

Mr. Tapen Mr. Malhabata  
Advocate  
C.P.O. Mr. S.P. Pahari,  
Advocate  
High Court, Calcutta  
Bar Association Room No.10

Residence :  
5/75, Netaji Nagar (Tallygunge),  
Kolkata-700040.  
Room No.79/23, 3<sup>rd</sup> floor,  
6, Old Post Office Street,  
Kolkata-700001,  
Mobile No.: 9831307525

Date: 20.06.2018

To

1. The Govt. Pleader,  
Appellate Side, High Court,  
Calcutta .
2. The Collector/District Magistrate,  
Birbhum, having its office at Suri,  
District - Birbhum, Pin - 731101.
3. The Special Land Acquisition Officer,  
having its office at Suri, District - Birbhum,  
Pin - 731101.
4. The Additional District Magistrate,  
having its office at Suri, District - Birbhum,  
Pin - 731101.
5. The Chairman, Sainthia Municipality,  
P.O. & P.S. Sainthia, District - Birbhum,  
Pin - 731234.

Tapas baby  
S.P. Pahari

Re.: W.P. No. 8038 (W) of 2018  
Swarup Kumar Dutta & Ors

.....Petitioners

-Vs-

The State of West Bengal & Ors.

....Respondents

Dear Sir(s),

Please find enclosed a copy of the above writ application which will be moved as a Listed Motion before His Lordship The Hon'ble Justice Harish Tandon on 26.6.2018 or thereafter as and when the business of the Hon'ble Court will permit..

This is for your information and necessary action.

Thanking you,

Yours faithfully,

Tapen Mr. Malhabata

Advocate



Incl: As above.

D. No. 782/4A  
256  
18

DISTRICT: BIRBHUM

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

W. P. No. 8038 (W) of 2018

-And-

In the matter of:

An application under Article  
226 of the Constitution of  
India;

-And-

In the matter of:

A writ in the nature of  
Mandamus, and/or Certiorari  
and/or any other appropriate  
writ or writs, order or  
orders and/or direction or  
directions;

LAW POINTS

1. Whether the petitioners can be deprived from receiving compensation for requisition of land by giving Notice Under Section 3(1) of the West Bengal (Requisition & Acquisition) Act, 1948 by the Additional District Magistrate and without restoring the same after lapse of time of requisition and keep the same under their possession for 27 years without giving rent?

2. Whether the petitioners are entitled to get compensation for aforesaid requisition under the provisions of the West Bengal (Requisition & Acquisition) Act, 1948?

3. Whether the order passed by the Special Land Acquisition Officer, Birbhum denying the admitted fact that the requisitioned land was under use and occupation of the Sainthia Municipality in pursuant to the Notice under Section 3(1) of the West Bengal Land (Requisition & Acquisition) Act, 1948 for about 27 years is justified for denying compensation and damages to the petitioners with interest for such use and occupation?

District : Howrah.

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION.

APPELLATE SIDE.

In the matter of :

W.P. No. (W) of 2018;

And

In the matter of :

An Application under Article 226 of the  
Constitution of India;

In the matter of :

1. Sri Swarup Kumar Dutta,

2. Sri Dibyarup Dutta,

both are sons of Late Mrityunjoy Dutta,

3. Sri Chandidas Dutta, son of Late

Krishna Prasanna Dutta,

all are residing at Sainthia Station Road,

P.O. & P.S., Sainthia, District - Birbhum,

Pin - 731234.

..Petitioners

7. true copy of the Compliance Letter issued by the Chairman, Sainthia Municipality "P-6" 49
8. True copy of the Order dated 29.04.2016 "P-7" 50-51
9. True copies of document for depositing police cost and the letter of the Municipality for handing over the physical possession of land "P-8" 52-53
10. True copy of such representation "P-9" 54-55
11. True copy of order passed by His Lordship the Hon'ble Justice R. K. Bag in W.P. No. 22350 (W) of 2016 "P-10" 56-63
12. True copy of the impugned order dated 23.08.2017 passed by the Special Land Acquisition Officer, Birbhum. "P-11" 64-72

District : Birbhum

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE

W.P. No. of 2018  
In the matter of :

An application Under Article 226 of the  
Constitution of India;

And

In the matter of :-

Swarup Kumar Dutta & Ors  
..Petitioners  
-Versus -  
The State of West Bengal & Ors  
..Respondents

LIST OF DATES

Date	::	Particulars
31.3.1994	::	The Notice was issued by the State of West Bengal.
24.05.2011	::	Death of the Petitioner No. 1 and 2 of the father .
23.05.2001	::	The Special Land Acquisition Officer, Suri issued an order.
07.12.2000	::	The Hon'ble Justice Amitabha Lala order.
29.04.2016	::	The Hon'ble Lordship Ashoke Kumar Dasadhikari was pleased to direct the Chairman Sainthia Municipality to hand over
30.04.2016	::	The police assistance of land handed over the petitioner.
23.08.2017	::	The Special Land Acquisition Officer, Birbhum the order.

DISTRICT: BIRBHUM

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

W. P. No. (W) of 2018

-And-

In the matter of:

An application under Article 226 of  
the Constitution of India;

-And-

In the matter of:

Swarup Kumar Dutta & Ors.  
... Petitioners

-Versus-

The State of West Bengal & Ors.  
... Respondents.

I N D E X

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2.	Notice under Section 3(1) of the West Bengal Land (Requisition & Acquisition) Act, 1948	"P-1"	32
3.	True copy of the said order dated 07.12.2000 passed by His Lordship the Hon'ble Justice Amitava Lala ,	"P-2"	33-37
4.	True copy of the communication through Learned Advocate Mr.S.P. Pahari.	"P-3"	38-39
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DISTRICT: BIRBHUM

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE

W. P. No. 8038 (W) of 2018

In the matter of:

An application under Article 226  
of the Constitution of India;

-And-

In the matter of:

Subject matter relating to:

Group - I Head - Q  
of the Classification List.

Cause Title

Swarup Kumar Dutta & Ors.  
... Petitioners

-Versus-

The State of West Bengal & Ors.

... Respondents

Advocate-On-Record

Sri Tapan Kumar Mahapatra,  
Advocate,  
C/o. Sri Shanti Pada Pahari  
Advocate,  
Bar Association Room No. 10,  
High Court, Calcutta.



-Versus -

1. State of West Bengal,  
service through the Secretary, Land &  
Land Reforms Department, Government  
of West Bengal, "Nabanna", Mandirtala,  
Howrah - 711101.
2. The Collector /District Magistrate,  
Birbhum, having its office at Suri,  
District - Birbhum, Pin - 731101.
3. The Special Land Acquisition  
Officer, having its office at Suri, District  
- Birbhum, Pin - 731101.
4. The Additional District  
Magistrate, having its office at Suri,  
District - Birbhum, Pin - 731101.
5. The Chairman, Sainthia  
Municipality, P.O. & P.S. Sainthia,  
District - Birbhum, Pin - 731234.

..Respondents.

To

The Hon'ble Jyotirmay Bhattacharya, Chief Justice and His Companion Justices  
of the said Hon'ble Court.

The humble petition of the  
petitioner above named most  
respectfully-

Sheweth -

1. That the petitioners are the Citizens of India and live permanently at the address given in the cause title.
2. That the petitioners hereinabove are the land owners of 09 Satak in Mouza Sainthia, J.L. No. 95, P.S. Sainthia, District - Birbhum. The details of lands are given below:-

R.S. Khatian No.	R.S. Plot No.	L.R. Plot No	Area
401	1319	653	01 Satak
402	1318	652	04 Satak
955	1342	679	02 Satak
1020	1343	681	02 Satak
<b>Total Land</b>			<b>09 Satak</b>

3. That the aforesaid lands were divided between the father of the petitioner No. 1 & 2 and the petitioner No.3 in equal share by virtue of Registered Partition Deed.

Your petitioners crave leave to produce such Registered Partition Deed at the time of hearing of this petition.

4. That the Chairman of the Sainthia Municipality requested the State of West Bengal for acquisition of above land for the purpose of Fish and Meat Market and as such the Additional District Magistrate, Birbhum requisitioned the lands by issuing Notice under Section 3(1) of the West Bengal Land (Requisition & Acquisition) Act, 1943 in Case No. R&A 1 of 1986 - 87.

True copy of the said Notice is enclosed herewith and marked as Annexure "P-1" to the petition.

5. That though the aforesaid Notice was issued but the State of West Bengal did not acquire the lands under the provisions of the Land Acquisition Act, 1894 and in the meantime the life of Act-II of 1948 was ended on 31/3/1994.

A true copy of the aforesaid communication is enclosed herewith and marked as Annexure "P-3" to the petition.

8. That on 23.05.2001 the Special Land Acquisition Officer, Suri, issued an Order to the petitioners informing that as the possession of the requisitioned land was not taken over, the question of restoration does not arise and the aforesaid authority remained silent in respect of giving compensation for such requisition of lands.

A true copy of the aforesaid order, issued by the Special Land Officer, is enclosed herewith and marked as Annexure "P-4" to the petition.

9. That against the aforesaid order, appeal being MAT No. 1474 of 2000 was filed by the Chairman, Sainthia Municipality but the said appeal was rendered infructuous as no step was taken by the appellant.

10. That the petitioners moved writ application being W.P. No. 20378 (W) of 2013 before this Hon'ble Court praying for direction upon the Sainthia Municipality to restore the possession in favour of the petitioner in terms

6. Your petitioners state that challenging the aforesaid Notice, the father of the petitioner No.1 and 2 who died 24.05.2011 and the petitioner No.3, filed writ application being C.O No. 15785 (W)/89 before this Hon'ble Court. On 07.12.2000 the writ petition came for final hearing before His Lordship the Hon'ble Justice Amitabha Lala. After hearing, His Lordship was please to quash the aforesaid Notice by directing the respondent authorities to restore possession in favour of the petitioner within a period of two months from the date of communication of the Order. His Lordship was further pleased to direct the concerned respondent authorities to pay compensation for the purpose of retaining possession during the aforesaid period by giving liberty to the petitioner to apply before the appropriate authority for compensation.

A true copy of the said order is enclosed herewith and marked as Annexure "P-2" to the petition.

7. That the petitioner communicated the aforesaid order immediately through his learned Advocate, Mr. S. P. Pahari.

12. That upon submission by the parties on 29.04.2016, His Lordship the Hon'ble His Lordship Ashoke Kumar Dasadhikari was pleased to direct the Chairman, Sainthia Municipality to hand over the possession of the land to the petitioner by 12 Noon on 30<sup>th</sup> April, 2016. Officer-in-Charge, Sainthia Police Station was directed to be present on spot with sufficient police force so that the petitioners can get possession of the lands. The petitioners were directed to deposit the costs for rendering police assistance.

A true copy of the said Order dated 29.04.2016 is enclosed herewith and marked as Annexure P-7" to the petition.

13. That the petitioners deposited the required costs for rendering police assistance and on 30.04.2016 physical possession of lands was handed over in favour of the petitioners in presence of Police Authorities. It is required to be stated that the petitioners got physical possession in respect of aforesaid lands and the lands.

10 - 7 -

of the Order dated 07.12.2000 passed by His Lordship the Hon'ble Justice Amitabha Lala. After hearing His Lordship was pleased to dispose of the writ application by directing the Chairman, Sainthia Municipality to restore possession of the land in favour of the petitioners within four weeks from the date of communication of the order.

A true copy of the said order is enclosed herewith and marked as Annexure "P-5" to the petition.

11. Your petitioners state that due to noncompliance of the aforesaid order, a Contempt Petition was moved before this Hon'ble Court and during the pendency of the Contempt Petition, the Chairman, Sainthia Municipality complied the order passed by His Lordship the Hon'ble Justice Ashoke Kumar Dasadhikari handing over the possession of the aforesaid requisitioned lands in favour of the petitioner.

