

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2115 of 2021

- Radhey Shyam Nathani S/o Late Shri Alam Chand Nathani Aged About 72 Years Occupation Business R/o Chakarbhata, Tahsil Bilha, District Bilaspur, Chhattisgarh ----- **Petitioner**

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Urban Administration And Development, Indravati Bhawan, Atal Nagar, Raipur, Chhattisgarh
2. Nagar Panchayat Naya Baradwar, Through Its Chief Municipal Officer, Nagar Panchayat Naya Baradwar, Tahsil Sakti, District Janjgir Champa, Chhattisgarh

----- **Respondents**

For Petitioner : Shri Sourabh Sharma, Advocate

For Respondent/ State : Ms. Richa Shukla, Dy. G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

11.06.2021

Heard

1. Learned counsel for the petitioner submits that the petitioner is the owner of the land bearing khasra No. 574/2 admeasuring 1.5 decimal situated at village Naya Baradwar, Ward No. 10 PC No. 18 Tahsil Sakti, District Jangir Champa.
2. The grievance of the petitioner is that in the year 2014, respondent No. 2 despite objection having been raised constructed the road over the land of the petitioner whereby the entire land of the petitioner i.e. 1.5 decimal was

acquired for construction of the road. It is submitted that while such construction of road was made no compensation was paid to the petitioner. He further submits that subsequently the petitioner got his land demarcated and the demarcation report dated 26.03.2015 would show that the land of the petitioner was covered in entirety for construction of the road. He further submits that compensation having not been paid till date, respondent No. 2 may be directed to follow the procedure under sub Section 4 of Section 183 of the C.G. Municipalities Act, 1961 ('for short act of 1961') and the interest may be also awarded on the delayed compensation and the part of the interest may be recovered from the erring officers.

3. Perused the documents.
4. Perusal of the demarcation report dated 26.03.2015 which is placed on record shows that land bearing Khasra No. 574/2 admesuring 1.5 decimal has been enveloped completely in construction of road. The letter of petitioner is also on record Annexure P-3 with the endorsement of Nagar Panchayat that complaint was made to the Chief Municipal Officer, Nagar Panchayat Baradwar on 29.09.2014 for grant of compensation. It appears that till today the issue of grant of compensation is in dormant state and nothing has been transpired.
5. Apparently, it appears that petitioner was deprived of his right to hold the land without compensation being paid. Section 183 of the Act of 1961 reads as under :-

183. Regular line of public street:-

1. XXXX

2. XXXX

3. XXXX

4. The Council shall pay such reasonable compensation to the owner as may be determined in accordance with the provisions of Section 303 for the loss which he may

sustain in consequence of inclusion of his land in a public street but in assessing such compensation regard shall be had to the benefits accruing to that owner from the development of the land belonging to him and affected by such street.

6. In view of the clear categorical mandate of the Statute that in case of such acquisition of the land for construction of road, the compensation is to be paid in accordance with provisions of Section 303 of the Act of 1961, the petitioner appears to have been deprived of his right to get the compensation, which is completely against the Article 300 A of the Constitution of India.
7. The Supreme Court in the case of **D.B. Basnett (D) Vs. Collector East District Gangtok, Sikkim AIR ONLINE 2020** reported in **SC 305, para 14 and 16** while dealing with likewise nature of deprivation from property laid down the principles as under :-

14. We may note that even though rights in land are no more a fundamental right, still it remains a constitutional right under Article 300A of the Constitution of India, and the provisions of any Act seeking to divest any person from the rights in property have to be strictly followed. *Padmamma & Ors. v. S. Ramakrishna Reddy & Ors.* (2008) 15 SCC 517

16. We find a detailed discussion about the law as it evolved and the rationale for the said purpose in **Vidya Devi** (Supra) of which the relevant paragraphs read as under:

"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 (*The State of West Bengal v. Subodh Gopal Bose and Ors.* AIR 1954 SC 92), 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 (Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors. (2013) 1 SCC 353) in a welfare State, and a Constitutional right under Article 300A of the Constitution. Article 300A 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 300A, can be inferred in that Article (K T Plantation Pvt. Ltd. v. State of Karnataka(2011) 9 SCC 1).

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 300A of the Constitution.

In case of **Hindustan Petroleum Corporation LTD V. Darius Shapur Chennai (2005) 7 SCC 627**, wherein this Court held that:

" 6.... Having regard to the provisions contained in Article 300A 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."

In N. Padmamma Vs. S. Ramakrishna Reddy (2008) 15 SCC 517, 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 300A of the Constitution protects such right. The provisions of the act seeking to divest such right, keeping in view of the provisions of Article 300A of the Constitution of India, must be strictly construed."

In Delhi Airtech Services Pvt. Ltd. & Ors. V. State of U.P. & Ors. (2011) 9 SCC 354, 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."

In Julubhai Nandbhai Khachar V. State of Gujarat, (1995)Supp. 1 SCC 596 this Court held as follows:

"48..... In other words, Article 300A 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 in not acquisition or taking possession under Article 300A. In other words, if there is no law, there is no deprivation."

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.

10.5. In a democratic polity government by the rule of law, the State could not have deprived a citizen of their property without the sanction of law.

In the case of **Tukaram Kana Joshi & Ors. V. M.I.D.C. and Ors. (2013) 1 SCC 353** 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** 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 multifaceted dimension."

8. Under the circumstances despite the clear mandate of Statute if the person is deprived of his right to hold the land and right to receive compensation, Article 300A is over reached to defeat. Then in such case the grievance of the petitioner cannot be shelved. Accordingly, it is ordered that the Municipal Corporation shall proceed in accordance with Section 183 (4) and Section 303 of the Act of 1961 and grant the compensation to the petitioner and conclude the proceeding within a further period of 6 months from the date of receipt of a copy of this order. The aforesaid time limit has been fixed considering the age of the petitioner as it is shown to be 72 years in the petition. In the event the compensation is granted "with interest", the Nagar Panchayat may conduct an enquiry so as to find out as to what is the reason for not following the Statute which controls the acquisition of the like nature under the Municipalities Act of 1961. If it is found that without any sufficient reason the procedure to be followed were dispensed with while acquisition was done, then in such case, the levy of interest cannot be charged to the public exchequer for the willful wrong committed by a set of persons holding the office for acquisitive intent. Under the circumstances, after the enquiry, if it is found that the Officers were negligent to follow the statutory duty caste upon them under the Act of 1961, then the amount of "levy of interest" should be recovered from the officers after payment of amount to the petitioner.
9. With the aforesaid observation/ direction, the writ petition stands disposed off.

Sd/-
(Goutam Bhaduri)
Judge

Jyoti