

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

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 2421 of 2023

**Madhu Das
Vs.
The State of West Bengal & Ors.**

For the petitioner	: Mr. Subhasish Misra Mr. Satyajit Paul
For NHAI	: Ms. Supriya Singh
For the State	: Mr. Hirak Barman
Heard on	: 07.01.2025
Judgement on	: 07.01.2025

PARTHA SARATHI SEN, J.:

1. In this writ petition as filed under Article 226 of the Constitution of India, the writ petitioner has prayed for issuance of appropriate writ against the respondent no. 2 for cancellation and/or for quashing and/or for setting aside the order as passed by the respondent no. 2, i.e., the District Magistrate & Collector, Cooch Behar which was communicated to the writ petitioner vide memo dated 20.09.2023 whereby and whereunder the said respondent

no. 2 had cancelled the patta of the writ petitioner in respect of RS Plot No. 1110 in Mouza- Kholta under J.L. No. 27, P.S. Pundibari, Dist- Cooch Behar depriving the writ petitioner from getting adequate compensation under the National Highways Act, 1956 (hereinafter referred to as the 'said Act of 1956').

2. In course of his submission Mr. Misra, learned advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to page no. 20 of the instant writ petition being a copy of a notice under Section 3G of the said Act of 1956. It is submitted by Mr. Misra that from the copy of the said notice and its annexures, it would reveal that the name of the writ petitioner transpires in respect of plot no. 1110.
3. It is further submitted by Mr. Misra that the writ petitioner was served with a letter dated 13.05.2022 by the Special Land Acquisition Officer, Cooch Behar regarding joint field enquiry report wherein the writ petitioner duly participated. It is contended further that since the writ petitioner was deprived of the compensation on account of acquisition of his land in respect of the said plot of land, the writ petitioner approached this Court by filing a writ petition being WPA 354 of 2023 wherein a co-ordinate Bench by its order and judgment dated 01.03.2023 directed the respondent no. 2 herein to pass a reasoned order after giving an opportunity of

hearing to the writ petitioner with regard to the entitlement of compensation of the writ petitioner.

4. It is submitted by Mr. Misra that pursuant to the earlier direction dated 01.03.2023, the District Magistrate, Cooch Behar, the respondent no. 2 herein passed a reasoned order which was communicated to the writ petitioner under cover of a letter dated 20.09.2023 which is under challenge in the instant writ petition.
5. In course of his submission, Mr. Misra, learned advocate for the writ petitioner contends that from paragraph nos. 6 and 7 of the impugned reasoned order, it would reveal that the writ petitioner's genuine claim for compensation was negated by the respondent no. 2/authority holding alleged violation of Section 49 (1A) of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as the 'said Act of 1955') at the instance of the writ petitioner and/or his father. It is submitted by Mr. Misra that the grounds for not considering the petitioner's genuine claim is vague and not in accordance with law. It is thus contended that the instant writ petition may be allowed in terms of the prayer as made in the writ petition.
6. In course of his submission, Mr. Misra places his reliance upon the reported decision of **Kazi Moinuddin Kazi Bashiroddin & Ors. Vs. The Maharashtra Tourism Development Corporation & Anr.** reported in **2022 LiveLaw (SC) 827**.

7. Per contra, Mr. Barman, learned advocate appearing on behalf of the respondent/State draws attention of this Court to the report supported by affidavit as submitted on behalf of the respondent no. 2. It is contended by Mr. Barman that from the said report, it would reveal that before passing the reasoned order under challenge, opportunity of hearing was given to the writ petitioner as directed in the earlier round of litigation and while passing the reasoned order, the respondent no. 2 rightly found complete violation of the provision of Section 49(1A) of the said Act of 1955 and thus, the respondent no. 2/authority is perfectly justified in cancelling the patta in the name of the writ petitioner.
8. Mr. Barman further argues that since the writ petitioner has got no title over the relevant plot of land which was acquired under the said Act of 1956, the writ petitioner is not entitled to any compensation and/or any relief as prayed for in the instant writ petition.
9. In his next fold of submission, Mr. Barman further argues that in a judicial review, this writ Court is not supposed to act as an appellate court and, therefore, the reappraisal of the materials and/or evidence as considered by the respondent no. 2 is impossible.
10. This Court has meticulously gone through the entire materials as placed before this Court. This Court has also perused the reported

decision of **Kazi Moinuddin Kazi Bashiroddin & Ors. (supra)** as cited by the side of the writ petitioner. This Court has given due consideration over the submissions of the learned advocates for the contending parties.

11. Before entering into the merit of the case, this Court proposes to look to the cardinal principles regarding issuance of writ of certiorari since by filing the instant writ petition, the writ petitioner has practically prayed for issuance of a writ of certiorari for quashing of the findings of a proceeding under Section 49(1A) of the Act of 1955 as conducted by the respondent no. 2 herein.
12. In the reported decision of **Central Council for Research in Ayurvedic Sciences Vs. Bikartan Das & Ors.**, reported in **2023 SCC Online SC 996**, the Hon'ble Apex Court had dealt with two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly, when it comes to issue the writ of certiorari. The relevant portions of the said reported decision of **Central Council for Research in Ayurvedic Sciences (supra)** are as follows:-

“51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the

order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

52. *The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction there under can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.*

53. *The essential features of a writ of certiorari, including a brief history, have been very exhaustively explained by B.K. Mukherjea, J. in T.C. Basappa v. T. Nagappa, AIR 1954 SC 440. The Court held that a writ in the nature of certiorari could be issued in 'all appropriate cases and in appropriate manner' so*

long as the broad and fundamental principles were kept in mind. Those principles were delineated as follows:

“7. ... In granting a writ of ‘certiorari’, the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous, but does not substitute its own views for those of the inferior tribunal

8. The supervision of the superior court exercised through writs of certiorari goes on two points, as has been expressed by Lord Sumner in *King v. Nat Bell Liquors Limited* [[1922] 2 A.C. 128, 156]. One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise.

9. Certiorari may lie and is generally granted when a court has acted without or in excess of its jurisdiction.”

54. Relying on *T.C. Basappa (supra)*, the Constitution Bench of this Court in the case of *Hari Vishnu Kamath (supra)*, laid down the following propositions as well established:

“(1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior court or tribunal acts without jurisdiction or in excess of it, or fails to exercise it.

(2) Certiorari will also be issued when the court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous.”

13. Keeping in mind the proposition of law as discussed in the reported decision of **Central Council for Research in Ayurvedic Sciences (supra)** if I look to the entire proceeding as conducted by the respondent no. 2 herein it appears that before passing the reasoned order the respondent no. 2 had given due opportunity of hearing to the writ petitioner and thus it cannot be said that the principle of natural justice has been violated at the instance of the respondent no. 2 while passing the impugned order.
14. It further appears to this Court that prior to passing the reasoned order, the respondent no. 2 duly assessed all the materials as placed before him and come to a logical finding. As rightly pointed out by Mr. Barman, learned advocate for the State that sitting in a judicial review, a writ court is not supposed to act as an appellate court and, therefore, it is outside the ambit and scope of a writ court to reassess the evidence and/or material as considered by the respondent no. 2 while coming to a logical conclusion in the said proceeding.
15. No materials have been placed before this Court that the finding of the respondent no. 2 is erroneous on account of non-consideration

of the relevant materials and/or consideration of some materials which are extraneous in nature.

16. This Court is conscious that a writ court is not supposed to substitute its own views, even if, two views are possible.
17. In considered view of this Court, the reported decision of ***Kazi Moinuddin Kazi Bashiroddin & Ors. (supra)*** as cited from the side of the writ petitioner is of little relevance in the case in hand since the writ petitioner's very right to seek compensation has become redundant on account of cancellation of patta under Section 49(1A) of the said Act of 1955.
18. This Court thus considers that the writ petitioner has miserably failed to establish his constitutional right as enshrined under Article 300A of the Constitution of India.
19. Accordingly, the instant writ petition being **WPA 2421 of 2023** is devoid of any merit and is thus dismissed.
20. There shall, however, be no order as to costs.
21. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)