

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

THE HON'BLE SRI JUSTICE VAKITI RAMAKRISHNA REDDY

WRIT PETITION No. 28538 of 2007

Date: 28.07.2026

Between:

Surinder Singh Makhija and others Petitioners
AND

The State of Andhra Pradesh,
represented by the District Collector,
Hyderabad District, Hyderabad, and others Respondents

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India seeking the following relief:

“...to issue a Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus declaring the notification issued under Section 4(1) of the Land Acquisition Act bearing No.D3/6686/2007 dated 06.11.2007, published in Eenadu daily dated 08.11.2007, the declaration issued under Section 6 of the Land Acquisition Act bearing No.D3/6686/2007 dated 06.11.2007, published in Eenadu daily dated 09.11.2007, and the notice issued under Sections 9(3) and 10 of the Land Acquisition Act in Form No.7 bearing No.AA/666/2007 dated 12.11.2007, issued by the respondents in relation to the petitioners' property, as illegal, arbitrary, violative of the provisions of the Land Acquisition Act, 1894 and consequently set aside the same, and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

I. BRIEF FACTS:

2. The petitioners claim to be the owners of the southern half (Portion-‘B’) of the building bearing Municipal Nos.3-6-364/1 to 6 situated at Liberty Cross Roads, Himayatnagar, Hyderabad. Their title is traceable to the compromise recorded in C.M.P. No.2721 of 2002 in L.P.A. No.193 of 2001 dated 14.02.2002, under which the common areas were agreed to be jointly enjoyed by the petitioners and the co-sharers owning Portion-‘A’. Pursuant thereto, the Municipal Corporation granted Building Permit No.41/37 dated 28.06.2003 permitting construction of a ground floor and two upper floors. At the time of granting the said building permission, the Municipal Corporation required the petitioners to surrender an extent of about 221 square yards falling within the proposed road widening and junction improvement alignment under the Master Plan. According to the petitioners, such surrender was made without claiming compensation on the assurance that the Corporation would extend certain developmental concessions, including additional permissible floor space, as reflected in its communication dated 27.11.2001. It is their case that the promised concessions were never extended, although the petitioners completed construction strictly in accordance with the sanctioned plan.

3. The petitioners further state that, thereafter, officials of respondent Nos.1 and 2 visited the subject property and called upon them to surrender the remaining extent, including the constructed building, for the purpose of road widening. Aggrieved thereby, the petitioners, along with the other co-owners, filed W.P.No.9385 of 2007 before this Court. By order dated 07.06.2007, this Court granted an interim order staying demolition, which, according to the petitioners, continues to remain in force. The petitioners state that, during the pendency of the said proceedings, they came to know that respondent No.1 had issued a notification under Section 4(1) and a declaration under Section 6 of the Land Acquisition Act, 1894 (for short, "the Act, 1894"), both dated 06.11.2007, published in Eenadu daily dated 08.11.2007 and 09.11.2007 respectively. They further state that respondent No.2 issued notice dated 12.11.2007 under Sections 9(3) and 10 of the Act, 1894 in Form No.7 to one of the co-owners, namely, Sri Surender Lunia.

4. According to the petitioners, although they admittedly own an undivided fifty per cent share in the subject property, their names do not find place either in the notification issued under Section 4(1), the declaration issued under Section 6 or the consequential notice issued under Sections 9(3) and 10 of the Act,

1894. It is their case that they were never served with notice nor afforded an opportunity to participate in the acquisition proceedings, notwithstanding the representations submitted by them on 19.11.2007 and 15.12.2007. The petitioners further contend that the enquiry contemplated under Section 5-A of the Act, 1894 was dispensed with by invoking the urgency provisions under Section 17(1), though no genuine urgency existed. It is pointed out that the notification under Section 4(1) and the declaration under Section 6 were approved on the very same day, namely, 06.11.2007, and published on the immediately succeeding dates, while no effective steps were taken thereafter for a considerable period. According to the petitioners, the very sequence of events belies the plea of urgency.

