

Baba Sarabjot Singh Bedi vs State Of Himachal Pradesh & Others on 23 May, 2024

Bench: Tarlok Singh Chauhan, Sushil Kukreja

IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA

LPA No. 82 of 2022

Date of decision: 23.05.2024

Baba Sarabjot Singh Bedi

.....Appellant.

Versus

State of Himachal Pradesh & others

.....Respondents.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

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Whether approved for reporting? Yes.

For the appellant:

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Mr. Vinay Kuthiala, Senior
Advocate, with Mr. Diwan Singh
Negi, Advocate.

For the respondents:

Mr. Anup Rattan, Advocate
General, with Mr. Ramakant
Sharma, Mr. Navlesh Verma,

Ms. Sharmila Patial, Additional
Advocates General and Mr. Raj
Negi, Deputy Advocate
General.

Sushil Kukreja, Judge (Oral)

The appellant, who was petitioner before the learned Single Judge (hereinafter referred to as "the petitioner") has maintained the instant petition under Clause 10 of the Letters Patent of the Lahore High Court, as applicable to this Court against the impugned judgment dated 07.01.2022, passed by the learned Single Judge in Whether reporters of Local Papers may be allowed to see the judgment?

2(a). The facts giving rise to the instant appeal are that on 18.05.2012 the petitioner (appellant herein) preferred a .

petition under Article 226 of the Constitution of India seeking a writ of Certiorari for declaring Award No. 85, dated 06.07.2009, passed by the Land Acquisition Officer (Northern Region), HPPWD, Kangra District Kangra, H.P., as being wholly without jurisdiction and a nullity and for quashing the same. rThe petitioner also sought issuance of a writ of Mandamus directing the respondents not to dispossess the petitioner or to interfere with the land of the petitioner in any manner whatsoever.

2(b). As per the petitioner he is the owner in possession of land bearing Khasra No. 3172, 3174, 3175, 3176, 3186 and 1921/1, Mohal Galua, Tehsil and District Una, H.P., measuring 7.00 bighas, which is adjoining the Una-Nangal Highway. The petitioner averred that his land is situated in the heard of Una Town and the same is the prime property. He has further averred that on the above mentioned land he intended to construct a Mall having 25000 square feet and for the said purpose he got plans sanctioned. On 17.09.2008, respondent No. 1 issued a Notification under Section 4 of the Land Acquisition Act (for short "the Act"), whereby it was proposed to acquire a part of the land of the petitioner, comprising in Khasras No. 3172/1, .

3174/1, 3175/1, 3176/1 and 3186/1 approximately (hereinafter referred to as "land of the petitioner") and the said notification was published in Rajpatra of Himachal Pradesh, dated 30.09.2008. Subsequently, respondent No. 3 called the petitioner and other land owners for a meeting on 06.01.2009, at 04:00 p.m., at HPSEB Rest House, Rakar, as well as to the Sabzi Mandi Rest House, Una on 04.02.2009. The petitioner attended the meetings and he had not opposed acquisition of the land, as the same was being acquired for the good of the public at large, but the petitioner requested the respondents to pay him adequate compensation considering the nature of the land. The petitioner also averred that he was informed that the land would be acquired through negotiations, as per the directions issued by respondent No. 1, dated 13.07.2004 and 10.06.2008.

2(c). In the meetings held on 06.01.2009 and 04.02.2009 no consensus was arrived at qua the price of the land and to the utter surprise of the petitioner the respondents were attempting to forcibly make the petitioner agree to part with his land. Despite various meetings no consensus was arrived at between the petitioner and the .

respondents, but the respondents started interfering with his land. Thus, on 16.06.2009 and 22.06.2009 the petitioner wrote letter to the Executive Engineer, HPPWD, Una and the District Collector, Una, respectively, and in response thereto respondent No. 4, through his letter dated 16.06.2009 requesting respondent No. 3 to take necessary action in the matter. However, the respondents did not adopt a reasonable approach, thus the petitioner again filed written objection qua the interference with his land on 09.11.2009.

2(d). The petitioner, through letter dated 20.10.2011, approached respondent No. 2 highlighting his grievance, but again the petitioner received no reply from the respondents.

