

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

BEFORE:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 26075 of 2025

**Gourhari Mondal & Ors.
Versus
The State of West Bengal & Ors.**

Appearance:
Mr. Partha Pratim Roy
Mr. Samrat Chakraborty
Mr. Saikat Gayen
... for the petitioners

Mr. Tapan Kumar Mukherjee, Ld. AGP
Mr. Somnath Naskar
... for the State

Heard on: 25.03.2026

Judgement delivered

In open Court on: 25th March, 2026.

The Court:-

1. The petitioners claim to be owners of several plots of land as specifically mentioned in paragraph 2 of the writ petition situated within Mouza Bagdanga, under Police Station Namkhana (now Fresergunj Coastal), which is alleged to have been utilised by the Executive Engineer, Kakdwip Irrigation Division without initiating any proceeding for acquisition.

2. Mr. Roy, the learned Advocate appearing for the petitioners submits that alleging inaction on the part of the respondent authorities, in not communicating any decision on the petitioners' representation petitioners approached this Court by filing a writ petition being WPA 1061 of 2023, which was disposed of on 12.06.2023 with a direction upon the respondent authorities to consider the representation of the petitioners and to communicate the decision within the time limit as specified thereunder. He submits that thereafter an estimate for direct purchase of 160 decimals of raiyati land was prepared by the authorities of Kakdwip Irrigation Division but no further communication has been made to the petitioners. He further submits that the petitioners are not ready to accept the valuation of land as indicated in the estimate for direct purchase and places reliance upon the valuation assessed by the ADSR, Kakdwip dated 8th August, 2024 as an evidence of the current market value of the land in question.
3. Mr. Roy, learned Advocate appearing for the petitioners further submits that since the properties of the petitioners have been admittedly utilised by the respondent authorities, they should be directed to initiate a proceeding for acquisition, failing which direction may be passed to return the properties of the petitioners forthwith.

4. Mr. Mukherjee, learned Additional Government Pleader, files a report of the Special Land Acquisition Officer, South 24 Parganas dated 23rd March, 2026, which is taken on record.
5. The said report specifically states that no proposal under the direct purchase of land has been received from the Requiring Body i.e. Irrigation and Waterways Department, Kakdwip Irrigation Division in respect of the lands which are the subject matter of this writ petition. The said report further states that the said plots are also not involved in any land acquisition proceeding.
6. In reply, Mr. Roy, learned Counsel appearing for the petitioners places reliance upon a decision of the Hon'ble Supreme Court in the case of ***B.K. Ravichandra & Ors. vs. Union of India & Ors.*** reported in ***(2021) 14 Supreme Court Cases 703***, in support of his contention that it is not open to the State to ignore the provisions of the Constitution.
7. Heard the learned Advocates for the parties and perused the materials placed.
8. From the estimate for direct purchase, which has been annexed at page 34 of the writ petition, it is evident that the authorities have admitted that the plots of land of the petitioners have been utilised for carrying different emergent flood protective work at Mouza Bagdanga, J.L. No. 15 in the District of South 24 Parganas. It is also not in dispute that no proposal has been initiated for direct purchase of land from the end of the Requiring Body. However, the undisputed

fact is that the plots of land, which are the subject matter of this writ petition, have been utilised without initiating any proceeding for acquisition.

9. The Hon'ble Supreme Court in *B.K. Ravichandra* (supra) held that to permit the State to assert that it has an indefinite and overriding right to continue occupying one's property (bereft of lawful sanction) is no less than condoning lawlessness and courts' role is to act as the guarantor and jealous protector of the people's liberties. It was further observed that any condonation by the court is a validation of such unlawful executive behaviour which it then can justify its conduct on the anvil of some loftier purpose, at any future time. The Hon'ble Supreme Court has held thus:

30. Other judgments of this court have also highlighted the importance of the right under Article 300-A, in the context of regulatory laws and enactments, which do not directly result in expropriation or acquisition, but rather, in an oblique and indirect fashion, block the right to enjoyment of properties, underlining that the essential theme of Article 300-A is unauthorized deprivation, which would result in an indefinite suspension of the right to property. The court stressed that the law (of development or town planning, of any other such enactment) should be explicit about the nature and effect of the deprivation, expressing the intention to do so. Therefore, in T. Vijayalakshmi v. Town Planning Member (2006) 8 SCC 502, this court observed that:

"13. Town Planning legislations are regulatory in nature. The right to property of a person would include a right to construct a building. Such a right, however, can be restricted by reason of a legislation. In terms of the provisions of the Karnataka Town and

Country Planning Act, a comprehensive development plan was prepared. It indisputably is still in force. Whether the amendments to the said comprehensive development plan as proposed by the Authority would ultimately be accepted by the State or not is uncertain. It is yet to apply its mind. Amendments to a development plan must conform to the provisions of the Act. As noticed hereinbefore, the State has called for objection from the citizens. Ecological balance no doubt is required to be maintained and the courts while interpreting a statute should bestow serious consideration in this behalf, but ecological aspects, it is trite, are ordinarily a part of the town planning legislation. If in the legislation itself or in the statute governing the field, ecological aspects have not been taken into consideration keeping in view the future need, the State and the Authority must take the blame therefore. We must assume that these aspects of the matter were taken into consideration by the Authority and the State. But the rights of the parties cannot be intermeddled with so long as an appropriate amendment in the legislation is not brought into force.

15. The law in this behalf is explicit. Right of a person to construct residential houses in the residential area is a valuable right. The said right can only be regulated in terms of a regulatory statute but unless there exists a clear provision the same cannot be taken away.”

31. In a very recent judgment, D.B. Basnett v. Land Acquisition Officer, (2020) 4 SCC 572 at page 580 the Court approved the findings of the courts below that the lands were never acquired, because the procedure prescribed was not followed; notice of acquisition had not been given, nor was any amount proved to have been received. The Court also turned down the State’s plea of adverse possession, and granted relief in the following terms:

“20. We are conscious that the land is being used by the respondent State through Respondent 2 Department. That,

however, does not give such a licence to the State Government. We had endeavoured to refer the matter for mediation, to find an amicable solution, but that did not fructify. We, however, would like to give some time to the respondent State to analyse the consequences of this judgment, and, in case they so desire, to acquire the land through a proper notification under the said Act, and to take proper recourse in law so as to enable them to keep the land. We grant three (3) months' time from the date of the judgment for the respondent State to make up their mind as to what they want to do. Would they still like to retain the land by issuing a proper notification, or would they like to surrender possession of the land. In either eventuality, the question of payment for use and occupation would still arise, which will have to be determined in accordance with law. Mesne profits would be determined by a Court Commissioner, to be appointed by the trial court, as a relief in that behalf has been sought in the plaint itself.”

35. It is, therefore, no longer open to the state: in any of its forms (executive, state agencies, or legislature) to claim that the law – or the constitution can be ignored, or complied at its convenience. The decisions of this court, and the history of the right to property show that though its pre-eminence as a fundamental right has been undermined, nevertheless, the essence of the rule of law protects it. The evolving jurisprudence of this court also underlines that it is a valuable right ensuring guaranteed freedoms and economic liberty. The phrasing of Article 300-A is determinative and its resemblance with Articles 21 and 265 cannot be overlooked- they in effect, are a guarantee of the supremacy of the rule of law, no less. To permit the state: whether the Union or any state government to assert that it has an indefinite or overriding right to continue occupying one's property (bereft of lawful sanction)- whatever be the pretext, is no less than condoning lawlessness. The courts' role is to act as the

guarantor and jealous protector of the people's liberties: be they assured through the freedoms, and the right to equality and religion or cultural rights under Part III, or the right against deprivation, in any form, through any process other than law. Any condonation by the court is a validation of such unlawful executive behavior which it then can justify its conduct on the anvil of some loftier purpose, at any future time- aptly described as a "loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need."

10. Since the properties which are the subject matter of this writ petition, have been utilised by the State without initiating any appropriate proceeding for acquisition and the State is also not in a position to restore possession of such lands to the landowners, this Court holds that possession of the State in respect of the lands in question is nothing but an unlawful one.
11. For all the reasons as aforesaid, this Court is inclined to pass the following directions.
12. The State is directed to initiate a proceeding for acquisition of the plots in question and to complete the entire process including the payment of compensation as expeditiously as possible but positively within a period of six months from the receipt of a server copy of this order, failing which the State shall restore the possession of the lands to the petitioners and shall also be liable to pay damages and compensation for utilization of the plots in question without any authority of law.

13. With the above observations and directions, WPA 26075 of 2025 stands disposed of.
14. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Hiranmay Bhattacharyya, J.)

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