

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

Present:

The Hon'ble Justice Aniruddha Roy

W.P.A. 24118 of 2023

Anju Bhattacharjee & Anr.

vs.

The State of West Bengal & Ors.

For the petitioners:

**Mr. Samim Ahammed, Adv.,
Ms. Gulasanwara Pervin, Adv.,
Ms. Saloni Bhattacharjee, Adv.**

For the State respondents:

**Mr. Ashim Kumar Ganguly, Ld. AGP,
Mr. Sk. Md. Masud, Adv.**

Reserved on:

06.02.2025

Judgment on:

13.02.2025

ANIRUDDHA ROY, J.:

1. This is a hearing of writ petition upon reports being filed by the State respondents. Mr. Samim Ahammed, learned counsel appearing for the petitioners on instruction from his client, at the outset submits that, the petitioners shall not file any exception to the report filed by the State in terms of the liberty granted by this Court on December 2, 2024 and shall proceed on the basis of the existing records.

Facts:

2. By virtue of a registered deed of gift dated **February 18, 1978** one Nanibala Devi (for short, Nanibala) donated the subject land, inter alia, being **Dag No. 871, Khatian No. 285, Mouza Kiriteswari, P.S.: Nabagram, District-**

Murshidabad (for short, the subject land) in favour of Ramesh Chandra Bhattacharyya since deceased, the husband of the petitioner and the petitioner no.1. The husband of the petitioner then died. Petitioner no.2 is the daughter of the petitioner no.1 and the said deceased Ramesh Chandra Bhattacharyya (for short, the said deceased). After the demise of the said deceased the petitioners claimed to be the joint owners of the subject land.

3. A requisition and acquisition process was initiated in the year **1981-82** under the provisions of the **West Bengal Land (Requisition and Acquisition) Act, 1948** (Act II of 1948) (for short, the said 1948 Act) in the year 1978. The case was registered as **R.A. Case No. 38/81-82** (for short, the requisition and acquisition case). The said requisition and acquisition case included the subject land.
4. In connection with the said requisition and acquisition case compensation was determined. Compensation was paid to the respective land losers including the said Nanibala Devi who was the original owner of the subject land. The petitioner no.1 is the granddaughter in law of Nanibala. Being aggrieved with the initial determination of compensation Nanibala challenged the same in accordance with law when the compensation was revised and enhanced. Such revised and enhanced compensation was paid to Nanibala and she accepted the same without any objection in respect of the subject land.
5. The instant writ petition is the second round of writ litigation by the petitioner no.1 touching the self-same plot being the subject land. The first round of writ litigation filed by the petitioner no.1 was registered as **WPA 12753 of 2023** which was disposed of by a Coordinate Bench by its order

dated **June 26, 2023, Annexure P-4 at page 35** to the writ petition with the following observations:

“On prayer of the petitioner liberty is granted to file a supplementary affidavit disclosing necessary facts therein.

The petitioner has sought to amend the writ petition to the extent that the petitioner is in possession of one acre of land in Dag no.871, Khatian No. 285, Mouza Kiriteswari, P.S. Nabagram, District Murshidabad instead of one decimal recorded in the writ petition. Such amendment is sought in the supplementary affidavit filed by the petitioner.

The petitioner’s prayer is allowed. Necessary corrections be incorporated in the writ petition.

The petitioner complains that though the respondents are raising construction in the plot in question, she is not aware as to whether the said plot has been acquired at all. No compensation has been received by the petitioner for the same. The petitioner seeks to submit a comprehensive representation before the concerned authority in this regard and prays for a direction upon the authority to consider the representation at the earliest.

It is submitted on behalf of the respondents that the 4th respondent be directed to consider the representation in accordance with law.

In view of the above, the writ petition is disposed of with liberty to the petitioner to submit a comprehensive representation before the 4th respondent within one week from date. The 4th respondent is directed to consider and dispose of the representation within six weeks from the date of receipt thereof upon affording reasonable opportunity of hearing to all the interested persons including the petitioner, in accordance with law.

