

State Of H.P. & Ors vs Ram Dhan & Anr on 20 May, 2024

Bench: Tarlok Singh Chauhan, Sushil Kukreja

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

LPA No. 137 of 2024

Date of decision: 20.05.2024

State of H.P. & Ors.

...Appellants

Versus

Ram Dhan & Anr.
Coram

...Respondents

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.
The Hon'ble Mr. Justice Sushil Kukreja, Judge.
Whether approved for reporting? No.

For the Appellants: Mr. Ramakant Sharma, Ms. Sharmila

Patial, Addl. A.Gs. with Mr. Raj Negi, Dy.
A.G.

Tarlok Singh Chauhan, Judge (Oral)

CMP(M) No 465 of 2024 For the reasons stated in the application, which is duly supported by an affidavit, we deem it appropriate to condone the delay in filing of the appeal. Ordered accordingly.

Application stands disposed of.

Appeal be registered.

2. The instant Letters Patent Appeal has been directed against the order passed by the learned Writ Court whereby it directed the appellants to initiate acquisition proceedings within four weeks' under the relevant statute vis-a-vis land of the respondent and thereafter pay the just and fair compensation to them.

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3. Adverting to the facts of the present case, the land of the respondents has admittedly been utilised for construction of the road named Jarol Khaighat via Behna under Pradhan Mantri Gram Sadak Yojna PMGSY). As per the appellants, the process for construction of the road was initiated in the year 1989 and it was constructed upto KM 0/0 to 7/0. The road was declared fit by the Road Fitness Committee on 23.05.1989 and further stretch of road i.e. KM 7/0 to 13/0 was constructed during the year 2000 and opened for vehicular traffic on 10.11.2000. The length of road in KM 13/0 to 16/780 was constructed during the year 2004- 05 and opened for vehicular traffic on 05.03.2005. The entire road was constructed/maintained in the year 2004-05 on popular demand of the people of the area whereby the land owners voluntarily surrendered their land for free. It was claimed that the respondents herein also voluntarily surrendered the land for availing road connectivity and the plea raised after a delay of more than 20 years is an after thought.

4. The issue in question is squarely covered by the judgment rendered by this Court in LPA No. 24 of 2019, titled as State of H.P. & Ors. vs. Baldev Singh & Ors., wherein all the issues, raised in this appeal, have been examined.

5. We really wonder why the State has been indiscriminately filing these appeals and this anguish has been .

expressed by this Court in number of cases.

6. It shall be apt to reproduce the relevant observations as contained in Baldev Singh's case (supra), which read as under:-

22. We may show utmost dismay and anguish in the manner in which the respondent State has been filing theses indiscriminately appeals more particularly in land acquisition cases when the State is fully aware that the legal position now stands well settled not only by the judgments of the Hon'ble Supreme Court, some of which have been noticed above, but also series of judgments rendered by the learned Division Benches and Full Bench of this Court which obviously as per mandate of Section 148 of the Constitution of India is binding upon this Court.

Reference in this regard can conveniently be made to the Division Benches Judgments in LPA No. 12/2019, titled as State of H.P. & ors. vs. Laiq Ram Dogra, decided on 23.3.2021, CWP No. 1465/2022, titled as Rajender Singh & ors. vs. State of H.P. & ors., decided on 31.10.2022, LPA No. 155/2022, titled as State of H.P. vs. Hem Raj & ors., decided on 10.3.2023, CWP No. 6581/2021, titled as Labdhu Ram vs. State of H.P. & ors, decided on 28.6.2023, CWP No. 491/2022, titled as

Shakuntla Devi & ors. vs. State of H.P., decided on 20.10.2023 and Full Bench decision of this Court in LPA No. 33/2021, along with Execution Petition No. 17/2019, titled as State of H.P. vs. Sita Ram.

23. It can be said with certainty that the legal position with regard to utilization of the land by the State without acquisition is un-exceptionable and the State has no other option but to clear the land in accordance with law and .

pay compensation subject to of course to the limited scope of contest, except for the limited grounds as held by the Hon'ble Supreme Court.

7. However, we need to make note of two very recent judgments of the Hon'ble Supreme Court one in SLP (C) No. 10492 of 2023, Dharnidhar Mishra (D) and Another vs. State of Bihar and Others, wherein while dealing with the identical issue as raised in this appeal, the Hon'ble Supreme Court takes strong exception to the view taken by the High Court and it was observed as under:-

16. There are many issues arising in this litigation and the High Court should have taken little pains to ask the State why it made the appellant run from pillar to post. It is sad to note that the appellant passed away fighting for his right to receive compensation. Now the legal heirs of the appellant are pursuing this litigation.

17. In 1976, when the land of the appellant came to be acquired 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, which could not be deprived without due process of law and upon just and fair compensation.

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 different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property. "Property must be secured, else liberty cannot subsist" was the opinion of John Adams. Indeed the view that property itself is the seed-bed which must be conserved if other constitutional values are to flourish, is the consensus among political thinkers and jurists."

(Emphasis supplied)

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)

8. Thereafter, similar issue with regard to acquisition of land under Kolkata Municipal Corporation Act came up for consideration before the Hon'ble Supreme Court in Civil Appeal No. 6466 of 2024, *Kolkata Municipal Corporation & Anr.*

vs. *Bimal Kumar Shah & Ors.*, wherein 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.

9. 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 44 th Constitutional Amendment⁸, 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 characterised 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 property¹². 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 restitute 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 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.

10. Evidently, none of the seven principles has been complied with by the appellants.

11. Consequently, we find no merit in the instant appeal and the same is accordingly dismissed.

(Tarlok Singh Chauhan)
Judge

(Sushil Kukreja)

20 th

May, 2024
(sanjeev)

Judge