

27.01.2026
Item No.41
Ct. No.1
KS

W.P.A. (P) 450 of 2025
Lt. Gen. Dr. Subrata Saha
Vs.
The Union of India & Ors.

Mr. Ajoy Krishna Chatterjee
Mr. Rohit Banerjee
Ms. Kanchan Jaju
Ms. S. Das

.....For the Petitioner

Mr. Kishore Dutta, Ld. A.G.
Mr. Sirsanya Bandopadhyay, Sr. Standing Counsel
Mr. Akash Dutta

.....For the State

Mr. Ashok Kumar Chakraborty, Ld. A.S.G.I.
Mr. Kumar Jyoti Tewari, Sr. Adv.
Ms. Amrita Pandey
Mr. Ghanashyam Pandey

.....For the Respondent Nos.1, 4 to 7

Mr. Subrata Goswami

.....For the W.B. Heritage Commission

PER, SUJOY PAUL, CJ.:

1. Parties are represented through their respective learned counsels.

2. Parties are heard on the question of interim relief.

This Public Interest Litigation (PIL) has been filed by a Former Deputy Chief of Army Staff, who held various crucial positions during his service.

3. The present PIL focuses on the grave issue of unfenced **Indo-Bangladesh Border** (hereinafter referred to as '**IBB**') adjoining the State of West Bengal. It is averred in the petition that IBB comprises of 4096.70 Kms. in total length. The State

of West Bengal shares the longest stretch of 2216.70 Km out of the entire border. The border passes through following district of West Bengal: 1) North 24 Parganas, 2) Nadia, 3) Murshidabad, 4) Malda, 5) Dakshin Dinajpur, 6) Uttar Dinajpur, 7) Darjeeling, 8) Jalpaiguri and 9) Cooch Behar.

4. It is submitted that there are serious increase of crime in relation to Narcotic Drugs, Infiltration and other crimes. To bolster the same, the petitioner has mentioned the data in tabular form, which is extracted from unstarred questions asked in Rajya Sabha. The first chart shows the number of persons apprehended during cross border infiltration at IBB.

The **first chart** is reproduced for ready reference:

Sr. No.	Year	Number of persons apprehended during cross-border infiltration at IBB
1.	2016	1601
2.	2017	907
3.	2018	884
4.	2019	1109
5.	2020	955
6.	2023	1547 (at IBB in the State of West Bengal
7.	2024	1694 (at IBB in the State of West Bengal
8.	2025 (till 31 st July 2025)	723 (at IBB in the State of West Bengal

5. The **second chart** highlighted by petitioner talks about seizure of drugs/narcotic items on IBB, which reads thus:

Sr. No.	Year	Seizure of Drugs/Narcotics Items on Indo-Bangladesh Border (seizure in lakhs)
7.	2020	24770.67
8.	2021	34673.19
9.	2022	34947.73
10.	2023	43197.44
11.	2024	46107.67

6. The petitioner has also prepared a **third chart**, which shows about the quantity of drugs seized from 2017 to 2022. This reads as under:-

YEAR/DRUG (quantity in Kgs)	2017	2018	2019	2020	2021	2022 (Upto Feb 2022)
Brown Sugar	3.120	1.128	0.164	1.941	24.556	0.295
Charas	0	0	0	13.200	30.500	361.870
Cocaine	0	0	0	0	0.003	0
Ganja	12246.100	28930.132	12222.735	11630.689	19335.135	4341.205
Hemp	0	0	0	113.950	36.650	10.00
Heroin	4.006	2.915	1.215	2.622	10.944	0.762
Opium	18.180	9.520	14.190	6.290	7.217	0
Poppy	93.500	1220.00	0	0	29.00	0

7. Similarly, the petitioner has taken pains to highlight about the seizure of Narcotic Item, Fake Currency Notes, seizure of cattle and gold etc. near IBB in the State of West Bengal. The **fourth chart** demonstrating the same is as under:-

S. No.	Year	2023	2024	2025 (till 31 st July)
1.	Incoming Apprehensions in Number	1547	1694	723
2.	Seizure of Narcotics Item (in Kgs)	4988.282	3145.606	5729.340
3.	Seizure of Cattle	8614	8648	2886
4.	Seizure of Phensedyl (in Nos)	214407	303480	210606
5.	Seizure of Yaba tablets (in Nos)	51882	86747	36440
6.	Seizure of Gold (in Kgs)	166.810	188.412	20.876
7.	Seizure of FICN (in Rs.)	1586000	3245700	745000

8. In nutshell, petitioner highlighted that the fencing of IBB is in National interest and is required to protect the integrity and sovereignty of the country. Thus, it is agreed that this PIL should not be treated as an adversary litigation but may be treated as a litigation filed to bring the seriousness of inaction of the

Government to the notice of the Court in relation to fencing of IBB.

9. Mr. Chatterjee, learned senior counsel submitted that although the petitioner has given details of the land, which is yet to be fenced, the State Government in their affidavit-in-reply have not disputed that in relation of certain lands they received the compensation, lands have been acquired but yet a sizeable portion of lands have not been handed over to Border Security Force (B.S.F.) for the purpose of fencing.

10. Learned Senior counsel has heavily placed reliance on a **fifth chart**, which reads thus:

SL. NO.	DISTRICT	HANDED OVER TO BSF	YET TO BE HANDED OVER	TIME FOR HANDING OVER
1.	Nadia	10.18 Km	7.981 Km	March, 2026
2.	Murshidabad	8.21 Km	5.366 Km	June, 2026
3.	Malda	1.2 Km	31.85 Km	May, 2026
4.	Dakshin Dinajpur	3.401 Km	14.50 Km	May, 2026
5.	Darjeeling		0.71 Km	
6.	Jalpaiguri		2.4 Km	June, 2026
7.	Cooch Behar	9.7 Km	41.9 Km	
8.	North 24 Parganas	37.084 Km	21.53 Km	June, 2026
9.	Uttar Dinajpur	1.15 Km	1.10 Km	May, 2026
	TOTAL	70.925 Km	127.327 Km	

11. It is strenuously contended that these figures/data are not brain child or creation of the petitioner. In fact, these figures are extracted from the affidavit-in-reply filed by the State Government. These figures are relating to the lands for which State Government has already received compensation from the Central Government but the entire land has not been handed over to B.S.F.

12. It is further submitted that the land acquisition proceedings have not been finalized for certain pieces of lands and for another set of lands, the process has not been even commenced. Entire needs to be expedited in the interest of the Nation and its sovereignty and integrity.

13. Learned A.S.G. supported the petition and urged that there is no doubt that petition is filed in great public and national interest. By placing reliance on Article 256 and 257 of the Constitution of India, it is submitted that Central Government is empowered to issue necessary directions to the State Government in the interest of the Nation. It is urged that for the purpose of expediting the land acquisition and handing over the land to the B.S.F., series of meetings were held, which were attended by very senior level officers including Union Home Secretary and the Chief Secretary of Government of West Bengal.

14. Sri Chakraborty, places reliance on chart filed alongwith Minutes of Meeting to review pending land acquisition cases, this **sixth chart** is:-

Sl. No.	District	Total Cases as per BSF			Approval received from State Govt. Cabinet as per BSF			Fund Received		Purchase Completed so far		Land handed over BSF so far (fully partially)	
		Nos of cases	Length	Area (in acre)	Nos. of cases	Length (in Km)	Area (in acre)	Length (KM)	Area (Acre)	Length (KM)	Area (acre)	Nos. of Cases	Area (in acre)
1	24 Parganas (N)	21	60.48	299.23	21	60.48	299.23	60.48	299.23	23	114	15	79.713
2	Nadia	11	19.62	146.20	11	19.62	146.20	15.564	108.716	8.31	70.7	5	42.422
3	Murshidabad	9	40.45	303.18	6	25.554	193.359	19.754	152.10	4.42	37.39	3	26.120

4	Malda	16	47.13	307. 84	14	46.13	303.77	1.5	10.4 4	1.34	9.83	1	8.686
5	Dakshin Dinajpur	31	29.58	67.3 4	29	26.4	58.62	-	13.7 26	3.799	11	10	11
6	Uttar Dinajpur	3	2.25	9.14	3	2.25	9.14	2.43 2	9.84 9	0.800	3.105	1	3.105
7	Darjeeling	1	1.54	5.77	1	1.54	5.77	0.65 5	1.40 2	0.655	1.402	0	0.000
8	Jalpaiguri	6	21.03	53.9 6	2	1.74	4.46	0.4	0.95 38	0.375	0.8935	0	0.000
9.	Cooch Behar	37	63.17	234. 01	32	57.49	223.6 8	18.5	75.4 5	5.800	21.545	4	6.651
	Total:	135	285.25	1426. 67	122	256.10	1354.0 5	107.5 07	558.3 068	48.49	269.865	39	178.3

15. It is highlighted that in 9 districts, the total cases are mentioned where amount of compensation have already been paid but, still entire land has not been handed over to the B.S.F. to enable it to initiate and complete the fencing process.

