

**SUPREME COURT OF INDIA**

Vidya Devi

Vs.

State of Himachal Pradesh

C.A.No.60-61 of 2020

(Indu Malhotra and Ajay Rastogi,JJ.,)

08.01.2020

**JUDGMENT**

**Indu Malhotra,J.,**

SLP (Civil) No.467-468/2020

1. Delay condoned. Leave granted.

2. The Appellant now almost 80 years old, was undisputedly the owner of land admeasuring about 3.34 Hectares comprised in Khata/Khatuni No. 105 min/127, Khasra No. 70 in Tika Jalari Bhaddirain, Mauja Jalari, Tehsil Nadaun, Dist. Hamipur, Himachal Pradesh.

: Respondent-State took over the land of the Appellant in 1967-68 for the construction of a major District Road being the Nadaun - Sujanpur Road, a major District Road without taking recourse to acquisition proceedings, or following due process of law. The construction of the road was completed by 1975.

3. The Appellant, being an illiterate widow, coming from a rural background, was wholly unaware of her rights and entitlement in law, and did not file any proceedings for compensation of the land compulsorily taken over by the State.

4. In 2004, some similarly situated persons whose lands had also been taken over by the Respondent-State for the same public purpose, filed *titled Anakh Singh & Ors. v. State of Himachal Pradesh & Ors*<sup>1</sup>. claiming compensation before the High Court of Himachal Pradesh. The High Court vide Order dated 23.04.2007, allowed CWP No.1192 of 2004, and directed the Respondent-State to acquire the lands of the Writ Petitioners under the Land Acquisition Act, 1894.

5. Pursuant to the Order of the High Court in 2008, the Respondent-State initiated acquisition proceedings under the Land Acquisition Act, 1894 only with respect to the

lands of the Writ Petitioners, and not the other land-owners whose lands had also been taken over.

6. The Appellant submits that she learnt of these proceedings in 2010, when she alongwith her two daughters filed C.W.P. No. 1736 of 2010 before the Himachal Pradesh High Court, praying that the State be directed to pay compensation for the land acquired in 1967-68; or, in the alternative, direct the State to initiate acquisition proceedings under the Land Acquisition Act, 1894. The Respondent-State filed its reply before the High Court, wherein it was admitted that the Department had used land in the ownership of the Appellant for the construction of the Nadaun - Sujanpur road, a major district road in 1967-68. The State had been in continuous possession of the property since 1967-68, i.e., for the last 42 years, and the title of the Respondent-State got converted into “adverse possession”. It was submitted that the statutory remedy available to the Appellant was by filing a Civil Suit. The State has further admitted that a Notification under Section 4 of the Land Acquisition Act had been issued in 2008 with respect to the land of Anakh Singh a neighbouring land-owner, whose land was similarly taken over for the same purpose. Furthermore, the Writ Petition was barred by laches, since the road was constructed in 1967-68, and metalled since 1975. The land was utilized by the Respondent-State after the Appellant and her predecessors-in-interest had verbally consented to the land being taken over without any objection.

7. The High Court vide the impugned Judgment and Order dated 11.09.2013 held that the matter involved disputed questions of law and fact for determination on the starting point of limitation, which could not be adjudicated in Writ proceedings. The Appellant was granted liberty to file a Civil Suit.

8. Aggrieved, the Appellant filed a Review Petition against the Judgment and Order dated 11.09.2013 which was dismissed vide Order dated 13.05.2014.

9. The Appellant has filed the present Appeals before this Court, to challenge the Judgment dated 11.09.2013 passed in the Writ Petition and Order dated 13.05.2014 passed in the Review Petition.

10. We have heard learned Counsel for the parties and perused the record.

10.1. The Appellant was forcibly expropriated of her property in 1967, when the right to property was a fundamental right guaranteed by Article 31 in Part III of the Constitution. Article 31 guaranteed the right to *private property*<sup>2</sup>, which could not be deprived without due process of law and upon just and fair compensation.

10.2. The right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act, 1978, however, it continued to be a *human right*<sup>3</sup> in a welfare State, and a Constitutional right under Article 300 A of the Constitution. Article 300 A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay

compensation, though not expressly included in Article 300 A, can be inferred in that *Article*<sup>4</sup>. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300 A of the Constitution. Reliance is placed on the judgment in *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai*<sup>5</sup>, wherein this Court held that:

“ 6. ... Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.”

(emphasis supplied)

In *N. Padmamma v. S. Ramakrishna Reddy*<sup>6</sup>, this Court held that:

“21. If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article 300-A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article 300-A of the Constitution of India must be strictly construed.”

(emphasis supplied)

In *Delhi Airtech Services Pvt. Ltd. & Ors. v. State of U.P. & Ors*<sup>7</sup>, this Court recognized the right to property as a basic human right in the following words:

“30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property.

