabilitation and resettlement for affected families on account of land acquisition.
32. It has been strongly contended by Ms. Bhattacharyya, learned advocate appearing for the respondent no. 11/authority that it is the further specific case of the respondent no. 11/authority that the project for which land of the writ petitioner was acquired does not generate any employment and, therefore, the respondent no. 2/authority is justified in passing the order under challenge.
33. This Court has meticulously gone through the provision of serial no. 4 of the second schedule of Act 30 of 2013 which clearly indicates

the legislative mandate that the appropriate government shall ensure the affected families are provided with the three options as mentioned under Clauses (a), (b) and (c) in column no. 3 i.e., under the column Entitlement/Provision. It further appears to this Court that in the event, relief (a) cannot be granted, the affected families are to be provided with the options as mentioned in Clauses (b) and (c) of the column no. 3 i.e., one-time payment or annuity policies.

34. At this juncture, if I look to the order dated 28.09.2022 as passed by the respondent no. 2/authority, it reveals that the respondent no. 2/authority had failed to visualize the true spirit of Section 31 of Act 30 of 2013 read with the provision of serial no. 4 of the second schedule of Act 30 of 2013.

35. In view of such, this Court has got no hesitation in mind that the orders under challenge dated 28.09.2022 as passed by the respondent no. 2/authority are vitiated for non-consideration of the relevant provisions of law and the same is perverse.

36. In view of such, this Court finds sufficient merit in the instant writ petition.

37. Accordingly, the instant writ petitions are hereby allowed.

38. Consequently, the orders dated 28.09.2022 are hereby quashed and set aside.

39. Before parting with this Court directs the respondent no. 2/authority to consider the entitlement of the writ petitioners afresh

in terms of the provision of Section 31 read with serial no. 4 of the 2nd schedule of the Act 30 of 2013 and after giving an opportunity of hearing to the writ petitioners and/or his/their authorized representative(s) as well as the respondent no. 11 and/or its authorized representative shall pass reasoned orders and to communicate the said reasoned orders both to the writ petitioners and the respondent no. 11 within 45 working days from the date of communication of the server copy of this judgment.

40. Before parting with, it is further made clear that since before this Court respondent no. 11 has specifically made out a case regarding non-generation of any employment in the project for which acquisition has been done, the respondent no. 2/authority is directed to make a thorough enquiry and assign his reason in his reasoned orders while considering the entitlement/disentitlement of the writ petitioner as the case may be strictly in terms of the provision of serial no. 4 of the second schedule of the Act 30 of 2013.
41. Liberty is given to the learned advocate for the writ petitioner to communicate the server copy of this judgment to the respondent no. 2/authority forthwith.
42. The respondent no. 2/authority is directed to act on the server copy of this judgment.
43. The time limit as fixed by this Court is mandatory and peremptory.

44. With the aforementioned observations, the instant three writ petitions are disposed of.

45. Urgent xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(PARTHA SARATHI SEN, J.)