



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of decision : 12.12.2024

1. RSA-1319-2012 (O&M)

Arjun Lal and others Appellants

versus

Dakshin Haryana Vidyut Parsaran Nigam Ltd. and others

..... Respondents

2. RSA-1603-2012 (O&M)

Arjun Lal and others Appellants

versus

Dakshin Haryana Vidyut Parsaran Nigam Ltd. and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Anurag Jain, Advocate and
Ms. Chahat, Advocate
for the appellants.

Mr. Puneet Jindal, Senior Advocate with
Ms. Navroop Jawanda, Advocate
for the respondents.

PANKAJ JAIN, J. (Oral)

1. The appellants are land owners fighting the might of State to reclaim their land. Their grievance is against the State usurping their land admeasuring 8 kanal 8 marlas as detailed in plaint (hereinafter referred to the 'suit land').



2. Plaintiffs filed suit for possession of the suit land. Plaintiffs claim themselves to be the owners of the suit land. Further prayer is for grant of decree of permanent/prohibitory injunction against the defendants from raising any further construction.

3. Suit was resisted by the defendants. They filed written statement claiming adverse possession. It was pleaded that the construction on suit land was raised by defendants way back in the year 1960-61. Since then the possession of the defendants has remained open, hostile and continuous to the knowledge of the plaintiffs and their predecessors-in-interest. Not only the suit was barred by limitation, but owing to the acquiescence of the plaintiffs and the continuous possession, the defendants have attained title over the suit land by way of prescription. Defendants filed counter claim claiming ownership. Suit and counter claim were put to trial by the Court of the first instance framing following issues:-

- “1. Whether the plaintiff is entitled possession of suit land after to get getting demolished the construction of power house over the suit land owned by the plaintiffs?OPP
2. Whether the plaintiffs are entitled to injunction for restraining the defendants from raising land?OPP further construction on the suit land?OPP
3. Whether the possession and construction of defendants over the suit land is legal and by acquiring the land in question?OPD
4. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit?OPD
5. Whether the suit is bad for want of proper Court Fees?OPD
6. Whether the suit is time barred?OPD
7. Whether the plaintiffs have no locus standi to file the present suit?OPD



8. Whether the Civil Court has no jurisdiction to try and entertain the present suit?OPD
9. Relief.”

4. Court of the first instance held that since neither the plaintiffs nor their father ever objected to the construction of power house on the suit land, they have lost their right to claim back possession. They cannot seek decree of injunction. Deciding issue No.1 and 2 against the plaintiffs, Trial Court dismissed the suit. Issue No.3 was decided against the defendants. The counter claim was also dismissed.

5. Cross appeals were preferred. The appeals have been decided vide impugned judgment. Appellate Court rejected plea of adverse possession raised by defendants in counter claim holding that the same can only be raised as a defence and cannot be pleaded as a plea of attack. The claim of the defendants, claiming ownership by way of adverse possession was rejected. Though Appellate Court held that the plaintiffs proved their ownership over the suit land, but the relief of possession was declined relying upon ratio of law laid down by this Court in ***Food Corporation of India vs. Dayal Singh*** reported as **1991 CivCC 629**. Lower Appellate Court held the plaintiffs entitled only for compensation at the rate prevalent on the date when the land was encroached by the State. It further held that since 11 marlas of land part of same khasra number comprising suit land was acquired vide award dated 21.07.1961, the plaintiffs are entitled for compensation at the rate land was acquired in the year 1961.



6. The Coordinate Bench of this Court on 22.08.2019 passed the following order:-

“The dispute in this appeal is pertaining to compensation payable for occupation of 8 Kanals 8 Marlas of land belonging to the appellants herein. It is contended that without any right, title or interest, the respondent-Dakshin Haryana Vidyut Parsaran Nigam Ltd. has forcibly occupied the said suit property. Mr. Birender Singh Rana, Sr. Advocate along with Mr. Deepak Gollen, Advocate contended that at best, the appellants herein would be entitled to compensation at the rate prevalent at the time when the land was occupied approximately in the year 1963.

