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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK JAIN
ON THE 22nd OF NOVEMBER, 2023**

WRIT PETITION No. 10144 of 2014

BETWEEN:-

1. **JAGDISH PRASAD SHUKLA S/O SHRI VAIDYANATH PRASAD SHUKLA, AGED ABOUT 72 YEARS, R/O DHEKHA REWA DISTRICT REWA (MADHYA PRADESH)**
2. **BADRI PRASAD SHUKLA S/O SHRI VAIDYANATH PRASAD SHUKLA, AGED ABOUT 63 YEARS, R/O DHEKHA REWA DISTRICT REWA (MADHYA PRADESH)**
3. **RAJENDRA PRASAD SHUKLA S/O SHRI VAIDYANATH PRASAD SHUKLA, AGED ABOUT 56 YEARS, R/O DHEKHA REWA DISTRICT REWA (MADHYA PRADESH)**
4. **RAVINDRA PRASAD SHUKLA S/O SHRI VAIDYANATH PRASAD SHUKLA, AGED ABOUT 53 YEARS, R/O DHEKHA REWA DISTRICT REWA (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI NITYA NAND MISHRA - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH THE SECRETARY REVENUE DEPARTMENT MANTRALAYA VALLABH BHAVAN BHOPAL (MADHYA PRADESH)**
2. **THE COLLECTOR / LAND ACQUISITION OFFICER REWA DISTRICT REWA (MADHYA PRADESH)**
3. **THE SUB DIVISIONAL OFFICER TAHSIL HUJOUR DISTRICT REWA (MADHYA PRADESH)**
4. **THE TAHSILDAR TAHSIL HUJOUR DISTRICT REWA (MADHYA PRADESH)**

5. **THE EXECUTIVE ENGINEER M.P. PUBLIC WORK DEPARTMENT DIV. NO.1 REWA DISTRICT REWA (MADHYA PRADESH)**
6. **THE DIVISIONAL MANAGER M.P.RURAL ROAD DEVELOPMENT AUTHORITY UNIT NO.2 REWA DISTRICT REWA (MADHYA PRADESH)**

.....RESPONDENTS

(STATE BY SMT. SAURYA DIXIT - PANEL LAWYER)

(RESPONDENT NO. 6 BY SHRI DIVYA KRISHNA BILAIYA - ADV.)

This petition coming on for admission this day, the court passed the following:

ORDER

The present petition has been filed under Article 226 of the Constitution of India being aggrieved by the action of the respondents in constructing a road on the land of the petitioners without acquisition. They further seek a direction to the respondents to award proper compensation to the petitioners as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. The counsel for the petitioners has stated that the petitioners own a total land measuring 2.24 Acres in survey No. 743 situated at Village Karahiya, Tehsil Huzur, Distt. Rewa. The said land adjoins Government land in survey No. 742. Out of the private land of the petitioners, 1.04 acres has been unauthorisedly utilised by the State authorities for construction of road. This has been done without any acquisition, nor giving any compensation to the petitioners. It is also stated that when the petitioners got the land demarcated, then it became clear that the land of the petitioners has been utilised for construction of road. This demarcation

report dated 24.6.2013 is on record as Annexure P-3. This report clearly mentions that the road has been constructed in 1.04 acres of land in survey No. 743 (private land of the petitioners). However, the land has not been acquired, nor any compensation has been paid to the petitioners.

3. The learned counsel for the respondent No.6 (M.P. Road Development Corporation), while referring to its reply has argued that the road in question was earlier operated by Public Works Department (PWD), and has been transferred to respondent No.6 very recently while it was constructed sometime around the year 1975 by the PWD, hence, the respondent No.6 are not liable to pay any compensation. It is also stated that the petitioner has also filed a civil suit in the matter.

4. The respondents No. 1 to 5-State Government and its functionaries have stated in their separate reply and referring to the same, the learned Government counsel has submitted that the petition is highly belated, as the road was constructed sometime around the year 1975.

