J&K&L High Court Grants Relief To Citizen Aggrieved By Unauthorized Occupation Of Her Property By Govt Since 1958

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HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR
SANJEEV KUMAR; J., WASIM SADIQ NARGAL; J.
LPA 105/2019 CM(3068/2019) CM(8245/2021); 27.10.2022
AMINA BEGUM *versus* **STATE OF J AND K AND ORS.**

Appellant / Petitioner(s) through: Mr. M.A. Qayoom, Adv. with Mr.Mian Muzaffar, Adv.

Respondent(s) through: Mr. Sheikh Mushtaq, AAG with Mr. Faheem Shah, GA.

J U D G M E N T

Sanjeev, J;

1. This appeal under Clause 12 of Letters Patent Appeal is directed against the judgment dated 18.03.2019 passed in OWP No. 951/2012 titled Mst. Amina Begum Vs. State of J&K & Ors., whereby the writ petition filed by the petitioner seeking compensation for the land measuring 37 kanals and 8 marlas situated at village Chaki Sheera Tehsil Khan Sahab District Budgam falling under different Khasra numbers under unauthorized occupation by the Department of Horticulture, has been dismissed.

2. The said writ petition of the petitioner has been dismissed primarily on two grounds: (i) that the writ petition involves determination of complicated disputed questions of fact which cannot be gone into by the writ court in exercise of its extraordinary writ jurisdiction vested under Article 226 of the Constitution of India; (ii) that there has been delay of about 54 years in approaching the court and therefore, writ petition is hit by delay and latches.

3. Before adverting to the grounds of challenge urged by Mr. Qayoom, learned counsel for the appellant, it is necessary to give brief resume of the factual antecedents leading to filing of the petition.

4. As is evident from the writ petition, the petitioner claims to be the owner of the land measuring 37 kanals and 8 marlas situated in village Chaki Sheera Tehsil Khan Sahab District Budgam falling under different khasra numbers ["subject land"], which was taken over by the Horticulture Department in the year 1958 from the petitioner's father on the basis of oral lease. It is pleaded by the petitioner that during the life time of her father, no rental compensation was ever paid nor same was ever offered to the petitioner after the death of her father. The petitioner claims that at the time of her father's death she was minor and was thus, not aware about the occupation of the said land by the respondents. It is only after she attained majority and came to know that a big chunk of land belonging to her father was under the unauthorized occupation of the Horticulture Department without payment of any compensation, rental or otherwise. She approached different authorities including the then Minister, Department of Horticulture to intervene in the matter. Some correspondence between the different functionaries of the Government ensued but without any fruitful results. This constrained the petitioner to file the writ petition bearing OWP No. 951/2012 in this Court.

5. On being put on notice, respondents entered their appearance and filed detailed objections. In their objections, respondents have not disputed that they are the

occupants of the subject land without of any compensation. However, the plea taken by the respondents is that the father of the petitioner, who reportedly died in the year 1952, never claimed any compensation, rental or otherwise from the respondents during his life-time nor the petitioner, who claims to be the sole legal heir of the owner of subject land, ever approached them. The plea of delay and latches was set up as the defence to the claim put-forth by the petitioner. Respondents have also denied that there was any lease-deed or agreement between the father of the petitioner and the respondents ever executed. The plea of the petitioner that there was oral understanding between the father of the petitioner and the respondents to let out the subject land, is also denied by the respondents. In the backdrop aforesaid, the writ petition, claiming reliefs prayed for, came to be filed.

6. The writ petition came up for consideration before the writ court and the same was dismissed by the writ court vide judgment dated 18.03.2019, impugned in this appeal.

7. The impugned judgment is assailed by the appellant primarily on the ground that right of property is a constitutional right and globally recognized human right and therefore, the State cannot take over the property of its citizens unauthorizedly and then set up the defence of delay and latches or raise the plea of adverse possession. The unauthorized occupation by the State on the immovable property of its citizens gives recurring cause of action to those who are deprived of their immovable property. So long it remains under unauthorized occupation of the State, the aggrieved citizen has a continuous cause of action and may approach the court any time. The delay and latches in such case cannot be set up as an excuse to deny compensation to the citizens deprived of his immovable property otherwise than by following due process of law.

8. It is submitted that the State being a welfare State cannot set up the claim of ownership by adverse possession over the property of its citizens. It is urged by Mr. Qayoom that the writ court has gone wrong while coming to the conclusion that there were complicated disputed question of facts requiring determination by the court. He submits that the respondents have in their objections very fairly admitted the facts and atleast not disputed that the land belongs to the father of the petitioner and after his death devolved on his legal heirs. Respondents have also not disputed that for the land under their occupation no compensation, rental or otherwise, has been paid. There is no acquisition of subject land undertaken as per law, is also admitted.

9. Per contra, Mr. Mushtaq, AAG submits that the father of the petitioner during his life time never objected to taking over the possession of the subject land nor the petitioner on attaining majority in the year 1973 came up with any claim over the subject land. He therefore, pleads estoppel and waiver of the rights of the petitioner. He reiterates the contention of the respondents that in view of the highly complicated disputed question of facts involved for determination in the case, the writ petition under Article 226 of the Constitution of India is not a remedy available to the petitioner. The petitioner, if aggrieved, may approach the civil court for determination of such question.

10. Having heard learned counsel for the parties and perused the material on record, we are of the view that the judgment impugned is not sustainable for more than one reason. We do not find existence of any disputed questions of fact, much-less, complicated disputed questions of fact which need determination in these proceedings. From specific averments made in the writ petition and which averments are not disputed by the respondents coupled with the Revenue record appended with

the petition, it is evident that the petitioner is the owner of the subject land. It is also not disputed by the respondents that they are the occupants of the subject land without payment of any compensation to the petitioner or her father, rental or otherwise. There is no whisper in the reply filed by the respondents that they had followed due process of law for acquiring the subject land.

11. In view of the aforesaid admitted position, we find that the subject land belonging to the petitioner is under unauthorized occupation of the respondents since 1958 and continues to be so even as on date. The unauthorized occupation by the State of the immovable property of its citizens gives recurring cause of action to the aggrieved citizen and therefore, delay and latches cannot come in the way of such citizen to assert his rights before constitutional court. It is equally well settled that the State cannot plead adverse possession in respect of the land of its citizens under its unauthorized occupation. The plea of waiver and estoppel is not attracted in such situation. The view, which we have taken, is supported by the judgment of Hon'ble Supreme Court rendered in case **Vidya Devi Vs. State of Himachal Pradesh & Ors.** reported in **(2020) 2 SCC 569.** The similar plea of delay and latches put forth by the State of Himachal Pradesh to deny compensation to a citizen whose land had been unauthorizedly taken over was not accepted by Hon'ble Supreme Court. What was said by the Supreme Court in Paragraphs 12.1 to 12.10 is reproduced hereunder:-

"12.1. 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. Article 31 guaranteed the right to private property 1, which could not be deprived without due process of law and upon just and fair compensation.

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 2 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.

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 Corporation Ltd. v. Darius Shapur Chenai4, wherein this Court held that: (SCC p.634, para 6)

"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 supplied)

12.4. In N. Padmamma v. S. Ramakrishna Reddy5, this Court held that: (SCC p.526, para 21)

"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 supplied)

12.5. In Delhi Airtech Services Pvt. Ltd. & Ors. v. State of U.P.& Ors.6, this Court recognized the right to property as a basic human right in the following words (SCC p.379, para 30)

"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 supplied)

12.6. In Jilubhai Nanbhai Khachar v. State of Gujarat,7 this Court held as follows :,(SCCm0.627, para 48)

"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 supplied)

12.7. 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.

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

12.9. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors.8 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 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."

12. In view of the aforesaid legal position, we are of the considered view that the writ court has erroneously dismissed the writ petition merely on the ground of delay and latches. Before we close, we find it appropriate to have a glance on the observations made by the Supreme Court in case **State of U.P & Ors. vs. Manohar** reported in **AIR 2005 SC 488:-**

"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 stgte 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.

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 44th amendment to the Constitution. Article 300 A has been placed in the Constitution."

13. We have reproduced the aforesaid observations of the Supreme Court having regard to the stand which the respondent State took before us to deny the right of the petitioner to get back her land or compensation in lieu thereof.

14. It shall not be disadvantageous to have reference to the judgment relied upon the Mr. Sheikh Mushtaq, AAG, which is rendered in case **Bharat Singh & Ors. Vs. State of Haryana & Ors.** reported in **AIR SC 2181**. In **Para 13** of the said judgment it is observed that when a point which is ostensibly a point of law is required to be substantiated by facts, the petitioner must plead and prove such facts by reference to evidence appearing from the writ petition, otherwise it is liable to be rejected.

15. The judgment relied upon may not be applicable to the facts of the present case for the reason that we do not find any relevant question of fact disputed in this matter.

16. For the foregoing reasons, we allow this appeal and set aside the impugned judgment. Respondents are directed either to return the subject land to the petitioner within a period of two months from today or initiate steps for acquiring the same in accordance with THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013 within the aforesaid period. In case respondents desire to return the subject land to the petitioner, in such situation, the Deputy Commissioner concerned shall work out the rental compensation to be paid to the petitioner in accordance with law for the period since 1958 till the land is actually returned to the petitioner.

17. Disposed of along-with all connected applications.