



**214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-2640-2000 (O&M)
Date of decision : 06.05.2025

Kamla and others

....Appellants

Versus

State of Haryana through Collector Rohtak

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Rakesh Nehra, Senior Advocate with
Mr. Devesh Nehra, Advocate
for the appellants.

Mr. Amandeep Joshi, DAG, Haryana.

PANKAJ JAIN, J. (ORAL)

CM-4685-C-2000

This is an application filed under Order XXII Rule 3 CPC seeking impleadment of LR's of deceased/appellant No.1-Risal Singh.

The application is supported by an affidavit.

For the reasons recorded in the application, the same is allowed subject to all just exceptions. The applicants/appellants as mentioned at Sr. No.1 to 7 in the amended memo of parties, annexed with the application, are brought on record as LR's of appellant Risal Singh.

Amended memo of parties is taken on record.

**CM-4686-C-2000**

This is an application filed under Section 151 CPC seeking condonation of delay of 07 months in re-filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicants/appellants have made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 07 months in re-filing the instant appeal is hereby condoned.

RSA-2640-2000 (O&M)

Plaintiffs are in second appeal.

2. For convenience, the parties hereinafter referred to by their original position in the suit i.e the appellants as plaintiffs and the respondent as defendant. Plaintiff No.1 namely Risal Singh and Plaintiff No.3 namely Partap, are being represented by their LR's.

3. Plaintiffs filed suit for mandatory injunction and in the alternate for possession *qua* suit land as detailed out in the plaint.

4. As per the plaintiffs, defendant/State of Haryana through Department of Drainage raised ring *bandh* utilizing their land in the year 1980. Land was utilized without any acquisition. No compensation was ever paid to the plaintiffs. It is prayed that the suit land belonging to the plaintiffs having been utilized by the State without paying any compensation to the plaintiffs, the possession of the State of Haryana is illegal. Plaintiffs sought decree of mandatory injunction against the State in form of directions



to acquire the land and to award them compensation as per law. The alternate prayer is for decree of possession.

5. Defendants contested the suit raising issue regarding non-joinder/misjoinder of necessary parties. On merits, utilization of land is admitted. It is claimed that the Government raised ring *bandh* for the safety of the village from floods on the request of Gram Panchayat. The *bandh* is administratively under the control of Panchayat Department through Block Development and Panchayat Officer, Beri. It is further claimed that at the time the land was utilized and the *bandh* was constructed, plaintiffs raised no objection and rather consented orally. So far as absence of acquisition and non-payment of compensation is concerned, the same is admitted by State. However, it is being claimed that plaintiffs having consented orally for utilization of land are not competent to maintain the present suit.

6. On the basis of the pleadings, Trial Court framed the following issues:

- “1. Whether the plaintiffs are owners in possession of the agricultural land as detailed and described in para No.1 of the plaint? OPP.
2. Whether the defendant was required to acquire the agricultural land mentioned in para no.1 of the plaint if so to what effect? OPP.
3. Whether the plaintiffs are entitled to compensations alleged? OPP.
4. Whether the suit is not maintainable in the present form? OPD.



5. *Whether the plaintiffs have no locus standi to file the present suit as the suit land has not been acquired by the defendant? OPD.*
6. *Whether the plaintiffs are estopped from filing the suit by their own act and conduct? OPD.*
7. *Whether the suit is bad for non-joinder of necessary parties? OPD.*
8. *Whether the suit is barred by limitation. OPD.*
9. *Relief."*

7. Deciding issue No.1 to 3, the Trial Court found that the ring *bandh* was constructed in the year 1980. There is nothing on record to suggest that any objection was raised by the plaintiffs at any point of time. The same shows their acquiescence and waiver. The extent of possession of land by State could not be proved. Exhibit D2 shows that 1 Kanal 18 Marla belonging to the plaintiffs, has come under the ring *bandh* and not the whole land. The Court of the First Instance decided Issues No.1 to 3 against the plaintiffs holding them guilty of remaining silent. Under Issue No.6, the Court of the First Instance found that since *bandh* now stands transferred to the Department of Panchayat. The present suit is bad for non-joinder of necessary parties i.e. Gram Panchayat. It dismissed the suit.

8. In appeal preferred by the plaintiffs, Lower Appellate Court reversed the findings on issues No.1 to 3 holding that the stand taken by the defendant/State that the plaintiffs gave consent to utilization of land is inconsequential. Regarding the stand of the defendant that at the time of construction of the dam in the year 1980, plaintiffs gave their consent, thus



they are precluded from the title over the suit property, it held that there can't be any estoppel against the statute. The Lower Appellate Court held the plaintiffs entitled for compensation regarding suit property. However, the Lower Appellate Court affirmed the findings on issues No.6 holding that Gram Panchayat being the necessary party, the present suit filed by the plaintiffs for mandatory injunction, cannot be maintained in absence thereof. Lower Appellate Court dismissed the appeal filed by the plaintiffs.

9. Ld. Senior Counsel while assailing the findings recorded by the Courts below submits that the Courts have misdirected themselves in holding that the suit filed by the plaintiffs was bad for non-joinder of parties. He submits that evidently the land measuring 1 Kanal 18 Marlas owned and possessed by the plaintiffs, was utilized by the State for construction of ring *bandh* without any acquisition and without any payment of compensation. Merely for the reason that the *bandh* is being maintained by Gram Panchayat, the Gram Panchayat cannot be held to be necessary party as the primary grievance of the appellants is utilization of land without acquisition and payment of compensation. He further relies upon law laid down in the case of **Vidya Devi vs. The State of Himachal Pradesh and others, (2020)2 SCC 569** and **Sukh Dutt Ratra and another vs. State of Himachal Pradesh and others, (2022)7 SCC 508**.

10. Per contra, Mr. Joshi, counsel for the State submits that once it is the Panchayat who is managing the *bandh*, the Courts below have rightly non-suited the plaintiffs as the *lis* cannot be decided in the absence of Gram



Panchayat. However, Mr. Joshi is not in position to dispute the admitted factual position on record that the land belonging to the plaintiffs, was utilized without there being any acquisition and payment of compensation.

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

12. The fact of the land belonging to the plaintiff is not in dispute. Utilization of 1 Kanal and 18 Marlas of land belonging to the plaintiffs without there being any acquisition and payment of compensation, is also not in dispute. State has tried to get refuge under the silence of the plaintiffs and has pleaded that an oral no objection was accorded by them. Their stand has been rightly rejected by the Appellate Court

13. Article 31A and Article 300A of the Constitution of India deal with right to property laws providing for acquisition of estates 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-



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

14. The aforesaid provisions were elaborately interpreted by Supreme Court in the case of **K.T. Plantation Pvt. Ltd. & another vs. State of Karnataka, (2011) 9 SCC 145**, holding as under:

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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.

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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.

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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 Jamindari 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.”

15. Similar sentiments have been echoed in *Vidya Devi's* case (supra), observing as under:

10.3. In this case, the Appellant could not have been forcibly dispossessed of her property without any legal sanction, and without following due process of law, and depriving her payment of just compensation, being a fundamental right on the date of forcible dispossession in 1967.

10.4. The contention of the State that the Appellant or her predecessors had "orally" consented to the acquisition is completely baseless. We find complete lack of authority and legal sanction in compulsorily divesting the Appellant of her property by the State.

10.5. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in *Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors. (2013) 1 SCC 353* wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

This Court in *State of Haryana v. Mukesh Kumar* 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 *P.S. Sadasivaswamy v. State of T.N. (1975) 1 SCC 152*.

In *Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors., (2013) 1 SCC 353* this Court while dealing with a similar fact situation, held as follows :

"There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities



and other categories of similar cases, etc. Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, under Articles 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)

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13. In view of the aforesaid facts and circumstances of the present case, the Respondent-State is directed to pay the compensation on the same terms as awarded by the Reference Court vide Order dated 07.07.2015 in Anakh Singh's case (i.e. Land Reference No.1 of 2011 RBT No.01/13) alongwith all statutory benefits including solatium, interest, etc. within a period of 8 weeks, treating it as a case of deemed acquisition. An Affidavit of compliance is directed to be filed by the State before this Court within 10 weeks. It is informed that an appeal has been preferred by Ravinder Singh s/o Anakh Singh & Ors. being RFA No.35 of 2016 which is pending before the High Court of Himachal Pradesh at Shimla. Taking note thereof, if an appeal is filed by the present appellant within 8 weeks from the date of compensation being paid to her by the State, the appeal will be treated to be within limitation, and would be decided on its own merits in accordance with law. The Respondent-State is directed to pay legal costs and expenses of L 1,00,0000/- to the present appellant.



16. *Vidya Devi's* case *ibid* was further relied upon in the case of *Sukh Dutt Ratra and another vs. State of Himachal Pradesh and others* *ibid*, observing as under:

“22. This court is also not moved by the State's contention that since the property is not adjoining to that of the appellants, it disentitles them from claiming benefit on the ground of parity. Despite it not being adjoining (which is admitted in the rejoinder affidavit filed by the appellants), it is clear that the subject land was acquired for the same reason - construction of the Narag Fagla Road, in 1972-73, and much like the claimants before the reference court, these appellants too were illegally dispossessed without following due process of law, thus resulting in violation of Article 31 and warranting the High Court's intervention under Article 226 jurisdiction. In the absence of written consent to voluntarily give up their land, the appellants were entitled to compensation in terms of law. The need for written consent in matters of land acquisition proceedings, has been noted in fact, by the full court decision of the High Court in Shankar Dass (*supra*) itself, which is relied upon in the impugned judgment.

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:

"2.12. 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 violative [22*] 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.



[22 Relying on Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai 2005 Supp (3) SCR 388; N. Padmamma v. S. Ramakrishna Reddy (2008) 15 SCC 517; Delhi Airtech Services Pvt. Ltd. & Ors. v. State of Uttar Pradesh & Ors. 2011 (12) SCR 191; and Jilubhai Nanbhai Kahchar v. State of Gujarat 1994 Supp (1) SCR 807.]*

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.”

17. In view thereof, this Court finds that the finding recorded by the Lower Appellate Court regarding illegality committed by State need to be maintained. Finding recorded by the Courts below w.r.t. non-impleadment of Gram Panchayat as necessary party, is misconceived. Gram Panchayat is only managing the *bandh* even as per the stand taken by the State. It is not in dispute that the land was utilized for construction of the *bandh* by the State Government. It is the State Government that incurred the expenses of construction thereof. In view thereof, this Court does not find that the Gram Panchayat had any role to play in acquisition of land or utilization thereof.



18. In view of the aforesaid discussion, this Court finds that the findings recorded by the Lower Appellate Court on Issue No.7 holding the suit to be bared for non-joinder of necessary party, cannot be sustained. The same is hereby set aside. The suit filed by the plaintiffs is ordered to be decreed.

19. The issue with respect to nature of relief to be granted to the plaintiffs where the land is under utilization without acquisition came up for consideration before this Court in **RSA-1319-2012** titled as ‘**Arjun Lal and others vs. Dakshin Haryana Vidyut Parsaran Nigam Limited and others**’ decided vide judgment dated 12.12.2024. This Court while deciding the issue of compensation payable to the land owners, observed as under:

“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.”

20. In view of above, the present appeal is allowed in the following terms:

1. The findings recorded by the Lower Appellate Court except on Issue No.7 are maintained. The findings on Issue No.7 regarding non-joinder of the parties, is ordered to be reversed. As a consequence thereof, the appeal is allowed.
2. The plaintiffs are entitled for compensation and other statutory benefits deeming the date of institution of the present suit to be the date of notification under Section 4 of the Land Acquisition Act.
3. The plaintiffs are also held entitled to recover user charges @ ₹500/- per annum with 10% enhancement after every 10 years for the period commencing from the date of acquisition i.e. notification under Section 4 of the Land Acquisition Act along with interest @ 6% per

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annum from the date of accrual of the amount till the date of actual realization.

4. The Land Acquisition Collector, Rohtak, shall pronounce the award *qua* the suit land deeming the date of institution of the suit as the date of acquisition within 3 months from the date of supply of certified copy of this judgment.

21. Ordered accordingly.

May 06, 2025
Dpr

(Pankaj Jain)
Judge

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