

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case:-OWP No. 682/2018 in
WP(C) No. 537/2022
WP(C) No. 538/2022

Pronounced on:17.03.2023

Chuni Lal Bhagat

.....Appellant/Petitioners(s)

Through :- Mr. Anil Gupta, Advocate
Mr. A.P. Singh, Advocate
Mr. Sunny Mahajan, Advocate

v/s

State of J&K and another

.....Respondent(s)

Through :- Mr. R.S. Jamwal, AAG

CORAM: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

(Per: Sindhu Sharma-J)

01. In all these three petitions, the propriety land of the petitioners was taken by the respondents without payment of compensation, as such, they are taken up together for consideration. The contention of the petitioners in all the three petitions is that their land was taken by the respondents for setting up Tube Well and other public utilities on the assurance of employment to one of their family member without payment of compensation.

02. While considering these petitions, this Court, vide order dated 17.05.2022 observed that important questions arise for consideration, firstly, whether the land donated by the petitioners by execution of a gift deed in favour of Government or Government functionaries can be said to be a valid legal document, considering the constitutional provisions, and whether the Government would at all accept a gift deed in its name by its citizens. Secondly, whether the gift deed made in favour of the Government could be

held to be a valid, inasmuch as, a gift deed is to be *inter vivos* to be a valid gift deed.

03. Mr. A.P. Singh, Advocate, was also appointed as *amicus curiae* to assist the Court in these matters vide the aforesaid order.

04. Chapter-VII of the Transfer of Property Act, 1882 defines gift in Section 122 as under:

“122. "Gift" defined-"Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made - Such acceptance must be made during the lifetime of the donor and while he is still capable of giving, if the donee dies before acceptance, the gift is void.

123. Transfer how effected -For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. For the purpose of making a gift of moveable property, the transfer may be affected either by a registered instrument signed as aforesaid or by delivery.”

05. The essentials of a gift, thus, would be; (i) There must be a donor and a donee, (ii) The subject matter of a gift must be a certain existing property, (iii) The gift must be voluntary and without consideration, (iv) There must be a transfer on the part of donor, (v) There must be an acceptance by or on behalf of the donee and such acceptance must be made during the lifetime of the donor and while he is still capable of giving, (vi) In case of an immovable property, the transfer must be affected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses and (vii) For the

purpose of making gift of a movable property, the transfer must be affected by a registered instrument or by delivery.

06. The first contention is whether the gift made in favour of Government could be held to be valid, inasmuch as, a gift deed is to be *inter vivos* to be a valid gift deed.

07. A gift is a transfer of property without any consideration or compensation of movable or immovable property, when the transfer takes place between two living persons, it is called *inter vivos*, though, when the transfer takes place after the death of the transferor, it is known as testamentary. Testamentary transfers do not fall within the scope of Section 5 of Transfer of Property Act, 1882, and thus, only *inter vivos* are treated as gifts under the provisions of this Act. If the essential elements required for a transfer to be treated as a gift are not implemented properly, it could be revoked or become void by law.

08. Mr. A.P. Singh, learned Advocate, has drawn our attention to Section 5 of the Transfer of Property Act, 1882, and relied upon the same to submit that the transfer of a property can be made in favour of the Government in terms of the said Section. The transfer of a property, according to him, can be made to a living person, and a living person has been defined to include a company, an association, or individuals or a body of individuals, whether incorporated or not. Thus, the definition of living person would include Government and gift deeds made in favour of Government by the citizens would be held to be a valid gift deed.

09. Section 5 of the Transfer of Property Act, 1882, for the facility of reference reads as under:

“5. “Transfer of property” defined - In the following sections “transfer of property” means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, [or it himself] and one or more other living persons; and “to transfer property” is to perform such act.

[in this section “living person” includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.]”

10. In **‘Shiromani GurudrawaPrabandhak Committee, Amritsar vs. Shri Som Nath Das and others, (2000) 4 SCC 146’**, a juristic person is defined as a creation of law necessitated for the human development by holding that:

“10. The very words Juristic Person connote recognition of an entity to be in law a person which otherwise it is not. In other words, it is not an individual natural person but an artificially created person which is to be recognised to be in law as such. When a person is ordinarily understood to be a natural person, it only means a human person. Essentially, every human person is a person. If we trace the history of a Person in the various countries we find surprisingly it has projected differently at different times. In some countries even human beings were not treated to be as persons in law. Under the Roman Law a Slave was not a person. He had no right to a family. He was treated like an animal or chattel. In French Colonies also, before slavery was abolished, the slaves were not treated to be legal persons. They were later given recognition as legal persons only through a statute. Similarly, in the U.S. the African-Americans had no legal rights though they were not treated as chattel.

In Roscoe Pounds Jurisprudence Part IV, 1959 Ed. at pages 192-193, it is stated as follows:-

In civilized lands even in the modern world it has happened that all human beings were not legal persons. In Roman law down to the constitution of

Antoninus Pius the slave was not a person. He enjoyed neither rights of family nor rights of patrimony. He was a thing, and as such, like animals, could be the object of rights of property..In the French colonies, before slavery was there abolished, slaves were put in the class of legal persons by the statute of April 23, 1833 and obtained a somewhat extended juridical capacity by a statute of 1845. In the United States down to the Civil War, the free negroes in many of the states were free human beings with no legal rights.

11. With the development of society, where an individual's interaction fell short, to upsurge social developments, cooperation of a larger circle of individuals was necessitated. Thus, institutions like corporations and companies were created, to help the society in achieving the desired result. The very constitution of State, Municipal Corporation, company etc. are all creations of the law and these Juristic Persons arose out of necessities in the human development. In other words, they were dressed in a cloak to be recognised in law to be a legal unit.

Corpus Juris Secundum, Vol. LXV, page 40 says:

Natural person. A natural person is a human being; a man, woman, or child, as opposed to a corporation, which has a certain personality impressed on it by law and is called an artificial person. In the C.J.S. definition Person it is stated that the word person, in its primary sense, means natural person, but that the generally accepted meaning of the word as used in law includes natural persons and artificial, conventional, or juristic persons.”

11. Thus, the definition of a living person being inclusive, the gift deeds would not only include corporations, companies and body of individuals but the Government as well. The gift deeds made to the Government by its citizens would otherwise also fall within the parameters of Section 122 are held to be valid gift deeds.

12. The next question would be whether the land donated by the petitioners by execution of gift deeds in favour of Government or Government functionaries can be held to be valid legal document or not.

13. In terms of Section 122 of the Transfer of Property Act, 1882, a gift of existing movable or immovable property made voluntarily and without consideration and accepted would be held to be a valid gift deed. Though there is no doubt that in terms of essentials of gift, the gift must be voluntary and without consideration, so in the event the essentials of the gift are complete, the same would be a valid document.

14. The Hon'ble Division Bench of this Court in LPA No. 309/1996 held that the concept of giving appointment to a person whose land is acquired is a concept which is judicially recognized as held by this Court in State of J&K vs. Chuni Lal, while relying on the judgment of the Hon'ble Apex Court in **'Calcutta Port Trust and anr. vs DebaProsad Bag, 1995 Supp (1) SCC 454,'**. The Government of the J&K has been issuing SRO and Government orders from time to time, providing appointment to one member of the family on account of land being acquired for public purpose. SRO 18 of 1988 was issued in this regard but the same was subsequently withdrawn. Thereafter Circular No. 30/PW/HYD of 2012 dated 03.04.2012 and Circular No. 17-PW (HYD) of 2013 dated 09.04.2013 were issued, which provided that Chief Engineer may engage one member of the family on casual need basis in lieu of land donated by them. The respondents, however, resiled from their assurance after the land from the petitioner was taken.

15. The gift made to the Government by its citizens would be a valid gift deed. If the gift deed made by the citizens complied with the provisions of

Section 122 of the Transfer of Property Act, 1882, these gifts would be a valid document.

16. Now reverting back to the facts of the case, the only issue is whether the land given by the petitioners to the respondents was by way of a gift and whether the same was by a valid gift deed.

17. In OWP No. 682 of 2018, the respondents-PHE Department set up a Tube Well on the land of the petitioner/Chuni Lal Bhagat measuring 01 Kanal out of the total landed property measuring 03 Kanals and 13 Marlas, falling under Khasra No. 799 situated at Muthi, Tehsil & District, Jammu without acquiring the same or paying any compensation to him.

18. The father of the petitioner filed a suit for mandatory injunction in the year 1993, seeking a direction to the respondents to acquire the land covered under Khasra No. 799 measuring 03 Kanals and 13 Marlas situated at Muthi, Tehsil & District, Jammu, as the land was owned by him and where the defendant No. 2 Executive Engineer Water Supply Division Master Plan, PHE Department, B.C. Road, Jammu, was digging the Tube Well and also to pay the compensation to him or in the alternative to remove the machinery and vacate the land.

19. This suit was decreed by the Court of Sub-Judge vide judgment dated 05.04.1994, directing the defendant Nos. 2 and 3 to acquire the land of the petitioner measuring 01 Kanal under Khasra No. 799 and release the compensation within a period of six months. The decree of the civil Court was not implemented by the respondents despite attaining finality. The petitioner thereafter again filed a writ petition bearing OWP No. 1447/2016 seeking a direction to the respondents to make payment of compensation to him for his

land. This writ petition was disposed of vide order dated 03.10.2016, directing the respondents to decide the representation of the petitioner for payment of compensation by passing a speaking order.

20. Mr. Anil Gupta, learned counsel for the petitioner submits that during the pendency of the contempt petition, the respondents asked for execution of gift deed on the assurance that one family member of the petitioner would be provided for Government job. This gift deed was duly registered before the Court of learned Sub-Registrar (Munsiff) on 12.10.2017. The respondents also directed the petitioner to submit an affidavit.

21. The respondents thereafter recommended the name of petitioner's grandson in the list of donors to be engaged in PHE City Division-I Jammu vide communication dated 31.10.2017, but strangely, the respondents took a totally contrary stand and in their compliance report filed in the contempt petition bearing COA (OWP No. 195/2017), placed on record a speaking order bearing No. 01 of 2017 dated 19.12.2017, rejecting the claim of the petitioner. The claim of the petitioner was rejected on 11.10.2017 on two grounds that the petitioner had executed gift deed in favour of the respondents and also that Government has imposed complete ban on engagement of casual/seasonal labours in Governments/State owned PSUs.

22. The respondents had drilled a Tube Well and created other electromechanical assets which are successfully functioning for the last 21 years for water supply purpose in the land of the petitioner, therefore, according to them, it is not possible to vacate the land. The respondents, however, claim that the petitioner had donated his land to them earlier also and has again donated the said land in the year 2017 to the respondents. In view the

circular No. 30/PW/HYD of 2012 dated 03.04.2012 regarding "Engagement in lieu of land donors in PHE, I&FC Department, they had processed the case of his grandson for appointment but subsequently was rejected by office order No. 01 of 12/2017 dated 19.12.2017.

23. The petitioner assails order dated 19.12.2017, in this petition, and seeks quashing of the same with a direction to the respondents to release compensation as per the market value or in the alternate, vacate the said land and hand-over the possession of the land.

24. The admitted case of the parties is that the land of the petitioner has been occupied for setting up of a Tube Well by the respondents without acquiring the same and without paying compensation for the same but subsequently rejected his claim for engagement as well as compensation.

25. The submission of the respondents that the petitioner has donated his land is also apparently without any basis, since the petitioner had initially filed the suit for seeking compensation, thereafter a writ petition was filed. It was only on the assurance of the respondents as regards engagement of one family member that gift deed was passed in the year 2017, which the contempt petition was pending thereafter. The engagement was denied and now again the stand has been changed by stating that they would provide employment.

26. Similarly, in WP(C) Nos. 537 and 538 of 2022, the contention of the petitioners is that in pursuance to Circular No. 30/PW/HYD of 2012 dated 03.04.2012 and Circular No. 17-PW (HYD) of 2013 dated 09.04.2013, the petitioners were approached by the respondents to offer their land by executing a gift deed of their land for construction and installation of Tube Wells in the land to cater to the need for providing drinking water to the public in general

on the condition that one family member of the petitioners would be engaged as Daily Wager in the Department.

27. On this assurance extended by the respondents, the petitioners agreed to part with their land to the Department free of cost on the ground that one family member would be engaged as Daily Wager in the Department on the basis of this assurance given by the respondents, the petitioners executed gift deeds in this regard to facilitate the recording of entries of the Department in the revenue record.