5. Heard learned counsel for the parties and perused the record.

6. From the pleadings of the parties, it is clear that the petitioners own land, total area measuring 2.24 hectares in survey No. 743 situated at Village Karahiya, Tehsil Huzur, Distt. Rewa. The said land adjoins Government land in survey No. 742. Out of the private land of the petitioners, 1.04 acres has been utilised by the State authorities for construction of road sometime in the year 1975. This has been done without any acquisition, nor giving any compensation to the petitioners. The demarcation report dated 24.6.2013 is on record as Annexure P-3. This

report clearly mentions that the road has been constructed in 1.04 acres of land in survey No. 743 (private land of the petitioners). These facts are undisputed as per the pleadings of the rival parties.

7. The document annexure P-6 dated 05.9.2013 is a letter written by the Additional Collector, Distt. Rewa to the Sub-Diviisonal Officer, directing to enquire about the claim of the petitioners for compensation. The document Annexure P-9 dated 13.2.2014 written by the Tehsildar shows that the private land of the petitioners has been utilised for road in 1975 and the Tehsildar has written that information as to acquisition of the said land can only be given by the Public Works Department, which has constructed the road. From the document Annexure P-11 dated 28.4.2014, it is shown that the Executive Engineer, Public Works Department has written to the respondent No.6 for taking action in the matter of compensation.

8. Thus, this fact is well established that 1.04 acres private land of the petitioners has been utilised for construction of road sometime in the year 1975-76 by the Public Works Department.

Objection as to pendency of suit

The objection as to pendency of suit is required to be considered. As per the injunction order (Annexure R-1 to reply of respondent No.6) passed in RCSA No. 505/2021 on 26.7.2022, it is clear that the petitioners have sought injunction against the State authorities that they will not utilise any additional area over and above 1.04 acres already utilised for road. A copy of the plaint is also on record. From perusal of the plaint memo, it is

seen that two main reliefs have been sought in the suit. First is a declaration that the respondents are not entitled to construct road over the entire land of the petitioners without acquisition. Second is that any additional and fresh area be not taken over for construction of road. The cause of action is shown to be an attempt of the respondent No.6 to widen the road previously constructed and to take additional land of the petitioners in the process. Even the pendency of the present writ petition has been duly disclosed in the plaint. In view of these facts, I am of the opinion that the right of the petitioners to claim compensation for the land already utilised for construction of road in 1975-76 is not affected in any manner.

Objection as to delay –

The present case is one of forcible dispossession without acquisition. When such forcible dispossession took place in 1975-76 as admitted by the respondents, right to property was still a fundamental right in view of Article 31 which was in force then. The said fundamental right was done away by a subsequent amendment i.e. 44th amendment to the Constitution of India. The said amendment did away with Right to Property as a fundamental right, and made it a constitutional right in terms of Article 300A. Both the provisions i.e. erstwhile Article 31 as well as present Article 300A do not give an absolute right to property, but provide that no person shall be deprived of his property save by authority of law. Law relating to compulsory acquisition is certainly an authority given by law to the State. The State is duty bound to adhere to the law relating to

compulsory acquisition while taking away the property of a citizen, otherwise the action of the State would be violating the Constitutional guarantee to the citizen.

The objection as to delay has to be examined on the touchstone of violation of an Constitutional Right. Either way, the State cannot be allowed to raise the plea of delay. Recently, the Supreme Court had the occasion to consider the case of a land-owner whose land was taken over by the State in similar fashion in 1972 for construction and he approached the High Court of Himachal Pradesh after 38 long years. While deciding this issue, the Hon'ble Supreme Court in the case of Sukh Dutt Ratra Vs. State of Himachal, reported in 2022 (7) SCC 508 has held as under :-

“16. Given the important protection extended to an individual vis-à-vis their private property (embodied earlier in Article 31, and now as a constitutional right in Article 300-A), and the high threshold the State must meet while acquiring land, the question remains — can the State, merely on the ground of delay and laches, evade its legal responsibility towards those from whom private property has been expropriated? In these facts and circumstances, we find this conclusion to be unacceptable, and warranting intervention on the grounds of equity and fairness.

