

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

WPA 5750 of 2025

Hemanta Kumar Roy

-Vs-

The State of West Bengal and others

WITH

WPA 5752 of 2025

Susanta Samui

-Vs-

The State of West Bengal and others

WITH

WPA 5765 of 2025

Manashi Samanta

-Vs-

The State of West Bengal and others

WITH

WPA 5821 of 2025

Gour Mohan Pandit alias Gour Pandit

-Vs-

The State of West Bengal and others

For the Petitioner:

Mr. Tanmoy Mukherjee
Mr. Sagnik Basu
Mr. Subhrajyoti Dey
Mr. Arjun Bhajan
Mr. Dilwar Khan
Mr. Pourush Bandyopadhyay
Ms. Apple Mughali Jimo

For the State in WPA 5750 of 2025:

Mr. Soumitra Bandyopadhyay, Sr. Govt. Adv.
Mr. Ram Chandra Guchhait

For the State in WPA 5752 of 2025:

Mr. Supratim Dhar, Sr. Adv.
Ms. Tuli Sinha

For the State in WPA 5765 of 2025:

Mr. Soumitra Bandyopadhyay, Sr. Govt. Adv.
Ms. Suchana Banerjee

For the State in WPA 5821 of 2025:

Mr. Soumitra Bandyopadhyay, Sr. Govt. Adv.

Mr. Priyabrata Batabyal

For the respondent no.10 in WPA 5750 of 2025:

Mr. Biswanath Chatterjee

Mr. Sobhan Pathak

For the respondent no.11 in WPA 5765 of 2025 & WPA 5821 of 2025:

Mr. Biswanath Chatterjee

Mr. Sobhan Pathak

Hearing concluded on: 17.07.2025.

Judgment on: 17.07.2025.

PARTHA SARATHI SEN, J. : -

1. At the very outset, Mr. Mukherjee, learned advocate appearing on behalf of the writ petitioners in WPA 5750 of 2025, WPA 5752 of 2025, WPA 5765 of 2025 and WPA 5821 of 2025 requests this Court to take up the hearing of WPA 5765 of 2025 first.
2. It is further submitted that WPA 5750 of 2025, WPA 5752 of 2025 and WPA 5821 of 2025 be tagged together with WPA 5765 of 2025 since identical questions of facts and laws are involved in those writ petitions. Accordingly, WPA 5750 of 2025, WPA 5752 of 2025, WPA 5821 of 2025 are tagged with WPA 5765 of 2025.
3. At this juncture, learned advocate appearing on behalf of the private respondent in all the writ petitions prayed for expunging the name of the private respondent since the presence of the private respondent is not necessary for effective adjudication of the *lis*.

4. On careful consideration of the entire materials, this Court finds sufficient merit in the submission of Mr. Chatterjee, learned advocate appearing on behalf of the private respondent.
5. Accordingly, the department is directed to delete the names of the private respondent from the cause title of WPA 5750 of 2025, WPA 5752 of 2025, WPA 5765 of 2025 and WPA 5821 of 2025 forthwith.
6. The reports in the form of affidavit as filed on behalf of the respondent/State and its instrumentalities in connection with WPA 5750 of 2025, WPA 5752 of 2025, WPA 5765 of 2025 and WPA 5821 of 2025 are taken on record.
7. By filing the instant writ petition being WPA 5765 of 2025, the writ petitioner has prayed for issuance of appropriate writ/writs against the respondent authorities commanding them from not giving effect to the alleged handing over of the land particulars of which has been mentioned in Schedule of the instant writ petition in terms of L.A. Case No.81(Act-II) of 1962-63.
8. At the time of hearing, Mr. Mukherjee, learned advocate appearing on behalf of the writ petitioner at the very outset draws attention of this court to paragraph no.3 vis-à-vis Schedule A of the instant writ petition. It is submitted by Mr. Mukherjee that it is the specific case of the writ petitioner that the writ petitioner got the schedule mentioned property situated in R.S. Dag No.304 and 305 corresponding to L.R. Plot No.333 and 334 in Mouza Rautara under P.S. Joypur, District Howrah by a registered deed of gift as executed

in the year 2022 by his husband Bulganin Samanta (donor) in favour of the writ petitioner (donee).

