

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction
(Appellate Side)

MAT 464 OF 2018

With

**I.A. No. CAN 1 of 2018
(Old No. CAN/5279/2018)**

With

**I.A. No: CAN 2 of 2018
(Old No. CAN/5280/2018)**

The State of West Bengal & Ors.

Vs.

Dilip Ghosh & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Rai Chattopadhyay

For the Appellant/
State : Mr. Susovan Sengupta, Adv.
Mr. Subir Pal, Adv.

Heard On : 13.06.2022, 23.06.2022, 07.07.2022,
13.07.2022 & 19.07.2022

CAV On : 19.07.2022

Judgment On : 29.09.2022

Arijit Banerjee, J. :-

1. A Judgment and Order dated May 2, 2017, whereby the writ petition of the respondents herein was disposed of, is the subject matter of challenge in this appeal.

2. It is not in dispute that the land of the writ petitioners was taken over by the Government and was utilised for the purpose of constructing a road. It is also not in dispute that the writ petitioners were not paid any compensation for such land. It is also an admitted position that other people whose lands were taken over in connection with L.A. Case No. 06/BRP/82-83 renumber as L.A. Case No De-Novo 35/PW/Roads/2004-2005, received compensation. The writ petitioners approached the learned Single Judge claiming compensation for their lands which they lost.

3. The learned Single Judge called for a report from the Additional Land Acquisition Officer, Nadia who was the respondent no. 5 in the writ petition. Such report was filed. The learned Judge noted from such report that although road was built over the land of the writ petitioners, such land was not acquired by initiating any proceeding and no compensation for such land was paid. The learned Judge disposed of the writ petition with the following direction :-

“I direct the respondent nos. 3, 4 and 6 to initiate appropriate proceeding under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in connection with the land of the petitioners on which the

road has already been constructed within a period of eight weeks from the date of communication of the order, so that the compensation is paid to the petitioners within a period of three months from the date of communication of the order.”

4. Being aggrieved, the State and other official respondents in the writ petition have come up in appeal.

5. Primarily two grounds have been urged as would appear from the Memorandum of Appeal. Firstly, that the learned Judge erred in directing initiation of proceedings under the provisions of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (in short ‘2013 Act’); the second ground is that the State Government has acquired title to the land of the writ petitioners by way of adverse possession.

6. We have heard learned Counsel for the parties and considered the rival contentions.

7. Taking the second ground of appeal first, I am not a little surprised to note that the State has taken the point of adverse possession for denying compensation to citizens whose land has been taken over by the State without initiating due proceedings contemplated in law. This is shocking. In

this connection we may note the observation of the Hon'ble Supreme Court at paragraph 29 of the decision in the case of ***B.K. Ravichandra & Ors. v. Union of India & Ors., reported at 2020 SCC OnLine SC 950*** which are to the following effect:-

“29. It is, therefore, no longer open to the state : in any of its forms (executive, state agencies or legislature) to claim that the law – or the Constitution can be ignored, or complied at its convenience. The decisions of this Court, and the history of the right to property show that though its pre-eminence as a fundamental right has been undermined, nevertheless, the essence of the rule of law protects it. The evolving jurisprudence of this Court also underlines that it is a valuable right ensuring guaranteed freedoms and economic liberty. The phrasing of Article 300-A is determinative and its resemblance with Articles 21 and 265 cannot be overlooked-they in effect, are a guarantee of the supremacy of the rule of law, no less. To permit the State : whether the Union or any State Government to assert that it has an indefinite or overriding right to continue occupying one's property (bereft of lawful sanction)- whatever be the pretext, is no less than condoning lawlessness. The Courts' role is to act as the

guarantor and jealous protector of the people's liberties : be they assured through the freedoms, and the right to equality and religion or cultural rights under Part III, or the right against deprivation, in any form, through any process other than law. Any condonation by the Court is a validation of such unlawful executive behaviour which it then can justify its conduct on the anvil of some loftier purpose, at any future time-aptly described as a "loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need."

8. Further, it is now settled by the Supreme Court vide its decision in the case of ***Vidya Devi v. The State of Himachal Pradesh and Ors., reported at (2020) 2 SCC 569 = AIR 2020 SC 4709***, that the State cannot be permitted to take the plea of adverse possession. The State, professing to be a welfare state, cannot claim to have perfected its title over the concerned land by invoking the doctrine of adverse possession to grab the property of its own citizens.