The decision taken by the authority shall be communicated to the petitioners within a week thereof.

It is made clear that this Court has not gone into the merits of the case and the concerned authority shall be at liberty to deal with the representation submitted by the petitioner independently and without being influenced by any observation which may have been made in this order.

With the aforesaid directions, WPA 12753 of 2023 is disposed of”.

6. Pursuant to the said direction of the Coordinate Bench dated June 26, 2023 the petitioner submitted a comprehensive representation dated **June 30, 2023, Annexure P-5 at page 37** to the writ petition.
7. The respondent no.6 after granting an opportunity of hearing had passed its impugned reasoned order which was communicated to the petitioner by the respondent no.6 through its communication dated **August 29, 2023, Annexure P-8 at page 48 to 50** to the writ petition. By passing the said impugned order the respondent no.6 has rejected the claim of the petitioner. Through the instant writ petition the petitioners have challenged the said impugned order passed by the respondent no.6 and prayed for the following reliefs:

“a. Grant leave to move the writ petition without serving upon the respondents.

b. Issue a writ of and/or in the nature of declaration by declaring that the acquisition of the 1-acre land, at Dag No. 871, Khatian No. 285, Mouza-Kiriteswari, P.S. Nabagram, District- Murshidabad, is procedurally ultra vires and thus, void.

c. Issue a writ of and/or in the nature of declaration by declaring that requisition/ acquisition of land of petitioners under special statute being the West Bengal Land (Requisition And Acquisition) Act, 1948 was done by playing fraud on statute.

d. Issue a writ of and/or in the nature of mandamus, directing the respondent authorities by setting aside the reasoned order dated August 29, 2023 passed by the Executive Engineer of Mursidabad, Division.

e. In alternative issue of writ of and/or in the nature of mandamus directing the responding authorities to determine the entitlement of the petitioner in terms of prevailing now for

acquisition of land and pay compensation and other benefits for which they are entitled to in terms of the law prevailing.

f. Issue a writ of and / or in the nature of Certiorari to produce records of the case before this Hon'ble Court for just and proper adjudication;

g. Issue Rule Nisi in terms of prayers a), b), c), d), e) and f) above.

h. Pass an interm order by directing the respondents to produce records relating to acquisition of land and serve a copy upon the petitioner.

i. Pass an Ad-interim order in terms of interim prayers made herein above.

j. Costs and other incidentals thereto.

k. And/or to pass such other or further or further order or order as Your Lordships may deem fit and proper”.

Submission:

8. Mr. Samim Ahammed, learned counsel appearing for the petitioners submits that, the principle challenge of the petitioners are as follows:

- (i) While initiating the process for requisition and acquisition under the said 1948 Act the requisite notice was not served upon the petition no.1, who was one of the owners of the subject land at the relevant point of time, following the specific statutory provisions laid down under the said 1948 Act, hence non-compliance of the said statutory provisions vitiated the said requisition and acquisition proceeding and consequently the subject land should be returned to the petitioners and***
- (ii) The scope and object of the 1948 Act was promulgated to meet an immediate and urgent requirement of the State. The provisions under the said 1948 Act were to be exercised for***

immediate requirement of the State. In the instant case though the requisition and acquisition case was initiated in the year 1981-82, the State sought to take possession of the land in the year 2023 when the plaque was posted on the subject land, Annexure P-7 at page 47 to the writ petition, therefore, the purpose of invocation of the provisions of the said 1948 Act stood vitiated and the entire requisition and acquisition proceeding consequently stands vitiated.

9. Referring to the bunch of documents disclosed by the State through its report, Mr. Samim Ahammed, learned counsel for the petitioners submits the documents would show that requisite notice was not served upon the petitioner no.1 or her deceased husband who were the owners of the subject land at the relevant point of time following the mandatory provisions of service of notice in the mode and manner it was required to be served. In absence of compliance of such mandatory provisions under the said 1948 Act the entire requisition and acquisition proceeding stands vitiated. In support, he has relied upon two decisions of this Court, which are:

- (i) ***In the matter of: M/s. Bhinashar Finance (P) Ltd. & Anr. Vs. State of West Bengal & Ors., reported at (1991) SCC OnLine Cal 246: (1992) 1 Cal LJ 222: (1991-92) 96 CWN 505 and***
- (ii) ***In the matter of: Sailendra Nath Pal vs. State of West Bengal, reported at (2010) SCC OnLine Cal 812.***

10. Referring to the object clause from the said 1948 Act learned counsel for the petitioner submits that only in April, 2023 with the placement of the plaque at page 47 to the writ petition the State authority intended to take

possession in April, 2023 whereas the proceeding was initiated in 1981-82. Therefore, there was no immediate requirement of the land. The invocation of the provisions of 1948 Act was illegal and arbitrary. 1948 Act was kept alive by legislature till **March 31, 1997**. Thereafter the steps were required to be taken under the **Land Acquisition Act, 1894** (Act I, 1894) (for short, the said 1894 Act).

11. Mr. Ahmed further submits that the records disclosed by the State could not and did not confront the contention of the petitioner as mentioned in the writ petition on oath. Since there was no confronting material disclosed by the State that the notice of the relevant requisition and acquisition proceeding was served upon the petitioner and her deceased husband being the owners of the subject land following the due process of law, it should be presumed in law that the statutory mandate for serving notice upon the owners of the land was not followed and accordingly the entire requisition and acquisition proceeding should be declared as bad in law and void.
12. Mr. Ashim Kumar Ganguly, learned Additional Government Pleader appearing for the State respondents has referred to the report filed by the State and the records disclosed therewith. At the outset, learned Additional Government Pleader without admitting the fact that on February 18, 1978 the deed of gift was executed by Nani Bala in favour of the petitioner no.1 and her deceased husband, submits that even if, the said deed of gift was executed and the petitioner no.1 with her deceased husband had become the owners of land in the year 1978 till the time of payment of compensation in 1985 they did not record their name in the relevant land record as owners of the property and the determined compensation in respect of whole of the

land acquired was paid and disbursed upon apportionment to the actual land losers on record.

13. Learned Additional Government Pleader referring to an order (form 1) at page 4 of the report submits that the requisition and acquisition case was initiated in the year 1981-82 and the schedule thereto shows the subject plot no. 871. On proper scrutiny of the record of right prepared at the relevant point of time at the stage of attestation dated July 12, 1977, it appeared that Nani Bala was the owner of 1.83 acre of land along with her full share 10,000 pertaining to subject plot no.871. Referring to the notification dated April 19, 1963 published in the Calcutta Gazette on May 9, 1963, Learned Additional Government Pleader submits that the necessary notification under **Sub-Section 1 to Section 3 of 1948 Act** was duly published in compliance of the statutory provisions which contained, inter alia, subject **Plot No.871**. The State has produced copies of several Form-13 in connection with the said requisition and acquisition case showing the necessary declaration was published in the Calcutta Gazette on March 18, 1983. Form-13 further shows that, the actual land losers including Nani Bala being aggrieved with the quantum of compensation determined initially preferred the necessary proceeding for enhancement thereof and the Jurisdictional Civil Court at Murshidabad passed its order dated May 26, 1989 and enhanced the compensation in accordance with law in respect of the subject plot no.871 in favour of Nani Bala and Nani Bala had received the said enhanced compensation. Referring to Form-21 from the records learned additional government pleader submits that, the beneficiaries of the

acquired land, inter alia, the subject plot no.871 had received the possession thereof on October 18, 1982.