"Property must be secured, else liberty cannot subsist" was the opinion of John Adams. Indeed the view that property itself is the seed bed which must be conserved if other constitutional values are to flourish is the consensus among political thinkers and jurists. ”

(emphasis supplied)

In *Hubhai Nanbhai Khachar v. State of Gujarat*<sup>8</sup>, this Court held as follows :

“48. ...In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation.”

(emphasis supplied)

10.3. In this case, the Appellant could not have been forcibly dispossessed of her property without any legal sanction, and without following due process of law, and depriving her payment of just compensation, being a fundamental right on the date of forcible dispossession in 1967.

10.4. The contention of the State that the Appellant or her predecessors had “orally” consented to the acquisition is completely baseless. We find complete lack of authority and legal sanction in compulsorily divesting the Appellant of her property by the State.

10.5. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in *Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors.*<sup>9</sup> wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution. This Court in *State of Haryana v. Mukesh Kumar*<sup>10</sup> held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.

10.6. We are surprised by the plea taken by the State before the High Court, that since it has been in continuous possession of the land for over 42 years, it would tantamount to “adverse” possession. The State being a welfare State, cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as has been done in the present case.

10.7. The contention advanced by the State of delay and laches of the Appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice. In a case where the demand for justice is so compelling, a constitutional Court would exercise its jurisdiction with a view to promote justice, and not defeat it<sup>10</sup>. In *Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors.*(Supra), this Court while dealing with a similar fact situation, held as follows :

“There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases, etc. Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, under Article 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. Functionaries of the State took over possession of the land belonging to the Appellants without any sanction of law. The Appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode.”

(emphasis supplied)

11. In the present case, the Appellant being an illiterate person, who is a widow coming from a rural area has been deprived of her private property by the State without resorting to the procedure prescribed by law. The Appellant has been divested of her right to property without being paid any compensation whatsoever for over half a century. The cause of action in the present case is a continuing one, since the Appellant was compulsorily expropriated of her property in 1967 without legal sanction or following due process of law. The present case is one where the demand for justice is so compelling since the State has admitted that the land was taken over without initiating acquisition proceedings, or any procedure known to law. We exercise our extraordinary jurisdiction under Articles 136 and 142 of the Constitution, and direct the State to pay compensation to the Appellant.

12. The State has submitted that in 2008 it had initiated acquisition proceedings in the case of an adjoining land owner viz. Shri Anakh Singh pursuant to a direction given by the High Court in C.W.P.No.1192 of 2004. The State initiated acquisition only in the case where directions were issued by the High Court, and not in the case of other land owners whose lands were compulsorily taken over, for the same purpose, and at the same time. As a consequence, the present land owner has been driven to move the Court in their individual cases for redressal.

13. In view of the aforesaid facts and circumstances of the present case, the Respondent-State is directed to pay the compensation on the same terms as awarded by the Reference Court vide Order dated 07.07.2015 in Anakh Singh's case (i.e. Land Reference No.1 of 2011 RBT No.01/13) along with all statutory benefits including solatium, interest, etc. within a period of 8 weeks, treating it as a case of deemed acquisition. An Affidavit of compliance is directed to be filed by the State before this Court within 10 weeks. It is informed that an appeal has been preferred by Ravinder Singh s/o Anakh Singh & Ors. being RFA No.35 of 2016 which is pending before the High Court of Himachal Pradesh at Shimla. Taking note thereof, if an appeal is filed by the present appellant within 8 weeks from the date of compensation being paid to her by the State, the appeal will be treated to be within limitation, and would be decided on its own merits in accordance with law.

The Respondent-State is directed to pay legal costs and expenses of Rs.1,00,0000/- to the

present appellant.

14. The Appeals are accordingly allowed. The Orders dated 11.09.2013 and 13.05.2014 passed by the High Court are set aside.

15. Ordered accordingly.

**Judgment Referred.**

<sup>1</sup>*CWP No.1192 of 2004*

<sup>2</sup>*The State of West Bengal v. Subodh Gopal Bose and Ors. AIR 1954 SC 0092*

<sup>3</sup>*Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors. (2013) 1 SCC 0353*

<sup>4</sup>*K T Plantation Pvt. Ltd. v. State of Karnataka (2011) 9 SCC 0001*

<sup>5</sup>*(2005) 7 SCC 0627*

<sup>6</sup>*(2008) 15 SCC 0517*

<sup>7</sup>*(2011) 9 SCC 0354*

<sup>8</sup>*(1995) Supp. 1 SCC 0596*

<sup>9</sup>*(2013) 1 SCC 0353*

<sup>10</sup>*(1975) 1 SCC 0152*