

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya**

**MAT No.1594 of 2025
IA No: CAN 2 of 2025**

**NEERAJ KUMAR
-versus-
THE UNION OF INDIA and others**

For the appellant	:	Mr. Saurab Guhathakurata, Ms. Tanuka Basu, Mr. Abhratanu Sarkar, Mr. Partho Proteem Das
For the Union of India	:	Mr. D. N. Ray, Snr. Adv. Mr. Guddu Singh, Adv.
For the State respondents	:	Mr. Supratim Dhar, Snr. Adv., Ms. Tuli Sinha
Heard on	:	22.03.2026 & 02.04.2026
Reserved on	:	02.04.2026
Judgment on	:	07.04.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred against the judgment dated September 11, 2025 passed by a learned Single Judge of this Court in WPA No.12843 of 2025, whereby the appellant's writ petition was dismissed, with the further direction on the respondent no.5-Authority to take immediate steps for removal of the encroachment over the subject-plot.
2. The appellant claims title on the basis of inheritance through his mother, who acquired title over the subject-plot, being CS and RS Plot No.2246,

corresponding to LR Plot No.2278, in Mouza – Dulia, PS – Sankrail, District – Howrah, by virtue of two sale deeds dated April 9, 2012 and October 27, 2014 respectively. The said plot is comprised of 11 Decimals of land. As per the case of the appellant, the name of the appellant's mother was recorded in respect of the subject-plot in the revenue records and that the appellant's mother constructed a G+4 storied building on the subject-property in terms of sanction plan obtained from the Howrah Municipal Corporation.

3. Subsequently, upon coming to know that the subject-property had been acquired, information was sought by the appellant's mother under Section 6 of the Right to Information Act, 2005, in response to which the Land Acquisition Authority informed that the said plot was acquired pursuant to a Gazette Notification under Section 4 of the Land Acquisition Act, 1894 (herein after referred to as "the LA Act") dated August 22, 1961 and a subsequent Declaration under Section 6 of the LA Act dated October 26, 1961.
4. After the appellant's mother met her demise on August 14, 2023, allegedly the men and agents of the Railway Authorities, along with local police, came to the subject property on February 13, 2024 and directed the appellant to stop construction on the said plot. The appellant gave a representation to the said Authorities seeking withdrawal of the stop work notice. Since no steps were taken thereon, the appellant preferred a writ petition bearing WPA No.11409 of 2024 which was disposed of by an order dated June 20, 2024, directing the respondent no.5, namely the Divisional Engineer (East), South-Eastern Railway, Kharagpur to consider and decide the representation of the appellant dated March 20, 2024 in accordance with law. Pursuant to the same, *vide* order dated June 2, 2025, the respondent

no.5 turned down the appellant's representation and directed the appellant to vacate the suit property. Being thus aggrieved, the appellant preferred WPA No.12843 of 2025 which was dismissed, giving rise to the present appeal.

5. Learned counsel for the appellant argues that the State as well as the Railway Authorities altered stands with regard to the alleged acquisition of the subject-plot.
6. First, it was contended that the acquisition was done by virtue of a notification under Section 4 of the LA Act, followed up by a declaration under Section 6 of the said Act dated October 26, 1961.
7. Subsequently, however, the respondents took a stand that the subject-plot had been requisitioned under Rule 75-A (1) of the Defence of India Rules, 1962 and thereafter acquired under sub-rule (2) of Rule 75-A.
8. Learned counsel appearing for the appellant argues that although initially CS Plot No.2246 was intended to be acquired under the LA Act and was mentioned in the Section 4 Notification, however, the said plot was omitted in the declaration under Section 6 of the said Act. Thus, there was no acquisition under the LA Act at all, which was purportedly for the purpose of construction of a link project, apparently for the Railways.
9. With regard to the purported requisition under the Defence of India Rules, although from the records it appears that the subject-plot was requisitioned, subsequently, only 0.02 Acre (2 Decimals) of the said plot was acquired under Rule 75-A (2). However, the purpose of such requisition and acquisition was the widening of roads and for taking earth by excavation of borrow pits for improvement of roads for military purposes and

straightening the Howrah-Mourigram Road. Such purpose, it is submitted, was unconnected with the Railway Authorities.