The respondents tried to interfere with the land of the petitioner many times, but the petitioner thwarted their attempts. The petitioner further averred that he received a letter dated 24.01.2012 from respondent No. 3, whereby he was informed that his land comprised in khasras No. 3172/1, 3174/1, 3175/1, 3176/1 and 3186/1, measuring 1608.785 decimeter had been acquired by the respondents, vide Award No. 85, dated 06.07.2009 @ Rs.40,000/- per marla and the total compensation awarded for this land was stated to be Rs.33,51,563/- and the said amount has not yet been .

paid to the petitioner. Subsequently, respondent No. 3 informed the petitioner, vide letter dated 13.02.2012, that after investigation it was found that the land of the petitioner measuring 1608.75 decimeter had been acquired for the Nangal-Talwara High Way, vide Award No. 85, dated 06.07.2009, for which compensation of Rs.33,51,563/- had been awarded @ of Rs.40,000/- per marla and in case the petitioner had any objection to the same he could file an appeal before the competent court.

2(e). As per the petitioner, the respondents never informed him either qua the making of the award or about the failure of the negotiations. The petitioner averred that after gathering more information he again wrote to respondent No. 2 on 16.02.2012 specifically enquiring as to whether the process prescribed in the Land Acquisition Act for compulsory acquisition of the land had been followed, as no settlement was arrived at between the parties. Thereafter, the petitioner came to know that the impugned Award No. 85, dated 06.07.2009, was passed behind his back and the impugned award demonstrates that it has been passed on the basis of negotiations and alleged settlement reached between the parties on 04.02.2009, however, no such .

settlement had been arrived at between the petitioner and the respondents. As per the petitioner, the impugned award had been passed without complying the mandatory provisions of Section 6 of the Land Acquisition Act. Lastly, the petitioner prayed that his petition be allowed by quashing the impugned award and also to direct the respondent not to dispossess the petitioner or to interfere with the possession of his land comprised in Khasras No. 3172, 3174, 3175, 3176 and 3186 Mohal

Galua, Tehsil and District Una, H.P., approximately measuring 7.00 bighas.

3. The respondents contested the petition filed by the petitioner by filing reply. As per the respondents, the land of the petitioner and other land owners was required for construction of Mehatpur-Una-Amb road and to this effect notification was published in Official Gazette on 30.09.2008 and in addition to this, it and was also published in Dainik Bhaskar newspaper on 01.10.2008 and in Times of India Newspaper on 02.10.2008. The respondents denied that the work was started in 2008, rather it was started in the month of July, 2009, that too with the consent of the petitioner. As per the respondents, the petitioner did not oppose the acquisition of the land, as the same was for the .

betterment of the general public at large. The respondents further averred that after publication under Section 4 of the Act, negotiation process commenced and the Land Acquisition Collector issued order dated 06.01.2009 for negotiation of the rates for the propose of acquisition. Firstly, under the Chairmanship of Additional Deputy Commissioner, Una, negotiations were held on 06.01.2009 and then on 04.02.2009 son of the petitioner, Shri Amarjot Singh Bedi, participated alongwith other land owners. Shri Amarjot Singh Bedi highlighted that the value of the land should be enhanced. After detailed discussions, the land owners were apprised about the factual position and consensus for compensation @ Rs.40,000/- per marla for all types of land in village Galua was arrived at and the consensus was accepted. Thus, as per the respondents, the petitioner was well aware of the rate arrived at by way of consensus in the negotiation meeting, therefore, the petitioner cannot allege that the rate were settled behind his back and the award was announced without his knowledge. The respondents further averred that notification under Sections 6 and 7 of the Land Acquisition Act, 1894, was not required to be issued, in the case in hand, considering the instructions issued by the .

Secretary (PW) to the Government of H.P.. The Land Acquisition Officer-cum-Member Secretary, vide his letter dated 17.02.2009, sent the recommendations of the District Level Committee for approval to the Government of H.P. and the same were approved by the Principal Secretary (PW) to the Government of H.P., vide award dated 13.03.2009.

Subsequent to the approval of rate, the Land Acquisition Officer, Kangra, prepared the award, which was further recommended by the Deputy Commissioner, Una, to the Government of H.P. for approval, vide letter dated 05.06.2009. The above recommendations were approved by the Principal Secretary (PW) to the Government of H.P., vide notification dated 17.06.2009 and Award No. 85, dated 06.07.2009, amounting to Rs.40,82,591/- was announced by the Land Acquisition Officer Kangra. During the last week of July, 2009, the possession of the land was taken and widening of the road was done with the consent of the petitioner in the month of July, 2009, in the part of the suit land, as mentioned in the award.