9. It is further submitted by Mr. Mukherjee that it is the specific case of the writ petitioner that the aforementioned land was requisitioned under Section 3 of Act II of 1948, which would be evident from page 4 of the report as filed on behalf of the respondent State.
10. It is further submitted by Mr. Mukherjee that it is also the specific case of the writ petitioner that despite publication of notice under Section 3 of Act II of 1948, no notice under Section 4(1a) was published by the respondent authorities and therefore, on account of non-publication of notice under Section 4(1a) read with Section 4(2) of Act II of 1948, the alleged vesting as wrongly claimed by the respondents/authorities did not take place.
11. Drawing attention to Section 7 and 7A of Act II of 1948, it is further argued by Mr. Mukherjee that for the sake argument even if it is accepted that such vesting has been completed, it is also the case of the writ petitioner i.e. the respondents made no endeavour to disburse compensation within the stipulated period as mentioned under Section 7(A) of Act II of 1948 and thus the resultant effect of and/or non-publication of non-disbursement of award would be, lapse of the notice under Section 4(1a) of Act II of 1948 and as a consequence thereof the alleged vesting stood lapsed.
12. At this juncture, Mr. Mukherjee draws attention of this court to page no.91 of the instant writ petition being a copy of Memo dated

12.11.2024 as issued by the respondent no.4 authority addressed to the respondent no.8 authority whereby and whereunder it has been communicated that though possession of the aforementioned two plots, particulars of which has been mentioned in the schedule of the instant writ petition, has been taken on the basis of requisition under Section 3 of Act II of 1948, but possession certificate in respect of the relevant plots of land, copy of the publication of notice under Section 4(1a) of Act II of 1948 and the awarded statement are not available in his office.

13. At this juncture, Mr. Mukherjee again took me to page 153 of the instant writ petition being a copy of the Memo dated 10.01.2025 as issued by the SPIO and Additional LAO (General), Howrah. It is submitted by Mr. Mukherjee that from the Memo which has been issued pursuant to some queries under the Right to Information Act, it has been categorically indicated that in respect of the schedule mentioned property of the instant writ petition, payment of compensation was not disbursed.
14. Drawing attention to page no. 81 and 82 of the instant writ petition being a copy of the order dated 20.06.2024 as passed in WPA 11488 of 2024, it is submitted by Mr. Mukherjee that a Co-ordinate Bench of this court while disposing of the said writ petition, directed the respondent authorities to consider the representation of the writ petitioner dated 16.04.2024 within a stipulated period after giving opportunity of hearing to the writ petitioner.

15. It is further submitted that from page 83 of the instant writ petition, it would reveal that all on a sudden the respondent no.8 authority has initiated a proceeding under Section 10(1) of the West Bengal Highways Act, 1964 (hereinafter referred to as 'the said Act of 1964' in short) for removal of alleged encroachment over the highway against the writ petitioner.
16. It is submitted that said proceeding was assailed again by the writ petitioner before another Co-ordinate Bench of this court which was disposed on 28.03.2024, whereby and whereunder the said writ petition being WPA 21398 of 2024 is however dismissed technically on the ground that the writ petitioner has failed to demonstrate that the writ petitioner has communicated the earlier order dated 20.06.2024 as passed in WPA 11488 of 2024 to the respondent authorities.
17. It is submitted further that in the meantime, the respondent no.10 authority had come to a logical conclusion of the proceeding as initiated under Section 10(1) of the said Act of 1964, wherein an order was passed for recovery of possession and removal of encroachment from the schedule mentioned property of the writ petition.
18. It is further submitted that challenging the said order, an appeal has been preferred under Section 10(4) of the said Act of 1964 before the respondent no.2 authority wherein the said respondent no.2 authority has passed an order of stay till disposal of the said appeal.

19. Based on the above mentioned factual scenario as discussed hereinabove, Mr. Mukherjee contends that from the chronology of events as placed before this court, it would reveal that in absence of publication of notice under Section 4(1a) of the Act II of 1948, the respondent authorities cannot claim that vesting has been completed in respect of the schedule mentioned property of the instant writ petition.
20. It is further contended by Mr. Mukherjee that for the sake of argument if it is held that after acquisition under Section 3 vesting has also been completed, however such vesting came to be lapsed on the failure of the respondent authorities to make an award within the stipulated period under Section 7(A) of Act II of 1948.
21. It is further submitted by Mr. Mukherjee that since the alleged vesting has not yet been completed and since the writ petitioner being the successor in interest, the original owner of schedule mentioned property of the instant writ petition is still in settled position of the suit property, the proceeding under Section 10 of the said Act of 1964 cannot continue since such proceeding presupposes an encroachment on a highway i.e. on the Government land.
22. It is thus submitted that the writ petitioner is entitled to the relief as prayed for in the instant writ petition; more specifically Prayer (a) of the instant writ petition.
23. Per contra, Mr. Batabyal, learned advocate appearing for the respondent State and duly led by Mr. Bandopadhyay, learned Senior

