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**(2009) 04 OHC CK 0049**  
**In the Orissa High Court**

Bandhu Baxia

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

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**Date of Decision :** 22-04-2009

**Acts Referred:**

Constitution of India, 1950 — Article 19, 300A, 31A  
General Clauses Act, 1897 — Section 21  
Land Acquisition Act, 1894 — Section 16, 17, 23

**Citation :** (2009) 108 CLT 85 : (2009) 2 OLR 124 Supp

**Hon'ble Judges :** B.S. Chauhan, C.J;I. Mahanty, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## **Judgement**

B.S. Chauhan, C.J.—The case has a checkered history as the Petitioner had earlier approached this Court through the "Rourkela Local Displaced Association" & had challenged the land acquisition proceeding. The said petition was dismissed. The Association approached the Hon"ble Supreme Court & the Apex Court made certain observations on the basis of which the present petition has been filed.

2. This Writ Petition has been filed challenging the constitutional validity of the provisions of the "Orissa Development of Industries, Irrigation, Capital Construction and Resettlement of Displaced persons (Land Acquisition Act) Act, 1948" (hereinafter referred to as the "Act") on the grounds that the provisions providing for acquisition of land under the said Act had been violative of the provisions of Article 19(1)(f) of the Constitution of India and after amendment of the Constitution of Articles 31A and 300A of the Constitution of India and as a consequence, seeking declaration that any acquisition made under the said Act is null and void. Further, relief has been sought to retain the land possessed by the Petitioner as it has not been utilized for the purpose it stood acquired.

3. The facts and circumstances giving rise to this case are that a huge area including the land of the forefathers of Petitioner situate in revenue village

Kantajhar, district Sundargarh (amongst others) stood notified u/s 3(1) of the Act on 19th May, 1955, for establishment of Rourkela Steel Plant and acquisition proceedings were concluded. Petitioner claims that his forefathers had neither been paid compensation for the land acquired nor they were dispossessed from the land and thus, he is still continuing in possession. In the revenue record names of his father and forefathers continued and name of Rourkela Steel Plant was recorded for the first time in 1993. A huge area of land had not been utilized for the purpose of establishment of the steel plant and a portion of the said land was, returned to the Government in 1962. It has been utilised for purposes other than the purpose for which it had been acquired. The Act stood repealed in 1994. The Petitioner and his family members had been harassed by the Opposite Parties- authorities by initiating proceedings under the provisions of the "Orissa Prevention of Land Encroachment Act, 1972" (hereinafter referred to as "OPLE Act"). Some similarly situated persons, who were dispossessed or were likely to be dispossessed, filed three Writ Petitions through their Association before this Court being W.P.(C) No. 15654 of 2005, W.R(C) No. 4441 of 2006 and W.P.(C) No. 2308 of 2007 which were heard and dismissed vide Judgment and Order Dated 5.12.2008. Though the Petitioners in those cases had challenged the constitutional validity of the provisions of the Act, this Court did not consider the said submissions. The said Association filed SLP (Civil) Nos. 1859-1861 of 2009 before the Hon'ble Supreme Court which have been dismissed. However, observations have been made therein that the dismissal of the petitions filed by the Association would not come in way of any person/individual agitating his right in accordance with law, if he has any existing enforceable right. Hence this petition.

4. Mr. Bharat Kumar Misra, Learned Counsel for the Petitioner has contended that provisions of the Act were ultra vires & unconstitutional as no person could be deprived from his immovable property without following the procedure prescribed by law & without paying the compensation. The Act was violative of the provisions of Article 31A & after its deletion, of Article 300A of the Constitution. The right to property earlier had been a fundamental right & now it is a constitutional & human right. Although the Act stood repealed in 1994, that would not change the position, for the reason that compensation had not been paid to the Petitioner's forefathers. They had also not been, dispossessed. The land was not required for the purpose it had been acquired. Therefore, the Act which stood repealed with effect from 22.7.1994 be declared ultra vires & the Opposite Parties be restrained to interfere with the physical possession of the Petitioner.