9. In the aforesaid case the State had taken over the land of the appellant in 1967-68 for constructing a major road without taking recourse to acquisition proceedings or following due process of law. The construction

of the road was completed by 1975. The appellant did not file any proceedings. Some similarly situated persons whose lands had also been taken over filed a writ petition before the Himachal Pradesh High Court. The High Court directed the State to acquire the lands of the writ petitioners under the Land Acquisition Act, 1894. Pursuant to such order, the State initiated acquisition proceedings under the 1894 Act only with respect to the lands of the writ petitioners who approached the High Court. The appellant filed a writ petition in the Himachal Pradesh High Court in 2010. The State in its reply took the point of adverse possession and also the point that the writ petition was barred by laches. The High Court dismissed the writ petition holding that the same involved disputed questions of law and fact. The appellant's review petition was also dismissed by the High Court. Accordingly the appellant approach the Hon'ble Supreme Court.

10. As regards the decision of the Hon'ble Supreme Court, I can do know better than quote liberally from the judgment:-

“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, 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 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 the 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.*

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.

Reliance is placed on the judgment in Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chennai MANU/SC/0610/2005 : (2005) 7 SCC 627, 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.

In N. Padmamma v. S. Ramakrishna Reddy

MANU/SC/7731/2008 : (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 300-A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view the provisions of Article 300-A of the Constitution of India, must be strictly construed.

In Delhi Airtech Services Pvt. Ltd. and Ors. v. State of U.P. and Ors.

MANU/SC/0956/2011 : (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 *Jilubhai Nanbhai Khachar v. State of Gujarat* MANU/SC/0033/1995 : (1995) Supp. 1 SCC 596 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.

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 governed by the Rule of law, the State could not have deprived a citizen of his property without the sanction of law. Reliance is placed on the judgment of this Court in *Tukaram Kana Joshi and Ors. v. M.I.D.C. and Ors.* MANU/SC/0933/2012 : (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 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. [Emphasis is mine]

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.

In Tukaram Kana Joshi and Ors. v. M.I.D.C. and Ors., MANU/SC/0933/2012 : (2013) 1 SCC 353 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.

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 directed the State to pay compensation to the Appellant.”

11. Although in that case the appellant was an illiterate lady, in my opinion, the same would not make any difference. The ratio of the decision is clear, i.e., the State cannot claim to have perfected title to land belonging to its citizens, by taking recourse to the doctrine of adverse possession. Although the said Supreme Court judgment says that the Hon'ble Supreme Court exercised extraordinary jurisdiction under Articles 136 and 142 of the Constitution to direct the State to pay compensation to the appellant, in my understanding, the detailed discussion leading to the conclusion that the State cannot resort to the principle of adverse possession to defeat a citizens claim for compensation for his land acquired by the State, is a binding declaration of law within the meaning of Article 141 of the Constitution. Law without Justice is as vain as a fancy motor car without its engine and as useless as a refrigerator without its compressor. Law is not an end by itself. The object of law- whether statutory or judge-made – must be to promote justice – both legal and social. That is what Rule of Law is all about. It would indeed be very odd if the State forcibly occupies the land of a citizen who may not be that enlightened, informed or diligent, and after 12 years the

State is permitted to claim that it has perfected its title to such land by way of adverse possession. This cannot be countenanced in law and would be contrary to all canons of justice.

12. As regards the other ground, there is no doubt that the State must compensate the respondents before us for having utilised their land, albeit for a public purpose. This, in my opinion, the State must do by acquiring the land in question in terms of the provisions of the 2013 Act. That is the only statute that is in force presently regarding acquisition of land from private persons. If that means that the State has to pay higher compensation compared to what its liability would have been under the 1894 Act, the State has only itself to blame. It is shocking that in spite of having taken over the land of the respondents several years back, not a penny has been paid to them to compensate them for depriving them of valuable property.

13. I see no infirmity in the judgment and order under appeal. The appellants shall initiate proceedings under the 2013 Act for acquiring the concerned land of which the writ petitioners are still the owners. Such proceedings shall be completed within 12 weeks from the date of communication of this order to the competent authority in the

administration. The compensation in terms of the 2013 Act shall be paid to the respondents within a month thereafter.

14. The appeal and the connected applications stand disposed of. There will be no order as to costs.

15. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(Rai Chattopadhyay, J.)

(Arijit Banerjee, J.)