5. The petitioners further contend that, having required them to surrender 221 square yards while granting building permission upon the assurance of certain developmental concessions, the respondents thereafter initiated acquisition proceedings even in respect of the remaining extent of about 105 square yards for the very same public purpose of road widening and junction improvement at Liberty Cross Roads. It is contended that the respondents proceeded on the erroneous assumption that the earlier surrendered extent had vested absolutely in the Municipal

Corporation and, therefore, excluded it altogether while determining the extent proposed for acquisition. According to the petitioners, both portions formed one indivisible holding under a common title and the respondents could not artificially bifurcate the property so as to deny them the benefits flowing from law.

II. SUBMISSIONS OF THE PARTIES:

A. Submissions on behalf of the Petitioners:

6. Sri T.S. Praveen Kumar, learned counsel appearing for the petitioners, contended that the acquisition proceedings are vitiated at their inception, as the petitioners, despite being admittedly co-owners of the subject property, were omitted from the notification issued under Section 4(1), the declaration under Section 6 and the consequential notices issued under Sections 9(3) and 10 of the Act, 1894. Such omission, according to the learned counsel, deprived the petitioners of their valuable statutory right to participate in the acquisition proceedings and to effectively safeguard their proprietary interest. Learned counsel further contended that the respondents illegally invoked the urgency provisions under Section 17(1) and dispensed with the enquiry contemplated under Section 5-A without there being any material demonstrating genuine urgency. It was further submitted that the respondents could not have excluded the earlier surrendered extent of 221 square yards

from consideration while initiating acquisition proceedings in respect of the remaining property, particularly when the surrender itself was made on the assurance that developmental benefits, including additional permissible floor space, would be extended to the petitioners. It was lastly contended that the respondents cannot rely merely upon the plea of vesting while ignoring the reciprocal obligations forming part of the very same arrangement under which the surrender was obtained. Such action, according to the learned counsel, is arbitrary, unfair and violative of Article 300-A of the Constitution of India. In support of the aforesaid submissions, reliance was placed upon the judgments of the Hon'ble Supreme Court in *Om Prakash Sharma and others v. M.P. Audyogik Kendra Vikas Nigam and others*¹, *Kumari Shrilekha Vidyarthi v. State of Uttar Pradesh*² and *State of Punjab v. Gurdial Singh*³.

B. Submissions on behalf of the Respondents:

7. *Per contra*, Sri G.Madhusudhan Reddy, learned Standing Counsel appearing for the Greater Hyderabad Municipal Corporation, supported the acquisition proceedings. It was submitted that the petitioners voluntarily surrendered an extent

¹ (2005) 10 Supreme Court Cases 306

² (1991) 1 SCC 212

³ (1980) 2 SCC 471

of 221 square yards while obtaining building permission and were granted corresponding developmental relaxations. Consequently, the said land stood vested in the Municipal Corporation and no further claim survived in respect thereof. It was further submitted that Liberty Junction had become a major traffic congestion point and that the acquisition was undertaken in furtherance of an important public project involving road widening and junction improvement. After survey, demarcation and subdivision, the respondents invoked the urgency provisions contained in Section 17(1), issued the notification under Section 4(1) and the declaration under Section 6 and thereafter issued notices under Sections 9 and 10 to the persons interested. It was also contended that one of the co-owners participated in the award enquiry and, therefore, no prejudice was caused to the petitioners. On these grounds, learned Standing Counsel prayed for dismissal of the Writ Petition.

8. By way of reply, the petitioners denied that Sri Surinder Singh Makhija participated in the award enquiry or authorised any person to represent them therein. They reiterated that the respondents were fully aware of their ownership, yet deliberately omitted their names from the acquisition proceedings. They further reiterated that the earlier surrender was conditional upon the

assurances extended by the Municipal Corporation, which admittedly remained unfulfilled, and that the proposed acquisition, confined substantially to the petitioners' property while leaving similarly situated properties untouched, is arbitrary, discriminatory and violative of Articles 14 and 300-A of the Constitution of India.

III. POINTS FOR DETERMINATION:

9. In the light of the pleadings, the rival submissions and the material available on record, the following Points arise for Determination:

(i) Whether the impugned acquisition proceedings commencing with the notification issued under Section 4(1), the declaration issued under Section 6 and the consequential notices issued under the Land Acquisition Act, 1894 are liable to be set aside on account of non-compliance with the mandatory provisions of the Act, particularly (a) omission to disclose the petitioners' names despite their admitted status as co-owners of the property proposed to be acquired, and (b) invocation of the urgency provisions under Section 17 dispensing with the enquiry contemplated under Section 5-A?