Government Advocate, however disputed the contention of Mukherjee. It is argued by Mr. Batabyal that from page 4 of the report supported by affidavit as filed today, it would reveal that pursuant to a notice under Section 3(1a) of Act II of 1948, 9.48 acres of land was requisitioned and possession of the said plot of land in the C.S. Plot No.304 was taken over and handed over to the requiring body, by execution of possession certificate, as has been annexed to the instant report.

24. It is further submitted by Mr. Batabyal that the present writ petitioner being a post acquisition purchaser of the schedule mentioned land of the writ petition, the writ petitioner cannot claim her right, title and interest over the suit property and therefore, the relief as prayed for by the writ petitioner cannot be called as innocuous. On being asked by this court, Mr. Batabyal however submits before this court that he has not received any instruction as to whether any notice under Section 4(1a) of Act II of 1948 has been published.
25. This court has meticulously perused the entire materials as placed before this court. This court has given its due consideration over the submissions of the learned advocates for the contending parties.
26. For effective adjudication of the instant *lis*, this court at the very outset proposes to look to the provision of Sections 3, 4 and 7A of Act II of 1948, which are quoted hereinbelow in verbatim:

“3. Power to requisition – (1) *If the State Government is of the opinion that it is necessary so to do for maintaining supplies and services essential to the life of the community or for increasing employment opportunities for the people by establishing commercial estates and industrial estates in different areas or for providing proper facilities for transport, communication, irrigation or drainage, or for the creation of better living conditions in rural or urban areas, not being an industrial or other area excluded by the State Government by a notification in this behalf, by the construction or reconstruction of dwelling places in such areas or for purposes connected therewith or incidental thereto, the State Government may, by order in writing, requisition any land and may make such further orders as appear to it to be necessary or expedient in connection with the requisitioning:*

* * *

(2) ...

(3) ...

4. Acquisition of land – (1) *Where any land has been requisitioned under section 3, the State Government may use or deal with such land for any of the purposes referred to in sub-section (1) of section 3 as may appear to it to be expedient.*

(1a) *The State Government may acquire any land requisitioned under section 3 by publishing a notice in the Official Gazette that such land is required for a public purpose referred to in sub-section (1) of section 3.*

(2) *Where a notice as aforesaid is published in the Official Gazette, the requisitioned land shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the State Government free from all incumbrances and the period of requisition of such land shall end.*

* * *

7. Compensation – (1) *Wherever any land is acquired under section 4 there shall be paid to every person interested compensation the amount of which shall be determined by the Collector in the manner and in accordance with the principles set out in sub-sections (1), (1A) and (2) of section 23 of the Land acquisition Act, 1894, so far as they may be applicable.*

Provided that the market value referred to in clause first of sub-section (1) of section 23 of the said Act shall, in respect of any land acquired under this Act, be deemed to be the market value of such land on the date of publication of the notice referred to in sub-section (1a) of Section 4.

(2) (a) *When the compensation has been determined under sub-section (1) the Collector shall make an award in accordance with the principles set out in section 11 of the Land Acquisition Act, 1894, and the amount referred to in sub-sections (1), (1A) and (2) of section 23 of that Act shall also be included in the award:*

* * *

7A. Award by Collector – *The Collector shall make an award under sub-section (2) of section 7 within a period of three years from the date of publication of the notice in the Official Gazette under sub-section (1a) of section 4 (hereinafter referred to as the said notice), and if such award is not made within the period as aforesaid, the said notice shall lapse:*

Provided that in a case where the said notice has been published more than two years before the commencement of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994, the award shall be made within a period of one year from the date of commencement of that Act.

Explanation – In computing the period of three years or one year, as the case may be under this section, the period during which any action

or proceeding to be taken in pursuance of the said notice is stayed by an order of a Court having jurisdiction, shall be excluded.”