Before getting into the merits of the case, let this Court be informed the value of the land in the year 2005 when the suit had been filed.

The needful be done within a period of four weeks.

Adjourned to 26.09.2019.

A photocopy of this order be placed on the file of other connected case.”

7. Defendants have neither preferred cross appeal nor cross objections. They accepted the judgment passed by Lower Appellate Court.

8. Mr. Jain while assailing impugned judgment passed by the Lower Appellate Court, submits that the appellants have been wrongly denied their right to property guaranteed under Article 300-A of the Constitution of India. The defendants have usurped the land of the plaintiffs-appellants without paying any compensation. The suit is for possession. The Courts below erred in granting compensation in lieu of possession. In order to hammer forth his contention, Mr. Jain relies upon ratio of law laid down in ***Food Corporation of India and anr. vs. Dayal Singh 1991 CivCC 629, The State of Haryana & Anr. vs. Amin***



Lal (Since Deceased) Through his LRs & Ors., D.B. Basnett (Dead), Through Legal Representatives vs. Collector, East District, Gangtok, Sikkim and another (2020) 4 SCC, Bhusawal Municipal Council vs. Nivrutti Ramchandra Phalak and others (2015) 14 Supreme Court Cases 327, State of Haryana vs. Mukesh Kumar and others 2011(10) SCC 404.

9. *Per contra*, Mr. Jindal, senior counsel representing the respondents submits that Court below erred in granting compensation despite the fact that it was proved on record that the plaintiffs and their predecessor-in-interest acquiesced to the possession of the defendants. He avers that it is a case wherein provision as contained under Section 25 read with Article 65 of the Limitation Act should not have been ignored. The best case of the plaintiffs is only grant of compensation which has been rightly granted on the same rate on which the 11 marlas of land belonging to the appellants comprised in same khasra number was acquired. It is matter of record that the defendants have not preferred any appeal. Mr. Jindal rather submits that the respondents-defendants offered the compensation to the plaintiffs-appellants which they refused to accept. Thus, acceptance of impugned judgment by respondents is admitted fact.

10. I have heard counsel for the parties and have carefully gone through the records of the case.

11. The issue that falls for consideration before this Court is only confined to:-

“(i) Whether the plaintiffs are entitled for possession or for lesser relief of compensation?”



(ii) If the answer to the first question is to grant compensation, whether the same be granted @ rate prevalent in the year 1961 or that in the year 2005 as noticed by this Court in the order dated 22.08.2019 or at the price of 2024 i.e. when the present appeal is being decided.”

12. By now, finding to the effect that the plaintiffs-appellants are the owners in possession of the suit land has attained finality and is beyond challenge. It is also matter of record that the suit land is in possession of the defendants. Power house stands constructed thereupon. Despite being a State instrumentality, defendants opted to take refuge under plea of adverse possession. Article 31-A of the Constitution of India and Article 300-A deal with right to property laws providing for acquisition of estate etc. and right to property. The same read as under:-

“31A. Saving of laws providing for acquisition of estates, etc.

[After Article 31 of the Constitution, the following article shall be inserted through Constitution (First Amendment) Act, 1951]

(1) Notwithstanding anything contained in article 13, no law providing for- [for clause (1), the following clause shall be substituted Constitution (Fourth Amendment) Act, 1955]

(a) the acquisition by the State of any estate or of any rights therein or the extinguishments or modification of any such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or



(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

(2) In this article,-



(a) the expression "estate", shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include-

(i) any jagir, inam or muafi or other similar grant and in the States of Tamil Nadu and Kerala, any janmam right;

(ii) any land held under ryotwari settlement;

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;

(b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue.

300A. Persons not to be deprived of property save by authority of law

No person shall be deprived of his property save by authority of law.”