5. On the other hand Mr. P. K. Khuntia, Learned Additional Government Advocate appearing for the State has vehemently opposed the petition contending that acquisition had been made in 1955 and as per the affidavit sworn by the Petitioner he is only 38 years of age. Therefore, it can be inferred that the Petitioner was born in 1970, that is, after 15 years of the acquisition of land. There is nothing on record to show that the Petitioner's forefathers had not

received the compensation or they had not been dispossessed. Rather in view of the provisions of the Act, the land in dispute vested in the State free from all encumbrances and once it is vested in the State, it cannot be divested. Even if the land is not used for the purpose for which it stood acquired, the Petitioner cannot have any objection if the land is being used for any other public purpose. Petitioner cannot have any grievance in this respect. Initiation of proceedings under the OPLE Act shows that after being dispossessed the Petitioner has encroached upon some land illegally and there is nothing on record to establish that the land so encroached upon, is the same land, which at one stage belonged to the forefathers of the Petitioner. Acquisition proceedings cannot be challenged at such a belated stage, i.e., 55 years after acquisition. Further the Petitioner is not able to point out as to how the Act was ultra vires, the Constitution.

The Act provided a detailed procedure for determination of the market value of the land u/s 10 making provisions for appointment of expert assessors and arbitrators. Market value of the land was to be assessed as per the provisions of Section 23 of the Land Acquisition Act, 1894 (hereinafter called the "L.A. Act"). Mr. Khuntia submitted that in the Judgment delivered in the case filed by the Rourkela Displaced Association, the issue of non-payment of compensation had been agitated.

The State Authorities issued notices inviting applications from the people who had not received the compensation in Oriya newspaper, "The Sambad" dated 19.2.2006. Forty-seven applications were received. On scrutiny it was found that 42 persons had already received compensation for the land acquired. Compensation could not be paid to one applicant because there was some discrepancy in the revenue record. Thus, only four such applicants were found to be genuine. Most importantly the present Petitioner did not make any representation at that time, nor he made any attempt to obtain necessary authentic proof of their claims. A bald statement that his forefathers were not paid the compensation is not enough to form the foundation of the present petition.

6. There is a clear distinction in law regarding pleadings in the Writ Petition and that of a suit proceedings. A Petitioner is required to adduce evidence to substantiate the pleadings of the Writ Petition. There is nothing on the record to show as on what basis the statement had been made by the Petitioner, that compensation had not been paid to his forefathers. The Petitioner was born after 15 years of acquisition of the land. The Petitioner's father or grandfather could have challenged the acquisition proceeding. However, they did not choose to do so. Even if the land had been taken illegally, the issue cannot be examined at such a belated stage. Hence the petition is liable to be dismissed.

7. We have considered the rival submissions made by the Learned Counsel for the parties and perused the record.

8. Admittedly the right to property had earlier been a fundamental right & now it

remains as a constitutional and/or as a human right. No person can be deprived of his property without paying the compensation. (Vide Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc., ; S.R. Ejaz Vs. The Tamil Nadu Handloom Weavers Co-operative Society Ltd., ; D.L.F. Qutab Enclave Complex Educational Charitable Trust Vs. State of Haryana and Others, ; Indian Handicrafts Emporium and Others Vs. Union of India (UOI) and Others, ; P.T. Munichikkanna Reddy and Others Vs. Revamma and Others, ; M. Naga Venkata Lakshmi Vs. Viskhapatnam Municipal Corp. and Another, ; Aslam Mohd. Merchant v. Competent Authority and Ors. (2008) 14 SCC 186; Karnataka State Financial Corporation Vs. N. Narasimahaiah and Others, ; Vimalben Ajitbhai Patel Vs. Vatslabeen Ashokbhai Patel and Others, ; & N. Padmamma and Ors. v. S. Ramakrishna Reddy and Ors. J.T. 2008 (10) SC 598).

9. In Jilubhai Nanbhai Khachar (supra) the Apex Court defined the "property" as under:

Property in legal sense means an aggregate of rights which are guaranteed and protected by law. It extends to every species of valuable right and interest, more particularly, ownership and exclusive right to a thing, the right to dispose of thing in every legal way to possess it, to use it and to exclude everyone else from interfering with it. The dominion or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects is called property.

The Court further observed that a person who is deprived of his property without authority of law is entitled to compensation.

10. The Supreme Court In Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others, , the Court held as under:

Property, while ceasing to be a fundamental right would, however, be given express recognition as a legal right, provisions being made that no person shall be deprived of his property save in accordance with law.

11. Thus, only where there is utter lack of legal authority for deprivation of a person of its property by the State Authority, the Court must exercise its jurisdiction to get possession of the land restored or must ensure that compensation is paid to him. (Vide State of U.P. and Others Vs. Manohar, ; and Ashok Kumar and Another Vs. State of Uttar Pradesh and Others, ).

12. Thus, it is a settled legal proposition that while the right to property had earlier been a fundamental right, now, it is constitutional and human right and no property can be acquired without paying the compensation, nor can a person can be deprived of his property without following the due procedure prescribed by law.