14. Mr. Ganguly, learned Additional Government Pleader then refers to an order dated January 17, 2022 passed by the respondent no.7 which is also part of the record to show that one Dilip Kumar Bhattacharjee the brother-in-law of the petitioner no.1 filed a writ petition being WPA 15572 of 2021. The writ petition, inter alia, was disposed of by a Coordinate Bench on November 26, 2021 when the Coordinate Bench directed the respondent no.7 to dispose of the representation of Dilip Kumar Bhattacharjee dated March 4, 2021.
15. Pursuant to the direction of the Coordinate Bench, the respondent no.7 had dealt with the issue in its reasoned order dated January 17, 2022. The said reasoned order shows that the respondent no.7 while passing the reasoned order had granted opportunity of hearing to all concerned and then upon careful consideration of all the land records and materials before it passed the reasoned order. The reasoned order shows that Dilip had specifically taken the point the subject land being plot no.871 along with other were never acquired. Dilip also prayed for return of possession of land in question which included the said plot no.871 so that he could enjoy the peaceful possession thereof. The respondent no.7 held that the requisition and acquisition proceeding was strictly in accordance with law. Under Section 4 of the said 1948 Act necessary gazette notification dated March 10, 1983 was published. After acquisition of the land including the subject plot no.871, the same was delivered to the Sericulture Department who was the beneficiary of the acquired land. Most curiously the respondent no.7 came to a finding that the other writ petitioners along with Dilip had received the

modified compensation in terms of the modified award. Ultimately the respondent no.7 came to a conclusive finding that the plots including the subject plot no.871 was acquired as per extent rules and by following its statutory procedures.

16. Relying upon the said reasoned order dated January 7, 2022 passed by the respondent no.7 Learned Additional Government Pleader further submits that upon a detailed fact finding enquiry it was held that plot no.871 was acquired in accordance with law. In the light of the facts of the instant case he further submits that record shows Nani Bala has also received compensation under the modified award who is the predecessor-in-interest of the petitioners.
17. The learned Additional Government Pleader further submits that, the petitioner has failed to demonstrate that no notice was served upon the petitioner no.1 and her deceased husband individually under **Sub-Section 1 to Section 3** of the **1948 Act**, which is required to be done under the statute in the manner specified therein.
18. Mr. Ganguly, learned Additional Government Pleader further submits that all along the claim of the petitioner in principle was for compensation but in this writ petition the petitioner has argued that in failure to comply with the mandatory statutory provisions, the acquisition of plot no0.871 was bad in law. The order of the respondent no.7 dated January 7, 2022 after a detailed fact finding enquiry decided that there is no procedural infirmity found while acquiring plot no.871 along with other plots. He submits that, this writ petition is a clear case of deliberate misrepresentation on the part of the petitioners before this Court and a chance taking litigation. The writ petition

is otherwise devoid of any merit. Accordingly the learned additional government pleader prays for dismissal of this writ petition.

Decision:

19. After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, the petitioners admitted that Nani Bala was the predecessor-in-interest of the petitioners in respect of the plot no.871.

20. On a brief analysis of the records produced by the State through its report, the following have emerged:

(a) The record of right of contemporaneous time during the acquisition proceeding or thereafter even in the year 1977 do not show that the name of the petitioner no.1 or her deceased husband was recorded as owner of plot no.871.

(b) The Gazette Notification No.639 EA-3M/37/63 dated April 19, 1963 was published in the Calcutta Gazette on May 9, 1963 in exercise of power under Sub-Section 1 to Section 3 of the 1948 Act.

(c) Schedule to the said Gazette Notification specified the subject plot no.871.

(d) Following the said gazette notification an order (form 1) was issued on July 7, 1982 by the Additional District Magistrate (LR, Murshidabad) directing the concerned land owners to vacate possession on July 15, 1982. The schedule to the said order contained subject plot no. 871.

(e) Form-13 and Form 13A issued under Section 11 of the 1894 on or about December 19, 1985 show that award was determined and the owners

of the plots including Nani Bala received the awarded compensation, which was paid by the State authority through cheque.

(f) Challenging the compensation determined initially Nani Bala filed proceeding before the Jurisdictional Civil Court, Murshidabad. By a judgment dated May 26, 1989 the compensation was enhanced and subsequently Nani Bala received the same.

(g) Form-21 issued in connection with the said requisition and acquisition case shows on October 18, 1982 possession of the acquired land was delivered to the beneficiary thereof in terms of the declaration dated July 17, 1982. The description of the land acquisition map after completion of the acquisition proceeding shows the subject plot of land being plot no.871.