(ii) If Point No.(i) is answered in favour of the petitioners, whether the respondents could have excluded the petitioners' claim

in respect of the extent of 221 square yards surrendered while obtaining Building Permit No.41/37 dated 28.06.2003 solely on the premise that the said extent had vested in the Municipal Corporation, and if not, what consequential directions are required to be issued?

IV. ANALYSIS AND FINDINGS:

Point No.(i):

10. Point No.(i) concerns the legality and validity of the acquisition proceedings initiated under the provisions of the Land Acquisition Act, 1894. The challenge of the petitioners rests principally on two grounds. Firstly, though the petitioners are admittedly co-owners of the property proposed to be acquired, their names do not find place either in the notification issued under Section 4(1), the declaration issued under Section 6 or the consequential notices issued under Sections 9(3) and 10 of the Act, 1894. Secondly, the respondents invoked the urgency provisions contained in Section 17(1) of the Act, 1894 and dispensed with the enquiry contemplated under Section 5-A without there being any material to establish the existence of genuine urgency. Since both issues strike at the very foundation of the acquisition proceedings and arise out of the same factual matrix, they are considered together.

11. Before advertizing to the rival submissions, it is necessary to notice certain facts which are not in dispute. The petitioners admittedly own an undivided fifty per cent share in the subject property. Their title flows from the compromise recorded in C.M.P. No.2721 of 2002 in L.P.A. No.193 of 2001. Equally undisputed is the fact that Building Permit No.41/37 dated 28.06.2003 was granted in favour of the petitioners after the Municipal Corporation insisted upon surrender of an extent of about 221 square yards required for the proposed road widening. Thus, much prior to the initiation of the acquisition proceedings, the respondents were fully aware not only of the identity of the petitioners but also of the extent of their ownership in the property proposed to be acquired.

12. Notwithstanding such admitted knowledge, the petitioners' names are conspicuously absent in the notification issued under Section 4(1), the declaration issued under Section 6 and the notices issued under Sections 9(3) and 10 of the Act, 1894. The respondents have merely referred to "Sri Surender Lunia and others", while the column intended to specify the names of the owners has been left blank. Such omission is not a matter of mere form. The statutory scheme of the Act, 1894 proceeds on the fundamental premise that every person interested in the land proposed to be acquired must receive effective notice of the

proposed acquisition so as to enable him to exercise the valuable rights conferred under the statute. Failure to identify and notify admittedly known owners undermines the fairness of the acquisition process itself.

13. The respondents sought to contend that one of the co-owners participated in the award enquiry and that, therefore, no prejudice was caused to the petitioners. The petitioners specifically deny such participation and assert that no one represented their interest before the Land Acquisition Officer. In the considered opinion of this Court, the controversy need not detain the Court for long. The question is not whether one of the co-owners subsequently appeared before the authorities. The real issue is whether the acquisition proceedings were initiated in conformity with the mandatory requirements of the statute. If the foundational notification itself suffers from a legal infirmity, subsequent participation of any individual, even if assumed, cannot cure the defect unless the statute itself so provides.

14. The legal position on the object and scope of a notification issued under Section 4(1) of the Act, 1894 is no longer *res integra*. In *Om Prakash Sharma's case (supra)*, the Hon'ble Supreme Court considered the object of the notification, the necessity of furnishing

adequate particulars and the consequences of omission thereof.

The Hon'ble Supreme Court held as follows:

“5. A Bench of three learned Judges of this Court in the aforementioned judgment, referring to earlier judgments, have held that notification issued under Section 4(1) of the Act, if it suffers from vagueness in regard to public purpose, such a notification cannot be sustained.”

15. The principle emerging from the aforesaid decision is that the notification issued under Section 4(1) constitutes the statutory foundation of the acquisition proceedings. It is through such notification that every person interested in the property is informed of the State's intention to acquire the land and is thereby enabled to exercise the valuable statutory rights available under the Act. Therefore, where the acquiring authority admittedly knew that the petitioners were co-owners of the property proposed to be acquired, omission to disclose their names in the notification cannot be treated as a mere procedural irregularity. Such omission directly impairs the petitioners' ability to protect their proprietary rights under the statute.

