

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 4770 of 2019

Order reserved on 14/06/2021

Order delivered on : 22/06/2021

Alok Lal S/o late Shyam Bhushan Lal Aged About 50 Years R/o.
Magarpara Chowk, Tahsil And District Bilaspur Chhattisgarh,

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Urban Development Department, Mahanadi Bhavan, Mantralaya, Atal Nagar, Raipur Chhattisgarh
2. Commissioner, Municipal Corporation, Bilaspur, District Bilaspur Chhattisgarh,
3. Collector, Bilaspur, District Bilaspur Chhattisgarh
4. Tahsildar, Bilaspur, District Bilaspur Chhattisgarh,

---Respondents

For petitioner- Shri Praveen Das, Advocate.

For State- Smt. Richa Shukla, Dy.G.A.

For respondent No.2- Shri Abhyudav Singh, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

CAV Order

1. Instant petition is for payment of compensation for the land acquired or in lieu thereof to return the land.
2. The case of the petitioner is that the petitioner through his predecessor in title owned a piece and parcel of land bearing Khasra No.671/1 and 674 admeasuring 0.56 acres and 0.40 acres at Patwari Halka, 23, Tifra, Vyapar Vihar, Bilaspur. The said lands were recorded in the name of father of the petitioner who died on 2/02/2007. Subsequent to it when the petitioner came to know that the land were owned by the father, it was enquired about it and it was revealed that the respondent No.2 is in possession of the said land without there being proper legal acquisition having been made the petitioners were deprived of their land.

Therefore detail representation was initially filed on 16/11/2015. The representation was responded by respondent/Municipal Corporation and it was revealed that the father of the petitioner Shyam Bhushan had executed an agreement on 15/01/1988 for land bearing Khasra No.671 and the acquisition was made on the basis of mutual consent. Further admission was made by letter 24/09/2019 (Annexure P-8) that no agreement was executed with respect to the land bearing khasra no.674 admeasuring 0.56 acres. According to the case of the petitioner even if an agreement was executed it was with respect to Khasra No.671/1 for an area of 0.34 acres, but no consideration was paid however with respect to Khasra No.674 there was no agreement. Learned counsel for the petitioner would submit that the petitioner cannot be therefore robbed in the manner by the Municipal Corporation of their land without due course of law.

3. Learned counsel for the Municipal Corporation would submit that Khasra No.671/1 and Khasra No.674 admeasuring 0.40 acres and 0.56 acres have been utilized by the Municipal Corporation and third party rights have been created. As per the reply it is stated that the land were recorded in the name of Shivcharan, Surajdeen and Bohran and 40% of the compensation amount in the year 1987 was paid to said Shivcharan, Surajdeen and Bohran. However an objection having been raised by the father of the petitioner that the land were purchased in the year 1967 he is the true owner, the disbursement of the rest of the compensation was stopped. It is stated subsequently the ownership was enquired into by the Corporation about the ownership of land and after enquiry it was found that the petitioner's father was true owner of the property so utilized by Corporation. Therefore a fresh agreement was executed with him for acquisition of the land bearing Khasra No.671/1 vide agreement dated

5/01/1988. As per the reply of the respondent the disbursement of initial compensation was made to the wrong person instead of the real owner.

4. Perusal of the documents therefore would show that the two land which belong to the petitioner through his predecessor bearing Khasra No.671/1 and 674/4 was acquired by the Municipal Corporation. In respect of Khasra No.671/1 by inadvertence the agreement was entered into with wrong land owner and part of compensation was paid to them. Subsequently when objection was made by father of petitioner, the Corporation conducted an enquiry and it was revealed that actual ownership belong to the petitioner's father. Thereafter an agreement was executed with Shyam Bhusan the father of the petitioner on 15/01/1988 in respect of land bearing Khasra No.671/1 admeasuring 0.34 acres to pay the compensation. According to the submission of the respondent since the initial amount was wrongly paid to the wrong land owners for Khasra No.671, no amount was paid to father of petitioner on the hope that wrong payment made, would be returned by that person. It is contended that since no amount was returned as such amount under agreement was not paid to the petitioner's father. The agreement therefore prima facie would show the admission of the respondent that agreement was without any consideration. This fact also fortified by the return of the respondent/Corporation wherein admission is made that because the amount initially paid to the wrong land owners since it was not returned, as such a sale deed could not be executed in favour of respondent/Corporation and amount due to the petitioner could not be paid.

5. In respect of the khasra No.674 admeasuring 0.56 acres same is also being taken over by the Corporation. The Corporation has failed to justify in its reply under what authority they occupied and deprived the

petitioner through their predecessor in title of the property. The letter dated 1st August, 2019 by the Municipal Corporation, Bilaspur to the petitioner shows the admission made that in respect of khasra No.671 the Corporation has decided to grant compensation to the petitioner in respect of the land which was acquired of 0.34 acres out of 0.40 acres. Though the same letter finds a reference of the agreement dated 15/01/1988 entered with the father of the petitioner but the same agreement is without consideration as no amount was paid then. Likewise for the khasra No.674 nothing is on record to justify the take over made by the respondent/Corporation and supported by the legal document.