13. Proviso appended to Article 31-A prohibits enactment of any law enabling acquisition of estate by State without paying compensation less than the market value. Article 300-A guarantees right to property. Supreme Court while interpreting Article 31A and 300-A of the Constitution of India in *K.T. Plantation Pvt. Ltd. & Anr vs State Of Karnataka 2011 (9) SCC 146 2011 (9) SCC 146*, held as under:



“**141.** Eminent domain is distinguishable alike from the police power, by which restriction are imposed on private property in the public interest, e.g. in connection with health, sanitation, zoning regulation, urban planning and so on from the power of taxation, by which the owner of private property is compelled to contribute a portion of it for the public purposes and from the war-power, involving the destruction of private property in the course of military operations. The police power fetters rights of property while eminent domain takes them away. Power of taxation does not necessarily involve a taking of specific property for public purposes, though analogous to eminent domain as regards the purposes to which the contribution of the taxpayer is to be applied. Further, there are several significant differences between regulatory exercises of the police powers and eminent domain of deprivation of property. Regulation does not acquire or appropriate the property for the State, which appropriation does and regulation is imposed severally and individually, while expropriation applies to an individual or a group of owners of properties.

142. [Ed: Para 142 corrected vide Official Corrigendum No.F.3/Ed.B.J./45/2011 dated 26-8-2011.] The question whether the "element of compensation" is necessarily involved in the idea of eminent domain arose much controversy. According to one school of thought (See Lewis, Eminent Domain, 3rd Edition, 1909) opined that this question must be answered in the negative, but another view (See Randolph Eminent Domain in the United States (Boston 1894 [AWR])), the claim for compensation is an inherent attribute of the concept of eminent domain.

143. Professor Thayer (cases on Constitutional law Vol 1.953), however, took a middle view according to which the concept of eminent domain springs from the necessity of the state, while the obligation to reimburse rests upon the natural rights of individuals. Right to claim compensation, some eminent authors expressed the view, is thus not a component part of the powers to deprive a person of his property but may arise, but it is not as if, the former cannot exist without the



other. Relationship between Public Purpose and Compensation is that of "substance and shadow".

144. The above theoretical aspects of the doctrine have been highlighted only to show the reasons, for the inclusion of the principle of eminent domain in the deleted Article 31(2) and in the present Article 30(1A) and in the 2nd proviso of Article 31A of our Constitution and its apparent exclusion from Article 300-A.

145. Our Constitution makers were greatly influenced by the Western doctrine of eminent domain when they drafted the Indian Constitution and incorporated the right to property as a Fundamental Right in Article 19(1)(f), and the element of public purpose and compensation in Articles 31(2). Of late, it was felt that some of the principles laid down in the Directive Principles of State Policy, which had its influence in the governance of the country, would not be achieved if those articles were literally interpreted and applied.

148. Article 31-A enabled the legislature to enact laws to acquire estates which also permitted the State in taking over of property for a limited period either in the “public interest” or to “secure the proper management of the property”, amalgamate properties, and extinguish or modify the rights of managers, managing agents, directors, stockholders etc. Article provides that such laws cannot be declared void on the grounds that they are inconsistent with Articles 14 and 19.

155. This Court in *P. Vajravelu Mudaliar case* [AIR 1965 SC 1017 : (1965) 1 SCR 614] examined the scope of the Land Acquisition (Madras Amendment) Act 1961 by which the lands were acquired for the purpose of building houses which move was challenged under Articles 31 and 14. The Court held that if the compensation fixed was illusory or the principles prescribed were irrelevant to the value of the property at or about the time of acquisition, it could be said that the Legislature had committed a fraud on power and therefore the law was inadequate.

166. Article 300-A, when examined in the light of the circumstances under which it was inserted, would reveal the following changes:

1. Right to acquire, hold and dispose of property has ceased to be a fundamental right under the Constitution of India.



2. Legislature can deprive a person of his property only by authority of law.

3. Right to acquire, hold and dispose of property is not a basic feature of the Constitution, but only a Constitutional right.