16. The aforesaid principle receives further support from the decision of the Hon'ble Supreme Court in *Narendrajit Singh v. State of Uttar Pradesh*⁴, wherein the Court considered whether defects

⁴ (1970) 1 SCC 125

affecting the notification issued under Section 4(1) could subsequently be cured by issuance of the declaration under Section 6 or by later stages of the acquisition proceedings. The Hon'ble Supreme Court observed as follows:

"Any notification which is the first step towards depriving a man of his property must be strictly construed and courts ought not to tolerate any lapse on the part of the acquiring authority in the issue of such notification if it be of a serious nature."

"In our view the defect in a notification under Section 4(1) cannot be cured by giving full particulars in the notification under Section 6(1)."

17. The legal position emerging from the aforesaid decision is that the declaration issued under Section 6 derives its legitimacy from a valid notification under Section 4(1). If the statutory foundation suffers from a legal infirmity, the subsequent proceedings ordinarily cannot survive. Consequently, this Court is unable to accept the submission of the respondents that the alleged participation of one of the co-owners in the award enquiry cures the omission committed while issuing the notification under Section 4(1), particularly when the petitioners' ownership was admittedly within the knowledge of the respondents even prior to initiation of the acquisition proceedings.

18. The next limb of the challenge pertains to the invocation of the urgency provisions contained in Section 17(1) of the Act, 1894.

The record discloses that the notification under Section 4(1) and the declaration under Section 6 were approved on the very same day, namely, 06.11.2007, and the enquiry contemplated under Section 5-A was dispensed with. The justification put forth by the respondents is that Liberty Junction had become a point of heavy traffic congestion and that immediate road widening and junction improvement had become necessary pursuant to administrative directions.

19. The scope of the extraordinary power conferred under Section 17 and the valuable nature of the right available under Section 5-A have repeatedly engaged the attention of the Hon'ble Supreme Court. In *Gurdial Singh's case (supra)*, the Hon'ble Supreme Court explained the limited circumstances in which the enquiry under Section 5-A can be dispensed with and emphasised that the urgency power cannot be invoked as a matter of routine. The Hon'ble Supreme Court observed as follows:

"It is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and preemptive of arbitrariness... Save in real urgency where public interest does not brook even the minimum time needed to give a hearing, land acquisition authorities should not... burke an enquiry under Sec. 17 of the Act. Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power"

20. The principles laid down in the aforesaid decision unequivocally establish that the power under Section 17 is intended to meet exceptional situations where adherence to the normal statutory procedure would frustrate the public purpose. The right of objection under Section 5-A has consistently been recognised as a valuable and substantive safeguard available to every person interested in the land. Consequently, the burden lies heavily upon the acquiring authority to demonstrate the existence of genuine urgency warranting deprivation of such right.

21. In the present case, except making a general reference to traffic congestion and junction improvement, the respondents have not placed any contemporaneous material before this Court demonstrating that such exceptional urgency existed on 06.11.2007 as would justify dispensing with the enquiry contemplated under Section 5-A. On the contrary, the petitioners have specifically pleaded that even after invocation of the urgency provisions, no immediate or irreversible steps followed. This circumstance assumes considerable significance while examining whether the satisfaction recorded under Section 17(1) was founded upon objective material or merely reflected administrative expediency.

22. The petitioners have also challenged the impugned acquisition proceedings as arbitrary and violative of Article 14 of the Constitution. The constitutional obligation of the State to act fairly, reasonably and non-arbitrarily has been succinctly explained by the Hon'ble Supreme Court in *Kumari Shrilekha Vidyarthi's case (supra)*. The Hon'ble Supreme Court observed as follows:

"The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. There is a basic difference between the acts of the State which must invariably be in public interest and those of a private individual, engaged in similar activities, being primarily for personal gain, which may or may not promote public interest."

23. The principles emerging from the aforesaid decisions may now be applied to the facts of the present case. The law declared by the Hon'ble Supreme Court consistently recognises that the notification issued under Section 4(1) constitutes the foundation of the acquisition proceedings; that every known person interested in the property must be afforded an effective opportunity of participation; that defects affecting the foundational notification ordinarily vitiate the subsequent proceedings; that the extraordinary power under Section 17 cannot be invoked in the absence of genuine urgency; and that every exercise of statutory power by the State must satisfy the constitutional requirements of

fairness, reasonableness and non-arbitrariness. Tested on the aforesaid principles, this Court finds that the respondents have failed to demonstrate strict compliance with the mandatory safeguards prescribed under the Act, 1894. The omission to disclose the petitioners' names despite their admitted ownership and the unjustified invocation of Section 17 dispensing with the enquiry under Section 5-A render the impugned acquisition proceedings legally unsustainable.

24. Accordingly, Point No.(i) is answered in favour of the petitioners.

Point No.(ii):

25. In view of the finding recorded on Point No.(i), the surviving question pertains to the nature of the relief that is required to be granted while reserving liberty to the respondents to initiate fresh acquisition proceedings, if the subject property continues to be required for the public purpose. In that context, it becomes necessary to examine whether the respondents were justified in proceeding on the premise that the extent of 221 square yards surrendered by the petitioners while obtaining Building Permit No.41/37 dated 28.06.2003 stood completely excluded from consideration while initiating the impugned acquisition proceedings.

26. The material placed before this Court discloses that the petitioners originally owned one compact and contiguous extent of land admeasuring about 300 square yards. It is equally not in dispute that, while granting Building Permit No.41/37 dated 28.06.2003, the Municipal Corporation required the petitioners to surrender an extent of about 221 square yards falling within the proposed road widening alignment under the Master Plan. The petitioners assert that such surrender was made without claiming compensation only because the Municipal Corporation assured them that corresponding developmental benefits, including permission for additional permissible floor space, would be extended. The respondents do not dispute that the surrender was obtained while processing the building permission. Their defence, however, is that the surrendered land stood vested in the Municipal Corporation and, therefore, no further claim survives in respect thereof.

27. The controversy, therefore, does not centre around the factum of surrender, which is admitted by both sides. The real issue is whether the respondents were justified in treating such surrender as conclusively extinguishing every claim of the petitioners without examining the nature of the transaction under which the surrender came to be effected and whether the reciprocal

obligations undertaken by the Municipal Corporation had, in fact, been fulfilled. The answer to this question has to be found not merely by examining the plea of vesting but by considering the transaction in its entirety.

28. The respondents appear to proceed on the assumption that the mere vesting of the surrendered extent in the Municipal Corporation is sufficient to non-suit the petitioners. Such an approach, in the considered opinion of this Court, overlooks the factual and legal setting in which the surrender was obtained. The surrender was admittedly not an independent, unconditional or gratuitous relinquishment of property. It was insisted upon by the Municipal Corporation as a condition precedent for grant of the building permission and formed part of a composite arrangement under which the petitioners were simultaneously assured corresponding developmental benefits, including additional permissible floor space.

29. Once the respondents themselves rely upon the said arrangement to contend that the land stood vested in the Municipal Corporation, they cannot ignore the corresponding obligations arising under the very same arrangement. Where the very basis of the respondents' plea of vesting is the surrender obtained pursuant to a reciprocal arrangement, the legal effect of

such vesting cannot be considered independently or in isolation from the performance or otherwise of the corresponding obligations undertaken by the Municipal Corporation under the very same arrangement. The plea of vesting, therefore, cannot be accepted as conclusive merely because possession of the surrendered extent is stated to have been delivered to the Municipal Corporation.

30. Significantly, the respondents have not produced any material before this Court to establish that the developmental benefits or additional permissible floor space allegedly assured while granting the building permission were ever actually extended to the petitioners or that the petitioners had lawfully availed such benefits. On the contrary, the consistent case of the petitioners is that, before they could derive any effective benefit from the building permission, the respondents themselves initiated acquisition proceedings in respect of the remaining portion of the very same property. This assertion has not been effectively controverted by producing any contemporaneous record.

31. If the respondents' contention were to be accepted in its entirety, it would lead to anomalous consequences. It would enable a planning authority to insist upon surrender of private property on the assurance of corresponding developmental benefits and thereafter, before such benefits are either extended or effectively

enjoyed, proceed to compulsorily acquire the remaining property and yet contend that the earlier surrendered extent stands permanently excluded from any further consideration. Such an interpretation would permit a public authority to enforce one part of a reciprocal arrangement while avoiding the corresponding obligations undertaken by it. Such a consequence would neither accord with settled principles governing fairness in State action nor satisfy the constitutional guarantee embodied in Article 300-A of the Constitution.

32. Before proceeding further, it is appropriate to notice the constitutional principles governing deprivation of property. In *Vidya Devi v. State of Himachal Pradesh*⁵, the Hon'ble Supreme Court reiterated that though the right to property is no longer a fundamental right, it nevertheless continues to remain a valuable constitutional right protected under Article 300-A of the Constitution and that no person can be deprived of property except by authority of law. The Hon'ble Supreme Court observed as follows:

“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

⁵ (2020) 2 SCC 569

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 therefore must be paid.”

12.4. In *N. Padmamma v. S. Ramakrishna Reddy* [*N. Padmamma v. S. Ramakrishna Reddy*, (2008) 15 SCC 517] , 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 300-A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article 300-A of the Constitution of India, must be strictly construed.”

12.5. In *Delhi Airtech Services (P) Ltd. v. State of U.P.* [*Delhi Airtech Services (P) Ltd. v. State of U.P.*, (2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673] , this Court recognised 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.”

12.6. In *Jilubhai Nanbhai Khachar v. State of Gujarat* [*Jilubhai Nanbhai Khachar v. State of Gujarat*, 1995 Supp (1) SCC 596] , this Court held as follows: (SCC p. 627, para 48)

“48. ... In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by

authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation.”

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 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”.*

33. The aforesaid constitutional principle has been reiterated in *Hari Krishna Mandir Trust v. State of Maharashtra*⁶, wherein the Hon'ble Supreme Court held that the State cannot assume ownership or control over private property except by following the procedure established by law and that every action affecting proprietary rights must satisfy the constitutional mandate under Article 300-A. The Hon'ble Supreme Court observed as follows:

"96. The right to property may not be a fundamental right any longer, but it is still a constitutional right under Article 300-A and a human right, as observed by this Court in Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel. In view of the mandate of Article 300-A of the Constitution of India, no person is to be deprived of his property save by the authority of law. The appellant Trust cannot be deprived of its property save in accordance with law."

34. More recently, in *Delhi Airtech Services Private Limited and another v. State of Uttar Pradesh and another*⁷, the Hon'ble Supreme Court reiterated that Article 300-A embodies a substantive constitutional guarantee against arbitrary deprivation of property and that every action of the State affecting proprietary rights must satisfy the requirements of legality, fairness, reasonableness and due process. The Hon'ble Supreme Court observed as follows:

"14.To be fair to him, though we have noted, we are however clear on that aspect that the State has the power. But the position of

⁶ (2020) 9 SCC 356

⁷ (2024) 17 SCC 610

law is also well established that in view of Articles 300A and 31A of the Constitution, the owner of land can be divested only in accordance with law after appropriately compensating if such land is required by the State for public purpose. Since such power of eminent domain is not in dispute, we need not advert to the decision referred in detail.”

35. The principles emerging from the aforesaid decisions reinforce the obligation of every public authority to act fairly while dealing with private property. Applying those principles to the facts of the present case, this Court is of the considered opinion that the respondents could not have treated the petitioners' claim in respect of the earlier surrendered extent as foreclosed merely by asserting that the land had vested in the Municipal Corporation. The respondents were required to examine whether the reciprocal obligations forming the basis of the surrender had been fulfilled and whether the petitioners had, in fact, received or enjoyed the corresponding developmental benefits. In the absence of such examination, the plea of vesting cannot be treated as determinative of the petitioners' rights.

36. This Court is, however, conscious that the present writ petition does not call upon it to adjudicate the petitioners' ultimate entitlement either to compensation or to any other monetary or statutory benefit arising out of the earlier surrender. Those questions necessarily involve factual and legal issues falling within

the jurisdiction of the competent authority under the law governing acquisition. The limited finding recorded herein is that the respondents were not justified in rejecting or ignoring the petitioners' claim solely on the assumption that the earlier surrender completely extinguished every right of the petitioners in relation to the said extent.

37. Accordingly, Point No.(ii) is answered by holding that the respondents could not have excluded the petitioners' claim in respect of the extent of 221 square yards surrendered while obtaining Building Permit No.41/37 dated 28.06.2003 solely on the premise that the said extent had vested in the Municipal Corporation. Where the very basis of the respondents' plea of vesting is a reciprocal arrangement under which the surrender was obtained on the assurance of corresponding developmental benefits, the legal effect of such vesting cannot be considered independently or in isolation from the performance or otherwise of the reciprocal obligations undertaken by the Municipal Corporation under the very same arrangement. Since the respondents have not demonstrated that the developmental benefits or additional permissible floor space allegedly assured to the petitioners were in fact extended to, or lawfully availed by, them, the petitioners' claim arising out of the earlier surrender necessarily requires

independent examination in accordance with law, if fresh acquisition proceedings are initiated.

V. CONCLUSIONS:

38. In view of the foregoing discussion and the findings recorded on the Points for Determination, this Court records the following conclusions:

(i) The notification issued under Section 4(1), the declaration issued under Section 6 and the consequential notices issued under Sections 9(3) and 10 of the Land Acquisition Act, 1894, are vitiated by non-compliance with the mandatory provisions of the Act, inasmuch as the petitioners, despite being admittedly co-owners of the subject property, were omitted from the acquisition proceedings, thereby depriving them of the valuable statutory safeguards available under the Act.

(ii) The invocation of the urgency provisions contained in Section 17(1) of the Act, 1894, dispensing with the enquiry contemplated under Section 5-A, is unsupported by any contemporaneous material establishing genuine urgency and is, therefore, legally unsustainable.

(iii) The respondents could not have proceeded on the premise that the surrender of 221 square yards, obtained as a

condition for grant of Building Permit No.41/37 dated 28.06.2003, automatically extinguished every claim of the petitioners in respect thereof. The respondents' plea of vesting cannot be considered independently or in isolation from the reciprocal obligations undertaken by the Municipal Corporation under the very same arrangement. In the absence of any material demonstrating that the developmental benefits or additional permissible floor space allegedly assured to the petitioners were in fact extended to, or lawfully availed by them, the respondents could not have treated the issue as concluded merely on the basis of the alleged vesting of the surrendered extent.

(iv) This Court has consciously refrained from adjudicating upon the petitioners' ultimate entitlement to compensation or any other consequential statutory benefit arising out of the earlier surrender of land. All such questions are expressly left open to be considered and determined by the competent authority in accordance with law, if occasion so arises.

VI. RESULT:

39. In the result, the Writ Petition is allowed.

40. Consequently, the notification issued under Section 4(1) of the Land Acquisition Act, 1894, bearing No.D3/6686/2007 dated

06.11.2007, the declaration issued under Section 6 thereof bearing No.D3/6686/2007 dated 06.11.2007, the notice issued under Sections 9(3) and 10 of the Act, 1894, in Form No.7 bearing No.AA/666/2007 dated 12.11.2007, together with all consequential proceedings taken pursuant thereto, including the award enquiry and the award, if any, are hereby set aside.

41. It is, however, open to the respondents to initiate fresh acquisition proceedings, if the subject property, either wholly or in part, continues to be required for the public purpose, strictly in accordance with the law governing acquisition as applicable on the date of initiation of such proceedings.

42. In the event fresh acquisition proceedings are initiated, the competent authority shall issue notice to all persons interested, including the petitioners, and shall independently examine and determine, in accordance with law, the legal effect of the petitioners' surrender of an extent of 221 square yards while obtaining Building Permit No.41/37 dated 28.06.2003, the reciprocal obligations arising therefrom, including whether the developmental benefits or additional permissible floor space allegedly assured by the Municipal Corporation were in fact extended to, or lawfully availed by the petitioners, having due regard to the terms and conditions of Building Permit No.41/37

dated 28.06.2003, the Corporation's communication dated 27.11.2001, the applicable statutory provisions and the law declared by the Hon'ble Supreme Court, and thereafter determine all claims, rights and consequences, if any, arising from the earlier surrender, strictly in accordance with law, uninfluenced by the assumptions contained in the impugned acquisition proceedings or by any observations made in this judgment on the merits of such claim.

43. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any pending, shall stand closed.

VAKITI RAMAKRISHNA REDDY, J

Date: 28.07.2026
AS