REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (C) NO. OF 2022)
(ARISING OUT OF S.L.P. (C) DIARY NO. 13202 OF 2020)

SUKH DUTT RATRA & ANR. ...APPELLANT(S)

VERSUS

STATE OF HIMACHAL PRADESH & ORS. ...RESPONDENT(S)

J U D G M E N T

S. RAVINDRA BHAT, J.

1. Delay condoned and leave granted. With consent of counsel for the parties, the appeal was heard finally. The appellants are aggrieved by final judgment[1] of the High Court of Himachal Pradesh at Shimla, disposing their writ petition, with liberty to institute a civil suit in accordance with law.

Facts

2. Sukh Dutt Ratra and Bhagat Ram (hereafter 'appellants') claim to be owners of land[2] situated at Mauzal Sarol Basach, Tehsil Pachhad, District Sirmaour, Himachal Pradesh (hereafter 'subject land'). The Respondent-State

[1] Dated 12.09.2013 in CWP No. 7873/2011.

[2] Khasra Nos. 141, 232/142, 143, 144, 145, 281/267, 206/147, 158, 268/149, 282/267, and Khasra Nos. 201/138, 242/146, 209/154, 158, 211/163, 16/172, further Khasra Nos. 50, 51, 89, 278/92, 280/93, and 205/147, 281/267, 151, 152, 283/153, 285/20.

utilised the subject land and adjoining lands for the construction of the 'Narag Fagla Road' in 1972-73, but allegedly no land acquisition proceedings were initiated, nor compensation given to the appellants or owners of the adjoining land.

3. Pursuant to a judgment by the Himachal Pradesh High Court[3] (hereafter 'High Court') directing the State to initiate land acquisition proceedings, a notification under Section 4 of the Land Acquisition Act, 1894 (hereafter 'Act') was issued on 16.10.2001 (published on 30.10.2001) and the award was passed on 20.12.2001 fixing compensation at ₹30,000 per bigha. Proceedings under Section 18 of the Act for enhancement of compensation, were initiated by ten neighbouring land owners (Mata Ram and others), whose lands were similarly utilised for the construction of the same road and an award[4] dated 04.10.2005 was passed by the reference court in their favour. It was held that the reference petitioners were entitled to enhanced compensation of ₹39,000 per bigha; solatium of 30% per annum on the market value of the land; additional compensation at the rate of 12% per annum under Section 23(1-A) of the Act w.e.f. 16.10.2001 (date of issuance of notification under Section 4) till the date of making of the award by the Collector, i.e. 20.12.2001; and under Section 28, interest of 9% per annum from 16.10.2001 for a period of one year, and thereafter 15% per annum, till date of payment. In 2009, the High Court dismissed[5] the appeal against this order by those claimants, who were seeking statutory interest from the date of taking possession (rather than date of initiation of acquisition proceedings).

4. Similarly situated land owners, filed writ proceedings before the High Court: a writ petition filed by one Anakh Singh, from the adjoining village was allowed by the High Court[6] with the direction to acquire lands of the writ

[3] In *Devender Singh & Ors. v. State of Himachal Pradesh* CWP No. 816/1992.
[4] Award in Land Ref. Petition No. 10-LAC/4 of 2004 and consolidated matters.
[5] Dated 25.08.2009 in RFA No. 1-9/2006.
[6] Order dated 23.04.2007 in CWP No. 1192/2004.

petitioners under the Act, with consequential benefits; subsequently other similarly situated owners also received[7] the benefit of these directions.

5. This led the appellants to file a writ petition before the High Court in 2011, seeking compensation for the subject land or initiation of acquisition proceedings under the Act. Relying on a Full bench decision[8] of the High Court, it was held in the impugned judgment that the matter involved disputed questions of law and fact for determination on the starting point of limitation, which could not be adjudicated in writ proceedings. The writ petition was disposed of, with liberty to file a civil suit in accordance with law. Aggrieved, the appellants have approached this court through these appeals.

Contentions of parties

6. Mr. Mahesh Thakur, learned counsel on behalf of the appellants argued that the State had illegally usurped the appellants' lands, without following due process of law and reliance was placed on this court's decision in *State of U.P. v. Manohar*[9] and *Tukaram Kana Joshi & Ors. v. Maharashtra Industrial Development Corporation (MIDC)*[10].

7. It was further submitted that the appellants' case is on the same footing as that of adjoining land owners who were granted compensation and consequential benefits by land acquisition award dated 04.10.2005, and in subsequent writ proceedings. Counsel urged that the state's inaction is arbitrary, given that the lands adjoining the subject land were acquired under directions of the High Court, despite it being used for the same purpose.