4. Right to Property, since no more a fundamental right, the jurisdiction of the Supreme Court under Article 32 cannot be generally invoked, aggrieved person has to approach the High Court under Article 226 of the Constitution.

167. Arguments have been advanced before us stating that the concept of eminent domain and its key components be read into Article 300A and if a statute deprives a person of his property unauthorizedly, without adequate compensation, then the statute is liable to be challenged as violative of Articles 14, 19 and 21 and on the principle of rule of law, which is the basic structure of our Constitution. Further it was also contended that the interpretation given by this Court on the scope of Article 31(1) and (2) in various judgments be not ignored while examining the meaning and content of Article 300A.

168. Article 300-A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. The expression “Property” in Article 300A confined not to land alone, it includes intangibles like copyrights and other intellectual property and embraces every possible interest recognised by law.

170. Article 300-A, therefore, protects private property against executive action. But the question that looms large is as to what extent their rights will be protected when they are sought to be illegally deprived of their properties on the strength of a legislation. Further, it was also argued that the twin requirements of “public purpose” and “compensation” in case of deprivation of property are inherent and essential elements or ingredients, or "inseparable concomitants" of the power of eminent domain and, therefore, of entry 42, List III, as well and, hence, would apply when the validity of a statute is in question.

178. The principles of eminent domain, as such, are not



seen incorporated in Article 300A, as we see, in Article 30(1A), as well as in the 2nd proviso to Article 31A(1) though we can infer those principles in Article 300A. The provision for payment of compensation has been specifically incorporated in Article 30(1A) as well as in the second proviso to Article 31A(1) for achieving specific objectives. The Constitution (Forty-fourth Amendment) Act, 1978 while omitting Article 31 brought in a substantive provision Clause (1A) to Article 30. Resultantly, though no individual or even educational institution belonging to majority community shall have any fundamental right to compensation in case of compulsory acquisition of his property by the State, an educational institution belonging to a minority community shall have such fundamental right to claim compensation in case State enacts a law providing for compulsory acquisition of any property of an educational institution established and administered by a minority community. Further, the second proviso to Article 31A(1) prohibits the Legislature from making a law which does not contain a provision for payment of compensation at a rate not less than the market value which follows that a law which does not contain such provision shall be invalid and the acquisition proceedings would be rendered void.

179. Looking at the history of the various constitutional amendments, judicial pronouncements and the statement of objects and reasons contained in the Forty-fourth Amendment Bill which led to the Forty-fourth Amendment Act we have no doubt that the intention of the Parliament was to do away with the fundamental right to acquire, hold and dispose of the property. But the question is whether the principles of eminent domain are completely obliterated when a person is deprived of his property by the authority of law under Article 300A of the Constitution.

Public purpose

180. Deprivation of property within the meaning of Article 300A, generally speaking, must take place for public purpose or public interest. The concept of eminent domain which applies when a person is deprived of his property postulates that the purpose must be primarily public and not primarily of private interest and merely incidentally beneficial to the



public. Any law, which deprives a person of his private property for private interest, will be unlawful and unfair and undermines the rule of law and can be subjected to judicial review. But the question as to whether the purpose is primarily public or private, has to be decided by the legislature, which of course should be made known.

181. The concept of public purpose has been given fairly expansive meaning which has to be justified upon the purpose and object of statute and the policy of the legislation. Public purpose is, therefore, a condition precedent, for invoking Article 300A.

Compensation

182. We have found that the requirement of public purpose is invariably the rule for depriving a person of his property, violation of which is amenable to judicial review. Let us now examine whether the requirement of payment of compensation is the rule after the deletion of Article 31(2).

183. Payment of compensation amount is a constitutional requirement under Article 30(1A) and under the second proviso to Article 31A(1), unlike Article 300A. After the Forty-fourth Amendment Act, 1978, the constitutional obligation to pay compensation to a person who is deprived of his property primarily depends upon the terms of the statute and the legislative policy. Article 300A, however, does not prohibit the payment of just compensation when a person is deprived of his property, but the question is whether a person is entitled to get compensation, as a matter of right, in the absence of any stipulation in the statute, depriving him of his property.

189. Requirement of public purpose, for deprivation of a person of his property under Article 300A, is a precondition, but no compensation or nil compensation or its illusiveness has to be justified by the state on judicially justiciable standards. Measures designed to achieve greater social justice, may call for lesser compensation and such a limitation by itself will not make legislation invalid or unconstitutional or confiscatory. In other words, the right to claim compensation or the obligation to pay, though not expressly included in Article 300A, it can be inferred in that Article and it is for the State to justify its stand on justifiable grounds which may



depend upon the legislative policy, object and purpose of the statute and host of other factors.

190. Article 300-A would be equally violated if the provisions of law authorizing deprivation of property have not been complied with. While enacting Article 300-A Parliament has only borrowed Article 31(1) (the "Rule of law" doctrine) and not Article 31(2)(which had embodied the doctrine of Eminent Domain). Article 300A enables the State to put restrictions on the right to property by law. That law has to be reasonable. It must comply with other provisions of the Constitution. The limitation or restriction should not be arbitrary or excessive or what is beyond what is required in public interest. The limitation or restriction must not be disproportionate to the situation or excessive.

191. The legislation providing for deprivation of property under Article 300A must be "just, fair and reasonable" as understood in terms of Articles 14, 19(1)(g), 26(b), 301 etc. Thus in each case, courts will have to examine the scheme of the impugned Act, its object, purpose as also the question whether payment of nil compensation or nominal compensation would make the impugned law unjust, unfair or unreasonable in terms of other provisions of the Constitution as indicated above.

192. At this stage, we may clarify that there is a difference between "no" compensation and "nil" compensation. A law seeking to acquire private property for public purpose cannot say that "no compensation shall be paid". However, there could be a law awarding "nil" compensation in cases where the State undertakes to discharge the liabilities charged on the property under acquisition and onus is on the government to establish validity of such law. In the latter case, the court in exercise of judicial review will test such a law keeping in mind the above parameters.

193. Right to property no more remains an overarching guarantee in our Constitution, then is it the law, that such a legislation enacted under the authority of law as provided in Article 300A is immune from challenge before a Constitutional Court for violation of Articles 14, 21 or the overarching principle of Rule of Law, a basic feature of our Constitution, especially when such a right is not specifically



incorporated in Article 300A, unlike Article 30(1A) and the second proviso to Article 31A.

194. [Ed.: Paras 194 and 195 corrected vide Corrigendum No.F.3/Ed.B.J./45/2011 dated 26-8-2011.].

Article 31-A was inserted by the First Amendment Act, 1951 to protect the abolition of Zamindari Abolition Laws and also the other types of social, welfare and regulatory legislations effecting private property. The right to challenge laws enacted in respect of subject matter enumerated under Article 31A(1) (a) to (g) on the ground of violation of Article 14 was also constitutionally excluded.

217. [Ed.: Para 217 corrected vide Corrigendum No.F.3/Ed.B.J./45/2011 dated 26-8-2011.].

The rule of law as a principle contains no explicit substantive component like eminent domain but has many shades and colours. Violation of principle of natural justice may undermine rule of law so also at times arbitrariness, proportionality, unreasonableness etc., but such violations may not undermine rule of law so as to invalidate a statute. Violation must be of such a serious nature which undermines the very basic structure of our Constitution and our democratic principles. But once the Court finds, a Statute, undermines the rule of law which has the status of a constitutional principle like the basic structure, the above grounds are also available and not vice versa. Any law which, in the opinion of the Court, is not just, fair and reasonable, is not a ground to strike down a Statute because such an approach would always be subjective, not the will of the people, because there is always a presumption of constitutionality for a statute.

218. The rule of law as a principle, it may be mentioned, is not an absolute means of achieving the equality, human rights, justice, freedom and even democracy and it all depends upon the nature of the legislation and the seriousness of the violation. Rule of law as an overarching principle can be applied by the constitutional courts, in rarest of rare cases, in situations, we have referred to earlier and can undo laws which are tyrannical, violate the basic structure of our Constitution, and our cherished norms of law and justice.



219. One of the fundamental principles of a democratic society inherent in all the provisions of the Constitution is that any interference with the peaceful enjoyment of possession should be lawful.

220. Deprivation of property may also cause serious concern in the area of foreign investment, especially in the context of International Law and international investment agreements. Whenever, a foreign investor operates within the territory of a host country the investor and its properties are subject to the legislative control of the host country, along with the international treaties or agreements. Even, if the foreign investor has no fundamental right, let them know, that the rule of law prevails in this country.

14. Same has been reiterated in recent judgments in the case of ***Vidya Devi v. State of Himachal Pradesh and Others, (2020) 2 SCC 569: 2020 INSC 23***, Supreme Court observed as under:-

"12.1. 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 [***State of W.B. v. Subodh Gopal Bose, (1953) 2 SCC 688: AIR 1954 SC 92***], which could not be deprived without due process of law and upon just and fair compensation.

12.2. 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 v. MIDC, (2013) 1 SCC 353 (2013) 1 SCC (Civ) 491***] in a welfare state, and a constitutional right under Article 300A 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 (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1: (2011) 4 SCC (Civ) 414***]

12.3. 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 300A of the Constitution. Reliance is placed on the judgment in *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai* [*Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai*, (2005) 7 SCC 627], wherein this Court held that (SCC p. 634, para 6)

"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)

12.4. In *N. Padmamma v. S. Ramakrishna Reddy* (*N. Padmamma v. S. Ramakrishna Reddy*, (2008) 15 SCC 517), this *Court* held that: (SCC p. 526, para 21)

"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)

12.5. In *Delhi Airtech Services (P) Ltd. v. State of U.P.* [*Delhi Airtech Services (P) Ltd. v. State of U.P.*, (2011) 9 SCC 354: (2011) 4 SCC (Civ) 673], this Court recognised the right to property as a basic human right in the following words: (SCC p. 379, para 30)

"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)

12.6. In *Jilubhai Nanbhai Khachar v. State of Gujarat* [*Jilubhai Nanbhai Khachar v. State of Gujarat*, 1995 Supp (1) SCC 596], this *Court* held as follows: (SCC p. 627, para 48)

"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)

12.7. 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.

12.8. 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.

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



the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.

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]*”

14. Supreme Court in the case of ***Ultra-Tech Cement Ltd. v. Mast Ram and Others, 2024 SCC Online 2598: 2024 INSC 709***, Supreme Court observed as under:-

"D. Role of the State under Article 300A of the Constitution

43. The Right to Property in our country is a net of intersecting rights which has been explained by this **Court** in ***Kolkata Municipal Corporation v. Bimal Kumar Shah, 2024 SCC Online SC 968***. A division bench of this Court identified seven non-exhaustive sub-rights that accrue to a landowner when the State intends to acquire his/her property. The relevant observations of this **Court** under the said judgment are reproduced below:

"...27.

....Seven such sub-rights can be identified, albeit non-exhaustive. These are: i) duty of the State to inform the person that it intends to acquire his property - the right to notice, ii) the duty of the State to hear objections to the acquisition the right to be heard, iii) the duty of the State to inform the person of its decision to acquire - the right to a reasoned decision, iv) the duty of the State to demonstrate that the acquisition is for public purpose the duty to acquire only for public purpose, v) the duty of the State to retribute and rehabilitate the right of restitution or fair compensation, vi) the duty of the State to conduct the process of acquisition efficiently and within prescribed timelines of the proceedings the right to an efficient and expeditious process, and vii) final conclusion of the proceedings leading to vesting-the right of conclusion..."