4. The petitioner filed rejoinder to the reply filed by the respondents, wherein he refuted the stand taken by the respondents and reiterated his claim, as made in the writ .

petition.

5. The learned Single Judge, vide order dated 07.01.2022, passed in CWP No. 3876 of 2012, dismissed the petition of the petitioner, hence the instant appeal.

6. We have heard the learned Senior Counsel for the appellant, r learned Advocate General for the respondents/State and carefully examined the entire record.

7. The learned Senior Counsel for the appellant contended that the petitioner (appellant herein) had not signed the negotiation proceedings and the son of the petitioner, who participated in the negotiation proceedings, did not consent to compensation @ Rs.40,000/- per marla, as such the impugned award is not binding upon the petitioner. He further contended that the petitioner did not object to the acquisition of his land, but he has objections qua the rate of compensation, being paid in terms of negotiation process, thus, the respondents were required under the law to acquire the land of the petitioner in accordance with the procedure prescribed under the Land Acquisition Act, 1894 (hereinafter referred to as the Act).

8. Conversely, the learned Advocate General for the respondents contended that elaborative discussions were .

held with the respondents during the negotiations and son of the petitioner participated in the negotiation proceedings wherein consensus was reached for compensation @ Rs.40,000/- per marla for all types of lands. He has further contended that the petitioner was well aware of the compensation rate arrived at by consensus in the negotiation meetings, therefore, it does not lie in the mouth of the petitioner to say that the rate of compensation was settled behind his back and the award was also passed without his knowledge.

9. It is not in dispute that the petitioner was the owner in possession of the land comprised in Khasra No. 3172, 3174, 3175, 3176, 3186 and 1921/1 Mohal Galua, Tehsil and District Una, H.P. measuring 7.00 bighas approximately. It is also not in dispute that Notification under Section 4 of the Act dated 17.09.2008, was issued proposing to acquire a part of the land of the petitioner along with the land of other land-owners for construction of Mehatpur-Una-

Amb road. The aforesaid notification was published in Official Gazette on 30.09.2008 and in addition to this it was also published in Dainik Bhaskar newspaper on 01.10.2008 and in Times of India Newspaper on 02.10.2008.

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10. It is also not in dispute that the petitioner had not opposed the acquisition of the land as the same was for the betterment of the general public at large. However, the petitioner had objection qua the rate of compensation, being paid in terms of negotiation process as such he requested the respondents to pay him adequate compensation keeping in view the nature of the land and other factors.

11. The perusal of the record reveals that after the publication of the notification under Section 4 of the Act, the negotiation process commenced and after detailed discussions, consensus for compensation @ Rs.40,000/- per marla for all types of land in village Galua was arrived at with all other land owners, except the petitioner. Thereafter, the impugned award No. 85 was announced on 06.07.2009.

However, the petitioner did not receive the compensation.

The award shows that it has been passed by respondent No. 3 with respect to all the land owners including the petitioner.

It further shows that the same has been passed behind the back of the petitioner. A bare reading of it clearly shows that it has been passed on the basis of the negotiations and alleged settlement reached between the parties on 04.02.2009, whereas as per the record no such settlement .

has been arrived at between the petitioner and the committee constituted by the respondents.

12. On 21.06.2012 the Hon'ble Division Bench dealing with the writ petition filed by the petitioner passed the following order:

"Pursuant to our order dated 31st May, 2012, Shri Sanjeev Kumar, LAO, HPPWD, Kangra (North Zone Region) and Shri S.S. Kutlehria, Executive Engineer, State Road Project CMU,Una, i.e., the 3rd and 4th respondents, are present in person and have produced the record.

