

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Ajay Kumar Gupta

WP 11387 (W) of 2019

Ashis Patra & Others

Versus

The State of West Bengal and Others

For the Petitioners : Mr. Dilip Kumar Maity, Adv.

Heard on : 05.03.2025

Judgment on : 02.05.2025

Ajay Kumar Gupta, J:

1. The writ petitioners have challenged the impugned order dated 15.05.2019 passed by the Land Acquisition Collector, Tamluk, Purba Medinipur in L.A. Misc. Case No. 8 of 2018 and prayed for

quashing and/or setting aside the same and also not to give any effect to the said impugned order.

2. The background facts, which led to filing of this writ petition, may be adumbrated as under: -

2a. The predecessor of the petitioner nos. 1 and 2 was the owner of the plots of land being Plot Nos. 1095, 1096, 1097, 1098, 1080, 1081 and 1082 under Mouza – Krishnanagar, J.L. No. 74, Police Station – Sutamata, District – Purba Medinipur.

2b. On the basis of request by the Doro Krishnanagar Bani Mandir (H.S.) by a letter dated 19th December, 1960, the Collector of Midnapur District acquired certain portion of land for the extension of play ground and construction of Hostel of the school and accordingly, L.A.P. Case No. 11 of 60-61 was started for the purpose of acquisition of land as per requirement of the school authority.

2c. The said acquisition proceeding was challenged before this Hon'ble Court and ad-interim order of stay was granted. The Managing Committee of the School preferred an appeal but, subsequently, it was declared that the land was no longer required for their purpose. Accordingly, the school adopted a resolution on

11.06.1971 to the effect that they would not proceed with the appeal and the L.A. Case No. 38 of 1963-64 should be dropped.

2d. The predecessor of the petitioner nos. 1 and 2 brought the said matter before this Hon'ble Court in the appeal. The said appeal as well as the writ petition filed by the predecessor of the petitioner nos. 1 and 2 was dismissed with liberty to the petitioners to approach the concerned authority for releasing the land.

2e. The predecessor of the petitioner nos. 1 and 2 approached the Land Acquisition Collector, Midnapur with a prayer for releasing the land in question. In response to the said application, the Land Acquisition Collector, Midnapur by a letter under Memo No. 1406/1/LA dated 24.06.1991 informed that the land was free from acquisition and as the land was not handed over to the school question of relinquishment of the land did not arise.

2f. After the demise of the predecessor, Ganesh Chandra Patra, the petitioner nos. 1 and 2 herein sold some portion of the aforesaid land to the petitioner nos. 3 and 4 herein and other persons and the rest is possessed and enjoyed by the petitioner nos. 1 and 2. They have mutated their names in the record of rights.

2g. The petitioners came to know subsequently from the office of the Land Acquisition Collector, Purba Medinipur, Tamluk that the land was handed over to the School and the possession certificate was issued in favour of the Secretary of Doro Krishnanagar Bani Mandir (H.S.) dated 07.01.2013.

2h. Due to changed circumstances, the petitioners had filed a writ petition being W.P. No. 5048 (W) of 2013 (Ashis Patra & Others Vs. The State of West Bengal & Others) and the said writ petition was finally heard by the Hon'ble Justice Rajasekhar Mantha on 26.11.2018 and the same was disposed of with some directions, *inter alia*, as under:-

“The writ-petitioner says that his land was initially proposed to be acquired by the L.A. Collector, Midnapore in the year 1991 for the benefit of a school.

It transpires subsequently that on June 24, 1995, the L.A. Collector, Midnapore has contended that no action towards the acquisition of the land being ILA Case No. 38/63-64 has been taken in view of the resolution dated June 19, 1971 from the Managing Committee of the school.

Notwithstanding the same, the revenue authorities stated to have attempted to transfer the land in question in favour of the school.

What is clear from above is that the possession of the land still remains with to the petitioner.

In those circumstances, this court deems it fit that the matter be remanded to the L.A. Collector, Purba Midnapore for deciding as to whether the land is still required by the school in question or as to whether the State requires the said land. The decision shall be made in the context of ILA Case No. 38/63-64.

Till such time, the L.A. Collector, does not take a decision in the matter, let the revenue authorities not effect any mutation of the property in question in favour of any third party.

The L.A. Collector shall upon notice to all, decide on the question referred to hereinabove, within a period of four months from the date of communication of a copy of this order. The parties shall be heard before the L.A. Collector and a reasoned order shall be passed thereon.

Let the order that may be passed by the L.A. Collector be communicated to the parties within ten days thereof.”

