

(2019) 01 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 28594 Of 2017

Om Parkash Dahiya & Others

APPELLANT

Vs

State Of Haryana & Others

RESPONDENT

Date of Decision : 10-01-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6, 17

Constitution of India, 1950 — Article 31, 31(1), 226, 227, 300A

Citation : (2019) 01 P&H CK 0037

Hon'ble Judges : G.S. Sandhawalia, J

Bench : Single Bench

Advocate : Vikram Singh, Sudeep Mahajan

Judgement

G.S.Sandhawalia, J

Present writ petition has been filed under Articles 226 and 227 of the Constitution of India, for setting aside the order dated 12.10.2017 (Annexure P-7) passed by the Deputy Commissioner, Sonapat and for directing the respondents to pay compensation to the petitioners for the land which has been used for the widening of the road and for making the drain on both sides of the road and for construction of cemented pavement, as the same was used without payment to the petitioners.

The order passed by the Deputy Commissioner, justifying the non-grant of compensation, would go on to show that there was consolidation path of 22' belonging to the Government and the balance 44' belonged to the landowners. The said portion of the land of 66' was utilized for widening/strengthening of the road and providing the side drain on the Gohana to Sisana Road, District Sonapat. The denial of compensation has been on the ground that landowners had happily parted with the portion of their land for the improvement and connectivity and therefore, they were now turning greedy and asking for payment whereas their ancestors had never agitated, as such and therefore, it was held that the petitioners were not entitled for compensation for the land

utilized for widening the road.

In the opinion of this Court, the Deputy Commissioner, while passing the impugned order, has not taken into consideration the provisions of Article 300-A of the Constitution of India and the same cannot be said to be justified in any manner. Article 300-A reads as under:

"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."

State Counsel, on the other hand, has placed reliance upon judgment passed by the Apex Court in State of Maharashtra Vs. Digambar AIR 1995 SC 1991, to submit that the land was in possession of the State and the landowners had never agitated.

The facts of the case, however, shows a totally different position. A perusal of the notification dated 20.07.2011/02.08.2011 (Annexure P-1), issued under Section 4 of the Land Acquisition Act, 1894 (for short, the 'Act') would go on to show that it was issued by the Public Welfare Department (Building & Roads Branch) Circle Jhajjar, for the public purpose, as noticed above, which was notified on 02.08.2011 (Annexure P-2). A communication from the Deputy Commissioner dated 20.02.2014 would show that Section 6 notification was issued on 24.10.2011 and the Divisional Price Committee had fixed the rate @ Rs.25,00,000/- per acre on 02.02.2012. A demand of Rs.3,64,18,859/- was made on 23.08.2013, but on account of non-payment, the award had lapsed on 23.10.2013. The Deputy Commissioner also noticed that there was an agitation in the District on account of the non-payment of the compensation and he had requested to arrange a meeting under the chairmanship of the Financial Commissioner-cum-Chief Secretary along with the agitators so that a rededcision could be taken with regard to the lapse of the award and the problem could be resolved.

The petitioners served a legal notice dated 25.05.2016 (Annexure P-3) for payment of compensation and thereafter, approached this Court in CWP-15581-2016 titled Om Parkash & others Vs. State of Haryana & others. Same was disposed of on 04.08.2016 (Annexure P-4) by noticing that it was a question of fact whether the compensation has been paid and the Deputy Commissioner was asked to ascertain the correct facts and determine the claim of the petitioners, in accordance with law, within a period of 4 months. Resultantly, the impugned order has been passed on the basis of the applications filed before the Deputy Commissioner.

In the written statement filed, justification has been made that when there is sufficient Road Of Way (ROW) available at site which was in possession of the respondent-Department and therefore, no land acquisition was required as Court cases had been filed claiming Road Of Way.

Neither any details have been mentioned of the Court cases or the decision, as

such, though a plea has been taken that they were decided in favour of the Government on account of adverse possession. Accordingly, a plea has been taken that the road was constructed for the welfare of the public and for the villagers' benefit and therefore, justification has been made.

Reliance placed by the State Counsel upon the judgment passed by this Court in CWP-12271-2017 titled Kamru & another Vs. State of Haryana & another, on 17.10.2018, whereby similar relief has been denied, while placing reliance upon the judgment of the Apex Court in Digambar (supra) and the judgment of the Division Bench in CWP-4790-2015 titled Dharambir & others Vs. State of Haryana & others, decided on 03.09.2015, is misplaced, in the facts and circumstances.

Similarly, reliance upon the the Division Bench judgment in Azad Singh Vs. State of Haryana & others 2017 (3) PLR 323, also is without any basis. In the case of Kamru (supra), the landowners had filed writ petition for the first time, after a period of 45 years, after 1971, alleging that in District Nuh, respondents had constructed roads without paying the compensation. The record of the acquisition was not locatable and that was the defence taken by the State. It was submitted that the fathers of the petitioners had supported and never raised any objection, as such and in such circumstances, this Court had declined to exercise its extraordinary writ jurisdiction under Articles 226 and 227 of the Constitution of India. Similar is the position in the other cases.

In the present case, the facts are totally different. The Government has initiated Section 4 proceedings on 20.07.2011, for the purpose of widening the road. The amount was also demanded from the said authorities to the tune of over Rs.3 crores and on account of the negligence and statutory lapse, the award was not passed within the time-frame. The State, thereafter, had taken a total somersault and started taking the defence of adverse possession.

The Apex Court in State of Haryana Vs. Mukesh Kumar & others 2011 (10) SCC 404 has held that it does not lie in the mouth of the State to take the plea of adverse possession. The relevant portion of the judgment read as under:

"45. Reverting to the facts of this case, if the Police department of the State with all its might is bent upon taking possession of any land or building in a clandestine manner, then, perhaps no one would be able to effectively prevent them.

46. It is our bounden duty and obligation to ascertain the intention of the Parliament while interpreting the law. Law and Justice, more often than not, happily coincide only rarely we find serious conflict. The archaic law of adverse possession is one such. A serious re-look is absolutely imperative in the larger interest of the people.

47. Adverse possession allows a trespasser - a person guilty of a tort, or even a crime, in the eyes of law - to gain legal title to land which he has illegally

possessed for 12 years. How 12 years of illegality can suddenly be converted to legal title is, logically and morally speaking, baffling.

This outmoded law essentially asks the judiciary to place its stamp of approval upon conduct that the ordinary Indian citizen would find reprehensible.

48. The doctrine of adverse possession has troubled a great many legal minds. We are clearly of the opinion that time has come for change.

49. If the protectors of law become the grabbers of the property (land and building), then, people will be left with no protection and there would be a total anarchy in the entire country.

50. It is indeed a very disturbing and dangerous trend. In our considered view, it must be arrested without further loss of time in the larger public interest. No Government Department, Public Undertaking, and much less the Police Department should be permitted to perfect the title of the land or building by invoking the provisions of adverse possession and grab the property of its own citizens in the manner that has been done in this case.

51. In our considered view, there is an urgent need for a fresh look of the entire law on adverse possession. We recommend the Union of India to immediately consider and seriously deliberate either abolition of the law of adverse possession and in the alternate to make suitable amendments in the law of adverse possession. A copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps in accordance with law.

52. This Special Leave Petition is dismissed with costs of Rs.50,000/- (Rupees Fifty Thousand only) to be paid by the State of Haryana for filing a totally frivolous petition and unnecessarily wasting the time of the Court and demonstrating its evil design of grabbing the properties of lawful owners in a clandestine manner. The costs be deposited within four weeks from the date of pronouncement of this judgment. In this petition, we did not issue notice to the defendants, therefore, we direct that the costs be deposited with the National Legal Services Authority for utilizing the same to enable the poor litigants to contest their cases."

The Constitution Bench in *K.T.Plantation Pvt. Ltd. & another Vs. State of Karnataka* 2011 (9) SCC 1, while examining the provisions of Article 300-A, which was inserted by the 44th Amendment and looking at the principles of Eminent Domain, held that the payment of compensation is a constitutional requirement. Relevant portions of the judgment reads as under:

"118. We have found that the requirement of public purpose is invariably the rule for depriving a person of his property, violation of which is amenable to judicial review. Let us now examine whether the requirement of payment of compensation is the rule after the deletion of Article 31(2). Payment of compensation amount is a constitutional requirement under Article 30(1A) and

under the 2nd proviso to Article 31A(1), unlike Article 300A. After the 44th Amendment Act, 1978, the constitutional obligation to pay compensation to a person who is deprived of his property primarily depends upon the terms of the statute and the legislative policy. Article 300A, however, does not prohibit the payment of just compensation when a person is deprived of his property, but the question is whether a person is entitled to get compensation, as a matter of right, in the absence of any stipulation in the statute, depriving him of his property.

xxxx xxxx xxxx

122. Article 300A would be equally violated if the provisions of law authorizing deprivation of property have not been complied with. While enacting Article 300A Parliament has only borrowed Article 31(1) [the "Rule of law" doctrine] and not Article 31(2) [which had embodied the doctrine of Eminent Domain]. Article 300A enables the State to put restrictions on the right to property by law. That law has to be reasonable. It must comply with other provisions of the Constitution. The limitation or restriction should not be arbitrary or excessive or what is beyond what is required in public interest. The limitation or restriction must not be disproportionate to the situation or excessive. The legislation providing for deprivation of property under Article 300A must be "just, fair and reasonable" as understood in terms of Articles 14, 19(1)(g), 26(b), 301, etc. Thus in each case, courts will have to examine the scheme of the impugned Act, its object, purpose as also the question whether payment of nil compensation or nominal compensation would make the impugned law unjust, unfair or unreasonable in terms of other provisions of the Constitution as indicated above. At this stage, we may clarify 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.

123. Right to property no more remains an overarching guarantee in our Constitution, then is it the law, that such a legislation enacted under the authority of law as provided in Article 300A is immune from challenge before a Constitutional Court for violation of Articles 14, 21 or the overarching principle of Rule of Law, a basic feature of our Constitution, especially when such a right is not specifically incorporated in Article 300A, unlike Article 30(1A) and the 2nd proviso to Article 31A."

In *Darshan Lal Nagpal (Dead) by LRs Vs. Government of NCT of Delhi and others* 2012 (2) SCC 327, it was held that the degree of care taken should be greater by the State when the power of Section 17 is invoked under the urgency provisions. Relevant portion reads as under:

"14. What needs to be emphasized is that although in exercise of the power of eminent domain, the State can acquire the private property for public purpose, it must be remembered that compulsory acquisition of the property belonging to a private individual is a serious matter and has grave repercussions on his Constitutional right of not being deprived of his property without the sanction of law - Article 300A and the legal rights. Therefore, the State must exercise this power with great care and circumspection. At times, compulsory acquisition of land is likely to make the owner landless. The degree of care required to be taken by the State is greater when the power of compulsory acquisition of private land is exercised by invoking the provisions like the one contained in Section 17 of the Act because that results in depriving the owner of his property without being afforded an opportunity of hearing."

In *Tukaram Kana Joshi & others thr. Power of Attorney Holder Vs. M.I.D.C. & others* 2013 (1) SCC 353, it was held that it is the State's duty, as such, even to rehabilitate such persons who are deprived of their immovable properties. The judgment of the Bombay High Court was set aside whereby the relief had been denied on the ground of delay. Relevant portions of the judgment read as under:

"14. The High Court committed an error in holding the appellants non-suited on the ground of delay and non-availability of records, as the court failed to appreciate that the appellants had been pursuing their case persistently. Accepting their claim, the Statutory authorities had even initiated the acquisition proceedings in 1981, which subsequently lapsed for want of further action on the part of those authorities. The claimants are illiterate and inarticulate persons, who have been deprived of their fundamental rights by the State, without it resorting to any procedure prescribed by law, without the court realising that the enrichment of a welfare State, or of its instrumentalities, at the cost of poor farmers is not permissible, particularly when done at the behest of the State itself. The appellants belonged to a class which did not have any other vocation or any business/calling to fall back upon, for the purpose of earning their livelihood.

15. Depriving the appellants of their immovable properties, was a clear violation of Article 21 of the Constitution. 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. The non-fulfillment of their obligations would tantamount to forcing the said uprooted persons to become vagabonds or to indulge in anti-national activities as such sentiments would be born in them on account of such ill-treatment. Therefore, it is not permissible for any welfare State to uproot a person and deprive him of his fundamental/constitutional/human rights, under the garb of industrial development.

16. The appellants have been deprived of their legitimate dues for about half a century. In such a fact-situation, we fail to understand for which class of citizens, the Constitution provides guarantees and rights in this regard and what is the exact percentage of the citizens of this country, to whom Constitutional/statutory

benefits are accorded, in accordance with the law.

17. The appellants have been seriously discriminated against qua other persons, whose land was also acquired. Some of them were given the benefits of acquisition, including compensation in the year 1966. This kind of discrimination not only breeds corruption, but also dis- respect for governance, as it leads to frustration and to a certain extent, forces persons to take the law into their own hands. The findings of the High Court, that requisite records were not available, or that the appellants approached the authorities at a belated stage are contrary to the evidence available on record and thus, cannot be accepted and excused as it remains a slur on the system of governance and justice alike, and an anathema to the doctrine of equality, which is the soul of our Constitution. Even under valid acquisition proceedings, there is a legal obligation on the part of the authorities to complete such acquisition proceedings at the earliest, and to make payment of requisite compensation. The appeals etc. are required to be decided expeditiously, for the sole reason that, if a person is not paid compensation in time, he will be unable to purchase any land or other immovable property, for the amount of compensation that is likely to be paid to him at a belated stage."

This Court in *Kuldeep Kaur & others Vs. Punjab State & others* 2018 (3) PLR 636, also deprecated the fact that the State cannot possess the land without following the due process of law and rejected the claim that it could take the plea of adverse possession and thus, allowed the Regular Second Appeal that the landowners were entitled to take-over the vacant possession, or in the alternative, to take compensation, in accordance with law. Relevant portion of the judgment reads as under:

"28. The matter can be viewed from another angle also. It is a case of the respondents that the road was constructed without any order, scheme and payment of compensation to the land-owners, somewhere in the year 1956-57. At that time right to property was a fundamental right under Article 31 of the Constitution of India as it was before 44th Amendment of 1978 i.e. original Article 31.

29. A classical doctrine of Eminent Domain gives the State unfettered power to acquire the private property. This doctrine enunciates that the government has inherent right to take and appropriate the private property belonging to individual citizens for the public use. It is offspring of political necessity. This right of the State rests upon the famous maxim *Salus populi est superema lex* which means that the welfare of the people or the public is the paramount law and also on the maxim *necessita public major est quam*, which means "public necessity, is greater than private". This power is subject to limitations provided in the Constitution under the original Article 31 and new Article 300-A.

30. Original Article 31(1) provided that no person shall be deprived of his property except by authority of law. This means that the State had authority to take away the property of an individual but it could do so only by authority of

law. Although, this Article was omitted and new Article 300-A has introduced in the Constitution which converted the right to property into a legal right by amendment 44th of the Constitution.

31. The word 'law' as used in Article 300-A makes it clear that the deprivation of the property can only be made by the authority of law, be it an Act of Parliament or State Legislature or a rule or statutory order having force of law, and not by an executive fiat or an order.

32. As per the version of State, road was constructed somewhere six decades ago i.e. prior to the 44th Amendment. At that time right to property was a fundamental right. Thus, the grabbing of the property of the plaintiffs was unconstitutional and illegal. Even after omitting of Article 31 by way of 44th Amendment, the right to property of the plaintiffs does not cease to exist and still the same is available as a constitutional right.

33. Viewing from all the angles, this court is of the view that the construction of road in the agricultural lands of the poor farmers in an unfair and arbitrary manner was absolutely illegal and it deprive the plaintiffs of their rights to the property. In this view of the matter, the State has no concern with a suit property and it cannot claim right of ownership thereon.

34. The precedents placed on record by the learned State counsel are distinguishable on facts and ratio decidendi laid therein is not applicable to the facts of the case.

35. On the analysis of the evidence, this court is of the view that the State has no authority to grab the property of a citizen without adopting due procedure of law and by following the provisions contained in the Land Acquisition Act. Therefore, the appellants are also entitled to seek possession of the suit land and alternatively to seek compensation.

36. Learned courts below failed to appreciate the evidence available on record properly and wrongly gave finding that the defendants had become owner of the suit land by way of adverse possession. Both the courts below also failed to take notice that no material was placed on record with regard to the date or time when road was constructed; that even no scheme was chalked out by the defendants to raise a road in the agricultural lands of the plaintiffs, equally, there is not an iota of evidence if the plaintiffs or their predecessors-in-interest had given consent for carving a road in their lands. Rather, oral evidence adduced by the defendants is self contradictory and not acceptable. Thus, the findings of the learned trial court to this effect are hereby set aside and reversed."

The above judgments squarely cover the issue against the State. Resultantly, the impugned order dated 12.10.2017 (Annexure P-7) is quashed. The landowners are not asking for the possession of the land and therefore, the State shall initiate proceedings for acquisition of the land, in accordance with law, within a period of 3 months from the receipt of the certified copy of this order and finalize

the same, within a further period of 3 months, thereafter.