REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVILAPPELLATE JURISDICTION

CIVIL APPEAL NO.196 OF 2011

D.B. BASNETT (D) Through LRs … Appellant

versus

THE COLLECTOR
East District, Gangtok, Sikkim & Anr. …Respondents

J U D G M E N T

SANJAY KISHAN KAUL, J.

1. The Agriculture Department of the Government of Sikkim (respondent No.2) sought to acquire, in the year 1980, land measuring 8.36 acres, located in Dundung Block, Sang in East Sikkim for the purpose of building the Progeny Orchard Regional Centre. The land was recorded in two names – 1.29 acres in the name of the Maharaja of Sikkim and 7.07 acres in the name of Man Bahadur Basnett, father of the original appellant. The latter land is subject matter of dispute in the

present proceedings.

2. The land in question is partially fenced, with a farm, some barracks and office. Late Man Bahadur Basnett passed away in the year 1991 whereupon the property fell to the share of the appellant in the present proceedings (now represented by his two sons). It may be noticed that Man Bahadur Basnett was survived by seven (7) children, but there is no dispute *inter se* the siblings in respect of the claim of D.B. Basnett over suit property.

3. It is the case of the late appellant that when he visited the suit property in March, 2002, he found that the respondents had wrongly encroached and trespassed on the same, using it as an agricultural farm. He claims to have lived away from Gangtok earlier and thus, served a notice on 5.4.2002 under Section 80 of the Code of Civil Procedure, 1908 notifying them against the alleged trespass and seeking possession. There was no response to the same and, thus, the suit was filed before the Court of District Judge (E&N), Gangtok, Sikkim, being the Title Suit No.6/2004 (renumbered) on 9.12.2002.

4. The sum and substance of the claim made was that the procedure envisaged under the Sikkim Land (Requisition and Acquisition) Act, 1977 (hereinafter referred to as the 'said Act') had not been invoked or followed. Suffice to say that the process is similar to the Land Acquisition Act, 1894 (hereinafter referred to as the '1894 Act'), i.e., notification required under Section 4 of the Act for acquisition of land, opportunity to interested persons to file claims under Section 5 of the Act and the determination of the amount of compensation under Section 7 of the Act. The plea raised was that no notice of acquisition was ever published, nor any process followed for the same.

5. Respondent No. 2 sought to raise a defence to the suit of the bar of limitation. It is their say that the Agriculture Department had followed due process while acquiring the land in 1980 and had paid compensation of Rs.62,645 to late Man Bahadur Basnett through the Land Revenue Department. Thus they were enjoying peaceful possession of the subject matter property as a consequence thereof. The claim of the late appellant that rent was being paid to the Government was stated not to be in the knowledge of the Agriculture Department.

6. The trial court dismissed the suit *vide* judgment and order dated 31.10.2006, both on grounds of limitation as well as substantive merits. The consideration of merits was based on the fact that the original stamped receipts of payment of compensation had been taken note of in the record of proceedings, though the actual receipt was not available. The correspondence exchanged even inter-departmentally was stated to point to the compensation being paid, as also a letter which had been sent by late Man Bahadur Basnett, signifying his consent to transfer suit property upon payment of due compensation.

7. On appeal being filed and registered before the High Court of Sikkim, being RFA No.2/2007, the same was examined on both issues and was dismissed on 29.5.2008. However, insofar as the aspect of limitation was concerned, the High Court disagreed with the findings of the trial court by relying upon Article 65 of the Limitation Act, 1963, which provided for a period of twelve (12) years in case of adverse possession. Such a case of adverse possession was opined to be difficult for the State Government to plead and in any case, on facts, had never been pleaded. It is also recorded that no notification under the said Act

had been produced, nor was any record produced in that behalf. The actual signed and stamped receipts were also not placed on record. The inconsistent stand of the Government claiming that they had acquired the land while still collecting land revenue for the same was also noted. These aspects were sought to be balanced with the letter dated 20.3.1980, of late Man Bahadur Basnett, who had given his no objection to the acquisition if compensation was paid to him, and a letter dated 2.4.1980 of the Land Revenue Department forwarding the compensation to the District Collector for payment to late Man Bahadur Basnett. The land revenue records were stated not to be of such significance in the face of these documents, but sympathising with the predicament of the appellant and recognising the weaker position of the Government in the entire dispute, it was observed that the Government had no justification to keep holding on to the land revenue as collected from the appellant. Since no claim was made in that behalf, it was directed that the same should be refunded, if so asked for by the appellant, more so as the Government has to act as a "model litigant."

8. In the SLP filed against the impugned order, leave was granted on 7.1.2011. The matter was, however, taken up for hearing for the first

time on 2.5.2019. On hearing learned counsel for the parties, at the request of the learned counsel for the respondents, time was given to scrutinize the record and show to the Court how a sum of Rs.62,645 was withdrawn by the Collector in cash (as alleged and as contended), and which document(s) evidenced payment to late Man Bahadur Basnett. It was observed that this was the least expected considering that the respondents claimed to have lost all records of acquisition proceedings and none of the notifications were available. The order ended by observing that a failure to show the same would necessitate the State Government to acquire the land through fresh notification, if it wants to keep the land.

9. An affidavit was filed in August, 2019, which was analysed on 27.8.2019, and it was found that there was neither any proof of the Collector having withdrawn cash to the tune of Rs.62,645 from the account, nor any receipt from late Man Bahadur Basnett acknowledging the payment, except the stated covering letter for the receipt. In the conspectus of these facts, in order to work out a mutually agreed settlement, the dispute was referred to the Mediation Centre annexed to

the High Court of Sikkim. Unfortunately this also did not produce any result, a failure report was received and, thus, the remaining arguments were heard.

10. We may notice that though leave was granted, no cross-objections were filed by the respondents on any aspect including on the finding of limitation.

11. Be that as it may, the fact remains, as noticed by the High Court, that it is not the case of the respondents that they had adverse possession, but that they had acquired the land through due process and had paid compensation for the same. We agree with the High Court that there is no plea even of adverse possession by the respondent. We are not to be detained by the same in this appeal.

12. We are in complete agreement with this view and for this reason also the plea of adverse possession really does not survive.

13. That brings us to the question whether the process of acquisition

had been followed in accordance with law. No notification has been shown to us of the intent to acquire land under Section 4, or any other declaration thereafter. In fact what is claimed before us, as also before the courts below, is that no records are available in respect of the acquisition process. This obviously puts the respondent State in a difficult situation, which was sought to be got over by only relying on a consent having been obtained for acquisition and the compensation having been paid, as determined. On the aspect of the compensation, only a covering letter is available, and not the actual receipt. We have also observed aforesaid that an unusual process of making payment in cash is claimed to have been adopted, and the amount is not an insignificant amount, if we look at the year of acquisition. We even gave a further opportunity to the authorities to show, as to from which account this compensation was withdrawn by the Collector, but it appears that there is no proof even of the withdrawal of the amount, much less payment of the compensation. The letter dated 20.3.1980 of late Man Bahadur Basnett is no doubt a no-objection to the acquisition of land, but provided compensation was paid subsequently. This letter does not obviate the need to furnish proof of the process for acquisition of land or for the determination of compensation,

under the said Act. There cannot be a presumption of acquisition without following the due process as envisaged under Sections 3(1), 4(2), 5(1) and 7(2) of the said Act. The burden was on the State to prove that the process as envisaged under the said Act was followed and the compensation paid. Not an iota of evidence has been laid in support of any of these aspects, except the willingness of late Man Bahadur Basnett to permit the land to be acquired on payment of compensation, the forwarding of the amount by the Land Revenue Department to the District Collector through a cheque, and thereafter a letter from the Collector/respondent No.1 stating that some receipt was being enclosed, acknowledging the payment in cash (without a receipt being found). There is, thus, absence of both primary and secondary evidence.

14. We may note that even though rights in land are no more a fundamental right, still it remains a constitutional right under Article 300A of the Constitution of India, and the provisions of any Act seeking to divest any person from the rights in property have to be strictly followed[1].

1N. Padmamma & Ors. v. S. Ramakrishna Reddy &Ors. (2008) 15 SCC 517

15. It is also settled law that following the procedure of Section 4(1) of the Land Acquisition Act, 1894[2] (akin to Section 5(1) of the said Act) is mandatory, and unless that notice is given in accordance with the provisions contained therein, the entire acquisition proceeding would be vitiated. An entry into the premises based on such non-compliance would result in the entry being unlawful[3]. The law being ex-propriatory in character, the same is required to be strictly followed. The purpose of the notice is to intimate the interested persons about the intent to acquire the land. These provisions, as they read, of the said Act, thus, are also required to be so followed.

16. We find a detailed discussion about the law as it evolved and the rationale for the said purpose in ***Vidya Devi***[4] of which the relevant paragraphs read as under:

> "10.1. The Appellant was forcibly expropriated of her property in 1967, when the right to property was a fundamental right guaranteed by Article 31 in Part III of the Constitution.

2Publication of Preliminary Notification and Powers of Officers thereupon.
3Narinderjit Singh & Ranjit Singh & Ors. v. State of U.P. &Ors., Etc. (1973) 1 SCC 157
4(supra)

Article 31 guaranteed the right to private property (*The State of West Bengal v. Subodh Gopal Bose and Ors. AIR 1954 SC 92*), which could not be deprived without due process of law and upon just and fair compensation.

10.2. 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 & Ors. v. M.I.D.C. & Ors. (2013) 1 SCC 353*) in a welfare State, and a Constitutional right under Article 300A 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 300A, can be inferred in that Article (*K T Plantation Pvt. Ltd. v. State of Karnataka (2011) 9 SCC 1*).

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 Corporation Ltd. v. Darius Shapur Chennai (2005) 7 SCC 627*,wherein this Court held that:

> " 6. … Having regard to the provisions contained in Article 300A 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 originally supplied)

In *N. Padmamma v. S. Ramakrishna Reddy (2008) 15 SCC 517*, this Courtheld that:

> "21. If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article 300A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article 300A of the Constitution of India, must be strictly construed."
>
> (emphasis originally supplied)

In *Delhi Airtech Services Pvt. Ltd. & Ors. v. State of U.P.& Ors. (2011) 9 SCC 354*, this Court recognized the right to property as a basic human right in the following words:

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

In *Jilubhai Nanbhai Khachar v. State of Gujarat, (1995) Supp. 1 SCC 596* this Court held as follows:

> "48. …In other words, Article 300A only limits the powers of the State that no person shall be deprived of his property

> save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300A. In other words, if there is no law, there is no deprivation."
>
> (emphasis originally supplied)

10.3. In this case, the Appellant could not have been forcibly dispossessed of her property without any legal sanction, and without following due process of law, and depriving her payment of just compensation, being a fundamental right on the date of forcible dispossession in 1967.

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

10.5. 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 &Ors. v. M.I.D.C. &Ors. (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.

This Court in *State of Haryana v. Mukesh Kumar* 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 multifaceted dimension."

17. There is also a discussion in the judgment on the aspect of delay and laches, which is as under:

> "10.7. 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.
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> 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*).
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> In *Tukaram Kana Joshi &Ors. v. M.I.D.C. &Ors. (2013) 1 SCC 353*, this Court while dealing with a similar fact situation, held as follows:
>
> > "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."
>
> (emphasis originally supplied)

18. The aforesaid legal principles do not leave the respondents with any defence in the given facts of the case.

19. The result of the aforesaid would be that the respondents have failed to establish that they had acquired the land in accordance with law and paid due compensation. The appellant would, thus, be entitled to the possession of the land as also damages for illegal use and occupation of the same by the respondents, at least, for a period of three (3) years prior to the notice having been served upon them. We are strengthened in our observations on account of the judgment of this Court in ***LAO v. M. Ramakrishna Reddy,***[5] where it was held that the owner can be entitled to damages for wrongful use and possession of land in respect of which no notification is issued under Section 4 of the Land Acquisition Act, from the date of possession till the date such notification is finally published.

5(2011) 11 SCC 648

20. We are conscious that the land is being used by the respondent-State through respondent No.2 Department. That, however, does not give such a license to the State Government. We had endeavoured to refer the matter for mediation, to find an amicable solution, but that did not fructify. We, however, would like to give some time to the respondent-State to analyse the consequences of this judgment, and, in case they so desire, to acquire the land through a proper notification under the said Act, and to take proper recourse in law so as to enable them to keep the land. We grant three (3) months' time from the date of the judgment for the respondent-State to make up their mind as to what they want to do. Would they still like to retain the land by issuing a proper notification, or would they like to surrender possession of the land. In either eventuality, the question of payment for use and occupation would still arise, which will have to be determined in accordance with law. Mesne profits would be determined by a Court Commissioner, to be appointed by the trial court, as a relief in that behalf has been sought in the plaint itself.

21. In view of the aforesaid order, the alternative direction passed by

the appellate court to refund the land revenue in case of a claim would not arise.

22. The appeal is accordingly allowed, leaving the parties to bear their own costs.

...……J.
[Sanjay Kishan Kaul]

...……J.
[K.M. Joseph]

New Delhi.
March 2, 2020.