16. Learned A.S.G. further submits that in order to curb cross border terrorism, infiltration etc., it is necessary to issue direction to the State Government to complete the aforesaid exercise expeditiously. The several directions issued by the Central Government to the State Government to expedite the acquisition and hand over the land are based on enabling power under Article 256 and 257 of the Constitution of India.

17. It is further submitted by Sri Chakraborty that the continuous insistence of Central Government on filing action taken report by State Government shows the keenness of Central Government to expedite the entire process and get the entire land physically at the

earliest so that the important work of fencing is completed.

18. Sri Bandyopadhyay, learned Counsel for the State Government submits that if the interim relief prayed for by the petitioner is examined in juxtaposition to the main relief, it will show that petitioner's main relief and interim relief has no difference. For this reason alone, no interim relief can be granted.

19. Learned counsel for the State Government submits that the lands in question are not acquired under the Land Acquisition Act, 1894 or **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013** (Act of 2013). Instead, the land is being purchased under a policy, which is called as **direct purchase policy** dated 25.02.2016 (Annexure – P/7).

20. By taking this Court to various Minutes of Meetings filed by learned A.S.G., Sri Bhattacharya informed that it was the common understanding that the land may be obtained by this purchase policy and Government has taken steps in accordance with this policy.

21. He further submits that a Writ Court in exercise of power under Article 226 of the Constitution of India

cannot issue a Writ of Mandamus directing the State Government to acquire the land in a particular way.

22. Reliance is placed on a Division Bench judgement of Allahabad High Court reported in *2010 SCC Online AL 1124 (Madhu Colonizers Pvt. Ltd. Vs. State of UP)*, wherein the Division Bench has placed reliance on its previous Full Bench decision. It was pointed out that the Writ Court should not ordinarily issue direction to acquire the land. On the strength of this decision, it is submitted that this Court cannot issue a Writ of Mandamus for acquisition of land.

23. The next submission is based on *Oil & Natural Gas Corporation Limited Vs. City & Industrial Development Corporation, Maharashtra Ltd. & Ors.* reported in *(2007) 7 SCC 39*. It is urged that the Supreme Court in the said case directed constitution of a Committee to iron out the creases in the matter in dispute. He fairly informed that this decision was subsequently doubted by Supreme Court in two decisions reported in *(2011) 3 SCC 404 (Electronics Corporation of India Limited Vs. Union of India & Ors.)* and *2016 (8) SCC 685 (Northern Coalfield Ltd. Vs. Heavy Engineering Corporation Ltd & Ors.)* but still applied again in *(2018) 10 SCC 634 (Hindustan*

Antibiotics Ltd. Vs. Maharashtra Housing and Area Development Authority).

24. During the course of hearing, learned A.S.G. and Sri Bhattacharya, learned counsel pointed out various proceedings of meeting wherein participation was by very senior officers even by Union Home Secretary and Chief Secretary of W.B. wherein it was brought to the notice of the participants that purchase of land for the purpose of fencing is under the direct purchase policy and not under the Act of 2013.
25. During the course of hearing, Sri Chatterjee, learned counsel for the petitioner has drawn our attention to Section 40 and 41 of the Act of 2013. He submits that this provision is a statutory provision whereas the direct purchase policy is an executive instruction/policy and does not have any statutory backing. For the purpose of fencing, where the defence and integrity of the country is involved, Section 40 is the special provision, which should have been invoked rather adopting or following a direct purchase policy.
26. At present, no other point is pressed by learned counsel for the parties on the aspect of interim relief.

27. So far the first objection of Sri Bhattacharya that the main relief and interim relief are almost similar is concerned, we are not inclined to disallow the interim prayer on this hyper-technical ground in the peculiar facts and circumstances of this case. During the course of hearing, Sri Bandopadhyay, learned Counsel for the State did not dispute that the fencing of IBB is in National interest and necessary for the defence of the country. In this peculiar backdrop, we are not inclined to adopt a hyper-technical approach and decline interim relief.

