IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4987 OF 2022

Mrs. Sumitra Shridhar Khane ...Petitioner
Versus
1.The Deputy Collector, Spl. Land Acquisition No.12, Kolhapur
2. Deputy Collector (Rehabilitation) Kolhapur,
3. Collector, Kolhapur,
4. State of Maharashtra …Respondents

AND
WRIT PETITION NO. 4991 OF 2022

1. Shankar Ganpati Khapre
2. Dattatrya Ganpati Khapre ...Petitioners
Versus
1.The Deputy Collector, Spl. Land Acquisition No.12, Kolhapur
2. Deputy Collector (Rehabilitation) Kolhapur,
3. Collector, Kolhapur,
4. State of Maharashtra …Respondents

AND
WRIT PETITION NO. 4988 OF 2022

Nivrutti Ganu Parit Decd. Thr. Legal heirs Muktabai Nivrutti Parit(since Decd) Thr. Its legal heirs & Ors. ...Petitioners
Versus
1.The Deputy Collector, Spl. Land Acquisition No.12, Kolhapur
2. Deputy Collector (Rehabilitation) Kolhapur,
3. Collector, Kolhapur,
4. State of Maharashtra …Respondents

AND
WRIT PETITION NO.11372 OF 2022

Maruti Rama Bhoite Decd Thru. Legal heirs ...Petitioners
Versus
1.The Deputy Collector, Spl. Land Acquisition No.12,

Kolhapur
2. Deputy Collector (Rehabilitation) Kolhapur,
3. Collector, Kolhapur,
4. State of Maharashtra …Respondents

AND
WRIT PETITION NO.15996 OF 2022

Rama Yallappa Bharmal & Anr. ...Petitioners
Versus
1.The Deputy Collector, Spl. Land Acquisition No.12,
Kolhapur
2. Deputy Collector (Rehabilitation) Kolhapur,
3. Collector, Kolhapur,
4. State of Maharashtra …Respondents

Mr. Nitin P. Deshpande with Ms. Kanchan Phatak, Ms. Rachana Harpale for Petitioners.

Mr. S. B. Kalel, AGP for the Respondent/State.

CORAM: G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.

DATE: 02 MAY 2025

ORAL JUDGMENT (Per G. S. Kulkarni, J.):-

Preface

1. In a society governed by the rule of law, there can be no discrimination in the application of law to persons who are similarly placed. In this situation, there cannot be different standards, yardsticks and methods in the application of law, to persons of limited means, who are not literate or who are not well versed of their legitimate legal and constitutional rights or on a consideration that they belong to rural areas. Likes should be treated alike. This is a Constitutional guarantee of

equality before the law and equal protection of the laws in a welfare state. It is the solemn duty and responsibility of the State to uniformly apply the law, as also take corrective actions when it is noticed that the State's actions are in breach of law and the constitutional rights. Any breach of such fundamental mandates has no place in a civilized society. These issues, which stem from the guarantee of equality of rights and the constitutional recognition of a right not to be deprived of property, save by authority of law, confronts us in the present proceedings.

2. Rule. Respondents waive service. By consent of the parties, heard finally.

3. These proceedings under Article 226 of the Constitution of India raise common issues of facts and law. Hence, they are being decided by this common judgment. The first writ petition was argued as the lead petition. For convenience, we refer to the pleadings on this petition.

Facts

4. The petitioner is the owner of land bearing Gat No.156 admeasuring 1 H. 12 R. situated at village Vhanur, Tal. Kagal, District-Kolhapur. It is the petitioner's case that in the year 1990 various lands in the petitioner's village were notified for mass acquisition, for a public project of rehabilitation of the persons affected by the Dudhganga Irrigation Project. To further such intention, mutation entries made in the revenue records indicating that the land would be acquired for the said project. The mutation entry qua the petitioner's land was dated 6 October 1990. A notification under Section 4 of the Land Acquisition Act, 1894

(for short **"the 1894 Act"**) was issued on 20 December 1990; thereafter a notification under Section 6 was issued on 8 March 1991. Subsequent thereto, notices under Section 9(1) & (3) were issued on 16 March 1991. On such backdrop, a "land acquisition award" came to be published on 28 February 1992.

5. The petitioner contends that prior to the issuance of the aforesaid statutory notifications as the petitioner's land was subject matter of mass acquisition, following the pattern being adopted by the Special Land Acquisition Officer and/or a *fait accompli,* she voluntarily handed over the possession of her land admeasuring 1H 12 R to the State Government on 19 September 1990 which being recorded in a formal affidavit dated 19 September 1990 taken from the petitioner by respondent No.1, which we would refer hereafter. This was also reflected in Mutation Entry No. 729 as borne by the revenue records. Admittedly, the petitioner was not paid the land acquisition compensation. The reason appears to be that the petitioner hailing from a rural area was certainly not a person well versed with her legal rights, that her land could only be taken away or her ownership divested only by following due process of law, and on payment of compensation. The petitioner appears to have bowed down before the might of the State Officers and handed over the possession of her land, without an award much less a farthing under any award. It was a legitimate expectation that a land acquisition award would be published, or in a manner known to law, an adequate compensation would be paid to the petitioner. In these circumstances, on 3 December 2021, petitioner applied to the Deputy Collector, (Rehabilitation) for payment of compensation. On such application, the Deputy Collector

reported that the petitioner's land was already allotted to the project affected persons. It was acknowledged that the petitioner's land was not included in the land acquisition award, indicating that the process of acquisition of land was not completed. A copy of the report in that regard dated 2 February 2022 of the Deputy Collector is annexed to the petition, the contents of which are required to be noted which read thus:-

"(Official Translation of a photocopy of typewritten in Marathi)
EXHIBIT-E

COLLECTOR OFFICE, KOLHAPUR.

Office of the Deputy Collector (Land Acquisition) No.12
Swaraj Bhavan, Nagala Park, Kolhapur

Number : L.A.-12/R.R./472/2021
Date : 02.02.2022

To,
The Deputy Collector (Rehabilitation)
Kolhapur.

Subject:- Regarding getting consideration for the acquired lands situated at village Vhannur, Tal. Kagal, District Kolhapur, for rehabilitation of the Dudhganga Project Affected persons.

Reference:- Application dated 03.12.2021 of Sau. Sumitra wife of Shridhar Khane, residing at village Vhannur, Tal. Kagal, District Kolhapur, submitted to this Office.

The Applicant vide the above-referred application on the above-mentioned subject, has requested to grant as early as possible and as per today's market rate, maximum consideration in respect of the land bearing Gat number 156, area admeasuring 1.12.00 hectares Are, situated at village Vhannur, Tal. Kagal, District Kolhapur, voluntarily given into possession.

In pursuance thereof, on verifying the records of this Office, the below-mentioned facts are noticed.
11 pt

As per the Land Acquisition Matter No. L.A./S.R./ Vhannur-72 of the Office of the then Special Land Acquisition Officer No.12, Kolhapur, the process of acquisition of the area adm. 1.12 Hechare-Are from out of the area of the Land bearing Gat No.156 belonging to the Khata-holder Sau. Sumitra w/of Shridhar Khane was in progress. On

perusing the available records, it is found that in the Notification issued under Section-6 under the said land acquisition process, the area adm. 1.12 Hechare-Are from out of the area of the Land bearing Gat No.156 was notified for acquisition. **However, in the Award in respect thereof, the said Gat number has not been included**. Further, on Page No.3 of the said Award, it is mentioned about the aforesaid Gat number as :

".....However, the Commissioner, Pune Division, Pune, by his order No. Rehabilitation - W.S.-3/50/91 dated 08.03.1991, issued directions to conduct re-enquiry, to carry out site-inspection and to again submit **Report in respect thereof and therefore, the said land has not been included in this Award**. Hence, pursuant to the order of the Commissioner, re-enquiry has been conducted and the aforesaid lands or instead of the same, other lands of the Khata-holder are again notified under section 4.

Gat Number	Area Hectare Are	Gat Number	Area Hectare Are
152 Part	2.02	841	4.35 Po.Kha. 0.03
156 Part	1.12	864	0.37
381 Part	0.10	913 part	1.55
529 Part	0.45	958 part	0.41
528 Part	4.06	965 part	2.02
705 Part	0.48	1129 part	0.88
723 Part	0.05	1156 part	3.90
719 Part	2.61	1124 part	0.33

Further, as the entire land bearing Gat Number 209 is fallow land, the said land has not been included in the present Award.

Aforesaid facts have been mentioned in the said Award. However, as regards the land bearing Gat No. 156 belonging to Sau. Sumitra, w/of Shridhar Khane, it is not understood from the available documents, as to which further steps have been taken by your Office about the report submitted again. It is further found that the process of acquisition in respect of the land bearing the aforesaid Gat Number, has not been completed. Therefore, it is requested to verify even from the documents maintained i8 ptn the Records with your office, the facts about the said process.

