

Jasvinder Kumar And Ors vs State Of Haryana And Others on 7 March, 2025

Bench: Sureshwar Thakur, Vikas Suri

Neutral Citation No:=2025:PHHC:032917-DB

CWP-31984-2024

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-31984-2024

Reserved on: 20.02.2025

Date of Decision : 07.03.2025

JASVINDER KUMAR AND OTHERS

...Petitioners

V/S

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI

Present : Mr. Rahul Dahiya, Advocate for the petitioners.

Mr. Ankur Mittal, Addl. AG Haryana with
Ms. Svaneel Jaswal, Addl. A.G. Haryana,
Mr. P.P. Chahar, Sr. DAG, Haryana,
Mr. Saurabh Mago, DAG, Haryana,
Mr. Gaurav Bansal, DAG, Haryana and
Mr. Karan Jindal, AAG, Haryana.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioners have prayed for the issuance of a writ in the nature of a mandamus, thus directing the respondents to acquire and decide the compensation of the land, from the date of possession, with H.B No.13, bearing Khewat No.64//71, Khatauni No.72,

Khasra No.6//24, 6//17/1/1/2, 6//16 and Khewat No.58//65, Khatauni No.65, Khasra No.6//17/1/1/1, 6//15 situated at Village Rapri, District Yamuna Nagar of the petitioners, which is already in possession of the respondents, as per the provisions of the Right to Fair Compensation and 1 of 22 Neutral Citation No:=2025:PHHC:032917-DB CWP-31984-2024 Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 (hereinafter referred to as the 'Act of 2013') and other benefits and release the same to the petitioners.

2. The brief facts of the present case are that the petitioners are the co-sharers of the lands mentioned hereinabove. The petitioners vide sale deed No.2267 dated 28.02.2019 (Annexure P-1), thus acquired a share in the subject lands, from petitioner No.3 i.e. Sh. Vijay Kumar son of Sh. Ramal Dass. The revenue record showing the name of the petitioners as co-owner becomes appended with the instant petition as Annexure P-2.

3. The petitioners sought information under RTI Act, wherebys, vide letter No.3034 dated 14.11.2022 (Annexure P-3), it was revealed that the aforesaid land had been encroached by the respondents and that the property of the petitioners had never been acquired by respondents or by any legal authority and the respondents had constructed the subject road on the said land. Further, the widening of the said illegal subject road was also done twice, within the last 3 years and the same was also done illegally and unlawfully, without following the due course of law.

4. After the petitioners found out that the area of their land is not complete, thereupons they moved an application dated 16.02.2023 (Annexure P-4) before the Tehsildar, Radaur, for the demarcation of the aforesaid land.

5. Subsequently, the demarcation of the land was done on 27.02.2023, through Ranbir Singh, Kanungo after giving notices dated 21.02.2023 to the persons concerned, inasmuch as, to the Nambardar of village, to the respondent No.5 i.e. SDO, PWD, Radaur, District Yamuna 2 of 22 Neutral Citation No:=2025:PHHC:032917-DB CWP-31984-2024 Nagar, and the other respectable persons of village Rapri, Tehsil Radaur, Yamuna Nagar. On 27.02.2023, Sh. Om Parkash from the office of respondent No.5 was present at the time of demarcation and duly signed his presence. Thereafter, the demarcation report dated 27.02.2023 (Annexure P-

5) was prepared and submitted, which revealed that there is an encroachment by respondent No.5 PWD & Forest department over Khasra No.6//16, 6//17/1/1/2, 6//24 inasmuch as, a road was constructed thereovers by the said department.

6. The petitioners contend that the respondents have illegally encroached upon the said land i.e. Khasra No.6//16, 6//17/1/1/2, 6//24, Village Rapri, thus through theirs constructing the new road, despite no valid demarcation of the subject lands being made by the respondents.

7. Subsequently, the petitioners visited the office of the respondents concerned, requesting to follow the due course of law, before undertaking the exercise of widening of the road constructed by PWD (B & R), and to acquire the land as per the provisions of the Act of 2013, besides to also calculate the compensation, from the date of possession along with other benefits. It was further averred that

despite all the said repeated visits, there was no response from the respondents.

8. The respondents contend that since the subject road is constructed about 45 years ago and since at the stage of the subject road being constructed over the subject lands, there was no objection on the part of the present petitioners, thereby there is an open acquiescence on the part of the petitioners, whereupon they are estopped to claim the writ reliefs 3 of 22 Neutral Citation No:=2025:PHHC:032917-DB CWP-31984-2024 before this Court. Moreover, it is also contended that the writ petition is also barred by the vices of delay and laches.

9. The learned counsel appearing for the respondents, has in the (supra) situation, thus placed reliance upon a decision made by the Apex Court in case Civil Appeal No.6066 of 1995 titled as 'State of Maharashtra V. Digambar', whereby the Apex Court in paragraph 14 thereof, paragraph whereof becomes extracted hereinafter, had after expounding that on account of delay, laches and acquiescence, rather the aggrieved-petitioners' espousal for lawful acquisition of their lands which became already subjected to public purpose, but would be an unyielding effort, thus proceeded to allow the appeal filed by the State of Maharashtra and declined relief to the petitioners in the writ petition.

"14. How a person who alleges against the State of deprivation of his legal right, can get relief of compensation from the State invoking writ jurisdiction of the High Court under Article 226 of the Constitution even though, he is guilty of laches or undue delay is difficult to comprehend, when it is well settled by decision of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blame-worthy because of laches, undue delay, acquiescence, waiver and the like. Moreover, how a citizen claiming discretionary relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblameworthy conduct for getting such relief, where the State against which relief is sought is a welfare State, is also difficult to comprehend. Where the relief sought under Article 226 of the Constitution by a person against the welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason that the State due to laches or undue delay on the part of the person 4 of 22 Neutral Citation No:=2025:PHHC:032917-DB CWP-31984-2024 seeking relief, may not be able to show that the executive action complained of was legal or correct for want of records pertaining to the action or for the officers who were responsible for such action not being available later on. Further, where granting of relief is claimed against the State on alleged unwarranted executive action, is bound to result in loss to the public exchequer of the State or in damage to other public interest, the High Court before granting such relief is required to satisfy itself that the delay or laches on the part of a citizen or any other person in approaching for relief under Article 226 of the Constitution on the alleged violation of his legal right, was wholly justified in the facts and circumstances, instead of ignoring the same or leniently considering it. Thus, in our view, persons seeking relief against the State under Article 226 of the

Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blame-worthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State."

10. However, the Apex Court in a judgment rendered in case Civil Appeal No.7780 of 2012, titled as 'Tukaram Kana Joshi and others through Power of Attorney Holder V. M.I.D.C. and others' has taken a contra thereto view.

11. Moreover, in another judgment rendered by the Apex Court in case Civil Appeal Nos.60-61 of 2020, titled as 'Vidya Devi V. The State of Himachal Pradesh and others', has also taken a view contrary to the one as taken in Digambar's case (supra). A similar view has also been taken by 5 of 22 Neutral Citation No:=2025:PHHC:032917-DB CWP-31984-2024 the Apex Court in case Civil Appeal No.196 of 2011, titled as 'D.B. Basnett (D) Through LRs V. The Collector, East District, Gangtok, Sikkim and another'. Resultantly, views favourable to the present petitioners became taken by the Apex Court in above mentioned three verdicts, whereas, the view as taken by the Apex Court in Digambar's case (supra) is favourable to the respondents. As such this Court is required to be reconciling the inter se differences of opinion in the verdicts rendered by the Apex Court rather respectively favourable to the petitioners and to the respondents.

12. In the said endeavour, it is relevant to extract the facts, which are carried in Digambar's case (supra). In the said case, the recorded landowner(s) had filed a civil writ petition, thus for a mandamus being passed upon the Government of Maharashtra to, after making valid acquisition of his lands, which became already utilized by the respondents, thus to assess compensation in respect thereof to the landowner concerned. The Bombay High Court in the operative part of the judgment as made on the writ petition filed by the landowner, operative part whereof becomes extracted hereinafter, thus adopted a view, that despite possession over the subject lands becoming assumed by the respondents in the year 1972 and the writ petition becoming filed before it, in the year 1991, yet the ground(s) of delay and laches becoming amenable to be rejected. It is further mentioned in the verdict (supra) that the State Government cannot take such an apathetic attitude, especially despite citizens coming before the Courts and complaining that they have been deprived of their property, without following the due process of law and without paying the compensation, as such an indifferent attitude, thus certainly affects the valuable rights of the 6 of 22 Neutral Citation No:=2025:PHHC:032917-DB CWP-31984-2024 citizens to receive compensation. Resultantly, the writ petition became allowed.

"Mr. Kakade, learned Government Pleader faintly urged that assuming that the petitioner/petitioners were right, but since possession was taken sometime in the year 1972, the present writ petition filed in the year 1991 are hopelessly time barred

and this delay itself is sufficient to reject the petition. We are afraid, in a welfare State, the State Government cannot take such attitude when citizens come before the Courts and complain that they have been deprived of their property without following due process of law and without paying the compensation. It certainly affects the valuable right of the citizen to receive compensation. There is no dispute that the possession of lands was taken sometime in 1972. There is no Investigation on factual aspects by any agency so far. The question as to whether any land of the petitioner has been taken possession of in the year 1971-72 as alleged in the petition will have to be enquired into by a competent Officer. We accordingly direct the Collector or any other Officer nominated by him but not below the rank of Deputy Collector to initiate the proceedings under the Land Acquisition Act, 1894."

13. The State of Maharashtra becoming aggrieved therefroms instituted an SLP thereagainst before the Apex Court. Ex facie also the said factual matrix, as laid in the said case, does make speakings that the thereins acquisition of lands, thus were made for operationalizing the scarcity relief works in the drought stricken villages of the State of Maharashtra. The striking impactful exposition of law which becomes carried in paragraph 14 of the judgment, paragraph whereof already stands extracted hereinabove, is that, though the writ claim is not to be assigned to the landowner concerned, on account of delay and laches and consequent thereto acquiescence(s) and estoppel(s). However, it is also further stated therein, that in case the said delay becomes well explained, thereby the landowner would become well 7 of 22 Neutral Citation No:=2025:PHHC:032917-DB CWP-31984-2024 fortified, to estop the government from creating against him, the bar of acquiescence and the consequent thereto waivers and estoppel. As such, when it is but clear from a reading of paragraph 14, that if the apposite delay becomes explained, thereby the bar of estoppel, thus arising from delays and or acquiescences rather would not baulk the landowner from well agitating, the endowments vis-a-vis him, the right of property, as envisaged in the Constitution of India. In other words, the said right cannot be interfered with, by the government unless acquisition is made of the already utilized lands of the landowners and also the consequent thereto lawful compensation becomes determined.

14. Therefore, since in the said case, there was no explanation with respect to the happening of the immense delay, since the assumption of possession and utilization of the thereins subject lands, thus till the filing of the writ petition before the Bombay High Court, in the year 1991, thereupons the omission to explain the said delay, rather led the Apex Court to allow the SLP filed, by the State of Maharashtra, against the verdict of the High Court, whereby the Bombay High Court had allowed the writ petition filed by the landowner(s).

15. In the said situation, this Court is required to be, thus delving into both the facts and the exposition of law made by the Apex Court in a judgment rendered in Tukaram Kana's case (supra). The facts in the said case are that illiterate and rustic landowners were apparently compelled by the government officials to handover the possession of their lands, to the government of Maharashtra.

8 of 22 Neutral Citation No:=2025:PHHC:032917-DB CWP-31984-2024

16. Be that as it may, in the said judgment while referring to a judgment made by the Apex Court in case titled as Jilubhai Nanbhai Kachar etc. V. State of Gujarat and another, reported in AIR 1995 Supreme Court 142, wherein, in the relevant paragraphs thereof, paragraphs whereof becomes extracted hereinafter, it becomes expounded that there cannot be, save by authority of law, thus any deprivation to any landowner vis-a-vis his right to property, besides when there is also an exposition therein, that the deprivation of the right to property of any landowner, rather can well happen only through the lawful employment of the doctrine of eminent domain, especially when the said right is not only a Constitutional right but is also a human right.

"In other words, Article 300-A only limits the power of the State that no person shall be deprived of his property save by authority of law. There is no deprivation without due sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation."

17. Furthermore, in a judgment rendered by Apex Court in case titled as Lachhman Dass V. Jagat Ram and others reported in 2007(2) R.A.J. 272, therein the Apex Court declared that human rights are gaining even greater multi faceted dimensions, and that the right to property is very much a part of such multi faceted dimension, as endowed to human rights, principle whereof becomes expounded vide judgments Amarjit Singh & Ors. v. State of Punjab & Ors., 2011(2) Recent Apex Judgments (R.A.J.) 482: 2012(4) RCR (Civil) 358:

(2010)10 SCC 43; Narmada Bachao Andolan v. State of Madhya Pradesh & Anr., 2011(5) RCR (Civil) 397; State of Haryana v. Mukesh Kumar & Ors., 2012(1) RCR (Civil) 17: 2011(5) Recent Apex Judgments 579 and Delhi Airtech Services Pvt. Ltd. v. State of U.P & Anr., AIR 2012 Supreme Court 573).

9 of 22 Neutral Citation No:=2025:PHHC:032917-DB CWP-31984-2024

18. Consequently in paragraphs, 9 to 18 carried in the judgment rendered in case titled as Lachhman Dass's case (supra), paragraphs whereof becomes extracted hereinafter, the Apex Court, did make a succinct exposition of law, qua the deprivation of property of the landowners, despite no lawful compensation becoming assessed law vis-a-vis them, besides yet their lands becoming subjected to utilization, but was an ill adopted mechanism by the Government of Maharashtra.

"9. 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. 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. There is a distinction, a true and concrete distinction, between the principle of "eminent domain" and "police power" of the State. Under certain circumstances, the police power of the State may be used temporarily, to take possession of property but the present case clearly shows that neither of the said powers have been exercised. A question then arises with respect to the authority or power under which the State entered upon the land. It is evident that the act of the State amounts to encroachment, in exercise of "absolute power" which in common parlance is also called abuse of power or use of muscle power. To further clarify this position, it must be noted that the authorities have treated the land owner as a 10 of 22 Neutral Citation No:=2025:PHHC:032917-DB CWP-31984-2024 'subject' of medieval India, but not as a 'citizen' under our constitution.

10. The State, especially a welfare State which is governed by the Rule of Law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.

11. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the Courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide: P.S. Sadasivaswamy v. State of T.N., AIR 1974 Supreme Court 2271; State of M.P. & Ors. v. Nandlal Jaiswal & Ors., AIR 1987 Supreme Court 251; and Tridip Kumar Dingal & Ors. v. State of West Bengal & Ors., 2009(1) S.C.T. 440 : (2009)1 SCC 768;) 11 of 22 Neutral Citation No:=2025:PHHC:032917-DB CWP-31984-2024

12. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged, by delay on the part of the Petitioners. (Vide: Durga Prasad v. Chief Controller of Imports and Exports & Ors., AIR 1970 Supreme Court 769; Collector, Land Acquisition, Anantnag & Anr. v. Mst. Katiji & Ors., AIR 1987 Supreme Court 1353; Dehri Rohtas Light Railway Company Ltd. v. District Board, Bhojpur & Ors., AIR 1993 Supreme Court 802; Dayal Singh & Ors. v. Union of India & Ors., 2003(1) RCR (Civil) 787 ; and Shankara Co-op Housing Society Ltd. v. M. Prabhakar & Ors., AIR 2011 Supreme Court 2161)

13. In the case of H.D Vora v. State of Maharashtra & Ors., 1984(1) RCR (Rent) 457 , this Court condoned a 30 year delay in approaching the court where it found violation of substantive legal rights of the applicant. In that case, the requisition of premises made by the State was assailed.

14. The High Court committed an error in holding the appellants non-suited on the ground of delay and non-availability of records, as the court failed to appreciate that the appellants had been pursuing their case persistently. Accepting their claim, the Statutory authorities had even initiated the acquisition proceedings in 1981, which subsequently lapsed for want of further action on the part of those authorities. The claimants are illiterate and inarticulate persons, who have been deprived of their fundamental rights by the 12 of 22 Neutral Citation No:=2025:PHHC:032917-DB CWP-31984-2024 State, without it resorting to any procedure prescribed by law, without the court realising that the enrichment of a welfare State, or of its instrumentalities, at the cost of poor farmers is not permissible, particularly when done at the behest of the State itself. The appellants belonged to a class which did not have any other vocation or any business/calling to fall back upon, for the purpose of earning their livelihood.

15. Depriving the appellants of their immovable properties, was a clear violation of Article 21 of the Constitution. In a welfare State, statutory authorities are bound, not only to pay adequate compensation, but there is also a legal obligation upon them to rehabilitate such persons. The non-fulfillment of their obligations would tantamount to forcing the said uprooted persons to become vagabonds or to indulge in anti-national activities as such sentiments would be born in them on account of such ill-treatment. Therefore, it is not permissible for any welfare State to uproot a person and deprive him of his fundamental/constitutional/human rights, under the garb of

industrial development.

16. The appellants have been deprived of their legitimate dues for about half a century. In such a fact-situation, we fail to understand for which class of citizens, the Constitution provides guarantees and rights in this regard and what is the exact percentage of the citizens of this country, to whom Constitutional/statutory benefits are accorded, in accordance with the law.

17. The appellants have been seriously discriminated against qua other persons, whose land was also acquired. Some of them were given the benefits of acquisition, including compensation in the year 1966. This kind of discrimination not only breeds corruption, but also dis- respect for governance, as it leads to frustration and to a certain extent, forces persons to take the law into their own hands. The findings of the High Court, that requisite records were not available, or that the appellants approached the authorities at a belated stage are contrary to the evidence available on record and thus, cannot be accepted and excused as it remains a slur on the system of governance and justice alike, and an anathema to the 13 of 22 Neutral Citation No:=2025:PHHC:032917-DB CWP-31984-2024 doctrine of equality, which is the soul of our Constitution. Even under valid acquisition proceedings, there is a legal obligation on the part of the authorities to complete such acquisition proceedings at the earliest, and to make payment of requisite compensation. The appeals etc. are required to be decided expeditiously, for the sole reason that, if a person is not paid compensation in time, he will be unable to purchase any land or other immovable property, for the amount of compensation that is likely to be paid to him at a belated stage.

18. While dealing with the similar issue, this Court in K. Krishna Reddy & Ors. v. The Special Dy. Collector, Land Acquisition Unit II, LMD Karimnagar, Andhra Pradesh, 1988(2) R.R.R. 267 , held as under :

"....After all money is what money buys. What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even one half of it. It is a common experience that the purchasing power of rupee is dwindling. With rising inflation, the delayed payment may lose all charm and utility of the compensation. In some cases, the delay may be detrimental to the interests of claimants. The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry. They have no savings to draw. They have nothing to fall back upon. They know no other work. They may even face starvation unless rehabilitated. In all such cases, it is of utmost importance that the award should be made without delay. The enhanced compensation must be determined without loss of time...."

19. Now in another judgment rendered by the Apex Court, in case titled as 'Vidya Devi V. The State of Himachal Pradesh and others', reported in 2020(2) SCC 569, wherein, the appellant was an 80 years old landlady, whose lands became subjected to utilization by the Government of Himachal Pradesh in the year 1967-68, rather for the construction of a road, but without employment by the Government of Himachal Pradesh vis-a-vis the doctrine of eminent domain, thereby the Apex Court in paragraphs 11 to 13 of the (supra) judgment, paragraphs whereof become extracted

hereinafter, ultimately concluded, that the ground of delay and laches as 14 of 22 Neutral Citation No:=2025:PHHC:032917-DB CWP-31984-2024 became raised by the Government of Himachal Pradesh rather for debarring the landlady, from claiming her right to compensation vis-a-vis her utilized lands, but was not justifiable ground nor the Government of Himachal Pradesh could circumvent the procedure envisaged by law, inasmuch as, despite its utilizing her lands, yet depriving the petitioner therein vis-a-vis her right to property, through non-employment vis-a-vis her the doctrine of eminent domain.

"11. In the present case, the Appellant being an illiterate person, who is a widow coming from a rural area has been deprived of her private property by the State without resorting to the procedure prescribed by law. The Appellant has been divested of her right to property without being paid any compensation whatsoever for over half a century. The cause of action in the present case is a continuing one, since the Appellant was compulsorily expropriated of her property in 1967 without legal sanction or following due process of law. The present case is one where the demand for justice is so compelling since the State has admitted that the land was taken over without initiating acquisition proceedings, or any procedure known to law. We exercise our extraordinary jurisdiction under Articles 136 and 142 of the Constitution, and direct the State to pay compensation to the Appellant.

12. The State has submitted that in 2008 it had initiated acquisition proceedings in the case of an adjoining land owner viz. Shri Anakh Singh pursuant to a direction given by the High Court in C.W.P.No.1192 of 2004. The State initiated acquisition only in the case where directions were issued by the High Court, and not in the case of other land owners whose lands were compulsorily taken over, for the same purpose, and at the same time. As a consequence, the present land owner has been driven to move the Court in their individual cases for redressal.

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

15 of 22 Neutral Citation No:=2025:PHHC:032917-DB CWP-31984-2024 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."

20. Similarly in another judgment rendered by the Apex Court in case titled as 'D.B. Basnett (D) Through LRs V. The Collector, East District, Gangtok, Sikkim and another', reported in 2020(4) SCC 572, in paragraph 16 whereof, paragraph thereof becomes extracted hereinafter, the principles relating to lawful deprivation of property of the landowner concerned, do become summarized, as under:-

"16. We find a detailed discussion about the law as it evolved and the rationale for the said purpose in Vidya Devi (supra) of which the relevant paragraphs read as under:

"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 (The State of West Bengal v. Subodh Gopal Bose and Ors. AIR 1954 Supreme Court 92), 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 (Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors. (2013) 1 SCC 353) in a 16 of 22 Neutral Citation No:=2025:PHHC:032917-DB CWP-31984-2024 welfare State, and a Constitutional right under Article 300A of the Constitution. Article 300 A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300A, can be inferred in that Article (K. T. Plantation Pvt. Ltd. v. State of Karnataka (2011) 9 SCC 1). To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300A of the Constitution.

Reliance is placed on the judgment in Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chennai (2005) 7 SCC 627, 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 originally supplied) In N. Padmamma v. S. Ramakrishna Reddy (2008) 15 SCC 517, 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 300 A of the Constitution of India, must be strictly construed."

(emphasis originally supplied) In Delhi Airtech Services Pvt. Ltd. & Ors. v. State of U.P.& Ors. (2011) 9 SCC 354, 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 17 of 22 Neutral Citation No:=2025:PHHC:032917-DB CWP-31984-2024 the seed bed which must be conserved if other constitutional values are to flourish is the consensus among political thinkers and jurists."

(emphasis originally supplied) In Jilubhai Nanbhai Khachar v. State of Gujarat, (1995) Supp. 1 SCC 596 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 300 A. In other words, if there is no law, there is no deprivation."

(emphasis originally 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.* (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."

21. Now bearing in mind the fact that there is an indefeasible Constitutional and statutory right endowed vis-a-vis the petitioners, to 18 of 22 Neutral Citation No:=2025:PHHC:032917-DB CWP-31984-2024 restrain, the respondents from subjecting their lands for utilization, rather for the relevant public purpose, except in accordance with the procedure established by law. Moreover, when the said procedure established by law, is the one which becomes embodied in the Act of 2013. Therefore, since evidently the said procedure envisaged by law remains unadopted. Resultantly the factor of delays and the consequent theretos estopping principles of waiver, abandonment and acquiescences, but do not stand in the way of the petitioners to claim the writ relief.

22. Now assuming that the present petitioners were slumbering over the claim and thereby they attracted against them the bar of estoppel rather for theirs well agitating the writ claim. However, when the judgment rendered by the Apex Court in Digambar's case (supra) yet creates a window to the landowners concerned, to even when there is some delay, thus to render a tangible explanation for the happening of the said delay, whereupons the espoused mandamus being passable against the respondents, to thus through theirs employing the doctrine of eminent domain, hence proceeding to lawfully acquire the petitioners' lands. Resultantly, the endowment of relief of mandamus to the aggrieved, thus is to be rendered, through a direction being passed upon the respondents to, through employing the doctrine of eminent domain, thus proceed to lawfully acquire the subject lands, rather for thereby the aggrieved becoming lawfully deprived of their right, title and interest over the subject lands.

23. Therefore, it is to be explored from the facts existing in the instant case whether the said avenue or window left to the landowner, can be well canvassed by the petitioners, for thereby rather becoming eased the bar 19 of 22 Neutral Citation No:=2025:PHHC:032917-DB CWP-31984-2024 of estoppel, if any, which has been created against them, on account of the purported delay in theirs agitating their claim against the present respondents.

24. In the said regard, the subject lands became utilized in the year 1978, however, post the utilization of the subject lands in the year 1978, rather the lawful landowners proceeded to make a deed of conveyance in the year 2019 vis-a-vis the present petitioners. Conspicuously, the deeds of conveyance became accepted for registration by the Registering Authority concerned, in the year 2019. Necessarily when the (tatima) became appended with the deeds of conveyance, thereby it appears that the very fact of acceptance of the deeds of conveyance, thus for registration in the year 2019, by the Registering Authority concerned, but manifested, that the Sub Registrar, who is also a government official accepting, that the vendees concerned, were unaware of the factum that their lands which were the subject matter of the sale deeds rather were already utilized at the instance of the respondent for the relevant public purpose.

25. The legal consequence(s) of lack of awakening in the present petitioners vis-a-vis the subject lands, being at the time of the registration of the deeds of conveyance in the year 2019, thus becoming then subjected to utilization by the respondents concerned, but necessarily becomes the foundation, for a further inference, that ipso facto thereby, there emerges a tangible ground in explication of the relevant delay. Moreover, since subsequent thereto in the year 2022, as revealed by Annexure P-3, drawn on 14.10.2022, annexure whereof is made on a RTI application, as, made by

the present petitioners, that the subject lands became encroached upon by the 20 of 22 Neutral Citation No:=2025:PHHC:032917-DB CWP-31984-2024 respondents concerned, besides when it is also declared therein, that the subject lands became never acquired by the respondents. As such, therebys the cause of action which commenced from the date of registration of the deeds of conveyance in the year 2019, thus continued upto the making of annexure P-3. Moreover, since only a minimal delay of two years has occurred since the drawing of Annexure P-3 and the institution of the instant writ petition. Resultantly, the said minimal delay when otherwise becomes well explained, on account of lack of awakening of the present petitioners vis-a-vis the subject lands, being already subjected to utilization by the respondents concerned, when thus is not of such an inexplicable elongated spell of time, thereupons necessarily it can be declared to be well explained, besides therebys the respondents, cannot on anvil of paragraph 14 rendered in Digambar's case (supra) rather claim, that the writ claim is barred on account of delay and laches. Predominantly when in the wake of a window/ avenue being left open in the said paragraphs, to the extent, that in case the said delay is well accounted for, as has been done in the instant case, thereupons the said well accounted for delay neither operating as an acquiescence nor waiver nor therebys the present writ claim becoming barred to be raised before this Court.

26. In aftermath, this Court does bestow, the benefit of the avenue, as created in favour of the landowner in Digambar's case (supra), thus qua the present petitioners. Furthermore, in terms of the exposition of law(s), as made in the judgments (supra), whereby it becomes pronounced qua there being an impermissibility in the respondent concerned, to, without making lawful acquisition of the lands of the petitioners, thus utilize them for the 21 of 22 Neutral Citation No:=2025:PHHC:032917-DB CWP-31984-2024 relevant public purpose. Therefore, the cumulative effect of the (supra), but is that, there cannot be any denial to the present petitioners of their right to seek compensation in respect of the subject lands.

27. For all the reasons made hereinabove, the instant writ petition is allowed. The respondents concerned, are directed to acquire the subject lands, which are already utilized by the respondents, as per the provisions of the Act of 2013 and to subsequent thereto assess compensation through the passing of a lawful award.

28. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

07.03.2025
Ithlesh

(VIKAS SURI)
JUDGE

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No

22 of 22