(h) The report issued under the seal and signature of the BL & LRO dated January 6, 2022 shows that the entire land acquisition proceeding was completed on February 12, 2001 which, inter alia, includes the subject plot no.871.

21. In course of the hearing learned counsel for the petitioner has produced a copy of the writ petition filed by the petitioner no.1 alone WPA No.12753 of 2023, the same has been taken on record. **Paragraph 4** of the writ petition has pleaded that the Public Health Engineering Department, PHE has already encroached a part of the said plot no.871 purportedly in absence of any requisition and acquisition notice duly served upon the petitioner and her son and daughter. In the light of the said pleading the petitioner no.1 prayed for removal of illegal encroachment from her land being plot no.871. The cause of the said writ petitioner was relegated for consideration before

the respondent no.6 by Coordinate Bench through its order dated June 26, 2023 and the impugned order was passed by respondent no.6 dated **August 29, 2023, Annexure P-8 at page 48** to the writ petition.

22. The record, as already discussed above also shows that, at the instance of Dilip Kumar Bhattacharjee the validity and legality of the requisition and acquisition proceeding in respect of the **self same plot** being subject **plot no.871** had already received judicial attention before this Court. Upon a detailed fact finding enquiry the respondent no.7 in its said order dated **January 7, 2022** came to a specific finding that there was no infirmity in respect of the requisition and acquisition proceeding with regard to the subject plot no.871. The learned additional government pleader appearing on behalf of the State respondents submits that, the said finding of the District Magistrate, Murshidabad dated January 7, 2022 has achieved its finality and conclusion in respect of the said plot no.871, as no further challenge was carried out from the said order dated January 7, 2022. The acquisition proceeding was completed few decades back. Still the petitioners with repetitive attempts trying to reopen the issue which has already been decided conclusively. This is not permitted in law.
23. The admitted fact is that even if the petitioner no.1 with her deceased husband became the owner under the said deed of gift executed in the year 1978, they chose not to rectify the land records in their favour showing their ownership. In absence of such recording in the land record the State authority rightly proceeded and disbursed the proportionate compensation in favour of Nani Bala and Nani Bala accepted the same including the modified compensation. Nani Bala never pointed out that she had already

gifted plot no.871 or any part thereof in favour of the petitioner no.1 and her deceased husband. The moment gazette notification was published, the requisition of plot no.871 was in the deemed knowledge of the world at large including the petitioners. The petitioner being the alleged owner of the subject plot was under the deemed knowledge of the notice published in the Calcutta Gazette in connection with the said requisition and acquisition case of 1981-82. The old records of few decades, as discussed above, gives rise to a presumption that the procedures laid down under the 1948 Act were followed unless otherwise rebutted by the petitioners. There is no such rebuttal on record. Even if, there is no conclusive evidence of service of individual notice according to the statutory provisions upon the petitioners no.1 or her deceased husband, in the light of the existing records such contention of the petitioners gives rise to a triable issue and without a proper trial of the issue no conclusion can be arrived at.

24. When one becomes owner of an immoveable property, the law cast an obligation upon him/her to record his/her name in the proper land records as owners of the property. In the event of acquisition of such land, the State always proceeds on the basis of the existing land records to find out the actual owners of the land. Notices are issued and widely published in newspaper and gazette. Objections from any such **owner** or **interested party** on the land are invited. The notice of requisition, the declaration of acquisition, notice inviting objection and declaration of acquisition in the instant case are all post execution of the said deed of gift. The record disclosed in this proceeding shows that the State authority had proceeded on the basis of the available land records then, which admittedly did not

contain the names of the petitioners but contained the name of Nani Bala the predecessor-in-interest of the petitioner as the recorded owner of plot no.871. The State, therefore, has rightly acknowledged Nani Bala as the owner of plot no.871 and paid the compensation. Since the petitioners have failed to perform their statutory obligation by not recording their own names in the relevant land records, subsequently the petitioners cannot blame the State authority and foist any liability upon the State. Once the compensation had been paid to the recorded owner of the land and the land acquisition proceeding stands concluded, no further liability cannot be foisted upon the State claiming further compensation.