10. It is argued that the order of the Divisional Engineer (East), South Eastern Railway was cryptic, as was the judgment of the learned Single judge.
11. Furthermore, the learned Single Judge went beyond the scope of the writ petition filed by the appellant and, even without any prayer being made to that effect, directed the encroachment on the subject-plot to be removed, thereby going beyond the writ court's jurisdiction.
12. Learned senior counsel appearing for the State, on the other hand, places reliance on the materials on record and argues that there was due acquisition of the subject-plot for the requiring body, that is, the South Eastern Railway. It is contended that from the materials on record, it is not clear as to whether the documents regarding the LA case pertaining to the subject-plot were at all produced. However, it is argued that the requisition and acquisition under the Defence of India Rules was for the purpose of the defence forces, connected with the Railway Authorities.
13. Learned counsel appearing for the Railway Authorities adopts the arguments of the State respondent and places reliance on its affidavit-in-opposition to the writ petition.
14. Upon hearing learned counsel for the parties, the Court comes to the following findings:

(i) Whether there was valid requisition under the LA Act

15. From the materials produced before the writ court, which are a part of the records of the present appeal, it transpires that by a Notification under Section 4 of the LA Act, published in the month of August, 1961, CS Plot

No.2246 was intended to be acquired in full. However, from the declaration under Section 6 of the said Act dated October 26, 1961, which has been relied on by the State Authorities, it transpires that the said plot was omitted from the purview of acquisition. Conspicuously, the Section 6 Declaration omits CS Plot No.2246 altogether. From a statement in respect of the plots surrounding the subject-plot, which were acquired under Section 6 of the LA Act, annexed with the affidavit-in-opposition filed by the Railway Authorities in the writ petition, it is seen that although the particulars and dates of the Gazette Notification relating to the surrounding lands were mentioned, the chart/statement is silent insofar as CS Plot No.2246 is concerned. The column corresponding to the relevant Gazette Notification in respect of the said plot is vacant.

16. That apart, in the awards under Section 11 of the LA Act corresponding to the concerned Mouza, produced by the State, Plot No.2246 does not find mention.
17. Thus, in the final analysis, it is clear from the records produced by the respondents themselves that Plot No.2246 was never acquired under the LA Act at all, although the declared purpose of the said Notification relating to such acquisition was to build a link project, apparently having some connection with the Railway Authorities.

(ii) Whether there was acquisition of the subject-plot under the Defence of India Rules

18. It is seen from the documents produced by the State-respondent that CS Plot No.2246 was requisitioned under Rule 75-A (1) of the Defence of India Rules. However, from the order passed in connection with LA Case No.2 of

1943-44, it is found that a stretch of only 0.02 acres (2 decimals) out of the 11 decimals of land comprised in CS Plot No.2246 was acquired by the Central Government, for the purpose of strengthening the Howrah-Mourigram Road. The purpose of the requisition and acquisition, as evinced from Memorandum No.2779(M) dated April 3, 1943, which referred to Memo No.198 LA dated March 27, 1943, issued by the Superintending Engineer, Defence Works Circle, it transpires that the lands were required for widening roads and for taking earth by excavation of borrow pits for improvement of roads for military purposes. Thus, from the documents produced by the respondents, it appears that the acquisition was made for the improvement of roads for military purposes, specifically for strengthening the Howrah-Mourigram Road. Therefore there is no apparent nexus of the Railway Authorities with the purpose of such requisition/acquisition.

- 19.** Hence, the acquisition under the Defence of India Rules was restricted only to 2 decimals out of the total 11 decimals of land comprised in CS Plot No.2246 and such acquisition, as borne out by the records produced by the respondents, had no connection with the Railway Authorities.

(iii) Legality of the impugned order of the Divisional Engineer (East), South Eastern Railway (respondent no.5) dated June 2, 2025

- 20.** From the said order, it is seen that the respondent no.5 proceeded on the premise that the submissions of the Railway officials were sacrosanct. It was recorded that the said officials had submitted that the concerned plot was found in the records of the Government of West Bengal in the name of South Eastern Railway and that no document/evidence was found in the records that the said plot, corresponding to LR Plot No. 2278, was

“cancelled/relinquished/transferred/modified/erratum”, etc., in favour of the appellant. It was also recorded that the appellant failed to submit any authentic document and/or concerned Gazette Notification to show that the subject-plot was not finally acquired.

