IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.5901 of 2024
Decided on: 19.12.2024

Devender Kumar .....Petitioner

Versus

State of Himachal Pradesh and Another ....Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? [1]

For the Petitioner	**:**	Mr. B.M. Chauhan, Senior Advocate, with Ms. Kamakshi Tarlokta, Advocate.
For the Respondents	**:**	Mr. Rajan Kahol, Mr. Vishal Panwar and Mr. B.C. Verma, Additional Advocates General, with Mr. Ravi Chauhan, Deputy Advocate 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 Khasra No.46/1, measuring 00-01-81 hectares, situate at Mohal Dhanroti, Tehsil Kotkhai, District Shimla, Himachal Pradesh, for construction of road namely "**Dhanroti-Purag Sampark Marg**", however, fact remains that till date, no compensation has been paid. Since despite repeated requests, respondents failed to initiate appropriate proceedings under the Land Acquisition Act for acquisition of land, petitioner has approached this Court in the instant proceedings filed under

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

Article 226 of the Constitution of India, praying therein for following main relief:-

> *"i. That a writ of mandamus may kindly be issued directing the respondents for initiating the acquisition proceedings with respect to the land belonging to the petitioner comprising in Khasra no. 46/1 measuring 00-01-81 hectares situated at Mohal Dhanroti, Tehsil Kotkhai, District Shimla, utilized by the respondents for construction of Dhanroti-Purag Samparg Marg in accordance with Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013."*

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, Himachal Pradesh, wherein there is no denial to the fact that land of the petitioner stands utilized for construction of road, as detailed herein above, but attempt has been made to defeat the claim of the petitioner on the ground that petitioner voluntarily surrendered his land for construction of road in question and at the relevant time, he did not raise any objection or made any demand for compensation.

3. It is averred in the reply that construction of the Dhanroti Purag Road in Tehsil Kotkhai was initiated during the year 2011, after administrative approval and expenditure sanction was accorded by the Government, which was executed under the State funding. The land-owners who owned the land on the alignment of the road gifted their land in favour of

respondents, as they were beneficiary of the road. It is averred in the reply that petitioner voluntarily surrendered his land for construction of road and at relevant time, he did not raise any objection or made any demand for compensation, as the petitioner was also the beneficiary of the road. As per reply filed by respondents, petitioner assured to gift the land and asked the respondents to construct the road through his land, however, he delayed the execution of gift deed, as the land was joint and all co-owners were not available. It has been submitted in the reply that road in question was constructed on the persistent demand of the residents of the area with clear cut understanding that no compensation shall be claimed.

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. B.M. Chauhan, learned Senior Counsel representing the petitioner is that at no point of time, consent, if any, was ever given by petitioner for construction of road on his land without compensation. Mr. Chauhan, while making this Court peruse pleadings adduced on record by respective parties vehemently argued that petitioner has been 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 though there is no written document suggestive of the fact that land was ever donated, but definitely there is implied consent of the petitioner for the construction of road. He submitted that there is no question of acquiring the land of any land owners and respondents are also ready to return the land to the petitioner in case he is not agreeable for the road to pass through his land.

6. While refuting the aforesaid submission of Mr. Vishal Panwar, learned Additional Advocate General, Mr. B.M. Chauhan, learned Senior Counsel submitted that since the road has already been constructed on the land in question, plea raised by learned Additional Advocate General may not hold substance as fruit bearing apple trees have been removed by the respondents, as such, there appears to be no reason, at this belated stage to return the said land to the petitioner. He further submitted that since the road has now become a common road, which is not only used by the villagers, but also by the public at large, it would not be feasible at this stage to return the land in question, which already forms part of the constructed road.

7. Having heard learned counsel for the parties and perused material available on record this Court finds that there

is no dispute qua the fact that the land of the petitioner was utilized for construction of road in question. It is also not in dispute that some of land owners have gifted the land in favour of the respondents for construction of road, as detailed hereinabove. Hon'ble Apex Court in case titled as **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, 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 Article 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.*
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> *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.*
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> *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)"*

8. 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:

> *"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.*
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> *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.*
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> *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.*
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> *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."*

9. 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 Senior Counsel for the petitioner that his client is entitled for compensation qua the land utilized by respondents for construction of road in question.

10. Admittedly, land of the petitioner stands utilized for construction of road during the year 2011-21, but till date, petitioner has not been paid any amount, which action of the respondents-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.

11. Plea sought to be raised by the respondents that no compensation is payable to the petitioner on account of the fact that land in question was constructed under PGMSY, also deserves outright rejection on account of judgment rendered by the Full Bench of this Court in LPA No.33 of 2021 alongwith Execution Petition No. 17 of 2019, titled **State of Himachal Pradesh v. Sita Ram**, wherein reference made to Full Bench came to be answered in the affirmative that, "a person, whose land has been utilized for construction of road under PMGSY, is entitled for compensation, unless it is proved to the satisfaction of the Court, that land was donated or given by the land owner willingly, of his own free will and consent, for construction of such road". It would be apt to take note of following paras of the aforesaid judgment:

> *"31. In Shankar Dass, the Full Bench relied on the Three Judge Bench judgment of Supreme Court in State of Maharashtra Versus Digambar, reported in (1995) 4 SCC 683, where filing of writ petition with enormous delay and latches on the part of a citizen on the alleged infraction of his legal right against the State, seeking a direction to initiate acquisition proceedings for their land of which possession was taken long*

> *time ago, was held to be fatal. It was held that writ petition under Article 226 of the Constitution, being power of discretion, could not be entertained with blameworthy conduct of the petitioner of such undue delay or laches, acquiescence or waiver in approaching the Court. The Full Bench also relied on the Constitution Bench judgment of the Supreme Court in the State of Madhya Pradesh Versus Bhailal Bhai, reported in AIR 1964 SC 1006, in which it was held "that the maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured." Delay and how far ratio of Shankar Dass would hold field in view of later judgments of the Supreme Court are not the questions for us to examine and answer. In view of the terms of reference made by the Division Bench, which does not include the question of delay, we have to confine our examination to the limited scope, whether a person whose land has been utilized for construction of road under PMGSY is entitled to compensation.*
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> *32. In view of above, the question referred to by the Division Bench, is, therefore, answered in the affirmative that a person whose land has been utilized for construction of road under PMGSY is entitled to compensation unless it is proved to the satisfaction of the Court that the land was voluntarily donated or given by him willingly with free will and consent for construction of such road."*

12. In the aforesaid case, specific reference was made to Full Court, "Whether a person(s) whose land(s) has been utilized for construction of road under 'PMGSY' is entitled to compensation?". While answering aforesaid reference, Full Bench though held that a person whose land has been utilized for construction of road under PMGSY is entitled to compensation unless it is proved to the satisfaction of the Court

that the land was voluntarily donated or given by him willingly with free will and consent for construction of such road.

13. Since in the case there is nothing on record to demonstrate that the land was ever donated or gifted by petitioner of his own free will for construction of road under PMGSY, plea of learned Additional Advocate General that person cannot claim compensation qua the land utilized for construction of road under PMGSY, deserves outright rejection.

14. 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.

15. 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.

16. Consequently, in view of the detailed discussion made hereinabove 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 petitioners and thereafter, just and fair compensation qua the same be awarded to the petitioners. 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 19, 2024 **(Sandeep Sharma),**
(Rajeev Raturi) **Judge**