17. When seen holistically, it is apparent that the State's actions, or lack thereof, have in fact compounded the injustice meted out to the appellants and compelled them to approach this Court, albeit belatedly. The initiation of acquisition proceedings initially in the 1990s occurred only at the behest of the High Court. Even after such judicial intervention, the State continued to only extend the benefit of the Court's directions to those who specifically approached the courts. The State's lackadaisical conduct is discernible from this action of initiating acquisition proceedings selectively, only in respect to the lands of those writ petitioners who had approached the

court in earlier proceedings, and not other landowners, pursuant to the orders dated 23-4-2007 (in Anakh Singh v. State of H.P. [Anakh Singh v. State of H.P., 2007 SCC OnLine HP 220]) and 20-12-2013 (in Onkar Singh v. State [Onkar Singh v. State, CWP No. 1356 of 2010, order dated 20-12-2013 (HP)]), respectively. In this manner, at every stage, the State sought to shirk its responsibility of acquiring land required for public use in the manner prescribed by law.

18. There is a welter of precedents on delay and laches which conclude either way—as contended by both sides in the present dispute—however, the specific factual matrix compels this Court to weigh in favour of the appellant landowners. The State cannot shield itself behind the ground of delay and laches in such a situation; there cannot be a “limitation” to doing justice. This Court in a much earlier case — Maharashtra SRTC v. Balwant Regular Motor Service [Maharashtra SRTC v. Balwant Regular Motor Service, (1969) 1 SCR 808 : AIR 1969 SC 329] , held : (AIR pp. 335-36, para 11)

“11. ... ‘Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material.

But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy’.”

19. *The facts of the present case reveal that the State has, in a clandestine and arbitrary manner, actively tried to limit disbursement of compensation as required by law, only to those for which it was specifically prodded by the courts, rather than to all those who are entitled. This arbitrary action, which is also violative of the appellants' prevailing Article 31 right (at the time of cause of action), undoubtedly warranted consideration, and intervention by the High Court, under its Article 226 jurisdiction. This Court, in Manohar [State of U.P. v. Manohar, (2005) 2 SCC 126] —a similar case where the name of the aggrieved had been deleted from revenue records leading to his dispossession from the land without payment of compensation held : (SCC pp. 128-29, paras 6-8)*

“6. Having heard the learned counsel for the appellants, we are satisfied that the case projected before the court by the appellants is utterly untenable and not worthy of emanating from any State which professes the least regard to being a welfare State. When we pointed out to the learned counsel that, at this stage at least, the State should be gracious enough to accept its mistake and promptly pay the compensation to the respondent, the State has taken an intractable attitude and persisted in opposing what appears to be a just and reasonable claim of the respondent.

7. Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(1)(f) was deleted by the Forty-fourth Amendment to the Constitution, Article 300-A has been placed in the Constitution, which reads as follows:

‘300-A. Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law.’

8. This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities. In our view, this case was an eminently fit one for exercising the writ jurisdiction of the High Court under Article 226 of the Constitution.”

20. Again, in *Tukaram Kana Joshi [Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn. (MIDC), (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491 : (2012) 13 SCR 29]* while dealing with a similar fact situation, this Court 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. The functionaries of the State took over possession of the land belonging to the appellants without any sanction of law. The appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode.”

21. Having considered the pleadings filed, this Court finds that the contentions raised by the State, do not inspire confidence and deserve to be rejected. The State has merely averred to the appellants' alleged verbal consent or the lack of objection, but has not placed any material on record to substantiate this plea. Further, the State was unable to produce any evidence indicating that the land of the appellants had been taken over or acquired in the manner known to law, or that they had ever paid any compensation. It is pertinent to note that this was the State's position, and subsequent findings of the High Court in 2007 as well, in the other writ proceedings.

