

GAHC010009352014



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2404/2014

Md. Safiqur Rahman Barbhuiya,
S/o Late Keramat Ali Barbhuiya,
Resident of Village – Haritikar,
Mouza- Niz Haritikar, P.S. Katiogora,
District-Cachar, Assam

.....Petitioner .

Versus

1. The State of Assam,
Represented by the Commissioner & Secretary to the
Government of Assam, Department of Home etc.,
Dispur, Guwahati-6.
2. The Deputy Commissioner,
Cachar, Silchar, Assam.
3. The Director General of Police,
Government of Assam, Ulubari, Guwahati-7,
4. The Superintendent of Police,
District-Cachar, Silchar, Assam.

.....Respondents.

BEFORE
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the petitioner : Mr. Z. Khalid Advocate.

For the respondents : Mr. B.K. Talukdar Addl. Sr. GA
Mr. A. Chetri. ... Advocate.

Dates of hearing & judgment : 18.07.2024.

JUDGMENT AND ORDER

1. Heard Mr. Z. Khalid, learned counsel for the petitioner. Also heard Mr. B.K. Talukdar, learned Additional Senior Government Advocate assisted by Mr. A. Chetri, learned counsel for all the respondents.

2. By filing this petition under Article 226 of the Constitution of India, the petitioner is seeking, *inter alia*, direction for payment of compensation of the acquired land of the petitioner as per law. The facts of the case is that in the month of December, 1972, police party led by the then Superintendent of Police, Cachar District requested the father of the petitioner, i.e. Keramat Ali Barbhuiya to give his land located at Village- Haritikar, which is about 14 Kathas in Dag No.347 of Patta No.139 for establishing a police Watch-Post.

3. Accordingly, the father of the petitioner agreed and the police authorities acquired the said land of the petitioner's father.

4. However, no compensation whatsoever of the land was paid to the petitioner's father.

5. Though several letters have been written from time to time, neither any reply nor any compensation was paid to the petitioner. As such, the writ petition has been filed.

6. Mr. Z. Khalid, learned counsel for the petitioner submits that though the land of the petitioner was acquired way back in 1973, despite almost 45 years have been lapsed, no payment whatsoever has been paid till date. He further submits that non-payment of compensation has deprived the petitioner from his constitutional, statutory and basic human right over the said land.

7. Mr. B.K. Talukdar, learned Additional Senior Government Advocate, on the other hand submits that it was the father of the petitioner, who donated voluntarily the said land to the police authorities and therefore, no question of giving compensation arises.

8. Heard the parties and perused the materials available on record.

9. It appears that the petitioner's land was acquired in the year 1973, for establishing Police Outpost. It further appears that no compensation has been paid till date as regard the acquisition of the said land of the petitioner. It further appears that since 03.10.1973, the petitioner's father and after the death of the petitioner's father, the petitioner has written several

representations to the police authorities for payment of compensation for the acquired land of the petitioner. The aforesaid representations are enclosed to the writ petition and marked as Annexure-1 to 4.

10. On the other hand, it appears that the State Government by filing an affidavit-in-opposition on 13.03.2018 has taken the stand that the petitioner's father donated voluntarily the said subject land to the police authorities for construction and setting up a police Watch Post on the subject plot of land. It further appears that accordingly, Rajatilla Police Watch Post was constructed by the Department on the said land and since then the said Watch Post has been functioning in the subject land. It further appears that no agreement whatsoever establish the donation of the subject land has been produced. In fact, it is mentioned in the affidavit-in-opposition that the said donation was done verbally. Paragraph-4 & 10 of the said affidavit-in-opposition are reproduced hereunder for ready reference.

“4. That with regard to the statements made in paragraph 3 and 4 of the writ petition the deponent begs to state that in the year 1973, the Land of Rajatilla police Watch Post under Katigorah P.S. District -Cachar, Assam measuring 12 (twelve) Katha 2(two) chotak, covered by 2nd R.S. Patta No. 139, Dag No. 347 of Mouza-Niz-Harinagar, Pargana-Haritikar was donated voluntarily by one Keramat Ali Barbhuya, the Late father of the petitioner on verbal agreement for construction and setting-up of a Police watch post titled Rajatilla police Watch Post on the aforementioned plot of land. Subsequently, the Rajatilla police watch post was constructed by the Department on the said land and since then the Watch Post has been functioning as per the Departmental norms and regulations. Further, as per the records available with the office of the respondent, the verbal agreement so made between the land doner and the departmental authority was not written down subsequently at any point of time. Hence

no written agreement/declaration of commitment as to the compensation to be given to the land doner is available on the available on the available records with the office of the deponent.

10. That with regard to the statements made in paragraph 10 of the writ petition the deponent begs to state that there is no any reference available in the available records with the office of the deponent as to the direction given by the deponent or by the predecessors of the deponent to the petitioner to submit petition for appointment of his son as constable in the department as stated in the 1st part of the para by the petitioner.

However, the petitioner submitted a petition dated 06.12.2010 for appointment of his son in the department, which was duly forwarded from the office to the Inspector General of Police (A), Assam, Guwahati vide this office Memo No,. SP(C)/R/SLC/2011/31/82 dated 06.01.2011. Again on 05.6.2013 the petitioner submitted another petition for appointment of his son in the department, which was also duly forwarded to the Addl. Director General of Police (A), Assam, Guwahati vide office Memo No. CB/M-V/2013/275 dated 6.6.2013 for his kind perusal.

