

(2016) 09 TP CK 0009
In the Tripura High Court
Case No : W.P. (C) No. 341 of 2014

Shri Jogendra Debbarma

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 29-09-2016

Acts Referred:

Constitution of India, 1950 — Article 300A

Citation : (2017) AIRCC 803

Hon'ble Judges : Mr. S. Talapatra, J.

Bench : Single Bench

Advocate : Ms. P. Dhar, Advocate, for the Petitioners; Mr. B.C. Das, Advocate General, Ms. A.S. Lodh, Addl. G.A., Mr. B. Majumder, C.G.C., Mr. B. Dutta and Mr. K.K. Pal, Advocates, for the Respondents

Final Decision : Allowed

Judgement

Mr. S. Talapatra, J.—In *Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others*, reported in AIR 1978 SC 851, Krishna Iyer, J, speaking for the bench, has observed as under:

"Once we understand the soul of the rule as fair play in action-and it is so-we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation; nothing more-but nothing less."

2. This court is reminded of that passage when confronted with the challenge raised by the petitioners in this writ petition. The petitioners have inherited some land situated in Mouja Brajapur, Tehsil Uttar Charilam, Sub-Division: Bishalragh,

District: Sepahijala and comprised in Khatian No.1659/1 and 1659/2. Without any process or acquisition or without any consent of the petitioners, their land has been taken over, occupied and thereafter the road called "Chowmuhani to Chandrapara" [Road No.L048] has been constructed.

3. The petitioners have discovered the information gathered from a disclosure made under Right to Information Act on 12.07.2013 that the respondent No.8, Bishalgarh Panchayat Samiti has given a declaration that for the proposed link road as per ANN1 that the land will be made available free of cost along the alignment of the roads. In the said certificate [Annexure-A/3 to the writ petition] it has been further asserted as under:

"Moreover, it is proclaimed by the undersigned in case any problem arises in future for taking up the construction work of proposed roads, the Panchayat Samiti will take up this matter with amicable solution in heart and soul."

4. The petitioners served a notice on 07.03.2014 to the various authorities on 07.03.2014 [Annexure-A/5 to the writ petition] stating that even though their land has been utilized for construction of the road "Chowmuhani to Chandrapara" [Road No.LO48] but they have not been paid any compensation even though the utilized land consists largely of cultivated paddy land which is one of their source of livelihood. In the paragraph-6 of the said notice, it has been asserted that:

"That, taking over of the lands belonging to my clients above named as Notice Givers for the construction of the road "Chowmuhani to Chandrapara (Road No. L048)" without paying a single penny to my clients as compensation for depriving them of their livelihood is unconstitutional and violative of the fundamental rights guaranteed by the Constitution of India to every citizen of India."

5. By the said notice, sent through the one advocate, a fortnight time was set up for the response by the authorities mentioned in the same notice. When they did not make any response, the petitioner have approached this court urging for initiating the land acquisition proceeding for the land that has been utilized in construction of the road "Chowmuhani to Chandrapara" [Road No.LO48] under the Pradhan Mantri Gram Sadak Yojna (PMGSY) within a reasonable time for purpose of providing the just compensation. The petitioners have filed their document being the record of right, Khatian No.1659/1 and 1659/2 to show that the land which has been utilized without any acquisition or consent of the petitioner originally belonged to their father Harinanda Debbarma who died on 25.12.1971 and the petitioners have become the owner that land by inheritance.

6. The respondent No.8, Bishalgarh Panchayat Samity has filed their reply separately and stated, inter alia, that the writ petition is not maintainable inasmuch as according to the guidelines of PMGSY, no fund is provided for acquisition of land, rather it is the responsibility of the State Government to ensure that the lands are available for the proposed road works. By adopting "this principle", when the State Government acting through the nodal agency,

PWD (R & B) and the executive agency NBCC had taken up the proposed road work with the "assent" of the land owners, for the land in the proposed alignment they have not paid any compensation for land for construction of the road, namely "Chowmuhan to Chandrapara" and it is further stated that the land owners at the time of construction and after the construction of the proposed road work did not raise any objection before the Panchayat Samiti or any other authority. On such premises, they denied the allegations of the petitioners. It has been further asserted in the said reply by the respondent No.8 that on scrutiny, it revealed that the disputed land in question for construction of the road from "Chowmuhan to Chandrapara" [Road No.LO48] [PMGSY] falls under the jurisdiction of Tripura Tribal Areas Autonomous District Council [TTAADC] which is not under the jurisdiction of Bishalgarh Panchayat Samiti. It has been further revealed in the reply that the said road was sanctioned in the year 2011-12 as per the report and the certificate in question was signed by the Vice-Chairman of the Panchayat Samiti on 05.12.2006. In the reply, the Panchayat Samiti did not disclose how they were competent to issue that certificate [Annexure-A/3 to the writ petition] though they have categorically contended that the discharge certificate was issued by the Panchayat Samiti even though the road was not under the jurisdiction of the Bishalgarh Panchayat Samiti.

7. The respondents No.3 to 7 did not file a separate counter-affidavit. The state-respondents by their counter-affidavit did not give any reason whatsoever under what authority the land of the petitioners were included in "the land" for construction of the said road as stated. On the contrary, they have advanced some strange reasons in the paragraph-7 of their reply. For purpose of reference, the entire paragraph-7 is reproduced below:

"That the petitioner filed the instant case for acquisition proceeding as per the Lands Acquisition Act, 2013 (for short "the Act") for the construction of the road Chowmuhan to Chandrapara under the Pradhan Mantri Gram Sadak Yojna.

In response to the claim of the petitioners the answering respondents state that according to the guidelines of Pradhan Mantri Sadak Yojna (for short PMGSY) which was launched in the year 2000 a scheme was formed for development of livelihood of the people who are residing in the Rural areas by way of proceeding proper road connectivity which in no case deprives any one on their basic right as contended by the petitioner. It is stated that the scheme would not provide fund for acquisition of the land. Rather it is the responsibility of the State Government/District Panchayat to ensure that the lands are available for taking up the proposed road works by adopting the principle the State Govt. with his Nodal Agency PWD (R & B) and Executive Agency NBCC had taken up the works everywhere through/with the assent of the land owners whose lands are within the assent of the land owners whose lands are within the proposed alignment. Here in the instant case and as per the record available to works was started in the month of March, 2012 and completed in the month of June, 2013 and thus it is crystal that the petitioners were fully aware about this works and they did not

raise any objection during execution of the works. Now after lapse of one year the petitioners filed the case before the learned court to make a turmoil situation and to disrupt the Govt. work. I state that implementation of the PMGSY works in West (Former) and South Tripura District has been entrusted to NBCC limited through a tripartite agreement between NBCC Ltd. PWD Govt. of Tripura and Ministry of Rural Development, Govt. of India on 27.04.2004. The land required for the purpose of construction of PMGSY road is the responsible of the concerned Zilla Parisad/Panchayat Samity. In the instant case a certificate was issued by the Vice Chairman, Bishalgarh, Panchayat Samity at the end of the preliminary Survey where the road alignment followed during the Survey was found to be correct. (A copy of the Survey along with the report is annexed herewith and marked as Annexure-R-1). As such, in the instant case as the road was constructed for the purpose of implementation of PMGSY scheme no such fund was available for acquisition of the lands and the answering respondents cannot be compensated to the petitioner for their rights."

8. From a reading of this paragraph two aspects which are relevant and noticeable are that (i) the petitioners had given their "assent" to utilise the said land and (ii) they did not raise any objection during execution of the work. Now after lapse of one year this writ petition has been filed "to make a turmoil" and "to disrupt the Government work". They have boasted that a tripartite agreement between NBCC, PWD, [Govt. of Tripura] and Ministry of Rural Development, was arrived on 27.04.2004. Those respondents have further asserted that the land required for purpose of construction of PMGSY road is the responsibility of the concerned zilla parishad. After the preliminary survey was conducted the Bishalgarh Panchayat Samiti issued that certificate and thereafter the said road was constructed for purpose of implementation of the PMGSY Scheme. According to those respondents, no fund is available for acquisition of the land and those respondents cannot take the responsibility of compensating the petitioner for their right. Though they have repeatedly stated that the "assent" of the petitioners were taken but not a piece of paper in this regard has been furnished before this court. The said respondents have further stated that in terms of the judgment and order delivered in W.P.(C) No. 146 of 2014 [Bihari Debbarma & Ors. v. Union of India & Ors.] the Empowered Officer as the Chief Engineer PWD in the similar circumstances, had issued instruction to the General Manager, NBCC Limited, the Executive Agency to consolidate that the Panchayat Samiti/Zilla Parishad was to settle the dispute and if failed to withdraw all construction from the disputed land in order to make the land free. The State Government has categorically stated that they do not provide any fund for acquisition of land utilised for construction of the roads under PMGSY Scheme. According to them, since the petitioners did not raise any objection, that conduct has to be construed as their assent. It has been stated further that:

"Use of cultivable paddy land for the said road as alleged will not make any adverse affect on the livelihood of the petitioners as the petitioners also confessed that agriculture is one of their source of livelihood and therefore, it is

contemplated that the petitioners are passing their days by other means also."

9. This court is taken by surprise that the State of Tripura has taken such stand after utilising land of some marginal tribal farmers. To mitigate that issue this court had given series of accommodations and passed several orders in the course of hearing. On 16.09.2015, this court passed the order as under:

"Ms. A.S. Lodh, learned Addl. G.A. is directed to produce all the records relating how the private lands of the petitioners have been utilized by the respondent No.9 for constructing a road under the PMGSY Scheme. Since it does not appear from the counter affidavit how the assignment or transfer of the land was made in consonance with the stipulation made in the scheme, all original records be produced before this Court to meet that aspect.

If on inspection, it appears that without any proper assignment of the land the road has been constructed, it is made clear that this Court will take a very serious view this time."

10. On 22.09.2015, Mr. B.C. Das, learned Advocate General appearing for the State-respondents had assured this court that the necessary corrective measures or the necessary action would be taken by the State-respondents and what steps had been taken be informed by the State-respondents by filing an affidavit by the next date. Again, an accommodation was made on 30.11.2015, but without any positive response from the state in consequence with the assurance made by the learned Advocate General. Finally on 17.12.2015, the following order was passed by this court:

"Ms. A.S. Lodh, learned Addl. Govt. Advocate has placed one note by the Secretary Law (IC) dated 15.12.2015, where it has been categorically mentioned that the dispute is likely to be settled soon and for that another one month time is urgently required. Even Mr. B.C. Das, learned Advocate General who was requested by this court at one point of time to appear in this matter is not present, as informed by Mr. B. Dutta, learned counsel that he would not be available before 14th January, 2016.

Having regard to these aspects, this court is allowing further accommodation reluctantly. However, the matter would positively be taken on 18.01.2016.

Ms. P. Dhar, learned counsel appearing for the petitioners has made serious allegations that the petitioners in this petition are under serious duress. They are pressurised to come to a settlement or to withdraw the petition. In the previous occasion also this court has strongly expressed its annoyance that if such practise goes on, this court will be bound to take such stern action which usually this court does not take.

Be that as it may, the petitioners are permitted to file the appropriate affidavit forthwith stating how and by whom they were pressurised, so that appropriate action can be taken by this court. If the allegations are true, those are nothing short of interference with the process of justice.

The File where the note as produced is available is returned."

11. Again on 18.01.2016, this court passed the following order, where the State was asked to restrain its officers from pressurising the petitioners to withdraw the writ petition :

"For continuation of hearing, list the matter on 10.03.2016 at the request of Mr. B.C. Das, learned Advocate General appearing for the respondents.

Mr. Das, learned Advocate General has assured this court again that the consultations are on for finding out a long term resolution in such matters.

Be that as it may, the court on noticing the facts involved in this writ petition, has already expressed annoyance that how the State could function like this while dealing with the land of the citizen.

It is the duty of the State to acquire or require the land in accordance with law for public purpose. Since Mr. Das, learned Advocate General has assured this court that the State is sincerely inclined to have a resolution on the matter, this accommodation has been made despite reluctance. That apart, one of the petitioners, namely Sri Amalendu Debbarma, has filed an affidavit alleging that the petitioners are being seriously pressurised by some Government officers having aided by other people to withdraw the writ petition.

This is a very serious issue. The respondents are directed to file their response in this regard by the next date. It is made clear that if it is found that those officers without being authorised by the State have been indulging in such activities, this court would take stern action on those persons on the basis of the affidavit that would be filed by the State.

A copy of this order be furnished to Ms. A.S. Lodh, learned Addl. Govt. Advocate for doing her needful."

Even thereafter, accommodations were made on 10.03.2016, 21.03.2016 and 04.04.2016, as asked by the petitioners. The petitioners have filed one rejoinder on 12.04.2016 and on 02.05.2016, the hearing was complete. With the rejoinder the petitioners have filed the scheme and guidelines as notified under No. P-12025/8/2001-RC (Pt) dated 02.11.2004 for Pradhan Mantri Gram Sadak Yojna (PMGSY) [Annexure-A/6 to the rejoinder]. It has been provided that at the paragraph 6.12 as under:

"It will be the responsibility of the State Government/District Panchayat to ensure that lands are available for taking up the proposed road works. A Certificate that Land is available must accompany the proposal for each road work. It must be noted that the PMGSY does not provide funds for Land Acquisition. This does not however mean that acquisition cannot be done by the State Government at its own cost. The State Government may also lay down guidelines for voluntary donation, exchange or other mechanisms to ensure availability of land. The process of making land available for the road works

should sub-serve the common good and also be just and equitable. The details of land made available should be reflected in the local land records to avoid dispute."

[Emphasis supplied]

12. It is, therefore, incorrect to state that for purpose of the PMGSY road works no land can be acquired as per the scheme. However, it is the responsibility of the State Government or the District Panchayat to arrange for the land by way of voluntary donation exchange or other mechanism including by the acquisition process from the fund that might be made available by the State Government. But at the time of utilising the land of the petitioners, no part of the said guidelines has been followed and this is the reason why not a chit of paper has been filed with the reply.

13. On the contrary, by filing his statement on oath on 17.12.2015 one of the petitioners namely Amalendu Debbarma has stated how without their consent the survey of the land had taken place and sometime in November, 2015 one Panchayat Secretary had approached the petitioner namely Jogendra Debbarma to meet the Sub-Divisional Magistrate, Bishalgarh for compromising the case or withdraw the same.

14. The petitioners have also stated in their rejoinder as under:

"That, on 15th day of December 2015, one Dilip Debbarma son of late Lalu Debbarma resident of Rangamatia, Parabachai who is known to us came to our residents with one Tapan Debnath, member of the Mandop Killa Gaon Sabha. Shri Tapan Debnath asked us to sign a paper immediately in which he claimed was written the fact that a compromise was being drawn up and in view of the same a prayer seeking time from this Hon'ble Court be made so that the terms of the compromise may be finalized and settled. We the present Petitioners refused to sign the said document and asked him to approach our advocate if there was any offer for compromise. That, during the conversation with us Shri Tapan Debnath repeatedly told us that the state would not pay any compensation to us and we ought to compromise and withdraw our case so that we do not make any ill will with the local residents our and neighbouring areas.

That, I say that Shri. Amit Debbarma son of Late Narendra Debbarma, a member of the Rangamatia Gaon Sabha personally approached the Petitioner No.1 at Agartala with the manager of the contractor executing the road work Shri. Kishore Roy. The manager did not introduce himself and when the Petitioner No.1 asked his name he avoided introducing himself. That Shri. Amit Debbarma again asked the Petitioner No.1 to withdraw the case and convince his brothers who are me and the other petitioners as our case has caused a lot of inconvenience in the development work being executed in the area and we would be responsible if no other development work is taken up in our area.

That, I say that my nephew Shri Puniram Debbarma son of Shri. Bhanu

Debbarma who is cultivating the lands at Sutamura located near the road has been repeatedly approached by Shri. Subin Debbarma son of Late Akhil Debbarma, member of the "Dwitiya Sutamura Gaon Sabha", to withdraw the case as they would not get anything by continuing their litigation. That, even today morning the 17.12.2015, when we were on our way to be present in the Court, Shri. Subin Debbarma came to us and told us that we should withdraw the case today as our case will cause great dispute with our villagers as we were depriving the villagers from further development projects being undertaken in the area.

That, I say that on 15.12.2015 three people who claimed to be employees of the Sub Divisional Magistrate, Bishalgarh came to our residence at about 2 PM along with Shri. Bijoy Debbarma son of Late Banamali Debbarma asking us to withdraw the case immediately. They refused to give their names and they also refused to show any documents of identity. Rather the visitors started to tell us that other petitioners had to withdraw their cases as the local residents had turned against them and in our case the same would happen again as they would inform the villagers that no government projects will be undertaken in our village as we had filed a case against the State. They demanded that the Petitioners should withdraw their case on the 17th day of December when the matter would be listed before this Hon''ble Court. That they left when the Petitioners asked them to talk to their advocate from the phone of the Petitioners. That, after this visit, we, the Petitioners are feeling insecure as we believe that unless we withdraw our case, we would be further pressurised to do the same."

15. One additional counter-affidavit has been filed by the respondents No.3, 5, 6 and 7, pursuant to the direction of the high court and they have stated as under:

"At the outset, I submit that State would not indulge through any officer to pressurize any litigant to withdraw cases. The allegation labelled in the affidavit is not at all a fact to the notice of the Revenue Department dealing with the case. State will not defend any officer, if would pressurize the petitioners to withdraw the writ petition. I further submit that it is not an act of the State to pressurizing someone to withdraw the case. Hon''ble court is one of limbs of the State for providing justice to citizen. If a citizen wins a case lawfully, it is Government would boast that its citizen gets justice. This is the philosophy of our democratic polity."

16. Even those respondents have denied that they did send any team for measuring the land for purpose of construction of the road under reference under PMGSY. Some individual''s act cannot be attributed as the act of the government. The respondents have asked the petitioner to approach the police if such incident occurred at all. In the para-13 of the said affidavit, it has been stated as under:

"The Government has considered pros and cons of the case and it has come to conclusion that land has been occupied on voluntary surrender by the parties and the officers concerned has done [sic.] the road constructed through NBCC

without preparing documentation. Notwithstanding the fact that the petitioners have consented for using their land for road construction for which they will be benefited, now at the instance of some touts in the villages, those people who voluntarily surrendered their land for construction of village road have been making volta face and claiming illegal encroachment.

The Government has considered its exchequer which does not permit to acquire the land through process of law because State is bereft of any fund for purchase of plot of land for construction of road. Since State has no fund to be utilized for the purpose, it has taken a decision that the land would be restored to its original position and would be handed over to the petitioners."

17. The state boasts of the constitutional philosophy. When this court sought the response from Mr. B.C. Das, learned Advocate General how to house the impugned action in the realm of "the constitutional philosophy", learned Advocate General has simply stated he has no reasonable and conscientious rejoinder in this matter. The court may pass any order in the circumstances.

18. Ms. P. Dhar, learned counsel appearing for the petitioners has submitted that the State has become the facilitator of the land of the poor tribal farmers by agencies those do not have any authority to require or acquire any land for any Government project. Ms. Dhar, learned counsel appearing for the petitioners has contended further that there was no voluntary surrender by the petitioners. The occupation was coercive under the aegis of the state machinery. Their reply is the testimony. It has been done in a concerted manner. Even though the respondents by filing the counter-affidavit have denied their "link" of pressurizing the petitioners but the statement of the petitioners on oath reflects the ground reality.

19. Ms. P. Dhar, learned counsel appearing for the petitioners has submitted further that the petitioners were never willing to part with their land without any compensation as the utilised land is the source of their livelihood. Reduction in the volume of the land would make proportionate reduction in the paddy as grown on those lands and that will have a serious impact on their livelihood, contrary to what has been contended by the state that this will not make any impact at all. Ms. Dhar, learned counsel has submitted that the respondents do not have any respect for the law of land which prohibits occupation or acquisition by the state machinery without following the due process of law. Had the land been surrendered by the petitioners which have those papers by which the land were surrendered for construction of the said road gone? The guidelines of PMGSY have categorically provided that the acquisition is permissible in the case of necessity by the State. That apart, the guideline clearly stipulates that the State Government may also lay down the guidelines for voluntary donation, exchange or other mechanism to ensure availability of land. The process of making land available for the road works should sub-serve the common goods. To make the process just and equitable, the details of the land available should be reflected in the local land records to avoid dispute.

20. Mr. B. C. Das, learned Advocate General appearing for the respondents has submitted that the state has not framed any guidelines for voluntary donation, exchange or other mechanism to ensure availability of land. Arrangement of the required land is done through the concerned Panchayat Samity. They are responsible for making the land available for construction of the road under said scheme.

21. Mr. B. Majumder, learned Central Government Counsel appearing for the Union of India-respondents has categorically stated that PMGSY is a well structured scheme and funding of the scheme has been clearly stipulated. The Central Government will not provide any fund for acquisition of the land. It will be the responsibility of the State Government or the District Panchayat for arranging the land.

22. Do we have any respect for law? Do the State owe to the constitution? By the 44th amendment to the Constitution, Articles 19(1)(f) and 31 have been deleted by taking away the fundamental right to the property. But Article 300A has been introduced. That Article provides that no person shall be deprived of his property save by authority of law. One of the reasons for deletion of the articles 19(1) and 31 and insertion of Article 300A was to reduce the right to property from the status of fundamental right to that of a legal right. The right will be available against the executive inference but not against the legislative inference. The apex court has very clearly stated that the executive cannot deprive a person of his property without the authority of law, "but law in this context means act of parliament or of a state legislature, a rule or a statutory order having the force of law", that is positive or state made-law [in *Bishambhar Dayal Chandra Mohan and Others v. State of Uttar Pradesh and Others*, (1982) 1 SCC 39]. In view of the interpretation extended to the word "law" in Article 21 in *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 and some subsequent cases that the law must be fair, reasonable and just law. In *State of Maharashtra v. Basantibai Mohanlal Khetan and Ors.*, (1986) 2 SCC 516, the apex court had occasioned to hold that even if Article 300-A required that law must be fair, reasonable and just, in *Jilubhai Nanbhai Khachar v. State of Gujarat and Another*, 1995 Supp (1) SCC 596 the apex court held that the exercise of power of eminent domain recognised in Article 300A requires an existence of public purpose and payment of money for acquisition of property, but the payment need not be just equivalent of the property so acquired. At the same time, the payment must not be illusory and the principle for determining the compensation must be relevant for purpose of arriving at a non-illusory or fair payment. In case a law fails to satisfy this condition, it may not be validated by the courts under Article 300A. The process that has been followed by the State Government is wholly illegal in view of Article 300A for purpose of acquiring the land. Even they have not done any kind of documentation to gather whether the lands are voluntarily surrendered for purpose of public good i.e. construction of a road connecting the remotest localities or not. Even in the guidelines it has been emphatically stated that before the construction is taken up, the land records must accordingly be

prepared so that no dispute may subsequently crop up. The State does not take any responsibility but simultaneously they have stated that it is a state project funded from the public exchequer. Since the state does not have money they are making arrangement of the land in the fashion as noted above. The further strange logic that has been advanced by the state is that since no objection was raised at the time of the construction of the road, there action cannot be challenged now. In this regard, Ms. P. Dhar, learned counsel appearing for the petitioners has referred *Budhi Ram alias Bidhi Chand v. State of H.P. and Ors.* reported in AIR 2006 HP 16. The said case is also regarding the construction of the road and resembling plea was taken that an oral consent was given by the petitioners. Himachal Pradesh High Court in that backdrop has observed as under:

"12. There is nothing produced on record to say that how, through whom and in what manner the so called "oral consent", was given by the petitioners. Nothing has been placed on record to suggest anything that at any point of time petitioners ever either gave their lands for construction of the road in question and/or ever voluntarily consented for it without claiming any compensation. If that was the true position, respondents in law were bound to have placed legally acceptable material on record to uphold this plea.

13. Except for placing reliance on the resolutions of Panchayat (Annexures R-1 to R-7) and letter dated 24-1-2001 (Annexure A-8) nothing has been brought on record by the respondents. In this view of the matter to say that the claim of the petitioners is either stale and/or they should have recourse to filing civil suit and establish their claim, would be diverting the course of justice as well as ignoring Article 14 and mandate of Article 300-A of the Constitution of India. It is true that right to property is not a fundamental right, but it is an acknowledged legal right that too under the Constitution, and not flowing from a contract between the parties under the Law of Contract.

14. Another reason to take this view is that construction of road from the land of the petitioners in both the cases is not in dispute. What is being disputed by the respondents, is that they have voluntarily consented to give land, when it was constructed that too without claiming any compensation. At the risk of repetition, it may be observed that in case respondents can satisfy the Court from the contemporaneous official record, both the petitions are bound to fail. Except for what is referred to herein above, no other material has been placed on record. Therefore, plea of Shri Chandel to the contrary is hereby rejected.

15. Now coming to the stand of the respondents that road in question has been constructed and has been tarred under PMGSY. No benefit can be derived by the petitioner from the scheme in question. Construction of road as per their own showing was finished much before the coming into force of this scheme. It was only tarred after the scheme came into existence. Therefore, no advantage can be derived by the respondents on this plea, which is also rejected.

16. Another plea urged for the dismissal of these petitions is based on the order of Division Bench of this Court dated 20-11-1996, referred to herein above. With respect, after having gone through this order we find it is neither precedent nor can be allowed to be referred to as such on behalf of the respondents. It is summary dismissal of the writ petition simply on the ground that facts are in dispute, therefore, only appropriate remedy to the petitioners is to approach the Civil Court and establish their right.

17. In the present cases, it was for the respondents, (who have to set out the plea of "oral consent" for construction of road without claiming any compensation for it), to have established by them. They could have supported the same prima facie establishing this plea and then to persuade the Court for dismissing these cases. We are further of the view that in case there was any such material available on the contemporaneous official record with the respondents, and the same having not been produced; consequently, adverse inference needs to be drawn against them by holding that in case such material had been produced, it would not have supported their plea. It is by now well known that Government and its functionalities do not speak like two individuals. There is thus no question of any "oral consent", being there on the part of the petitioners in these cases for having either voluntarily consented for the construction of road over their lands and/or having further agreed not to claim any compensation.

18. A Division Bench of this Court by reasoned and speaking judgment in the case of *Nokhia v. State of H.P.* ILR (1984) HP 906, has elaborately dealt with almost identical situation based on the "oral consent" having been given by the persons interested (like petitioners in these two cases), for construction of road many years ago. Such plea was negated by the Division Bench.

19. Once the above conclusion is arrived at, action of the respondents in constructing Kuther-Chalokhar to Patlandar and Banal via Ree Road, without having recourse to law tantamounts to depriving the petitioners of their property and such action has no legal authority, much less sanction behind it and it is declared as such.

20. No other point is urged.

21. In view of the aforesaid discussion, both these writ petitions deserve to be allowed and it is ordered accordingly. As a consequence of this respondents are now directed to initiate steps for acquisition of land of the petitioners over which part of Kuther Chalukhan to Patlandar and Banal via Ree Road has been constructed. Such steps will be initiated by the respondents latest by or before 30th April, 2005 and thereafter acquisition proceedings completed by or before 30th April, 2006. Direction regarding time frame is pre-emptory to be carried out by all concerned. Parties are left to bear their own costs.

22. For limited purpose of reporting compliance only, both these cases are ordered to be listed in the first week of May, 2006, affidavit of compliance will be filed by respondent No. 1 latest by 30th April, 2006."

23. Ms. Dhar, learned counsel appearing for the petitioner has also relied on *Balkeshwar Singh v. State of Bihar* reported in 2011 (2) PLJR 374. That case was also relating to utilization of land for construction of the road under PMGSY where their private land was taken up for widening the said road. In that case, the respondents were directed to make inquiry and it was found that the private land had been utilized, as consequence thereof, the respondents have been directed to initiate the land acquisition proceeding within a period of one month through the Collector.

24. In another decision relating to PMGSY where the rayati land was utilised for the construction of the road and the similar plea was taken that the state cannot finance the acquisition of the land as it was unable to shoulder the financial burden. Patna High Court in *Satendra Kumar Singh v. State of Bihar* reported in 2010(1) PLJR 1052 has observed as under:

"3. This Court has noticed that in every Gram Panchayats under the NAREGA Scheme or under the PMGSY, the Mukhiya or the R.E.O. have utilized the raiyati lands of the villagers for construction of the road. In both the schemes, there is no provision for acquisition of land, the result is that the persons aggrieved have been approaching this Court by filing writ applications. The action of the Mukhiya and the other authorities, In-charge of such work is unnecessarily putting the financial burden on the exchequer of the State of Bihar as obviously if lands are being utilized for the construction of road, compensation has to be given to such persons."

25. In *Anant Ram v. State of Haryana & Anr.* reported in 2010 (4) Law Herald (P & H) 3519, the Punjab and Haryana High Court has observed as under:

"5. Taking note of the averments made in the written statement filed at the instance of respondents No. 1 and 2, it becomes apparently clear that land measuring 1 Kanal 13 Marias, which is ownership of the petitioners, was wrongly used for construction of a road without acquiring the same. Thereafter, despite many requests made, no attempt was made to pay compensation to the Petitioners by acquiring the above-said land in a legal manner. The State is not expected to behave in such irresponsible manner.

6. Admittedly, the land owned by the Petitioners is under occupation of the State authorities, for which the State is duty bound to pay compensation to the Petitioners. The averment of the State counsel that compensation has been determined by taking the date i.e. 30.03.1989 as the base, is liable to be rejected. The Petitioners cannot be put to loss, if the State authorities have failed to take action as per law. It was duty of the State authorities to pursue the notifications issued under Section 4 and 6 of the Act and thereafter pass an Award accordingly.

7. Admittedly, Award was not passed and at this stage, the Petitioners cannot be forced to accept compensation, which was due to them in the year 1989.

8. It is not in dispute that at present, road is in existence and operational at the spot. Taking note of the above-said facts, we allow this writ petition and direct the Secretary, PWD (B&R), State of Haryana, to initiate process to acquire land owned by the Petitioners. The needful process shall be done within a period of four months" from today. If the authorities fail to take action, as mentioned above, the right will be available to the Petitioners to retrieve their land, which was used for constructing a road.

9. It is also made clear that if in a similar manner, for the road in question any other land owner's land was used without acquisition, the necessary proceedings to acquire the same shall also be initiated. We are issuing this direction with a view to stop any further litigation. The authorities are at liberty to invoke the emergency provisions, as envisaged under Section 17 of the Act, to acquire the land in dispute."

26. Having examined the impugned process, this court is constrained to observe the process is constitutionally invalid unless there is documentation of voluntary surrender of land. In this case, the respondents have totally failed to produce a chit of paper in support voluntary surrender. Transfer of any right on immovable property requires legal instrument. Unless such documentation is available with the State or the Panchayat Samity, it has to be inferred by this court that there was no fair action and the land of the petitioner was utilised by trampling the due process of law as provided by Article 300A of the constitution. In *Samatha v. State of A.P. and Ors.*, reported in AIR 1997 SC 3297, it has been observed by the apex court that, purposive interpretation would ensure distributive justice among the tribals in this behalf and it elongates the constitutional commitment. Any other interpretation would sow the seed-beds to disintegrate the tribal autonomy, their tribal culture and frustrate empowerment of them, socially, economically and politically, to live a life of equality, dignity of person and equality of status. Whether such kind of utilization can be justified by the state under our constitutional frame-work, the answer is "blowing in the wine".

27. This court is really bewildered by the state action. The State has been utilizing service of "invisible hands" for making arrangement of land in gross violation of Article 300-A as it would be apparent that no court in India has accepted that since there is no adequate fund, the State may be permitted to acquire or utilise land without following the prescribed procedure of law. This is simply not permissible. Another strategy that the State has adopted in their reply that they would retrieve the land of the petitioner but they will not acquired their land. Such arrogance was never heard within the four corners of a court in recent time. If the land of the petitioners as utilised is retrieved, the petitioners will be made "the victim" the of destroying the road constructed for the public utility. But the law cannot be a silent by-stunder.

28. Be that as it may, this court records its strong disapproval of the action of the state as stated above. More dangerous is that the State has approached this court without any remorse for the inaction. However, this court is not forgetful of

its constitutional obligation to uphold the citizen's right to have the fair treatment in accordance with law. As stated earlier, no law does permit such process, as indulged by the State in this case.

29. Having due regard to the circumstances as narrated above, this court is of the considered view that the respondents No.3-8 shall be directed to inquire and determine the amount of land of the petitioner that has been utilized in construction of "Chowmuhan to Chandrapara" [Road No.LO48] under PMGSY and to initiate the acquisition proceeding for purpose of giving them just compensation for utilising their land by way of constructing the said road. If such acquisition is not completed within a period of 6(six) months from the day when the petitioners shall furnish a copy of this order to the respondents or the respondents shall be under obligation to retrieve the land of the petitioners which has been utilized in construction of the said road and hand over the said land to the petitioners without fail within the said period as stipulated.

30. With these observations and direction, this petition stands allowed to the extent as indicated above.

31. There shall be no order as to costs.