

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

**HEARD ON: 07.07.2025
DELIVERED ON: 07.07.2025**

**PRESENT:
THE HON'BLE MR. JUSTICE GAURANG KANTH**

WPA 28042 of 2024

DINESH ROY & ORS

VERSUS

THE STATE OF WEST BENGAL & ORS.

Appearance:-

Mr. Partha Sarathi Bhattacharyya, Sr. Adv.
Mr. Raju Bhattacharyya, Adv.

... .. for the petitioners

Mr. Piush Chaturvedi, Sr. Adv.
Md. Nauroz Rahber, Adv.
Mr. Muhammad Jawwad, Adv.

... .. for the Municipality
[Dalkhola Municipality]

Mr. Santanu Kumar Mitra, Sr. Govt. Adv.
Mr. Subhabrata Das, Adv.

... .. for the State

JUDGMENT

Gaurang Kanth, J. :-

1. Affidavit-of-service filed in court today is taken on record.
2. The Petitioners, by way of the present writ petition, challenge the action of the respondent–Dalkhola Municipality in establishing the Dalkhola Children Park on their land without complying with the mandatory procedures prescribed under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter *the 2013 Act*), and without providing them any compensation or affording an opportunity of hearing. The Petitioners contend that such action amounts to a violation of their fundamental and statutory rights.

3. The Petitioners state that their predecessor-in-interest, Smt. Abalabala Roy, was declared the rightful owner of the subject land by judgment dated 17.02.1998 in Title Suit No. 183 of 1992, passed by the learned Munsif at Islampore, Uttar Dinajpur. In the said judgment, the vesting order issued by the State Government in respect of the subject land was declared illegal and not binding on Smt. Roy. According to the Petitioners, the judgment has attained finality, having never been challenged. Pursuant to the said judgment, the Petitioners initiated *Execution Case No. 03 of 2024*, which is still pending before the appropriate forum. Further, by order dated 06.06.2016 in *O.A. No. 1112 of 2006*, the West Bengal Land Reforms and Tenancy Tribunal directed correction of the land records in accordance with law. However, this order remains unimplemented to date. Despite these pending proceedings, the respondent–Dalkhola Municipality commenced steps to transfer and utilize the land for the establishment of *Dalkhola Children Park*. The Petitioners, through their learned counsel, state that they lodged a formal complaint dated 11.09.2024 with the Board of Councillors of the Dalkhola Municipality and also approached the District Magistrate and Additional District Magistrate, Uttar Dinajpur, raising objections to the illegal use of their land and requesting fair compensation under the 2013 Act. However, no action has been taken in response. In light of the continued inaction and ongoing use of their land, the Petitioners have approached this Hon'ble Court by way of the present writ petition.

4. Learned counsel for the Petitioners further submits that although *Execution Case No. 03 of 2024* is still pending, the Petitioners are now confining their relief to compensation in accordance with the provisions of the 2013 Act.

5. Learned senior counsel for the respondent–Dalkhola Municipality opposes the petition and submits that the Petitioners have approached this Court by suppressing material facts. It is contended that, vide order dated 06.06.2016 in *O.A. No. 1112 of 2006*, the West Bengal Land Reforms and Tenancy Tribunal, directed the B.L. & L.R.O., Karandighi to dispose of the Petitioners' representation in accordance with law. In

compliance thereof, the B.L. & L.R.O. passed a final order dated 11.07.2024, rejecting the Petitioners' application for mutation of the land in their favour. The learned senior counsel submits that the Petitioners, in the body of the writ petition, misrepresented that the matter was still pending before the B.L. & L.R.O., concealing the fact that a final order had already been passed. A copy of the said order has been placed before this Court by the respondent–Municipality. It is further contended that the land in question had already vested in the State Government and was thereafter lawfully transferred to the Dalkhola Municipality for the purpose of constructing a public utilitynamely, a children's park. The Municipality is merely acting upon the said transfer. The respondent also submits that the Petitioners have an efficacious alternative remedy and that the writ petition raises complex and disputed questions of factparticularly with respect to title which are not amenable to adjudication in writ proceedings under Article 226 of the Constitution. It is also urged that the Petitioners' simultaneous pursuit of execution of the civil court decree and claim for compensation under the 2013 Act is mutually inconsistent, and such reliefs cannot be sought concurrently.

5. The learned senior Government counsel appearing for the State–respondents submits that the land in question has been validly vested with the State and is duly recorded in the Collector's Khatian. It is further submitted that the State Government, being the rightful owner, has lawfully allocated the said land to the Dalkhola Municipality for public use.

6. This Court has heard the arguments advanced by the learned senior counsels for the respective parties and has perused the pleadings as well as documents on record.

7. Upon careful consideration of the materials placed on record, it is evident that there exists a serious and substantial dispute with regard to the title and ownership of the land in question. Both the Petitioner and the State claim ownership over the said parcel of land. While the State contends that the land is vested in it and was duly handed over to the

respondent-Municipality for the development of a children's park, the Petitioner, on the other hand, asserts ownership over the same land on the strength of a judgment dated 17.02.1998 passed in Title Suit No. 183 of 1992, wherein the civil court had purportedly recognized their title.

8. A perusal of the relevant land records, including the Khatian and other revenue entries, reveals that the possession of the land has continuously remained with the State authorities. There is no material on record to show that actual possession was ever delivered to the Petitioners pursuant to the said judgment. The entries in the Khatian and revenue records, which prima facie support the State's claim of possession, are matters requiring detailed appreciation. Therefore, the competing claims of ownership and possession between the Petitioner and the State give rise to a complex factual matrix, which cannot be resolved merely on the basis of affidavits and annexures filed in writ proceedings. Resolution of such disputes would necessarily require the parties to lead evidence, including oral and documentary proof, and a proper trial, which falls within the exclusive domain of the civil court.

9. It is well settled that the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India is primarily meant for enforcement of fundamental rights and other legal rights in cases where the facts are either undisputed or capable of determination without elaborate evidence. This jurisdiction is not intended to be invoked for adjudicating intricate questions of civil title, ownership, or possession that involve disputed facts. The nature of relief sought by the Petitioner in the instant case, namely compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, presupposes lawful deprivation of property, which in turn rests on the assumption that the Petitioner was the rightful owner of the land. However, in the absence of a clear finding on title, which is hotly contested, such claim cannot be adjudicated summarily in a writ proceeding.

10. Moreover, it is not in dispute that the Petitioner has already instituted execution proceedings being Execution Case No. 03 of 2024 before the competent civil court for recovery of possession of the land in question pursuant to the judgment in Title Suit No. 183 of 1992. Thus, on one hand, the Petitioner is seeking to enforce possession of the land through execution of a civil decree, and on the other hand, simultaneously claims compensation under the land acquisition law by asserting that the State has taken over possession. The two stands are mutually inconsistent and cannot co-exist.

11. For the reasons stated above, this Court holds that the issues raised in the present writ petition involve seriously disputed questions of fact which cannot be effectively adjudicated in the exercise of writ jurisdiction under Article 226 of the Constitution. The writ petition is, accordingly, not maintainable. The Petitioner, however, shall be at liberty to pursue his remedies before the appropriate forum in accordance with law.

12. Accordingly, the present writ petition is dismissed as not maintainable.

13. Since no affidavits have been filed by the respondents, the allegations made in the writ petition shall not be deemed to have been admitted.

14. There shall be no order as to costs.

15. Let urgent Photostat certified copy of this judgment if applied for, be supplied to the parties on usual undertaking.

(Gaurang Kanth, J.)

AKD