IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1449 of 2019
Decided on: 26.12.2024

Raju @ Rajinder Singh .....Petitioner

Versus

State of Himachal Pradesh and Others ....Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? [1]

For the Petitioner	**:**	Mr. J.L. Bhardwaj, Senior Advocate, with Ms. Dhanvanti Devi, Advocate.
For the Respondents	**:**	Mr. Rajan Kahol, Mr. Vishal Panwar and Mr. B.C. Verma, Additional Advocates General.

Sandeep Sharma, Judge *(oral):*

Petitioner herein is compelled to approach this Court in the instant proceedings on account of the fact that though respondents used his land comprised in Khewat/Khatauni No.23/38, Khasra No.630, measuring 00-00-88 hectare situate in Mohal Gumma, Tehsil Kotkhai, District Shimla, Himachal Pradesh, for construction of road namely "**Gumma-Bakhol**", however, fact remains that till date, no compensation has been paid. Since despite repeated requests, respondents failed to initiate appropriate proceeding under the Land Acquisition Act, petitioner has approached this Court in the instant proceedings filed under Article 226 of the Constitution of India, praying therein for following main relief:-

[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

> *"It is, therefore, respectfully prayed that this petition may kindly be allowed throughout with cost and the respondents may kindly be directed to initiate the acquisition proceedings for acquiring the land of the petitioner utilized for the construction of road as envisaged under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in a time bound manner and pay the compensation to the petitioner and other benefits including payment of damages of the land illegally utilized since 2005 till the compensation is awarded and paid in favour after summoning the record of the respondents and justice be done."*

2. Pursuant to notices issued in the instant proceedings, respondents have filed reply under the signatures of Superintending Engineer, 14th Circle, Himachal Pradesh Public Works Department, Rohru, wherein they have denied the plea raised by petitioner that their land stands utilized for construction of road, as detailed hereinabove and attempt has also been made to defeat the claim of the petitioner on the ground of delay and laches.

3. It is averred in the reply that as per joint inspection conducted by PWD and Patwari/Kanungo, road in question is not passing through the Khasra number owned by petitioner. It is further stated in the reply that petitioner has raised highly disputed question of facts and law, which cannot be adjudicated in the instant proceedings and since efficacious remedy for redressal of his grievance is Civil Court, petitioner herein is estopped from claiming compensation qua the land in question in the instant proceedings.

4. Having heard learned counsel for the parties and perused the material available on record, this Court finds that precisely the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. J.L. Bhardwaj, learned Senior Counsel representing is that land of the petitioner comprised in Khasra No.822, measuring 0-05-98 hectare, has been acquired, whereas Khasra No.630 has been excluded/left out, even though portion of land from both the Khasra numbers have been utilized for the construction of road. Mr. Bhardwaj, learned Senior Counsel, while making this Court peruse pleadings adduced on record by respective parties vehemently argued that petitioner is continuously requesting respondents to initiate acquisition proceedings and pay adequate compensation, but in vain.

5. Mr. Vishal Panwar, learned Additional Advocate General, while making this Court peruse pleadings adduced on record submitted that land of the similarly situate persons was acquired with the clear cut understanding that no compensation shall be paid to them. He further stated that as per revenue records, land comprised in Khasra No.630 never came to be utilized and as such, prayer made on behalf of the petitioner for compensation deserves outright rejection. He submitted that even though it is assumed that land of the petitioner stood utilized for construction of road, detailed

hereinabove, that may not be of much consequence for the reason that petitioner remained silent for more than two decades, which is sufficient to establish the factum with regard to his implied consent qua construction of road in question.

6. To refute the submission of learned Additional Advocate General, Mr. Bhardwaj, learned Senior Counsel representing the petitioner, while placing heavy reliance upon the subsequent/fresh demarcation report (Annexure P-4), strenuously argued that as per fresh demarcation report conducted by Field Kanungo, it was found that Gumma-Tapri-Bakhol Road has been constructed through Khasra No.630, which is owned and possessed by the petitioner. Afore demarcation report stands duly proved on record with the statement of Junior Engineer of Public Works Department (available at page No.57 of the paper-book).