8. Counsel highlighted that the Respondent-State had not disputed that the appellants were owners of the subject land, that it had been taken and used by the State for construction of Narag Fagla Road, and that no compensation had been

---

[7] Order dated 20.12.2013 in CWP No. 1356/2010.
[8] *Shankar Dass v. State of Himachal Pradesh* CWP No. 1966/2010-C, judgment dated 02.03.2013 (hereafter "*Shankar Dass"*).
[9] (2005) 2 SCC 126 (hereafter "*Manohar*")
[10] 2012 (13) SCR 29 (hereafter "*Tukaram Kana Joshi*")

paid. So, given that these facts are undisputed, it was urged that the High Court had erred in dismissing the writ petition, in light of this court's decision in *Air India Ltd. v. Vishal Capoor*[11].

9. Counsel drew our attention to a judgment of this court in *Vidya Devi v. State of Himachal Pradesh*[12], which he argued had similar facts and prevailing circumstances: petitioners' lands had been taken by the State at the same time and for the same purpose as that of the appellants, and this court had after condoning delay of 1756 days, allowed the appeal and directed the State to pay compensation along with all statutory benefits, including solatium, interest, etc.

10. Mr. Abhinav Mukerji, learned counsel on behalf of the State of Himachal Pradesh, urged that the petition was hit by immense delay and latches and liable to be dismissed on this ground alone: appellants had approached the High Court after an inordinate delay of 38 years in 2011, against action taken by the State in 1972-73; and an inordinate delay of about 6 years in approaching this court after passing of the impugned judgment in 2013. Reliance was placed on this court's decisions in *State of Maharashtra v. Digambar*[13], *State of Madhya Pradesh & Anr v. Bhailal Bhai & Ors.*[14] and *Brijesh Kumar & Ors. v. State of Haryana*[15]. Counsel also submitted that the decision in *Tukaram Kana Joshi* (*supra*) which the appellants strongly rely on, is per incuriam in light of the larger bench decision in *Digambar* (*supra*), which was not considered in *Tukaram Kana Joshi*. The Respondent-State opposes the application for condonation of delay filed by the appellants on the same grounds, by way of reply.

11. On facts, counsel on behalf of State submitted that the Narag Fagla road was in fact constructed at the request of the appellants, and other landowners who wanted the benefit of connectivity; counsel claims that they volunteered their land for this purpose, and hence, it was constructed with their verbal consent. Since

---

[11] 2005 Supp (3) SCR 670.
[12] (2020) 2 SCC 569; Civil Appeal Nos. 60-61/2020, judgment dated 08.01.2020 (hereafter "*Vidya Devi*").
[13] 1995 Supp (1) SCR 492 (hereafter "*Digambar*")
[14] 1964 (6) SCR 261
[15] (2014) 11 SCC 351

1972-73 when it was built, there was no objection raised or compensation sought by the appellants till 2011. Further, counsel contended that the lands dealt with in other writ proceedings (CWP No. 1192/2004 and 1356/2010) are not adjoining to the subject land of the appellants', as claimed by them. It was submitted that the appellants' land falls in Sirmour District while the lands in the other writ proceedings, were acquired for the road between Jalari to Sujanpur via Bara-Choru, which is a different road, falling in the Hamirpur district. Therefore, on these facts, the counsel urges that the ground of parity is untenable.

12. Lastly, it was argued that in light of the disputed questions of fact relating to limitation, construction of the road, and verbal consent for the same – the appropriate forum would be the civil court, and thus the impugned order required no intervention.

Analysis and conclusion

13. While the right to property is no longer a fundamental right[16], it is pertinent to note that at the time of dispossession of the subject land, this right was still included in Part III of the Constitution. The right against deprivation of property unless in accordance with procedure established by law, continues to be a *constitutional* right under Article 300-A.

14. It is the cardinal principle of the rule of law, that nobody can be deprived of liberty or property without due process, or authorization of law. The recognition of this dates back to the 1700s to the decision of the King's Bench in *Entick v. Carrington*[17] and by this court in *Wazir Chand v. The State of Himachal Pradesh*[18]. Further, in several judgments, this court has repeatedly held that rather than enjoying a wider bandwidth of lenience, the State often has a higher responsibility in demonstrating that it has acted within the confines of legality, and therefore, not tarnished the basic principle of the rule of law.

[16] Constitution (Forty Fourth Amendment) Act, 1978.
[17] [1765] EWHC (KB) 198
[18] 1955 (1) SCR 408

15. When it comes to the subject of private property, this court has upheld the high threshold of legality that must be met, to dispossess an individual of their property, and even more so when done by the State. In *Bishandas v. State of Punjab*[19] this court rejected the contention that the petitioners in the case were trespassers and could be removed by an executive order, and instead concluded that the executive action taken by the State and its officers, was destructive of the basic principle of the rule of law. This court, in another case - *State of Uttar Pradesh and Ors. v. Dharmander Prasad Singh and Ors*.[20], held:

> *"A lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. The use of the expression 're-entry' in the lease-deed does not authorise extra-judicial methods to resume possession. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law. In the present case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of Government and Governmental authorities should have a 'legal pedigree'".*

16. Given the important protection extended to an individual *vis-a-vis* their private property (embodied earlier in Article 31, and now as a constitutional right in Article 300-A), and the high threshold the State must meet while acquiring land, the question remains – can the State, merely on the ground of delay and laches, evade its legal responsibility towards those from whom private property has been expropriated? In these facts and circumstances, we find this conclusion to be unacceptable, and warranting intervention on the grounds of equity and fairness.

17. When seen holistically, it is apparent that the State's actions, or lack thereof, have in fact compounded the injustice meted out to the appellants and

---

[19] 1962 (2) SCR 69
[20] 1989 (1) SCR 176

compelled them to approach this court, albeit belatedly. The initiation of acquisition proceedings initially in the 1990s occurred only at the behest of the High Court. Even after such judicial intervention, the State continued to only extend the benefit of the court's directions to those who specifically approached the courts. The State's lackadaisical conduct is discernible from this action of initiating acquisition proceedings selectively, only in respect to the lands of those writ petitioners who had approached the court in earlier proceedings, and not other land owners, pursuant to the orders dated 23.04.2007 (in CWP No. 1192/2004) and 20.12.2013 (in CWP No. 1356/2010) respectively. In this manner, at every stage, the State sought to shirk its responsibility of acquiring land required for public use in the manner prescribed by law.

18. There is a welter of precedents on delay and laches which conclude either way – as contended by both sides in the present dispute – however, the specific factual matrix compels this court to weigh in favour of the appellant-land owners. The State cannot shield itself behind the ground of delay and laches in such a situation; there cannot be a 'limitation' to doing justice. This court in a much earlier case - *Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service*[21], held:

> *"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material.*
>
> *But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might*

[21] 1969 (1) SCR 808

> *affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."*

19. The facts of the present case reveal that the State has, in a clandestine and arbitrary manner, actively tried to limit disbursal of compensation as required by law, only to those for which it was specifically prodded by the courts, rather than to all those who are entitled. This arbitrary action, which is also violative of the appellants' prevailing Article 31 right (at the time of cause of action), undoubtedly warranted consideration, and intervention by the High Court, under its Article 226 jurisdiction. This court, in *Manohar* (*supra*) - a similar case where the name of the aggrieved had been deleted from revenue records leading to his dispossession from the land without payment of compensation – held:

> *"Having heard the learned counsel for the appellants, we are satisfied that the case projected before the court by the appellants is utterly untenable and not worthy of emanating from any State which professes the least regard to being a welfare State. When we pointed out to the learned counsel that, at this stage at least, the State should be gracious enough to accept its mistake and promptly pay the compensation to the respondent, the State has taken an intractable attitude and persisted in opposing what appears to be a just and reasonable claim of the respondent.*
>
> *Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(1)(f) was deleted by the Forty-fourth Amendment to the Constitution, Article 300-A has been placed in the Constitution, which reads as follows:*
>
> *"300-A. 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."*
>
> *This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities. In our view, this case was an eminently fit one for exercising the writ jurisdiction of the High Court under Article 226 of the Constitution…"*

20. Again, in *Tukaram Kana Joshi* (*supra*) while dealing with a similar fact situation, this court 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 Article 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. The 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."*

21. Having considered the pleadings filed, this court finds that the contentions raised by the State, do not inspire confidence and deserve to be rejected. The State has merely averred to the appellants' alleged verbal consent or the lack of objection, but has not placed any material on record to substantiate this plea. Further, the State was unable to produce any evidence indicating that the land of the appellants had been taken over or acquired in the manner known to law, or that they had ever paid any compensation. It is pertinent to note that this was the State's position, and subsequent findings of the High Court in 2007 as well, in the other writ proceedings.

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.

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.

27. For the above reasons, the appeal is allowed and the impugned order of the High Court is hereby set aside. Given the disregard for the appellants' fundamental rights which has caused them to approach this court and receive

---

[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.

remedy decades after the act of dispossession, we also deem it appropriate to direct the Respondent-State to pay legal costs and expenses of ₹ 50,000 to the appellants. Pending applications, if any, are hereby disposed of.

…….....J.
[S. RAVINDRA BHAT]

…….....J.
[PAMIDIGHANTAM SRI NARASIMHA]

New Delhi,
April 06, 2022.