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 1972-1973, 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 Das [Shankar Das v. State of H.P., 2013 SCC OnLine HP 681] itself, which is relied upon in the impugned judgment [Sukh Dutt Ratra v. State of H.P., 2013 SCC OnLine HP 3773] .

23. This Court, in Vidya Devi [Vidya Devi v. State of H.P., (2020) 2 SCC 569 : (2020) 1 SCC (Civ) 799] facing an almost identical set of facts and circumstances — rejected the contention of “oral” consent to be baseless and outlined the responsibility of the State : (SCC p. 574, para 12)

“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 v. Maharashtra Industrial Development Corpn. [Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn. (MIDC), (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491 : (2012) 13 SCR 29] 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 [State of Haryana v. Mukesh Kumar, (2011) 10 SCC 404 : (2012) 3 SCC (Civ) 769] 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.”

24. And with regard to the contention of delay and laches, this Court went on to hold : (Vidya Devi case [Vidya Devi v. State of H.P., (2020) 2 SCC 569 : (2020) 1 SCC (Civ) 799] , SCC 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. [P.S. Sadasivaswamy v. State of T.N., (1975) 1 SCC 152 : 1975 SCC (L&S) 22] ”

25. Concluding that the forcible dispossession of a person of their private property without following due process of law, was violative [Relying on Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai, (2005) 7 SCC 627 : 2005 Supp (3) SCR 388; N. Padmamma v. S. Ramakrishna Reddy, (2008) 15 SCC 517; Delhi Airtech Services (P) Ltd. v. State of U.P., (2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673 : (2011) 12 SCR 191 and Jilubhai Nanbhai Khachar v. State of Gujarat, 1995 Supp (1) SCC 596 : 1994 Supp (1) SCR 807.] 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 [Vidya Devi v. State of H.P., (2020) 2 SCC 569 : (2020) 1 SCC (Civ) 799] is squarely applicable to the nearly identical facts before us in the present case.”

9. In view of the aforesaid pronouncement by the Supreme Court, it is clear that the State cannot take shelter of a plea of delay, when the State

has blatantly abused its position of eminent domain, in depriving a citizen of his right to property. Thus, the objection as to delay is rejected.

10. The State in para-4 of the reply has categorically admitted the claim of the petitioners in following terms :-

That, the answering respondents most humbly submits before this Hon'ble Court that since the land in question and the dispute of compensation for acquisition of the same dates back to the year 1975 when there was existence of a road in the disputed land the records of 1975 are not available with the respondents due to long span of time the same is not traceable. So far as to the claim of the petitioner is concerned pertaining to the acquisition of his land for the purposes constructing road and compensation to be awarded to him is concerned the same shall be duly dispersed and awarded to the petitioner in accordance with law as per directions of this Hon'ble Court. The respondents will take all endeavours to redress the claim of the petitioner in light of the patwari dated 24.6.2013 (Annexure P-3). The respondents are duty bound to pay compensation to the petitioner if any part of his land is acquired by the respondents in accordance with law. (emphasis supplied)

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11. The aforesaid is a clear admission of the liability by the State Government.

12. Thus, for the foregoing reasons, it is held that the State violated the constitutional guarantee given to the citizen by not adhering to the law relating to compulsory acquisition of land. As a natural consequence thereof, the petitioners are held liable to get the compensation of 1.04 acres of land unauthorisedly utilized by the State for construction of road in the year 1975-76.

23. As the dispossession has taken place in 1975-76, let the compensation, solatium, etc. be determined in accordance with the Land Acquisition Act 1894

(which was applicable on the date of dispossession), as per the market value of the land on the date of taking over of possession in 1975-76. The petitioners shall also be entitled to interest as per section 34 of the Act of 1894 at the rates mentioned therein from taking over possession till date of actual payment.

14. Let the aforesaid exercise be completed by the respondent No.3 within a period of 3 months from the date of communication of certified copy of this order to the respondent No.2.

15. The petition stands allowed.

MISHRA



(VIVEK JAIN)
JUDGE