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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No.341 of 2017

Guharam S/o Shri Asharam, aged about 45 years, R/o Torwa Basti, Bilaspur, District Bilaspur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary, General Administration and Urban Administration Department, Mantralaya, Mahanadi Bhawan, New Raipur, District-Raipur (CG)
2. The Arpa Special Area Development Tribunal, Bilaspur (CG) through the Chief Executive Officer, Ashok Pingle Building, 1st Floor, Near Nehru Chowk, Bilaspur, District-Bilspur (CG)
3. The Collector, Bilaspur, District Bilaspur (CG)
4. The Tahsildar, Bilaspur, District Bilaspur (CG)

---- Respondents

For Petitioners	:	Mr.S.C.Verma, Advocate
For Res.No.1, 3 and 4	:	Mr.Dheeraj Wankhede, Govt. Advocate
For Respondent No.2	:	Mr.Shashank Thakur, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

26/10/2017

1. The petitioner is owner of the land bearing khasra No.631 admeasuring 0.089 hectare situated at village Torwa, Bilaspur included within the area known as Arpa Special Area Development Authority, Bilaspur. He made an application before respondent No.2 for 'No Objection Certificate' for sale of his land to Mr. Naresh Agrawal, which has been rejected by respondent No.2 by the impugned order dated 6.2.2016 (Annexure P/1).

2. Feeling aggrieved against that order, this writ petition under Article 226 of the Constitution of India has been filed by the

petitioner herein stating inter-alia that right to property is a constitutional right as envisaged under Article 300-A of the Constitution of India and respondent No.2 has no authority and jurisdiction to restrict transfer of land by the petitioner and therefore, the impugned order rejecting his application for 'No Objection Certificate, is unsustainable and bad in law and deserves to be set aside.

3. Return has been filed opposing the writ petition stating inter-alia that the petitioner's land has been included in Arpa (Sada) Planning Area-2033. The petitioner's application for grant of 'No Objection' has been considered and it has rightly been rejected by respondent No.2 finding that the petitioner's land is required for construction of road under PPP project. Therefore, the writ petition deserves to be dismissed.

4. Mr.S.C.Verma, learned counsel appearing for the petitioner, would submit that right to property is a constitutional right under Article 300-A of the Constitution of India and there is no law prohibiting such transfer by the petitioner and respondent No.2 by his executive instruction cannot restrict the petitioner's right to transfer his immovable property, therefore, the impugned order rejecting his application for grant of 'No Objection Certificate' is liable to be set aside.

5. On the other hand, Mr.Shashank Thakur, learned counsel appearing for respondent No.2, would oppose the writ petition and submit that the petitioner's land has been included in development of Arpa (Sada) Area and therefore, the

petitioner's land is required and needed for the said scheme and the petitioner has no right and authority to transfer the said land to other person without valid 'No Objection Certificate' granted by respondent No.2.

6. I have heard learned counsel appearing for the parties and considered their rival submissions made herein-above and also gone through the records with utmost circumspection.

7. Article 300-A of the Constitution of India reads as under:-

> "300A. **Persons not to be deprived of property save by authority of law**.-No person shall be deprived of his property save by authority of law."

Thus, right to property is a constitutional right, though right to property is no longer a fundamental right and constitutional protection continues inasmuch as without authority of law, a person cannot be deprived of his property. Right to property is a human right as well as a constitutional right (See **Indian Handcrafts Emporium and others Vs. Union of India and others**[1]). Thus, the right to acquire, hold and dispose of the property has ceased to be a fundamental right under the Constitution of India, but it continues to be a legal or constitutional right that no person can be deprived of his property save and except by and in accordance with law.

8. At this stage, it would be appropriate to notice Sections 50 (7) and 53 of the Chhattisgarh Nagar Tatha Gram Nivesh

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1 (2003) 7 SCC 589

Adhiniyam, 1973 (hereinafter called as “Act of 1973”) which read as under:-

> “50(7) Immediately after the town development scheme is approved under sub-section (4) with or without modifications the Town and Country Development Authority shall publish in the Gazette and in such other manner as may be prescribed a final town development scheme and specify the date on which it shall come into operation.
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> **53. Restrictions on land use and land development**.-As from the date of publication of the declaration to prepare a town development scheme, no person shall, within the area included in the scheme, institute or change the use of any land or building or carry out any development, save in accordance with the development authorised by the Director in accordance with the provisions of this Act prior to the publication of such declaration.”

