

Form No. J(2)

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

M.A.T. 1668 of 2025
IA No: CAN 1 of 2025

Banbihari Jhulki and others
Vs.
The State of West Bengal and others

For the appellants	: Mr. Gopal Chandra Ghosh, Snr.Adv. Mr. Uttam Kr. Bhattacharyya Mr. Kaustav Mishra, Adv.
For the State	: Mr. Jayanta Samanta Mr. Priyabrata Batabyal, Adv.
For the respondent nos.13 & 14	: Mr. Raj Kr. Sain, Adv.
Heard on	: 25.09.2025
Judgment on	: 25.09.2025

Sabyasachi Bhattacharyya, J.:-

1. The present challenge has been preferred against an order whereby the learned Single Judge, primarily relying on a purported report issued by the respondent no.11-authority to the effect that the land-in-question was fully acquired for a public purpose, dismissed the writ petition of the present appellant, which was preferred against concurrent findings of

both the authorities under Section 10(4) of the West Bengal Highways Act, 1964.

2. Learned senior counsel appearing for the appellants submits that the said document was produced for the first time before the learned Single Judge at the hearing of the writ petition, without service of any copy thereof on the appellants.
3. Even subsequently, no copy thereof was served on the appellants.
4. Heard learned counsel for the parties.
5. There are certain illegalities in the impugned order.
6. First, no opportunity was given to the appellants/writ petitioners to deal with or controvert the purported report of the respondent no.11-Authority dated September 16, 2025, which was not a part of the records either before the First Forum or the Appellate Authority or the Writ Court but was produced for the first time during arguments in the writ petition by the private respondents. Hence, the principle of *audi alteram partem* is squarely hit.
7. Secondly, from the observations made in paragraph no. 8 of the impugned order, it is evident that the report of the respondent no.11-Authority merely revealed that a notification under Section 4 of Act-I of 1894, that is, the Land Acquisition Act, 1894, was produced.

- 8.** Although it has been recorded by the learned Single Judge that the land losers have been awarded compensation, particulars of which have been mentioned in the report, the respondent no.11 is not an authority under the 1894 Act empowered by statute to decide on the questions of compensation and/or acquisition.
- 9.** There is no mention in the order of the learned Single Judge as to any document being produced from the end of the appropriate authority under the 1894 Act to show that compensation was actually awarded or paid to the appellants.
- 10.** Thirdly, a notification under Section 4 of the 1894 Act is merely the first step towards an acquisition proceeding. Such a notification, after compliance with the modalities of Sections 5 and 5A, has to culminate in a declaration under Section 6 of the 1894 Act for the purpose of inviting objections.
- 11.** Only after an award is passed, unless possession is taken prior to the same under the provisions of Section 9, the vesting is complete upon possession being taken in terms of Section 16 of the 1894 Act.
- 12.** Thus, a mere report of the respondent no.11 to the effect that there was a Section 4 notification and compensation was awarded to the land losers could not be a determinant at all in the adjudication to be done by the writ court.

13. Lastly, respondent no.11, who furnished the report, is the Assistant Engineer of the Haldia Highway Sub-Division of the Public Works Department (Roads), which is the beneficiary of the purported acquisition.
14. Thus, the PWD has a vital interest in the matter and a report authored by an Assistant Engineer of the PWD, who is an employee of the said party, in the absence of further corroborative evidence of acquisition and vesting of the land in the State, could not have *prima facie* authenticity sufficient to form the basis of the impugned order.
15. Thus, the impugned order cannot be sustained on the above grounds.
16. Accordingly, MAT 1668 of 2025 is allowed on contest, thereby setting aside the impugned judgment dated September 18, 2025 passed in WPA 17881 of 2025.
17. The learned Single Judge is requested to hear out the writ petition afresh on merits in the light of the above observations upon granting opportunity to the parties, including the private respondents, if they so require, granting the parties further opportunity to furnish additional documents by way of proper affidavits if they seek to furnish such documents.
18. If so filed, an opportunity may be given to the other parties to controvert the contentions in the same in writing.

- 19.** CAN 1 of 2025 stands disposed of accordingly.
- 20.** The interim order of status quo which was subsisting during the pendency of the writ petition is revived and shall continue till November 30, 2025 or until further order of the writ court, whichever is earlier.
- 21.** It will be open to the writ court to extend, vary, modify and/or vacate such *ad interim* order at its discretion upon giving opportunity of hearing to the parties.
- 22.** There will be no order as to costs.
- 23.** Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)

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