

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**CWP-436-2018 (O&M).
Date of Decision: 02.12.2022.**

Pawan Kumar and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Sanjay Mittal, Advocate, for
Mr. Rahul Rampal, Advocate for the petitioners.

Ms. Niharika Sharma, AAG, Punjab.

Mr. H.S. Ghuman, Advocate,
for respondents No.2 to 4.

VINOD S. BHARDWAJ. J (ORAL)

The present petition seeks issuance of a writ in the nature of mandamus directing the respondents to remove the electricity poles/electricity wires erected in the agricultural land of the petitioners.

Briefly summarized the facts of the present case are that the petitioners - owners of agricultural land measuring 1 acre and 1 kanal comprising in Khasra No.118//1/1/13, 118//1/2, 118/2/4 situated in the revenue estate of village Badni Kalan, District Moga, claim that the

above land of the petitioners is adjacent to 132 KV Sub Station Badni Kalan of Punjab State Power Corporation Limited and that the respondent department has erected 28 electricity poles and transmissions lines in the agricultural land of the petitioners without any permission and without paying any compensation for acquisition/requisition of the said land. As a result of the erection of large number of poles and laying of the transmission lines in the land, the petitioners cannot utilize the above land for any purposes. Hence, the present petition has been filed for seeking compensation for deprivation of use or enjoyment of the property.

Written statement on behalf of respondents No.2 to 4 was filed wherein it was stated by the respondents that 33 KV Sub Station was installed by the respondents at Badni Kalan on 06.11.1971 and that the entire infrastructure i.e. the electricity poles and the transmission lines had been laid prior thereto. It is averred that the cause of action for seeking shifting of the transmission lines is highly belated and claim is not sustainable. It is further averred that as per the provisions of Section 10 of the Indian Telegraph Act, 1885, the respondents-PSPCL is empowered to place telegraph lines and also to erect poles upon any immovable property. Reliance was also placed on the provisions of the Indian Electricity Act, 1910, to contend that the licensee is entitled to creation of Infrastructure upon payment of such compensation as is determined by arbitration. A reference was also placed upon the provisions of The Electricity (Supply) Act, 1948 justifying its action of laying of transmission lines.

Considering that the electricity lines and the transmission system had been set in place before 1971 and has been operating for nearly 50 years, learned counsel does not press his relief for seeking shifting of the electricity poles and transmission lines from the said agricultural land of the petitioners and confines his prayer to the compensation in terms of the applicable statutory provisions.

Learned counsel for the petitioners had reiterated the facts noticed above and argued that the provisions of the Electricity Act, 1910, also stipulated payment of compensation and that they are entitled to the same for deprivation of use and enjoyment of their land. He contends that the factual aspect as regards the existence of the electricity poles and transmission lines over the land is undisputed and the respondents have also not denied that no compensation for such land and denial of use and enjoyment of property has been paid to the petitioners.

While advertng to the objections raised by the respondents- PSPCL that the relief claimed for is stale and there is an inordinate delay in claiming compensation, learned counsel places reliance on the judgment of the Hon'ble Supreme Court in the matter of **Vidya Devi Vs. The State of Himachal Pradesh and others passed in Civil Appeal Nos.6061 of 2020 decided on 08.01.2020**. The relevant extract of the said judgment reads 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. (**K T Plantation Pvt. Ltd. v. State of Karnataka (2011) 9 SCC**).*

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 Chenai, 4 (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. Vs. State of U.P. and 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. (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 (2013) 1 SCC 353 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 so compelling, a constitutional Court would exercise its jurisdiction with a view to promote justice, and not defeat it. **In Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors. (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.”

(emphasis supplied)

While referring to the aforesaid extract, it is contended that the State cannot be permitted to perfect possession-title on account of forcible occupation of the property owned by a private individual. The obligation fell upon the state to pay just compensation by defining the statutory right of a person under Article 300 A of the Constitution of India. The plea of delay and laches was duly rejected by the Hon'ble Supreme Court and the respondents were directed to pay compensation of the possession/utilization of the land by forcible occupation thereof.

Per contra, learned counsel appearing for the respondent has placed reliance upon the judgment of the Hon'ble Allahabad High Court in the matter of **Modh. Sharif Saifi Vs. State of U.P. and others, reported as 2014 (2) RCR (Civil) 550**, and has contended that the claim for compensation was declined by the Hon'ble Division Bench of Allahabad High Court as such claim was lodged after a delay of 48 years. The said claim was declined by relying on the principle of acquiescence.

I have heard the learned counsel for the respective parties and gone through the record with their assistance.

In order to appreciate the issue, it is necessary to examine various statutory provisions pertaining to Electricity Act.

Article 300 A of the Constitution of India - “No person shall be deprived of his property save by authority of law.”

Section 19 of the Electricity Act, 1910 reads as under:-

“19. Compensation for damage.—

(1) A licensee shall, in exercise of any of the powers conferred by or under this Act, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

(2) Save in the case provided for in section 12, sub-section (3), where any difference or dispute arises as to the amount or the application of such compensation the matter shall be determined by arbitration.”

Section 67 of the Electricity Act, 2003 reads as under:-

“Section 67. (Provisions as to opening up of streets, railways, etc): ---

(1) A licensee may, from time to time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works such as –

(a) to open and break up the soil and pavement of any street, railway or tramway;

(b) to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;

(c) to alter the position of any line or works or pipes, other than a main sewer pipe;

(d) to lay down and place electric lines, electrical plant and other works;

(e) to repair, alter or remove the same;

(f) to do all other acts necessary for transmission or supply of electricity.

(2) The Appropriate Government may, by rules made by it in this behalf, specify, -

(a) the cases and circumstances in which the consent in writing of the Appropriate Government, local authority, owner or occupier, as the case may be, shall be required for carrying out works;

(b) the authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works;

(c) the nature and period of notice to be given by the licensee before carrying out works;

(d) the procedure and manner of consideration of objections and suggestion received in accordance with the notice referred to in clause (c);

(e) the determination and payment of compensation or rent to the persons affected by works under this section;

(f) the repairs and works to be carried out when emergency exists;

(g) the right of the owner or occupier to carry out certain works under this section and the payment of expenses therefor;

(h) the procedure for carrying out other works near sewers, pipes or other electric lines or works;

(i) the procedure for alteration of the position of pipes, electric lines, electrical plant, telegraph lines, sewer lines, tunnels, drains, etc.;

(j) the procedure for fencing, guarding, lighting and other safety measures relating to works on streets, railways, tramways, sewers, drains or tunnels and immediate reinstatement thereof;

(k) the avoidance of public nuisance, environmental damage and unnecessary damage to the public and private property by such works;

(l) the procedure for undertaking works which are not repairable by the Appropriate Government, licensee or local authority;

(m) the manner of deposit of amount required for restoration of any railways, tramways, waterways, etc.;

(n) the manner of restoration of property affected by such works and maintenance thereof;

(o) the procedure for deposit of compensation payable by the licensee and furnishing of security; and

(p) such other matters as are incidental or consequential to the construction and maintenance of works under this section.

(3) A licensee shall, in exercise of any of the powers conferred by or under this section and the rules made thereunder, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

(4) Where any difference or dispute [including amount of compensation under sub-section (3)] arises under this section, the matter shall be determined by the Appropriate Commission.

(5) The Appropriate Commission, while determining any difference or dispute arising under this section in addition to any compensation under sub-section (3), may impose a penalty not exceeding the amount of compensation payable under that sub-section.”

Further the Government of India laid down guidelines for payment of compensation towards damages vide No.3/7/2015 Trans

dated 15.10.2015 during the Power Ministers Conference. The Relevant part of the recommendations are as under:-

“2. The Recommendations made by the Committee are hereby formulated in the form of following guidelines for determining the compensation towards "damages" as stipulated in section 67 and 68 of the Electricity Act, 2003 read with Section 10 and 16 of Indian Telegraph Act, 1885 which will be in addition to the compensation towards normal crop and tree damages. This amount will be payable only for transmission lines supported by a tower base of 66 KV and above, and not for sub-transmission and distribution lines below 66 KV:-

- (i) Compensation @ 85% of land value as determined by District Magistrate or any other authority based on Circle rate/ Guideline value/ Stamp Act rates for tower base area (between four legs) impacted severely due to installation of tower/pylon structure;*
- (ii) Compensation towards diminution of land value in the width of Right of Way (RoW) Corridor due to laying of transmission line and imposing certain restriction would be decided by the States as per categorization/type of land in different places of States, subject to a maximum of 15% of land value as determined based on Circle rate Guideline value Stamp Act rates;*
- (iii) In areas where land owner/owners have been offered accepted alternate mode of compensation by concerned corporation Municipality under Transfer Development Rights (TDR) policy of State, the licensee Utility shall deposit compensation amount as per (i) & (ii) above with the concerned Corporation Municipality, Local Body or the State Government.*
- (iv) For this purpose, the width of RoW corridor shall not be more than that prescribed in the table at Annex-2*

and shall not be less than the width directly below the conductors”.

Hence, the scheme of the Act has always stipulated payment of compensation. The responsibility has been cast on the distribution licensee to pay compensation for the works undertaken by it.

The above provisions are in furtherance of Constitutional mandate. The respondent distribution licensee thus failed to perform its obligation and pay compensation to the land-owner. Such denial of usage of land is still continuing.

The sole issue which now survives is whether the prayer ought to be declined on the ground of delay.

Reliance has been placed by the petitioners on the judgment of **Vidya Devi (supra)** while respondents have relied on Division Bench judgment of the Hon’ble Allahabad High Court in **Modh. Sharif Saifi (supra)**.

Having heard the learned counsel appearing on behalf of the respective parties, I find myself in agreement with the argument advanced by the learned counsel for the petitioners. The contention of the respondent and his reliance on the Division Bench Judgment of the Hon’ble Allahabad High Court cannot be accepted considering that the Hon’ble Supreme Court has upheld the entitlement of the petitioners in the matter of **Viday Devi (supra)** to pay compensation even after a period of 42 years. The Division Bench Judgment in the matter of **Mohd. Sharif Saifi (supra)** does not take into account the judgment of the Hon’ble Supreme Court.

It is also not disputed by the respondents that as per the provisions of the Statute, a land owner is entitled to compensation which is to be determined as per the procedure prescribed under law.

Resultantly, the petitioners are held entitled to claim compensation to be determined in accordance with law. The petitioners shall approach the competent authority for determination of compensation and in the event of petitioners approaching the respondents within a period of one month from today, the same shall be determined by the competent authority in a time bound manner, in accordance with law.

The present petition is accordingly allowed.

December 02, 2022
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No