

10.03.2025
Ct. No. 2
Sl. No. 8
tbsr

WPA 22370 of 2023

**Sk. Enamul
Vs.
Union of India & Ors.**

Sk. Rejaul Alam
....for the petitioner

Mr. Dhiraj Kumar Trivedi
Ms. Tanusree Ghosh
....for the respondent nos. 1 to 3

Mr. Sk. Rajaul Alam, learned advocate appears for the petitioner.

Mr. Dhiraj Kumar Trivedi, learned senior counsel and D.S.G. along with Ms. Tanusree Ghosh, learned counsel appears for the respondent nos. 1 to 3.

The rest of the respondents are not represented.

The petitioner submits that by virtue of a registered Deed of Conveyance dated **January 10, 1995, Annexure P-1 at page 19** to the writ petition six brothers including the petitioner have jointly purchased a chunk of land mentioned therein.

The railway authority subsequently for extension of railway projects acquired a portion of such chunk of land. The other five brothers have received compensation as their land had duly been acquired. The petitioner admittedly is being in continuous and uninterrupted possession of his portion of land had an

initial grievance that other five brothers have received compensation but the petitioner has not.

At this juncture, the petitioner moved the first round litigation being WPA 15149 of 2022. A Co-ordinate Bench by its order dated August 25, 2022 disposed of the said writ petition directing the authority to consider the case of the petitioner by passing a reasoned order.

Pursuant to and in terms of the said direction respondent no. 1 passed its speaking order dated **September 27, 2022, Annexure P-7 at page 35** to the original writ petition and at **page 42** to the amended writ petition. The relevant observation and finding from the said speaking order is quoted below.

“Now in compliance of the direction passed by Hon’ble High Court vide order dated 25th August, 2022 I the undersigned respondent no. 1, working as General Manager, South Eastern Railway, 11, Garden Reach Road, Kolkata-700043 has examined your representation dated 4th April, 2022. It is seen that you have claimed to be of one co-sharers/joint owners of alleged suit property along with your brothers and thus equally entitled for compensation and other consequential benefits from respondent railway against acquisition your proportionate

share similar to your brothers who were already provided compensation & employment assistance.

As per available records, only 6.53 decimal in alleged suit property out of total 246 decimal was acquired. Accordingly, compensation and other consequential benefits were distributed among the eligible co-sharers/awardees at par with their apportionment in terms of prevalent Records of Right (ROR) those were actually having of possession in railway's acquired area. However, your proportionate share in alleged suit property was not acquired for railway purpose as per field verification done at the material time of acquisition and same is still under your possession.

Since, your proportionate share in alleged suit property has not acquired by railway for Deshpran-Nandigram (17km.) project, you are not considered as a land loser and you are not at all entitled for any compensation and other consequential benefits from railway under land loser category. Further, the said project is stalled since 2013 and no further acquisition is under process.

Hence, your representation dated 4th April, 2022 is disposed of as above, in compliance to the Hon'ble High Court/Calcutta's order dated 25th August, 2022."

After considering the submissions made on behalf of the parties and upon perusing the reports filed by the respondents and the exception thereto filed by the petitioner, it appears to this Court that, the issue has already culminated and crystallized in the decision of the said speaking order with its finding as quoted above.

The finding in the speaking order specifically shows that the portion of the land of the petitioner has not been acquired and it was beyond the scope of the railway project and the petitioner is still in possession thereof. Accordingly, the claim for compensation of the petitioner was rejected.

The existing record does not show that the railway authority and/or acquiring authority have taken any step for eviction of the petitioner from the portion of land of which the petitioner is still in possession. The speaking order shows that such portion of the land on which the petitioner is still in possession is not an acquired land. Therefore, the reasonable presumption in law is that since the land has been found to be not acquired, on which the petitioner is in possession, no step was taken for his eviction.

In view of the above, it is clarified and made clear that the portion of land being the subject matter of the representation of the petitioner dated **April 4, 2022, Annexure P-4 at page 27** to the writ petition which was considered in the said speaking order dated **September 27, 2022** and found to have been not acquired by the railway authority, the same cannot be touched by the railway authority without due process of law. The petitioner, subject to other relevant provisions of law applicable as the case may be, shall be entitled to utilize his land in any manner permitted in law and of course strictly in accordance with law following the due process of law.

In the event, the acquired portion of land is not demarcated and segregated from the unacquired portion of land of the petitioner, the railway authority may take steps for demarcation of the acquired portion of land to segregate the same from the unacquired land of the petitioner following the due process of law and in presence of the petitioner.

It is also made clear that this order shall not create any right or equity in favour of the petitioner in respect of the acquired portion of the land, acquired by the railway authority.

With the above observations and directions, this writ petition, **WPA 22370 of 2023** stands disposed of, without any order as to costs.

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

(Aniruddha Roy, J.)