28. We can categorize the present relief and matter into three broad categories. The **first** category relates to such pieces of lands, which have been acquired, compensation has already been received by State Government from the Central Government but, only partial portion of such land is handed over to B.S.F. for fencing.

29. The **second** category is of such pieces of lands for which acquisition/purchase proceedings have been commenced under the direct purchase policy but could not be finalized and is struck up at different stages including the stage, where it is pending approval before the State Government. **Third,**

category is about the pieces of lands for which acquisition/purchase process is yet to start.

30. So far applicability of Section 40 of the Act of 2013 is concerned, it is noticed that neither the Central Government nor the State Government during the course of review Meetings (filed by learned A.S.G.) has examined the matter of acquisition in the teeth of Section 40 of the Act of 2013.

31. Thus, we deem it proper to request learned counsel for the parties to address us after obtaining instructions regarding applicability and feasibility of acquisition by invoking Section 40 of the Act of 2013. We will hear the parties on this aspect on the next date of hearing.

32. So far **first category** of land is concerned, Sri Chatterjee, learned senior counsel has extracted the data in the **fifth chart** from the affidavit-in-reply filed by the State Government. This chart reproduced hereinabove makes it clear that a sizeable number of lands are acquired/purchased by the State Government for which an amount of compensation has already been received by the State Government from the Central Government. However, the third

column of the said chart shows the description of lands, which are yet to be handed over to the B.S.F.

33. Sri Bhattacharya, learned counsel from his affidavit-in-reply pointed out the months district-wise time for handing over the remaining portion of the land to B.S.F. For the sake of convenience, we have added those dates in last column of the said chart.

34. Sri Bandopadhyay, learned counsel during the course of argument submitted that the engagement of Revenue Officers of State in S.I.R. procedure is not the only reason, which is creating hurdle in expediting the handing over process and acquisition/purchase of land. He highlights certain other reasons from his affidavit-in-reply.

35. However, so far as, the *first category* is concerned, the other reasons will not cut any ice. The first category belongs to such lands, which have already been acquired/purchased and compensation amount has been received. This category of land needs to be handed over to the B.S.F. at the earliest. The S.I.R. procedure cannot, in our considered view, be an impediment for expediting this procedure and hand over these lands in 9 districts, which are mentioned in aforesaid chart.

36. Thus, in view of admitted position of acquisition/purchase of lands in first category and acceptance of compensation for these pieces of land, we deem it proper to direct the State Government to hand over the aforesaid lands as per the fifth chart to the B.S.F. before 31st March, 2026. At the cost of repetition, in our opinion, the State Government needs to expedite the process of handing over of already acquired land for which compensation is already received in these 9 districts to the B.S.F. expeditiously but not beyond 31st March, 2026.

37. So far *second category* is concerned, the State Government shall file an Action Taken Report (ATR) before the next date of hearing to show the steps taken for completing the purchase/acquisition proceedings. We direct the State Government to expedite the entire process and complete such acquisition/purchase before 31st March, 2026.

38. So far the *third category* is concerned, the fresh acquisition, which will also depend on the applicability of Section 40 of the Act of 2013, we deem it proper to take decision on this aspect after hearing the parties on the applicability and feasibility of invoking Section 40 of the Act of 2013. At this stage,

we have not issued any direction to acquire lands in fresh cases and only directed complete the process already initiated/finalised by Govt. Hence, at this stage, judgment of all High Courts in the case of *Madhu Colonizers Pvt. Ltd. (supra)* is of no assistance.

39. It is directed that the State Government and the Central Government shall file their respective counter affidavits within three weeks from date. Reply/rejoinder, if any, be filed within two weeks therefrom.

40. Prayer for interim relief is **disposed of** partially.

41. List this matter on 2nd April, 2026 at 2:00 p.m. under the heading “Interim Hearing”.

42. At this stage, it is noticed that in the last order, the order date has been inadvertently typed as “22.12.2025” whereas the correct date of order is “14.01.2026”.

43. Registry is directed to correct the said order-sheet by mentioning the date as “14.01.2026” in place of “22.12.2025”.

(SUJOY PAUL, CJ.)

(PARTHA SARATHI SEN, J.)