IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CMP(M) No. 1543 of 2024 and LPA No. 484 of 2024.

Date of Decision : 21st December, 2024.

State of H.P. & Ors. **...Applicants/Appellants.**

Versus

Kanta Devi & Ors. ....**Respondents.**

Coram:

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Acting Chief Justice.
The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting? No.

For the Appellants/Applicants(s): Mr. Anup Rattan, Advocate General with Mr. Sidharath Jalta, Deputy Advocate General.

For the respondent(s): Mr. Jagan Nath, Advocate.

Satyen Vaidya, Judge (Oral).

CMP(M) No. 1543 of 2024.

Notice. Mr. Jagan Nath, learned counsel appears and waives service of notice on behalf of the respondents.

2. In view of the averments made in the application, as also on account of non opposition thereto, the application is allowed and the delay in filing the appeal is condoned.

LPA No. 484 of 2024

3. Heard.

4. Aggrieved against the non payment of compensation by the appellants despite use of their land for construction of road, namely, “Dehar to Triphalghat” road, the respondents had filed CWP No.2429 of 2023.

5. The appellants had contested the prayer of the respondents on the grounds that the claim of respondents was highly belated; the land of respondents had been utilized with their consent and the respondents had enjoyed the facility of road and were thus estopped from filing the petitions.

6. Learned Single Judge after taking the settled legal position into account more particularly, the exposition of law in ***Vidya Devi vs. State of Himachal Pradesh & Ors, (2020)2 SCC 569*** and ***Sukh Dutt Ratra vs. State of Himachal Pradesh and others, (2022)7 SCC 508*** has negated all the pleas raised by the appellants.

7. In result, learned Single Judge has directed the appellants to initiate acquisition proceedings under the relevant statute in respect of the land of the respondents and to pay just and fair compensation to them.

8. The appellants have assailed the impugned judgment on the

grounds that the claim of the respondents was highly belated and since, the respondents had consented for utilization of their land for construction of the road, they were not entitled to any relief. Appellants have placed reliance on the judgment passed by the Full Bench of this Court in ***Shankar Dass vs. State of H.P., CWP No. 1966 of 2010,*** decided on 02.03.2013, whereby in the identical facts situation, the appropriate remedy was held to be the filing of a Civil Suit. The appellants have also placed reliance on the judgment passed by the Hon'ble Supreme Court in **State of *Maharashtra vs. Digambar, (1995)4 SCC 683*** to support its contention.

9. In our considered view, issues sought to be raised by the appellants are no more *res integra*. In ***Sukh Dutt Ratra vs. State of Himachal Pradesh and others, (2022)7 SCC 508***, the Hon'ble Supreme Court in almost identical fact situation, after placing reliance on ***Vidya Devi vs. State of Himachal Pradesh & Ors, (2020)2 SCC 569*** has held as under:-

> *"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. MIDC [Tukaram Kana Joshi v. MIDC, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] 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 [State of Haryana v. Mukesh Kumar, (2011) 10 SCC 404 : (2012) 3 SCC (Civ) 769] 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."

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. [P.S. Sadasivaswamy v. State of T.N., (1975) 1 SCC 152 : 1975 SCC (L&S) 22]"

25. Concluding that the forcible dispossession of a person of their private property without following due process of law, was violative22 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."*

10. The aforesaid issues were also considered in detail by the Division Bench of this Court while deciding a bunch of matters vide judgment dated 23.07.2024 with ***LPA No. 24 of 2019, titled as State of H.P. & Ors vs. Baldev Singh & Anr.,*** as lead case and in light of the judgments on the subject more particularly in ***Sukh Dutt Ratra and Vidya Devi (supra)*** has issued directions to the State to initiate acquisition proceedings with respect to land belonging to the affected persons and pay compensation in accordance with law.

11. One of the LPA decided with the aforesaid batch was ***LPA No. 54 of 2017, titled as State of H.P. & Ors. vs. Upender Kumar***. The appellants had assailed the aforesaid judgment passed in LPA No. 54 of 2017 by way of ***SLP(Civil) Diary No. 49057 of 2024***, which has been dismissed by the Hon'ble Supreme Court vide order dated 22.11.2024 in following terms:-

> *"1. Delay condoned.*
> *2. We have come across several matters wherein the State of Himachal Pradesh has challenged the orders passed by the Division Bench of the High Court of Himachal Pradesh, thereby directing the compensation to be paid to the respondent(s).*
> *3. The writ petitioner(s) has approached the High Court with a grievance that though the possession of their lands were taken for road construction, they did not receive*

> *compensation.*
> *4. By the impugned judgment and order, the High Court has held that the State cannot take possession of citizen land without pay the compensation.*
> *5. Although the right to property is no longer considered a fundamental right, it is still a constitutional right. The State cannot be permitted to acquire citizen land without paying appropriate compensation.*
> *6. In these circumstances, it would have been justified in dismissed the special leave petition(s) with exemplary cost. However, we refrain from doing so now and simply dismiss these special leave petitions."*

12. Learned Advocate General also placed reliance on the judgment dated 24.2.2023, passed by Hon'ble Supreme Court in ***Civil Appeal No. 1278 of 2023, titled State of Himachal Pradesh & Others vs. Rajiv And Another***. After going through the judgment so referred, we have not found a view different than the view taken by Hon'ble Supreme Court in Sukh Dutt Ratra, save and except, that in Civil Appeal No. 1278 of 2023 the respondents therein were not held entitled to the interest under the Land Acquisition Act from the date of notification under Section 4 of the said Act in that case till the filing of the writ petition.

13. In our considered view the appellant cannot derive any benefit from the judgment passed in Civil Appeal No. 1278 of 2023 for the reason that the said judgment has been passed in peculiar facts of the case by resorting to the power under Article 142 of the Constitution of

India. Even otherwise, the direction issued by the Learned Single Judge in the impugned judgment is to award just and fair compensation to the respondents after initiation of acquisition proceedings under the relevant statute.

14. Thus, we see no reason to interfere with the impugned judgment dated 10th October, 2023, passed by the learned Single Judge in CWP No. 2429 of 2023 and the same is affirmed. Accordingly, the instant appeal is dismissed with no order as to the costs. Pending applications, if any, also stand disposed of.

(Tarlok Singh Chauhan)
Acting Chief Justice.

(Satyen Vaidya)
Judge

21st December, 2024.
(jai)