

THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT APPEAL No.1445 of 2016

JUDGMENT: *(Per the Hon'ble the Chief Justice Satish Chandra Sharma)*

The present writ appeal is arising out of the order dated 09.09.2004 passed by the learned Single Judge in W.P.No.19767 of 1993.

The undisputed facts of the case reveal that the respondents in the writ appeal, who are title holders of the property situated in Gangupudi Village, Chandrugonda Mandal, Khammam District, came up before the learned Single Judge stating that a tank was constructed in the village, their land went under submergence, the authorities at the relevant point of time i.e., in the year 1965-66 assured them that they will receive compensation by way of allotment of alternative land and however, no compensation was paid to them. It has also been stated that the Tahsildar, Kothagudem, conducted an enquiry in the matter and submitted a report to the District Collector, which was also endorsed by the Revenue Divisional Officer, Kothagudem, on 22.11.1963, and proposals were also forwarded to various authorities in the matter of allotment of alternative land. The writ petitioners/respondents before this

Court, who are illiterate innocent villagers, kept on visiting the offices of the Tahsildar, the Collector and the Executive Engineer. However, nothing was done in the matter. Large number of representations were also submitted and finally they have filed the writ petition before the learned Single Judge.

The learned Single Judge, in paragraphs 5 and 6 of the order, has held as under:-

“5. Having heard the learned Counsel on either side and also on perusal of the material on record, it is seen that admittedly the tank was constructed in the year 1965-66, whereunder the land belongs to the petitioners were submerged. It is the case of the respondents that the petitioners themselves have given consent and, therefore, the question of payment of compensation or providing alternative land does not arise. Further, even on a reading of the proceedings dated 22-11-1963 of the Revenue Divisional Officer and the proceedings dated 31-12-1963 of the District Collector and also the letter produced by the respondents themselves show that it was agreed to provide the alternative land, subject to payment of prices to be fixed by the Government. Neither any alternative land has been proposed nor compensation has been paid, as to which they are entitled to under Article 300-A of the Constitution of India. Having kept quiet such a long time is totally denying the petitioners’ legitimate claim and entitlement and it is not open for the respondents nor to turn out and come out with a plea to deny the same. In the circumstances, I do not find any justification in the action of the respondents herein in not considering the petitioners’ case, in either way.

6. The writ petition is accordingly allowed and the respondents are directed to take immediate steps for providing alternative land to the petitioners or pay the compensation towards the lands of the petitioners, which have been submerged, within a period of three from the date of receipt of a copy of this order. No costs.”

The record of the case reveals that there was a promise of providing alternative land which is evident from the proceedings dated 22.11.1963. It is true that the State Government came up with a plea that the land owners have given consent to the State to acquire the land. However, at the same time the record reveals that there was a demand and proposal for allotment of alternative land.

Learned counsel for the State Government has vehemently argued before this Court that once consent was given by the writ petitioners/respondents before this Court (land owners), in respect of the land in question, the question of allotting alternative land or paying compensation does not arise. She has stated that in respect of an action which took place in the year 1965-66, the writ petition was preferred in the year 1993 and therefore, it should have been dismissed on the ground of delay and laches alone.

Learned counsel for the State Government has not disputed the title of the writ petitioners/respondents before this

Court. However, attempts were made to deprive the land owners of their right to compensation by stating that consent was given by them in the matter. The documents on record reveal that there was an offer of allotting alternative land to the writ petitioners/respondents before this Court and they have given consent only because there was an offer for allotting alternative land.

Learned counsel for the writ petitioners/respondents before this Court has drawn the attention of this Court towards the judgment delivered by the Hon'ble Supreme Court in the case of **Vidya Devi vs. The State of Himachal Pradesh** (Civil Appeal Nos.60-61 of 2020 decided on 08.01.2020).

Paragraphs 10 to 14 of the aforesaid judgment are reproduced as under:-

“10. We have heard learned Counsel for the parties and perused the record.

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 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 300 A, can be inferred in that Article (**KT 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 300 A of the Constitution.

Reliance is placed on the judgment in **Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenat** ((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.”

(emphasis supplied)

In **N. Padmamma v. 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 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.”

(emphasis supplied)

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.

(emphasis supplied)

In **Jilubhai Nanbhai Khachar v. State of Gujarat** ((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."

(emphasis supplied)

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.

10.4. 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.

10.5. 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 & Ors. v. M.I.D.C. & Ors.** (supra) 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.

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 compelling, a constitutional Court would exercise its jurisdiction with a view to

promote justice, and not defeat it." (**P.S. Sadasivaswamy v. State of TN.** (1975) 1 SCC 152).

In **Tukaram Kand Joshi & Ors. v. M.I.D.C. & Ors.**, (supra) 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.”

(emphasis supplied)

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 direct the State to pay compensation to the Appellant.

12. The State has submitted that in 2008 it had initiated acquisition proceedings in the case of an adjoining land owner viz. Shri Anakh Singh pursuant to a direction given by the High Court in C.W.P.No.1192 of 2004. The State initiated acquisition only in

the case where directions were issued by the High Court, and not in the case of other land owners whose lands were compulsorily taken over, for the same purpose, and at the same time. As a consequence, the present land owner has been driven to move the Court in their individual cases for redressal.

13. In view of the aforesaid facts and circumstances of the present case, the Respondent-State is directed to pay the compensation on the same terms as awarded by the Reference Court vide Order dated 07.07.2015 in **Anakh Singh's** case. (i.e. Land Reference No.1 of 2011 RBT No.01/13) along with all statutory benefits including solatium, interest, etc. within a period of 8 weeks, treating it as a case of deemed acquisition. An Affidavit of compliance is directed to be filed by the State before this Court within 10 weeks.

It is informed that an appeal has been preferred by Ravinder Singh s/o Anakh Singh & Ors. being RFA No.35 of 2016 which is pending before the High Court of Himachal Pradesh at Shimla.

Taking note thereof, if an appeal is filed by the present appellant within 8 weeks from the date of compensation being paid to her by the State, the appeal will be treated to be within limitation, and would be decided on its own merits in accordance with law.

The Respondent-State is directed to pay legal costs and expenses of Rs.1,00,0000/- to the present appellant.

14. The Appeals are accordingly allowed. The Orders dated 11.09.2013 and 13.05.2014 passed by the High Court are set aside.

Ordered accordingly.”

In the light of the aforesaid judgment, the writ petition could not have been dismissed merely on the ground of delay and laches, keeping in view the peculiar facts and circumstances of the case, and has rightly been allowed by the learned Single Judge. Therefore, this Court does not find any reason to interfere with the order passed by the learned Single Judge.

Resultantly, the writ appeal is dismissed. State is granted three months time to comply with the order passed by the learned Single Judge.

Pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

SATISH CHANDRA SHARMA, CJ

ABHINAND KUMAR SHAVILI, J

25.04.2022
JSU