

VIDYA DEVI

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v.

THE STATE OF HIMACHAL PRADESH & ORS.

(Civil Appeal Nos. 60-61 of 2020)

JANUARY 08, 2020

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**[INDU MALHOTRA AND AJAY RASTOGI, JJ.]**

*Constitution of India – Arts. 31, 136, 142 and 300A – Respondent-State took over the land of the appellant in 1967–68 for the construction of Nadaun-Sujanpur Road, without taking recourse to acquisition proceedings or following due process of law – Construction of the road completed by 1975 – In 2004, some similarly situated persons whose lands were also taken over by the respondent for the same public purpose, filed writ petition titled Anakh Singh & Ors. v. State of Himachal Pradesh & Ors. claiming compensation – Allowed – Respondent initiated acquisition proceedings under the 1894 Act only with respect to the lands of the writ petitioners, and not the other land-owners whose lands were also taken over – Appellant filed writ petition inter alia praying that the State be directed to pay compensation for the land acquired in 1967-68 – High Court held that the matter involved disputed questions of law and fact which could not be adjudicated in writ proceedings, however granted liberty to the appellant to file suit– Review Petition dismissed – On appeal, held: In the present case, the appellant being an illiterate person, a widow coming from rural area was forcibly expropriated of her property in 1967, when the right to property was fundamental right (though ceased to be so by the 1978 Amendment Act) guaranteed by Art.31 in Part III of the Constitution – To forcibly dispossess a person of his private property, without following due process of law, would be violative of human right, as also the constitutional right u/Art.300 A – Cause of action is a continuing one, since the appellant was compulsorily expropriated of her property in 1967 without any legal sanction– In view of extraordinary jurisdiction u/Arts. 136 and 142, the State is directed to pay compensation to the appellant on the same terms as awarded by the Reference Court by order dtd. 07.07.15 in Anakh Singh’s case with all statutory benefits including solatium, interest, etc. within 8 weeks, treating it as a case of deemed acquisition –*

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- A *Affidavit of compliance be filed by the State before Supreme Court within 10 weeks – If appeal is filed by the 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 decided on its own merits in accordance with law– State to pay legal costs and expenses of Rs.1,00,0000/- to the appellant– Orders passed by the*
- B *High Court set aside– Land Acquisition Act, 1894– Constitution (Forty Fourth Amendment) Act, 1978– Doctrine of adverse possession.*

- Principles/Doctrines – Doctrine of adverse possession –*
- C *Appellant’s land taken over by the Respondent-State in 1967–68 for the construction of Nadaun-Sujanpur Road, without taking recourse to acquisition proceedings or following due process of law – Plea of adverse possession taken by State – Held: State being a welfare State, cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12*
- D *years – State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as done in the present case.*

- Constitution of India – Arts.136, 142 and 226 – Land of the*
- E *appellant (an illiterate person, widow from rural area) was taken over by the Respondent-State in 1967–68 for the construction of Nadaun-Sujanpur Road, without taking recourse to acquisition proceedings or following due process of law – Appellant approached the High Court in 2010 – State took the plea of delay and laches by the appellant in moving the Court – Held: Rejected – Delay and*
- F *laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court – Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case – It will depend upon the breach of*
- G *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.*

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Allowing the appeals, the Court

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**HELD: 1.1** 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, which could not be deprived without due process of law and upon just and fair compensation. 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 300 A of the Constitution. [Paras 10.1 and 10.2][755-G-H; 756-C]

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*The State of West Bengal v. Subodh Gopal Bose and Ors.* AIR 1954 SC 92 : [1954] SCR 587; *K T Plantation Pvt. Ltd. v. State of Karnataka* (2011) 9 SCC 1 : [2011] 13 SCR 636 – followed.

*Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors.* (2013) 1 SCC 353 : [2012] 13 SCR 29; *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai* (2005) 7 SCC 627 : [2005] 3 Suppl. SCR 388; *N. Padmamma v. S. Ramakrishna Reddy* (2008) 15 SCC 517 : [2008] 9 SCR 535; *Delhi Airtech Services Pvt. Ltd. & Ors. v. State of U.P. & Ors.* (2011) 9 SCC 354 : [2012] 12 SCR 191; *Jilubhai Nanbhai Khachar v. State of Gujarat* (1995) Suppl. 1 SCC 596 : [1994] 1 Suppl. SCR 807 – relied on.

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**1.2** 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. There is complete lack of authority and legal sanction in compulsorily divesting the Appellant of her property by the State. 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. [Paras 10.3-10.5][756-F-G; 758-A]

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A *State of Haryana v. Mukesh Kumar* (2011) 10 SCC 404  
: [2011] 14 SCR 211; *P.S. Sadasivaswamy v. State of*  
C *T.N.* (1975) 1 SCC 152 : [1975] 2 SCR 356 – relied  
D on.

1.3 The State being a welfare State, cannot be permitted to  
B take the plea of adverse possession, which allows a trespasser  
i.e. a person guilty of a tort, or even a crime, to gain legal title  
over such property for over 12 years. The State cannot be  
permitted to perfect its title over the land by invoking the doctrine  
of adverse possession to grab the property of its own citizens, as  
C has been done in the present case. The contention advanced by  
the State of delay and laches of the Appellant in moving the Court  
is also liable to be rejected. Delay and laches cannot be raised in  
a case of a continuing cause of action, or if the circumstances  
shock the judicial conscience of the Court. Condonation of delay  
is a matter of judicial discretion, which must be exercised  
D judiciously and reasonably in the facts and circumstances of a  
case. It will depend upon the breach of fundamental rights, and  
the remedy claimed, and when and how the delay arose. There is  
no period of limitation prescribed for the courts to exercise their  
constitutional jurisdiction to do substantial justice. [Paras 10.6,  
E 10.7][758-D-G]

1.4 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  
F 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  
G over without initiating acquisition proceedings, or any procedure  
known to law. Extraordinary jurisdiction is exercised under  
Articles 136 and 142 of the Constitution, and direct the State to  
pay compensation to the Appellant. The Respondent–State is  
directed to pay the compensation on the same terms as awarded  
by the Reference Court *vide* Order dated 07.07.2015 in *Anakh*  
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***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. Orders dated 11.09.13 and 13.05.14 passed by the High Court are set aside. [Paras 11, 13-14][759-E-F; 760-B-D]**

Case Law Reference

[1954] SCR 587	followed	Para 10.1	D
[2012] 13 SCR 29	relied on	Para 10.1	
[2011] 13 SCR 636	followed	Para10.1	
[2005] 3 Suppl. SCR 388	relied on	Para 10.2	E
[2008] 9 SCR 535	relied on	Para 10.2	
[2012] 12 SCR 191	relied on	Para 10.2	
[1994] 1 Suppl. SCR 807	relied on	Para 10.2	
[2011] 14 SCR 211	relied on	Para 10.5	F
[1975] 2 SCR 356	relied on	Para 10.5	

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 60-61 of 2020.

From the Judgment and Order dated 11.09.2013 of the High Court of Himachal Pradesh at Shimla in CWP No. 1736 of 2010-B and order dated 13.05.2014 in Review Petition No. 50 of 2014.

Ms. Radhika Gautam, Adv. for the Appellant.

Abhinav Mukerji, AAG, Ms. Bihu Sharma, Ms. Pratishtha Vij, Samarth Khanna, Advs. for the Respondents.

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A The Judgment of the Court was delivered by

**INDU MALHOTRA, J.**

Delay condoned. Leave granted.

B 1. The Appellant now almost 80 years old, was undisputedly the owner of land admeasuring about 3.34 Hectares comprised in Khata/ Khatuni No. 105 min/127, Khasra No. 70 in Tika Jalari Bhaddirain, Mauja Jalari, Tehsil Nadaun, Dist. Hamipur, Himachal Pradesh.

C 2. The Respondent–State took over the land of the Appellant in 1967–68 for the construction of a major District Road being the Nadaun – Sujampur Road, a major District Road without taking recourse to acquisition proceedings, or following due process of law.

The construction of the road was completed by 1975.

D 3. The Appellant, being an illiterate widow, coming from a rural background, was wholly unaware of her rights and entitlement in law, and did not file any proceedings for compensation of the land compulsorily taken over by the State.

E 4. In 2004, some similarly situated persons whose land had also been taken over by the Respondent–State for the same public purpose, filed CWP No.1192 of 2004 titled *Anakh Singh & Ors. v. State of Himachal Pradesh & Ors.* claiming compensation before the High Court of Himachal Pradesh.

The High Court *vide* Order dated 23.04.2007, allowed CWP No.1192 of 2004, and directed the Respondent–State to acquire the lands of the Writ Petitioners under the Land Acquisition Act, 1894.

F 5. Pursuant to the Order of the High Court in 2008, the Respondent–State initiated acquisition proceedings under the Land Acquisition Act, 1894 only with respect to the lands of the Writ Petitioners, and not the other land-owners whose lands had also been taken over.