7. Learned Additional Advocate General while inviting attention of this Court to sur-rejoinder filed by respondents, argued that since revenue officials have already conducted demarcation (Annexure R-1) and same has attained finality, as such, subsequent/fresh demarcation report is of no consequence. While making this Court peruse judgment passed by this Court in **Shankar Dass Vs. State of Himachal Pradesh** in CWP No.1966 of 2010, Mr. Vishal Panwar, learned Additional Advocate General submitted that otherwise also, appropriate

remedy for the petitioner for redressal of his grievance is to approach a Civil Court by way of civil suit. Mr. Panwar also invited attention of this Court to judgment passed by Hon'ble Apex Court in **State of Maharashtra Vs. Digambar** (1995) 4 SSC (683) to state that claim being highly stale, deserves outright rejection.

8. While controverting the aforesaid submission of Mr. Vishal Panwar, learned Additional Advocate General, Mr. J.L. Bhadrdwaj, learned Senior Counsel strenuously argued that Hon'ble Apex Court in **Vidya Devi Vs. State of Himachal Pradesh and Others**, (2020) 2 SCC 569 and **Sukh Dutt Ratra Vs. State of Himachal Pradesh and Others** (2022) 7 SCC 508, has already held that plea of delay and laches cannot be raised in the case of continuous cause of action, especially in land acquisition matter. He also invited attention of this Court to judgment dated 27.07.2023 passed in CWP No.5928 of 2022 in **Vir Sain Vs. State of Himachal Pradesh and Others**, wherein, admittedly, this Court, having taken note of the judgments passed in **Vidya Devi** and **Sukh Dutt Ratra**, supra, negated the plea of delay and laches raised by the respondent-State.

9. Having heard learned counsel for the parties and perused material available on record this Court finds that subsequent/fresh demarcation report (Annexure P-4) (Colly) clearly reveals that land of the petitioner was utilized for

construction of road in question. Moreover, afore demarcation report never came to be challenged in the appropriate Court of law. Plea of delay and laches sought to be raised by respondents may not be available on account of judgment rendered in **Vidya Devi** and **Sukh Dutt Ratra** (supra), wherein it has been categorically held that plea of delay and laches cannot be raised in case of continuous cause of action or if the circumstances shock the judicial conscience of the Court, it can always condone the delay to do the substantial justice. While holding that condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case, Hon'ble Apex Court has further held that there is no period of limitation prescribed for the Courts to exercise their constitutional jurisdiction to do substantial justice. It has been further held that forcible dispossession of a person from his private property without following due process of law, is violative of both, human right and constitutional right, guaranteed under Art. 300-A of the Constitution of India. It would be apt to take note of following paras of **Vidya Devi**, supra:

> *"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 1, 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 2 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.

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****, 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." (emphasis supplied)*

In ***N. Padmamma*** *v.* ***S. Ramakrishna Reddy****, 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." (emphasis supplied)*

In ***Delhi Airtech Services Pvt. Ltd. & Ors****. v.* ***State of U.P.& Ors****., 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*** *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 is not acquisition or taking possession under Article 300A. 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.8 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.

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****., 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 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)"*

10. Reliance is also placed upon judgment passed by the Hon'ble Apex Court in **Sukhdutt Ratra**'s cases (supra).

> *"23. This Court, in Vidya Devi (supra) facing an almost identical set of facts and circumstances – rejected the contention of 'oral' consent to be baseless and outlined the responsibility of the State:*
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> > *"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., 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*** *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."*

24. And with regards to the contention of delay and laches, this court went on to hold:

> *"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.*

25. Concluding that the forcible dispossession of a person of their private property without following due process of law, was violative of both their human right, and constitutional right under Article 300-A, this court allowed the appeal. We find that the approach taken by this court in Vidya Devi (supra) is squarely applicable to the nearly identical facts before us in the present case.