27. At this juncture, I propose to look to the judgment dated 20.05.2025 as passed by this court in WPA 17757 of 2024 (*Sadhan Narayan Kundu and others vs. The State of West Bengal and others*). The relevant portion of the judgment of *Sadhan Narayan Kundu* (supra) is quoted hereinbelow in verbatim:

“21. On careful consideration of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties it appears to this Court that from page no.23 of the instant writ petition it would reveal that in respect of the writ petitioners’ land, particulars of which has been mentioned at paragraph no.2 of the instant writ petition, a notice under Section 4(1a) of Act II of 1948 was published in the official gazette on July 26, 1991. As rightly argued by Mr. Pan that as soon as such notice was published in the official gazette, the requisitioned land of the writ petitioners’ stood vested absolutely with the State under Section 4(2) of Act II of 1948.

22. It is undisputed that on account of such acquisition, the writ petitioners were not disbursed with any compensation. This Court has noticed that by virtue of the Amendment Act of 1994 the validity of the Act II of 1948 was extended till 31.03.1994. However, by the self same Amendment Act, on and from 01.04.1994 the power of requisition under

Section 3 of the Act II of 1948 was taken away. On perusal of the amended provision of Section 7A of Act II of 1948 it reveals that collector was empowered to make an award under Section 7(2) of Act II of 1948 within the period of three years from the date of publication of the notice under Section 4(1a) and in the event such award is not

made within the said period, the said notice under Section 4(1a) would lapse. The proviso of Section 7A of Act II of 1948 further mandates that in the event the aforementioned notice have been published more than two years before the commencement of the Amendment Act of 1994, the award shall have to be made within a period of one year from the date of commencement of the said Amendment Act.

23. On perusal of the entire materials as placed before this Court, this Court has got no iota of doubt that on account of non-publication of the award within the stipulated period as mentioned in Section 7A of Act II of 1948 the notice as published under Section 4(1a) of Act II of 1948 lapsed in terms of the provision of Section 7A of the said Act of 1948. Consequently, on account of such lapse of notice the vesting under Section 4(2) of Act II of 1948 got vitiated.

24. At this juncture if I look to the provisions of Section 9(3A) and (3B) of Act I of 1894 it appears that it is the legislative intent that in respect of land requisitioned and acquisitioned under Act II of 1948, the Collector shall serve notice to all such persons known or believed to be interested in any such land for the purpose of determination of the award under Section 11 of Act I of 1894. The first proviso of Section 9 (3B) of Act I of 1894 also postulates that the date of publication of notice under Section 4 (1a) of Act II of 1948 would be the date of reference for the purpose of determining the value of such land under Act I of 1894. As noticed earlier that since the notice as has been published under Section 4(1a) of Act II of 1948 lapsed, the collector cannot determine the value of the acquisitioned and requisitioned land under Act II of 1948 on the basis of the date of publication of such lapsed notice. Undoubtedly, no award has also been made under Section 11 of Act I of 1894 in respect of requisitioned and acquisitioned land pursuant to the notice as has been annexed at page no.23 of the instant writ petition since no notice under Section 9(3B) the Act I of 1894 was served upon the writ petitioners.

* * *

26. In view of the discussion made hereinabove and in view of the proposition of law as enunciated in the case of Mahadeb Kahan (supra) this Court holds that the justice would be sub-served if the respondent no.3 is directed to initiate proceeding for acquiring land of the writ petitioners particulars of which have been mentioned in paragraph 2 of the instant writ petition as per the provision of the said Act of 2013 and to complete such acquisition proceeding within a stipulated time.”

28. Keeping in mind the aforementioned the legislative mandate as well as my previous finding in the case of Sadhan Narayan Kundu (supra), if I look to the factual aspects of this case, it reveals to this court that undisputedly in respect of the schedule mentioned property of the instant writ petition a notice under Section 3(1) was published, for requisition of land in the relevant mouza including the land of the writ petitioner, particulars of which has been mentioned in the schedule of the instant writ petition. No material could be placed before this court on behalf of the respondent State and its instrumentalities that any notice under Section 4(1a) of Act II of 1948 was published thereafter.
29. Such being the position, this court has got no hesitation to hold that the alleged vesting of the requisitioned land pursuant to publication of notice under Section 3(1) of Act II of 1948 remains incomplete.
30. As rightly pointed out by Mr. Mukherjee, for the sake of argument even if I accept that said vesting was completed at the relevant point

of time by publication of notice under Section 4(1a) of Act II of 1948, in absence of any materials that any award has been made by the jurisdictional Collector within the stipulated period of Section 7(A) of Act II of 1948, this court is constrained to hold that the said notice under Section 4(1a) of Act II of 1948 stood lapsed. Consequentially the alleged vesting also stood lapsed.

31. At this juncture, the moot question arises for consideration is as to whether the respondent authorities; more specifically the respondent nos.8 to 10 authorities are at all justified in initiating the proceeding under Section 10 of the said Act of 1964 against the writ petitioner.
32. At this juncture, I propose to look to Section 2(c) of the said Act of 1964 which defines 'Highway' and the same is quoted hereinbelow in verbatim:

"2. In this Act, unless there is anything repugnant in the subject or context.-

(a)

(b)

(c) 'Highway' means-

(1) Any Government road, or

(2) Any other road, street, path, way or land, other than a national highway within the meaning of the National Highways Act, 1956, which is declared by the State Government to be a highway under section 3 and includes –

(i) The flanks, footpaths, pavements and drains adjoining such highway;

(ii) *All bridges, culverts, causeways, carriageways and other structures built on or across such highway; and*

(iii) *Any land in the possession of the State Government or any other authority adjoining such highway, used or intended to be used for purposes of the highway;*

(d)

(e)”

33. Section 3 of the said Act of 1964 is as under:

“3. (1) The State Government may, by notification in the Official Gazette, declare any road, street, path, way or land to be a highway.

(2) Such notification may specify the boundaries of such highway.

(3) The Highway Authority may demarcate the boundaries of the highway by placing the maintaining stones or other suitable marks at intervals all along the highway in such manner as may be prescribed.”

34. On perusal of the aforementioned two provisions of law, it reveals that in the said Act of 1964, the legislations have given a definition of ‘highway’ which includes any land in the possession of the State Government of any authority adjoining such highway used or intended to be used for the purpose of highway.

35. On further perusal of the entire materials as placed before this Court, it reveals that though in the report as filed in the instant writ petition, a copy of certificate of possession of the requisitioned property was annexed but from the pleadings of the instant writ

petition as well as from the various annexures, sufficient materials have been placed before this Court that the writ petitioner and/or her predecessor-in-interest that is her husband was/were in settled possession of the schedule mentioned property which is why the respondent no. 8/authority had issued a notice under Section 10(1) of the said Act of 1964 and as a consequential action, the respondent no. 10/authority had initiated a proceeding under Section 10(3) of the said Act of 1964.

36. This Court has already observed that vesting in respect of the schedule mentioned property has not been completed and even if, it is completed, that stood lapsed on account of non-publication of award under Section 7A of the said Act of 1964. In view of such, this Court has got no hesitation to hold that the respondent/State and its instrumentalities have miserably failed to establish that the schedule mentioned property has been acquired in accordance with law.
37. Such being the position, this Court considers that the respondents/authorities have got no right, title and interest over the schedule mentioned property and they have also got no right to disturb the peaceful possession of the writ petitioner even by initiating a proceeding under Section 10 of the said Act of 1964.
38. In view of the discussion made hereinabove, the instant writ petition succeeds and is hereby allowed.
39. Consequently, the entire proceedings being Misc. Case No.03 of 2024 as initiated under Section 10 of the West Bengal Highways Act, 1964

and as completed by respondent no. 10/authority and over which an appeal is pending before the respondent no. 2/authority are hereby quashed and set aside.

40. Consequently, the respondents/authorities and its instrumentalities are hereby directed not to disturb the possession of the writ petitioner in respect of the schedule mentioned property of the writ petitioner without initiating a valid proceeding of acquisition under Act XXX of 2013.
41. Since identical questions of facts and laws are involved in WPA 5750 of 2025, WPA 5752 of 2025 and WPA 5821 of 2025 and since, the said writ petitions have been tagged with the instant writ petition, the said writ petitions being WPA 5750 of 2025, WPA 5752 of 2025, WPA 5821 of 2025 are also hereby allowed in the light of the observation as made hereinabove.
42. With the aforementioned observations, the instant writ petitions being WPA 5750 of 2025, WPA 5752 of 2025, WPA 5765 of 2025 and WPA 5821 of 2025 are disposed of.
43. 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.)