IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 14438 of 2024

Decided on: 17.11.2026

Dhani Ram and Ors. ……..Petitioners

Versus

State of Himachal Pradesh & others. ….Respondents

Coram:
Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?

For the Petitioners	**:**	Mr. Vinod Chauhan, Ms. Aanchal Singh and Ms. Nandita, Advocates.
For the Respondents	**:**	Mr. Rajan Kahol, Additional Advocate General, Mr. R.P.Singh, Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General.

Sandeep Sharma, Judge (oral):

Since despite utilization of land of the petitioners for the construction of "Bharoli Kalan Jejwin Salwar Marotan road", no steps were taken by the respondents for acquisition of the land of the petitioners and no compensation was paid to the petitioners, they were compelled to approach this Court in the instant proceedings under Article 226 of the Constitution of India, praying therein for following main relief:-

> "i)That writ in the nature of mandamus may kindly be issued to the respondents and they may be directed to initiate acquisition proceeding qua the land of the petitioners utilised by the respondents situated in Khata Khatauni No. 59/54 min Khasra Nos. 535, 558, 561 & 616 measuring 06-13-00, 02-07-00, 08-00-00 & 00-14-00 bighas respectively, situate in Muhal Fujli Jhalwana, Tehsil Jhandutta, District Bilaspur, Himachal Pradesh, as per Jamabandi for the years 2019-20 and

conclude the same in term time bound manner And thereafter pay due and admissible compensation in accordance with rehabilitation and fair compensation act.."

2. Precisely, the facts of the case, as emerge from the record, are that in 1994-95, respondent-State constructed "Bharoli Kalan Jejwin Salwar Marotan road." Though, for the construction of aforesaid road, land of petitioners came to be utilized by the respondent-State, but the petitioners were not paid any compensation. As per petitioners, though some of persons, whose land was acquired for construction of road from "Bharoli Kalan Jejwin Salwar Marotan" have been paid compensation, but same has not been paid to the petitioners, for their land utilized for the construction of road from "Bharoli Kalan Jejwin Salwar Marotan road."

3. Petitioners repeatedly requested the respondents to initiate acquisition proceedings qua their land used for construction of road in question, but in vain as such, they have approached this court in the instant proceedings, praying therein for the reliefs, as have been reproduced herein above.

4. Pursuant to the notices issued in the instant proceedings, respondents have filed reply, under the signatures of Superintending Engineer, 10th Circle, Himachal Pradesh Public Works Department, Bilaspur, District Bilaspur, Himachal Pradesh, wherein facts as have been noticed herein above, have not been disputed rather stand admitted.

5. Claim of the petitioners for compensation raised in the instant petitions has been sought to be refuted by the respondents on the ground of delay and laches. Besides above, it has been stated in reply that while the road was being constructed, petitioners and similarly situate persons never raised objection, rather voluntarily donated land for construction of the road.

6. Mr. Rajan Kahol, learned Additional Advocate General, while making this Court peruse pleadings adduced on record vehemently argued that there is no written document suggestive of the fact that land was ever donated, but definitely there is implied consent of the villagers for the construction of the road. He submitted that the very fact that the petitioners remained silent for more than 25 years is sufficient to establish factum with regard to implied consent of the petitioners for construction of road in question without there being any compensation.

7. While making this Court peruse judgment passed by this Court in Shankar Dass v. State of Himachal Pradesh in CWP No. 1966 of 2010, Mr. Rajan Kahol, learned Additional Advocate General submitted that otherwise also appropriate remedy for the petitioners is to approach a civil court by way of civil suit. He further submitted that Hon'ble Apex Court in State of Maharashtra v. Digambar, (1995) 4 SCC 683 has categorically held that the claim being highly stale, deserves outright rejection.

8. To the contrary, Mr. Vinod Chauhan, learned counsel for the petitioners strenuously argued that at no point of time, consent, if any, was given by the petitioners for the construction of road, without compensation. He submitted that once the respondents themselves have admitted factum of passing of award in case of some of land owners, such plea raised by the respondents, that there was oral consent on behalf of the petitioners for construction of road through their land, without payment of compensation, falls to the ground.