A true copy of the said Compliance Letter issued by the Chairman, Sainthia Municipality, enclosed herewith and marked as Annexure "P-6" to the petition.

utilization of the aforesaid land in pursuant to the Notice under Section 3(1) of the West Bengal Land (Requisition & Acquisition) Act, 1948 which was issued by the L.A Collector, Birbhum on 06.11.1989. In the aforesaid Notice it has been mentioned that Officers and workmen of the Sainthia Municipality

will use the land as may appear to them to be expedient or necessary and possession of the land under requisition will be taken over on 16.11.1989 at 11 a.m. It is required to be stated that by strength of the aforesaid Notice the Sainthia Municipality enjoyed the possession of the aforesaid requisitioned land since the date the aforesaid Notice was issued and continued possession of the same till 30.04.2016. The petitioners land remained in possession in the hand of Sainthia Municipality for about 27 years and during the time no steps have been taken by the respondent authorities for giving compensation in favour of the petitioner for such utilization of the land.

17. Your petitioners state that they made representation to the concerned authorities for payment



True copies of document for depositing police cost and the letter of Municipality for handing over the physical possession in respect of above lands are enclosed herewith and collectively marked as Annexure "P-8" to the petition.

14. That the Chairman, Sainthia Municipality preferred appeal being MAT No. 160 of 2015 which was withdrawn treating the same as infructuous as the Order is under challenge in the appeal was already complied with by handing over the physical possession in favour of the petitioners.

Your petitioners crave leave to produce the order of the Division Bench at the time of hearing of this Case.

15. That the possession of the land of the petitioners was handed over by the Municipal Authority on 30.04.2016 and since then the petitioners have been enjoying the vacant peaceful possession of the said land.

16. The petitioners states that the petitioners are entitled to get compensation under the provisions of the West Bengal Land (Requisition & Acquisition ) Act, 1948 for

compensation for utilization of the aforesaid land. But no steps appear to have been taken by the concerned respondent authorities so far.

A true copy of such representation is enclosed herewith and marked as Annexure "P-9" to the petition.

18. That it is evident from the records of the case that the concerned authorities are well aware as regards the order passed by His Lordship the Hon'ble Justice Amitava Lala wherein His Lordship was pleased to direct the concerned respondent authorities to pay compensation for the purpose of retaining the possession of land of the petitioners. Moreover, the provision under Section 7 (3) of the West Bengal Land (Requisition & Acquisition) Act, 1948 clearly provides that any land is requisitioned under Section 3 there shall be paid to every persons interested (compensation) in respect of - (a) the requisition of land; (b) any damage done during the period of requisition of said land and other land what may have been sustained by natural causes.

19. That Section 7(4) of the aforesaid Act provides that the principle to be followed in determining compensation under sub-section (3) shall be as follows, namely:-

(i) where the Collector and the person interested agree as to the compensation, the Collector shall make an award ordering payment of the agreed compensation :

(ii) where the person interested cannot be traced or does not appear before the Collector when called upon to be present for the purpose of the determination of the compensation, such amount shall be determined as compensation as appears reasonable to the Collector having regard to the facts and circumstances of the case and the Collector shall make an award ordering payment of the compensation so determined;

(iii) where there is any disagreement between the Collector and the person interested, the compensation payable shall be the amount

hearing, His Lordship the Hon'ble Justice R. K. Bag was pleased to dispose of the writ application by directing the Special Land Acquisition Officer, being respondent no.3 to consider the application submitted by the petitioner on August 16, 2016 (Annexure P-9 to the writ application) in accordance with law after giving opportunity of hearing to the petitioner within a period of eight weeks from the date of communication of the order and to communicate the result of the same to the petitioner within two weeks thereafter.

A true copy of order passed by His Lordship the Hon'ble Justice R. K. Bag in W.P). No. 22350 (W) of 2016 is enclosed herewith and marked as Annexure "P-10".

22. That the aforesaid order was duly communicated to the aforesaid concerned respondent by registered post with A/D and after receiving the aforesaid order the Special Land Acquisition Officer, Birbhum started a Mis-Proceeding No.1 of 2017 in pursuant to the order passed by the Hon'ble Court. The Notice was served upon the petitioner to appear for hearing on 07.06.2017. Accordingly, the petitioner

determined by the Court on reference made by the Collector under clause (b) of sub-section (1) of section 8.

20. Your petitioners state that they suffer huge financial loss and damages for retaining the possession of valuable land for about 27 years and no compensation has yet been determined by the concerned respondent authorities so far for requisition of the aforesaid land. Therefore, the petitioners are entitled to get compensation along with 18% interest for such illegal occupation of land. The concerned authorities cannot be permitted under the law to enjoy illegal possession of the land without payment of compensation. Therefore, efficacious direction is required to be passed upon the concerned respondent authorities to determine compensation and pay the same to the petitioners with 18% interest immediately.

21. That challenging the inaction on part of the concerned respondent authorities for non-payment of compensation the petitioner moved writ application being W.P. No. 22350 (W) of 2016 before this Hon'ble Court. After

participated in hearing on different dates and the last hearing was fixed on 23.08.2017.

On 23.08.2017, the order was passed by the Special Land Acquisition Officer, Birbhum in taking into consideration of the following issues:-

- i) Whether the possession of the land in question was taken over as per notices issued under Sub-section (1) of Section 3 of the West Bengal Land (Requisition & Acquisition) Act, 1948.
- ii) Whether the land was acquired under the provision of the said Act.
- iii) Whether the possession of the land was handed over to the Sainthia Municipality.
- iv) Whether the possession of the land was restored in favour of the petitioner by the Land Acquisition Authority.
- v) How did the land was under possession of Sainthia Municipality.

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- i) Whether the possession of the land in question was taken over as per notices issued under Sub-section (1) of Section 3 of the West Bengal Land (Requisition & Acquisition) Act, 1948.
- ii) Whether the land was acquired under the provision of the said Act.
- iii) Whether the possession of the land was handed over to the Sainthia Municipality.
- iv) Whether the possession of the land was restored in favour of the petitioner by the Land Acquisition Authority.
- v) How did the land was under possession of Sainthia Municipality.

vi) Whether the petitioners are entitled to any compensation in terms of the provision of the said Act.

