

2023 STPL(Web) 34 HP
HIGH COURT OF HIMACHAL PRADESH

(HON'BLE MR. JUSTICE SANDEEP SHARMA, J.)

SH. SANT RAM CHAUHAN

Petitioner

VERSUS

STATE OF HIMACHAL PRADESH AND ORS.

Respondents

CWP No. 8758 of 2022-Decided on 19-07-2023

Land Acquisition

Land Acquisition - Land was utilized without acquisition – No compensation paid – Held: Since in the instant case, there is no dispute that land of the petitioner stands utilized for construction of the road in question and some of the persons, whose land were also used alongwith land of the petitioners, stand granted compensation as has been detailed herein above, prayer made by the petitioner through instant petition deserves to be allowed. Direction to initiate acquisition proceedings within four weeks under the relevant statute vis-à-vis land of the petitioner and thereafter, just and fair compensation qua the land of the petitioner used by the respondents for construction of the road may also be paid.

(Para 12, 13)

Advocate(s): For the Petitioners: Mr. Nishant Khidtta, Advocate.

For the respondents: Mr. Anup Rattan, Advocate General with Mr. Mr. Rajan Kahol, Mr. Vishal Panwar and Mr. B.C. Verma, Additional Advocates General and Mr. Rahul Thakur and Mr. Ravi Chauhan, Deputy Advocates General.

JUDGMENT

Sandeep Sharma, J. (Oral)-Being aggrieved and dissatisfied with office order dated 29.9.2022 whereby representations having been filed by the petitioner in terms of order dated 18.12.2018 passed by Division Bench of this Court in CWP No. 2370 of 2018, for awarding adequate compensation qua the land used for construction of road namely “Udho-Niwas- Jakhhar-Bartu Road” in Tehsil Rohru, District Shimla, HP, as was done in the other similarly situate cases vide award dated 4.9.2014 (Annexure P-3), came to be dismissed, petitioners have approached this Court in the instant proceedings, praying therein for following main reliefs:

“(i) That the impugned order dated 29.9.2022 (Annexure P-14) may kindly be quashed and set aside.

(ii) That writ in the nature of mandamus may kindly be issued directing the respondents to acquire the land of the petitioner and pay the compensation as has been done in the other similar situated cases i.e. by award dated 04.09.2014 (Annexure P-3) immediately within a reasonable period as deemed fit by this Hon’ble Court with all consequential benefits.”

2. For having bird’s eye view, which may be relevant for adjudication of the case at hand, are that in the year 1995-96, respondents constructed “Udho-Niwas-Jakhhar-Bartu Road” and for that purpose, acquisition proceedings were commenced for some of the land utilized for the construction of the aforesaid road and compensation was awarded vide order dated 24.11.1997, whereas part of the land was utilized without acquisition, as a result of which, owners of the suit land were not paid any compensation.

3. Precisely, the grouse of the petitioner, as has been highlighted in the instant petition and further canvassed by Mr. Nishant Khidtta, Advocate, appearing for the petitioner is that land of the petitioner was also utilized by the respondents for construction of the road in question, but no acquisition proceedings were undertaken in respect of his land, as a result of which, he did not get any compensation either in terms of award dated 24.11.1997 or 4.9.2014.

4. Though petitioner repeatedly approached the appropriate authorities with a request to acquire his land already used for the above detailed road, but despite recommendation of his case by the appropriate authority, his grievance was not redressed and as such, he was compelled to approach this court by way of CWP No. 43 of 2018 (Annexure P-11), which came to be disposed of vide judgment dated 11.1.2018 passed by Division Bench of this Court, with direction to the respondent/competent Authority to consider the case of the petitioner in accordance with law by affording opportunity of hearing to all the concerned within two months.

5. Though pursuant to aforesaid direction issued by the Division Bench of this Court, petitioner filed representation (Annexure P-12) to Secretary (PWD) Government of Himachal Pradesh, Shimla-2, but in vain, because vide order 29.9.2022, Principal Secretary (PWD), rejected the representation of the petitioner on the ground that land of the petitioner was utilized for construction of the road in question with a clear understanding that petitioner shall not claim any compensation. Besides above, respondents also rejected the claim of the petitioner on the ground of delay & laches. It has been stated in the order impugned in the instant proceedings that petitioner remained silent for more than 20 years, meaning thereby, he had no objection qua the construction of the road and as such, at this stage, cannot be permitted to claim compensation for the land which he had himself made available for construction of the road. In the aforesaid backdrop, petitioner has approached this Court in the instant proceedings filed under Article 226 of the Constitution of India, praying therein for reliefs as reproduced herein above.

6. Prayer made in the instant petition has been opposed by the respondents on the ground that claim of the petitioner being highly belated, deserves outright rejection. It has been stated in the reply that petitioner approached this Court after an inordinate delay of 20 years and as such, are not entitled to any relief. Apart from above, it has been further stated in the reply that since petitioner had given oral consent and never raised objection with regard to construction of the road in question from their land, he is estopped from filing the petition seeking therein compensation.

7. Mr. B.C. Verma, learned Additional Advocate General vehemently argued that though there is no written document suggestive of the fact that land was occupied, but definitely there is an implied consent on the part of the petitioner for construction of the road. He submitted that petitioner remained silent for more than 20 years, meaning thereby, he himself made the land available for construction of the road and as such, is not entitled to be compensated on account of use of land. While making this Court peruse judgment passed by the Hon'ble Apex Court in Shankar Dass v. State of Himachal Pradesh in CWP No. 1966 of 2010, decided on 2.3.2013, Mr. Verma, vehemently argued that appropriate remedy for redressal of grievance as raised in the instant petition is to approach civil court by way of civil suit. He also placed reliance upon the judgment passed by the Hon'ble Apex Court in State of Maharashtra v. Digambar, 1995 (4) SCC 683, to state that claim being highly stale deserves outright rejection.

8. On the other hand, Mr. Nishant Khidta, learned counsel appearing for the petitioner invited attention of this court to judgment passed by the Hon'ble Apex Court in Vidya Devi v. State of HP and Ors, 2020 (2) SCC 569, to dispel the contention raised by the respondent-State. He also invited attention of this court to judgment passed by the Hon'ble Apex Court in Sukh Dutt Ratra and Anr v. State of Himachal Pradesh and Ors, 2022 (7) SCC 508, wherein it has been categorically held that 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. Most importantly, in the aforesaid judgment, it has been held that there is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice. While concluding that forcible dispossession of a person of their private property without following due process of law, is violative of both their human right and constitutional right under Article 300-A. In Sukh Dutt Ratra (supra), it has been categorically held that land owners cannot be deprived of the property without due process of law. Since in the case at hand, there is no dispute that land of the petitioner already stands utilized for construction of the road in question and in that regard, two separate awards stand passed by the Land Acquisition Collector, prayer of the petitioner for acquisition and as a consequence thereof, compensation cannot be disallowed merely on the ground of delay and laches.

9. Learned Additional Advocate General while inviting attention of this court to judgment dated 24.2.2023, passed by the Hon'ble Apex Court in Civil Appeal No. 1278 of 2023, State of Himachal Pradesh and Ors V. Rajiv and Anr., argued that petitioner is not entitled to compensation qua the land utilized for the construction of the road in question, however having perused aforesaid judgment, this Court is not persuaded to agree with the contention of learned Additional Advocate General because bare perusal of the aforesaid judgment nowhere suggests that claim raised for acquisition and compensation after 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 till the filing of the writ petition.

10. In the instant case, record clearly reveals that award for grant of compensation was passed for the second time in 2014 without considering the land of the petitioners and no plausible reason, whatsoever, ever came to be put forth by the respondents for such omission. Record reveals that petitioner repeatedly approached the authorities and thereafter, this Court directed the respondents to redress the grievances of the petitioner, but yet despite there being positive recommendation from the appropriate authority, respondents failed to consider the claim of the petitioner. At this stage, it would be apt to take note of following paras of the judgment passed in 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. 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*⁴, 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*⁵, 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.

12.10. This Court in *State of Haryana v. Mukesh Kumar* held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multifaceted dimension.”

24. And with regards to the contention of delay and laches, this court went on to hold:

“12.12. The contention advanced by the State of delay and laches of the appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.

12.13. In a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and not defeat it.

25. Concluding that the forcible dispossession of a person of their private property without following due process of law, was violative²² of both their human right, and constitutional right under Article 300-A, this court allowed the appeal. We find that the approach taken by this court in *Vidya Devi* (supra) is squarely applicable to the nearly identical facts before us in the present case.

26. In view of the above discussion, in view of this court’s extraordinary jurisdiction under Article 136 and 142 of the Constitution, the State is hereby directed to treat the subject lands as a deemed acquisition and appropriately disburse compensation to the appellants in the same terms as the order of the reference court dated 04.10.2005 in Land Ref. Petition No. 10-LAC/4 of 2004 (and consolidated matters). The Respondent-State is directed, consequently to ensure that the appropriate Land Acquisition Collector computes the compensation, and disburses it to the

appellants, within four months from today. The appellants would also be entitled to consequential benefits of solatium, and interest on all sums payable under law w.e.f 16.10.2001 (i.e. date of issuance of notification under Section 4 of the Act), till the date of the impugned judgment, i.e. 12.09.2013.”

12. In the aforesaid judgment, 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 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. Since in the instant case, there is no dispute that land of the petitioner stands utilized for construction of the road in question and some of the persons, whose land were also used alongwith land of the petitioners, stand granted compensation as has been detailed herein above, prayer made by the petitioner through instant petition deserves to be allowed. Since petitioner is suffering continuous loss coupled with the fact that he repeatedly requested the authorities and thereafter, also approached the competent court of law for initiation of acquisition proceedings, rightful claim of the petitioner cannot be allowed to be defeated on the ground of delay in filing the petition, which has been otherwise held to be impermissible by the Hon’ble Apex Court in the judgments (supra).

13. Consequently, in view of the above, present petition is allowed and order dated 4.9.2014 (Annexure P-3) is quashed and set aside and respondents are directed to initiate acquisition proceedings within four weeks under the relevant statute vis-à-vis land of the petitioner and thereafter, just and fair compensation qua the land of the petitioner used by the respondents for construction of the road may also be paid. Since petitioner has been fighting for his rightful claim for more than two decades, this Court hopes and trusts that needful in terms of the directions contained in the instant judgment shall be done by the respondents expeditiously, preferably, within two months thereafter. In the aforesaid terms, present petition is disposed of alongwith pending applications, if any.