- 21.** There are two glaring errors in the said order. First, the respondent no.5 proceeded purely on the submission of the Railway Authorities, without citing any specific Gazette Notification or document to substantiate the claim of the Railway Authorities that the land was acquired for such authorities at all.
- 22.** Secondly, the respondent no.5 reversed the burden of proof, by casting the burden of proving the negative fact of no acquisition having taken place in respect of the subject-plot on the appellant himself. However, such negative fact could not be proved. Rather, it was the burden and initial onus of the Railway Authorities, who asserted that the subject-plot was acquired for them, to show that the subject-plot was ever acquired for their purpose. Hence, since the Railway Authorities/State failed to discharge such burden and initial onus, the conclusion in the impugned order dated June 2, 2025 was perverse.

(iv) Legality of the impugned judgment

- 23.** The learned Single Judge, after narrating the respective submissions of the parties, concluded straightaway that sufficient materials had been placed before the court, supported by affidavit, to establish that by virtue of a Gazette Notification dated 7th/8th May, 1943, the subject-plot was not only requisitioned but acquisitioned under Rule 75-A of the Defence of India Rules and was also handed over to the requiring body.

- 24.** The said finding is perverse, inasmuch as it did not take into account the materials on record, as extensively narrated above. It was overlooked that there was no acquisition of the subject plot under the LA Act, since the Declaration under Section 6 of the LA Act in respect of the concerned Mouza did not contain the subject plot, although the preceding Notification under Section 4 of the said Act had mentioned the said plot. Furthermore, the learned Single Judge did not take note of the fact that the acquisition under the Defence of India Rules was only in respect of 2 decimals of the subject plot and not the entire 11 decimals, of which the plot was comprised and that the purpose of the said acquisition was the development of a stretch of road for defence purposes, without any reference to the Railways. The Railways are not restricted to military activities but are utilized both for civilian and defence purposes. Moreover, every project of development of roads is not connected with the Railways, unless it specifically refers to such object.
- 25.** Secondly, the reasoning of the learned Single Judge is cryptic and merely mentions that from the materials it was sufficiently proved that the disputed plot was acquired for the Railways, without adverting to the exact materials on the basis of which such conclusion was drawn.
- 26.** The third error in the impugned judgment is that the learned Single Judge, on a writ petition filed by the appellant against the order of the respondent no.5, went beyond his charter as a writ court and directed respondent no.5 to take immediate steps for removal of the encroachment over the subject-plot. With respect, such direction was beyond the scope of the writ petition itself, since even the respondents had not made any such prayer at all.

CONCLUSION

- 27.** Thus, in terms of the above discussions, the impugned order of the respondent-authorities dated June 2, 2025, which was assailed before the writ court, is vitiated by perversity, being based on conjecture and on the basis of no documents at all as well as due to reversal of the burden of proof of acquisition contrary to law.
- 28.** Unfortunately, the impugned judgment of the learned Single Judge is tainted with the same flaws, having not considered the materials on record and having arrived at its conclusions on cryptic reasoning, going merely by the submissions of the respondents.
- 29.** Accordingly, the appeal succeeds.
- 30.** MAT No.1594 of 2025 is allowed on contest, thereby setting aside the impugned judgment dated September 11, 2024 passed in WPA No.12843 of 2025 as well as quashing the Order dated June 2, 2025 passed by the respondent no.5 *vide* No. W/L.Cell/WPA 11409 of 2024.
- 31.** Any action/steps, if taken pursuant to the impugned judgment of the writ court or the impugned decision dated June 2, 2025 taken by respondent no.5, are hereby quashed and stand reversed.
- 32.** It is hereby declared that the Railway Authorities have no manner of right, title or interest in respect of the subject-plot, being CS and RS Dag No.2246, corresponding to LR Dag No.2278 in Mouza – Dulia, PS – Sankrail, District – Howrah.
- 33.** In the event the subject plot stands recorded in the name of the Railway authorities, the corresponding entries in the records of rights shall be rectified by the appropriate authorities and the name of the appellant shall

be recorded in respect of the said plot upon being approached by the appellant for such rectification.

- 34.** CAN 2 of 2025 is accordingly disposed of in the light of the above observations.
- 35.** There will be no order as to costs.
- 36.** Urgent certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)