9. Respondent No.2/Arpa Special Area Development Authority, Bilaspur has been constituted under Section 16 of the Act of 1973 by notification dated 25.10.2010 and Arpa (Sada) Planning Area [Development Plan – 2033] has been published, but under Section 50(7) of the Act of 1973 town development scheme has not been yet notified and as such, no town planning scheme is in existence and therefore, Section 53 of the Act of 1973 is not at all attracted to the facts of the present case as preparation of town development scheme is condition precedent for applicability of Section 53 of the Act of 1973.

10. The Supreme Court in the matter of **Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Coke &**

Chemicals Ltd. and others[2] has held that right of property is now considered to be not only a constitutional right but also a human as well as a legal right. It was observed as under:-

> “54. The Declaration of Human Rights of 26-8-1789 enunciates under Article 17:
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> > "17. Since the right to property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid".
> >
> > Further under Article 17 of the Universal Declaration of Human Rights, 1948 dated 10-12-1948, adopted in the United Nations General Assembly Resolution it is stated that : (i) Everyone has the right to own property alone as well as in association with others. (ii) No one shall be arbitrarily deprived of his property.
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> 55. Earlier human rights were existed to the claim of individuals right to health, right to livelihood, right to shelter and employment etc. but now human rights have started gaining a multifaceted approach. Now property rights are also incorporated within the definition of human rights. Even claim of adverse possession has to be read in consonance with human rights. As President John Adams (1797-1801) put it:
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> > "Property is surely a right of mankind as real as liberty."
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> Adding,
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> > "The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence".
>
> 56. Property, while ceasing to be a fundamental right would, however, be given express recognition as a legal right, provisions being made that no person shall be deprived of his property save in accordance with law. ”

11. Similarly, the Supreme Court in the matter of **DLF**

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2 (2007) 8 SCC 705

Qutab Enclave Complex Educational Charitable Trust Vs. State of Haryana and others[3] has held that right to transfer the land is incidental to right of ownership of the land and cannot be taken away without authority of law. It was observed as under:-

> "54. In these cases, we are not concerned with the question as to whether the provisions of the Transfer of Property Act are applicable in the State of Haryana or not. Ownership of land jurisprudentially involves a bundle of rights. One of such rights is the right to transfer. Such a right, being incidental to the right of ownership, having regard to Article 300-A of the Constitution of India, cannot be taken away save by authority of law."

12. The Supreme Court in the matter of **Jilubhai Nanbhai Kachar and others Vs. State of Gujarat and another**[4] has held that right to property under Article 300-A of the Constitution of India is subject to State's restraints and regulation. It was observed as under:-

> "42. Property in legal sense means an aggregate of rights which are guaranteed and protected by law. it extends to every species of valuable right and interest, more particularly, ownership and exclusive right to a thing, the right to dispose of the thing in every legal way, to possess it, to use it and to exclude every one else from interfering with it. The dominion or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects is called property. The exclusive right of possessing, enjoying, and disposing of a thing is property in legal parameters. Therefore, the word 'property' connotes everything which is subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate or status. Property, therefore, within the constitutional protection, denotes group of rights inhering

3 (2003) 5 SCC 622
4 1995 Supp (1) SCC 596

> citizen's relation to physical thing, as right to possess, use and dispose of it in accordance with law. In Ramanatha Aiyar's The Law Lexicon, Reprint Ed. 1987 at p. 1031, it is stated that the property is the most comprehensive of all terms which can be used, inasmuch as it is indicative and descriptive of every possible interest which the party can have. The term property has a most extensive signification, and, according to its legal definition, consists in free use, enjoyment, and disposition by a person of all his acquisitions, without any control or diminution, save only by the laws of the land, in Dwarkadas Srinivas's case this court gave extended meaning to the word property. Mines, minerals and quarries are property attracting Article 300-A."