25. It is the obligation of the land owner to record its name in the land records immediately after the land is owned by the owner. Though a record of right cannot confer title but definitely it is a prima facie evidence with regard to the existence of the land owner or a person having some right and interest on the land. When the land owner fails to comply with its obligation and duties and does not record its name in the land records immediately after acquiring right, interest and/or title on the land, it is not the obligation of the State to recognize such persons as land owner or a person having any right or interest on the land. In the facts of this case admittedly the petitioner had not entered their names in the relevant land record in respect of plot no.871. The petitioners have not produced any iota of evidence except the said registered gift deed that the petitioners have any right, title or interest on plot no.871. On the contrary, at the relevant point of time when the land acquisition proceeding was concluded, possession was handed over to the beneficiary of the acquired land and compensation was paid to the

land losers, all along the name of Nani Bala was there in the existing land records and accordingly State has paid compensation including the enhanced compensation to Nani Bala who was the predecessor-in-interest of the petitioners in respect of plot no.871. There has been no erroneous exercise of power on the part of the State. There was no scope even to serve notice upon the petitioners personally or otherwise in compliance of Section 3 and other relevant provisions of the said 1948 Act, as the names of the petitioners were never there in the contemporaneous land records. Thus, there was no procedural infirmity in the requisition and acquisition proceeding in respect of subject plot no.871.

26. ***In the matter of: M/s. Bhinashar Finance (P) Ltd. & Anr. (supra)*** the name of the land owner was **mutated** in the mutation record. The name of the land owner being the writ petitioner therein was available before the State authority from the contemporaneous land records during the acquisition process. Hence, the Coordinate Bench had held that the relevant notice which was required to be served in strict compliance of Section 3 of the 1948 Act upon such land owners was not served and the requisition and acquisition proceeding was held to be bad. In the instant case, the name of the petitioners was never there in the contemporaneous land records during the acquisition proceeding. On the contrary Nani Bala whose name was available in the contemporaneous land records in respect of subject plot no.871, who was the predecessor-in-interest of the petitioners, had duly been paid the compensation. As the names of the petitioners were not available before the State as owner of plot no.871, there was no scope to serve any notice under Section 3 of the Act. Thus, the ratio laid down ***In the***

matter of: M/s. Bhinashar Finance (P) Ltd. & Anr. (supra) is of no application in the facts of this case.

27. ***In the matter of: Sailendra Nath Pal (supra)*** the existence of the land owner was there in the contemporaneous land records before the acquiring authority as their names were available in the contemporaneous land records but still the mandatory provisions under **Sub-Section 1 to Section 3** of the 1948 Act with regard to service of notice for requisition and acquisition was not complied with. Hence, in absence of compliance of such mandatory provisions the requisition and acquisition proceeding was held to be bad. In the instant case, the name of the petitioners were not available at all in the contemporaneous land records, therefore, there was no scope to serve any notice upon the petitioners in compliance of the mandatory provisions laid down under Section 3 of the 1948 Act. Nani Bala being predecessor-in-interest of the petitioners whose name was available in the relevant land records contemporaneously during the requisition and acquisition proceeding, had duly been paid compensation. Thus, the ratio of the judgment of the Hon'ble Division bench ***In the matter of: Sailendra Nath Pal (supra)*** will have no application in the facts of the instant case.
28. Since, the compensation had already been paid to Nani Bala the predecessor-in-interest of the petitioners in respect of the subject plot no.871, there is no scope and question for making any further compensation to the petitioners in respect of the said acquired land being plot no.871.
29. In view of the foregoing reasons and discussions, this Court is of the firm and considered view that, this writ petition is devoid of any merit.

30. Accordingly this writ petition **WPA 24118 of 2023** stands **dismissed**,
without any order as to costs.
31. Interim order, if any, stands vacated.

(Aniruddha Roy, J.)