On perusal and consideration of the petitions of the petitioners as referred above for appointment of his son Baharuddin Barbhuiya as constable in the department on the strength of donation of land, the said Baharuddin Borbhuiya was called to appear in the Recruitment rally held for selection of constables. Accordingly, the said Baharuddin Barbhuiya appeared in the Recruitment rally held on 23.5.2008 vide Admit Card No.976 issued from this office but failed to qualify himself for the post of constable as per the criteria set by the department. The fact of his failure was duly communicated to the petitioner vide office Memo No. SP©/SLC/R/2010/204/3795 dtd.26.8.2010. Subsequently, the fact was also communicated to the higher authority vide office Memo No. SP©/SLC./R/2011/31/82 dated 06.01.2011. Hence the contention of the petitioner that his petition was rejected is unfounded."

11. It further appears that the State Government has also taken the stand in

the said affidavit-in-opposition that the representations filed by the petitioner's father are not available in the records maintained by the concerned office. Paragraph-7 & 8 of the said affidavit-in-opposition are also reproduced hereunder for ready reference.

“7. That with regard to the statements made in paragraph 7 of the writ petition the deponent begs to state that no such reference of claiming of compensation by the Late father of the petitioner by appearing at the office of the deponent or through letters as stated in this para by the petitioner is available on the available records with the office of the deponent.

8. That with regard to the statements made in paragraph 8 of the writ petition the deponent begs to state that there is no such reference of the representation dated 14.3.1985 reportedly submitted by Late father of the petitioner as stated in this para by the petitioner is available in the available records with the office of the deponent.”

12. The factum of the respondent authorities possessing the land of the petitioner appears to be an admitted fact. It further appears that despite of such possession, no compensation whatsoever has been paid to the petitioner till date. It has been almost 45 years since the respondent authorities have taken possession of the land of the petitioner and constructed a Police Outpost in the said land. Though the stand of the police authorities is that the said land was donated by the petitioner's father, no written agreement or covenant whatsoever has been placed before this Court. In fact, the respondents contend that the said arrangement was verbally done. However, the petitioner denies the same. In the absence of any agreement/covenant, it is difficult for this Court to come to a conclusion as to whether the land of the petitioner was donated to the respondent authorities. Be that as it may, the right of the petitioner over the

subject land being a constitutional, statutory and basic human right, the same cannot be deprived without following the due procedure of law.

13. Reference is made to the decision of the Apex Court in the case of ***Tukaram Kana Joshi & Others vs. Maharashtra Industrial Development Corporation & Others***, reported in **(2013) 1 SCC 353**. Paragraph-8 to 12 of the said judgment are reproduced hereunder for ready reference.

“8. The appellants were deprived of their immovable property in 1964, when Article 31 of the Constitution was still intact and the right to property was a part of fundamental rights under Article 19 of the Constitution. It is pertinent to note that even after the Right to Property seized to be a Fundamental Right, taking possession of or acquiring the property of a citizen most certainly tantamounts to deprivation and such deprivation can take place only in accordance with the "law", as the said word has specifically been used in Article 300-A of the Constitution. Such deprivation can be only by resorting to a procedure prescribed by a statute. The same cannot be done by way of executive fiat or order or administration caprice. In Jilubhai Nanbhai Khachar v. State of Gujarat, it has been held as follows: -

"48. 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."

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 multi faceted

dimension. The right to property is considered, very much to be a part of such new dimension. (Vide: Lachhman Dass v. Jagat Ram, Amarjit Singh v. State of Punjab, State of Madhya Pradesh v. Narmada Bachao Andolan, State of Haryana v. Mukesh Kumar and Delhi Airtech Services Pvt. Ltd. v. State of U.P)

10. In the case at hand, there has been no acquisition. The question that emerges for consideration is whether, in a democratic body polity, which is supposedly governed by the Rule of Law, the State should be allowed to deprive a citizen of his property, without adhering to the law. The matter would have been different had the State pleaded that it has right, title and interest over the said land. It however, concedes to the right, title and interest of the appellants over such land and pleads the doctrine of delay and laches as grounds for the dismissal of the petition/appeal.

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. 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 'subject' of medieval India, but not as a 'citizen' under our constitution.

12. 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."

14. Reference is also made to the decision of the Apex Court in the case of ***Kolkata Municipal Corporation & Another vs. Bimal Kumar Shah & Others***, reported in **2024 SCC OnLine SC 968**.

15. Be that as it may, this Court is of the considered opinion that this writ petition can be disposed of with a direction to the jurisdictional District Commissioner to cause an inquiry as regard the claim of compensation of the petitioner's acquired subject land and do the needful in accordance with law. It is needless to clarify that the said exercise shall be completed within a period of

2 (two) months from the date of receipt of a certified copy of this order. It is further made clear that the jurisdictional District Commissioner during inquiry, shall give due opportunity to all the parties concerned to substantiate their claim before deciding the same.

16. With the above observations and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant