



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR

WRIT PETITION NO. 910 OF 2026

Shekhar Ghanshyam Janbandhu
Aged about 54 years, Occu. Private
R/o. Yadav Nagar, Nagpur
Tah. and Distt. Nagpur.



.. Petitioner

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Rural Development & Panchayat Raj
Department, Mantralaya,
Mumbai – 32
- 2) The District Collector,
Chandrapur, Distt. Chandrapur.
- 3) The Special Land Acquisition Officer
(General), Chandrapur, Collector
Office, Chandrapur
- 4) The Executive Engineer (Const.)
Zilla Parishad Construction Division,
Chandrapur.



.. Respondents

Mr. A. R. Ingole, Advocate for petitioner.

Mr. P. P. Pendke, AGP for respondent Nos.1 to 3.

Mr. Abhishek Rao, Advocate h/f Ms. Gayatri Reve, Advocate for
respondent No.4.

CORAM : ANIL S. KILOR AND
RAJNISH R. VYAS, JJ.

DATE : SEPTEMBER 24, 2026

ORAL JUDGMENT (PER : RAJNISH R. VYAS, J.)

(1) The petitioner by the instant petition has prayed for setting aside a communication dated 15/12/2025, issued by respondent Executive Engineer by which, representation made by the petitioner was rejected. The representation submitted by the petitioner was regarding grant of compensation for the utilization of the land for construction of the road. The respondent No.4 did not find favour with the representation of the petitioner on the ground that the claim for grant of compensation for utilization of land without acquisition was made after a lapse of more than 20 years. The order so passed, took help of the judgment delivered by the Hon'ble Apex Court in case of ***State of Maharashtra vs Digambar*** reported in **(1995) 4 SCC 386**.

(2) It is the case of the petitioner that the land bearing Survey No.46/1 Gat No.85 and 57, P.H.No.9, Mouza – Kolar (Rith), Taluka Chimur, District – Chandrapur was owned by his father, who died in the year 1998. According to the petitioner, in the year 1979, the said land was not acquired by respondent Nos.3 and 4, but construction was made for Satara – Masal road over the said land. He submitted that neither the compensation was paid nor any possession was taken by the respondents, in accordance with law. According to him, the information obtained under the Right to Information Act, 2005 clearly

shows that the Sub-Divisional Engineer, Zilla Parishad, Sub Division, Chimur on 25/06/2022 that it has received communication from the Office of Sub Divisional Officer, Chimur that the compensation for the land is to be awarded to the father of the petitioner. It was further stated that after carrying out the approximate measurement the amount of compensation roughly comes to Rs.96074/- which may be sanctioned the further process be forwarded to the Office of Sub Divisional Office, Chimur for implementation.

(3) The petitioner has relied upon several communications, which are the part of the petition in order to substantiate his claim, wherein various authorities have stated that the petitioner's land was not acquired and the proposal for acquisition of the land once submitted, the compensation can be determined. The petitioner further invited our attention to the communication dated 21/12/1998 issued by Special Land Acquisition Officer, Chandrapur to the Executive Engineer, Zilla Parishad, Chandrapur in which it was stated that a request was made to the office of Executive Engineer to carryout spot inspection regarding Survey No.46/1 and 46/6 and forward the proposal for acquisition. In the said communication, it was also stated that in spite of lapse of 15 years the report was not received from the office of Executive Engineer. Again request was made to submit appropriate report before 31/12/1998. The petitioner has relied upon

various communications of 2008 and 2022 exchanged between Sub Divisional Officer, Sub Division, Chandrapur and the Deputy Collector (Acquisition), Chandrapur as well as Executive Engineer, Zilla Parishad, Chandrapur to contend that these communications show that the petitioner was seriously approaching the authorities for the compensation.

(4) In this background, learned counsel for the petitioner has argued that the act of the respondent-State in laying the road without acquiring the land and taking lawful possession thereof in lawful manner is not only contrary to the provisions of law, but also against the mandate of Article 300-A of the Constitution of India.

(5) Per contra, learned AGP has strongly opposed the prayers made in the petition by way of reply/submission filed on behalf of respondent No.4. It was stated that until the completion of the work in the year 1979, the father of the petitioner did not object and voluntarily allowed the work to be completed. At that time no payment was demanded. According to respondent No.4, construction of Satara – Masal road was completed in the year 1979. He further submitted that if private land is handed over by the owner for public purpose willingly, then the owners subsequently will have no right to claim compensation as it would be presumed that land was given with

consent and owner has relinquished his right to claim compensation.

(6) Learned AGP has also relied upon reply affidavit of respondent Nos.2 and 3 and has categorically stated that the delay and laches on the part of the petitioner have not been explained at all and, therefore, the petition is liable to be rejected at the threshold. It was further argued that in the year 1971-72 and for subsequent years, when the drought situation had arisen, the Government in order to provide employment under 'Rojgar Hami Yojna' undertook several tasks including construction of the road. According to him, the father of the petitioner did not object at that time. In order to support the stand taken by the respondents, it was submitted that the impugned order takes into consideration the decision of the Hon'ble Apex Court in case of *Digambar*, (supra).

(7) It was further stated that the Hon'ble Apex Court in the case of *Digambar*(supra) which arose out of the similar project/acquisition, has categorically stated that considering the delay and laches in approaching the Court, the relief under Article 226 of the Constitution of India could not be granted. He further submitted that, since the issue has been put to rest by the Hon'ble Apex Court, contrary inference at the hands of this Court is not permissible.

(8) Learned counsel for the petitioner has relied upon the following judgments :-

1. *Bernard Francis Joseph Vaz & Others vs. Government of Karnataka & Others* (2025) 7 SCC 580.
2. *Tukaram Kana Joshi & Others vs. MIDC & Others* (2013) 1 SCC 353
3. *Vidya Devi vs. Stat of Himachal Pradesh and Others* (2020) 2 SCC 569.
4. *Dharnidhar Mishra (D) & Another vs. State of Bihar & Others* (2024) 10 SCC 605.

(9) Learned AGP has relied upon the following judgments :-

1. *Syed Maqbool Ali vs. State of Uttar Pradesh & Another* (2011) 15 SCC 383.
2. *State of Maharashtra vs. Digambar* (1995) 4 SCC 683.
3. *Shankar Das vs. State of Himachal Pradesh and others* 2013 SCC Online HP 681.
4. *Sukh Dutt Ratra & Another vs. State of Himachal Pradesh and others* (2022) 7 SCC 508.
5. *Gaur Pratibha & Others vs. State of Maharashtra & Others* 2019 SCC Online Bom 597.
6. *Rattiram & others vs. State of Madhya Pradesh* (2012) 4 SCC 516.
7. *Safiya Bee vs. Mohd. Vajahath Hussain* (2011) 2 SCC 94.
8. *Pyare Mohan Lal vs. State of Jharkhand & others* (2010) 10 SCC 693.
9. *K.T.Plantation Private Limited & Another vs. State of Karnataka* (2011) 9 SCC 1.

(10) In this background, we have heard the respective counsels at length on various dates and have also given thoughtful consideration to the arguments advanced. The principal contention of the counsel for the petitioner is that the property was taken without adhering to the constitutional mandate of Article 300-A of the Constitution of India and therefore, delay and laches itself would not be a ground to reject the claim of the petitioner.

(11) According to him, the State is required to act in accordance with the provisions of law and the mandate of the Constitution. He submits that if the property of a citizen is taken, then the source of power either would be the statute or the Constitution. In the present case, according to him, as the statutory provisions were not invoked, the question of taking land of the petitioner by the State will have to be decided on the touchstone of Article 300-A of the Constitution of India, which states that "no person shall be deprived of their property except by the authority of law". He states, there was absolutely "no authority of law" to take possession of the land of the petitioner. He then contended that the judgment in the case of Digambar (supra), fails to consider the mandate of Article 300-A of the Constitution of India. He further submits that the subsequent judgments relied upon by him would reveal that the case of Digambar(supra) was considered, still the compensation was granted to

the persons whose land was taken before several years. According to him, there is continuing cause of action since the date of taking of possession illegally, till this date, compensation has not been paid.

(12) Per contra, learned AGP has contended that the delay and laches would itself be a ground to reject the present petition. He has strongly placed his reliance upon the case of Digambar(supra) and has contended that the petitioner has absolutely no case in the eyes of law, since the predecessor in the title did not object for construction of the road at the relevant time.

(13) The facts which are not in dispute are that the land of the petitioner's father was used for construction of road by the respondent authority. There were no acquisition proceedings initiated. The respondents have not produced any document to show that the petitioner's predecessor in title at any point of time had given in writing that the State can use the land for construction of the road.

(14) Thus, what is revealed from the aforesaid arguments is that the land of the petitioner was taken without following the authority of law. We say so, because neither the acquisition proceedings were initiated under the Land Acquisition Act, nor the land was acquired honouring the mandate of Article 300-A of the Constitution of India.

What is known to the law is “either compulsory acquisition of the land or acquisition by the agreement.” The agreement then would mean agreement in writing and not verbal agreement, in peculiar facts and circumstances of the case. Further in the absence of any statutory provision permitting such deprivation or any legally enforceable instrument showing voluntary surrender, transfer or permission to occupy the land, mere absence of objection cannot by itself would give the state authority of law for deprivation of property.

(15) In case of *Digambar*(supra), the Hon’ble Apex Court has refused to grant relief to the petitioner whose land was used without acquisition. The Hon’ble Apex Court has categorically held in the aforesaid judgment that delay and laches would be a factor which is required to be considered. Non-explanation of undue delay of 20 years, which had occurred between the alleged taking of possession of the land of the petitioner therein and the date of filing of writ petition, would be a ground enough to refuse to exercise jurisdiction under Article 226 of the Constitution of India. The law laid down by the Hon’ble Apex Court in the case of *Digambar*(supra) cannot be disputed at all. What is required to be seen is that the principle laid down in *Digambar* regarding delay and laches in the exercise of discretionary jurisdiction under Article 226 cannot be read as laying down a proposition that delay, irrespective of the nature of the State action and

the continuing deprivation of property without authority of law, must invariably defeat a claim based upon Article 300-A.

(16) Whereas in case of *Tukaram Kana Joshi* (supra), the Hon'ble Apex Court has clearly observed that the appellants therein whose lands were acquired absolutely unaware about their rights and hence too inarticulate to claim them. It was further observed that the functionaries of the State took over possession of the land belonging to the appellants without any sanction of law though the State is duty bound to comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode. The welfare State which is governed by the Rule of Law, cannot arrogate itself to a status beyond one that is provided by the Constitution. The Hon'ble Apex Court further observed that there is a 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. It was further stated that the appellants therein who were land owners were treated as "subjects" of medieval India, but not as "citizens" under our constitution. In the aforesaid background, the Hon'ble Apex Court further observed that in a welfare State, statutory authorities are bound, not only to pay adequate compensation, but there is also a legal obligation upon them to rehabilitate such persons.

(17) In the case of *Vidya Devi*(supra) the Hon'ble Apex Court while dealing with the matter pertaining to the Land Acquisition Act, has clearly observed that Constitutional right under Article 300-A of the Constitution provides that no person shall be deprived of his property save by authority of law or procedure established by law and obligation to pay compensation, though not expressly included in Article 300-A, can be inferred in that case. The dispossession of the land was in the year 1967 when the right to property was a fundamental right guaranteed by Article 31 in Part III of the Constitution. The Hon'ble Apex Court observed that to forcibly dispossess a person of his private property, without following due process of law, would not only be a violative of a human right, but also the constitutional right under Article 300-A of the Constitution. As regards the applicability of delay and laches, the Hon'ble Apex Court observed that it cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Further, according to the Apex 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. The Hon'ble Apex Court then observed that the appellant therein being an illiterate person, who was a widow coming from a rural area has been deprived of her private property by the State without resorting to the procedure established by law. Finally the respondents therein were directed to pay the compensation with a further direction

to pay legal costs and expenses to the tune of Rs.1,00,000/-.

(18) The Hon'ble Apex Court thereafter in the case of *Dharnidhar Mishra*(supra), while dealing with Article 300-A of the Constitution of India, has taken into consideration the cases of *Tukaram Kana Joshi* and *Vidya Devi* (supra). In para 23 the Hon'ble Apex Court has observed as under :-

"23. 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. State of H. P. 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 condonation 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."

(19) Learned AGP then contended that though cases of *Bernard*, *Tukaram Kana Joshi*, *Vidya Devi* and *Dharnidhar Mishra*(cited supra) deals with Article 300-A of the Constitution of India and question of delay and laches helping the cause of citizens, fact remains that all the aforesaid four judgments were delivered by two judges Bench, whereas the case of *Digambar*(supra), was delivered by three judges Bench of the Hon'ble Apex Court. He then submitted that all the four judgments, would become per incuriam having ignored the

mandate in case of *Digambar*(supra). He also relied upon the judgments, which we shall discuss in the later part of this judgment.

(20) Since the issue raised is regarding “per incuriam”, it will have to be seen what exactly it means by way of catena of cases including ***State of U.P. vs. Synthetics & Chemicals Ltd. (1991) 4 SCC 139***, as well as ***Municipal Corporation of Delhi vs. Gurnam Kaur, AIR 1989 SC 38***, so also ***Sundeep Kumar Bafna vs. State of Maharashtra, AIR 2014 SC 1745*** and ***Furest Day Lawson Ltd. vs. Jindal Exports Ltd. (2001) 6 SCC 356***; it can be said that “per incuriam” means through inadvertence. The word “incuria” literally means “carelessness”. The purport of the doctrine of “Per Incuriam” is that a decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute, or of a rule having the force of a statute. A decision of Court is not binding precedent if given per incuriam, that is, without the Court’s attention having been drawn to the relevant authorities or statutes. The “per incuriam” rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta.

(21) What emerges from the discussion made in the aforesaid judgment is that when a decision is rendered by the High Court without having regard to the relevant line of decisions rendered by the Supreme Court, then such a decision of the High Court is per incuriam.

A decision/judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a coequal or larger Bench; or if the decision of High Court is not in consonance with the views of the Supreme Court. The said principle is based on the principle of judicial discipline. Thus the question before us, is not whether this Court can declare the judgment of a larger Bench of the Hon'ble Supreme Court to be per incuriam. Clearly, it cannot. The question is whether, having regard to the subsequent pronouncements of the Hon'ble Supreme Court dealing specifically with deprivation of private property without authority of law and the effect of delay in such cases, the principle in *Digambar* requires dismissal of the present petition notwithstanding the admitted absence of acquisition proceedings and compensation.

(22) In the aforementioned background, if case of *Sukh Dutt Ratra* (supra, delivered by two judges bench,) more particularly para 10 is considered where in, the argument of the State were noted , same would reveal that even case of *Digambar* was taken into consideration:-

"10. Mr. Abhinav Mukerji, learned counsel on behalf of the State of Himachal Pradesh, urged that the petition was hit by immense delay and laches and liable to be dismissed on this ground alone : the appellants had approached the High Court after an inordinate delay of 38 years in 2011, against action taken by the State in 1972-73; and an inordinate delay of about 6 years in approaching this court after passing of the impugned

judgment in 2013. Reliance was placed on this court's decisions in State of Maharashtra v. Digambar, (1995) 4 SCC 683 (hereafter "Digambar"), State of M. P. v. Bhailal Bhai AIR 1964 SC 1006 and Brijesh Kumar v. State of Haryana (2014) 11 SCC 351. The counsel also submitted that the decision in Tukaram Kana Joshi (2013) 1 SCC 353 which the appellants strongly rely on, is per incuriam in light of the larger bench decision in Digambar (1995) 4 SCC 683, which was not considered in Tukaram Kana Joshi (2013) 1 SCC 353."

(23) Dealing with the aforesaid aspect, the Hon'ble Apex Court then in paragraphs 22, 24 and 25 of the said judgment has observed as under :-

"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 vs. State of H.P., 2013 SCC OnLine HP 681 itself, which is relied upon in the impugned judgment.

24. And with regards to the contention of delay and laches, this court went on to hold (Vidya Devi vs. State of H.P. (2020) 2 SCC 569, pp 574-75, para 12) :

"12.12. 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 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.

12.13. 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. ”

25. Concluding that the forcible dispossession of a person of their private property without following due process of law, was violative of both their human right, and constitutional right under Article 300-A, this court allowed the appeal. We find that the approach taken by this court in Vidya Devi (supra) is squarely applicable to the nearly identical facts before us in the present case.”

(24) Thus, it can be seen that the point raised by the petitioner as regards the applicability of judgment of *Digambar*(supra) was dealt with in case of *Sukh Dutt Ratra*(supra). The case of *Digambar* is a three-Judges Bench decision, while *Sukh Dutt Ratra* is a subsequent decision of the two-Judges bench. Notably, *Sukh Dutt Ratra* explicitly acknowledged the State’s reliance on *Digambar* and the argument that *Tukaram Kana Joshi* was per incuriam. However, it held that in the specific circumstances before it, delay and laches could not defeat the claim where the State had acquired the land without lawful authority and without compensation.

(25) We can say that *Digambar*(supra) continues to govern the exercise of discretionary jurisdiction under Article 226 of the Indian Constitution, where delay, laches, acquiescence or other blameworthy conduct justifies refusal of relief.

(26) The learned counsel for the petitioner, in order to oppose the argument of the learned AGP that non-consideration of the ratio laid down in the case of *Digambar*(supra) would render the judgment relied upon by him “per incuriam”, has invited our attention to the judgment delivered by the Principal Seat at Bombay in Writ Petition No.4987/2022, wherein the question was regarding acquisition of land and non-payment of compensation. In the said case, the government had placed reliance in case of *Digambar*(supra) and had contended that on account of delay and laches the petition was liable to be dismissed. The co-ordinate Bench then while deciding the aforesaid issue has observed in para 35 as under :-

“35. On the aforesaid backdrop, we now consider the decisions as cited on behalf of the respondents. The learned Additional Government Pleader has placed reliance on the decision in State of Maharashtra vs Digambar (supra), wherein the Supreme Court was dealing with a peculiar case where the respondent, an agriculturist from Vepani village in Maharashtra, sought compensation for his land allegedly utilized by the State Government in 1971-72 for constructing the Vepana-Gogri road during scarcity relief works at the time Maharashtra faced severe scarcity in 23 thousand villages, prompting large-scale relief efforts, including 38,000 km of road construction. Due to financial constraints, Collectors ensured that lands were donated without compensation. In 1991, the respondent filed a writ petition before the Bombay High Court for a direction to the State Government to grant him compensation for allegedly utilising his land without his consent in the course of execution of the scarcity reliefs work undertaken by the State Government. Rejecting the plea of the Government to dismiss the writ petition on the ground of laches and delay of 20 years and allowing the writ petition, the High Court held that in a welfare State, the State Government could not adopt such attitude when citizens come before the Court and complain that they had been deprived of their property without following due process of law and without paying compensation. On an appeal by the State Government before the Supreme Court, the State urged that the respondent on account of the delay and laches on the part of the respondent disentitled him to the relief

from the High Court. Allowing the appeal, the Supreme Court held that the power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable. Persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. It was held that where the High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blameworthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State. In our opinion, such principles as laid down in this decision are salutary, however, in the facts of the present case, the same are certainly not applicable. Also, this is not a case where the petitioner donated her land to the State and thereafter has taken a reverse position. It is in such context, the Supreme Court has made the observations in paragraphs 12 to 26 of the report. Hence, this decision would not assist the respondents."

(27) In present case also it is not that the petitioner donated the land to the State and thereafter has taken a reverse position. We would like to state that nothing has been brought on record by the respondents to show that petitioner or predecessors in title have donated their land to the State.

(28) The learned AGP then finally contended that the case of petitioner would be a case of "nil" compensation and not "no" compensation. He advanced his argument on the basis of law laid down by the Hon'ble Apex Court in case of *K.T.Plantation* (supra), wherein it has stated that there is a difference between "no" compensation and "nil" compensation. A law seeking to acquire private

property for public purpose cannot say that "no compensation shall be paid". However, there could be a law awarding "nil" compensation in cases where the State undertakes to discharge the liabilities charged on the property under acquisition and onus is on the government to establish validity of such law. In the latter case, the court in exercise of judicial review will test such a law keeping in mind the above parameters. The contention of AGP is liable to be rejected since it is not even the case of the government that the State undertook to discharge the liabilities charged on the property under the acquisition. Further the Hon'ble Apex Court has categorically observed that requirement of public purpose, for deprivation of a person of his property under Article 300-A, is a pre-condition, but no compensation or nil compensation or its illusiveness has to be justified by the state on judicially justiciable standards. Measures designed to achieve greater social justice, may call for lesser compensation and such a limitation by itself will not make legislation invalid or unconstitutional or confiscatory. In other words, the right to claim compensation or the obligation to pay, though not expressly included in Article 300-A, it can be inferred in that Article and it is for the State to justify its stand on justifiable grounds which may depend upon the legislative policy, object and purpose of the statute and host of other factors.