13. In the matter of **Bishambhar Dayal Chandra Mohan and others Vs. State of Uttar Pradesh and others**[5] the Supreme Court has held that the "law" within the meaning of Article 300-A of the Constitution of India would mean the law enacted by competent legislature. It was observed as under:-

> "41. There still remains the question whether the seizure of wheat amounts to deprivation of property without the authority of law. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State Government cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. Article 162, as is clear from the opening words, is subject to other provisions of the Constitution. It is, therefore, necessarily subject to Article 300-A. The word "law" in the context of Article 300-A must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order, having the force of law, that is positive or State-made law. The decisions in Wazir Chand v. State of H.P. [(1955) 1 SCR 408] and Bishan Das v. State of Punjab [(1962) 2 SCR 69] and others are an authority for the proposition that an illegal seizure amounts to deprivation of property without the authority of law. In Wazir Chand's case (supra), the police in India seized goods in possession of the petitioner in India at the

5 (1982) 1 SCC 39

instance of the police of the State of Jammu and Kashmir. The seizure was admittedly not under the authority of law, inasmuch as it was not under the orders of any Magistrate; nor was it under Sections 51, 96, 98 and 165 of the Code of Criminal Procedure, 1898, since no report of any offence committed by the petitioner was made to the police in India, and the Indian police were not authorised to make any investigation. In those circumstances, the Court held that the seizure was not with the authority of law and amounted to an infringement of the fundamental right under Art. 31(1). This view was reaffirmed in Bishan Das's case (supra).”

14. The word “law” under Article 300-A of the Constitution of India would mean a validly enacted law meaning thereby a just, fair and reasonable law (See **Delhi Airtech Services (P) Ltd. Vs. State of U.P**.[6]).

15. The Supreme Court in the matter of **Tukaram Kana Joshi Vs. MIDC**[7] has held that right to property is not only constitutional right, but also human right and held as under:-

“6. The appellants were deprived of their immovable property in 1964, when Article 31 of the Constitution was still intact and the right to property was a part of fundamental rights under Article 19 of the Constitution. It is pertinent to note that even after the Right to Property seized to be a Fundamental Right, taking possession of or acquiring the property of a citizen most certainly tantamounts to deprivation and such deprivation can take place only in accordance with the "law", as the said word has specifically been used in Article 300-A of the Constitution. Such deprivation can be only by resorting to a procedure prescribed by a statute. The same cannot be done by way of executive fiat or order or administration caprice. In Jilubhai Nanbhai Khachar v. State of Gujarat [1995 Supp (1) SCC 596 : AIR 1995 SC 142], it has been held as follows: (SCC p. 627, para 48)

"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 is no deprivation without due sanction of law. Deprivation by any other mode is not acquisition or

6 (2011) 7 SCC 354
7 (2013) 1 SCC 353

> taking possession under Article 300-A. In other words, if there is no law, there is no deprivation."
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> 7. The right to property is now considered to be, not only a constitutional or a statutory right, but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multifaceted dimension. The right to property is considered, very much to be a part of such new dimension. (Vide: Lachhman Dass v. Jagat Ram[8]; Amarjit Singh v. State of Punjab[9]; State of M.P. v. Narmada Bachao Andolan[10]; State of Haryana v. Mukesh Kumar[11] & Ors. AIR 2012 SC 559 and Delhi Airtech Services Pvt. Ltd. (supra).”

16. Thus, in the light of principles of law laid down by the Supreme Court in the aforesaid judgments (supra), if the facts of the present case are examined, it is quite vivid that town development scheme has not been notified at present under Section 50 (7) of the Act of 1973, therefore, no restriction can be made to the owner's right to transfer the land under Section 53 of the Act of 1973. Likewise, there is no law enacted by competent legislature restraining the right of owner of land to transfer his land and as such, right to transfer the land can be restricted only by a statute enacted by competent legislature. In absence of law prohibiting transfer, no restriction to transfer the land can be directed by respondent No.2 as right to property under Article 300-A of the Constitution of India is not only constitutional or legal right, but it is also human right and a person can be deprived of that right only by authority of law.

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8 (2007) 10 SCC 448
9 (2010) 10 SCC 43
10 (2011) 7 SCC 639
11 (2011) 10 SCC 404

17. As a fallout and consequence of the above-stated discussion, the impugned order dated 6.2.2016 (Annexure P/1) passed by respondent No.2/Arpa Special Area Development Tribunal, Bilaspur refusing to grant 'No Objection Certificate' to the petitioner is hereby quashed. Respondent No.2 is directed to grant 'No Objection Certificate' to the petitioner for transfer of his land to Naresh Agrawal within a period of three weeks from the date of receipt of a copy of this order on behalf of the petitioner.

18. The writ petition is allowed to the extent indicated herein-above. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-