



2025:AHC-LKO:77608-DB

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**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 8222 of 2024

Kaushal Kishore and another

.....Petitioner(s)

Versus

State of U.P. Thru. Addl. Chief Secy. Revenue , Lucknow and 4 others

.....Respondent(s)

Counsel for Petitioner(s) : Madan Gopal Tripathi, Shivam

Kumar Mishra

Counsel for Respondent(s) : C.S.C., Mohan Singh

Court No. - 3

HON'BLE SHEKHAR B. SARAF, J.

HON'BLE PRASHANT KUMAR, J.

(Delivered by Hon'ble Prashant Kumar, J.)

1. Heard Sri Madan Gopal Tripathi and Sri Shivam Kumar Mishra, learned counsel for the petitioners, Sri Mohan Singh, learned counsel for the respondent No.5 and Sri Akhilesh Kumar Chaturvedi, learned Additional Chief Standing Counsel appearing on behalf of State respondent nos.1 to 4.

2. The present writ petition has been filed by the petitioners under article 226 of the Constitution of India with the following prayer:-

“(i) Issue a writ, order or direction in the nature of mandamus thereby commanding the opposite parties to pay promptly a due compensation to the petitioners for the land admeasuring area 0.109 hectare out of Gata No. 328 admeasuring total area 1.025 hectare situated in village Andka, Pargana & Block-Siddhaur, Tehsil-Haidargarh, District-Barabanki, in accordance to the Right to Fair Compensation and Transparency Acquisition, Rehabilitation and Resettlement Act, 2013, as prayed in the applications made by the petitioners to the opposite parties which are collectively contained as Annexure No. 8, in the interest of justice.”

3. The factual matrix of the case is that the petitioners are the owners and cultivators of Plot No.328, measuring 1.025 hectares, which is in their possession since the time of their ancestors. Out of the total area of the said plot, the Gram Panchayat-Andka, respondent No.5 herein, has constructed a 4 meter-wide public way (*khadanja*) over an area measuring approximately 0.109 hectares, without adopting due process of land acquisition provided under the law.

4. During the construction of the aforesaid *Khadanja*, the Village Head and the concerned officials of the Gram Panchayat assured the petitioners that correspondence had been made with higher authorities of the Panchayat Raj Department and the compensation for the acquired land would be paid to them upon release of funds.

5. To ascertain the actual area of land utilized for road construction, demarcation proceedings were conducted by the Revenue Inspector, Siddhaur, on 18.08.2023. The demarcation report confirmed that although a road was already recorded on the south side of Plot No. 328, new construction had been carried out by the Gram Pradhan of Gram Panchayat-Andka on the east, north, and west sides over a total length of 272 meters having width of 4 meters amounting to 0.109 hectares, which is not recorded as a road in revenue records. The Sub-Divisional Magistrate, Haidargarh, vide order dated 16.04.2024, accepted the demarcation report and, while noting that the construction was done in

public interest, had held that the possession of the land could not be delivered to the petitioners.

6. The petitioners for the purpose of compensation posted their grievances through registered post to the concerned respondents on 20.07.2024 and again posted reminder letter on 07.08.2024 through registered post to the respondents but even after that they did not consider the grievances of the petitioners. Against the inaction of the respondents, the petitioners herein has filed the instant writ petition with the aforesaid prayers.

7. Learned counsel for the petitioners submits that the construction of the public way (*khadanja*) has been carried out without acquisition and without payment of compensation, which is contrary to law.

8. He further submits that the petitioners are legally entitled for compensation at four times to the current market value of the acquired land as per the provisions of **the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013**.

9. He further submits that the concerned respondents flagrantly violated the constitutional rights of the petitioners and they were not given any chance to get the construction of public way stopped as there was political pressure due to which the petitioners' prayer to the authorities concerned were never heeded.

10. To buttress his arguments, he relied upon the judgments of the Hon'ble Supreme court in the case of ***Vidya Devi v. State of Himachal Pradesh***; (2020) 2 SCC 569, wherein it has been held as follows:

"12.1. 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.

12.2. 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 in a welfare State, and a Constitutional right Under Article 300A of the Constitution. Article 300A 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 300A, can be inferred in that Article.

12.3. 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 300A of the Constitution. Reliance is placed on the judgment in Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chennai; (2005) 7 SCC 627, wherein 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.”

12.4. In N. Padmamma v. S. Ramakrishna Reddy; (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.”

12.5. In Delhi Airtech Services Pvt. Ltd. and Ors. v. State of U.P. and Ors.; (2011) 9 SCC 354, this Court recognized the right to property as a basic human right in the following words: (SCC p. 379, para 30)

“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.”

12.6. In Jilubhai Nanbhai Khachar v. State of Gujarat; (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.”

12.7. *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.*

12.8. *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.*

12.9. *In a democratic polity governed by the Rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in Tukaram Kana Joshi and Ors. v. M.I.D.C. and Ors.; (2013) 1 SCC 353 wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the Rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.*

12.10. *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 in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.*

12.11. *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 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 own citizens, as has been done in the present case.*

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.*

12.14. *In Tukaram Kana Joshi and Ors. v. M.I.D.C. and Ors.; (2013) 1 SCC 353, this Court while dealing with a similar fact situation, held as follows: (SCC p. 359 para 11)*

“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.”

11. In support of his submissions, he further relied on the judgments passed by the Hon’ble Supreme court in ***D.B. Basnett v. Collector East District, Gangtok Sikkim and another***; (2020) 4 SCC 572, ***Sukh Dutt Ratra v. State of H.P.***; (2022) 7 SCC 508, ***Kukreja Construction Co. v. State of Maharashtra***; (2024) 14 SCC 594, ***Bernard Francis Joseph Vaz v. State of Karnataka***; (2025) 7 SCC 580 and the judgment passed by Allahabad High Court in the matter of ***Kanyawati v. State of U.P.***; 2025 SCC OnLine All 1294 which had relied on the ratio of the judgment passed in ***Vidya Devi (supra)***.

12. *Per contra*, learned Additional Chief Standing Counsel appearing on behalf of State respondent Nos.1 to 4 and Sri Mohan Singh, learned counsel for the respondent No.5, submitted that according to the inquiry report dated 07.10.2024 of the Sub-Divisional Magistrate, Haidargarh, there was a *kacha* road around the field in the north direction of South canal Pathway Pratapganj, East and west direction for about last 30-40 years, on which the villagers used to travel, the said land had already been used as a road and now they have made a *khadanja* road.

13. They vehemently opposed the petition and submitted that the *khadanja* was constructed years ago on the same existing *kacha* road in public interest and at that time, no objection was lodged by the

petitioners. They also submitted that since the land was used as a passage for the last 30-40 years, it would be tantamount to adverse possession.

14. In support of his argument, he has placed reliance on the judgment of the Hon'ble Supreme Court passed in ***Syed Maqbool Ali V. State of U.P. & Anr.***; [2011] 4 SCR 238, wherein it was held that the demand for compensation is not appropriate in decades old cases. The relevant part of judgment is extracted below:-

“6. But that does not mean that the delay should be ignored or appellant should be given relief In such matters, the person aggrieved should approach the High Court diligently. If the writ petition is belated, unless there is good and satisfactory explanation for the delay, the petition will be rejected on the ground of delay and laches. Further the High Court should be satisfied that the case warrants the exercise of the extraordinary jurisdiction under Article 226 of the Constitution of the India, and that the matter is one where the alternative remedy of suit is not appropriate. For example, if the person aggrieved and the State are owners of adjoining lands and he claims that the State has encroached over a part of his land, or if there is a simple boundary dispute, the remedy will lie only in a civil suit, as the dispute does not relate to any highhanded, arbitrary or unreasonable action of the officers of the State and there is a need to examine disputed questions relating to title, extent and actual possession. But where the person aggrieved establishes that the State had highhandedly taken over his land without recourse to acquisition or deprived him of his property without authority of law, the landholder may seek his remedy in a writ petition. When a writ petitioner makes out a case for invoking the extra ordinary Jurisdiction under Article 226 of the Constitution, the High Court would not relegate him to the alternative remedy of a civil court, merely because the matter may involve an incidental examination of disputed questions of facts. The question that will ultimately weigh with the High Court is this Whether the person is seeking remedy in a matter which is primarily a civil dispute to be decided by a civil court, or whether the matter relates to a dispute having a public law element or violation of any fundamental right or to any arbitrary and high-handed action. (See the decisions of this court in ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd- 2004(3) SCC 553 and Kisan Sahkari Chini Mills Lad. v. Vardan Linkers-2008(12) SCC 500)

7. High Courts should also be cautious in entertaining writ petitions filed decades after the dispossession, seeking directions for acquisition and payment of compensation. It is not uncommon for villagers to offer/ donate some part of their lands voluntarily for a public purpose which would benefit them or the community as for example, construction of an access road to the village or their property, or construction of a village

tank or a bund to prevent flooding/erosion. When they offer their land for such public purpose, the land would be of little or negligible value. But decades later, when land values increase, either on account of passage of time or on account of developments or improvements carried out by the State, the land holders come up with belated claims alleging that their lands were taken without acquisition and without their consent. When such claims are made after several decades, the State would be at a disadvantage to contest the claim, as it may not have the records to show in what circumstances the lands were given/donated and whether the land was given voluntarily. Therefore, belated writ petitions, without proper explanation for the delay, are liable to be dismissed. Be that as it may.”

15. After hearing the rival submission of the learned counsels for the parties and upon perusal of the records, it is evident that the area of the land in question is recorded in the name of the petitioners and the said land was being used by the general public merely as a passage. It is not disputed that the petitioners had never objected to such use, and the said land had never been acquired for road constructions. However, it is also apparent that respondents have constructed a public way (*Khadanja*) over the portion of petitioners' land without following any due process of law and also without payment of any compensation.

16. We do not found any justification for the respondents to occupy or utilize the portion of the land in question without following or adopting the procedures prescribed under the law.

17. The contention of the State that the petitioners had orally consented for the use of the land as a road cannot be a valid ground to take over his land, in the absence of any legal sanction in divesting the petitioners from their property.

18. We are surprised by the plea taken by the State that since the land was used as a passage for the last 30-40 years, it would tantamount to adverse possession. The State being a welfare State cannot be permitted to take a plea of adverse possession. 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 citizen. [reliance is placed to paragraph 12.11 of *Vidya Devi (supra)*].

19. In a democratic polity governed by the rule of law, the State cannot deprive a citizen on his property without sanction of law. Reliance is placed on the judgment passed in *Tukaram Kana Joshi (supra)* and *Vidya Devi (supra)*.

20. Thus, we are of the view that no person can be deprived of his property without due procedure of law. It is well settled in catena of judgments of the Hon'ble Supreme Court that the right to property is not only a constitutional or a statutory right but also a Human Right and the property of a citizen can only be acquired for public purpose, following the due procedure and only on payment of reasonable compensation in accordance with law.

21. Accordingly, the instant petition is **allowed** and in case, the respondent wants to use the road which is on the land of the petitioner then the same can only be used after following the due process and after paying the suitable compensation to the petitioner in accordance with law. The authorities are directed to calculate the compensation payable to the petitioners and make payment within a period of twelve weeks from date.

(Prashant Kumar,J.)

I agree.

(Shekhar B. Saraf,J.)

November 26, 2025

Saurabh Yadav/Anupam S/-