

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

FMA 1459 of 2025
IA No: CAN 1 of 2025

Sri Promod Choudhury alias Pramod Chowdhury
Vs.
State of West Bengal and others

For the appellant : Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal,
Mr. Samrat Chakraborti, Advs.

For the State : Mr. Soumitra Bandyopadhyay, Snr. Govt. Adv.,
Mr. Priyabrata Batabyal, Adv.

For the NHAI : Ms. Manika Roy,
Ms. Ankita Chowdhury,
Mr. Atanu Sur, Advs.

Heard on : 01.04.2026

Judgment on : 01.04.2026

Sabyasachi Bhattacharyya, J.:-

1. Affidavit-of-service filed today be kept on record.
2. As the appeal involves short questions and since all the relevant papers are before us, we take up the appeal itself for adjudication along with the connected application.

3. In view of affidavits not being invited, it is deemed that none of the allegations made in CAN 1 of 2025 are admitted by any of the respondents.
4. The present appeal arises out of a judgment passed in WPA No. 9971 of 2023. The genesis of the issue between the parties is a representation made by the appellant before the respondent-authorities staking claim to compensation with regard to acquisition by the State for the requiring body, that is, the National Highway Authorities, in respect of R.S. Plot No. 1072 (L.R. Plot No. 804), Police Station: Kotwali, Mouza: Paschim Bhatjangla, District: Nadia.
5. Learned counsel for the appellant submits that the name of the appellant was clearly depicted in the concerned records of rights in respect of the subject plot all along, along with the other co-owners. However, despite the same, the representation of the appellant seeking compensation was not being considered, prompting the appellant to move a writ petition before this Court, which culminated in an order directing the respondent authorities to consider the representation of the appellant.
6. However, upon such consideration, vide Order No.10 dated February 02, 2023, the Competent Authority came to the conclusion, apparently on the basis of a joint field enquiry report, that the land of the appellant is “beyond the alignment of acquisition” for widening of national highway in connection with LA Case

No.37/LA/NHAI/Kri/10-11 and that it was revealed from the form 2B that in the said LA case, 0.125 acre of land was acquired in Plot No. 1072 (RS)/804(LR) and C.C. Voucher of the said Mouza reflected that the compensation of the total area of acquired land was duly paid and was received by the concerned awardees.

7. Learned counsel appearing for the appellant submits that the Competent Authority proceeded on the basis of a report authored by the B.L. & L.R.O without referring the dispute under Section 3H(4) of the National Highways Act, 1956 (for short “the 1956 Act”).
8. It is argued that the learned Single Judge affirmed such order on similar lines, by relying on the report authored by the B.L. & L.R.O.
9. Upon hearing learned counsel for the parties, we find that the premise of Order No.10 dated February 02, 2023 passed by the Competent Authority, which was assailed before the writ court, was two-fold. First, that from an enquiry report, it was reflected that the appellant’s land was beyond the alignment of acquisition. Secondly, that the compensation of the total area acquired was duly paid and received by the concerned awardees.
10. Insofar as the joint field enquiry report is concerned, the same was apparently authored by the concerned B.L. & L.R.O.
11. However, this is a clear instance where a *prima facie* case has been made out by the appellant with regard to his co-ownership of the concerned plot of land, which is borne out from the annexures to the

interlocutory application filed in this appeal (which were also placed before the writ court), in particular, at pages-43 and 45, which indicate that along with others, the name of the appellant was also recorded as one of the owners of Plot No. 1072 in the records-of-rights.

12. If a dispute is raised as to apportionment of compensation under the 1956 Act, Section 3H(4) thereof categorically provides that the authority shall refer the matter to the principal court of original jurisdiction.
13. However, in the present case, the Competent Authority proceeded merely on the basis of a joint field enquiry report, without referring the matter to the appropriate statutory forum, that is, the principal civil court having original jurisdiction. The adjudication contemplated under Section 3H(4) is of a quasi-judicial nature, which is also borne out by the very fact that the said adjudication has been entrusted to a competent civil court and not to an executive officer.
14. Thus, the report of an official of the State could not be a substitute of such an adjudication.
15. Secondly, the very premise of the report, to the effect that the appellant's plot fell outside the alignment of acquisition, is bad in law, since the records of rights depict the appellant as one of the joint owners in respect of the subject plot and in the absence of any partition by metes and bounds, in the teeth of the admission that at

least a portion of Plot No. 1072 has been acquired, it cannot be said that a specific demarcated portion of the appellant was left out of such acquisition.

16. It is well-settled that every co-owner has right, title and interest over every inch of a joint property. Thus, there was no specific and exclusive demarcated “portion” belonging to the appellant in the concerned plot which could have been excluded if there was an acquisition of even a portion of Plot No. 1072, since in such case, the appellant, along with the other co-owners of such plot, would have equal right to compensation and to consequential apportionment of compensation accordingly.
17. Under the law, Section 3H(4) leaves no manner of doubt that any such dispute as raised by the appellant was required to be referred to the principal civil court having original jurisdiction. Having not done so, the order of the Competent Authority dated February 02, 2023 as well as the judgment of the learned Single Judge are vitiated by patent error of law.
18. Accordingly, FMA 1459 of 2025 is allowed on contest, thereby setting aside the impugned judgment dated July 07, 2025 passed in WPA No. 9971 of 2023 along with Order No. 10 dated February 02, 2023 passed by the Competent Authority under the N.H. Act, 1956 and Additional District Magistrate (LA), Nadia and directing the respondent no.3, that is, the Additional District Magistrate (Land

Acquisition), Nadia, also being the Competent Authority under the 1956 Act, to refer the dispute under Section 3H(4) of the National Highways Act, 1956 to the principal civil court having original jurisdiction to determine the matter.

19. Such reference shall be made at the earliest, positively within six weeks from the date of communication of this judgment to the said respondent. Upon such reference being made, the concerned civil court shall decide the reference as expeditiously as the business of the said court permits.
20. CAN 1 of 2025 is accordingly disposed of.
21. There will be no order as to costs.
22. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)