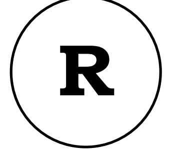
Reserved on : 24.09.2025
Pronounced on : 25.11.2025



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.3982 OF 2023 (LA - RES)

BETWEEN:

1 . SRI H.P.RAMESH
S/O LATE PANCHAKSHARAIAH,
AGED ABOUT 42 YEARS.

2 . SUSHMITHA H.R.,
D/O H.P.RAMESH,
AGED ABOUT 28 YEARS.

BOTH ARE RESIDING AT
HARADAGERE VILLAGE,
NITTUR HOBLI, GUBBI TALUK,
TUMAKURU DISTRICT – 572 210.

... PETITIONERS

(BY SRI KISHAN K.S., ADVOCATE)

AND:

1 . STATE OF KARNATAKA
REPRESENTED BY ITS
PRINCIPLE SECRETARY,

REVENUE DEPARTMENT,
VIDHANA SOUDHA,
BENGALURU – 560 001.

2 . THE DEPUTY COMMISSIONER
TUMAKURU DISTRICT,
TUMAKURU.

... RESPONDENTS

(BY SMT.RASHMI RAO, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE ORDER PASSED BY THE R-2 IN CASE NO. LND (GUBBI) 01/2019-20 DATED 08/11/2021 (ANNEXURE-B) DENYING THE COMPENSATION TO THE PETITIONERS FOR THEIR ILLEGALLY USED LANDS IN SY.NO. 51 OF HARADAGERE VILLAGE; DIRECTING THE R-2 TO FORMALLY ACQUIRE THE LAND MEASURING 09 GUNTAS (03 GUNTAS ILLEGALLY USED FOR THE CONSTRUCTION OF SCHOOL BUILDING AND 06 GUNTAS OF LAND ILLEGALLY USED FOR FORMATION OF ROAD) IN SY.NO.51 OF HARADAGERE VILLAGE AND AWARD COMPENSATION FOR THE SAME IN TERMS OF THE PROVISIONS OF THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 24.09.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioners are before this Court calling in question an order dated 08.11.2021, passed by respondent No.2 denying payment of compensation for the usage of their lands in Survey No.51 of Haradagere Village and seeks a consequential *mandamus* to the respondents, to pay compensation for the land utilised, under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. Heard Sri Kishan G.S., learned counsel for the petitioners and Smt. Rashmi Rao, learned High Court Government Pleader for the respondents.

3. Facts in brief, germane, are as follows:

The father of the first petitioner owned certain land measuring 2 acres and 8 guntas in survey No.51 of Haradagere Village. The first petitioner gifts the property in favour of the second petitioner - daughter through a registered gift deed on 04.12.2017. It transpires that the first petitioner noticing the fact that the government has utilised the land belonging to them for the

purpose of establishment of a school wayback in the year 1957, submits several representations seeking compensation for having constructed a government school and formation of the road in the property. The representations were not considered and therefore, the first petitioner had approached this Court in W.P.No.12385/2016. A co-ordinate bench disposed the said writ petition with a direction to consider the representations and pass necessary orders. The result of the said direction is the impugned order. The impugned order is passed after the first petitioner invoked the Courts contempt jurisdiction in C.C.C.No.320/2022. It is this order that drives the petitioners to this Court in the subject petition.

4. Sri Kishan G.S., learned counsel for the petitioners submits that the land of the petitioners admittedly is being utilised by constructing a government school and formation of a road. If the fact is admitted, it cannot be said that the petitioners would not be entitled to any compensation.

5. *Per contra*, the learned High Court Government Pleader would refute the submissions, contending that the land of the

petitioners was no doubt utilised but it was voluntarily handed over by the father of the first petitioner long ago in the year 1957. It is his submission that the first petitioner has kept quiet for ages and he could not seek compensation after 65 years of the alleged usage of land at the hands of the State. He would seek dismissal of the petition.

6. I have given my anxious consideration to the submissions made by the learned counsel for the respective parties and have perused the material on record.

7. The afore-narrated facts, link in the chain of dates and events are all a matter of record. The father of the first petitioner submits plethora of representations before the second respondent seeking compensation on the score that his land is utilised for construction of a school building and formation of the road, which is not in dispute. Non-consideration of the aforesaid representations, lead the first petitioner to knock at the doors of this Court in W.P.No.12385/2016. The said writ petition comes to be disposed on 19.09.2019. The order reads as follows:

"....   ....

5. **Upon hearing the learned counsel for the parties, I find from the materials on record that the petitioner claims to be the absolute owner of the property bearing Sy.No.51 measuring 2 acres 8 guntas. He is tracing the title to certain documents. While it is important that formation or widening of road has to be attended to on priority, as it is a matter of public interest, it cannot be forgotten that rights of the citizens cannot be jeopardized in the said process. On the other hand, the claims of the petitioner who assert his rights as owner of the land, cannot be denied by taking decisions unilaterally by the respondent – authorities**. Under these circumstances, it is necessary that the authority has to hear the petitioner personally and pass an order as to whether the property on which the road has been formed and the school building has been constructed belongs to the petitioner or not. In this case, the petitioner has produced some revenue records to show that he is the owner of the property. His possession shall not be disturbed except by due process of law and by acquiring the properties by specifying the extent of land that would be required for road widening or construction of the school building. If the authority found that the road formation and the school constructed the property does not belong to the petitioner the petitioner is not entitled for any compensation.

6. In the light of the above, the writ petition is disposed of with the following directions:

> **(i) Petitioner shall file statement of objections along with the necessary documents before the Deputy Commissioner, Tumkur District, within a period of four weeks from the date of receipt of a copy of this order;**
>
> **(ii) The Deputy Commissioner shall consider the objections and hear the petitioner by providing personal hearing and thereafter pass a considered order;**

> **(iii) After the enquiry, if the Deputy Commissioner finds that the property in dispute is a Government property, then the petitioner is not entitled for any compensation. If the property belongs to the petitioner and he has not encroached the land, the authorities have to proceed in accordance with law to acquire the land by specifying the extent of area required for the formation of the road and construction of the school building and by paying compensation to the petitioner as per law."**

(Emphasis supplied)

The result of the said direction is the passage of the impugned order. The order dated 08.11.2021, insofar as it is germane, reads as follows:

"…. …. ….

5ನೇ ಎದುರುದಾರರಾದ ಕ್ಷೇತ್ರ ಶಿಕ್ಷಣಾಧಿಕಾರಿಗಳು, ಗುಬ್ಬಿ ತಾಲ್ಲೂಕು ಇವರು ಶಾಲೆಯು 1957ನೇ ಇಸವಿಯಲ್ಲಿ ಆರಂಭಗೊಂಡಿದ್ದು, ಅರ್ಜಿದಾರರ ತಂದೆಯವರು ಸ್ವಇಚ್ಛೆಯಿಂದ ಶಾಲೆಯ ಕಟ್ಟಡಗಳನ್ನು ನಿರ್ಮಿಸಲು ಅನುಮತಿ ನೀಡಿರುತ್ತಾರೆ. ಸದರಿ ಜಾಗದಲ್ಲಿ ಶಾಲೆ ಪ್ರಾರಂಭದಿಂದ ಇಲ್ಲಿಯವರೆವಿಗೂ ನಡೆಯುತ್ತಾ ಬಂದಿರುತ್ತದೆ. ಆದರೆ ಶಾಲೆಯ ಹೆಸರಿಗೆ ಜಮೀನು ನೊಂದಣಿಯಾಗಿರುವುದಿಲ್ಲ. ಈ ಹರದಗೆರೆ ಸ.ನಂ.51/1 ರಲ್ಲಿ 0-03 ಗುಂಟೆ ಜಾಗದಲ್ಲಿ ಶಾಲೆಯು 1957 ರಿಂದ ಪ್ರಸ್ತುತ ವರ್ಷದವರೆವಿಗೂ ನಡೆಯುತ್ತಿರುತ್ತದೆ. ಆದ್ದರಿಂದ ಇನ್ನು ಮುಂದೆಯೂ ಶೈಕ್ಷಣಿಕ ಅನುಕೂಲಕ್ಕಾಗಿ ಸದರಿ ಜಾಗವನ್ನು ಶಾಲೆಯ ಉದ್ದೇಶಕ್ಕೆ ನೀಡಲು ಕೋರಿರುತ್ತಾರೆ.

