

Neutral Citation No. - 2025:AHC:29933-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Order Reserved on 13.02.2025

Order Delivered on 04.03.2025

Court No. - 21

Case :- WRIT - C No. - 27598 of 2020

Petitioner :- Kanyawati

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Rajendra Prasad Tiwari,Vimlesh Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Manoj Kumar Gupta,J.

Hon'ble Anish Kumar Gupta,J.

(Per: Anish Kumar Gutpa, J.)

1. Heard Sri Vimlesh Kumar and Sri Shiv Raj Singh, learned counsel for the petitioner and Sri Rajiv Gupta, learned Additional Chief Standing Counsel for the respondents.

2. The instant petition has been filed by the petitioner being aggrieved by an order dated 24.02.2020 passed by the District Level Committee constituted under a Government Order dated 12.05.2016, pursuant to the directions issued by this Court vide order dated 19.09.2019 passed in Writ Petition (C) No. 29915 of 2019 (Smt. Kanyavati vs. State of U.P.).

3. The case of the petitioner is that she is the owner of the land situated at Khasra No. 53 area 0.0690 hectare situated at Village- Akha, Pargana- Ballia, Tehsil- Anwala, District- Bareilly, which she had purchased by way of sale deed from Fate Singh (However, from the perusal of the sale deed dated 02.12.2009 annexed as Annexure RA-1 to the rejoinder, it is apparent that the petitioner had purchased the land from Smt. Urmila Devi). On the basis of the aforesaid sale deed, her name was mutated in the revenue records as bhumidhar with transferable rights. On the south of the aforesaid plot, was a chak road. The case of the petitioner is that as per the revenue records the width of the said road was two and a half metre (8.25 feet) and the road was already constructed thereon. Subsequent thereto, the widening of the road was done in which according to the petitioner her land, to the extent of 0.033 hectare, has been utilized by the PWD without payment of any compensation.

4. An RTI application was filed before Public Information Officer/ Executive Officer, PWD Division- Bareilly seeking information with regard to any acquisition proceedings for widening of the road. In reply thereto, it was informed to the petitioner that there is no record available with regard to acquisition of the land as this Division was constituted 7-8 years ago. Thereupon, she kept on sending the representations claiming therein that in the revenue record the width of the chak road was 8.25 feet whereas the road was constructed on the width of 3 metre. Subsequently, the road has been further widened without acquiring the land or payment of compensation to the land owners and she claimed compensation for her land used for widening of the road. When she did not receive any response from the Authority, she filed a Writ Petition (C) No. 29915 of 2019, which was disposed of with a direction to the District Magistrate- Bareilly to refer the matter to the District Level Committee in terms of the Government Order dated

12.05.2016, for determination of entitlement of compensation of the petitioner herein. In compliance of the aforesaid directions, the matter was referred to the District Level Committee. Vide order dated 24.02.2020, the District Level Committee has rejected the claim of the petitioner, holding that the road was initially a chak marg on which a 3 metre wide pakka road was constructed about 25-30 years back and on both sides 2.50 metre patri was available. In the year 2012-15, the said road was widened on both sides utilizing 1.25 metre available patri without affecting land of any tenureholder. Since, no land of the petitioner was acquired for purpose of widening of the road, therefore, she is not entitled for any compensation.

5. The claim of the petitioner is that as per revenue record width of chak marg was only 2.5 metre. Therefore, the additional land which has been utilized for construction of the road and widening of the road is bhumidhari land, therefore, the petitioner is entitled for compensation. The State Authorities cannot utilize the land of the petitioner without payment of compensation.

6. *Per Contra* learned Standing Counsel submits that since three metre wide road was constructed 25-30 years back without any objection from any side, in view thereof the petitioner, who has subsequently purchased the land in question in the year, 2019 cannot claim any compensation. It is further alleged that in the sale deed of the petitioner itself the link road has been shown on the south of the said plot prior to the land purchased by the petitioner. The widening of the road has been done by the PWD on the available patri on both sides of the road, without acquiring any land. Therefore, the petitioner is not entitled for any compensation. Learned Standing Counsel has further relied upon the site plan given in the sale deed of the petitioner wherein existence of road is categorically stated.

7. Having regard to the submissions of the parties, we have carefully gone through the record of the case. From the perusal of the records it is apparent that initially on the chak road, the pakka road was constructed by Sugar Industry and Cane Development Department around 20 years back, prior to the land purchased by the petitioner herein to the extent of three metres, without acquisition of any land. Subsequent thereto, the said road has been further widened sometimes between 2011 and 2014 by the PWD and it is apparent from the report of Tahsildar dated 05.02.2020, that due to such widening of the road by PWD, sometimes in 2014 the land of the petitioner, to the extent of 0.033 hectares, is affected from the Gata No. 54. Therefore, it is apparent that the aforesaid affected land of the petitioner had been utilized by the PWD without there being any acquisition and without payment of compensation to the petitioner herein or it is further admitted that the petitioner or her predecessors in interest had never consented for utilization of the road.

8. The findings of the report dated 05.02.2020 by Tahsildar-Anwala are as follows:

"तहसीलदार आंवला द्वारा उपलब्ध करायी गयी आख्या दिनांक 05.02.2020 में अंकित किया गया है कि "ग्राम अखा, परगना बल्लिया तहसील आंवला जिला बरेली में स्थित भूमि गाटा संख्या 53 रकबा 0.069 वर्तमान अभिलेख खतौनी खाता संख्या 54 पर कन्यावती पत्नी महीपाल के नाम बतौर संकमणीय भूमिधर अंकित है। गाटा सं 53 वर्तमान में चल रही सड़क अखा गैनी मार्ग पर स्थित है। उक्त गाटा सं के सम्बन्ध में चाही गयी आख्या बिन्दुवार निम्नवत् है-

1. जोत चकबन्दी आकार पत्र 45 व 41 के खाता संख्या पर पटे सिंह पुत्र गुपाल सिंह निवासी ग्राम वारिद हाल निवासी खुदसारी जिला एटा का नाम श्रेणी-1 का भूमिधर अंकित है। प्रार्थिनी कन्यावती पत्नी महीपाल सिंह का नाम आधार वर्ष खतौनी आकार पत्र-45 में अंकित नहीं है। साक्ष्य हेतु सी.एच.-45 का उद्धरण संलग्न है।

2. प्रार्थिनी का नाम आकार पत्र 45 में अंकित नहीं है।

3. कन्यावती पत्नी महीपाल सिंह का नाम अभिलेख खतौनी में सन् फसली 1416 द्वारा बैनामा अंकित है।

4. अखा गैनी मार्ग गन्ना विभाग द्वारा लगभग 20 वर्ष पूर्व बनवायी गयी है।

5. पी०डब्ल्यू०डी० द्वारा उक्त मार्ग का 2014 के आसपास चौड़ीकरण किया जाना बताया गया है।

6. प्रार्थिनी कन्यावती पत्नी महीपाल के उक्त गाटा संख्या में $3.70 \times 90 = 0.033$ हे० रकबा सड़क में (समाहित) प्रभावित है।"

9. The Right to Property is protected under Article 300A of the Constitution of India. Thus, no person can be deprived of his property without due procedure of law. The land of a person cannot be acquired without payment of due compensation in accordance with law. There is no concept of implied consent for utilizing the land of a citizen without following the due procedure and without payment of compensation. The property of a citizen can be acquired for public purpose on payment of reasonable compensation in accordance with law.

10. In ***Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai***: (2005) 7 SCC 627, the following observations were made by the Apex Court:

"6. ... Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid."

11. In ***N. Padmamma vs. S. Ramakrishna Reddy*** : (2008) 15 SCC 517, the following observations were made by the Apex Court:

"21. If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article 300-A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article

300-A of the Constitution of India, must be strictly construed.”

12. In *Delhi Airtech Services (P) Ltd. v. State of U.P.* [*Delhi Airtech Services (P) Ltd. v. State of U.P.*, (2011) 9 SCC 354], the Apex Court has observed as under:

“30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property. “Property must be secured, else liberty cannot subsist” was the opinion of John Adams. Indeed the view that property itself is the seed-bed which must be conserved if other constitutional values are to flourish, is the consensus among political thinkers and jurists.”

13. In *Jilubhai Nanbhai Khachar v. State of Gujarat* : 1995 Supp (1) SCC 596, the Apex Court has observed as under:

“48. ... In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation.”

14. In *Vidya Devi v. State of H.P.*: (2020) 2 SCC 569, the Apex Court did not accept the concept of oral consent of persons for depriving him/her of his/her valuable rights over the property and it is observed that such utilization of land without payment of lawful consideration is not sanctioned by the constitutional mechanism:

“12.8. The contention of the State that the appellant or her predecessors had “orally” consented to the acquisition is completely baseless. We find complete lack of authority and legal sanction in compulsorily divesting the appellant of her property by the State.

12.9. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property

without the sanction of law. Reliance is placed on the judgment of this Court in Tukaram Kana Joshi v. MIDC [Tukaram Kana Joshi v. MIDC, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.”

15. In *State of Haryana v. Mukesh Kumar* : (2011) 10 SCC 404, the Apex Court has held that Right to Property is now considered not only to be a constitutional or statutory right but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.

16. In *Sukh Dutt Ratra v. State of H.P.*, (2022) 7 SCC 508, the Apex Court has held that in case the land of the citizens have been acquired without following the procedure of law, then it would be deemed acquisition. Thus, the State Authorities are liable to pay compensation to the citizens, whose land has been utilized without acquisition as the same would have been acquired under the relevant provisions of the applicable law. The following observation of the Apex Court would be relevant to be noted:

"26. In view of the above discussion, in view of this Court's extraordinary jurisdiction under Articles 136 and 142 of the Constitution, the State is hereby directed to treat the subject lands as a deemed acquisition and appropriately disburse compensation to the appellants in the same terms as the order of the Reference Court dated 4-10-2005 in Land Ref. Petition No. 10-LAC/4 of 2004 (and consolidated matters). The respondent State is directed, consequently to ensure that the appropriate Land Acquisition Collector computes the compensation, and disburses it to the appellants, within four months from today. The appellants would also be entitled to consequential benefits of solatium, and interest on all sums payable under law w.e.f. 16-10-2001 (i.e. date of issuance of notification under Section 4 of the Act), till the date of the

impugned judgment [Sukh Dutt Ratra v. State of H.P., 2013 SCC OnLine HP 3773] i.e. 12-9-2013."

17. Thus, from the aforesaid judgements it is apparent that Right to Property though, is not a Fundamental Right but a Constitutional Right, which has been recognized at par with the human rights, which are inalienable. Thus, no person can be deprived of his property except in accordance with law and in case where the land of a citizen has been acquired by the State Authorities without proper acquisition, the same amounts to an action without Authority of law. Thus, a person whose property has been utilized without authority of law, is entitled for due compensation in accordance with the provisions of law applicable on the date of such utilization of the property by the State.

18. It is also been contented by the State that there are delay and laches on the part of the petitioner while approaching the Court, seeking compensation for her land utilized by the State. The Apex court in ***Vidya Devi (supra)***, has held that delay and laches cannot be raised by a continuing cause of action or if the circumstances shock the judicial conscience of the court. It has further been observed that there is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice. The following observation of the Apex Court in ***Vidya Devi (supra)*** are relevant which reads as under:

"12.12. The contention advanced by the State of delay and laches of the appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to

exercise their constitutional jurisdiction to do substantial justice."

19. Thus, from the facts of the instant case it is apparent that the land of the petitioner to the extent of 0.033 hectares had been utilized by the State Authorities without authority of law and without there being any acquisition of the land in accordance with law. Undisputedly, the petitioner was the owner of the property in question as she had purchased the land in the year, 2009. From the records it is apparent that the petitioner was running from pillar to post to know the procedure how she has been deprived of the property in question. She has moved the RTI applications and it was informed that she has been deprived of the property without there being any proper acquisition in accordance with law. She has approached this Court by filing the Writ Petition (C) No. 29915 of 2019, which was disposed of on 19.09.2019 with a direction that her case be determined by the District Level Committee in accordance with the Government Order dated 12.05.2016. Vide impugned order though, it is admitted by the State Authorities that her land to the extent of 0.033 hectares is affected by widening of the road, done by PWD in the year, 2014, for which neither the land was acquired nor any compensation has been paid. Thus, in the considered opinion of this Court the petitioner is entitled for the compensation, which is required to be determined in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

20. Thus, since the land of the petitioner been utilized without any proper acquisition, therefore, we cannot direct the Special Land Acquisition Officer to quantify the compensation or recommend its payment. In view thereof, we remit back the matter to the District Level Committee to determine the compensation with regard to the land of the petitioner to the extent of 0.033 hectares,

which was utilized without acquisition while widening the road in accordance with the provisions of the Act, 2013. The compensation so determined shall be paid to the petitioner by respondent no.4 within a period of four weeks alongwith interest as provided in the said Act.

21. While disapproving the action of the State Authorities of utilizing the land of the petitioner without Authority of Law, we are refraining ourselves from awarding the penalty against the State Authorities who have utilized the land without sanction of law. The State Authorities are required to be cautious that they should not utilize the land of the citizens without due authority of law or without following the proper procedure of acquisition, else the authorities, who may be found responsible for such utilization of land without due procedure of law shall be held responsible personally and the court will have to impose heavy penalty for such actions on the part of the Authorities, which shall be recovered from their personal account.

22. With the aforesaid observations, the instant writ petition is ***allowed.***

Order Date :- 04.03.2025

Shubham Arya

(Anish Kumar Gupta, J.) (Manoj Kumar Gupta, J.)