6. The Supreme Court in a case law reported in **(2020) 4 SCC 572** in between **D.B. Basnett (dead), through legal representatives Vs. Collector, East District, Gangtok Sikkim and another** reiterated the view taken in case of **Vidya Devi v. State of H.P. (2020) 2 SCC 569**. It has been held that when there is a forceful take over of the property, it should be supported by the proper procedure and deprivation of just and fair compensation without due process of law cannot be allowed. The relevant para from 12.2 to 12.10 which is laid down in Vidya Devi case has been reiterated in **(2020) 4 SCC 572** in case of **D.B. Basnett (dead), through legal representatives Vs. Collector, East District, Gangtok Sikkim and another** which is reproduced hereunder:-

“12.2. 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. Maharashtra Industrial Development Corpn. \(2013\) 1 SCC 353](#)) 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 300A](#), can be inferred in that [Article \(K.T. Plantation \(P\). Ltd. v. State of Karnataka \(2011\) 9 SCC 1\)](#).

12.3 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 Chennai](#) (2005) 7 SCC 627, wherein this Court held that: (SCC p.634, para 6)

“ 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.”

12.4 [In N. Padmamma v. S. Ramakrishna Reddy](#) (2008) 15 SCC 517, this Court held that: SCC p. 526, para 21)

“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.”

12.5 [In Delhi Airtel Services \(P\) Ltd. & Ors. v. State of U.P.](#) (2011) 9 SCC 354, this Court recognized the right to property as a basic human right in the following words: (SCC p.379, para 30

“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.”

12.6. [In Jilubhai Nanbhai Khachar v. State of Gujarat](#), (1995) Supp. 1 SCC 596 this Court 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 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.”

12.7. 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.

12.8. 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.

12.9. 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 v. Maharashtra Industrial Development Corpn.](#) (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.

12.10 This Court in [State of Haryana v. Mukesh Kumar](#) (2011) 10 SCC 404 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.”

7. In respect of delay and laches in the like nature of acquisition, the Supreme Court has reiterated the view taken in case of Vidya Devi and lamented the same. For the sake of brevity para 17 to this issue on delay and laches is reproduced herein below:-

“17. There is also a discussion in the judgment Vidya Devi v. State of H.P., (2020) 2 SCC 569 on the aspect of delay and laches, which is as under: (Vidya Devi case, (2020) 2 SCC 569, SCC pp. 574-75, para 12)

“12.12. 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.

12.13. 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 ([P.S. Sadasivaswamy v. State of T.N.](#) (1975) 1 SCC 152).

12.14. In [Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn.](#) (2013) 1 SCC 353, this Court while dealing with a similar fact situation, held as follows: (SCC p. 359, para 11)

11. 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 in original)

8. Following the aforesaid principle the issue of delay and laches cannot be made a ground to dismiss the petition specially when the Corporation had admitted by its letter 1st August, 2019 agreed to grant compensation. The Corporation too before this Court admitted the fact that without payment of compensation petitioner was deprived of his land.

9. The Supreme Court in case of **Delhi Airtech Services Private Limited and Another Vs. State of Uttar Pradesh and Another** reported in **(2011) 9 SCC 354** has held that the authorities are instrumentalities of the State and the officers are empowered to exercise the power on behalf of the State and such exercise of power attains greater significance when it arises from the statutory provisions. The level of expectation of timely and just performance of duty is higher, as compared to the cases where the power is executively exercised in discharge of its regular business. Therefore the administrative norms and principles of fair performance are applicable to the like nature of cases with equal force, as they are to the government department. The well established precepts of public trust and public accountability are fully applicable to the functions which emerges from the public servants or even the persons holding public office. It

further observed that the doctrine of full faith and credit applies to the acts done by the officers. There is a presumptive evidence of regularity in official acts, done or performed, and there should be faithful discharge of duties to elongate public purpose in accordance with the procedure prescribed.

10. Here in this case it would show that Municipal Corporation which is statutory body constituted under the Act while dispossessing father of the petitioner did not adhere to the prescribed statute and without payment of any compensation, the petitioner through his predecessor was dispossessed of his right to hold the property which is against the mandate of Article 300-A of the Constitution of India.

11. Under the circumstances, following the principles so laid down by the Supreme Court and the facts of this case, it is directed that the respondent/Municipal Corporation shall grant compensation to the petitioner in lieu of the land acquired as he has been deprived of the property without due course of law or in alternate if there is municipal/government land available he may be allotted 30% municipal/government of total acquired area of 0.96 acres.

12. With such observation, the petition stands allowed to the above extent.

Sd/-

(Goutam Bhaduri)

JUDGE