6ನೇ ಎದುರುದಾರರಾದ ತಹಶೀಲ್ದಾರ್, ಗುಬ್ಬಿ ತಾಲ್ಲೂಕು ಇವರು ಗುಬ್ಬಿ ತಾಲ್ಲೂಕು, ನಿಟ್ಟೂರು ಹೋಬಳಿ, ಹರದಗೆರೆ ಗ್ರಾಮದ ಸ.ನಂ.51/1 ರ ಜಮೀನಿನ ಮೂಲಕ ಹಿಡುವಳಿ ಜಮೀನಿನಲ್ಲಿ ಹಾಲಿ ಪಹಣಿಯಂತೆ ಸುಶ್ಮಿತ ಹೆಚ್.ಆರ್. ಬಿನ್ ಹೆಚ್.ಪಿ.ರಮೇಶ್ ತಮ್ಮಪ್ಪ ಉರುಫ್ ಪವನಕುಮಾರ್‌ರವರ ಪತ್ನಿ ಇವರ ಹೆಸರಿಗೆ ಎಂಆರ್.18/2017-18 ರಂತೆ 1-38 ಎಕರೆ/ಗುಂಟೆ ಜಮೀನು ದಾಖಲಾಗಿರುವುದು ಕಂಡು ಬಂದಿರುತ್ತದೆ. ಸ.ನಂ.51/1 ರ ಜಮೀನಿನಲ್ಲಿ ನಕಾಶೆ ಕಂಡ ದಾರಿ ಇರುವುದಿಲ್ಲ. ತಾಲ್ಲೂಕು ಸರ್ವೆಯರ್ ರವರು ತಯಾರಿಸಿರುವ ನಕ್ಷೆಯಲ್ಲಿ ತೋರಿಸಿರುವಂತೆ ಗೊಲ್ಲರಹಟ್ಟಿ ಮತ್ತು ಹರದಗೆರೆ ಬೋವಿ ಕಾಲೋನಿಗೆ ಓಡಾಡುವ

ಕಾಲುದಾರಿ ಇದ್ದು, ಡಾಂಬರೀಕರಣ ರಸ್ತೆ ನಿರ್ಮಾಣ ಮಾಡಿರುವುದಿಲ್ಲ ಹಾಗೂ ಸರ್ಕಾರಿ ಹಿರಿಯ ಪ್ರಾಥಮಿಕ ಪಾಠಶಾಲೆ ಕಟ್ಟಡವಿರುತ್ತದೆ ಎಂದು ವರದಿ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ. ತಾಲ್ಲೂಕು ಸರ್ವೆಯರ್‌ರವರು ನಕ್ಷೆಯಲ್ಲಿ ಗುರುತಿಸಿರುವಂತೆ ಸ.ನಂ.51/1 ರಲ್ಲಿ ಹಸಿರು ಬಣ್ಣದಿಂದ ಗುರುತಿಸಿರುವ 0-04 ಗುಂಟೆ ಪ್ರದೇಶವು ರಸ್ತೆ ಎಂದು ಹಾಗೂ ಕೆಂಪು ಬಣ್ಣದಿಂದ ಗುರುತಿಸಿರುವ ಪ್ರದೇಶ 0-02 ಗುಂಟೆ ಜಮೀನು ಪಾಠಶಾಲೆ ಕಟ್ಟಡ ಇರುವ ಪ್ರದೇಶವಾಗಿರುತ್ತದೆ ಎಂದು ವರದಿಸಿರುತ್ತಾರೆ.

ಅರ್ಜಿದಾರರು ಸಲ್ಲಿಸಿರುವ ಅರ್ಜಿಯಲ್ಲಿ ಪಿತ್ರಾರ್ಜಿತವಾಗಿ 2-00 ಎಕರೆ ವಿಸ್ತೀರ್ಣದ ಜಮೀನು ನನ್ನ ಭಾಗಕ್ಕೆ ಬಂದಿರುತ್ತದೆ. ಸದರಿ ಜಮೀನನ್ನು ಅಳತೆ ಮಾಡಿದಾಗ ನನಗೆ ಸೇರಿದ ಜಮೀನಿನಲ್ಲಿ 0-03 ಗುಂಟೆ ವಿಸ್ತೀರ್ಣದಲ್ಲಿ ಹರದಗೆರೆ ಪ್ರಾಥಮಿಕ ಶಾಲಾ ಕಟ್ಟಡವಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ ಹಾಗೂ ನನ್ನ ಜಮೀನಿನಲ್ಲೇ 0-06 ಗುಂಟೆ ವಿಸ್ತೀರ್ಣದಲ್ಲಿ ಹರದಗೆರೆಯಿಂದ ಭೋವಿ ಕಾಲೋನಿಗೆ ಹೋಗುವ ರಸ್ತೆ ಅಭಿವೃದ್ಧಿಪಡಿಸಿರುತ್ತಾರೆ. **ರಸ್ತೆ ಮತ್ತು ಶಾಲೆ ನಿರ್ಮಿಸಲು ನನ್ನ ಜಮೀನನ್ನು ಭೂಸ್ವಾಧೀನ ಪಡಿಸಿಕೊಂಡಿರುವುದಿಲ್ಲ. ಭೂಸ್ವಾಧೀನ ಪಡಿಸಿಕೊಳ್ಳದೇ ನನಗೆ ಸೇರಿದ ಖಾಸಗಿ ಜಾಗದಲ್ಲಿ ಶಾಲೆ ಮತ್ತು ರಸ್ತೆ ಅಭಿವೃದ್ಧಿ ಪಡಿಸಿರುವುದು ಕಾನೂನು ಬಾಹಿರವಾಗಿರುತ್ತದೆ. ಶಾಲೆ ಮತ್ತು ರಸ್ತೆ ಅಭಿವೃದ್ಧಿ ಪಡಿಸಿರುವುದಕ್ಕೆ ನನ್ನ ಹಾಗೂ ನನ್ನ ಕುಟುಂಬದವರ ಒಪ್ಪಿಗೆ ಇರುವುದಿಲ್ಲ. ನನಗೆ 2-00 ಎಕರೆ ಜಮೀನು ಬಿಟ್ಟರೆ ಬೇರೆ ಜಮೀನು ಇರುವುದಿಲ್ಲ, ಆದ್ದರಿಂದ ಶಾಲೆ ಮತ್ತು ರಸ್ತೆ ಅಭಿವೃದ್ಧಿ ಪಡಿಸಿರುವ ಒಟ್ಟು 0-09 ಗುಂಟೆ ಜಮೀನನ್ನು ಭೂಸ್ವಾಧೀನಪಡಿಸಿಕೊಂಡು ಸೂಕ್ತ ಪರಿಹಾರ ನೀಡಬೇಕೆಂದು ಕೋರಿ ಎದುರುದಾರರ ಕಛೇರಿಗಳಿಗೆ ಮನವಿ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ**.

ಅರ್ಜಿದಾರರು ಸಲ್ಲಿಸಿರುವ ದಾಖಲೆ, ಉಭಯತ್ರರ ವಾದ ಹಾಗೂ ಲಭ್ಯ ದಾಖಲಾತಿಗಳನ್ನು ಪರಿಶೀಲಿಸಲಾಗಿರುತ್ತದೆ.

1967-68ನೇ ಸಾಲಿನ ಪಹಣಿಯಲ್ಲಿ ವಿವಾದಿತ ಸ.ನಂ.51/1 ರಲ್ಲಿ ನಂಜಪ್ಪ ಬಿನ್ ಚೆಂದಗಿರಯ್ಯ ಇವರ ಹೆಸರಿಗೆ 4-33 ಎಕರೆ/ಗುಂಟೆ ಇದ್ದು, ನಂತರ ಎಂ.ಆರ್.19/89-90 ರಲ್ಲಿ ಪಂಚಾಕ್ಷರಯ್ಯ ಬಿನ್ ನಂಜಪ್ಪ ಇವರಿಗೆ 2-18 ಎಕರೆ/ಗುಂಟೆ ವಿಭಾಗದಂತೆ ಖಾತೆಯಾಗಿರುತ್ತದೆ, ಉಳಿಕೆ ಮೂಲ ಖಾತೆದಾರ ನಂಜಪ್ಪ ಇವರಿದ್ದ ಜಮೀನು 2-15 ಎಕರೆ/ಗುಂಟೆ ಸಿದ್ದಗಂಗಮ್ಮ ಕೋಂ ಉಮಾಮಹೇಶ್ವರಯ್ಯ ಇವರಿಗೆ ವಿಭಾಗದಂತೆ ಎಂ.ಆರ್.10/1997-98 ರಂತೆ ಖಾತೆಯಾಗಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ.

ಎಂ.ಆರ್.20/2004-05 ರಂತೆ ಪಂಚಾಕ್ಷರಯ್ಯ ಇವರ ಹೆಸರಿಗಿದ್ದ ಖಾತೆಯು ವಿಭಾಗದ ಮೂಲಕ ಹೆಚ್.ಪಿ.ರಮೇಶ್ ಬಿನ್ ಪಂಚಾಕ್ಷರಯ್ಯ ಇವರಿಗೆ ಖಾತೆ ಪಹಣಿ ಬದಲಾವಣೆಗೊಂಡಿರುತ್ತದೆ. ಹಾಲಿ 2020-21ನೇ ಸಾಲಿನ ಪಹಣಿಯಂತೆ ಸುಶ್ಮಿತಾ ಹೆಚ್.ಆರ್. ಬಿನ್ ಎಂ.ಪಿ.ರಮೇಶ್ ತಿಮ್ಮಪ್ಪ ಉರುಫ್ ಪವನಕುಮಾರ್‌ರವರ ಪತ್ನಿ ಎಂ.ಆರ್.ಹೆಚ್-8/2017-18 ದಾನ ಎಂದು ಆರ್.ಟಿ.ಸಿ.ಯಲ್ಲಿ ನಮೂದಾಗಿರುತ್ತದೆ. **ಅರ್ಜಿದಾರರಾದ ಹೆಚ್.ಪಿ.ರಮೇಶ್‌ರವರು ವಿವಾದಿತ ಜಮೀನಿನಲ್ಲಿ ತಮ್ಮ ಹಕ್ಕನ್ನು ತಮ್ಮ ಮಗಳಿಗೆ ದಾನಪತ್ರದ ಮೂಲಕ ನೀಡಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ.**

ಮುಖ್ಯ ಶಿಕ್ಷಕರು, ಸರ್ಕಾರಿ ಹಿರಿಯ ಪ್ರಾಥಮಿಕ ಪಾಠಶಾಲೆ, ಹರದಗೆರೆ, ಗುಬ್ಬಿ ತಾಲ್ಲೂಕು ಇವರು ಸರ್ಕಾರಿ ಹಿರಿಯ ಪ್ರಾಥಮಿಕ ಶಾಲೆಗೆ ಸಂಬಂಧಿಸಿದಂತೆ 1957-58ನೇ ಸಾಲಿನ ದಾಖಲಾತಿ ಪುಸ್ತಕವನ್ನು (Admission Register) ಹಾಗೂ 1969-70ನೇ ಸಾಲಿನಲ್ಲಿ 2 ಕಟ್ಟಡಗಳು ಹಾಗೂ 4 ಕೋಣೆಗಳನ್ನು ಸರ್ಕಾರ ಮತ್ತು ಗ್ರಾಮಸ್ಥರಿಂದ ನಿರ್ಮಿಸಿರುವ ಬಗ್ಗೆ ಹಾಗೂ ಶಾಲೆಯ ಆಟದ ಮೈದಾನ ಒಳಗೊಂಡಿರುವುದು ದಾಖಲಾತಿಯನ್ನು ಸಲ್ಲಿಸಿರುತ್ತಾರೆ. **ಇದರಿಂದ ಪ್ರಸ್ತಾವಿತ ಶಾಲೆಯು ಸುಮಾರು 60 ವರ್ಷಗಳ ಹಿಂದಿನಿಂದ ಪ್ರಾರಂಭವಾಗಿ ಈ ತಹಲ್‌ವರೆಗೂ ನಡೆಯುತ್ತಿರುವುದು ಕಂಡುಬಂದಿದ್ದು, ಈ ಬಗ್ಗೆ ಹಿಂದಿನ ಖಾತೆದಾರರಾಗಲಿ ಅವರ ವಂಶಸ್ಥರಾಗಲೀ ಯಾವುದೇ ಆಕ್ಷೇಪಣೆ ಸಲ್ಲಿಸಿರುವುದಿಲ್ಲ. ಅಂದರೆ ಅರ್ಜಿದಾರರ ಪೂರ್ವಿಕರ ಕಾಲದಿಂದಲೂ ಈ ಶಾಲೆಯ ಕಟ್ಟಡ ಇರುವುದು ಕಂಡು ಬಂದಿರುತ್ತದೆ.**

ಸದರಿ ಅರ್ಜಿದಾರರ ಪೂರ್ವಜರು ಹಾಗೂ ವಂಶಸ್ಥರು ಶಾಲೆಯನ್ನು ನಿರ್ಮಾಣ ಮಾಡಿರುವುದಕ್ಕೆ ಹಾಗೂ ರಸ್ತೆ ನಿರ್ಮಾಣ ಮಾಡಿರುವುದಕ್ಕೆ ಯಾವುದೇ ಆಕ್ಷೇಪಣೆಯನ್ನು ಸಲ್ಲಿಸದೇ ಇರುವುದರಿಂದ ದಾಖಲೆಗಳ ಪರಿಶೀಲನೆಯಿಂದ ಸದರಿ ಶಾಲೆಯ ಕಟ್ಟಡವು ಸುಮಾರು 60-70 ವರ್ಷಗಳ ಹಿಂದೆಯೇ ನಿರ್ಮಾಣಗೊಂಡಿದ್ದು, ಹಿಂದಿನ ಖಾತೆದಾರರ ಹಾಗೂ ಅವರ ಕುಟುಂಬದ ವಂಶಸ್ಥರಾಗಲೀ ಹಿಂದಿನಿಂದಲೂ ಈ ತಹಲ್‌ವರೆವಿಗೂ ಪ್ರಸ್ತಾವಿತ ಪ್ರದೇಶದಲ್ಲಿ ಅನುಭವ ಅಥವಾ ಅಭಿವೃದ್ಧಿ ಪಡಿಸಿರುವುದು ಕಂಡುಬಂದಿರುವುದಿಲ್ಲ. ಸದರಿ ಪ್ರಸ್ತಾವಿತ ಪ್ರದೇಶವು ಅಂದರೆ 0-03 ಗುಂಟೆ ಪ್ರದೇಶದಲ್ಲಿ ಶಾಲಾ ಕಟ್ಟಡ ಇರುವುದು ಇದು ಈ ಹಿಂದೆಯೇ ನಿರ್ಮಾಣ ಮಾಡಿರುವುದು ಅರ್ಜಿದಾರರು ಇತ್ತೀಚೆಗೆ ಅಳತೆ ಅಮಯದಲ್ಲಿ ಸದರಿ ಜಾಗದಲ್ಲಿ ಕಟ್ಟಡವಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆಂದು ತಿಳಿಸಿರುತ್ತಾರೆ. **ಈ ಜಾಗಕ್ಕೆ ಭೂಪರಿಹಾರ ಕೋರಿ ಅರ್ಜಿದಾರರ ಪೂರ್ವಿಕರು ಭೂಪರಿಹಾರ ಕೋರಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿಲ್ಲ ಹಾಗೂ ಕಟ್ಟಡ ನಿರ್ಮಾಣವಾಗುವ ಸಂದರ್ಭದಲ್ಲಿ ಯಾವುದೇ ಆಕ್ಷೇಪಣೆ ಸಹ ಸಲ್ಲಿಸಿರುವುದು ಕಂಡುಬಂದಿರುವುದಿಲ್ಲ.** ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ಆದೇಶವನ್ನು ಸಹ ಪರಿಶೀಲಿಸಿದ್ದು, ಪ್ರಸ್ತಾವಿತ ಸರ್ಕಾರಿ ಶಾಲೆ ನಡೆಸುತ್ತಿರುವ ಕಟ್ಟಡ 0-03 ಗುಂಟೆ ಹಾಗೂ ಈ ಹಿಂದಿನಿಂದಲೂ ಇರುವ ರೂಢಿ ರಸ್ತೆಯನ್ನು ಸಾರ್ವಜನಿಕರು ಬಹಳ ಹಿಂದಿನಿಂದಲೂ ಉಪಯೋಗಿಸುತ್ತಿರುವುದರಿಂದ ಈ ಜಮೀನನ್ನು ಭೂಸ್ವಾಧೀನ ಪಡಿಸಿಕೊಳ್ಳುವ ಅವಶ್ಯಕತೆ ಕಂಡುಬಂದಿರುವುದಿಲ್ಲ.

ಸುಮಾರು 60–70 ವರ್ಷಗಳಿಂದ ಇರುವ ಶಾಲಾ ಕಟ್ಟಡ ಜಾಗ ಹಾಗೂ ಸಾರ್ವಜನಿಕರ ರೂಢಿ ಈ ರಸ್ತೆಯನ್ನು ಭೂಸ್ವಾಧೀನಪಡಿಸಿಕೊಂಡು ಪರಿಹಾರ ನೀಡಲು ಅರ್ಜಿದಾದರು ಕೇಳುತ್ತಿರುವುದರಿಂದ ಈ ಸಂಬಂಧ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರ/ನ್ಯಾಯಾಲಯದಲ್ಲಿ ತಮ್ಮ ಹಕ್ಕನ್ನು ಸ್ಥಾಪಿಸಿಕೊಳ್ಳಲು ಅರ್ಜಿದಾರರಿಗೆ ಮುಕ್ತ ಅವಕಾಶವಿರುತ್ತದೆ ಎಂದು ತಿಳಿಸಿ ಕೆಳಗಿನಂತೆ ಆದೇಶಿಸಿದೆ.

ಆದೇಶ

ಅರ್ಜಿದಾರರು ಪ್ರಸ್ತಾವಿತ ಗುಬ್ಬಿ ತಾಲ್ಲೂಕು, ನಿಟ್ಟೂರು ಹೋಬಳಿ, ಹರದಗೆರೆ ಗ್ರಾಮದ ಸ. ನಂ. 51/1 ರಲ್ಲಿ ಶಾಲಾ ಕಟ್ಟಡದ ಜಾಗ ಹಾಗೂ ಸಾರ್ವಜನಿಕ ರೂಢಿ ರಸ್ತೆಗೆ ಉಪಯೋಗಿಸುತ್ತಿರುವ ಜಾಗವು ಈಗಾಗಲೇ ಸುಮಾರು 60 ವರ್ಷಗಳಿಗಿಂತ ಹಿಂದೆಯೇ ಶಾಲೆಯ ಕಟ್ಟಡ ಮತ್ತು ರಸ್ತೆ ನಿರ್ಮಾಣವಾಗಿರುವುದರಿಂದ ಈಗ ಅರ್ಜಿದಾರರು ಪರಿಹಾರ ಕೇಳುತ್ತಿರುವ

ಅರ್ಜಿಯನ್ನು ತಿರಸ್ಕರಿಸಿದೆ. ಅರ್ಜಿದಾರರು ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರ/ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ತಮ್ಮ ಹಕ್ಕನ್ನು ಸ್ಥಾಪಿಸಿಕೊಳ್ಳಲು ತಿಳಿಸಿದೆ. "

(Emphasis added)

The afore-quoted order has again driven the petitioners to this Court in the subject petition.

8. A co-ordinate bench of this Court owing to the submissions made by the learned counsel for the petitioners on 25.07.2023, has passed the following order:

"Learned AGA accepts notice for respondents.

Learned counsel for the petitioner submits that the enquiry was held and report of which is enclosed at Annexure-B pursuant to the direction made in W.P.No.12385/2016 and specifically at paragraph No.6(iii) of the order.

Paragraph No.6(iii) of the order passed in W.P.No.12385/2016 reads as follows:

"After the enquiry, if the Deputy Commissioner finds that the property in dispute is a Government property, then the petitioner is not entitled for any compensation. If the property belongs to the petitioner and he has not encroached the land, the authorities have to proceed in accordance with law to acquire the land by specifying the extent of area required for the formation of the road and construction of the school building and by paying compensation to the petitioner as per law."

It is submitted that despite enquiry, the authority has declined payment of compensation on the ground that the relief sought for is after 60 years and is belated.

Learned counsel for the petitioner has relied on the judgment of the Apex Court in the case of SUKH DUTT RATRA AND ANOTHER VS. STATE OF HIMACHAL PRADESH AND OTHERS - (2022) 7 SCC 508 to assert that the question of limitation ought not to be raised as a defence once the private property utilised for public purpose is established.

Learned AGA submits that he would obtain necessary instructions and if there is no dispute as regards the title, necessary stand would be taken.

List this matter in the week commencing from 07.08.2023."

(Emphasis supplied)

On 14.08.2023, another co-ordinate bench passed the following order:

"Though learned Counsel for the petitioners seeks to place reliance on a decision of the Apex Court in the case of Sukh Dutt Ratra and Another Vs. State of Himachal Pradesh And Others (2022) 7 SCC 508, this Court finds that there is some distinction that could be drawn on the facts of the case. Here is a case where a portion of the land then belonging to the petitioner's grandfather was utilized for construction of a school building and the school was established wayback in the year 1957-58. Only about 2 guntas of land has been utilized for construction of a school building. Such facts do not appear to be forcible utilization of a private property. It can be a case where the then land owner had magnanimously given up a portion of the land for construction of a school building. The petitioner, grandson of such a person is now before this Court seeking compensation for utilization of the land for construction of a school building. On facts, it is also found that about 4 guntas of land in the same Survey number has been utilised for formation of a road. However, it is not clear from the findings recorded by the Deputy Commissioner at Annexure 'B' as to when the road was formed.

Therefore, the respondent-Deputy Commissioner, Tumkur District, is once again called upon to verify from the records and state clearly as to when the road in question was formed. The Deputy Commissioner shall state as to when the kutcha road was formed and thereafter when it was metalled. The Deputy Commissioner shall also state as to whether the school is still functioning in the same place including the 2 guntas of land which were earlier utilized for construction of the school building or whether the school has been shifted.

Relist this matter on 28.08.2023."

(Emphasis supplied)

On 15.07.2025, the following order is passed:

"Heard the learned counsel for petitioners.

The petitioners are before this Court seeking compensation for utilization of their 7 guntas of land by the State about 60 years ago. They had approached this Court in W.P.No.12385/2016. A coordinate bench of this Court in terms of the order dated 19.09.2019, disposed the said petition by the following directions:

> "6. In the light of the above, the writ petition is disposed of with the following directions:
>
> > (i) Petitioner shall file statement of objections along with the necessary documents before the Deputy Commissioner, Tumkur District, within a period of four weeks from the date of receipt of a copy of this order;
> >
> > (ii) The Deputy Commissioner shall consider the objections and hear the petitioner by providing personal hearing and thereafter pass a considered order;

> (iii) After the enquiry, if the Deputy Commissioner finds that the property in dispute is a Government property, then the petitioner is not entitled for any compensation. If the property belongs to the petitioner and he has not encroached the land, the authorities have to proceed in accordance with law to acquire the land by specifying the extent of area required for the formation of the road and construction of the school building and by paying compensation to the petitioner as per law."

Pursuant to the order, the Deputy Commissioner holds an enquiry. The result of the enquiry is an order that is passed, which reads thus:

"ಸದರಿ ಅರ್ಜಿದಾರರ ಪೂರ್ವಜರು ಹಾಗೂ ವಂಶಸ್ಥರು ಶಾಲೆಯನ್ನು ನಿರ್ಮಾಣ ಮಾಡಿರುವುದಕ್ಕೆ ಹಾಗೂ ರಸ್ತೆ ನಿರ್ಮಾಣ ಮಾಡಿರುವುದಕ್ಕೆ ಯಾವುದೇ ಆಕ್ಷೇಪಣೆಯನ್ನು ಸಲ್ಲಿಸದೇ ಇರುವುದರಿಂದ ದಾಖಲೆಗಳ ಪರಿಶೀಲನೆಯಿಂದ ಸದರಿ ಶಾಲೆಯ ಕಟ್ಟಡವು ಸುಮಾರು 60-70 ವರ್ಷಗಳ ಹಿಂದೆಯೇ ನಿರ್ಮಾಣಗೊಂಡಿದ್ದು, ಹಿಂದಿನ ಖಾತೆದಾರರ ಹಾಗೂ ಅವರ ಕುಟುಂಬದ ವಂಶಸ್ಥರಾಗಲೀ ಹಿಂದಿನಿಂದಲೂ ಈ ತಹಲ್‌ವರೆವಿಗೂ ಪ್ರಸ್ತಾವಿತ ಪ್ರದೇಶದಲ್ಲಿ ಅನುಭವ ಅಥವಾ ಅಭಿವೃದ್ಧಿ ಪಡಿಸಿರುವುದು ಕಂಡುಬಂದಿರುವುದಿಲ್ಲ ಸದರಿ ಪ್ರಸ್ತಾಪಿತ ಪ್ರದೇಶವು ಅಂದರೆ 0-03 ಗುಂಟೆ ಪ್ರದೇಶದಲ್ಲಿ ಶಾಲಾ ಕಟ್ಟಡ ಇರುವುದು ಇದು ಈ ಹಿಂದೆಯೇ ನಿರ್ಮಾಣ ಮಾಡಿರುವುದು ಅರ್ಜಿದಾರರು ಇತ್ತೀಚೆಗೆ ಅಳತೆ ಅಮಯದಲ್ಲಿ ಸದರಿ ಜಾಗದಲ್ಲಿ ಕಟ್ಟಡವಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆಂದು ತಿಳಿಸಿರುತ್ತಾರೆ. ಈ ಜಾಗಕ್ಕೆ ಭೂಪರಿಹಾರ ಕೋರಿ ಅರ್ಜಿದಾರರ ಪೂರ್ವಿಕರು ಭೂಪರಿಹಾರ ಕೋರಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿಲ್ಲ ಹಾಗೂ ಕಟ್ಟಡ ನಿರ್ಮಾಣವಾಗುವ ಸಂದರ್ಭದಲ್ಲಿ ಯಾವುದೇ ಆಕ್ಷೇಪಣೆ ಸಹ ಸಲ್ಲಿಸಿರುವುದು ಕಂಡುಬಂದಿರುವುದಿಲ್ಲ. ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ಆದೇಶವನ್ನು ಪರಿಶೀಲಿಸಿದ್ದು, ಪ್ರಸ್ತಾವಿತ ಸರ್ಕಾರಿ ಶಾಲೆ ನಡೆಸುತ್ತಿರುವ ಕಟ್ಟಡ 0-03 ಗುಂಟೆ ಹಾಗೂ ಈ ಹಿಂದಿನಿಂದಲೂ ಇರುವ ರೂಢಿ ರಸ್ತೆಯನ್ನು ಸಾರ್ವಜನಿಕರು ಸಹ ಬಹಳ ಹಿಂದಿನಿಂದಲೂ ಉಪಯೋಗಿಸುತ್ತಿರುವುದರಿಂದ ಈ ಜಮೀನನ್ನು ಭೂಸ್ವಾಧೀನ ಪಡಿಸಿಕೊಳ್ಳುವ ಅವಶ್ಯಕತೆ ಕಂಡುಬಂದಿರುವುದಿಲ್ಲ.

ಸುಮಾರು 60-70 ವರ್ಷಗಳಿಂದ ಇರುವ ಶಾಲಾ ಕಟ್ಟಡ ಜಾಗ ಹಾಗೂ ಸಾರ್ವಜನಿಕರ ರೂಢಿ ರಸ್ತೆಯನ್ನು ಭೂಸ್ವಾಧೀನಪಡಿಸಿಕೊಂಡು ಪರಿಹಾರ ನೀಡಲು ಅರ್ಜಿದಾರರು ಕೇಳುತ್ತಿರುವುದರಿಂದ ಈ ಸಂಬಂಧ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರ/ನ್ಯಾಯಾಲಯದಲ್ಲಿ ತಮ್ಮ ಹಕ್ಕನ್ನು ಸ್ಥಾಪಿಸಿಕೊಳ್ಳಲು ಅರ್ಜಿದಾರರಿಗೆ ಮುಕ್ತ ಅವಕಾಶವಿರುತ್ತದೆ ಎಂದು ತಿಳಿಸಿ ಕೆಳಗಿನಂತೆ ಆದೇಶಿಸಿದೆ.

<u>ಆದೇಶ</u>

ಅರ್ಜಿದಾರರು ಪ್ರಸ್ತಾವಿತ ಗುಬ್ಬಿ ತಾಲ್ಲೂಕು, ನಿಟ್ಟೂರು ಹೋಬಳಿ, ಹರದಗೆರೆ ಗ್ರಾಮದ ಸ.ನಂ.51/1 ರಲ್ಲಿ ಶಾಲಾ ಕಟ್ಟಡದ ಜಾಗ ಹಾಗೂ ಸಾರ್ವಜನಿಕ ರೂಢಿ ರಸ್ತೆಗೆ ಉಪಯೋಗಿಸುತ್ತಿರುವ ಜಾಗವು ಈಗಾಗಲೇ ಸುಮಾರು 60

ವರ್ಷಗಳಿಗಿಂತ ಹಿಂದೆಯೇ ಶಾಲೆಯ ಕಟ್ಟಡ ಮತ್ತು ರಸ್ತೆ ನಿರ್ಮಾಣವಾಗಿರುವುದರಿಂದ ಈಗ ಅರ್ಜಿದಾರರು ಪರಿಹಾರ ಕೇಳುತ್ತಿರುವ ಅರ್ಜಿಯನ್ನು ತಿರಸ್ಕರಿಸಿದೆ. ಅರ್ಜಿದಾರರು ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರ/ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ತಮ್ಮ ಹಕ್ಕನ್ನು ಸ್ಥಾಪಿಸಿಕೊಳ್ಳಲು ತಿಳಿಸಿದೆ.

ಈ ಆದೇಶವನ್ನು ದಿನಾಂಕ:08-11-2021 ರಂದು ತೆರೆದ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಘೋಷಿಸಲಾಯಿತು.

ಸಹಿ/–
08.11.2021
ಜಿಲ್ಲಾಧಿಕಾರಿ
ತುಮಕೂರು ಜಿಲ್ಲೆ."

A perusal at the report or the report which forms the part of the order would clearly indicate that the land of the petitioners has been utilized by the State for the purpose of establishment of a school and formation of the road.

The observation is, since the petitioners or their ancestors did not object to the said utilization, no acquisition need be made and therefore, the land belongs to the government. The report on the face of it, is contrary to law.

The government *prima facie,* cannot become an encroacher of a private property.

Learned High Court Government Pleader seeks a week's time to file statement of objections.

Objections be filed by the next date of hearing.

List this matter on **24.07.2025, in preliminary hearing**.

In the event, objections are not filed, appropriate orders would be passed on hearing the learned counsel for petitioners."

(Emphasis supplied)

Pursuant to the afore-quoted orders, the government has filed statement of objections along with an affidavit. The relevant paragraphs of the objections read as follows:

"…. …. ….

5. It is submitted that according to the direction of the Hon'ble Court, enquiry was conducted by the concerned Government Authorities and Order was passed, on 08.11.2021 and it was found that Petitioner's 3 guntas of land was used for school building and another 4 to 6 guntas of land was used for formation of road.

6. It is submitted that, the petitioner filed C.C.C. No.320/2022 (Civil) against the respondents for non-compliance of the order of the Hon'ble Court dated 19/09/2019. The said Contempt proceedings were dropped with a liberty for the petitioner to file/challenge the decision of the Deputy Commissioner before the appropriate forum.

7. It is submitted that, after the dismissal of the contempt proceedings, the Petitioner filed Review Petition No.788/2022, which was withdrawn with liberty to pursue proper legal course.

8. It is submitted that, the father of the petitioner had voluntarily allowed the use of the land for formation of school and road which is in existence since 1957. Neither the family members of the petitioner nor the members of the village objected to the same. The petitioner being well aware/ deemed to be aware of this continued possession and use is now estopped from claiming compensation. The petitioner who remained silent for over 60 years cannot claim for compensation at this stage. The petitioner's right to recover possession or compensation is lost after the statutory period of 12 years as per the Limitation Act, 1963.

9. It is submitted that, the petitioner has claimed for compensation for the use of land for public purpose

> **after 60 years. The claim of the petitioner is barred by delay and latches. The possession of the Government has been continuous, open and peaceful for 60 years thereby barring any claim in the present stage. Extraordinary delay disentitles a petitioner from relief under Article 226 of the Constitution of India.**
>
> **10. It is submitted that, the land is used for noble public purpose like education for 60 years. Disruption or compensation at this stage would adversely affect public interest and would set a wrong precedent. It is further submitted that, by allowing the school to function uninterruptedly, the land is deemed to have been constructively dedicated to public use and such dedications are irrevocable in nature once accepted by the public and is acted upon."**

(Emphasis added)

The State concedes that the petitioners land has long stood in the service of public infrastructure for having been utilised for construction of a government school and formation of the road, all acts have undertaken more than six decades ago. The State's defence however, rests on the assertion that the father of the first petitioner has voluntarily surrendered the land for the said purpose and that, by reason of passage of time, the petitioners' right either to reclaim possession or seek compensation has withered away with

statutory limitation of 12 years as obtaining under the Limitation Act, 1963.

9. **The question that now arises is, stark and unavoidable - on the face of the State's unequivocal admission that it has appropriated private land belonging to the petitioners for public purposes – be it establishment of a school or formation of a road, does the law permits the petitioners to receive the compensation even today, or, it should be non-suited on the ground of delay. Thus, the time extinguishes the constitutional obligation to compensate or does the rule of law compel the State to answer for its actions even after an aeon.**

10. Jurisprudence is replete with authoritative pronouncements revealing **a consistent and unwavering thread woven by the Apex Court that, right to property preserved under Article 300A of the Constitution of India is fortified by the life and personal liberty mandated under Article 21, cannot be rendered illusory by the mere lapse of years. Delay even extending across half a century, does not semi**

articulate the landowners claim to just compensation, when it is admitted by the State that, it has, without legal formalities taken over a private land. It thus becomes imperative to draw inference from the aforesaid precedents.

11. The King's bench in the case of **JOHN ENTICK CLERK VS. NATHAN CARRINGTON AND THREE OTHERS[1],** has delineated on the right on their own property.

"…. ….. ….

Curia,—The defendants make two defences; first, that they are within the stat. 24 Geo. 2, c. 44 ; 2dly, that such warrants have frequently been granted by Secretaries of State ever since the Revolution, and have never been controverted, and that they are legal ; upon both which defences tbe defendants rely.

A Secretary of State, who is a Privy Counsellor, if he be a conservator of the peace, whatever power he has to commit is by the common law : if he be considered only as a Privy Counsellor, he is the only one at the board who has exercised this authority of late years ; if as a conservator, he never binds to the peace ; no other conservator ever did that we can find : he has no power to administer an oath, or take bail ; but yet it must be admitted that he is in the full exercise of this power to commit, for treason and seditious libels against the Government, whatever was the original source of that power ; as appears from the cases of *The Queen and Derby, The King and Earbury, and Kendale and Roe's case.*

We must know what a Secretary of State is, before we can tell whether he is within the stat. 24

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[1] WILS.K.B.275; 1765 EWHC (KB) J98; 95 ER 807

Geo. 2, c. 44. He is the keeper of the King's signet wherewith the King's private letters are signed. [289] 2 Inst. 556. Coke upon Articuli Super Chartas, 28 Ed. 1. Lord Coke's silence is a strong presumption that no such power as he now exercises was in him at that time ; formerly he was not a Privy Counsellor, or considered as a magistrate ; he began to be significant about the time of the Revolution, and grew great when the princes of Europe sent ambassadors hither ; it seems inconsistent that a Secretary of State should have power to commit, and no power to administer an oath, or take bail ; who can commit and not have power to examine ? the House of Commons indeed commit without oath, but that is nothing to the present case ; there is no account in our law-books of Secretaries of State, except in the few cases mentioned ; he is not to be found among the old conservators ; in Lambert, Crompton, Fitzherbert, &c. &c. nor is a Privy Counsellor to be found among our old books till *Kendall and Roe's case,* and I Leon. 70, 71, 29 Eliz. is the first case that takes notice of a commitment by a Secretary of State ; but in 2 Leon. 175 the Judges knew no such committing magistrate as the Secretary of State. It appears by the Petition of Right, that the King and Council claimed a power to commit ; if the Secretary of State had claimed any such power, then certainly the Petition of Right would have taken notice of it ; but from its silence on that head we may fairly conclude he neither claimed nor had any such power ; the Stat. 16 Car. 1, for Regulating the Privy Council, and taking away the Court of Star-Chamber, binds the King not to commit, and in such case gives a habeas corpus ; it is strange that House of Commons should take no notice of the Secretary of State, if he then had claimed power to commit. This power of a Secretary of State to commit was derivative from the commitment per mandatum Regis : Ephemeris Parliamentaria. Coke says in his speech to the House, If I do my duty to the King, I must commit without shewing the cause ; " 1 Leon. 70, 71, shews that a commitment by a single Privy Counsellor was not warranted. By the Licensing Statute of 13 & 14 Car. 2, cap. 33, sec. 15, licence is

given to messenger under warrant of the Secretary of State to search for books unlicensed, and if they find any against the religion of the Church of England, to bring them before the Secretary of State ; the warrant in that case expressed that it was by the King's command. See Stamford's comment on the mandate of the King, and Lambert, cap. Bailment. All the Judges temp. Eliz. held that in a warrant or commitment by one Privy Counsellor he must shew it was by the mandate of the King in Council. See And. 297, the opinion of all the Judges; they remonstrated to the King that no subject ought to be committed by a Privy Counsellor against the law of the realm. Before the 3 Car. 1 all the Privy Counsellors exorcised this power to commit; from that æra they disused this power, but then they prescribed still to commit per mandatum Regis. Journal of the House of Commons 195. 16 Car. 1. Coke, Selden, &c. argued that the King's power to commit, meant that [290] he had such power by his Courts of Justice. In the case of *The Seven Bishops* all the Court and King's Council admit, that supposing the warrant had been signed out of the Council, that it would have been bad, but the Court presumed it to be signed at the board ; Pollexfen in his argument says, we do not deny but the Council board have power to commit, but not out of Council ; this is a very strong authority ; the whole body of the law seem not to know that Privy Counsellors out of Council had any power to commit, if there had been any such power they could not have been ignorant of it ; and this power was only in cases of high treason, they never claimed it in any other case. It was argued that if a Secretary of State hath power to commit in high treason, he hath it in cases of lessor crimes : but this we deny, for if it appears that he hath power to commit in one case only, how can we then without authority say he has that power in other cases} he is not a conservator of the peace ; Justice Rokeby only says he is in the nature of a conservator of the peace : we are now bound by the cases of *The Queen and Derby, and The King and Earbury.*

The Secretary of Sate is no conservator nor a justice of the peace, quasi secretary, within the words or equity of the Stat. 24 Geo. 2, admitting him (for arguments sake) to be a conservator, the preamble of the statute shews why it was made, and for what purpose ; the only grantor of a warrant therein mentioned, is a justice of the peace ; justice of peace and conservator are not convertible terms ; the cases of construction upon old statutes, in regard to the warden of the Fleet, the Bishop of Norwich, & c. are not to be applied to cases upon modern statutes. **The best way to construe modern statutes is to follow the words thereof ; let us compare a justice of peace and a conservator ; the justice is liable to actions, as the statute takes notice, it is applicable to him. who acts by warrant directed to constables ; a conservator is not intrusted with the execution of laws, which by this Act is meant statutes, which gives justices jurisdiction ; a conservator is not liable to actions; be never acts : he is almost forgotten ; there never was an action against a conservator of the peace as such ; be is antiquated, and could never be thought of when this Act was made ; and ad ea quae frequenter accidunt jura adaptantur. There is no act of a constable or tithingman as conservator taken notice of in the statute; will the Secretary of State be ranked with the highest or lowest of these conservators? the Statute of Jac. 1, for officers acting by authority to plead the general issue, and give the special matter in evidence, when considered with this Statute of 24 Geo. 2, the latter seems to be a second part of the Act of Jac. 1, and we are all clearly of opinion that neither the Secretary of nor the messengerss are within the Stat. 24 Geo. 2, but if the messengers had been within it, as they did not take a constable [291] with them according to the warrant, that alone would have been fatal to them, nor did they pursue the warrant in the execution thereof, when they carried the plaintiff and his books, &c. before Lovel Stanhope, and not before Lord Halifax; that was wrong, because a Secretary of State cannot delegate his power, but ought to act in this part of his office personally.**

The defendants having failed in their defence under the Statute 24 Geo. 2 ; we shall now consider the special justification, whether it can be supported in law, and this depends upon the jurisdiction of the Secretary of State; **for if he has no jurisdiction to grant a warrant to break open doors, locks, boxes, and to seize a man and all his books, &c. in the first instance upon an information of bis being guilty of publishing a libel, the warrant will not justify the defendants** : it was resolved by B. R. in the case of *Shergold v. Holloway*, that a justice's warrant expressly to arrest the party will not justify the offcer, there being no jurisdiction. 2 Stran, 1002. **The warrant in our case was an execution in the first instance, without any previous summons, examination, hearing the plaintiff, or proof that he was the author of the supposed libels ; a power claimed by no other magistrate whatever (Scroggs C.J. always excepted) ; it was left to the discretion of these defendants to execute the warrant in the absence or presence of the plaintiff, when he might have no witness present to see what they did ; for they were to seize all papers, bank bills, or any other valuable papers they might take away if they were so disposed; there might be nobody to detect them. If this be lawful, both Houses of Parliament are involved in it, for they have both ruled, that privilege doth not extend to this case.** In the case of *Wilkes*, a member of the Commons House, all his books and papers were seized and taken away; we were told by one of these messengers that he was obliged by his oath to sweep away all paper whatsoever ; if this is law it would be found in our books, **but no such law ever existed in this country ; our law holds the property of every man so sacred, that no man can set his foot upon his neighbour's close without his leave ; if he does he is trespasser, though he does no damage at all ; if he will tread upon his neighbour's ground, he must justify it by law. The defendants have no right to avail themselves of the usage of these warrants since the Revolution, and if that would have justified**

them they have not averred it in their plea, so it could not be put, nor was in issue at the trial ; we can safely say there is no law in this country to justify the defendants in what they have done ; if there was, it would destroy all the comforts of society ; for papers are often the dearest property a man can have. This case was compared to that of stolen goods ; Lord Coke denied the lawfulness of granting warrants to search for stolen goods, 4 Inst. 176, 177, though now it prevails to be law ; but in that case the justice and the informer must proceed with great caution ; there must be an oath that the [292] party has had his goods stolen, and his strong reason to believe they are concealed in such a place ; but if the goods are not found there, he is a trespasser ; the offcer in that case is a witness ; there are none in this case, no inventory taken ; if it had been legal many guards of property would have attended it. We shall now consider the usage of these warrants since the Revolution ; if it began then, it is too modern to be law ; the common law did not begin with the Revolution ; the ancient constitution which had been almost overthrown and destroyed, was then repaired and revived ; the Revolution added a new buttress to the ancient venerable edifice : the K. B. lately said that no objection had ever been taken to general warrants, they have passed sub silentio : this is the first instance of an attempt to prove a modern practice of a private office to make and execute warrants to enter a man's house, search for and take away all his books and papers in the first instance, to be law, which is not to be found in our books. It must have been the guilt or poverty of those upon whom such warrants havo been executed, that deterred or hindered them from contending against the power of a Secretary of State and the Solicitor of the Treasury, or such warrants could never have passed for lawful till this time. We are inclined to think the present warrant took its first rise from the Licensing Act, 13 & 14 Car. 2, c. 33, and are all of opinion that it cannot be justified by law, notwithstanding the resolution of the Judges in the time of Cha. 2, and Jac. 2, that such search warrants are lawful. State Trials, vol. 3, 58, the

> trial of Carr for a libel. There is no authority but of the Judges of that time that a house may be searched for a libel, but the twelve Judges cannot make law ; and if a man is punishable for having a libel in his private custody, as many cases say he is, half the kingdom would be guilty in the case of a favourable libel, if libels may be searched for and seized by whomsoever and wheresoever the Secretary of State thinks fit. It is said it is better for the Government and the public to seize the libel before it is published ; if the Legislature be of that opinion they will make it lawful. Sir Samuel Astry was committed to the Tower, for asserting there was a law of State distinct from the common law. The law never forces evidence from the party in whose power it is ; when an adversary has got your deeds, there is no lawful way of getting them again but by an action. 2 Stran. 1210, *The King and Cornelius. The King and Dr. Purnell*, Hil. 22 Geo. B. R. **Our law is wise and merciful, and supposes every man accused to be innocent before he is tried by his peers : upon the whole, we are all of opinion that this warrant is wholly illegal and void. One word more for ourselves ; we are no advocates for libels, all Governments must set their faces against them, and whenever they come before us and a jury we shall set our faces against them ; and if juries do not prevent them they may prove fatal to liberty, destroy Government and introduce anarchy ; but tyranny is better than anarchy, and the worst Government better than none at all.**
>
> Judgment for the plaintiff."

(Emphasis supplied)

The Apex Court following the afore-quoted judgment of the King's bench, in the case of **WAZIR CHAND v. STATE OF**

HIMACHAL PRADESH AND DISTRICT MAGISTRATE, CHAMBA[2], has held as follows:

"… … …

> **8. It was contended before us that the learned Judicial Commissioner was in error in thinking that in order to determine the legality of the seizures and to determine the point whether there had been any infringement of the petitioner's fundamental rights it was necessary to determine the true nature of the title in the goods seized and that the petitioner could not be granted any relief till he was able to establish this. It was argued that the goods having been seized from the actual possession of the petitioner or his servants, the Chamba concern, being admittedly under the exclusive control of Trilok Nath or Wazir Chand, the determination of the question whether Wazir Chand had obtained possession fraudulently was not relevant to this inquiry, and that the only point that needed consideration was whether the seizures were under authority of law or otherwise, and if they were not supported under any provisions of law, a writ of mandamus should have been issued directing the restoration of the goods so seized.**
>
> **9.** It seems to us that these contentions are well founded. The Solicitor General appearing for the respondents was unable to draw our attention to any provision of the Code of Criminal Procedure or any other law under the authority of which these goods could have been seized by Chamba Police at the instance of Jammu Police. **Admittedly these seizures were not made under the orders of any Magistrate.** The provisions of the Code of Criminal Procedure authorising Chamba Police to make a search and seize the goods are contained in Sections 51, 96, 98 and 165. None of these sections, however, has any application to the facts and circumstances of this case. Section 51 authorises in certain circumstances the search of arrested persons. **In this case no report of the commission of a cognizable offence had been made to Chamba Police and**

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[2] **(1954) 1 SCC 787**

no complaint had been lodged before any Magistrate there and no warrant had been issued by a Chamba Magistrate for making the search or for the arrest of any person. That being so, Sections 51, 96 and 98 had no application to the case.

10. .....

11. All that the Solicitor General could urge in the case was that on the allegation of Prabhu Dayal, the goods seized in Chamba concerned an offence that had been committed in Jammu and being articles regarding which an offence had been committed, the police was entitled to seize them and that Wazir Chand had no legal title in them. **Assuming that that was so, goods in the possession of a person who is not lawfully in possession of them cannot be seized except under authority of law, and in absence of such authority, Wazir Chand could not be deprived of them.** On the materials placed on this record it seems clear that unless and until Prabhu Dayal proved his allegations that the Chamba concern was part and parcel of the Jammu partnership firm (which fact has been denied) and that Trilok Nath who was admittedly one of the partners had no right to put Wazir Chand in possession of the property, no offence even under Section 406 could be said to have been committed about this property. **Jammu Police without having challaned any of the accused before a Magistrate in Jammu, and without having obtained any orders of extradition from a Magistrate (if the offence was extraditable) could not proceed to Chamba and with the help of Chamba Police seize the goods and attempt to take them to Jammu by a letter of request written by the District Magistrate of Jammu to the District Magistrate of Chamba.**"

(Emphasis supplied)

Later, the Apex Court in the case of **VIDYA DEVI v. STATE OF HIMACHAL PRADESH**[3], has held as follows:

[3] (2020) 2 SCC 569

"… … …

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 [*State of W.B.* v. *Subodh Gopal Bose*, (1953) 2 SCC 688 : AIR 1954 SC 92] , 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 [*Tukaram Kana Joshi* v. *MIDC*, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] in a welfare State, and a constitutional right under Article 300-A of the Constitution. **Article 300-A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300-A, can be inferred in that Article. [*K.T. Plantation (P) Ltd.* v. *State of Karnataka*, (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414]**

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

> "*6*. … Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and *reasonable compensation therefor must be paid*."
>
> (emphasis supplied)

12.4. 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*."
>
> (emphasis supplied)

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*."
>
> (emphasis supplied)

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."

(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* v. *MIDC* [*Tukaram Kana Joshi* v. *MIDC*, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

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

12.11. We are surprised by the plea taken by the State before the High Court, that since it has been in continuous possession of the land for over 42 years, it would tantamount to "adverse" possession. The State being a

welfare State, cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as has been done in the present case.

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

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

12.14. In *Tukaram Kana Joshi* v. *MIDC* [*Tukaram Kana Joshi* v. *MIDC*, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] , this Court while dealing with a similar fact situation, held as follows: (SCC p. 359, para 11)

> "*11*. 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. *The 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 supplied)

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

14. The State has submitted that in 2008 it had initiated acquisition proceedings in the case of an adjoining landowner viz. Shri Anakh Singh pursuant to a direction given by the High Court in *Anakh Singh* v. *State of H.P.* [*Anakh Singh* v. *State of H.P.*, 2007 SCC OnLine HP 220] The State initiated acquisition only in the case where directions were issued by the High Court, and not in the case of other landowners whose lands were compulsorily taken over, for the same purpose, and at the same time. As a consequence, the present landowner has been driven to move the Court in their individual cases for redressal.

15. In view of the aforesaid facts and circumstances of the present case, the respondent State is directed to pay the compensation on the same terms as awarded by the Reference Court vide order dated 7-7-2015 in *Anakh Singhcase* [*Anakh Singh* v. *State of H.P.*, 2007 SCC OnLine HP 220] (i.e. Land Reference No. 1 of 2011 RBT No. 01/13)

along with all statutory benefits including solatium, interest, etc. within a period of 8 weeks, treating it as a case of deemed acquisition. An affidavit of compliance is directed to be filed by the State before this Court within 10 weeks."

(Emphasis supplied)

All of the afore-quoted judgments bear consideration by the Apex Court in the case of **SUKH DUTT RATRA AND ANOTHER VS. STATE OF HIMACHAL PRADESH AND OTHERS[4],** wherein the Apex Court in an identical circumstance has held as follows:

"12. Lastly, it was argued that in light of the disputed questions of fact relating to limitation, construction of the road, and verbal consent for the same — the appropriate forum would be the civil court, and thus the impugned order required no intervention.

Analysis and conclusion

13. While the right to property is no longer a fundamental right ["Constitution (Forty-fourth Amendment) Act, 1978"], it is pertinent to note that at the time of dispossession of the subject land, this right was still included in Part III of the Constitution. The right against deprivation of property unless in accordance with procedure established by law, continues to be a constitutional right under Article 300-A.

14. It is the cardinal principle of the rule of law, that nobody can be deprived of liberty or property without due process, or authorisation of law. The recognition of this dates back to the 1700s to the decision of the King's Bench in Entick v. Carrington [Entick v. Carrington, 1765 EWHC (KB) J98 : 95 ER 807] and by this Court in Wazir Chand v. State of H.P. [Wazir Chand v. State of H.P., (1955) 1 SCR 408 :

[4] (2022) 7 SCC 508

AIR 1954 SC 415] Further, in several judgments, this Court has repeatedly held that rather than enjoying a wider bandwidth of lenience, the State often has a higher responsibility in demonstrating that it has acted within the confines of legality, and therefore, not tarnished the basic principle of the rule of law.

15. When it comes to the subject of private property, this Court has upheld the high threshold of legality that must be met, to dispossess an individual of their property, and even more so when done by the State. In Bishan Das v. State of Punjab [Bishan Das v. State of Punjab, (1962) 2 SCR 69 : AIR 1961 SC 1570] this Court rejected the contention that the petitioners in the case were trespassers and could be removed by an executive order, and instead concluded that the executive action taken by the State and its officers, was destructive of the basic principle of the rule of law. This Court, in another case — State of U.P. v. Dharmander Prasad Singh [State of U.P. v. Dharmander Prasad Singh, (1989) 2 SCC 505 : (1989) 1 SCR 176] , held : (SCC p. 516, para 30)

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

16. Given the important protection extended to an individual vis-à-vis their private property (embodied earlier in Article 31, and now as a constitutional right in Article 300-A), and the high threshold the State must meet while acquiring land, the question remains — can the State, merely on the ground of delay and laches, evade its legal responsibility towards those from whom private property has

been expropriated? In these facts and circumstances, we find this conclusion to be unacceptable, and warranting intervention on the grounds of equity and fairness.

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

18. There is a welter of precedents on delay and laches which conclude either way—as contended by both sides in the present dispute—however, the specific factual matrix compels this Court to weigh in favour of the appellant landowners. The State cannot shield itself behind the ground of delay and laches in such a situation; there cannot be a "limitation" to doing justice. This Court in a much earlier case — Maharashtra SRTC v. Balwant Regular Motor Service [Maharashtra SRTC v. Balwant Regular Motor Service, (1969) 1 SCR 808 : AIR 1969 SC 329] , held : (AIR pp. 335-36, para 11)

> "11. … 'Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet

put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material.

But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy'."

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

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

7. Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(1)(f) was deleted by the Forty-fourth

Amendment to the Constitution, Article 300-A has been placed in the Constitution, which reads as follows:

> '300-A. Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law.'

8. This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities. In our view, this case was an eminently fit one for exercising the writ jurisdiction of the High Court under Article 226 of the Constitution."

20. Again, in Tukaram Kana Joshi [Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn. (MIDC), (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491 : (2012) 13 SCR 29] while dealing with a similar fact situation, this Court held as follows : (SCC p. 359, para 11)

> "11. 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. The 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."

21. Having considered the pleadings filed, this Court finds that the contentions raised by the State, do not inspire confidence and deserve to be rejected. The State has merely averred to the appellants' alleged verbal consent or the lack of objection, but has not placed any material on record to substantiate this plea. Further, the State was unable to produce any evidence indicating that the land of the appellants had been taken over or acquired in the manner known to

law, or that they had ever paid any compensation. It is pertinent to note that this was the State's position, and subsequent findings of the High Court in 2007 as well, in the other writ proceedings.

22. This Court is also not moved by the State's contention that since the property is not adjoining to that of the appellants, it disentitles them from claiming benefit on the ground of parity. Despite it not being adjoining (which is admitted in the rejoinder-affidavit filed by the appellants), it is clear that the subject land was acquired for the same reason—construction of the Narag Fagla Road, in 1972-1973, and much like the claimants before the Reference Court, these appellants too were illegally dispossessed without following due process of law, thus resulting in violation of Article 31 and warranting the High Court's intervention under Article 226 jurisdiction. **In the absence of written consent to voluntarily give up their land, the appellants were entitled to compensation in terms of law. The need for written consent in matters of land acquisition proceedings, has been noted in fact, by the Full Court decision of the High Court in Shankar Das [Shankar Das v. State of H.P., 2013 SCC OnLine HP 681] itself, which is relied upon in the impugned judgment [Sukh Dutt Ratra v. State of H.P., 2013 SCC OnLine HP 3773].**

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

> **"12.9. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn. [Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn. (MIDC), (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491 : (2012) 13 SCR 29] 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."

24. And with regard to the contention of delay and laches, this Court went on to hold : (Vidya Devi case [Vidya Devi v. State of H.P., (2020) 2 SCC 569 : (2020) 1 SCC (Civ) 799] , SCC pp. 574-75, para 12)

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

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

25. Concluding that the forcible dispossession of a person of their private property without following due process of law, was violative [Relying on Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai, (2005) 7 SCC 627 : 2005 Supp (3) SCR 388; N. Padmamma v. S. Ramakrishna Reddy, (2008) 15 SCC 517; Delhi Airtech Services (P) Ltd. v. State of U.P.,

> **(2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673 : (2011) 12 SCR 191 and Jilubhai Nanbhai Khachar v. State of Gujarat, 1995 Supp (1) SCC 596 : 1994 Supp (1) SCR 807.] of both their human right, and constitutional right under Article 300-A, this Court allowed the appeal. We find that the approach taken by this Court in Vidya Devi [Vidya Devi v. State of H.P., (2020) 2 SCC 569 : (2020) 1 SCC (Civ) 799] is squarely applicable to the nearly identical facts before us in the present case.**
>
> 26. In view of the above discussion, in view of this Court's extraordinary jurisdiction under Articles 136 and 142 of the Constitution, the State is hereby directed to treat the subject lands as a deemed acquisition and appropriately disburse compensation to the appellants in the same terms as the order of the Reference Court dated 4-10-2005 in Land Ref. Petition No. 10-LAC/4 of 2004 (and consolidated matters). The respondent State is directed, consequently to ensure that the appropriate Land Acquisition Collector computes the compensation, and disburses it to the appellants, within four months from today. The appellants would also be entitled to consequential benefits of solatium, and interest on all sums payable under law w.e.f. 16-10-2001 (i.e. date of issuance of notification under Section 4 of the Act), till the date of the impugned judgment [Sukh Dutt Ratra v. State of H.P., 2013 SCC OnLine HP 3773] i.e. 12-9-2013."

On a coalesce of the judgments quoted hereinabove, stretching back to the judgment of the King's bench in the case of **JOHN ENTICK CLERK VS. NATHAN CARRINGTON** quoted *supra,* **the law has stood as an unyielding sentinel guardian to an individual against any intrusion by the State particularly, when it concerns a private land.** The same is followed in the

subsequent judgments, where the Courts insist that the **State must justify its every trespass into the private domain by pointing to a clear legal mandate.** Delving deep into the issue of trespass in the case at hand is unnecessary, as the State has admitted the trespass. **Thus, when the State by its own hand has taken away the possession of the citizen's private land, whether by force oversight or voluntarily handed over, it must meet the threshold of justification by grant of compensation.** As held by the Apex Court in the judgments such as **BISHAN DAS V. STATE OF PUNJAB** reported in **AIR 1961 SC 1570** and **STATE OF U.P. V. DHARMANDER PRASAD SINGH** reported in **(1989) 2 SCC 505, the law demands not only authority, but procedure; not only power, but propriety.** Therefore, the principle that emerges with crystalline clarity is **'no individual's private property shall be wrested away by the State save through the due process ordained by law'.** To do otherwise, or to permit what is done otherwise, to stand would be to do violence to the constitutional fibre. In the light of the State's own admission that the land having been utilised without recourse to lawful acquisition, this Court is of the considered opinion that

compensation must inevitably follow. The petition thus, deserves to succeed.

12. For the aforesaid reasons, the following:

ORDER

a. The writ petition is allowed.

b. The impugned order dated 08.11.2021, passed by respondent No.2 stands quashed.

c. The respondents are directed to determine compensation under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and pass necessary orders, in accordance with law, within three months from the date of receipt of the copy of the order.

Ordered accordingly.

Sd/-
(M.NAGAPRASANNA)
JUDGE

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CT:MJ