26. In view of the above discussion, in view of this court's extraordinary jurisdiction under Article 136 and 142 of the Constitution, the State is hereby directed to

> *treat the subject lands as a deemed acquisition and appropriately disburse compensation to the appellants in the same terms as the order of the reference court dated 04.10.2005 in Land Ref. Petition No. 10-LAC/4 of 2004 (and consolidated matters). The Respondent-State is directed, consequently to ensure that the appropriate Land Acquisition Collector computes the compensation, and disburses it to the appellants, within four months from today. The appellants would also be entitled to consequential benefits of solatium, and interest on all sums payable under law w.e.f 16.10.2001 (i.e. date of issuance of notification under Section 4 of the Act), till the date of the impugned judgment, i.e. 12.09.2013."*

11. In the aforesaid judgments, Hon'ble Apex Court has categorically held that contention advanced by the State of delay and laches of the appellant in moving the Court is liable to be rejected, especially when it is not in dispute that petitioners are suffering continuous loss, coupled with the fact that they repeatedly requested the authorities to initiate acquisition proceedings.

12. If the aforesaid judgments are read in their entirety, it clearly emerges that land owners cannot be deprived of their land, without following due process of law. If it so, ground raised by the respondents that petitioner has made his land available with consent, is of no consequence rather, this Court, having taken note of the fact that the land of the petitioner stands utilized for the construction of road in question, is compelled to agree with the submission of learned counsel for the petitioner that his client is entitled for compensation qua

the land utilized by respondents for construction of road in question.

13. Though at this stage, Mr.Vishal Panwar, learned Additional Advocate General, while making this court peruse judgment dated 24.2.2023 passed by Hon'ble Apex Court in Civil Appeal No. 1278 of 2023, titled **State of Himachal Pradesh and Ors** v. **Rajiv and others**, attempted to argue that the relief as sought in the instant petition, cannot be allowed on the ground of delay and laches, but having perused judgment supra, in its entirety, this Court finds that it never came to be held in the aforesaid judgment that the claim of the land owner after an inordinate delay, cannot be considered, rather, in the aforesaid case, claimants were not held entitled to the interest under the Land Acquisition Act from the date of Notification under S.4 till the filing of the writ petition. Since, no Notification under S.4 of Land Acquisition Act, 1894 ever came to be issued in the case of the petitioner, ruling, if any, given in the aforesaid judgment, is of no relevance.

14. Admittedly, land of the petitioner stands utilized for construction of road more than two decades back, but till date, petitioner has not been paid any amount, which action of the respondent-State certainly amounts to forcible dispossession of the petitioner from his land, which is violative of provision contained under Article 300-A of the Constitution of India.

15. In case titled, **State of Himachal Pradesh** v. **Umed Ram Sharma** (1986) 2 SCC 68, Hon'ble Apex Court has held that entire State of Himachal Pradesh is a hilly area and without workable roads, no communication is possible; every person is entitled to life as enjoined in Article 21 of the Constitution of India; every person has right under Article 19 (1) (b) of the Constitution of India to move freely, throughout the territory of India; for the residents of hilly areas, access to road is access to life itself. Stand taken by the respondents that there was a policy for providing roads on demand of residents as a favour to them on conditions that they would not claim compensation, cannot be sustained because such stand is violative of Article 300A of the Constitution of India.

16. In case titled **Hari Krishna Mandir Trust** v. **State of Maharashtra and others**, 2020 9 SCC 356, Hon'ble Apex Court has held that though right to property is not a fundamental right, but it is still a constitutional right under Article 300A of the Constitution of India and also a human right; in view of the mandate of Article 300A, no person can be deprived of his property save by the authority of law. No doubt, State possesses the power to take or control the property of the owner of the land for the benefit of public, but at the same time, it is obliged to compensate the injury by making just compensation.

17. Consequently, in view of the detailed discussion made herein above as well as law taken into consideration, this Court finds merit in the present petition and accordingly, the same is allowed with direction to the respondents to initiate acquisition proceedings within four weeks under the relevant statute vis-à-vis land of the petitioner and thereafter, just and fair compensation qua the same be awarded to the petitioner. Since petitioner has been fighting for his rightful claim for so long, this Court hopes and trusts that authority concerned would do the needful expeditiously, preferably, within four months. In the aforesaid terms, present petition is disposed of along with pending applications, if any.

December 26, 2024 **(Sandeep Sharma),**
(Rajeev Raturi) **Judge**