28. The details of the land given by the petitioners were as under:

S. No.	Name of the land-owner/petitioners	Total area/description of land
01.	Gotam Sharma, S/o Ashok Kumar	01 Kanal, comprising Khasra No. 1718, situated at village Saidgarh, Tehsil Bishnah, District Jammu
02.	Parkash Chand, S/o Gura Ram	01 Kanal, comprising Khasra No. 54, situated at Village Nekowal, Tehsil R.S. Pura, District Jammu
03.	Jarnail Singh (now deceased), being represented through his widow Goma Devi	01 Kanal, comprising Khasra No. 105 (old) & 274 (new), situated at Jajowal, Tehsil Suchetgarh, District Jammu
04.	Parkash Chand (now deceased), being represented through his son Ajay Kumar	01 Kanal, comprising Khasra No. 403, situated at Sai Kalan, Tehsil R.S. Pura, District Jammu

05.	Surjeet Singh	01 Kanal, comprising Khasra No. 82, situated at Sai Kalan, District Jammu.
06.	Swaran Singh	01 Kanal, comprising Khasra No. 111/112, situated at village Jangwal, Tehsil Suchetgarh, District Jammu
07.	Tej Ram (now deceased), being represented through his grandson Sanjeev Kumar	01 Kanal, comprising Khasra No. 91, situated at Badali, Samba
08.	Charan Singh (now deceased), being represented through his grandson Navdeep Singh	01 Kanal, comprising Khasra No. 170, situated at ChakBalotrian, Tehsil Ramgarh, District Samba
09.	Basawa Singh (now deceased), being represented through his son Sartej Singh	01 Kanal 03 Marlas, comprising Khasra No. 514, situated at Rakh Abtal, Tehsil Ramgarh, District Samba
10.	Ram Pal	01 Kanal, comprising Khasra No. 188-min (old) 48 (new), situated at Aajpur, Tehsil Bishnah, District Jammu
11.	Ajit Lal	01 Kanal, comprising Khasra No. 218-min, situated at Bidhipur, Tehsil R.S. Pura, District Jammu.

12.	Balbir Singh (now deceased), being represented through his widow Neelam Kumari	01 Kanal, comprising Khasra Nos. 494-min & 495-min, Situated at Jangwal, Tehsil R.S. Pura, District Jammu
13.	Jagdev Singh	01 Kanal, comprising Khasra No. 116, situated at Village Ladwal, Tehsil R.S. Pura, District Jammu
14.	Rattan Singh	01 Kanal, comprising Khasra No. 785-min, situated at Village Biaspur, Tehsil R.S. Pura, District Jammu
15.	Gurbachan Singh	01 Kanal, comprising Khasra No. 116, situated at Village Talhar, Tehsil Suchetgarh, District Jammu
16.	Sham Lal	01 Kanal, comprising Khasra No. 1605, situated at Arnia, Tehsil Bishnah, District Jammu
17.	Kamal Pal Singh	01 Kanal, comprising Khasra No. 270, situated at Bagga Marh, Tehsil R.S. Pura, District Jammu

18.	Satya Devi	01 Kanal, comprising Khasra No. 1038, situated at Arnia, Tehsil R.S. Pura, District Jammu
19.	Baldev Singh	01 Kanal, comprising Khasra No. 436-min, situated at Village Jhang, Tehsil Ramgarh, District Samba.

29. Pursuant to these gift deeds, the Tube Wells were installed in the land of the petitioners. Thereafter, the respondents did not issue any engagement order in favour of the petitioners, thus, constraining them to approach this Court. The petitioners, thus, in this petition seek a direction to the respondents to; (i) restore the vacant possession of their respective lands and to pay compensation and usage charges on account of use and occupation of their respective lands from the date of actual possession till date or to acquire their land in accordance with the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and (ii) to pay compensation to the petitioners for their respective lands in terms of the market rate or in the alternative fulfil the assurance given by them at the time of execution of the gift deeds by appointing one member of their family as Daily Wager in the Department.

30. The respondents, in their objections, submit that the petitioners had donated their land for construction of irrigation Tube Wells as well as to cater to the need for providing drinking water to the public of the area concerned, though, the respondents cannot issue any engagement order in favour of the

petitioners as Daily Workers due to the blanket ban imposed by the Government vide Order No. No. 43-F of 2015 dated 17.03.2015.

31. The Administrative Department, therefore, has taken a decision for assessment of compensation of the land donated by the petitioners as per the value of the land and the rates approved by the petitioner.

32. Though, in WP(C) No. 538/2022, the petitioners have not annexed the gift deeds but only registered notices, however, the respondents have admitted the claim of the petitioners in terms of their communication dated 23.05.2022 and other similar communications and have referred their case to the Revenue Authority, Tehsildar R.S. Pura, to provide the value of the land in their cases for the year mentioned in the table so that the compensation process can be initiated.