G 6. The Appellant submits that she learnt of these proceedings in 2010, when she along with her two daughters filed C.W.P. No. 1736 of 2010 before the Himachal Pradesh High Court, praying that the State be directed to pay compensation for the land acquired in 1967–68; or, in the alternative, direct the State to initiate acquisition proceedings under the Land Acquisition Act, 1894.

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The Respondent–State filed its reply before the High Court, wherein it was admitted that the Department had used land in the ownership of the Appellant for the construction of the Nadaun – Sujanpur road, a major district road in 1967–68. The State had been in continuous possession of the property since 1967–68, i.e., for the last 42 years, and the title of the Respondent–State got converted into “adverse possession”. It was submitted that the statutory remedy available to the Appellant was by filing a Civil Suit.

The State has further admitted that a Notification under Section 4 of the Land Acquisition Act had been issued in 2008 with respect to the land of Anakh Singh a neighbouring land-owner, whose land was similarly taken over for the same purpose. Furthermore, the Writ Petition was barred by laches, since the road was constructed in 1967–68, and metalled since 1975. The land was utilized by the Respondent–State after the Appellant and her predecessors-in-interest had verbally consented to the land being taken over without any objection.

7. The High Court *vide* the impugned Judgment and Order dated 11.09.2013 held that the matter involved disputed questions of law and fact for determination on the starting point of limitation, which could not be adjudicated in Writ proceedings. The Appellant was granted liberty to file a Civil Suit.

8. Aggrieved, the Appellant filed a Review Petition against the Judgment and Order dated 11.09.2013 which was dismissed *vide* Order dated 13.05.2014.

9. The Appellant has filed the present Appeals before this Court, to challenge the Judgment dated 11.09.2013 passed in the Writ Petition and Order dated 13.05.2014 passed in the Review Petition.

10. We have heard learned Counsel for the parties and perused the record.

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<sup>1</sup>, which could not be deprived without due process of law and upon just and fair compensation.

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<sup>1</sup>*The State of West Bengal v. Subodh Gopal Bose and Ors.* AIR 1954 SC 92.

A 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<sup>2</sup> 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.<sup>3</sup>

C 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 300 A of the Constitution.

Reliance is placed on the judgment in *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai*<sup>4</sup>, wherein this Court held that:

D “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.”*

E (emphasis supplied)

In *N. Padmamma v. S. Ramakrishna Reddy*<sup>5</sup>, this Court held that:

F “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.”

G (emphasis supplied)

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<sup>2</sup> *Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors.* (2013) 1 SCC 353.

<sup>3</sup> *K T Plantation Pvt. Ltd. v. State of Karnataka* (2011) 9 SCC 1.

<sup>4</sup> (2005) 7 SCC 627.

H <sup>5</sup> (2008) 15 SCC 517.

In *Delhi Airtech Services Pvt. Ltd. & Ors. v. State of U.P. & Ors.*<sup>6</sup>, A  
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 the seed bed which must be conserved if other  
constitutional values are to flourish is the consensus among  
political thinkers and jurists.”* B C

(emphasis supplied)

In *Jilubhai Nanbhai Khachar v. State of Gujarat*,<sup>7</sup> this Court D  
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.”* E

(emphasis 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. F

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. G

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<sup>6</sup> (2011) 9 SCC 354.

<sup>7</sup> (1995) Supp. 1 SCC 596. H

A 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.*<sup>8</sup> 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  
B 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  
C in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.

10.6. We are surprised by the plea taken by the State before the High Court, that since it has been in continuous possession of the land for over 42 years, it would tantamount to “adverse” possession. The  
D State being a welfare State, cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its  
E own citizens, as has been done in the present case.

10.7. The contention advanced by the State of delay and laches of the Appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the  
F Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional  
G jurisdiction to do substantial justice.

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.<sup>9</sup>

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<sup>8</sup> (2013) 1 SCC 353.

H <sup>9</sup> *P.S. Sadasivaswamy v. State of T.N.* (1975) 1 SCC 152.

In *Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors.*,<sup>10</sup> this Court A  
while dealing with a similar fact situation, held as follows :

*“There are authorities which state that delay and laches B  
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 C  
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.” D*

(emphasis supplied)

11. In the present case, the Appellant being an illiterate person, E  
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 F  
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. G

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

<sup>10</sup> (2013) 1 SCC 353.

A 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 *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 AnakhSingh &Ors. being RFA No.35 of 2016 which is pending before the High Court of Himachal Pradesh at Shimla.

D 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.

E The Respondent-State is directed to pay legal costs and expenses of Rs.1,00,0000/- to the present appellant.

14. The Appeals are accordingly allowed. The Orders dated 11.09.2013 and 13.05.2014 passed by the High Court are set aside.

Ordered accordingly.