We have perused the record which reveals that negotiation has been tried in this matter on 04.02.2009. All the affected persons of Mohal Galua (Una Town), where the land sought to be acquired is situated, were associated by the Committee constituted for conducting negotiation qua the settlement of market price of the land in that area. The petitioner was also present in the meeting and as per the minutes of the meeting available on record, the petitioner had demanded the market value of his land @ of Rs.4 lacs per marla. One Shri R.K. Singh, another right holder had demanded the same @ of Rs.3.5 lacs per marla, whereas one Shri Hari Krishan, Rs. 45,000/- per marla. The minutes so recorded further reveal that the Charirman of the Committee, i.e., Additional District Magistrate, keeping in view the rates so quoted by the different right holders and also as per the factual position, had fixed the rate of the land proposed to be acquired as Rs.40,000/- per marla. No record, except for the minutes aforesaid, is available nor produced before us to show that the petitioner had accepted the rates so fixed. However, as per the list produced before us, in addition to the petitioner there are 17 more land owners, whose lands situated in Mohal Galua, have been acquired. It is brought to our notice that except for the petitioner, each and every right holder has received the compensation @ Rs.40,000/- per marla. In this view of the matter, let the reply to the writ petition be filed within six weeks."

13. The perusal of the aforesaid order reveals that all the affected persons, including the petitioner, were present in the meeting and the petitioner had demanded market value of his land @ Rs. four lacs per marla, however, the authorities had fixed the rate of the land proposed to be .

acquired @ Rs.40,000/- per marla, but there was no record to show that the petitioner had accepted the rates so fixed.

The perusal of letter dated 16.06.2009, Annexure P-7, letter dated 22.06.2008, Annexure P-8, and letter dated 23.06.2009 would go to show that no settlement had ever been arrived at between the petitioner and the respondents, and the petitioner had repeatedly requested the respondents to either offer him reasonable amount of compensation or to complete the process of acquisition in accordance with law.

Moreover, these letters have been written before the award was passed The record further makes it clear that the petitioner has never given his consent either orally or in writing for the rates being offered by the respondents. The letter Annexure R-5, annexed by the respondents with their reply to the writ petition clearly shows that the son of the petitioner had demanded compensation @ four lacs per marla and he had not agreed to a lesser rate. Therefore, the respondents were bound under the law to issue notifications under Sections 6 and 7 of the Act within the stipulated period. However, admittedly no such notifications were issued. The petitioner was never informed about the award being passed by respondent No. 3. The fact qua passing of .

the award came to his knowledge only on 24.01.2012 when he received a letter of Land Acquisition Officer, HPPWD, Kangra, in response to his representation dated 20.10.2011 which clearly shows that award was passed behind his back by ignoring the mandatory provisions of the Act. Since no settlement was arrived at with the petitioner and the negotiations were never concluded with the petitioner for the acquisition of his land, therefore, it was mandatory for the respondents to have issued the declaration under Sections 6 and 7 of the Act within the stipulated period. In our opinion, even if, other land owners had agreed to receive compensation @ Rs. 40,000/- per marla, such an agreement was neither binding upon the petitioner, nor did it affect his rights to receive the compensation of his land, as the petitioner had never agreed to the amount of compensation offered either orally or in writing.

14. It is true that right to property is not a fundamental right in view of 42nd Constitutional Amendment and now it is a constitutional right under Article 300-A, which reads as under :

"Article 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."

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15. In view of above constitutional provision, it is evident that no person can be deprived of his property except in accordance with the provisions of law, which has not been done in the case in hand. The procedure prescribed in the Statute i.e. Act, 1894 has not been followed at all. In Jilubhai

Nanbhai Khachar, etc. v. State of Gujarat & Anr., AIR 1995 SC 142, Court said that:

"..... 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 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 Acquisition of mines, minerals and quarries is deprivation under Article 300A."

16. In Hari Krishna Mandir Trust vs. State of Maharashtra & others, (2020) 9 Supreme Court Cases 356, the Hon'ble Supreme Court has held that the right to property may not be a fundamental right any longer, but it is still a constitutional right under Article 300-A and a human right as well. The relevant portion of the aforesaid judgement reads as under:

"96. The right to property may not be a fundamental right any longer, but it is still a constitutional right under Article 300-A and a human right as observed by this Court in Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel ([2008] 4 SCC 649, para 42). In view of the mandate of Article 300- A of the Constitution of India, no person is to be .

deprived of his property save by the authority of law.

The appellant Trust cannot be deprived of its property save in accordance with law.

97. Article 300-A of the Constitution of India embodies the doctrine of eminent domain which comprises two parts, (i) possession of property in the public interest; and (ii) payment of reasonable compensation. As held by this Court in a plethora of decisions, including State of Bihar vs. Project Uchcha Vidya, Sikshak Sangh; Jilubhai Nanbhai Khachar v. State of Gujarat; Bishambhar Dayal Chandra Mohan v. State of U.P., the State possesses the power to take or control the property of the owner for the benefit of public. When, however, a State so acts it is obliged to compensate the injury by making just compensation as held by this Court in Girnar Traders vs. State of Maharashtra."

17. This proposition was reiterated by the Hon'ble Apex Court in Tukaram Kana Joshi and others through powers of Attorney Holder vs. M.I.D.C. and others, 2013 1 SCC 353, wherein it has been observed that the right to property is now considered to be not only a constitutional or a statutory right but also a human right. The relevant portion of the aforesaid judgement reads as under:

"9. The right to property is now considered to be not only a constitutional or a statutory right but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to

shelter and employment, etc. Now however, human rights are gaining an even greater multifaceted dimension....."

This question was also considered by the Hon'ble Supreme Court in Hari Krishna Mandir Trust vs. State of Maharashtra 2020(9) SCC 356 and it was held that the right of property is a statutory right and no person can be deprived of the right to his property. It was observed:-

"96. The right to property may not be a fundamental right any longer, but it is still a constitutional right under Article 300A and a human right as observed by this Court in Vimlaben Ajitbhai Patel vs. Vatslaben Ashokbhai Patel and Others, (2008) 4 SCC 649 (para 42). In view of the mandate of Article 300A of the Constitution of India, no person is to be deprived of his property save by the authority of law. The appellant trust cannot be deprived of its property save in accordance with the law.

97. Article 300A of the Constitution of India embodies the doctrine of eminent domain which comprises two parts, (i) possession of the property in the public interest; and (ii) payment of reasonable compensation. As held by this Court in a plethora of decisions, including State of Bihar and Others vs. Project Uchcha Vidya, Sikshak Sangh and Others, (2006) 2 SCC 545, 574 (para 69); Jelubhai Nanbhai Khachar and Others vs. State of Gujarat and Anr. (1995) Suppl. 1 SCC 596; Bishambhar Dayal Chandra Mohan and Ors. vs. State of Uttar Pradesh and Others, (1982) 1 SCC 39 the State possesses the power to take or control the property of the owner for the benefit of the public. When, however, a State so acts it is obliged to compensate the injury by making just compensation as held by this Court in Girnar Traders vs. State of Maharashtra and Others, (2007) 7 SCC 555 (paras 55 and 56)."

18. Similar is the judgment of the Hon'ble Supreme Court in Sukh Dutt Ratra & another Vs. State of H.P & others 2022 (7) SCC 508 wherein it was observed:

"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 of 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.

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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 the right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-

faceted dimension. ""

19. We also need to make note of two very recent judgments of the Hon'ble Supreme Court i.e. one in SLP (C) No. 10492 of 2023, *Dharnidhar Mishra (D) and Another vs. State of Bihar and Others*, wherein the Hon'ble Supreme Court observed as under:

"18. 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 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. [See: K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1]

19. In Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai reported in (2005) 7 SCC 627, this Court held that:

"6. Having regard to the provisions contained in Article 300- A 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)

20. In N. Padmamma v. S. Ramakrishna Reddy reported in (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 300-A 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 supplied)

21. In Delhi Airtech Services (P) Ltd. v. State of U.P. reported in (2011) 9 SCC 354, this Court recognised the right to property as a basic human right in the following words:

"30. It is accepted in every jurisprudence and by r 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."

22. In *Jilubhai Nanbhai Khachar v. State of Gujarat* reported in 1995 Supp (1) SCC 596, this Court held as follows:

"48. In other words, Article 300-A 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 supplied)

23. In *Tukaram Kana Joshi v. MIDC* reported in (2013) 1 SCC 353, this Court 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.

24. This Court in *State of Haryana v. Mukesh Kumar* reported in (2011) 10 SCC 404 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.

25. We regret to state that the learned Single Judge of the High Court did not deem fit even to enquire with the State whether just and fair compensation was paid to the appellant or not. The learned Single Judge rejected the writ petition only on the ground of delay. As held by this court in *Vidya Devi v. The State of Himachal Pradesh & Ors.* reported in (2020) 2 SCC 569, 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. The condition of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of the case. As held by this Court, it would 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.

26. 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. [See: *P.S. Sadasivaswamy v. State of T.N.*, (1975) 1 SCC 152]

27. In *Tukaram Kana Joshi v. MIDC* reported in (2013) 1 SCC 353, this Court while dealing with a similar fact situation, held as follows:

"11. 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."

(Emphasis supplied)

20. Thereafter, in Civil Appeal No. 6466 of 2024, Kolkata Municipal Corporation & Anr. vs. Bimal Kumar .

Shah & Ors., the Hon'ble Supreme Court held that right to property was a net of intersecting rights and laid down seven principles that have to be seamlessly followed by the Union and State statutes concerning acquisition.

21. It shall be apt to reproduce the relevant observations, which read as under:-

"24. The Right to property: A net of intersecting rights:

There is yet another aspect of the matter. Under our constitutional scheme, compliance with a fair procedure of law before depriving any person of his immovable property is well entrenched. We are examining this issue in the context of Section 352 of the Act which is bereft of any procedure whatsoever before compulsorily acquiring private property. Again, assuming that Section 363 of the Act provides for compensation, compulsory acquisition will still be unconstitutional if proper procedure is not established or followed before depriving a person of their right to property. We find it compelling to clarify that a rather undue emphasis is laid on provisions of compensation to justify the power of compulsory acquisition, as if compensation by itself is the complete procedure for a valid acquisition.

25. While it is true that after the 44th Constitutional Amendment, the right to property drifted from Part III to Part XII of the Constitution, there continues to be a potent safety net against arbitrary acquisitions, hasty decision making and unfair redressal mechanisms.

Despite its spatial placement, Article 300A9 which declares that "no person shall be deprived of his property save by authority of law" has been characterized both as a constitutional and also a human right. To assume that constitutional protection gets constricted to the mandate of a fair compensation would be a disingenuous reading of the text and, shall we say, offensive to the egalitarian spirit of the Constitution.

26. The constitutional discourse on compulsory acquisitions, has hitherto, rooted itself within the 'power of eminent domain'. Even within that articulation, the twin conditions of the acquisition being for a public purpose and subjecting the divestiture to the payment of compensation in lieu of acquisition were mandated. Although not explicitly contained in Article 300A, these twin requirements have been read in and inferred as necessary conditions for compulsory deprivation to afford .

protection to the individuals who are being divested of property. A post-colonial reading of the Constitution cannot limit itself to these components alone. The binary reading of the constitutional right to property must give way to more meaningful renditions, where the larger right to property is seen as comprising intersecting sub-rights, each with a distinct character but interconnected to constitute the whole. These sub-rights weave themselves into each other, and as a consequence, State action or the legislation that results in the deprivation of private property must be measured against this constitutional net as a whole, and not just one or many of its strands.

27. What then are these sub-rights or strands of this swadeshi constitutional fabric constituting the right to property? Seven such sub-rights can be identified, albeit non-exhaustive. These are: i) duty of the State to inform the person that it intends to acquire his property - the right to notice, ii) the duty of the State to hear objections to the acquisition - the right to be heard, iii) the duty of the State to inform the person of its decision to acquire - the right to a reasoned decision, iv) the duty of the State to demonstrate that the acquisition is for public purpose - the duty to acquire only for public purpose, v) the duty of the State to restitute and rehabilitate - the right of restitution or fair compensation, vi) the duty of the State to conduct the process of acquisition efficiently and within prescribed timelines of the proceedings - the right to an efficient and expeditious process, and

vii) final conclusion of the proceedings leading to vesting - the right of conclusion.

28. These seven rights are foundational components of a law that is tune with Article 300A, and the absence of one of these or some of them would render the law susceptible to challenge. The judgment of this Court in K.T. Plantations (supra)¹³ declares that the law envisaged under Article 300A must be in line with the overarching principles of rule of law, and must be just, fair, and reasonable. It is, of course, precedentially sound to describe some of these sub- rights as 'procedural', a nomenclature that often tends to undermine the inherent worth of these safeguards. These seven sub-rights may be procedures, but they do constitute the real content of the right to property under Article 300A, non- compliance of these will amount to violation of the right, being without the authority of law.

29. These sub-rights of procedure have been synchronously incorporated in laws concerning compulsory acquisition and are also recognised by our constitutional courts while reviewing administrative actions for compulsory acquisition of private property. The following will demonstrate how these seven principles have seamlessly become an .

integral part of our Union and State statutes concerning acquisition and also the constitutional and administrative law culture that our courts have evolved from time to time.

30. Following are the seven principles:

30.1. The Right to notice: (i) A prior notice informing the bearer of the right that the State intends to deprive them of the right to property is a right in itself; a linear extension of the right to know embedded in Article 19(1)(a). The Constitution does not contemplate acquisition by ambush. The notice to acquire must be clear, cogent and meaningful. Some of the statutes reflect this right. (ii) Section 4 of the Land Acquisition Act, 1894, Section 3(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Section 3A of the National Highways Act, 1956 are examples of such statutory incorporation of the right to notice before initiation of the land acquisition proceedings. (iii) In a large number of decisions, our constitutional courts have independently recognised the right to notice before any process of acquisition is commenced.

30.2. The Right to be heard: (i) Following the right to a meaningful and effective prior notice of acquisition, is the right of the property-

bearer to communicate his objections and concerns to the authority acquiring the property. This right to be heard against the proposed acquisition must be meaningful and not a sham. (ii) Section 5A of the Land Acquisition Act, 1894, Section 3(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 15 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Section 3C of the National Highways Act, 1956, are some statutory embodiments of this right. (iii) Judicial opinions recognizing the importance of this right are far too many to reproduce. Suffice to say that the enquiry in which a land holder would raise his objection is not a mere formality.

30.3. The Right to a reasoned decision: i) That the authorities have heard and considered the objections is evidenced only through a reasoned order. It is incumbent upon the authority to take an informed decision and communicate the same to the objector. (ii) .

Section 6 of the Land Acquisition Act, 1894, Section 3(2) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Section 3D of the National Highways Act, 1956, are the statutory incorporation of this principle. (iii) Highlighting the importance of the declaration of the decision to acquire, the Courts have held that the declaration is mandatory, failing which, the acquisition proceedings will cease to have effect.

30.4. The Duty to acquire only for public purpose: (i) That the acquisition must be for a public purpose is inherent and an important fetter on the discretion of the authorities to acquire. This requirement, which conditions the purpose of acquisition must stand to reason with the larger constitutional goals of a welfare state and distributive justice. (ii) Sections 4 and 6 of the Land Acquisition Act, 1894, Sections 3(1) and 7(1) of the Requisitioning and Acquisition of Immovable

Property Act, 1952, Sections 2(1), 11(1), 15(1)(b) and 19(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Section 3A(1) of the National Highways Act, 1956 depict the statutory incorporation of the public purpose requirement of compulsory acquisition. (iii) The decision of compulsory acquisition of land is subject to judicial review and the Court will examine and determine whether the acquisition is related to public purpose. If the court arrives at a conclusion that there is no public purpose involved in the acquisition, the entire process can be set-aside. This Court has time and again reiterated the importance of the underlying objective of acquisition of land by the State to be for a public purpose.

30.5. The Right of restitution or fair compensation: (i) A person's right to hold and enjoy property is an integral part to the constitutional right under Article 300A. Deprivation or extinguishment of that right is permissible only upon restitution, be it in the form of monetary compensation, rehabilitation or other similar means. Compensation has always been considered to be an integral part of the process of acquisition. (ii) Section 11 of the Land Acquisition Act, 1894, Sections 8 and 9 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 23 of the Right to Fair Compensation and Transparency in Land Acquisition, .

Rehabilitation and Resettlement Act, 2013, and Sections 3G and 3H of the National Highways Act, 1956 are the statutory incorporations of the right to reconstitute a person whose land has been compulsorily acquired. (iii) Our courts have not only considered that compensation is necessary, but have also held that a fair and reasonable compensation is the sine qua non for any acquisition process.

30.6. The Right to an efficient and expeditious process: (i) The acquisition process is traumatic for more than one reason. The administrative delays in identifying the land, conducting the enquiry and evaluating the objections, leading to a final declaration, consume time and energy. Further, passing of the award, payment of compensation and taking over the possession are equally time consuming. It is necessary for the administration to be efficient in concluding the process and within a reasonable time. This obligation must necessarily form part of Article 300A. (ii) Sections 5A(1), 6, 11A, and 34 of the Land Acquisition Act, 1894, Sections 6(1A) and 9 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 4(2), 7(4), 7(5), 11(5), 14, 15(1), 16(1), 19(2), 25, 38(1), 60(4), 64 and 80 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Sections 3C(1), 3D(3) and 3E(1) of the National Highways Act, 1956, prescribe for statutory frameworks for the completion of individual steps in the process of acquisition of land within stipulated timelines. (iii) On multiple occasions, upon failure to adhere to the timelines specified in law, the courts have set aside the acquisition proceedings.

30.7. The Right of conclusion: (i) Upon conclusion of process of acquisition and payment of compensation, the State takes possession of the property in normal circumstances. The culmination of an acquisition process is not in the payment of compensation, but also in taking over the actual physical possession of the land. If possession is not taken, acquisition is not complete. With the taking over of actual possession after the normal procedures of acquisition, the private holding is

divested and the right, title and interest in the property, along-with possession is vested in the State. Without final vesting, the State's, or its beneficiary's right, title and interest in the property is inconclusive and causes lot of difficulties. The obligation to conclude and complete the process of acquisition is also .

part of Article 300A. ii) Section 16 of the Land Acquisition Act, 1894, Sections 4 and 5 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 37 and 38 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Sections 3D and 3E of the National Highways Act, 1956, statutorily recognise this right of the acquirer

iii) This step of taking over of possession has been a matter of great judicial scrutiny and this Court has endeavoured to construe the relevant provisions in a way which ensures non-arbitrariness in this action of the acquirer²⁰. For that matter, after taking over possession, the process of land acquisition concludes with the vesting of the land with the r concerned authority. The culmination of an acquisition process by vesting has been a matter of great importance. On this aspect, the courts have given a large number of decisions as to the time, method and manner by which vesting takes place

31. The seven principles which we have discussed are integral to the authority of law enabling compulsory acquisition of private property. Union and State statutes have adopted these principles and incorporated them in different forms in the statutes provisioning compulsory acquisition of immovable property. The importance of these principles, independent of the statutory prescription have been recognised by our constitutional courts and they have become part of our administrative law jurisprudence."

22. In the present case, petitioner has been deprived of his immovable property in utter disregard of rule of law by gross misuse of authority on the part of respondents. The negotiations were held by the authorities with all the land owners and the consensus was reached with all of them except the petitioner. The petitioner did not sign the negotiation proceedings and had also not accepted the payment of compensation. The perusal of the record makes it clear that after the issuance of notification on 17.09.2008, .

the negotiations were held and thereafter the award was passed on 06.07.2009. No declaration under Section 6 of the Act, 1894, was issued, as such the mandatory provisions of the Act, 1894, were not complied with despite the fact that the petitioner had not given his consent. This is in clear violation of Articles 300-A and Article 21 of Constitution of India. The State Authorities acted in an illegal manner and are compelling petitioners to accept compensation on their dictates. This action of respondents is patently illegal, unsustainable and also violative of Article 300-A of Constitution of India. It was open to respondents to have acquired land by following procedure of Land Acquisition Act, 1894 but such procedure was not followed. Instead of determining compensation of land in accordance with law, the respondents entered into a settlement with other land owners, as to what compensation should be paid and are compelling petitioner to accept said amount of compensation. This is a wholly unconstitutional, illegal exercise of power on the part of respondents as a result of

which grave injustice is caused to the petitioner. The Land Acquisition Act is a beneficial legislation and it is the duty of a Welfare State to protect the constitutional rights of a citizen.

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23. Therefore, in view of the law laid down by the Hon'ble Supreme Court and in the given facts and circumstances of the instant case, the writ court had erred in law in dismissing the writ petition filed by the petitioner.

Hence, we are left with no other option but to set aside the judgment dated 07.01.2022, passed by the learned writ court. Consequently, the appeal is allowed and Award No. 85, dated 06.07.2009, passed by respondent No. 3 qua the land of the petitioner is quashed and set-aside.

24. In view of what has been discussed hereinabove, the instant appeal is disposed of. Pending application(s), if any, shall also stand(s) disposed of. The parties are left to bear their own costs.

(Tarlok Singh Chauhan) Judge (Sushil Kukreja) Judge 23rd May, 2024 (virender)