13. According to the pleadings, the Petitioner claims to be the descendant of one Jegu Oram, who had three sons, namely, Fakir, Madra & Hembo. Hembo had 3 sons, namely, Gandru, Madhu & Lachhu. Petitioner Bandhu Baxia is the son of Gandru. It is stated by the Learned Counsel for the Petitioner that the Petitioner

had heard from his forefathers that compensation had not been paid to them. Such a vague statement would not serve any purpose, particularly in view of the fact that he has stated that his grandfather died in 1962 & his father died in 1982 & the land had been acquired in 1955. His grand father "the person interested" might have received the compensation. At the time of death of his father in 1982, the Petitioner was only 10-12 years of age. No explanation is being furnished as on what basis such a statement is being made. As the Petitioner is facing proceedings under the OPLE Act, it is quite possible that he has encroached upon a part of the public land. Learned Counsel for the Petitioner fairly conceded that it is not possible at such a belated stage to identify the land, which at one time belonged to Petitioner's forefathers. In such a fact situation, it becomes difficult for the Court to accept such vague pleadings.

14. It is settled proposition of law that a party has to plead the case and produce/adduce sufficient evidence to substantiate his submissions made in the petition and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas. In *Bharat Singh and Others Vs. State of Haryana and Others*, the Hon'ble Supreme Court has observed as under:

In our opinion, when a point, which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the Writ Petitioner, must plead and prove such facts by evidence which must appear from the Writ Petition and if he is the Respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the Writ Petition or to the counter-affidavit, as the case may be, the Court will not entertain the point. There is a distinction between a pleading under the CPC and a Writ Petition or a counter-affidavit. While in a pleading, that is a plaint or written statement, the facts and not the evidence are required to be pleaded. In a Writ Petition or in the counter affidavit, not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.

15. Similar view has been reiterated in *M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others*, ; *National Buildings Construction Corporation Vs. S. Raghunathan and Others*, ; *Ram Narain Arora Vs. Asha Rani and Others*, ; *Smt. Chitra Kumari etc. Vs. Union of India and Others*, ; & *State of U.P. and Others Vs. Chandra Prakash Pandey and Others Etc.*, ; *M/s. Atul Castings Ltd. Vs. Bawa Gurvachan Singh*, ; *Vithal N. Shetti and Anr. v. Prakash N. Rudrakar and Ors.* (2003) 1 SCC 18; *Devasahayam (D) by LRs. Vs. P. Savithramma and Others*, ; and *Sait Nagjee Purushotham and Co. Ltd. Vs. Vimalabai Prabhulal and Others*, .

16. The Petitioner has miserably failed to substantiate the pleading that his forefathers had not been paid the due compensation. There is also a distinction between "not receiving the compensation" & not making payment thereof. State might have determined the compensation, & offered it to the "person aggrieved", but the "person aggrieved" may not have received it for some reason.

17. In view of the provisions contained in Section 5 of the Act once the land

vests in the State "free from all encumbrances" on the date the notice is served or published in the gazette. Section 10 of the Act provides that the State Government or the competent authority may use or deal with any land acquired under the provisions of the said Act in such manner and subject to such condition as it will appear to be expedient. Therefore, once the land has vested in the State free from all encumbrances it cannot be divested and can be used for public purpose other than for which it was acquired.

18. In *Satendra Prasad Jain and Others Vs. State of U.P. and Others*, , the Supreme Court held that once land vests in the State free from all encumbrances, it cannot be divested & proceedings under the Act would not lapse even if award is not made within the statutory period of statutory limitation. In cue possession is taken resorting to only powers u/s 17 of the Act, the said limitation u/s 11-A of the Act does not apply and the Collector is not absolved from making the award. The same view has been reiterated in *Awadh Bihari Yadav and Others Vs. State of Bihar and Others*, ; *U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others*, ; *Pratap and Others Vs. State of Rajasthan and Others*, ; *Chandragauda Ramgonda Patil and Another Vs. State of Maharashtra and Others*, ; *Allahabad Development Authority Vs. Nasiruzzaman and Others*, ; *State of Kerala and others Vs. M. Bhaskaran Pillai and another*, ; *M. Ramalinga Thevar Vs. State of Tamil Nadu and Others*, ; *The Printers (Mysore) Ltd. Vs. M.A. Rasheed and Others*, ; *Bangalore Development Authority and Others Vs. R. Hanumaiah and Others*, ; & *Govt. of A.P. and Another Vs. Syed Akbar*, .

19. Thus, it is evident that the land so acquired can not be restored to the tenure holder/person interested even if it is not used for the purpose it was originally acquired, and since it is being used for other public purpose. The proceedings cannot be withdrawn/abandoned under the provisions of the Act or Section 21 of the General Clauses Act, once the possession of the land has been taken and the land has vested in State free from all encumbrances. (Vide *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, ; *Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma*, ; and *Rajasthan Housing Board and Others Vs. Shri Kishan and Others*, ).

20. The meaning of word "vesting" has been considered time & again. In *Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust*, , the Apex Court held that the meaning of word "vesting" varies as per the context of the Statute in which the property vests. So far as the vesting under Sections 16 and 17 of the L.A. Act is concerned, the Court held as under:

...the property acquired becomes the property of Government without any condition or limitations either as to title or possession. The legislature has made it clear that vesting of the property is not for any limited purpose or limited duration.

21. "Encumbrance" actually mean the burden caused by an act or omissions of

man & not that created by nature. It means a burden or charge upon property or a claim or lien on the land. It means a legal liability on property. Thus, it constitutes a burden on the title which diminishes the value of the land. So far as the provisions of the land acquisition Act are concerned, the word "encumbrance" means the interest in respect of which compensation has been made or could have been claimed. These examples of "encumbrance" includes a lease or a mortgage, securities, servitudes & trust etc. (Vide The Collector of Bombay Vs. Nusserwanji Rattanji Mistri and Others, ).

22. In State of Himachal Pradesh Vs. Tarsem Singh and Others, , the Apex Court held that the terminology "free from all encumbrances" used in Section 16 of the L.A. Act is wholly unqualified and would include within its compass "all rights, title and interests including easementary rights" and stands extinguished when the title vests in the H.P. State Electricity Board and Others Vs. Shiv K. Sharma and Others, , the Apex Court held that when the land vests in the State free from all encumbrances, it does not include the easementary rights.

Thus, "free from all encumbrances" means vesting of land in the State without any burden or charge on it.

23. In Secretary of State Vs. Amulya Charan Banerjee and Others, , the Calcutta High Court considered the issue involved herein as to whether after acquisition of the land, it could be put to use for the purposes other than for what it was originally acquired and held that after acquisition, the new owners have the ordinary rights of proprietors and may use their land as they think fit for any purpose, which does not infringe the rights of others and is not inconsistent with the purposes sanctioned by the Statute, under which the land has been taken. While deciding the said case, reliance was placed on the Judgment in Maharaja Luchmeswar Singh v. The Chairman of the Darbhanga Municipality 17 IA 90, wherein the Privy Council upheld the using of land for the purpose other than the purpose for which the land had been acquired. In the said case, the land had been acquired for establishing a public Ghaat but on the part of the said land, a market was established.

24. In Gulam Mustafa and Others Vs. The State of Maharashtra and Others, in a similar situation, the Apex Court held as under:

Once the original acquisition is valid and title has vested in the Municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring Authority diverts it to a public purpose other than the one stated in the...declaration.

25. This issue has also been dealt with by this Court in the earlier Writ Petition filed by the Rourkela Local Displaced Association (supra) wherein the Judgment of the Hon'ble Supreme Court, dealing with the same acquisition proceedings in Mangal Oram and Others Vs. State of Orissa and Another, has been relied upon. In Mangal Oram it was contended on behalf of the land owners that the State

Government was not competent to acquire the land under the Act for the establishment of a steel plant. The Apex Court held that the establishment of the steel plant and ancillary industries at Rourkela should be held to answer to the definition of "development of industries". The further contention raised before the Apex Court was that part of the land which were acquired for the purpose of steel plant and ancillary industries were being used as a civil township, when the acquired land could only be used for the steel plant and ancillary industries and not for a civil township. The Court held the same as devoid of force observing as under:

The establishment of a steel plant necessarily postulates the construction of residential quarters for the workmen to be employed in the plant. In addition to that, lands would be needed for shopping areas, for schools for the children of the employees, for play-grounds, for hospitals and for residential quarters of persons opening their shops catering to the needs of the employees of the steel plant. Lands would likewise be needed for post offices, banks, clubs, parks, cinemas, roads, police stations as also for cremation and burial of the dead. Land would also be needed for a variety of other purposes and civil amenities. A township is a necessary adjunct and concomitant of a big steel plant. The fact, therefore, that part of the land which was acquired has been used for civil township would not, in our opinion, affect the validity of the acquisition of the land.

26. Reiterating a similar view in *C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others*, , the Apex Court held that if by virtue of valid acquisition of land, it stands vested in the State, thereafter claimants are not entitled to restitution of the possession on the ground that either original public purpose is ceased to be in operation or the land could not be used for any other purposes.

27. In *Bhagat Singh Vs. State of U.P. and Others*, ; *Niladri Narayan Chandradhurja (d) by L.Rs. Vs. State of West Bengal*, ; and *Northern Indian Glass Industries Vs. Jaswant Singh and Others*, , the Apex Court held that, the land use can be changed by the Statutory Authority after the land vests in the State free from all encumbrances.

28. In view of the above, the law can be summarised that once the land is acquired it vests in the State free from all encumbrances. It is not the concern of the land owner as how his land is used and whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes *persona non grata* once the land vests in the State. He has a right to get compensation only for the same. The person interested cannot claim the right of restitution of land on any ground, whatsoever.

29. The basic question which arises for consideration in this case is as to whether it is permissible for the Petitioner to challenge the acquisition proceedings and also the vires of the Act which stood repealed in 1994, at such a belated stage.

30. When a person challenges Section 4 Notification on any ground, it should be challenged within a reasonable period, and if the acquisition is challenged at a belated stage, the petition deserves to be dismissed only on this count. (Vide Hari Singh and Others Vs. State of U.P. and Others, .

31. A Constitution Bench of the Supreme Court, in Aflatoon and Others Vs. Lt. Governor of Delhi and Others, has observed as under:

...To have sat on the fence & allowed the government to complete the acquisition on the basis that notification u/s 4 and the declaration u/s 6 were valid and then to attack the notification on the grounds which were available to them at the time when the notification was published, would be putting a premium of dilatory tactics. The Writ Petitions are liable to be dismissed on the ground of laches & delay on the part of the Petitioner.

32. Same view has been taken by the Supreme Court in State of Mysore and Others Vs. V.K. Kangan and Others, ; PT. Girdharan Prasad Missir v. State of Bihar (1980) 2 SCC 83; H.D. Vora Vs. State of Maharashtra and Others, ; Bhoop Singh Vs. Union of India and others, ; Ram Chand and Others Vs. Union of India (UOI) and Others, ; State of Orissa Vs. Dhobei Sethi and Another, ; State of Maharashtra Vs. Digambar, ; State of Tamil Nadu and others etc. Vs. L. Krishnan and others etc., ; and C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others, .

33. In Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, , the Supreme Court observed as under:

If the interested person allows the grass to grow under his feet by allowing the acquisition proceedings to go on and reach its terminus in the award & possession is taken in furtherance thereof & vest in the State free from all encumbrances, the slumbered interested person would be told off the gates of the Court that his grievance should not be entertained when there is inordinate delay in filing the Writ Petition & when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications.

34. Similar view has been reiterated in State of Rajasthan and Others Vs. D.R. Laxmi and Others, , wherein the Apex Court has held that even the void proceedings need not be set at naught if the party has not approached the Court within reasonable time, as judicial review is not-permissible at a belated stage. The Apex Court held as under:

...Delay in challenging the notification was fatal and Writ Petition entails with dismissal on grounds of laches. It is thus, well-settled law that when there is inordinate delay in filing the Writ Petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications.... The order or action, if ultra vires the power, becomes void and it does not confer any right. But the action need not necessarily be set at

naught in all events. Though the order may be void, if the party does not approach the Court within reasonable, time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances.

35. Similar view has been reiterated by the Supreme Court in Northern Indian Glass Industries Vs. Jaswant Singh and Others, ; & Haryana State Handloom & Handicrafts Corporation Ltd. v. Jain School Society AIR 2004 SC 850.

36. The present petition is squarely covered by the Judgment of the Hon''ble Supreme Court in State of Rajasthan and Others Vs. D.R. Laxmi and Others, , that even if the proceedings are void, it cannot be declared so at such a belated stage. The Petitioner attained majority in 1988. No explanation could be furnished by the Learned Counsel for Petitioner as to why the Petitioner waited for more than 21 years to approach this Court. Even the earlier petition by the Rourkela Local Displaced Association was filed only in 2005.

37. In the instant case, it is not the complaint of the Petitioner that the provisions of the Act had not been followed and whether the compensation in this case has been received by anybody or not is a question of fact. No evidence has been adduced by the Petitioner to substantiate his averments that his forefathers had not received the compensation. The Act stood repealed in 1994. We are afraid at this belated stage the validity of certain provisions of the Act cannot be allowed to be questioned. More so the Petitioner has not been able to point out any specific provisions of the said Act which are claimed to be ultra vires the Constitution. The relief sought is for declaring the entire Act as ultra vires & unconstitutional.

38. In view of the above, we do not find any force in the submissions of the Learned Counsel for Petitioner. The petition is dismissed.

I. Mahanty, J.

39. I agree.