(29) The only reason advanced by the State to oppose the

prayer made by the petitioner is delay and laches. The State has forgotten that it has duty to pay the compensation for the land acquired. The State further cannot ignore the fact that our country is governed by "Rule of Law" and not "Rule by Law". The continuing cause of action, uninformed consent of the owners, constitutional mandate of Article 300-A of the Constitution of India, taking land without "authority of law", clearly shows that the State has not acted in fair and proper manner.

(30) The Hon'ble Apex Court has observed that right to property in our country is a net of intersecting rights which has been explained by the Hon'ble Apex Court in ***Kolkata Municipal Corporation & Anr. v. Bimal Kumar Shah & Ors., 2024 SCC OnLine SC 968***. Seven non-exhaustive sub-rights that accrue to a landowner when the State intends to acquire his property were stated to be as under :-

i) the 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...”

(31) Thus, the obligation to provide just and fair compensation is an important constitutional consequence of compulsory deprivation of private property, as recognised in the jurisprudence under Article 300-A of the constitution of India.

(32) In the aforesaid background, we do not find any merit in the opposition made by learned AGP. The petitioner has rightly contended that he would be entitled for the compensation for the possession, which was taken by the State for construction of road. As regards the reliance placed by learned AGP on the Judgment of High Court of H.P. in case of *Shankar Das* (supra) suffice it to say that the majority view of the said High Court is reflected in paragraph 56 which says that where the State has not acquired land in accordance with law, and roads have been constructed the land owners can approach the High Court within reasonable time. The delay will have to be explained by the petitioner. It was further observe that when State pleads consent, it must show some tangible form of consent and the mere fact of construction of roads, cannot be deemed to be implied

consent. The minority view has held that in case where the State has not taken steps under the Land Acquisition Act for the purpose of construction of road on the ground that required land have been willingly surrender either orally or otherwise, then land owners can invoke the jurisdiction refuting such express or implied consent only within time within such a relief can be claimed in a civil suit. Once such a question is thus raised in writ petition the same can be considered in the writ petition itself. We have already discussed the aforesaid aspect and even otherwise the High Court of H.P. through the majority has held that when consent is pleaded by the State it must show some tangible form of consent.

(33) In view of the aforesaid discussion, we hold that the respondents have used the petitioner's land for a public purpose without demonstrating any authority of law by which the petitioner or his predecessor in title was deprived of the property. Mere absence of objection, in the absence of material establishing lawful surrender, transfer or consent to permanent deprivation, cannot constitute authority of law within the meaning of Article 300-A of the Constitution of India.

(34) Since no acquisition proceedings were initiated when the land was taken, respondent shall now undertake acquisition in

accordance with the law governing acquisition on the date on which the proceedings are to be initiated. The respondents shall, therefore, initiate appropriate acquisition proceedings in accordance with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, including the issuance of preliminary notification under Section 11 thereof, and shall complete the acquisition proceedings in accordance with law within a stipulated period.

(35) Needless to mention while determining compensation, the competent authority shall consider the applicable provisions of the 2013 Act and all statutory benefits. Having regard to the extraordinary delay attributable to the respondents and the prolonged deprivation of the petitioner's property, the competent authority shall specifically consider the consequences of such delay while determining the amount payable, subject to the provisions of the Act and the law laid down by the Hon'ble Supreme Court.

(36) We would further like to clarify that our observation would not mean that it would be the petitioner only who would be entitled to claim compensation. The issue regarding disbursement of compensation in favour of the legal heirs of the deceased/original owner shall be decided in accordance with Law.

(37) Writ petition is allowed and disposed of in the aforesaid terms. No order as to costs.

(38) Rule is made absolute in the above terms.

[RAJNISH R. VYAS, J.]

[ANIL S. KILOR J.]

KOLHE