The consideration of aforesaid issues are, inter alia, as follows:-

**Issue No.(i) & (ii) :** are taken up analogously for discussion as both issues are related to each other. Possession of the land was not taken over on 16/11/1989 as per notices issued on 06/11/1989 under sub-section (1) of section 3 of the said Act due to a writ petition being C.O. No. 15785 (W) of 1989 filed by the land owners challenging the said notices and subsequently said notice stood quashed by an order dt. 07/12/2000 passed by the Hon'ble High Court in the aforesaid C.O. No. 15785 (W) of 1989. Hence possession of the land was not taken over and the same was not simultaneously handed over to the Sainthia Municipality. As a result the land in question was not acquired under the provision of the said Act by



notification under section 4 of the Act at any material point of time.

**Issue No. (iii) :** No, possession of the land was not handed over to the Sainthia Municipality by the Land Acquisition Authority as the same could not be taken pursuant to the notice issued on 6/11/1989 under sub-section (1) of section 3 of the said Act.

**Issue No. (iv) :** No, the possession of the land was not restored in favour of the petitioner by the Land Acquisition Authority, it is evident from the records that the possession of the land was restored on 30/04/2016 in favour of the petitioner pursuant to the order passed by the Hon'ble High Court in W.P. No. 20378 W) of 2013 by the Sainthia Municipality.

**Issue No. (v) :** It is learnt from the representative of the Sainthia Municipality in course of hearing that they had come to the possession of the land in question by virtue of an agreement prior to submission of the Land Acquisition proposal of the land in question.

Issue No. (vi) : Considering all the documentary evidences and after careful observation of the same it may be opined that the petitioners are not entitled to get any land compensation under the provision of the West Bengal Land (Requisition Acquisition) Act the same was not acquired in terms of the provision of the said Act.

Hence it is ordered that the annexure P/9 to the writ application no. 22350 (W) of 2016 is considered and the same be and is disallowed on the aforesaid observation. The order dated 24/01/2017 in W. P. No. 22350 (W) of 2016 thus complied with.

The case is thus disposed of.

Let a copy of this order be communicated to the petitioners within the stipulated period as directed by the Hon'ble High Court, Calcutta in the aforesaid writ petition.

A true copy of the said impugned order is enclosed herewith and marked as Annexure "P-11" to the application.

23. Your petitioners state that the Special Land Acquisition Officer without applying his mind passed this order not taking into consideration the Notice issued under Section 3(1) of the West Bengal Land (Requisition & Acquisition) Act, 1948 wherein the Requisition Authority directed the Officer and Workmen of Sainthia Municipality to use or deal with the land in a manner as may appear to them to be expedient or necessary and possession of land under requisition will be taken over on 16.11.1989 at 11 A.M. or on a date to be fixed. Therefore, there is no need to take further possession of land as already by this Notice possession of land was given to the Sainthia Municipality and by strength of the Notice, the Sainthia Municipality was possessing the land till the date of restoration of possession by the further order passed by this Hon'ble Court. Moreover, the order passed by His Lordship, the Hon'ble Justice Amitava Lala was unchallenged by the concerned respondent authority wherein His Lordship the Hon'ble Justice Amitava Lala was pleased to direct the concerned respondent authority to restore possession with

further direction to pay compensation for the purpose of retaining possession of land of the petitioners. Now, the Special Land Acquisition Officer cannot take the plea that possession of land was not given to the Sainthia Municipality. There is no explanation in the said impugned order as to why the acquisition was not made in pursuant to the Notice under Section 3(1) of the West Bengal (Requisition & Acquisition) Act, 1948.

24. Your petitioners state that admittedly the possession of land was enjoyed by the Sainthia Municipality for about 27 years without giving rent to the petitioners. According to the provision of the aforesaid West Bengal Land (Requisition & Acquisition) Act, 1948, the Notice under Section 3(1) of the aforesaid Act, acted upon the owners of the land for immediate handing over the possession of requisitioned land otherwise the land to be taken over forcibly. It is also evident from the record that the Sainthia Municipality took benefit of the aforesaid Notice and constructed the stalls for Fish & Meat market. The concerned authority has not considered all such

aspects for considering the payment of compensation to the petitioners though they are entitled to get compensation for uses and occupation of the aforesaid land by the Sainthia Municipality who was given possession of land by issuing aforesaid Notice.

25. Your petitioners state that the order passed by the Special Land Acquisition Officer is otherwise bad and illegal and the same to be quashed and set aside. Considering the aforesaid facts and circumstances of the case, an efficacious order may be passed by directing the concerned respondent authority to pay compensation and damages for use and occupation of the land of the petitioners pursuant to the Notice under Section 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948.

26. That being aggrieved by and dissatisfied with the impugned order dated 23.08.2017, passed by the Special Land Acquisition Officer, Birbhum your petitioners beg to move this application before this Hon'ble Court in writ jurisdiction on the following amongst other -

G R O U N D S

I. For that the impugned order passed by the Special Land Acquisition Officer, Birbhum is not justified both in fact of the case as well as the provisions of the West Bengal Land (Requisition and Acquisition) Act, 1948 inasmuch as he has not considered the issue by applying his judicious mind.

II. For that the aforesaid authority ought to have considered the case of the petitioners as the land requisitioned by the aforesaid authority under Section 3(1) of the West Bengal Land (Requisition & Acquisition) Act, 1948 was already handed over to the Sainthia Municipality wherein direction was given in the aforesaid Notice that the Sainthia Municipality Officers and Workmen will use or deal with the land in the manner as may appear to them to the expedient or necessary and pursuant to the Notice under Section.

3(1) of the aforesaid Act, the said Municipality was in possession and occupation in respect of requisitioned land for about 27 years till the date of handing over the possession of land in favour of the petitioners.

III. For that undisputedly the requisitioned land was used and occupied by the Sainthia Municipality without giving any rent to the petitioners but the concerned respondent authorities have not restored possession of land in favour of the petitioners in pursuant to the order passed by His Lordship the Hon'ble Justice Amitava Lala in C.O. No. 15785 (W) of 1989.

IV. For that the Notice under Section 3(1) of the aforesaid Act was never recalled and/or withdrawn even after the lapse of statutory period. But on the contrary, the State Respondents allowed the Sainthia

Municipality to use and occupy the aforesaid requisitioned land without rent for such occupation. Therefore, the petitioners cannot be deprived from getting compensation and damages caused by the action on part of the State respondent authority for issuing requisition notice allowing the Sainthia Municipality to use and occupy the requisitioned land.

V. For that the grounds for disallowing compensation and damages for aforesaid requisitioned land is totally contrary to both facts and law as the petitioners cannot be deprived in both way by loosing compensation and damages and not enjoying the possession of the land which was requisitioned by the State Authority.

VI. For that the impugned order passed by the Special Land Acquisition Officer is bad, illegal, malafide and the same should be



quashed and set aside and the concerned respondent authority may be directed to pay compensation and damages in favour of the petitioners for use and occupation of the land for about 27 years without giving any rent.

27. Your petitioners state they have got no other alternative remedy and reliefs sought for if granted would be adequate and complete.

28. Your petitioners state that they have not moved any other application before this Hon'ble Court on the self-same cause of action.

29. That the application is made bonafide and for the ends of justice.

In the circumstances, the petitioners most humbly pray that your Lordships be graciously pleased to issue -

a) A writ in the nature of mandamus commanding the

concerned respondent  
authorities to recall,  
rescind and cancel the order  
dated 23.08.2017 passed by  
the Special Land Acquisition  
Officer, Birbhum Siuri, in  
Misc. Proceeding No.1 of 2017  
by directing the respondents  
to give compensation and  
damages for use and  
occupation of requisitioned  
land mentioned above for a  
period of 27 years with 18%  
interest immediately;

b) To quash and set aside  
the impugned order dated  
23.08.2017 passed by the  
Special Land Acquisition  
Officer Birbhum Siuri, in Mis  
Proceeding No.1 of 2017;

- c) A writ in the nature of Certiorari directing the concerned State respondent authorities to transmit all relevant papers relating to this case before this Hon'ble Court so that after perusal of the same, conscionable justice may be done in favour of the petitioner;
- d) Rule nisi in terms of prayers (a), (b) and (c) above;
- e) Cost;
- f) To pass any other or further order or orders as Your Lordships may deem fit and proper.

And your petitioner as in duty bound shall ever  
pray.

" Suresh Kumar Gupta -

A F F I D A V I T

I, Swarup Kumar Dutta, son of <sup>Late</sup> Mrityunjoy Dutta, aged about 62 years, by faith Hindu, by occupation - unemployed, residing at Sainthia Station Road, P.O. & P. S. Sainthia, District - Birbhum, <sup>Pin-731234</sup> do hereby solemnly affirm as follows:-

1. That I am the petitioner No. 1 in the instant case and as such I am well acquainted with the facts and circumstances of the case. I have been authorized to affirm this affidavit by other petitioners.
2. That the statement made in paragraphs 1 to 22(vi) are true to my knowledge and rest of the paragraphs are my humble submission before this Hon'ble Court at the time of hearing of the petition.

Prepared in my office

Sd/- Tapan Kr. Halapeta

Advocate

Swarup Kumar Dutta -

The deponent is known to me

Santanu Bishnu

Clerk to;

Mr. Surendra Das  
Advocate

Solemnly affirmed before

me on this the 10th day of

May, 2018

COMMISSIONER



GOVERNMENT OF WEST BENGAL  
OFFICE OF THE SPECIAL LAND ACQUISITION OFFICER, BIRBHUM  
SURI, BIRBHUM.

Email: [spllaobirbhumi@gmail.com](mailto:spllaobirbhumi@gmail.com)

03462-255424

Memo No. 2263 / LA / LAW

Date: 27/6 / 2018

To

The Ld. Government Pleader  
Kolkata High Court

Sub: Engagement of State Advocate in respect of W.P. No. 8038 (w) of 2018 in the matter of Swarup Kumar Dutta & Ors - vs - The State of West Bengal & Ors.

Respected Sir,

Enclosed please find herewith the letter dated 20.06.2018 of Mr. Tapan Kumar Mahapatra, Ld. Advocate & the copy of the Writ Petition of the above mentioned matter which will speak for itself. It is necessary to engage a State Advocate for contesting the matter on behalf of the State Respondents.

You are, therefore, requested to kindly make necessary arrangements or engagements of State Advocate for the same.

The undersigned proposes the name of Mr. Talay Siddique, Ld. A.G.P. as State Advocate.

The proposal may kindly be accepted.

This is for favour of your kind information and taking necessary action.

Enclose: 1) Copy of the Advocate's letter.

2) Two sets of Writ Petition.



Yours faithfully,

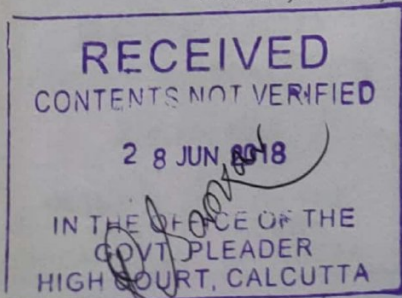
Special Land Acquisition Officer, Birbhum  
Suri, Birbhum

Date: 27/6 / 2018

Memo No. 2263 / LA / LAW

Copy to

The Secretary to the govt. of West Bengal. Department of L & L.R. and R R & R (L.A. Branch),  
Nabanna, 6<sup>th</sup> floor, 325, Sarat Chatterjee Road, Howrah - 711 102.



Special Land Acquisition Officer, Birbhum  
Suri, Birbhum

S Babu  
SP.A.A.O  
27/7/18

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High Court Cases Monitoring Cell  
2nd Floor (above Protocol Department), High Court at Calcutta, Kolkata-700001  
Phone: 033-22627404/05, Website: www.sarthac.gov.in

No.: ISR/WP No. 8038(W) of 2018/26.06.2018/PURA/0005  
Date: 26/06/2018

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To  
The Special Land Acquisition Officer  
Office of District Magistrate and Collector, Birbhum  
P.O. + P.S. - Suri, Dist. - Birbhum-731101

Second Fold

Second Fold

Sub: Intimation to State Respondent.

Sir/Madam,

I am directed to inform you that a WP No. 8038(W) of 2018 has been filed in the High Court at Calcutta against you/ your Department. A scanned copy of the WP is available at [www.sarthac.gov.in/case-details?type=WP&no=8038\(W\)&year=2018](http://www.sarthac.gov.in/case-details?type=WP&no=8038(W)&year=2018). This link has also been e-mailed to you (subject to your e-mail Id being available with this Cell).

(1) Mr. Talay Masood Siddiqui, Ld. Senior Government Advocate and (2) Mr. Azim Md Sabir, Ld. State Advocate (group C) have been engaged as State Advocates in the case. Their contact details are mentioned, in seriatim, as follows:

1) Address: Bar Association Room No.-15, Court No. - 4, Ch. : 22C, Dilkusha Street, Kolkata-700017  
Ph No.: 9831260304  
Email Id: talay\_adv@yahoo.com

2) Address: 22C, Dilkusha Street, Kolkata - 700017  
Ph No.: 9007838155  
Email Id: azimmd.sabir@gmail.com

First Fold

First Fold

As you are <sup>arrayed as a Respondent in the case</sup> the Nodal Officer of the Department, you are requested to immediately contact the State Advocate with all documents relating to the case.

Yours faithfully,

(D.K.Garg)  
Nodal Officer,  
High Court Cases Monitoring Cell.  
High Court at Calcutta.

Q.No. - 800/LA  
Dt 27/7/18



**Office of the Special Land Acquisition Office**

**Prashasonik Bhawan, Suri, Birbhum**

Memo No. 2265/LA

Date : 28.06.2018

**Brief History in respect of W.P.No. 8038(W) of 2018 in the matter of**  
**Swarup Kr. Dutta & Ors. -Vs- The State of West Bengal**

The fact of the case, in brief, is that a land acquisition proceeding being No. 1/86-87 in respect of the Plot No. 1328 with area 0.04 acre, 1319 with 0.01 acre, 1392 with 0.02 acre, 1343 with 0.02 acre of Mouza Sainthia, J.L. No. 95 was initiated under Act -II, 1948 of land acquisition by the Land Acquisition Authority following the direction of the local Govt. & Urban Development Deptt., Govt. of West Bengal as well as earlier proposal of Chairman Sainthia Municipality for construction of Fish and Meat Market.

Notices for requisition under Sub-Section 1 of Section 3 of West Bengal land) Requisition and Acquisition) Act, 1948 was issued on 06/11/1989 (Copy 'A' enclosed). Challenging the aforesaid notices Mrintyunjoy Dutta, the father of the petitioner filed Writ Application being C.O. No. 15785(W) of 89 before the Hon'ble High Court, Kolkata.

Through the aforesaid notice was issued but the State of West Bengal did not acquire the lands under the provisions of the Land Acquisition Act-II, 1948 and in the meantime, the life of the Act-II of 1948 was lapsed on 31/03/197. Ultimately, the possession of the land was not taken over and was not handed over to the Requiring Body.

Received  
Sanjay Kumar  
for T.M. Siddiqui  
on 28/6/18

On an order dated 07/12/2000 in the said C.O. No. 15785(W) of 1989 passed by the Hon'ble High Court, Calcutta, the aforesaid notice stood quashed and the respondent authorities had been directed to restore possession in favour of the petitioners and for the purpose of restraining possession during the period if compensation would be paid, the petitioner would be entitled to apply before the appropriate authority for the same.

Consequently, on 30/04/2016, the Sainthia Municipality restored possession of land in favour of the petitioners pursuant to the order passed by the Hon'ble High Court, Kolkata in W.P. No. 20378(W) of 2013.

Now, the petitioners claimed for compensation in term of the provision of the West Bengal Land (Requisition and Acquisition) Act, 1948 for use and occupation of the land for a period of about 27 years from 06/11/1989 to 30/04/2016 i.e. till the date of restoration of possession of land.

During hearing held on 10/08/2017 in respect of complying the order dated 24.01.2017 in W.P. No. 22350 (W) of 2016, the representative of the Sainthia Municipality submitted attested copies of regulation date 09/08/1985 and informed that they had come to possession of the said land by virtue of an agreement on rental basis long before submission of land acquisition proposal in question. (Copy 'B' enclosed).

From the note sheet as available in the office, it is learnt that no possession was taken over and handed over to the R.B. and Act-II of



1984 has been repeated and the L.A. Case no. 1/86-87 was dropped (Copy -'C' enclosed).

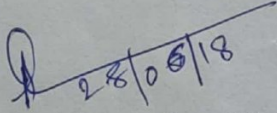
It is clear from this that the land in question was not acquired under the provision of the said Act by notification U/S 4 of the Act at any material point of time.

It is further to state, the land in question was not handed over to the Sainthia Municipality by the land acquisitions authority as the same could not be taken pursuant to the notice issued on 06/11/1989 U/S 3(1) of the said Act.

It may be opined that the writ petitioners are not entitled to get any compensation under the provision of the West Bengal Land (Requisition & Acquisition Act) and the same was not acquired in terms of the provision of the said Act.

Place : Suri

Date : 28/08/2018.

  
Addl. Land Acquisition Officer,  
Suri, Birbhum.

Addl. Land Acquisition Officer  
BIRBHUM



Government of West Bengal  
Office of the District Magistrate, Birbhum  
(Land Acquisition Section, 2<sup>nd</sup> Floor)  
Suri, Birbhum

Email: [spllaobirbhum@gmail.com](mailto:spllaobirbhum@gmail.com)

Ph. no- 03462-255424

Memo.No. 535...../ L.A.

Dated 27/6.... / 2019.

To

Mr. Chandi Charan De  
Ld.State Advocate,  
High Court, Calcutta

**Sub:-** submission of brief history along with others related papers / documents in connection with W.P No- 8038(W) of 2018 in the matter of Swarup Kumar Dutta and Ors Versus The State of West Bengal & Ors.

