

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

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 12843 of 2025

Neeraj Kumar

Vs.

The Union of India & Ors.

For the petitioner : Mr. Sourabh Guhathakurata
Ms. Tanuka Basu
Mr. Abhratanu Sarkar
Mr. Partho Proteem Das
Mr. Aftab Munshi

For the State : Mr. Supratim Dhar, Sr. Adv.
Ms. Tuli Sinha

For the respondent nos. 1 : Mr. Guddu Singh
to 6

Heard on : 11.09.2025

Judgement on : 11.09.2025

PARTHA SARATHI SEN, J.:

1. At the very outset, it is pertinent to mention herein that on September 10, 2025, the writ petitioner has filed a composite exception against the report filed by the State as well as by the railway authorities which has been taken on record.
2. The subject matter of challenge in the instant writ petition is the order dated 02.06.2025 as passed by the respondent no. 5/authority whereby and whereunder the respondent no.

5/authority came to a finding that the present writ petitioner is an encroacher in respect of L.R. Plot No. 2278 corresponding to C.S./R.S. Dag No. 2246 at Mouza – Duilla under P.S. Sankrail, District – Howrah.

3. The respondent no. 5/authority while passing the said reasoned order dated 02.06.2025 also noticed that an unauthorized multistoried construction was raised on such plot of land and, accordingly, passed an order for vacating the said unauthorized multistoried construction within 15 days from the day of passing of the said reasoned order failing which the railway authority would take appropriate action in accordance with law.
4. At the time of hearing Mr. Guhathakurata, learned advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to Page Nos. 30 to 69 of the instant writ petition, being copies of two registered deeds of conveyance dated 09.04.2012 and 22.10.2014 as have been executed in favour of the mother of the writ petitioner whereby and whereunder according to the writ petitioner, the mother of the writ petitioner became the absolute owner of 5 cottahs 19 chittaks 12 sq.ft. of land in the aforementioned plot of land.
5. Drawing attention of Page No. 70 of the instant writ petition, it is submitted by Mr. Guhathakurata that soon thereafter the name of the writ petitioner's mother was recorded in the record of right and the mother of the writ petitioner during her lifetime went on paying

‘Khajna’ in favour of the respondent/State in respect of the said plot of land.

6. It is further submitted by Mr. Guhathakurata that after the death of the mother of the writ petitioner, the writ petitioner become the owner of the said property by law of inheritance and after obtaining sanctioned plan from the local authority, he has started construction over the said property which was, however, stopped by the respondent/railway authority by issuing two separate stop work notices dated 17.08.2021 and 24.02.2021, the copies of which have been annexed at Page Nos. 83 and 84 of the instant writ petition.
7. Drawing attention to Page Nos. 81 and 82 of the instant writ petition, it is submitted by Mr. Guhathakurata that from the copy of the memo dated 15.12.2022 as issued by the Special Land Acquisition Officer (General), Howrah, it would reveal that pursuant to a query made by the writ petitioner under Section 6 of the Right to Information Act, 2005, the said SPIO informed that the aforementioned plot of land was notified in gazette vide notification dated 22.08.1961 which according to Mr. Guhathakurata is a notice under Section 4 of Act I of 1894, a copy of which has been annexed at Page Nos. 72 to 76 of the instant writ petition.
8. At this juncture, Mr. Guhathakurata draws attention to Page Nos. 77 to 79 of the instant writ petition, being a gazette notification

dated 26.10.1961 as published under Section 6 of Act I of 1894. It is submitted by Mr. Guhathakurata that from the said notification under Section 6 of Act I of 1894, it would reveal that aforementioned plot which is the subject matter of the instant *lis* was kept outside the ambit of the said notification under Section 6 of Act I of 1894.

9. It is thus submitted by Mr. Guhathakurata that in view of such exclusion, by no stretch of imagination it can be said that the property of the writ petitioner which is situated over the aforementioned plot of land has been acquired for the railway authority and, therefore, the railway authority was neither entitled to issue stop work notices dated 17.08.2021 and 24.02.2021 nor the respondent no. 5/authority is empowered to pass the order under challenge dated 02.06.2025.
10. In course of his argument Mr. Guhathakurata further contended that from the order under challenge dated 02.06.2025 as passed by the respondent no. 5/authority it would reveal that the respondent no. 5/authority while passing the reasoned order has failed to apply his judicious mind inasmuch as the said respondent no. 5/authority did not consider the aforementioned notification under Section 6 of Act I of 1894 and thus for not considering a material document the decision making process of the respondent no. 5/authority has been vitiated.

11. Mr. Guhathakurata further contended that the respondent no. 5/authority for the reason best known to him placed reliance upon some Gazette notifications and/or erratum which are no way connected with the subject matter of dispute and, therefore, the respondent no. 5/authority while passing the reasoned order under challenge was mislead on account of consideration of some extraneous materials which are beyond the record. It is thus submitted by Mr. Guhathakurata that the reasoned order dated 02.06.2025 as passed by the respondent no. 5/authority thus suffers from material illegality and/or irregularity and the same is absolutely unreasoned one and, therefore, the said reasoned order dated 02.06.2025 may be quashed in judicial review by exercising the writ jurisdiction of this Court.
12. In course of his argument Mr. Guhathakurata further contended that from page nos. 10 and 11 from the report of the respondent/State it would reveal that the aforementioned plot of land was merely requisitioned under Defence of India Rules whereas from page no. 11 it would reveal that in the aforementioned plot no. 2246, only two (2) decimal of land were acquired by the Central Government pursuant to Rule 75A(2) of the Defence of India Rules. It is thus submitted by Mr. Guhathakurata that in the garb of alleged acquisition of two (2) decimal of land in the aforementioned plot of land the respondent no. 5/authority is totally unjustified in coming to a conclusion that the entire plot of

land measuring about 5 cottah 19 chittaks 12 sq.ft. in the aforementioned have been acquired.