2i. After communication of the said order passed by the Co-ordinate Bench, the respondent no. 2 took up the matter for hearing on 17.01.2019, 06.03.2019 and 04.04.2019 and after hearing the parties, the respondent no. 2 rejected the submissions made by the

petitioners herein on 15.05.2019 holding that the requirement of land in question for the purpose of acquisition was felt, feasible and justified and the land in question was vested to the Government of West Bengal after acquisition of land. Hence, this Writ Petition.

3. Mr. Maity, learned counsel appearing on behalf of the petitioners submitted that the land was not acquired. In view of the resolution of the school authority dated 11.06.1971, the school authority declared the school did not require the land in question for the purpose of extension of play ground and construction of Hostel of the school.

3a. It was further submitted that the L.A. Collector also issued a letter to Ganesh Chandra Patra vide Memo No. 1406/1/LA dated 24.06.1991 that no action has been taken towards acquisition of the land covered by Act (II) LA Case No. 38/63-64 in view of the letter dated 19.06.1971 issued by the Managing Committee, Doro Krishnanagar Bani Mandir (H.S.). The said land is not acquired by the school or Government for the aforesaid purpose. Therefore, the petitioners are entitled to the said land as the land was not acquired

and handed over to the School Authority. Therefore, the impugned order dated 15.05.2019 is liable to be set aside.

4. On the other hand, none appears on behalf of the State respondents at the time of call. No accommodation was sought for.

5. However, upon perusal of the record, it appears that the affidavit-in-opposition on behalf of the respondent no. 5 to the writ petition has already been filed and reply thereto is also filed on behalf of the petitioners.

6. From careful perusal of the affidavit-in-opposition, it reveals that the State respondent contended that the writ petition is wholly frivolous, misconceived and mala fide as such it is not maintainable and same is liable to be dismissed.

7. It was further contended that the writ petition has been filed in gross suppression and/or distortion of material facts and with ulterior motive only to harass and deprive the said school and its students for taking advantage of the land already acquired for the

benefit of the school and its students as the said school is a State Government sponsored school.

8. A Gazette notification bearing No. 14468 L.A. dated September 6, 1961 under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'said Act' in short) was published at page 3420, Part - I of the Calcutta Gazette dated September 27, 1961 for the purpose of acquiring 2.18 acres of land under Mouza Krishnanagar, J.L. No.74, Police Station - Sutahata within the then District of Medinipur now Purba Medinipur for the purpose of construction of hostel building and extension of school play ground for the students of the said school.

9. The draft declaration under Section 6 of the said Act along with the report of enquiry under Section 5A (2) was sent to the Government of West Bengal and thereupon L.A. Case No.38 of 1963-64 was started in respect of acquisition of the said land on publication of declaration dated September 27, 1963 at page 2150 of the Calcutta Gazette dated July 26, 1963. The then Secretary of the said school deposited a sum of Rs. 4739.00 (Rupees four thousand seven hundred thirty-nine) only under T.R. Form No. 7 on April 8,

1964 being the compensation amount of the said proceeding as per the instruction of the acquiring body.

10. The said acquisition proceeding when reached upto the stage of the declaration under Section 6 of the Land Acquisition Act, 1894, after publication of the notification under Section 4 of the said Act and even when the award of the said L.A. Case was already published some of the owners of the land received payment of compensation/award and amount awarded in favour of the others had been kept in the name of respective awardees.

11. In the meantime, the predecessor-in-interest of the present writ petitioner Nos. 1 & 2, late Ganesh Chandra Patra and others challenged the legality and validity of the said L.A. Case No. 38 of 1963-64 including the aforesaid notification and declaration by filing a writ petition under Article 226 of the Constitution of India being C.R. No. 65(W) of 1965.

12. Initially this court passed an ad-interim order of stay on L.A. Proceedings by issuing Civil rule. The said civil rule was ultimately discharged and the said writ petition was dismissed after vacating interim order of stay by His Lordship The Hon'ble Justice Mr. Anil

Kumar Sen (as His Lordship then was) by the judgment and order dated February 24, 1970.

13. Being aggrieved by the said order, the said Ganesh Chandra Patra and others preferred an appeal before the Hon'ble High Court at Calcutta being Appeal Case No. 900 (M) of 1970. By the judgment dated September 6, 1985, Their Lordships The Hon'ble Justice Chittotosh Mukherjee and The Hon'ble Justice Samshuddin Ahmed were pleased to uphold the order of the Hon'ble Single Bench and dismissed the said appeal.

14. Thereafter, the appellants filed an application seeking review of the judgment and order dated September 6, 1985 passed in the aforesaid appeal being Rev.T. No. 312 of 1986 on the ground that the said school being the requiring authority does not require the said land any longer.