Sir,

As you are the Ld. State Advocate in the aforesaid Writ Petition, the undersigned is furnishing the brief history along with relevant papers / documents in your favour.

This is for your kind information & take necessary action.

Yours faithfully,

Encl: As stated above

Recd by  
28.6.19

Special Land Acquisition Officer, Birbhum  
Suri, Birbhum

27/6/19

27/6/2019



Government of West Bengal  
Office of the District Magistrate, Birbhum  
(Land Acquisition Section, 2<sup>nd</sup> Floor)  
Suri, Birbhum

Ph. no- 03462-255424

Email: [spllaobirbhum@gmail.com](mailto:spllaobirbhum@gmail.com)

Memo.No. 559...../ L.A.

Dated 4.../7.../ 2019.

To,  
**Mr. Chandi Charan De**  
**Ld. Additional Govt. Pleader,**  
**High Court, Calcutta**

**Sub:-** Authorization letter in respect of filing A.O at High Court, Kolkata in connection with W.P. no- 8038 (W) of 2018 on behalf of the State in the matter of Swarup Kumar Dutta & Others -vs- The State of West Bengal & Ors.

Sir,  
The undersigned, being the Special Land Acquisition Officer, Birbhum do hereby authorize Alope Kr. Naskar, Addl LAO, Birbhum attached to this office to file affidavit-in-opposition for the above mentioned WP on behalf of the state.

Signature of  
Alope Kr. Naskar,  
Addl LAO, Birbhum

*Alope Kr. Naskar*

Attested by

*AMV/7/19*  
Special Land Acquisition Officer, Birbhum

*AMV/7/19*  
Special Land Acquisition Officer, Birbhum  
Suri, Birbhum

District : Birbhum

In the High Court at Calcutta

Constitutional Writ Jurisdiction

Appellate Side

W.P.NO. 8038 (W) of 2018

Swarup Kumar Dutta & Others

.....Petitioners

=Versus=

The State of West Bengal & Ors.

.... Respondents

AFFIDAVIT-IN-OPPOSITION on behalf of the Respondent Nos. 1 to 4

I, Sri Alope Kumar Naskar, Son of Late Indu Bhusan Naskar  
aged about 52 years by faith Hindu, working for gain as an  
Additional Land Acquisition Officer, Birbhum having office at  
Suti, P.O. & P.S. Suri, District -Birbhum, PIN- 731101, do  
hereby solemnly affirm and say as follows :-

1. That I am the Additional Land Acquisition Officer,  
Birbhum and as I am well acquainted with the facts and  
circumstances of the case, I have been duly authorised by the  
Respondent Nos. 1 to 4 to sign and swear this Affidavit on  
their behalf.

2. A Copy of the Writ Petition was handed over to the Respondent No. 1 to 4 by our Learned Advocate and we have gone through the contents of the above writ Petition and fully understood the purport thereof and I am well acquainted with the facts and circumstances of the case the Respondent No. 1 to 4 have been authorised me to affirm the affidavit on their behalf.

3. I have been advised to traverse only those allegations and/or averments which are material for the purpose of disposal of this case the allegations and/or averments, not controverted shall not be regarded as my admission in any manner whatsoever.

4. Before dealing with parawise statement I like to state the following silent fact for smooth disposal of this case.

a). The fact of the case, in brief, is that a land acquisition proceeding being No.1/86/87 in respect of Plot No.1318 with area 0.04 acre, 1319 with 0.01 acre, 1342 with 0.02 acre, 1343 with 0.02 acre of Mouza Sainthia, J.L.NO. 95

was initiated under Act-II, 1948 of land acquisition by the Land Acquisition Authority following the direction of the local Govt. & Urban Development Deptt. Govt. of West Bengal as well as earlier proposal of Chairman Sainthia Municipality for construction of Fish and Meat Market.

b) Notices for requisition under Sub-Section 1 of Section 3 of West Bengal Land (Requisition and Acquisition) Act, 1948 was issued on 06.11.1989, Challenging the aforesaid notices Mrintunjoy Dutta, the father of the petitioner filed Writ Application being C.O.No. 15785 (W) of 89 before the Hon'ble High Court, Calcutta and as such the possession of the land was not taken over and was not handed over to the Requiring Body.

c). On and order dated 07.12.2000 in the C.O.NO. 15785(W) of 1989 passed by the Hon'ble High Court, Calcutta the aforesaid notice stood quashed.

d). On 30.04.2016, the Sainthia Municipality restored possession of land in favour of the petitioners pursuant to the order passed by the Hon'ble High Court, Calcutta in W.P.NO. 20378(W) of 2013.

e). The petitioners claimed for compensation in term of the provision of the West Bengal Land (Requisition and Acquisition) Act, 1949 for use and occupation of the land for a period of about 27 years from 06/11/1989 to 30.4.2016 i.e. till the date of restoration of possession of land.

f). During hearing held on 10.8.2017 in respect of complying the order dated 24.01.2017 in W.P.NO. 22350(W) of 2016, the representative of the Sainthia Municipality submitted attested copies of regulation date 9.8.1985 and informed that they had come to possession of the said land by virtue of an agreement on rental basis long before submission of land acquisition proposal in question.

g). The Writ petitioners are not entitled to get any compensation under the provision of the West Bengal Land (Requisition and Acquisition) Act, 1949 as the State Respondents never took the possession of the lands.

5. The statements made in paragraph Nos. 1 to 3 of the Writ petition are matters of record and anything contrary thereto are denied.

6. I deny and disputes the statements made in paragraph 4 to 19 of the Writ Petition save and except what are matters on record and admitted by me. I repeat and reiterate the statements of paragraph No. 5 of this Affidavit again for this Paragraph. I deny that the aforesaid authority remained silent in respect of giving compensation for requisition of lands. I deny that the petitioner are entitled to get compensation of the West Bengal Land (Requisition & Acquisition) Act 1948 for utilization of the aforesaid lands in pursuant to the above notice dated 6.11.1989. I deny that by strength of the aforesaid notice the Sainthia Municipality enjoyed the possession of the aforesaid requisited land since the date of aforesaid notice and contained possession of the same till 30.4.2016. I say that state respondents never took possession of the lands and the requisition notice dated 6.11.1989 was quashed by the Hon'ble Justice Amitava Lala on 7.12.2000 in C.O.NO. 15785(W) of 1989 and as such there was not any question of taking possession and/or payment of compensation to the petitioners.



7. I deny and disputes the statements made in paragraph Nos. 20 to 22 of the Writ Petition save and except what are matters of record and admitted by me. I repeat and reiterate any statements in paragraph 4 of this affidavit again for this paragraph. I say that the petitioners are not entitled to get compensation from us so far for requisition of the aforesaid land.

8. With regard to the averment made in paragraph 23 to 25 of the Writ Petition this answering deponent denies the correctness of the contention made therein which are borne out of record. It is stated that the petitioner has not disclosed that the Sinthia Municipality was in possession of the lands by virtue of an agreement on rental basis long before submission of land Acquisition proposal in question.

9. The grounds set forth and the submissions made in paragraph 27 to 29 of the Writ petition are not at all tenable in law and I deny that the application is made bonafide and for the ends of Justice. The Writ Petition is liable to be dismissed.

= 7 =

10. That the Statements made in paragraph Nos. 1 to 3 are true to my knowledge and those made in paragraph 4 to 8 are true which are derived from the Original Records and documents and the rests are my humble submissions before this Hon'ble Court.

Prepared in my Office  
Chandhi Chandra Si  
Advocate

f Akhne Kumar Mooker  
Deponent is known to me

f D. G. M. S. N.  
Clerk to Mr.

Advocate

Solemnly affirmed before me  
this 5<sup>th</sup> day of July, 2019.

Commissioner

District : Birbhum

In the High Court at Calcutta  
Constitutional Writ Jurisdiction  
Appellate side

W.P.NO. 8038 (W) OF 2018

Swarup Kumar Dutta & Others

....Petitioners

=Vs.=

The State of West Bengal & Ors.

... Respondents

AFFIDAVIT - IN OPPOSITION

Chandi Charan De, Advocate  
9, Old Post Office Street,  
2nd Floor, Kolkata- 700001

# NOTE-SHEET

Date OFFICE OF THE SPL. LAND ACQUISITION OFFICER, BIRBHUM

27.6.2018 Received a letter dated 20.6.18 from Advocate Mr. Tapan Kr. Mahapatra along with copy of W.P NO:- 8038(W) of 2018 in the matter of Swarnup Kumar Dutta & ors - vs - The State of West Bengal & ors, which may kindly be seen. *27/6/18*

TO Addl L.A.O

03/07/18

This office has forward a memo vide this no-2263/KA/LAW dt 27.06.2018 to the Ld. G.P. Kolkata High Court requesting him to engage a State Advocate in respect of W.P no-8038(W) of 2018 in the name of Swarnup Kr. Dutta.

This office has proposed the name of Md. Talay Siddique Ld. A.G.P. Kolkata High Court.

Spl. L.No.

*[Signature]*  
27/6/18

*[Signature]*  
03/07/18

03/07/18

The Ld. G.P., Kolkata High Court has engaged Md. Talay Siddique Ld. M.P as state Advocate with his assistance Ajim Md. Sabir and on 28/06/18 and this office has furnished the brief history of the FAI case no - WP no - 8038 (w) of 2018 on 28/06/18

Spl. L.No

*[Signature]*  
27/6/18

*[Signature]*  
03/07/18

NOTE-SHEET

Received a letter No. 1SR/WA/NO/8038(W) of 2018/06/07/18

26/06/18 26.06.2018/PURA/005. Dated 26/06/2018

from High Court Monitoring Cell, 2nd Floor, High Court at Calcutta, Kolkata - 700001. It is ~~so~~ stated that Mr. Talay Masood Siddiqui, Ld. Senior Government Advocate and Mr. Azim Md. Sabir, Ld. State Advocate (a group) have engaged as a State Advocate in this case.

on 25/6/18 this office has furnished brief case history and other related papers/documents to Ld. Sr. Government Advocate Mr. T. Masood Siddiqui

This office has officially received <sup>on 02/07/18</sup> the engagement letter of State Advocate for the aforesaid w.r. from the Nodal office, High Court Cases Monitoring Cell, High Court at Kolkata instructing that the contact be made with the concerned engaged State Advocate.

This is to add that <sup>as</sup> this office got to know the engaged advocate <sup>earlier</sup>, the undersigned contacted Mr. Talay Siddiqui, Ld. Sr. Advocate Kolkata High Court and submitted the <sup>on 28/06/2018</sup> State of Brief History to him of which the memo is 2265/L & dt. 28.06.2018.

*[Signature]*

*[Signature]*

*[Signature]*  
10/7/18

# NOTE-SHEET

Page No.

Date

OFFICE OF THE SPL. LAND ACQUISITION OFFICER, BIRBHUM

Through telephonic ~~confer~~  
communication, ~~at~~ Sri Chandi Charan Das,  
Ld. Adv. asks to submit the brief  
history along with relevant papers on  
28/08/2019 for purpose of making draft  
A/O in the behalf of the State.

This forwarding letter  
may kindly be seen & signed, if approved.

Spl. Ld. Adv.  
e.

Seen and signed  
AMV 27/8/19

27/8/19

The brief history along with relevant papers  
in respect of ~~the~~ W.P. No - 8038 (W)/2018  
has been submitted on 28.08.2019 vide his  
office memo No - 535 / Lt. Dt - 27.08.2019.

The Mr. Chandi Charan Das, Lt. State  
State Advocate, High Court, Calcutta  
has asked to appear on 05/07/2019 to  
file A.O. in favour of the State and  
to file the A.O., ~~he~~ Rs 1500 has been  
given to him in advance.

This may kindly be seen  
and ~~forward~~ ~~up~~  
Spl. Ld. Adv.

Seen and signed  
AMV 27/8/19

01/07/19