13. Mr. Guhathakurata thus submits that it is a fit case for allowing the instant writ petition and appropriate writ/writs may be issued against the respondents/authorities in terms of the prayers made in the instant writ petition.
14. *Per contra*, Mr. Dhar, learned Senior advocate for the respondents/State in course of his submission requests this Court to peruse the page nos. 9, 10 and 11 of the report as submitted on behalf of the respondents/State. It is submitted by Mr. Dhar that on careful perusal of the photocopies of the notification dated 7th/8th May, 1943 a copy of which has been annexed at page nos. 9 and 10 of the report as submitted by the respondents/State it would reveal that after initial requisition under Rule 75A, Defence of India Rules the said requisitioned land including the land in question that is RS plot no. 2246 in Mouza/Village – Duillya was acquired under Rule 75A(2) of the Defence of India Rules by the then provincial Governemnt.
15. It is thus submitted by Mr. Dhar that it is the specific case of the respondents/State that the aforementioned RS plot no. 2246 corresponding to LR plot no. 2278 in Mouza – Duillya under P.S. Sankrail was acquired in connection with LA case no. 2 of 1943-44 and the said plot of land stood vested with the State and the same was handed over to the requiring body on 24.03.1943 as would be

evident from Annexure – A3 of the said report at page no. 7. It is thus submitted by Mr. Dhar by no stretch of imagination it can be said that the aforementioned plot of land has not been acquired as wrongly contended on behalf of the writ petitioner.

16. Mr. Singh, learned advocate appearing on behalf of the railway authority adopted the argument of Mr. Dhar.
17. On careful perusal of the entire materials as placed before this court and after considering the respective submissions of the learned advocates for the contending parties, it appears to this Court that on behalf of the respondents/State sufficient materials have been placed before this Court supported by affidavit to establish that by virtue of a Gazette notification dated 7th/8th May, 1943 RS plot no. 2246 corresponding to LR plot no. 2278 in Mouza – Duillya under P.S. Sankrail, District – Howrah was not only requisitioned under Rule 75A of the Defence of India Rules but also the said land was acquisitioned under Rule 75A(2) of the Defence of India Rules by the then provincial Government and further the said land was also handed over the requiring body by executing the document which has also been annexed with the report submitted by the respondents/State.
18. In view of such, this Court thus finds no merit in the case of the writ petitioner that the aforementioned land was not subject matter of acquisition in a proceeding under Section 6 of Act I of 1894 since as indicated hereinabove prior to the publication of notice under

Section 6 on 26.10.1961 the aforementioned plot of land already stood vested with the State by virtue of the aforementioned notification dated 7th/8th May, 1943 under the relevant provisions of the Defence of India Rules.

19. In view of such chronology of events, this Court has got no hesitation to hold that neither the writ petitioner nor his deceased mother, Sushila Devi has got any right, title and interest over the land measuring about 5 cottah 19 chittaks 12 sq.ft. in the said plot of land as claimed to have been purchased by virtue of two registered deed of conveyances dated 09.04.2012 and 20.10.2014.
20. In view of such finding, this Court thus finds no reason to interfere with the finding of the respondent no. 5/authority while passing its reasoned order dated 02.06.2025.
21. In view of the discussion made hereinabove, this Court thus finds that the instant writ petition is devoid of any merit and accordingly, WPA 12843 of 2025 is dismissed.
22. Before parting with this Court directs the respondent no. 5/authority to take immediate steps for removal of the encroachment over the acquired RS plot no. 2246 corresponding to LR plot no. 2278 in Mouza – Duillya under P.S. Sankrail, District – Howrah and in the event such encroachment is not removed by the last day of October, 2025 the respondents/railway authorities are permitted to take assistance of the respondent nos. 9 and 10 for

removal of the encroachment with the help of the adequate police force.

23. The respondent nos. 9 and 10/authorities are hereby directed to provide adequate numbers of police personnel for removal of the encroachment of the aforementioned plot, in the event any such requisition is made by the railway authority before them.
24. The respondent nos. 9 and 10/authorities are hereby directed to ensure that no breach of peace takes places and/or no obstruction is created by any person whatsoever in executing the work of removal of encroachment from the aforementioned RS plot no. 2246 corresponding to LR plot no. 2278 in Mouza – Duillya under P.S. Sankrail, District – Howrah.
25. It is further made clear that in the event the respondent no. 9 and 10 failed to discharge their duty as indicated by this court liberty is given to the railway authority to approach this Court in contempt.
26. The interim order as passed earlier is hereby vacated.
27. Department is directed to forward the copies of this order to the respondent nos. 5, 9 and 10 for their immediate compliance.
28. However, there shall be no order as to costs.
29. 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.)