[Emphasis Supplied]



15. In view of the aforesaid provisions and ratio of law laid down by Supreme Court, State cannot claim adverse possession over private property. The argument raised by Mr. Jindal with respect to Article 65 read with Section 27 is again misconceived and sans merit. By filing writing statement and pleading adverse possession and thereafter offering to pay compensation, defendants themselves admitted ownership of the plaintiffs. Respondents-defendants are also precluded from raising plea against the findings recorded by the Lower Appellate Court. No appeal has been preferred by the respondents against the judgment and decree passed by the Appellate Courts. In terms of law laid down by Supreme Court in the case of ***Banarsi and ors. vs. Ram Phal (2003) 9 SCC 606***, once decree was passed against the respondents and they opted not to file any appeal or cross objections, they cannot be allowed to interfere the finding recorded by Lower Appellate Court invoking Order XLI Rule 33 CPC.

16. Coming on to the plea raised by Mr. Jain with respect to grant of possession instead of compensation, it is matter of record that a power house was constructed over the suit land way back in 1961. Since then, the same is being used for public purpose. In ***State of Haryana and another vs. Amin Lal (supra)***, Supreme Court held the plaintiff entitled for possession where the land was under possession of the State without acquisition, as the land was being utilized for placing bitumen, drums etc. There was no permanent structure raised in the said case. Similarly, in the case of ***D.B. Basnett (supra)***, the land was being utilized for a farm house. In ***Bhusawal Municipal Council (supra)*** also,



the land though was within boundary wall, but the same was lying vacant. The case in hand is different and distinguishable. Construction of permanent character exists on the spot and the same is serving public purpose.

17. In view thereof, this Court finds that no fault can be found with the decision of Lower Appellate Court granting compensation to the plaintiff instead of decree possession.

18. In the considered opinion of this Court, granting compensation to the appellants-plaintiffs at the market rate prevalent in the year 1961, would be travesty of justice. For 44 years, not only the plaintiffs were deprived of their right to use the land, but were also deprived of monetary compensation. Had they been granted compensation in 1961, they may have purchased some other land. The same also would have grown exponentially with the other lands in the country. Given the compensation at the rate prevalent in the year 1961, they have been left high and dry. The compensation would be nothing but alms.

19. For the aforesaid reason, this Court finds that the plaintiffs are entitled for compensation at the rate prevalent in the year 2005 i.e. when the present suit was instituted. They are also entitled to interest and all statutory benefits as per the Land Acquisition Act, 1894. For the purpose of grant of compensation, Section 4 notification shall be deemed to have been notified on the date of filing of the suit i.e. 16.02.2005.



20. Apart from compensation on account of acquisition, plaintiffs are also entitled to user charges qua land from the date it came in possession of defendants. Since 1961 defendants have been using land owned by plaintiffs without acquisition and without payment of any compensation. Accordingly, plaintiffs are granted user charges at the rate of Rs.1,000/- per year for the period commencing from 1961 with 10% enhancement of after every 10 years till the date of acquisition alongwith interest @ 6% per annum. Interest shall be paid till actual realisation.

21. In view of above, present appeals are disposed off in following terms:-

(i) The impugned judgment and decree dated 07.12.2011 passed by Additional District Judge, Hisar is upheld qua grant of compensation to the plaintiff in lieu of decree of possession.

(ii) The decree is modified to the extent that plaintiffs are held entitled for compensation and other statutory benefits deeming date of notification under Section 4 of Land Acquisition Act, 1894 to be the date of institution of suit i.e. 16.02.2005.

(iii) The plaintiffs are also held entitled to recover user charges at the rate of Rs.1,000/- per annum with 10% enhancement after every 10 years for the period commencing from the year 1961 till date of acquisition i.e. 16.02.2005.



(iv) The Commissioner, Hisar shall pronounce award qua suit land deeming the date of acquisition as 16.02.2005 within 03 months from the date of supply of certified copy of this judgment.

- 22. Ordered accordingly.
- 23. A photocopy of this order be placed on the file of other connected case.
- 24. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

12.12.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes