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"Tukaram Kana Joshi and others through Power of Attorney Holder v. M.I.D.C. ", 2013(1) SCC 353,

2012 SupremeCourtOnline 0109

SUPREME COURT OF INDIA

(Dr. B.S. CHAUHAN) (JAGDISH SINGH KHEHAR)

Tukaram Kana Joshi & Ors. thr. Power of Attorney Holder v. M.I.D.C.

CIVIL APPEAL NO.7780 OF 2012 (Arising out of SLP(C)No.2418 OF 2012)

2.11.2012

Right to property - Is now considered to be not only a constitutional or a statutory right but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multi faceted dimension. The right to property is considered very much to be a part of such new dimension. [Para 9]

Constituion of India, Article 300-A

JUDGMENT

Dr. B.S. Chauhan, J.

1. Leave granted.

2. This appeal has arisen from the impugned judgment and order dated 14.11.2011, passed by the High Court of Bombay in Writ Petition No.9513 of 2009, by way of which the High Court has rejected the claim of the appellants for any compensation due to them for the land taken by the respondent authorities, without resorting to any procedure prescribed by law.

3. The facts and circumstances giving rise to this appeal are as under:

A. The land in dispute admeasuring 0-2-3 and 0-7-1 (9500 sq.mtrs.) in Survey nos. 2 and 3 respectively, situate in the revenue estate of village Shirwame Taluka and District Thane, was owned by the predecessors-in-interest of the appellants, namely, Kana Ganpat Joshi, Maruti Kana Joshi, Dinanath Ganpat Joshi and Gopinath Ganpat Joshi. A very large chunk of land including the said land stood notified under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') on 6.6.1964 for the establishment of the Ulhas Khore Project i.e. a project for industrial development. However, no subsequent proceedings were taken up thereafter, and the acquisition proceedings lapsed. The predecessors-in-interest of the appellants were not merely illiterate farmers, but were also absolutely unaware of their rights and hence too inarticulate to claim them. Thus, they could be persuaded by the officers of the respondent authorities to hand over possession of the said land. Actual physical possession of the said land was taken by the State authorities and handed over to the Maharashtra Industrial Development Corporation (hereinafter called as the 'Development Corporation') in the year 1964 itself. B. Similarly situated persons who were also deprived of their rights in a similar manner were granted compensation vide order dated 17.6.1966.

C. The respondent-authorities realised in 1981 that grave injustice had been done to the appellants. Thus, in respect of the land in dispute, a fresh notification under Section 4 of the Act dated 14.5.1981 was issued. However, no further proceedings under the Act were initiated. The appellants had been pursuing the authorities persuading them to complete the deemed acquisition proceedings, but despite their efforts, even a declaration under Section 6 of the Act was not issued and therefore, such proceedings also died a natural death.

D. On 30.4.1988, the Development Corporation, under the instructions of the Government of Maharashtra handed over the possession of the said land to the City Industrial Development Corporation of Maharashtra (hereinafter referred to as 'CIDCO'). The appellants were unable to get any compensation for the said land or even for that matter, any land in lieu of the lands so taken, in spite of their best efforts made in this regard. Various beneficial schemes were floated by the State authorities in favour of persons who had been deprived of their livelihood and those, whose land had been acquired for the same purpose and under such schemes, such uprooted persons were granted a particular piece of developed land, proportionate to their area acquired. But, appellants' efforts in this regard also could not be fruitful.

E. As the appellants were unable to get any relief from any authority, though they were continuously pursuing their remedies by approaching the Special Land Acquisition Officer, as well as the Revenue Authorities of the State, without any success whatsoever, they then, feeling totally distraught/frustrated, approached the High Court of Bombay as a last resort, by filing Writ Petition No. 9513 of 2009. The same was dismissed by the High Court only on the grounds of delay, and the non-availability of certain documents.

Hence, this appeal.

4. We have heard the learned counsel for the parties and perused the record.

5. This Court has dealt with this case on several occasions in the past and has repeatedly asked the State authorities to be sensitive, sympathetic and requested them to put forward suggestions before the court, to enable it to redress the grievances of the appellants. The respondents herein have placed various affidavits on record and the facts of the case have fairly been admitted.

6. The appellants were deprived of their immovable property in 1964, when Article 31 of the Constitution was still intact and the right to property was a part of fundamental rights under Article 19 of the Constitution. It is pertinent to note that even after the Right to Property seized to be a Fundamental Right, taking possession of or acquiring the property of a citizen most certainly tantamounts to deprivation and such deprivation can take place only in accordance with the “law”, as the said word has specifically been used in Article 300-A of the Constitution. Such deprivation can be only by resorting to a procedure prescribed by a statute. The same cannot be done by way of executive fiat or order or administration caprice. In *Jilubhai Nanbhai Khachar, etc. etc. v. State of Gujarat & Anr.*, AIR 1995 SC 142, it has been held as follows: –

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

7. The right to property is now considered to be, not only a constitutional or a statutory right, but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multi faceted dimension. The right to property is considered, very much to be a part of such new dimension.

(Vide: *Lachhman Dass v. Jagat Ram & Ors.* (2007) 10 SCC 448; *Amarjit Singh & Ors. v. State of Punjab & Ors.* (2010) 10 SCC 43; *Narmada Bachao Andolan v. State of Madhya Pradesh & Anr.* AIR 2011 SC 1989; *State of Haryana v. Mukesh Kumar & Ors.* AIR 2012 SC 559 and *Delhi Airtech Services Pvt. Ltd. v. State of U.P & Anr.* AIR 2012 SC 573)

8. In the case at hand, there has been no acquisition. The question that emerges for consideration is whether, in a democratic body polity, which is supposedly governed by the Rule of Law, the State should be allowed to deprive a citizen of his property, without adhering to the law. The matter would have been different had the State pleaded that it has right, title and interest over the said land. It however, concedes to the right, title and interest of the appellants over such land and pleads the doctrine of delay and laches as grounds for the dismissal of the petition/appeal.

9. There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational

facilities and other categories of similar cases, etc. Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, under Article 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. Functionaries of the State took over possession of the land belonging to the appellants without any sanction of law. The appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode. There is a distinction, a true and concrete distinction, between the principle of “eminent domain” and “police power” of the State. Under certain circumstances, the police power of the State may be used temporarily, to take possession of property but the present case clearly shows that neither of the said powers have been exercised. A question then arises with respect to the authority or power under which the State entered upon the land. It is evident that the act of the State amounts to encroachment, in exercise of “absolute power” which in common parlance is also called abuse of power or use of muscle power. To further clarify this position, it must be noted that the authorities have treated the land owner as a ‘subject’ of medieval India, but not as a ‘citizen’ under our constitution.

10. 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 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.

11. 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. AIR 1974 SC 2271; State of M.P. & Ors. v. Nandlal Jaiswal & Ors., AIR 1987 SC 251; and Tridip Kumar Dingal & Ors. v. State of West Bengal & Ors., (2009) 1 SCC 768;)

12. 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 Prasad v. Chief Controller of Imports and Exports & Ors., AIR 1970 SC 769; Collector, Land Acquisition, Anantnag & Anr. v. Mst. Katiji & Ors., AIR 1987 SC 1353; Dehri Rohtas Light Railway Company Ltd. v. District Board, Bhojpur & Ors., AIR 1993 SC 802; Dayal Singh & Ors. v. Union of India & Ors., AIR 2003 SC 1140; and Shankara Co-op Housing Society Ltd. v. M. Prabhakar & Ors., AIR 2011 SC 2161)

13. In the case of H.D Vora v. State of Maharashtra & Ors., AIR 1984 SC 866, this Court condoned a 30 year delay in approaching the court where it found violation of substantive legal rights of the applicant. In that case, the requisition of premises made by the State was assailed.

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

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

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

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

18. While dealing with the similar issue, this Court in *K. Krishna Reddy & Ors. v. The Special Dy. Collector, Land Acquisition Unit II, LMD Karimnagar, Andhra Pradesh*, AIR 1988 SC 2123, held as under:

"....After all money is what money buys. What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even one half of it. It is a common experience that the purchasing power of rupee is dwindling. With rising inflation, the delayed payment may lose all charm and utility of the compensation. In some cases, the delay may be detrimental to the interests of claimants. The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry. They have no savings to draw. They have nothing to fall back upon. They know no other work. They may even face starvation unless rehabilitated. In all such cases, it is of utmost importance that the award should be made without delay. The enhanced compensation must be determined without loss of time...."

19. In view of the above, the instant case represents a highly unsatisfactory and disturbing situation prevailing in one of the most developed States of our country.

20. Be that as it may, ultimately, good sense prevailed, and learned senior counsel appearing for the State came forward with a welcome suggestion stating that in order to redress the grievances of the appellants, the respondent-authorities would notify the land in dispute under Section 4 of the Act within a period of 4 weeks from today. Section 6 declaration will be issued within a period of one week thereafter. As the appellants have full notice and information with respect to the proceedings, publication in the newspapers either of the notification or of the declaration under the Act are dispensed with. Notice under Section 9 of the Act will be served within a period of 4 weeks after the publication of Section 6 declaration and award will be made within a period of three months thereafter. The deemed acquisition proceedings would thus, be concluded most expeditiously. Needless to say, the market value of the land in dispute will be assessed as it prevails on the date on which the Section 4 notification is published in the Official Gazette. Payment of

compensation/award amount will be made to the claimants/persons- interested immediately thereafter, alongwith all statutory benefits. The appellants shall be entitled to pursue the statutory remedies available to them for further enhancement of compensation, if so desired.

21. Before parting with the case, we appreciate the gesture shown by the State Government for coming forward with a most appropriate suggestion to enable us to resolve the controversy involved herein, in a manner so cordial and sympathetic.

22. With these observations, the appeal stands disposed of.