15. The Hon'ble Division Bench of Their Lordships the Hon'ble Justice Samshuddin Ahmed and the Hon'ble Justice Mohitosh Majumder after hearing were pleased to dismiss the said review application on the ground that no substance was available in the

application. However, it would not have debarred the writ petitioners to approach the said authorities for getting the land released by making out a case, as they may feel advised. None of the writ Petitioners ever approached the authorities of the said school to get the said land released as indicated in the aforementioned order. Therefore, the writ petition is liable to be dismissed in limini with exemplary costs for deliberate suppression and distortion of the fact that on the self-same cause of action the petitioners of the instant writ petition approached different forum of law on previous occasions but unsuccessful. The particulars of the said proceeding are enumerated herein below: -

- i. That the petitioner No. 3 and the petitioner No. 4 of the instant writ petition along with twenty-two others on January 19, 2013 filed a suit in the Court of Learned Civil Judge (Junior Division), Haldia, District - Purba Midnapore being T.S. 31 of 2013 against the Headmaster, Managing Committee of the said school along with other authorities of the State of West Bengal. The said petitioner No. 3 and petitioner No. 4 along with others in the said suit *inter alia* prayed for decree of declaration of their right, title and

interest over the properties involved in the said suit which includes the plot of lands involved in the present writ petition. The petitioner Nos. 1 and 2 of the instant present Writ Petition have been figured as pro-forma defendants in the said suit. The Learned Civil Judge (Junior Division), Haldia by the order No. 1 dated January 19, 2013 was pleased to refuse the prayer of the plaintiffs of the said suit for an ad-interim order of injunction and ultimately was pleased to pass an Order of dismissed for default on August 22, 2013.

ii. That apart from the above-mentioned suit, the petitioners of the instant writ petition along with twenty-seven others filed an application under Section 10 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 before the West Bengal Land Reforms and Tenancy Tribunal being O.A. No. 421 of 2013 on 12th February, 2013 against the State Government, Secretary of the Managing Committee and the Headmaster of the said school seeking the following reliefs: -

“a). To pass appropriate order by directing the Block Land & Land Reforms Officer, Sutahata - I to quash/cancel/rescind/revoke the impugned notice dated January 28, 2013.

b). To pass appropriate order by directing that all of your applicants are the Rayat in respect of their plot of land and record of rights has been prepared rightly."

However, the said O.A 421/2013 was ultimately dismissed

On 08.08.2014.

16. By virtue of the order No. 1 dated January 24, 2013 passed in Case No. 702 of 2013, notice under Section 50 of the West Bengal Land Reforms Act, 1955 was issued by the Prescribed authority appointed under Section 50 of the WBLR Act, 1955 to the concerned persons including the petitioners of the instant writ petition.

17. The hearing on the said case was held on February 13, 2013 before the prescribed authority under Section 50 of the said Act. The writ petitioners participated in the said hearing and by the order No. 3 dated February 13, 2013 the said authority disposed of the said case in favour of the school.

18. The possession of the land acquired in the L.A. Case No.38 of 1963-64 has already been handed over to the said school authority and the name of the said school has already been recorded in the record of rights in respect of the lands acquired under the aforesaid acquisition case.

19. The petitioners had preferred a writ petition being no. 5048 (W) of 2013 before the Hon'ble High Court at Calcutta challenging the legality and validity of the said notice under Section 50 of the West Bengal Land Reforms Act, 1955 without disclosing anything about the said pending suit, proceeding before the competent authority under the West Bengal Land Reforms Act, 1955 under Section 50 of the said Act and about their pending application before the West Bengal Land Reforms and Tenancy Tribunal over the self-same issue.

20. The name of the Doro Krishnanagar Bani Mandir, High School was recorded in the records of rights as per the order No. 3 dated February 28, 2013. His Lordships the Hon'ble Justice Mr. Ashok Kumar Dasadhikary on February 28, 2013 was pleased to pass an order of Status Quo in the Writ Petition No. W.P. 5048 (W) of 2013.

21. A contempt application being CPAN No. 638 of 2013 was moved by the Writ Petitioner alleging that the order dated 28-02-2013 passed by His Lordship the Hon'ble Justice Mr. Ashok Kumar Dasadhikary has been violated by mutating the name of the school in the record of rights of the said land.

22. The Secretary of the said School, the respondent No. 6 therein on receipt of the notice of contempt appeared before His Lordship the Hon'ble Justice Ashok Kumar Dasadhikary and prayed for time to file affidavit to the contempt application. In spite of such appearance of the appellant, the contempt rule was issued directing the alleged contemnors to appear before the said Hon'ble Court at 10:30 A.M. at June 25, 2013.

23. An order was passed in contempt proceeding preventing the school authority to enter into the land in question.

24. The concerned Revenue Officer and the concerned B.L. & L.R.O. respectively were also directed to remove the name of the school from the records of right of the land in question and to put the

name of those persons who were in the said records of right on 27th February, 2013. Since the contemnors were affected by the said directions, they challenged the said order in two different appeals.

25. Two appeals being nos. M.A.T. 1094 of 2013 and FMA 2994 of 2013 were preferred by the respondents/contemnors against the said interim order of contempt. The said appeal was heard by the Hon'ble Division Bench of Their Lordships the then Hon'ble Chief Justice Mr. Arun Kumar Mishra and the then Hon'ble Justice Mr. Joymalya Bagchi. Their Lordships were then pleased to pass order, *inter alia*, on 30.07.2013 as follows:

“In order dated 25.06.2013 the Single Bench has passed an order preventing the school authorities to enter into the land in question. The aforesaid order appears to be prima facie without jurisdiction. No such order can be passed in contempt jurisdiction. In the main case there was no such injunction, only order of status quo was there. Apart from that, we find that there is averment in the petition that the possession of the land has been taken away from the petitioner. Thus, the aforesaid order appears to be in excess of jurisdiction. Similar is the case with the subsequent order, in which certain directions have been issued which are totally uncalled for can be expunged from the order.

As other appeals are also to be filed, we are deferring the hearing of the case.

Let the matter be listed after ten days.

It is made clear that the school authorities shall enjoy the possession of the property as it is mentioned in the writ petition itself that they have been placed in possession.”

26. The appeal bearing No. F.M.A. 2994 of 2013 against the order of His Lordship the Hon'ble Justice Ashok Kumar Dasadhikary in the contempt case was allowed and the order of the B.L. & L.R.O. dated 28-02-2013 implementing or effecting mutation bringing the name of the school in the R.O.R was upheld subsequently vide order dated 31st October, 2014 by Their Lordship The Hon'ble Chief Justice Manjula Chellur and His Lordship The Hon'ble Justice Arijit Banerjee.

27. The name of the school was entered in the Record of Right by the B.L. & L.R.O, Sutahata-1 which stands till date.

28. The petitioners preferred a Special Leave Petition bearing No. SLP (C) 10276 of 2015 before the Hon'ble Supreme Court of India against the order dated October 31, 2014 passed by Their Lordships

the then Hon'ble Chief Justice Manjula Chellur and the Hon'ble Justice Arijit Banerjee in F.M.A. No. 2994 of 2013.

29. By order dated July 6, 2017 Their Lordships The Hon'ble Justice Rohinton Fali Nariman and The Hon'ble Justice Sanjay Kishan Kaul, were then pleased to dismissed the said Special Leave Petition bearing No. SLP (C) 10276 of 2015 with the remark "We find no merit in the special Leave Petition" and, accordingly, upheld the order dated October 31, 2014 passed by Their Lordships the Hon'ble Chief Justice Manjula Chellur and the Hon'ble Justice Arijit Banerjee in F.M.A. No. 2994 of 2013.

30. Considering the submission of the learned counsel representing the petitioners and aforesaid facts and circumstances, this Court finds that the matter travelled upto the Hon'ble Supreme Court but the writ petitioner further filed a Writ petition on the self-same issue on the ground of changed circumstances being W.P. No. 5048 (W) of 2013 (Ashis Patra & Others Vs. The State of West Bengal & Others) and the said writ petition was finally heard by the Single Bench on 26.11.2018 and passed order as aforesaid.

31. In terms of order dated 26.11.2018 passed by the Single Bench, the respondent no. 2 after hearing the parties, rejected the submissions made by the petitioners herein holding that the requirement of land in question for the purpose of acquisition was felt, feasible or justified and the land in question was vested to the Government of West Bengal.

32. The possession of the land was already handed over to the school authority. Their name is also recorded in the Records of rights. The land already acquired in a validly levied acquisition case cannot be released in favour of the owners of the land so acquired.

33. In addition, the law does not permit release of any acquired land in favour of the erstwhile owners, acquired by a validly levied acquisition proceeding on any grounds far less on the basis of the grounds sought to be canvassed in the present writ petition. Some of the land owners have already received compensation/award of their acquired lands. This Court holds that impugned order passed by the respondent No. 2 calls for no interference.

34. The present writ petitioners also suppressed and distorted the actual facts that the matter travelled upto the Hon'ble Supreme Court and the other proceedings were filed but they were unsuccessful.

35. Consequently, the writ petition being **WP No. 11387 (W) of 2019** is, thus, **dismissed**.

36. However, this Court makes it clear that dismissal of this writ petition will not preclude the writ petitioners to apply for release of compensation/awarded amount towards their lands acquired, if not already paid.

37. There shall be no order as to costs.

38. All parties shall act on a server copy of this judgment uploaded from the official website of High Court at Calcutta.

39. Urgent photostat certified copy of this judgment, if applied for, is to be given to the parties on priority basis on compliance of all legal formalities.

(Ajay Kumar Gupta, J)