33. The gift deeds made by the petitioners in favour of the respondents-Department are not valid as they were based upon engaging one member of the family in Government services.

34. The petitioners in these petitions contended that the respondents approached them to offer their land in terms of Circular No. 30/PW/HYD of 2012 dated 03.04.2012 and Circular No. 17-PW (HYD) of 2013 dated 09.04.2013 by executing gift deeds for construction/installation of Tube Wells to cater to the need for providing drinking water to the public concerned on the condition that one family member would be engaged as Daily Wager in the Department. This assertion has not been denied by the respondents but the respondents submit that they have processed their case for compensation which is yet to be granted to them.

35. The gift deeds executed by the petitioners in favour of the respondents are not valid gift deeds as they contain a condition that the respondents (Donee) has decided to give job to a member of their family and on that basis, the petitioners are gifting their land.

36. In '**S. Sarojini Amma vs. Velayudhan Pillai Sreekumar, (2019) 11 SCC 391,**' the Hon'ble Apex Court held as under:

“**16.**We are in agreement with the decision of this Court in Renikuntla Rajamma that there is no provision in law that ownership in property cannot be gifted without transfer of possession of such property. However, the conditions precedent of a gift as defined in Section 122 of the Transfer of Property Act must be satisfied. A gift is transfer of property without consideration. Moreover, a conditional gift only becomes complete on compliance of the conditions in the deed.

17. In the instant case, admittedly, the deed of transfer was executed for consideration and was in any case conditional subject to the condition that the donee would look after the petitioner and her husband and subject to the condition that the gift would take effect after the death of the donor. We are thus constrained to hold that there was no completed gift of the property in question by the appellant to the respondent and the appellant was within her right in cancelling the deed. The judgment and order¹ of the High Court cannot, therefore, be sustained.”

Therefore, the gift deeds executed in these cases, in any case, are not valid gift deeds.

37. So far as Chuni Lal Bhagat's (OWP No. 682/2018) case is concerned, the land was taken by the respondent-Department without acquiring the same. The petitioner was made to run for receiving compensation which resulted in filing of a civil suit which was decided in his favour and the respondents were directed to acquire the land and pay compensation to him within a period of six

months. The respondents failed to do so, thus, again constraining the petitioner to approach the Court by filing a petition. It was only when the respondents failed to implement the direction for deciding the representation which too was disposed of by directing the respondents to decide the representation of the petitioner for grant of compensation. During the pendency of the contempt petition, the respondents persuaded the petitioner to provide a gift deed and affidavit on the assurance of providing employment to his grandson but strangely after the gift deed was executed by the petitioner, the representation of the petitioner was decided by a speaking order dated 19.12.2017, rejecting the case of the petitioner on the ground of the fact that the gift deed was executed after imposition of complete ban on engagement of casual/seasonal labours in Governments/State owned PSUs, though, a contradictory stand has been taken by the respondents that they have forwarded the case of the petitioner's grandson for employment.

38. The petitioner for the last thirty years is clamoring for compensation of his land which was taken away by the respondents-State without following the due process of law and providing any compensation to either father or him. The respondents also resiled from the assurance extended to the petitioner while obtaining a gift deed. The land of the petitioners in all these cases have been taken by the respondent authorities without resorting to the procedure prescribed under law.

39. The respondents without following the procedure established by law and resorting to acquisition proceedings have set up a Tube Well and created other assets, such as, electromechanical components for functioning of the same for more than 21 years for the water supply purpose. No doubt, the purpose for

which the land has been taken is laudable but for that the right of an individual cannot be trampled. The petitioner had to be paid compensation for the same.

40. The respondents have, thus, forcibly occupied the land of the petitioner without following any procedural law. The Right to Property is a valuable Constitutional Right, as such, the respondents-State could not have taken the property of the petitioner without acquiring the same. The petitioner is, thus, seeking benefit of the same for more than 30 years.