On perusing the Mutation Entry No. 729 recorded in 7/12 extract in respect of the land bearing Gat No. 156 in this matter, it is found that Sau. Sumitra, w/of Shridhar Khane has voluntarily given possession of the land adm. 1.12 hectares-Are from out of the land bearing Gat No.156 and that in pursuance thereof, the name of the Collector and Deputy Director, Project Rehabilitation (Land), Kolhapur" has been entered in 7/12 extract in respect of the said land bearing Gat Number 156 and that the said land has been allotted to the Project affected persons.

The aforesaid facts are found in respect of the land bearing Gat No.156 mentioned by the Applicant. Therefore, you are requested to ascertain the facts as to which steps have been by your Office about the

proposal of the acquisition of the land bearing the aforesaid Gat number and thereafter, to take further appropriate steps as per the Rules accordingly.

(Signature Illegible)
(Vivek V. Kale)
Deputy Collector (Land
Acquisition) No.12
Kolhapur

Copy to : Sau. Sumitra, w/of Shridhar Khane,
residing at Vhannur,
Tal. Kagal, District Kolhapur."

(emphasis supplied)

6. It is apparent from the aforesaid report of the Deputy Collector, Land Acquisition, Kolhapur, as addressed to the Deputy Collector (Rehabilitation), Kolhapur, that the Government record revealed that the process to acquire the petitioner's land was set into motion and was in progress, however, qua the petitioner's land admeasuring 1 H 12 R, in Gat No.156, the award did not include the petitioner's land, so as to conclude the acquisition. Also, there is no dispute that sans an award qua the petitioner's land, mutation entry No.729 was incorporated in the revenue records (7/12 extracts) , which indicated that the petitioners land admeasuring 1H 12R in Gat No.156 was handed over to the Deputy Director, Project Rehabilitation (Land), Kolhapur. It is also clear that the name of the said State authority was incorporated in the revenue records as the owner of the land. It is in such context, the Deputy Collector observed that in the petitioners case, further appropriate steps would be required to be taken as per rules. As noted above, it was already a *fait accompli* for the petitioner as the petitioner is not only rendered landless, but further as the petitioner's land has already been allotted to the Project Affected Persons. The petitioner's land for quite sometime is now in possession and in use of third parties / allottees, without

the petitioner being divested of her ownership rights in a manner the law would mandate.

7. It is the petitioner's case that the respondents have not taken any action on the aforesaid report of the Deputy Collector (Land Acquisition) dated 2 February 2022. The petitioner contends that such action of the respondents to take away petitioner's land and indisputedly utilize the same for public purpose without payment of compensation to the petitioner is in the teeth of law laid down by the Supreme Court in **Vidya Devi Vs. State of Himachal Pradesh & Ors.**[1] wherein the Supreme Court has recognized the constitutional rights guaranteed under Article 300A of the Constitution of India to hold that in land acquisition cases, no person shall be deprived of his property save by authority of or procedure established by law, that is by adhering to the provisions of the land acquisition law. The petitioner contends that such invaluable rights guaranteed to the petitioner under the Constitution stand breached by the respondents by non-payment of compensation to the petitioner and in taking away the petitioner's land. It is in these circumstances, the petitioner has approached this Court praying for the following substantive relief:-

> "(a) this Hon'ble Court may by way of appropriate writ Order or direction direct the respondents to complete the acquisition of the Petitioner' land bearing Gat No. 156 admeasuring 01 H 12 R situated at village Vhannur, Tal. Kagal, Dist. Kolhapur and further direct them to pay to the petitioners monetary compensation and 15% interest p.a. as per Sec. 80 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 on the compensation within four weeks from the date of order of this Hon'ble Court."

---

1 (2020) 2 SCC 569

Counter Affidavits :-

8. The first counter affidavit is a short / one page affidavit of Mr. Vivek Kale, Deputy Collector (Land Acquisition) no. 12, Kolhapur, opposing the petition on behalf of respondent no. 1, which *inter alia* records the indisputed facts to contend the following:

i. The land acquisition proceedings to acquire the petitioner's (Mrs. Sumitra Shridhar Khane) land bearing Gat No. 156, for area admeasuring 1 H 12 R of village Vhannur, Taluka – Kagal, were initiated. The land was also notified under section 6 of the 1894 Act for acquisition for a public purpose.

ii. The petitioner voluntarily offered the possession of the land.

iii. The Divisional Commissioner, Pune directed to make a fresh enquiry with spot inspection of the land bearing Gat no. 156, area admeasuring 1 H 12 R.

iv. The petitioner's land was however not included in passing of the land acquisition award dated 28 February 1992.

9. There is a second counter affidavit of Ms. Varsha Tanaji Shingan, Deputy Collector (Resettlement) Kolhapur filed on behalf of Respondent no. 2. In this affidavit, it is not disputed that the land owned by the petitioner falls in Village Vhannur, which was situated in the benefited zone of Dudhganga Irrigation Project. That lands in Village Vhannur were acquired for the purpose of resettlement of Project Affected Persons of Dudhganga Irrigation Project. It is stated that several farmers, including the Petitioner, voluntarily surrendered and handed over their lands for the Dudhganga Project and to that effect, the

petitioner executed an "Affidavit of Voluntary Possession" dated 19 September 1990 surrendering and handing over the possession of the land bearing Gat no. 156 admeasuring 1H 12 R. It is stated that accordingly, the Collector and Dy. Director Project Resettlement (Land), Kolhapur passed an order dated 19 September 1990, under which the name of the Collector and Dy. Director, Project Resettlement (Land), Kolhapur was mutated in the 7/12 extract of the said land vide mutation entry no. 729 dated 25 September 1990. It is next stated that the Additional Collector, Kolhapur, issued multiple orders in favour of several persons allotting portions of land including the petitioner's land from Gat No. 156. The affidavit further states that by an order dated 21 June 2014, the Additional Collector allotted land admeasuring H 0.40 R to Maruti Bhau Tamkar, and land admeasuring H 0.40 R to the Ananda Krishnat Belekar from the land which belonged to the petitioner. It is stated that thereafter, by an order dated 13 December 2013, the Additional Collector allotted land admeasuring H 0.17 R to Vasant Babu Kamble, and by a further order dated 21 March 2016, land admeasuring H 0.15 R was allotted in favour of some other Project Affected Persons. This reply affidavit thus clearly states that vacant and peaceful possession of the land belonging to the petitioner and other similar persons was handed over to the Project Affected Persons with their names mutated in the 7/12 extract. It is contended that as on today, the possession of the petitioner's land and similar such lands is with the Project Affected Persons.

10. It is next contended that in 2021, the petitioner filed an application dated 3 December 2021 with respondent no. 2, seeking compensation on the acquisition of the petitioner's land for land allotment to the Project Affected Persons, as per market valuation. On such application, respondent no. 2 issued a letter to respondent no. 1, who submitted a detailed report. Insofar as the possession of the petitioner's land is concerned, it is stated that the same was taken over in the year 1990, and as per the decision of the Supreme Court in **State of Maharashtra v. Digambar**[2], the petitioner is not entitled to seek compensation on the ground of unexplained delay in filing the petition after 20 years. It is next contended that the petitioner filed an application for payment / release of compensation in 2021 and the present petition is filed after over 32 years, after the possession of the petitioner's land was taken over. Hence, it ought not be entertained. It is next contended that since the possession of the said land was already handed over to the State Government long back, as per Article 123 of the Limitation Act, 1963, the reasonable period to pursue the cause of action against the same was three years. It is asserted that the petitioner, having voluntarily surrendered the land long years back, has filed the present writ petition, without any justifiable explanation on the prolonged delay in approaching this Court, hence the petition be not entertained. It is next contended that Government of Maharashtra vide Government Resolution dated 26 October 2010 has decided that whenever any person hands over his land to the Government for public purpose, he loses the right to seek compensation after a specified period of time,

---

2 (1995) 4 SCC 683

and it is to be presumed that such person has waived his right to seek compensation for giving land to Government.

Submissions

11. Mr. Deshpande, learned counsel for the petitioner has made elaborate submissions asserting the petitioner's case as pleaded in the writ petition. He submits that the respondents' contention that there is a delay in filing of the petition is misconceived. His submission is that it is a settled principle of law, as laid down by the Supreme Court that the petitioner's land could not have been taken away without granting land acquisition compensation to the petitioner. He submits that the right to receive compensation being a continuing cause of action, it will survive till the date compensation is paid to the petitioner. Hence, the case of the respondents as pleaded in the counter affidavits cannot be accepted. It is next submitted that in the present facts, the Government Resolution dated 26 October 2010 is *per se* not applicable and in fact, the same would be contrary to the decisions of the Supreme Court, if the same is sought to be applied in the present facts. In support of his contention, Mr. Deshpande has placed reliance on the decisions which we would hereafter discuss.

12. On the other hand Mr. Kalel, learned AGP has supported the respondents case relying on the affidavits, which we have discussed herein

before in some detail. His primary contention is that as there is a delay in filing the petition, in supporting this submission, reliance is placed on the decision of the Supreme Court in **State of Maharashtra Vs. Digambar** (supra) and **Chairman, State Bank of India Vs. M.J. James**[3]. He would submit that the petition accordingly needs to be dismissed.

Reasons and Conclusion:-

13. We have heard learned Counsel for the parties. With their assistance, we have perused the record.

14. It is not in dispute that the petitioner is the owner of the land bearing Gat no. 156 admeasuring 1 H 12 R situated at village Vhanur, Taluka Kagal, Kolhapur. It is also not in dispute that the petitioner voluntarily handed over the possession of her land to the State Government by executing an Affidavit of Voluntary Possession dated 19 September 1990, which is reflected in the Mutation Entry No. 729 dated 25 September 1990. Notification under Section 6 of the 1894 Act was published on 8 March 1991 seeking to acquire lands in the petitioner's village for the purpose of rehabilitation of project affected persons of the 'Dudhganga Irrigation Project', which included the petitioner's land. However, the land acquisition award published on 28 February 1992, which was in respect of several lands, the same did not include the petitioner's land, hence no compensation was paid to the petitioner.

---

3 (2022) 2 SCC 301

The Question

15. On such conspectus, the primary issue as involved in these proceedings is whether in the facts and circumstances of the case the petitioner would be entitled for the land acquisition compensation qua her land which indisputedly stands acquired/utilized for a public purpose of rehabilitation of Project Affected Persons. Also, whether the delay as alleged by the respondents in the petitioner asserting her rights to demand compensation and in approaching the Court, can be regarded to be fatal, so as to disentitle the petitioner to the compensation.

16. At the outset, we may observe that a person can be deprived of his property only by a process known to law, which is the constitutional mandate flowing from Article 300A of the Constitution of India. Article 300A reads thus:-

> **"Article 300A. 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."

17. Article 300A was inserted in the Constitution by the Constitution (Forty-fourth Amendment) Act, 1978, prior to which, right to property was guaranteed under Article 31 of the Constitution, which was a fundamental right falling under Part III of the Constitution. The effect being that the right to hold property ceased to be a fundamental right under the Constitution and the same was recognized as a special right being 'a right to property', outside Part III of the Constitution. Consequently if a person is being deprived of his property, not as per the authority of law, it would be regarded as a breach of such constitutional

right and a person, whose rights in such manner stand breached, would be entitled to seek remedy under Article 226 of the Constitution.

18. It is now well settled that when Article 300A grants such protection and ensures that a person cannot be deprived of his property, no executive action can deprive the person of his property by any method not known to law. Also, the right to property can be curtailed, abridged and modified only by law as declared by the legislature. If the law which relates to deprive the person of his property and when such law provides for compensation to be provided for such expropriation, in such event, any action to take over the land without following the due process of law, much less to acquire the land without payment of compensation, would certainly amount to an unconstitutional and arbitrary action, not only resulting into a breach of the constitutional right guaranteed under Article 300A, but also violative of the law under which the person is sought to be deprived of his land. Such person cannot be deprived of his / her land without payment of compensation, as the law would mandate. There cannot be any other reading of such constitutional protection guaranteed under Article 300A as also granted under the statute.

19. Thus, when the property of the person is acquired and the possession is taken over, so as to bring about a situation that the land has stood vested with the Government, without payment of compensation, it would be illegal and denying the person of the right guaranteed under Article 300A. It is settled principle of law that right to acquire a person's property under the Act is coupled with the

duty to pay compensation as it is an implied duty to pay compensation "as expeditiously as possible" and any delay in payment would be illegal, being violative of Article 300A of the Constitution. Similarly taking possession of land without payment of compensation also amounts to violation of Article 300A. It would also amount to an high-handed action as held by the Supreme Court in **State of Uttar Pradesh & Ors. vs. Manohar**[4].

20. We discuss the position in law as enunciated in various decisions of the Supreme Court, which recognizes such basic tenets of the rule of law and its strict adherence in land acquisition cases.

21. In **State of Uttar Pradesh & Ors. Vs. Manohar** (supra), the Supreme Court was dealing with a case wherein the respondent filed a writ petition before the Allahabad High Court, seeking a writ of mandamus directing the State of Uttar Pradesh to determine compensation for his land (Plot Nos. 3-ka, 4-ka, and 3-kaa) in Village Chakia Bhagwanpur, Azamgarh. The respondent claimed that his land was forcibly taken in 1955 without following due process of law or compensation, and structures were built on it. Despite repeated appeals, no compensation was paid. He supported his claim with a 1991 letter from the Collector, Azamgarh, to the Special Land Acquisition Officer, referencing the issue. The Court held that the appellants failed to provide any evidence showing that the respondent's land was lawfully acquired or compensation ever paid. It was undisputed that the land was later built upon. The Supreme Court criticized the State's stance, which was

4 (2005) 2 SCC 126

held to contradict the principles of a welfare state, and urged the State to acknowledge its mistake and promptly compensate the respondent, emphasizing that India is a constitutional democracy. Referring to Article 300A of the Constitution, the respondent's right to just compensation was recognised.

22. In **Tukaram Kana Joshi & Ors. v. Maharashtra Industrial Development Corporation & Ors.**[5], the land owned by the predecessors-in-interest of the appellants stood notified under Section 4 of the 1894 Act, for an industrial development project, however, no steps to acquire the land were taken up and in fact the acquisition had lapsed. The predecessors-in-interest of the appellants were illiterate farmers, who were absolutely unaware of their rights and hence were inarticulate to claim them. The farmers were persuaded by the authorities to hand over the actual physical possession of the lands in 1964 itself. However, certain similarly situated persons who were also deprived of their rights in a similar manner were granted compensation in 1966. The authorities realized in 1981 that grave injustice had been done to the appellants. In respect of the land in dispute, a fresh Notification under Section 4 of the 1894 Act was issued in 1981. In 1988, Development Corporation, under the instructions of the Government of Maharashtra handed over possession of the land to CIDCO. A writ petition filed by appellants against the inaction of the respondent authorities was dismissed by the High Court only on the ground of delay, and on non-availability of certain documents. In the appeal before the Supreme Court, it was held that the State must either comply with the procedure laid down for acquisition, or requisition,

5 (2013) 1 SCC 353

or under any other permissible statutory mode. The Supreme Court held that the State, especially a welfare State which is governed by the rule of law, cannot arrogate itself to a status beyond the one, that is provided by the Constitution. The following observations of the Supreme Court and the ratio of the decision aptly applies to the facts in hand:-

> "12. The State, especially a welfare State which is governed by the rule of law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.
>
> 13. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the courts to exercise their powers under Article 226, nor is it that there can never be a case where the courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide P.S. Sadasivaswamy v. State of T.N. [(1975) 1 SCC 152 : 1975 SCC (L&S) 22 : AIR 1974 SC 2271] , State of M.P. v. Nandlal Jaiswal [(1986) 4 SCC 566 : AIR 1987 SC 251] and Tridip Kumar Dingal v. State of W.B. [(2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119])
>
> 14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches.

> Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. (Vide Durga Prashad v. Chief Controller of Imports and Exports [(1969) 1 SCC 185 : AIR 1970 SC 769] , Collector (LA) v. Katiji [(1987) 2 SCC 107 : 1989 SCC (Tax) 172 : AIR 1987 SC 1353] , Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur [(1992) 2 SCC 598 : AIR 1993 SC 802] , Dayal Singh v. Union of India [(2003) 2 SCC 593 : AIR 2003 SC 1140] and Shankara Coop. Housing Society Ltd. v. M. Prabhakar [(2011) 5 SCC 607 : (2011) 3 SCC (Civ) 56 : AIR 2011 SC 2161] .)"

23. The legal position as enunciated by the Supreme Court in **Vidya Devi v. State of Himanchal Pradesh & Ors.**(supra) would also squarely apply in the facts of the present case. In this decision, the Supreme Court was dealing with the case of the appellant whose land was taken over by the State in 1967-68 for the construction of a major district road, Nadaun-Sujanpur Road, without taking recourse to acquisition proceedings or following due process of law. The appellant, being an illiterate 80 year old widow, from a rural background was unaware of her rights and entitlement in law, who did not initiate any proceedings for compensation of the land compulsorily taken over by the State. The Supreme Court held that the cause of action in the case was a continuing cause of action as the appellant was compulsorily expropriated of her property in the year 1967, without following the due process of law. While allowing the appeal and directing the State to pay compensation along with all statutory benefits, including solatium, interest, etc., the Supreme Court observed as under:

"12.2. The right to property ceased to be a fundamental right by the Constitution (Forty-Fourth Amendment) Act, 1978, however, it continued to be a human right [Tukaram Kana Joshi v. MIDC, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] in a welfare State, and a constitutional right under Article 300-A of the Constitution. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300-A, can be inferred in that Article. [K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414]

12.3. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300-A of the Constitution. Reliance is placed on the judgment in Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai [Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai, (2005) 7 SCC 627] , wherein this Court held that: (SCC p. 634, para 6)

> "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."
>
> (emphasis supplied)

……...

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.

12.10. This Court in *State of Haryana* v. *Mukesh Kumar* [*State of Haryana* v. *Mukesh Kumar*, (2011) 10 SCC 404 : (2012) 3 SCC (Civ) 769] held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.

……

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.
>
> 13. In the present case, the appellant being an illiterate person, who is a widow coming from a rural area has been deprived of her private property by the State without resorting to the procedure prescribed by law. The appellant has been divested of her right to property without being paid any compensation whatsoever for over half a century. The cause of action in the present case is a continuing one, since the appellant was compulsorily expropriated of her property in 1967 without legal sanction or following due process of law. The present case is one where the demand for justice is so compelling since the State has admitted that the land was taken over without initiating acquisition proceedings, or any procedure known to law. We exercise our extraordinary jurisdiction under Articles 136 and 142 of the Constitution, and direct the State to pay compensation to the appellant."
>
> (emphasis supplied)

24. In a decision of a recent origin in **Sukh Dutt Ratra & Anr. Vs. State of Himachal Pradesh & Ors.**[6] the Supreme Court was considering a challenge to the decision of the High Court which had not entertained the Writ Petition filed by the appellants. The appellants were the owners of land, the possession of which was taken over by the State in the year 1972-73, for constructing the Narag Fagla road, without initiating the land acquisition proceedings or paying compensation. The appellant had filed a writ petition seeking compensation and/or initiation of land acquisition proceedings. However, the High Court, not entertaining the writ petition, granted liberty to the appellants to file a civil suit on the ground that an issue of limitation was involved in the prayers as made by the appellants in demanding compensation. Aggrieved by such order of the High Court, the

6 (2022) 7 SCC 508

appellants had approached the Supreme Court. The Supreme Court, taking review of the legal position, in the context of the rights which would accrue to the appellants under Article 300A of the Constitution, made significant observations to hold that it was imperative to recognize the rights of the appellants to receive compensation and the process of law being required to be followed. It was held that the valuable Constitutional right of a person were required to be protected. It was held that dispossession of the appellants of their private property without following due process of law was violative of both their human right and Constitutional right under Article 300A, by approving the principles of law as laid down in Vidya Devi (supra). The relevant observations as made by the Supreme Court are required to be noted which reads thus:

> **13.** While the right to property is no longer a fundamental right ["Constitution (Forty-fourth Amendment) Act, 1978"], it is pertinent to note that at the time of dispossession of the subject land, this right was still included in Part III of the Constitution. The right against deprivation of property unless in accordance with procedure established by law, continues to be a *constitutional* right under Article 300-A.
>
> **14. It is the cardinal principle of the rule of law, that nobody can be deprived of liberty or property without due process, or authorisation of law. The recognition of this dates back to the 1700s to the decision of the King's Bench in *Entick* v. *Carrington* [1765 EWHC (KB) J98 : 95 ER 807] and by this Court in *Wazir Chand* v. *State of H.P.* [(1955) 1 SCR 408 : AIR 1954 SC 415] Further, in several judgments, this Court has repeatedly held that rather than enjoying a wider bandwidth of lenience, the State often has a higher responsibility in demonstrating that it has acted within the confines of legality, and therefore, not tarnished the basic principle of the rule of law.**
>
> **15.** When it comes to the subject of private property, this Court has upheld the high threshold of legality that must be met, to dispossess an individual of their property, and even more so when done by the State. In *Bishan Das* v. *State of Punjab* [(1962) 2 SCR 69 : AIR 1961 SC 1570] this Court rejected the contention that the petitioners in the case were trespassers and could be removed by an executive order, and instead

concluded that the executive action taken by the State and its officers, was destructive of the basic principle of the rule of law. This Court, in another case — *State of U.P.* v. *Dharmander Prasad Singh* [(1989) 2 SCC 505 : (1989) 1 SCR 176] , held : (SCC p. 516, para 30)

> "*30.* A lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. The use of the expression "re-entry" in the lease deed does not authorise extra-judicial methods to resume possession. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law. In the present case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of Government and Governmental authorities should have a "legal pedigree"."

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

17. When seen holistically, it is apparent that the State's actions, or lack thereof, have in fact compounded the injustice meted out to the appellants and compelled them to approach this Court, albeit belatedly. The initiation of acquisition proceedings initially in the 1990s occurred only at the behest of the High Court. Even after such judicial intervention, the State continued to only extend the benefit of the Court's directions to those who specifically approached the courts. The State's lackadaisical conduct is discernible from this action of initiating acquisition proceedings selectively, only in respect to the lands of those writ petitioners who had approached the court in earlier proceedings, and not other landowners, pursuant to the orders dated 23-4-2007 (in *Anakh Singh* v. *State of H.P.* [2007 SCC OnLine HP 220]) and 20-12-2013 (in *Onkar Singh* v. *State* [CWP No. 1356 of 2010, order dated 20-12-2013 (HP)]), respectively. In this manner, at every stage, the State sought to shirk its responsibility of acquiring land required for public use in the manner prescribed by law.

18. There is a welter of precedents on delay and laches which conclude either way—as contended by both sides in the present dispute—however, the specific factual matrix compels this Court to weigh in favour of the

appellant landowners. The State cannot shield itself behind the ground of delay and laches in such a situation; there cannot be a "limitation" to doing justice. This Court in a much earlier case — *Maharashtra SRTC* v. *Balwant Regular Motor Service* [(1969) 1 SCR 808 : AIR 1969 SC 329] , held : (AIR pp. 335-36, para 11)

> "*11.* … 'Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material.
>
> But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy'."

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

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

> *7.* Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(1)(*f*) was deleted by the Forty-fourth Amendment to the Constitution, Article 300-A has been placed in the Constitution, which reads as follows:
>
> '300-A. *Persons not to be deprived of property save by authority of law.*—No person shall be deprived of his property save by authority of law.'
>
> *8.* This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities. In our view, this case was an eminently fit one for exercising the writ jurisdiction of the High Court under Article 226 of the Constitution."

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

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

> "*12.9.* In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in *Tukaram Kana Joshi* v. *Maharashtra Industrial Development Corpn.* [(2013) 1 SCC 353] wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.
>
> *12.10.* This Court in *State of Haryana* v. *Mukesh Kumar* [(2011) 10 SCC 404 : (2012) 3 SCC (Civ) 769] held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health,

employment, etc. Human rights have gained a multi-faceted dimension."

24. And with regard to the contention of delay and laches, this Court went on to hold : (*Vidya Devi* v. *State of H.P.*, (2020) 2 SCC 569], SCC pp. 574-75, para 12)

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

12.13. In a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and not defeat it. [*P.S. Sadasivaswamy* v. *State of T.N.*, (1975) 1 SCC 152 : 1975 SCC (L&S) 22] "

25. Concluding that the forcible dispossession of a person of their private property without following due process of law, was violative [Relying on *Hindustan Petroleum Corpn. Ltd.* v. *Darius Shapur Chenai*, (2005) 7 SCC 627 : 2005 Supp (3) SCR 388; *N. Padmamma* v. *S. Ramakrishna Reddy*, (2008) 15 SCC 517; *Delhi Airtech Services (P) Ltd.* v. *State of U.P.*, (2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673 : (2011) 12 SCR 191 and *Jilubhai Nanbhai Khachar* v. *State of Gujarat*, 1995 Supp (1) SCC 596 : 1994 Supp (1) SCR 807.] of both their human right, and constitutional right under Article 300-A, this Court allowed the appeal. We find that the approach taken by this Court in *Vidya Devi* is squarely applicable to the nearly identical facts before us in the present case.

27. For the above reasons, the appeal is allowed and the impugned order [*Sukh Dutt Ratra* v. *State of H.P.*, 2013 SCC OnLine HP 3773] of the High Court is hereby set aside. Given the disregard for the appellants' fundamental rights which has caused them to approach this Court and receive remedy decades after the act of dispossession, we also deem it appropriate to direct the respondent State to pay legal costs and expenses of Rs 50,000 to the appellants. Pending applications, if any, are hereby disposed of.

(emphasis supplied)

25. Thus, the Supreme Court in the aforesaid decision concluded that the forcible dispossession of a person of his private property without following due process of law, was violative of both their human rights and the constitutional right guaranteed under Article 300A, and accordingly allowed the appeal. Also, the State's contention of delay and laches of the appellant in moving the Court was rejected, observing that 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. It was held that 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, as to 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. Such principles of law as enunciated in Vidya Devi (supra) are squarely applicable to the facts in hand.

26. In **Rajeev Kumar Damodarprasad Bhadani & Ors. Vs. Executive Engineer, Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) & Ors.**[7], a Division Bench of this Court of which one of us (Somasekhar Sundaresan, J.) was a member was dealing with a challenge to the acquisition of land by the Maharashtra State Electricity Board (now MSEDCL) without complying with due process of law as stipulated under the 1894 Act. The respondent-MSEDCL resisted the proceedings on several grounds, one of the main grounds being that the Writ Petition was vitiated by delay and laches. According to the MSEDCL,

7 2024 SCC OnLine Bom 35

the writ petition was filed merely 40 years after taking over possession of the subject land, and merely 28 years after the construction of the sub-station on the petitioners' land. It is in such context, the Court considering the doctrine of delay and latches observed that in dealing with the constitutional rights in exercise of writ jurisdiction, one can no longer apply *mutatis mutandis* the time frame stipulated in limitation law as if they were attracted. Referring to the decision in Tukaram Kanha Joishi Vs. MIDC (supra) as also the decision in State of Maharashtra Vs. Digambar (supra) and the decision of the Supreme Court in Sukh Dutt Ratra Vs. State of Himachal Pradesh (supra), it was observed that there can be no limitation "to doing justice" if it is clear that the right to property has been intruded without due process of law. The Court made the following observations:

> "30. In *Tukaram Kana Joshi* v. *Maharashtra IDC* [(2013) 1 SCC 353: (2013) 1 SCC (Civ) 491] (Tukaram), the Supreme Court ruled that the constitutional right to property could not be defeated on technical grounds citing delay. Indeed, in *State of Maharashtra* v. *Digambar* (Digambar), the Supreme Court had denied relief to farmers on the ground of delay, but delay was not simply declared to be an absolute bar on filing a writ petition. A plain reading of *Tukaram case* would suggest that *Digambar case* had not been noticed. In *Digambar case*, the Supreme Court was dealing with farmers who had consciously gifted land to the State under a specific scheme for drought relief, to build roads and infrastructure on the land donated, so that income could be generated for them. Decades later, the very same farmers filed writ petitions claiming compensation for the land acquired, and were awarded compensation by writ courts, only to be eventually struck down by the Supreme Court.
>
> 31. More recently, in *Sukh Dutt Ratra* v. *State of H.P.* [(2022) 7 SCC 508 (2022) 3 SCC (Civ) 754] (Sukh Dutt), the Supreme Court has dealt with a whole line of judgments of the Supreme Court to emphasise that there can be no "limitation" to doing justice, if it is clear that the right to property has been intruded into without due process of law. Effectively, *Sukh Dutt case* has repelled the citation of delay and laches in enforcement of the constitutional right to property in land. It is noteworthy that *Digambar case* was cited at the Bar when *Sukh Dutt case* was argued, since the reliance by the State on *Digambar case* has been recorded. However, the Supreme Court did not think it necessary to deal

> with *Digambar case*, in *Sukh Dutt case*. Suffice it to say, *Digambar case*[*State of Maharashtra* v. *Digambar*, was a case where equity principles worked in favour of denial of relief rather than for considering grant of relief. In our opinion, the consideration of the facet of delay in *Digambar case*, must be read in that context and the adjustment of equities that was presented in the facts of that case.
>
> **34.** The State cannot, on the ground of delay and laches, evade its responsibility towards those from whom private property has been expropriated. In any case, what principles a court must apply when assessing whether a writ petition is so hopelessly barred by delays and laches that a remedy is not worthy of consideration, is well articulated in *Maharashtra SRTC* v. *Balwant Regular Motor Service* [1968 SCC OnLine SC 54 AIR 1969 SC 329] ("Maharashtra SRTC"). These principles are extracted and endorsed in *Sukh Dutt case*. When one analyses *Digambar case*, it is noteworthy that these are in fact the principles on which the land-donor farmers claiming compensation decades later, were denied consideration by the Supreme Court."

27. We may also refer to a recent decision of the Supreme Court in **Kolkata Municipal Corporation and Another vs. Bimal Kumar Shah & Ors.**[8] in which the Court was dealing with a case where the appellant-Municipal Corporation had claimed to have acquired property of respondent no.1 in exercise of powers under Section 352 of the Kolkata Municipal Corporation Act, 1980. A Single Judge and the Division Bench of the High Court concurrently held that there is no such power of compulsory acquisition of immovable property under Section 352 of the said Act. The Supreme Court in such context held that there are seven sub-rights which are foundational components of the law, which are in tune with Article 300A of the Constitution. It was held that the absence of one of these or some of them being breached, the land acquisition would be required to be held illegal. In dealing with the right to restitution or entitlement to the fair compensation, the Court observed thus:-

> **"28.** While it is true that after the 44th Constitutional Amendment [the

8 (2024) 10 SCC 533

Constitution (44th Amendment) Act, 1978], the right to property drifted from Part III to Part XII of the Constitution, there continues to be a potent safety net against arbitrary acquisitions, hasty decision-making and unfair redressal mechanisms. Despite its spatial placement, Article 300-A which declares that "*no person shall be deprived of his property save by authority of law*" has been characterized both as a constitutional and also a human right. To assume that constitutional protection gets constricted to the mandate of a fair compensation would be a disingenuous reading of the text and, shall we say, offensive to the egalitarian spirit of the Constitution.

29. The constitutional discourse on compulsory acquisitions, has hitherto, rooted itself within the "power of eminent domain". Even within that articulation, the twin conditions of the acquisition being for a public purpose and subjecting the divestiture to the payment of compensation in lieu of acquisition were mandated. Although not explicitly contained in Article 300-A, these twin requirements have been read in and inferred as necessary conditions for compulsory deprivation to afford protection to the individuals who are being divested of property. A post-colonial reading of the Constitution cannot limit itself to these components alone. The binary reading of the constitutional right to property must give way to more meaningful renditions, where the larger right to property is seen as comprising intersecting sub-rights, each with a distinct character but interconnected to constitute the whole. These sub-rights weave themselves into each other, and as a consequence, State action or the legislation that results in the deprivation of private property must be measured against this constitutional net as a whole, and not just one or many of its strands.

30. What then are these sub-rights or strands of this swadeshi constitutional fabric constituting the right to property? Seven such sub-rights can be identified, albeit non-exhaustive. These are:

(*i*) The duty of the State to inform the person that it intends to acquire his property —*the right to notice,*

(*ii*) The duty of the State to hear objections to the acquisition — *the right to be heard*,

(*iii*) The duty of the State to inform the person of its decision to acquire — *the right to a reasoned decision,*

(*vi*) The duty of the State to demonstrate that the acquisition is for public purpose — *the duty to acquire only for public purpose,*

(*v*) The duty of the State to restitute and rehabilitate — *the right of restitution or fair compensation,*

(*vi*) The duty of the State to conduct the process of acquisition efficiently and within prescribed timelines of the proceedings — *the right to an efficient and expeditious process*, and

(*vii*) The final conclusion of the proceedings leading to vesting — *the right of conclusion.*

31. These seven rights are foundational components of a law that is tune with Article 300-A, and the absence of one of these or some of them

would render the law susceptible to challenge. The judgment of this Court in *K.T. Plantation (P) Ltd.* v. *State of Karnataka*, [(2011) 9 SCC 1] declares that the law envisaged under Article 300-A must be in line with the overarching principles of rule of law, and must be *just*, *fair*, and *reasonable*. It is, of course, precedentially sound to describe some of these sub-rights as "procedural", a nomenclature that often tends to undermine the inherent worth of these safeguards. These seven sub-rights may be procedures, but they do constitute the real content of the right to property under Article 300-A, non-compliance of these will amount to violation of the right, being without the *authority of law*.

32. These sub-rights of procedure have been synchronously incorporated in laws concerning compulsory acquisition and are also recognised by our constitutional courts while reviewing administrative actions for compulsory acquisition of private property. The following will demonstrate how these seven principles have seamlessly become an integral part of our Union and State statutes concerning acquisition and also the constitutional and administrative law culture that our courts have evolved from time to time.

33. Following are the seven principles:

33.1. *The Right to notice*

33.1.1. A prior notice informing the bearer of the right that the State intends to deprive them of the right to property is a right in itself; a linear extension of the right to know embedded in Article 19(1)(*a*). The Constitution does not contemplate acquisition by ambush. The notice to acquire must be clear, cogent and meaningful. Some of the statutes reflect this right.

33.1.2. Section 4 of the Land Acquisition Act, 1894, Section 3(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Section 3-A of the National Highways Act, 1956 are examples of such statutory incorporation of the right to notice before initiation of the land acquisition proceedings.

33.1.3. In a large number of decisions, our constitutional courts have independently recognised the right to notice before any process of acquisition is commenced.

33.2. *The Right to be heard*

33.2.1. Following the right to a meaningful and effective prior notice of acquisition, is the right of the property-bearer to communicate his objections and concerns to the authority acquiring the property. This right to be heard against the proposed acquisition must be meaningful and not a sham.

33.2.2. Section 5-A of the Land Acquisition Act, 1894, Section 3(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 15 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Section 3-C of the National Highways Act, 1956, are some statutory embodiments of this right.

33.2.3. Judicial opinions recognising the importance of this right are far too many to reproduce. Suffice it to say that that the enquiry in which a landholder would raise his objection is y ambush. The notice to acquire must be clear, cogent and meaningful. Some of the statutes reflect this right.

33.3. *The Right to a reasoned decision*

33.3.1. That the authorities have heard and considered the objections is evidenced only through a reasoned order. It is incumbent upon the authority to take an informed decision and communicate the same to the objector.

33.3.2. Section 6 of the Land Acquisition Act, 1894, Section 3(2) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Section 3-D of the National Highways Act, 1956, are the statutory incorporations of this principle.

33.3.3. Highlighting the importance of the declaration of the decision to acquire, the Courts have held that the declaration is mandatory, failing which, the acquisition proceedings will cease to have effect.

33.4. *The Duty to acquire only for public purpose*

33.4.1. That the acquisition must be for a public purpose is inherent and an important fetter on the discretion of the authorities to acquire. This requirement, which conditions the purpose of acquisition must stand to reason with the larger constitutional goals of a welfare State and distributive justice.

33.4.2. Sections 4 and 6 of the Land Acquisition Act, 1894, Sections 3(1) and 7(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 2(1), 11(1), 15(1)(*b*) and 19(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Section 3-A(1) of the National Highways Act, 1956 depict the statutory incorporation of the public purpose requirement of compulsory acquisition.

33.4.3. The decision of compulsory acquisition of land is subject to judicial review and the Court will examine and determine whether the acquisition is related to public purpose. If the Court arrives at a conclusion that that there is no public purpose involved in the acquisition, the entire process can be set aside. This Court has time and again reiterated the importance of the underlying objective of acquisition of land by the State to be for a public purpose.

33.5. *The Right of restitution or fair compensation*

33.5.1. A person's right to hold and enjoy property is an integral part to the constitutional right under Article 300-A. Deprivation or extinguishment of that right is permissible only upon restitution, be it in the form of monetary compensation, rehabilitation or other similar means. Compensation has always been considered to be an integral part of the process of acquisition.

33.5.2. Section 11 of the Land Acquisition Act, 1894, Sections 8 and 9 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 23 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Section 3-G, and Sections 3-H of the National Highways Act, 1956 are the statutory incorporations of the right to restitute a person whose land has been compulsorily acquired.

33.5.3. Our courts have not only considered that compensation is necessary, but have also held that a fair and reasonable compensation is the *sine qua non* for any acquisition process.

33.6. *The Right to an efficient and expeditious process*

33.6.1. The acquisition process is traumatic for more than one reason. The administrative delays in identifying the land, conducting the enquiry and evaluating the objections, leading to a final declaration, consume time and energy. Further, passing of the award, payment of compensation and taking over the possession are equally time-consuming. It is necessary for the administration to be efficient in concluding the process and within a reasonable time. This obligation must necessarily form part of Article 300-A.

33.6.2. Sections 5-A(1), 6, 11-A and 34 of the Land Acquisition Act, 1894, Sections 6(1-A) and 9 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 4(2), 7(4), 7(5), 11(5), 14, 15(1), 16(1), 19(2), 25, 38(1), 60(4), 64 and 80 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Sections 3-C(1), 3-D(3) and 3-E(1) of the National Highways Act, 1956, prescribe for statutory frameworks for the completion of individual steps in the process of acquisition of land within stipulated timelines.

33.6.3. On multiple occasions, upon failure to adhere to the timelines specified in law, the courts have set aside the acquisition proceedings.

33.7. *The Right of conclusion*

33.7.1. Upon conclusion of process of acquisition and payment of compensation, the State takes *possession* of the property in normal circumstances. The culmination of an acquisition process is not in the payment of compensation, but also in taking over the actual physical possession of the land. If possession is not taken, acquisition is not complete. With the taking over of actual possession after the normal procedures of acquisition, the private holding is divested and the right, title and interest in the property, along with possession is vested in the State. Without final vesting, the State's, or its beneficiary's right, title and interest in the property is inconclusive and causes lot of difficulties. The obligation to conclude and complete the process of acquisition is also part of Article 300-A.

33.7.2. Section 16 of the Land Acquisition Act, 1894, Sections 4 and 5 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 37 and 38 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Sections 3-D and 3-E of the National Highways Act, 1956, statutorily recognise this right of the acquirer.

> **33.7.3.** This step of taking over of possession has been a matter of great judicial scrutiny and this Court has endeavoured to construe the relevant provisions in a way which ensures non-arbitrariness in this action of the acquirer. For that matter, after taking over possession, the process of land acquisition concludes with the vesting of the land with the authority concerned. The culmination of an acquisition process by vesting has been a matter of great importance. On this aspect, the courts have given a large number of decisions as to the time, method and manner by which vesting takes place.
>
> **34.** The seven principles which we have discussed are integral to the *authority of law* enabling compulsory acquisition of private property. Union and State statutes have adopted these principles and incorporated them in different forms in the statutes provisioning compulsory acquisition of immovable property. The importance of these principles, independent of the statutory prescription have been recognised by our constitutional courts and they have become part of our administrative law jurisprudence."

28. In the context of the concept of continuing wrong, we may usefully refer to the decision of the Supreme Court in **Samruddhi Cooperative Housing Society Ltd. vs. Mumbai Mahalaxmi Construction Pvt. Ltd.**[9], wherein dealing with an issue under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, Justice D. Y. Chandrachud speaking for the Bench held that the cause of action of the appellant was of a continuing nature, since members of the cooperative society had continued paying higher charges, as the respondent therein failed to provide the occupancy certificate. The Court, considering the provisions of Section 24A of the Consumer Protection Act, 1986, which provides for period of limitation for lodging a complaint to be filed within two years from the date on which the cause of action had arisen, observed that the case of the appellant was of a cause of action, being founded on a continuing wrong. It was hence held that the complaint of the appellant was within limitation. The Supreme Court in reaching

9 (2022) 4 SCC 103

to such conclusion considered the provisions of Section 22 of the Limitation Act, 1963 which provided for computation of limitation in the case of a continuing breach of contract or tort. Referring to the distinct nature of the continuing wrong as considered in the case of **Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan**[10] and the case of **CWT v. Suresh Seth**[11] as also the decision in **M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das**[12], the Supreme Court made the following observations:

> "13. Section 22 of the Limitation Act 1963 5 provides for the computation of limitation in the case of a continuing breach of contract or tort. It provides that in case of a continuing breach of contract, a fresh period of limitation begins to run at every moment of time during which the breach continues. This Court in Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan (AIR 1959 SC 798) elaborated on when a continuous cause of action arises.
>
> 14. Speaking for the three-judge Bench, Justice PB Gajendragadkar (as the learned Chief Justice then was) observed that: (BALAKRISHNA CASE air P.807, PARA 31)
>
> > (2020) 1 SCC 1 "31. …….. Does the conduct of the trustees amount to a continuing wrong under Section 23? That is the question which this contention raises for our decision. In other words, did the cause of action arise *de die in diem* as claimed by the appellants? In dealing with this argument it is necessary to bear in mind that Section 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that Section 23 can be invoked." (emphasis supplied)
>
> The Court held that the act of the trustees to deny the rights of

10 AIR 1959 SC 798

11 (1981) 2 SCC 790

12 (2020) 1 SCC 1

> Guravs as hereditary worshippers and dispossessing them through a decree of the court was not a continuing wrong. Although the continued dispossession caused damage to the appellants, the injury to their rights was complete when they were evicted.

15 In **CWT v. Suresh Seth** (1981) 2 SCC 790, a two-judge Bench of this Court dealt with the question of whether a default in filing a return under the Wealth Tax Act amounted to a continuing wrong. Justice ES Venkataramiah (as the learned Chief Justice then was) observed that:

> "11. …….. The distinctive nature of a continuing wrong is that the law that is violated makes the wrongdoer continuously liable for penalty. A wrong or default which is complete but whose effect may continue to be felt even after its completion is, however, not a continuing wrong or default. It is reasonable to take the view that the court should not be eager to hold that an act or omission is a continuing wrong or default unless there are words in the statute concerned which make out that such was the intention of the legislature. In the instant case whenever the question of levying penalty arises what has to be first considered is whether the assessee has failed without reasonable cause of file the return as required by law and if it is held that he has failed to do so then penalty has to be levied in accordance with the measure provided in the Act. When the default is the filing of delayed return the penalty may be correlated to the time-lag between the last day for filing it without penalty and the day on which it is filed and the quantum of tax or wealth involved in the case for purposes of determining the quantum of penalty but the default however is only one which takes place on the expiry of the last day for filing the return without penalty and not a continuing one. The default in question does not, however, give rise to a fresh cause of action every day. **Explaining the expression "a continuing cause of action" Lord Lindley in Hole v. Chard Union [(1894) 1 Ch D 293 : 63 LJ Ch 469 : 70 LT 52] observed:**
> **"What is a continuing cause of action? Speaking accurately, there is no such thing; but what is called a continuing cause of action is a cause of action which arises from the repetition of acts or omissions of the same kind as that for which the action was brought." (emphasis supplied)**
> … … … …

18. **A continuing wrong occurs when a party continuously breaches an obligation imposed by law or agreement. Section 3 of the MOFA imposes certain general obligations on a promoter**. These obligations inter alia include making disclosures on the nature of title to the land, encumbrances on the land, fixtures, fittings and amenities to be provided, and to not grant possession of a flat until a completion certificate is given by the local authority. The responsibility to obtain the occupancy certificate from the local authority has also been imposed under the agreement to sell between the members of the appellant and the respondent on the latter."

…….

> 21. Based on these provisions, it is evident that there was an obligation on the respondent to provide the occupancy certificate and pay for the relevant charges till the certificate has been provided. The respondent has time and again failed to provide the occupancy certificate to the appellant Society. For this reason, a complaint was instituted in 1998 by the appellant against the respondent. Ncdrc on 20-8-2014 directed the respondent to obtain the certificate within a period of four months. Further, Ncdrc also imposed a penalty for any delay in obtaining the occupancy certificate beyond these 4 months. Since 2014 till date, the respondent has failed to provide the occupancy certificate. Owing to the failure of the respondent to obtain the certificate, there has been a direct impact on the members of the appellant in terms of the payment of higher taxes and water charges to the municipal authority. This continuous failure to obtain an occupancy certificate is a breach of the obligations imposed on the respondent under the MOFA and amounts to a continuing wrong. The appellants, therefore, are entitled to damages arising out of this continuing wrong and their complaint is not barred by limitation."
>
> (emphasis supplied)

29. Adverting to the aforesaid principles of law as laid down in the series of these decisions of the Supreme Court, in their application to the case in hand, this is clearly a case which not only depicts the breach of the petitioner's constitutional rights guaranteed under Article 300A of the Constitution, which is the basic illegality and a wrong done to the petitioner, but also a case of continuing wrong, as the illegality of an expropriation of petitioner's land is compounded on day to day basis, by non-payment of compensation. Once, in a process known to law, the corporeal rights of the petitioner to hold the land were not severed, in such event indisputedly the petitioner is made to continuously suffer the breach of her constitutional rights guaranteed under Article 300A. The sequel being that the petitioner could not be deprived of the right to property, unless the procedure in law as mandated under the statute and, in the present case the provisions of the Land Acquisition Act, 1894, was followed.

30. We also cannot fathom that in a civilized society, and more particularly, when the rights are governed by the Rule of Law, namely the provisions of the Constitution and the Statute law, in a situation where continuous wrong is being caused to a person who is guaranteed such rights, these rights could be permitted to be defeated or rendered extinct, merely for the reason that there was a delay on the part of such person to approach the Court. It is difficult to accept the proposition and more particularly applying the principles of law as laid down in the decisions as discussed by us that a continuing wrong would cease to exist. In the present context, if such a proposition is accepted, and more so in a country like ours where in regard to our brother and sister citizens hailing from the rural area, neither there is legal literacy nor the means to approach the Court. The law cannot be applied in such manner to mean that their rights would be regarded as dead rights.

31. We may observe that the sad reality can never be overlooked that every person in such situation may not be so fortunate, in the first place to be informed of the legal rights, then to receive legal advice and thereafter to knock the doors of the Court. There may not even be the means/resources to do so. It is for such reason that the State officers posted on such duties are under an onerous obligation to adhere to the lawful procedure and protect the rights of such citizens. This is a constitutional duty. Thus, the respondent's contention of such rights to be dead rights would be a proposition too far-fetched. The Court cannot be oblivious to the basic constitutional responsibility and obligation on the State, when it intends to exercise the powers of *eminent domain*. Even in the

circumstances of voluntary surrender of land when it is not a decision, it would be mandatory to pay compensation at all material times, and till the time compensation is not paid, the infringement of the legal and Constitutional rights would keep occurring. If such right and authority in the person is not recognized, in our opinion, it would amount to a complete negation of the rights guaranteed under Article 300A of the Constitution, as also, rendering the provisions of the Land Acquisition Act nugatory. There cannot be a contrary intention of either the Constitutional provisions or the relevant statute.

32. Having considered the aforesaid position in law, we are of the clear opinion that it cannot be said that the right of the petitioner to receive compensation in any manner stood extinguished and/or that the petitioner had acquiesced in the non-receipt of compensation. In any case, to establish acquiescence, there is no evidence of such intention on the part of the petitioner which could be gathered so as to attract the principle of estoppel.

33. The petitioner admittedly was the owner of the land in question. The possession of the land was handed over by the petitioner to the Special Land Acquisition Officer although voluntarily way back in the year 1990 in regard to which there is no dispute. Also, it is an indisputed fact that the petitioner has not been paid compensation, despite which the Collector allotted the petitioner's land to project affected persons/third parties. However, in a manner quite unknown to law, it was handed over under a mutual/ consensual/arrangement as seen in the affidavit as executed by the petitioner which reads thus:-

"(Translation of a photocopy of an AFFIDAVIT, printed in Marathi, having the blanks left therein, filled in in writing, in Marathi).

Exhibit R-1

Voluntary Affidavit

On being asked on behalf of the Collector and Deputy Director, Rehabilitation (Land), Kolhapur, I, the undersigned Occupant, by name Sumitra Shridhar Khane, residing at Vannur, Taluka - Kagal, District - Kolhapur, give in writing on solemn affirmation as under:

The land of my ownership, mentioned in Column No.5 from out of the area of the land bearing Survey Number / Gat Number mentioned hereinbelow is required by the Government for Public Usage i.e. for rehabilitation of the dam-affected persons, and for that purpose, I am ready to voluntarily sell the said land to the Government for an appropriate lawful price as per the provisions of the law. Moreover, today, I am voluntarily handing over the advance possession of the said land to the Collector and Deputy Director, Rehabilitation (Land), Kolhapur.

Sr. No.	Name of Occupant	Survey / Gat No.	Total Area	Area from out of the same, taken into possession by the Government	Remarks
			Hect.- Are	Hect. --- Are	
1	2	3	4	5	6
1)	Sumitra Shridhar Khane	156-Part	1 – 54	1 – 12	Voluntarily
2)	Proposed Gat No.	154-Part	1 – 96 0 – 23 Pot-Kharaba	1 – 12	In lieu of

I am aware that, till the said land is allotted to the dam-affected persons, the same shall remain with me only for cultivation thereof on one-yearly basis and I will duly get executed a 'Kabulayat' (admission) Statement in respect thereof from the Tahasildar concerned. I am required to pay the current Government Assessment, Local Fund and other taxes in respect of the said land. I will pay the same in Village Chavadi Office and will obtain an official receipt in respect thereof. (I will pay the rent to the tune of an amount of one-and-half times of the Assessment in Government Treasury). I am ready to accept the amount of final valuation in respect of the land whatever that might be determined as per the prevailing market rate by the Special Land Acquisition Officer.

The actual Panchanama in respect of the trees, crops, structures etc. whatever that are standing in the said land as of today has been mentioned in the report enclosed herewith and I agree to the same. I also agree to the official valuation in respect of the trees and crops standing in the land as may be determined by the Government Officers. Further, I will

not fell the said trees, harvest crops and demolish structures etc. without seeking permission therefor from the Collector.

I agree that the area mentioned in Column No.5 under the aforesaid Paragraph No. 1 is an approximate area. Date: 19.09.1990.

BEFORE ME,
(Signature Illegible)
Rehabilitation Officer,
Doodhganga Project,
Kolhapur."

Sd/- Sumitra Shridhar Khane.
Signature/Thumb impression of
the Owner of the Land.

(emphasis supplied)

34. From a bare reading of the aforesaid affidavit, it is quite clear that although the petitioner voluntarily surrendered the possession of the land, she never gave up her right to receive compensation as clearly seen from her voluntary affidavit (supra). These facts make it clear that the petitioner became landless, in as much as, the petitioner's right to enjoy the land of her ownership has been deprived and that too without following the due process of law. It requires no elaboration that in depriving the petitioner of her land and taking away the petitioner's ownership and by allotting the land to third parties, has amounted to a gross violation of petitioner's constitutional right guaranteed under Article 300A of the Constitution, applying the aforesaid well settled principles of law. In the event, the ownership of the petitioner's land was to be taken away, certainly, the petitioner was required to be compensated in a manner known to law and without adhering to the doctrine of due process, that is the petitioner being paid compensation, further steps to allot the land to third parties / project affected persons could never have been resorted leaving the acquisition incomplete, even if, the petitioner was to voluntarily surrender the land.

35. On the aforesaid backdrop, we now consider the decisions as cited on

behalf of the respondents. The learned Additional Government Pleader has placed reliance on the decision in **State of Maharashtra vs Digambar** (supra), wherein the Supreme Court was dealing with a peculiar case where the respondent, an agriculturist from Vepani village in Maharashtra, sought compensation for his land allegedly utilized by the State Government in 1971-72 for constructing the Vepana-Gogri road during scarcity relief works at the time Maharashtra faced severe scarcity in 23 thousand villages, prompting large-scale relief efforts, including 38,000 km of road construction. Due to financial constraints, Collectors ensured that lands were donated without compensation. In 1991, the respondent filed a writ petition before the Bombay High Court for a direction to the State Government to grant him compensation for allegedly utilising his land without his consent in the course of execution of the scarcity reliefs work undertaken by the State Government. Rejecting the plea of the Government to dismiss the writ petition on the ground of laches and delay of 20 years and allowing the writ petition, the High Court held that in a welfare State, the State Government could not adopt such attitude when citizens come before the Court and complain that they had been deprived of their property without following due process of law and without paying compensation. On an appeal by the State Government before the Supreme Court, the State urged that the respondent on account of the delay and laches on the part of the respondent disentitled him to the relief from the High Court. Allowing the appeal, the Supreme Court held that the power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious

and reasonable. Persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. It was held that where the High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blameworthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State. In our opinion, such principles as laid down in this decision are salutary, however, in the facts of the present case, the same are certainly not applicable. Also, this is not a case where the petitioner donated her land to the State and thereafter has taken a reverse position. It is in such context, the Supreme Court has made the observations in paragraphs 12 to 26 of the report. Hence, this decision would not assist the respondents.

36. The learned Additional Government Pleader has also placed reliance on the decision of the Supreme Court in **Chairman, State Bank of India vs M J James** (supra). Reliance on this decision is also not well founded. In this decision, the Supreme Court was dealing with a case where the respondent, a dismissed employee, challenged his termination following an Inquiry Officer's report. The dismissal order dated 18 April 1985 remained unchallenged for over four years, and the absence of a limitation period was argued during the appeal. In such

context, the Supreme Court in such facts, held that what is a reasonable time cannot be put in a straight jacket formula or judicially codified. It was also held that in the facts of the case, a satisfactory explanation justifying the delay was required to be furnished, without which the Court held that it was difficult to hold that the appeal was preferred within a reasonable time. We are at a loss to understand as to how this decision which is on the principles of service law would apply to the facts of the present case and more particularly, when there are catena of decisions as noted above, directly on the propositions that the State cannot shield itself on the ground of delay and laches in not paying compensation in such cases.

37. Thus, viewed holistically, it becomes evident that the State's actions or inactions have exacerbated the injustice suffered by the petitioner, ultimately forcing her to approach this Court, albeit belatedly. This lackadaisical approach is highlighted by the State's initiation of acquisition proceedings in respect of the petitioner's land, however, in not including the petitioner's land in the award, that too after dispossession of the petitioner without payment of compensation to the petitioner. It is quite astonishing that the State would intend to evade its obligatory duty of paying compensation to the petitioner whose land has been utilised for a public purpose to rehabilitate the project affected persons of Dudhganga Irrigation project. This is certainly not permissible. State cannot deny payment of compensation having dispossessed the petitioner as also taking away petitioner's ownership. The obligation to pay compensation is firmly rooted within the purview of the Constitutional guarantee conferred under Article 300A

of the Constitution. It is implied that acquisition of private property can be recognized only on payment of fair compensation as the law would mandate unless the circumstances are otherwise. Failure to provide compensation is negation of Article 300A. Hence, any act by the State to acquire land and property without complying with these principles would be manifestly illegal and unconstitutional. This apart, such breach of the legal and constitutional rights is held to give rise to cause of action which a continuing cause of action. It thus cannot be countenanced that the land of the petitioner when acquired for public purpose, the petitioner can be deprived of the compensation. This is also not a case where the respondents are in a position to point out any material that it is the petitioner who had given up receiving compensation. It is hence a unilateral act on the part of the respondents not to pay the compensation. In this view of the matter, in our opinion, the petitioner has certainly become entitled for payment of the land acquisition compensation.

38. Now coming to the relief as prayed by the petitioner, in our opinion, reliefs would be required to be moulded, inasmuch as, considering the provisions of Section 114 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "**2013 Act**"), it would be required to be held that the provisions of the 1894 Act would apply to the case in hand. Section 114 of the 2013 Act reads thus:

> "**114. Repeal and saving.–**
>
> (1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed.

> (2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals"

39. Insofar as the facts of the present case, it is clear that initially the land of the petitioner was identified for acquisition under the 1894 Act. The possession of the land was also handed over on 19 September 1990 before the notifications were issued under Section 4 and 6 dated 20 December 1990 and 8 March 1991 respectively. In respect of certain lands notified for acquisition, the Special Land Acquisition Officer declared an award, however, an award was not declared qua the petitioner's land. It is in these circumstances, applying the provisions of Section 6 of the General Clauses Act, 1897 read with Section 114 of the 2013 Act, the provisions of the 1894 Act would continue to apply. Hence, the relief which would be required to be granted to the petitioner would attract the applicability of the 1894 Act and the rights of the petitioner recognized thereunder. Accordingly, the petition would be required to be allowed in terms of the following order:

ORDER

(i) The respondents are directed to treat the land of the petitioner as a deemed acquisition. It is declared that the petitioner is entitled for disbursement of the compensation for acquisition of her land i.e. Gat No.156, admeasuring 1 H. 12 R. situated at village Vhanur, Tal. Kagal, District-Kolhapur.

(ii) The Respondents/Collector (Land Acquisition) is directed to compute the compensation as payable to the petitioner on the date the possession of the land was taken over i.e. 19 September 1990 and disburse to the petitioner, the amount of compensation within a period of four months from today, with all consequential benefits of solatium, interest and/or all the sums payable under the Land Acquisition Act, 1894. Interest to be calculated till the date of actual payment of all the amounts.

40. As held by the Supreme Court in **Sukh Dutt Ratra** (supra) in paragraph 27 (supra) of the said judgment, as the facts of the present case are almost similar, we hold that as there was a patent breach of the petitioner's Constitutional rights, which has caused the petitioner to approach this Court. We, hence, find it appropriate and imminently in the interest of justice, to direct the State Government to pay legal cost and expenses of Rs.25,000/- to the petitioner, within a period of two weeks from today.

41. Rule is made absolute in the aforesaid terms.

THE COMPANION PETITIONS

[Writ Petition no. 4991 Of 2022, Writ Petition No.11372 Of 2022, Writ Petition No.4988 Of 2022 & Writ Petition No.15996 Of 2022]

42. Learned counsel for the parties agree that except for the details of the land, the facts in these companion petitions are identical. It is agreed at the Bar that our aforesaid judgment would cover these writ petitions as well. However, the

compensation amount be paid to the petitioners considering the relevant date on which the possession of the petitioners' land in these cases are taken over.

43. We accordingly allow these petitions in terms of our operative orders as as contained in paragraph 39 & 40 of this judgment.

44. Rule is made absolute in the aforesaid terms.

(SOMASEKHAR SUNDARESAN, J.) (G. S. KULKARNI, J.)