9. He submitted that otherwise also Hon'ble Apex Court in Vidya Devi v. State of Himachal Pradesh and others, (2020) 2 SCC 569 and Sukh Dutt Ratra v. State of Himachal Pradesh and others, (2022) 7 SCC 508, has categorically held that plea of delay and laches cannot be raised in the case of continuing cause of action, especially in land acquisition matters. He also invited attention of this court to judgment dated 27.7.2023 passed in CWP No. 5928 of 2022 in Vir Sain v. State of Himachal Pradesh and Ors,, wherein, admittedly, this Court, having taken note of the judgments passed in Vidya Devi and Sukh Dutt Ratra, supra, negated the plea of delay and laches raised by the respondent-State.

10. 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 petitioners was utilized

for construction of road in question. It is also not in dispute that some of land owners were paid compensation after initiation of acquisition proceedings under Land Acquisition Act in vogue at the relevant time. Plea of delay and laches sought to be raised by respondents may not be available on account of judgment rendered in Vidya Devi and Sukh Dutt Ratra (supra), wherein it has been categorically held that plea of delay and laches cannot be raised in case of continuous cause of action or if the circumstances shock the judicial conscience of the court, it can always condone the delay to do the substantial justice. While holding that condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case, Hon'ble Apex Court further held that there is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice. It has been further held that forcible dispossession of a person of his private property without following due process of law, is violative of both, human right and constitutional right, guaranteed under Art. 300-A of the Constitution of India. It would be apt to take note of following paras of Vidya Devi, supra:

> “10.1. The Appellant was forcibly expropriated of her property in 1967, when the right to property was a fundamental right guaranteed by Article 31 in Part III of the Constitution.
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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.

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)"

11. 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."
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> 24. And with regards to the contention of delay and laches, this court went on to hold:
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> "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.
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> 25. Concluding that the forcible dispossession of a person of their private property without following due process of law, was violative of both their human right, and constitutional right under Article 300-A, this court allowed the appeal. We find that the approach taken by this court in Vidya Devi (supra) is squarely applicable to the nearly identical facts before us in the present case.

> 26. In view of the above discussion, in view of this court's extraordinary jurisdiction under Article 136 and 142 of the Constitution, the State is hereby directed to treat the subject lands as a deemed acquisition and appropriately disburse compensation to the appellants in the same terms as the order of the reference court dated 04.10.2005 in Land Ref. Petition No. 10-LAC/4 of 2004 (and consolidated matters). The Respondent-State is directed, consequently to ensure that the appropriate Land Acquisition Collector computes the compensation, and disburses it to the appellants, within four months from today. The appellants would also be entitled to consequential benefits of solatium, and interest on all sums payable under law w.e.f 16.10.2001 (i.e. date of issuance of notification under Section 4 of the Act), till the date of the impugned judgment, i.e. 12.09.2013."

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

13. 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 is so, ground raised by the respondents that petitioners have made their land available with consent, is of no consequence rather, this Court, having taken note of the fact that the land of petitioners stands utilized for the construction of road in question, is compelled to agree with the submission of learned counsel for the petitioner

that his clients are entitled for compensation qua the land utilized by respondents for construction of road in question.

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

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

16. 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.

17. 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.

18. Consequently, in view of the detailed discussion made herein above as well as law taken into consideration, this Court finds merit in the present petitions and accordingly same are allowed with direction to the respondents to initiate acquisition proceedings within six weeks under the relevant statute vis-à-vis land of the petitioners used for construction of road in question and thereafter, just and fair compensation qua the same be awarded to the petitioners. Since petitioners have been fighting for their rightful claim for so long, this Court hopes and trusts that authority concerned would do the needful expeditiously, preferably, within six months. In the aforesaid terms, present petitions are disposed of alongwith pending applications, if any.

(Sandeep Sharma)
Judge

November 17, 2026
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