41. The petitioners can be deprived of their property only in accordance with law.

42. The Hon'ble Apex Court in '**Hari Singh Mandir Trust vs. State of Maharashtra and others, (2020) 9 SCC 356**, it was held that the Right to Property may not be a Fundamental Right any longer, but it is still a Constitutional Right under Article 300-A and a human right and it was held that:

“99. In case of dispossession except under the authority of law, the owner might obtain restoration of possession by a proceeding for Mandamus against the Government as held by this Court in **Wazir Chand v. State of Himachal Pradesh AIR 1954 Supreme Court 415**. Admittedly, no compensation has been offered or paid to the appellant Trust. As observed by this Court in **K.T. Plantation Private Limited and Anr. v. State of Karnataka (2011) 9 SCC 1**, even though the right to claim compensation or the obligation of the State to pay compensation to a person who is deprived of his property is not expressly provided in Article 300A of the Constitution, it is inbuilt in the Article. The State seeking to acquire private property for public purpose cannot say that no compensation shall be paid. The Regional and Town Planning Act also does not contemplate deprivation of a land holder of his land, without compensation. Statutory authorities are bound to pay adequate compensation.

100. The High Courts exercising their jurisdiction under Article 226 of the Constitution of India, not only have the power to issue a Writ of Mandamus or in the nature of Mandamus, but are duty bound to exercise such power, where the Government or a public authority has failed to exercise or has wrongly exercised discretion conferred upon it by a Statute, or a rule, or a policy decision of the Government or has exercised such discretion malafide, or on irrelevant consideration.”

43. It was also held that Right to Property is a Constitution Right under Article 300A of the Constitution of India embodies the doctrine of eminent domain which comprises two parts, (i) possession of property in the public interest; and (ii) payment of reasonable compensation. The State possesses the power to take or control the property of the owner for the benefit of public. When, however, a State so acts it is obliged to compensate the injury by making just compensation as held in *Girnar Traders v. State of Maharashtra and Others*.

44. In **‘Jilubhai Nanbhai Khachar vs. State of Gujarat and another, AIR 1995 SC 142,’** the Hon’ble Apex Court held as under:

“In other words, Article 300-A only limits the power of the State that no person shall be deprived of his property save by authority of law. There is no deprivation without due 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.”

45. In **‘Tukaram Kana Johsi and others vs. Maharashtra Industrial Development Corporation (MIDC), (2013) 1 SCC 353’**, the Hon’ble Supreme Court held as under:

“(Vide: *Lachhman Dass v. Jagat Ram & Ors.* (2007) 10 SCC 448; *Amarjit Singh & Ors. v. State of Punjab & Ors.* (2010) 10 SCC 43; *Narmada Bachao Andolan v. State of Madhya Pradesh & Anr.* AIR 2011 SC 1989; *State*

of Haryana v. Mukesh Kumar &Ors. AIR 2012 SC 559 and Delhi Airtech Services Pvt. Ltd. v. State of U.P &Anr. AIR 2012 SC 573)

8. In the case at hand, there has been no acquisition. The question that emerges for consideration is whether, in a democratic body polity, which is supposedly governed by the Rule of Law, the State should be allowed to deprive a citizen of his property, without adhering to the law. The matter would have been different had the State pleaded that it has right, title and interest over the said land. It however, concedes to the right, title and interest of the appellants over such land and pleads the doctrine of delay and laches as grounds for the dismissal of the petition/appeal.”

46. The respondents have admitted the case that the land has been taken by them, as such, they are duty bound to pay compensation to the petitioners for taking possession of their land without providing any compensation to them. Article 226 of the Constitution of India gives any aggrieved person a right to seek enforcement of his Fundamental Rights by invoking extra-ordinary jurisdiction of the Court to issue any writ, order or direction to secure the ends of justice by protecting the rights of those entitled to the same under the Constitution and laws in force.

47. There is no law permitting the deprivation of the property of the citizens, the respondents are either to restore the land to the land owners or pay them the requisite compensation, as no one can be deprived of his Right to Property except in accordance with law in force in the State. The petitioners being small land owners are deprived of their property without payment of any compensation till date. The petitioners are, thus, entitled to payment of compensation as it has resulted in infraction of basic rights of Right to Property as guaranteed under Article-300A of the Constitution of India and are also entitled to use and occupation charges for the same.

48. In view of the aforesaid discussion, these petitions are also allowed. The respondents are directed to initiate the steps for acquiring the land under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act, 2013 within a period of eight weeks. The Deputy Commissioner concerned shall pay rent for use and occupation of the land of the petitioners from the date, the respondents have taken possession of the same.

49. We express our appreciation for the valuable assistance rendered by Mr. A.P. Singh, learned *amicus curiae*.

50. **Disposed of** accordingly.

(SINDHU SHARMA)
JUDGE

(TASHI RABSTAN)
JUDGE

Jammu:

17.03.2023

Michal Sharma

