

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Aniruddha Roy

W.P.A. 8469 OF 2024
With
I.A. No. CAN 1 of 2025

Saifuddin

Vs.

The State of West Bengal & Ors.

For the petitioner : Mr. Kamalesh Ch. Saha, Adv.
Mr. Arka Mukherjee, Adv.
Mr. Samannya Saha, Adv.

For the State : Mr. Supratim Dhar, Sr. Adv.
Mr. Tauhid Khan, Adv.

Heard on : March 27, 2025

Judgment on : March 27, 2025

Aniruddha Roy, J. :

Facts:

1. By virtue of a Deed of Conveyance at **page 46** to the writ petition executed on **June 1, 1998** one **Rabiya Bibi** (for short **Rabiya**) alleged to have purchased the plot of land mentioned in detail in the said Schedule to the Conveyance (for short the subject land). Schedule to the Conveyance at **page 49** to the writ petition shows that, the measurement of the said land is **2 cottah 13 chittak and 15 sq. ft.** being **Plot No.817**.

2. The instant writ petition has been filed through one Saifuddin who claims to be the Power of Attorney holder of Rabiya as would be evident from **Annexure-A at page 22** to the writ petition.

3. By virtue of a notification dated **February 21, 1997** published in the Gazette on **March 18, 1997** by the State authority in exercise of its power under **Sub-Section (1) to Section 4** of the **West Bengal Land (Requisition and Acquisition) Act, 1948** (for short **Act II of 1948**) the parcel of land mentioned therein, *inter alia*, including the entire **Plot No.817** measuring about **0.180 acres** equivalent to **0.0728 hectares** of land was notified and subjected to acquisition after being requisitioned by the State under the Act.

4. **Saira Khatun Bibi** (for short **Saira**), the vendor in the said Conveyance being the actual land loser in respect of the said land had duly received compensation from the State, as would be evident from **Serial No.134 at page 44** and **Serial No.134 at page 50** to the report filed by the State. The said land which was the subject-matter of the said Conveyance is a part and parcel of **Plot No.817**.

5. Rabiya claims to be the purchaser of the land and further claims to be still in possession of the land. On **February 8, 2024, Annexure-F at page 61** to the writ petition the State authority had served a notice upon the petitioner, Saifuddin, for being present at the time of demarcation of the land.

6. The petitioner then submitted **two** representations. The petitioner, *inter alia*, contending that no demarcation being effected by the State had raised its objections.

7. By a communication dated **February 15, 2024** at **page 62** to the writ petition the District Magistrate has referred the matter to the jurisdictional Sub-Divisional Officer to take steps to resolve the grievance of the petitioner.

8. The petitioner then submitted its representations, **Annexure-H at page 68** and **Annexure-I at page 71** to the writ petition before the **District Magistrate and the Executive Engineer, Urban Drainage Division**. The authorities have not taken any step on the said representations. Hence, this writ petition with the following prayers :

“(a) A writ in the nature of Mandamus as any other writ and/or order or orders/direction of directions commanding the respondents to stop the construction of the boundary wall/unauthorized construction with police protection otherwise the land of the petitioner forcefully taken possession by the police authority in favour of the respondent no. 4 till disposal of the application;

(b) to direct the respondent Nos. 4 and 5 to submit demarcation report regarding construction of the alienated boundary wall on the suit property;

(c) A writ in the nature of certiorari directing the respondent to certify and transmit to this Hon’ble Court the records of the case within such time as may be fixed so that conscionable justice may be done by pursuing the same;

(d) Rule NISI in terms of prayers (a), (b) and (c) above;

(e) Ad-interim order of injunction directing the Inspector in Charge, Narayanpur Police Station, Salt Lake, Bidhannagar to stop the construction of the boundary wall with police protection otherwise the land of the petitioner forcefully taken possession by Police Authority in favour of Respondent No. 4 till the disposal of the writ application;

(f) To direct the Government, the respondent authority to make payment of compensation in respect of forcefully encroachment of a portion of land of the property to the actual owner at this stage;

(g) To make the rule absolute;

(h) Rule 26 of the Appellate Side may be disposed with.

(i) To issue any other appropriate order or orders, direction or directions to which the petitioner is entitled;

(j) Cost or costs;”

9. The State has filed its report in the form of affidavit to which the petitioner has also filed its reply.

Submissions:

10. Mr. Kamallesh Chandra Saha, learned Counsel appearing for the petitioner submits that, Rabiya is the *bona fide* purchaser of the land. She did not have any notice or knowledge of the alleged acquisition proceeding.

The notification published under **Sub-Section (1) to Section 4** of the **Act of 1948**, as referred to above, was never served upon Rabiya. Since purchase, all along Rabiya has paid the municipal tax and the jurisdictional municipal corporation has accepted the same by issuing valid receipts.

11. Learned Counsel Mr. Saha appearing for the petitioner further submits that, since the municipal corporation has accepted the tax and the name of Rabiya has been mutated in the **Record of Rights**, a valid right has been created in favour of Rabiya to challenge the acquisition proceeding. He submits that, once with the knowledge of acquisition the municipal corporation has accepted tax from Rabiya since purchase, if ultimately it is held that Rabiya has no right over the land then the municipal corporation must refund the entire amount received by it by way of tax from Rabiya with interest.

12. Learned Counsel for the petitioner further submits that, the said land measuring about **2 cottah 13 chittak and 15 sq. ft.** was never acquired by the State. No demarcation was ever taken place with regard to the acquired portion of land though the land acquisition proceeding was initiated in **1966** by requisitioning the land and then till **1997** when Rabiya purchased the said land there was no demarcation. He submits that, it is only the petitioner who was picked and chosen by the State to take steps against the subject land on the plea of acquisition. The other adjacent land occupiers/owners are enjoying their possession and no step has been taken against them. This, according to him, is a *mala fide* exercise of power on the part of the

State and the Land Acquisition Department should cause an immediate inquiry including those adjacent lands of the occupiers and the respondent no.8.

13. In support of his contention, learned Counsel for the petitioner has relied upon a decision of the Hon'ble Supreme Court dated **October 14, 2022 In the matter of : M/S Delhi Airtech Services Pvt. Ltd. & Anr. -vs.- State of U.P. & Anr.** rendered in **Civil Appeal No. 24 of 2009.**

14. Mr. Tauhid Khan, learned Advocate led by Mr. Supratim Dhar, learned Senior Counsel appearing for the State drawing attention to various parts from the report submitted by the State, submits that the record disclosed in this proceeding would admittedly reveal that Rabiya is a **post-acquisition** purchaser. Therefore, the purchase itself is void *ab initio* and illegal. As the purchase and the execution of the said Conveyance dated **June 1, 1998** is void *ab initio*, Rabiya cannot claim any right over the land and, as such, neither Rabiya nor the petitioner being her Power of Attorney holder can maintain this writ petition.

15. Referring to the said notification, issued under **Sub-Section (1) to Section 4** of the **Act of 1948** at **page 10** to the report, he submits that the schedule is very clear which defines that the entire **Plot No.817** was acquired and was the subject-matter of the said notification. Once such notification was issued, on and from the date of such notification, the entire land stood vested with the State and therefore, the said Conveyance admittedly being executed thereafter is bad in law, illegal and is of no effect.

16. Mr. Tauhid Khan, learned State Advocate further submits that, compensation had also been received by Saira and the documents have already been referred to above.

17. In support of his contention Mr. Khan, learned Counsel for the State has relied upon a decision of the Hon'ble Supreme Court ***In the matter of : V. Chandrasekaran & Anr. -vs.- The Administrative Officer & Ors.*** reported at ***[2012] 10 SCR 603 : (2012) 12 SCC 133.***

18. In the light of the above submissions learned State Counsel prays for dismissal of the writ petition.

Decision :

19. After considering the rival contentions of the parties and upon perusal of the materials on record, this Court first proceeds to examine as to what right ***Rabiya***, the alleged purchaser of the land, has in respect of the alleged land. The law is well settled that, to maintain a proceeding under Article 226 of the Constitution of India before a Constitutional Court, the petitioner or the aggrieved party first has to establish his/her unimpeachable right to proceed with the cause of action in the writ petition.

20. The records of the proceeding show that admittedly the Conveyance in favour of ***Rabiya*** was executed by the actual land loser Saira on ***June 1, 1998*** which is post-notification, issued under ***Sub-Section (1) to Section 4*** of the ***Act II of 1948*** dated ***February 21, 1997*** published in the Gazette on ***March 18, 1997***. The moment such a notification has been issued under ***Sub-Section (1) to Section 4*** of the ***Act II of 1948***, the land under such

notification stood automatically vested with the State then and there by operation of law. Therefore, any further alleged transfer touching the said land, would be void *ab initio*, illegal, wrongful and without any effect or further effect.

21. The Hon'ble Supreme Court ***In the matter of : V. Chandrasekaran & Anr.(supra)*** had observed and held as under :

“Whether subsequent purchaser can challenge the acquisition proceedings:

6. *The issue of maintainability of the writ petitions by the person who purchases the land subsequent to a notification being issued under Section 4 of the Act has been considered by this Court time and again.*

In Pandit Leela Ram v. Union of India, AIR 1975 SC 2112, this Court held that, any one who deals with the land subsequent to a Section 4 notification being issued, does so, at his own peril. In Sneh Prabha v. State of Uttar Pradesh, AIR 1996 SC 540, this Court held that a Section 4 notification gives a notice to the public at large that the land in respect to which it has been issued, is needed for a public purpose, and it further points out that there will be ‘an impediment to any one to encumber the land acquired thereunder.’ The alienation thereafter does not bind the State or the beneficiary under the acquisition. The purchaser is entitled only to receive compensation. While deciding the said case, reliance was placed on an earlier judgment of this Court in

Union of India v. Shri Shiv Kumar Bhargava & Ors.
JT (1995) 6 SC 274.

7. Similarly, in *U.P. Jal Nigam v. M/s. Kalra Properties Pvt. Ltd.*, AIR 1996 SC 1170, this Court held that, purchase of land after publication of a Section 4 notification in relation to such land, is void against the State and at the most, the purchaser may be a person-interested in compensation, since he steps into the shoes of the erstwhile owner and may therefore, merely claim compensation. (See also: *Star Wire (India) Ltd. v. State of Haryana & Ors.*, (1996) 11 SCC 689).

8. In *Ajay Kishan Singhal v. Union of India*, AIR 1996 SC 2677; *Mahavir & Anr. v. Rural Institute, Amravati & Anr.*, (1995) 5 SCC 335; *Gian Chand v. Gopala & Ors.*, (1995)2 SCC 528; and *Meera Sahni v. Lieutenant Governor of Delhi & Ors.*, (2008)9 SCC 177, this Court categorically held that, a person who purchases land after the publication of a Section 4 notification with respect to it, is not entitled to challenge the proceedings for the reason, that his title is void and he can at best claim compensation on the basis of vendor's title. In view of this, the sale of land after issuance of a Section 4 notification is void and the purchaser cannot challenge the acquisition proceedings. (See also : *Tika Ram v. State of U.P.*, (2009) 10 SCC 689).

9. In view of the above, the law on the issue can be summarized to the effect that a person who purchases land subsequent to the issuance of a Section 4 notification with respect to it, is not

competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reason that the sale deed executed in his favour does not confer upon him, any title and at the most he can claim compensation on the basis of his vendor's title."

22. In the light of the law laid down by the Hon'ble Supreme Court mentioned above, this Court is of the firm and considered view that since **Rabiya** has no right, title and interest over and above the subject land, she has no right or locus to question the acquisition proceeding or any steps taken by the State authority in connection with the acquisition proceeding.

23. The other two plea taken by the petitioner that the adjacent land occupiers/owners are not touched but only the **Rabiya's** land has been touched by the State, this Court is of the view that since the petitioner has no right to question the acquisition proceeding, such plea is not tenable at the behest of the petitioner. The other plea that the municipal corporation shall have to refund the tax paid by the petitioner, is of no relevance in this writ petition as the petitioner is not at all a purchaser of the land in the eye of law. The payment whether made by the petitioner and accepted by the jurisdictional municipal corporation, is a dispute *inter se*, if any, between the petitioner and the municipal corporation and the same cannot and shall not be gone into through this writ petition.

24. ***In the matter of : M/S Delhi Airtech Services Pvt. Ltd. & Anr.(supra)*** the proceedings were initiated by the actual land losers who had

a valid right over the land. In the instant case the petitioner has no right over the land concerned. Therefore, the petitioner is not eligible to challenge the acquisition proceeding in any manner. Hence, the ratio decided ***In the matter of : M/S Delhi Airtech Services Pvt. Ltd. & Anr.(supra)*** has no application in the fact situation of this case.

25. In view of the foregoing reasons and discussions this Court is of the considered view that, the writ petition is totally devoid of any merit and should be dismissed.

26. Accordingly, the writ petition, ***WPA 8469 of 2024*** stands ***dismissed***, without any order as to costs.

27. In view of the above, the connected application, ***I.A. No. CAN 1 of 2025*** also stands ***dismissed***.

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

(Aniruddha Roy, J.)