

IN HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

OWP No. 1081/2014

Abdul Majeed Lone
S/O. Sikender Lone
R/O. Tangdhar Karnah

...Appellant(s)/Petitioner(s)

Through: Ms Saima Mehboob, Advocate

Vs.

01. Union of India, through Secretary to Govt.
of India Home Department, New Delhi

...Respondent(s)

02. State of J&K through
Commissioner/Secretary to Govt. Revenue
Department, Civil Secretariat,
Srinagar/Jammu.

03. Deputy Commissioner Kupwara

04. Brigadier Commander, HQ 104 Infantry
Division, C/O: 56 APO

05. Sub-Divisional Magistrate Tangdhar,
Karnah.

06. Tehsildar Karnah

Through: Mr. Hakim Aman Ali, Dy.AG,
Mr. T.M.Shamsi, DSGI, with Ms. Shugufta, Adv.

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.

JUDGMENT

20.11.2024

ORAL:

1. The petitioner in the instant petition claims to be the owner in possession of piece of land measuring 12 Kanals and 14 Marlas falling under Khasra No. 391 situated at village Tangdhar and copy of revenue extracts

substantiating the proprietary rights of the petitioner with respect to the aforesaid land has been placed on record of the instant petition.

2. The case set up by the petitioner in the instant petition is that respondent no. 4 occupied his land in the year 1978 and continues to be in his possession till the filing of the petition. Since the respondents did not pay any rent to the petitioner for the occupation of his proprietary land nor have initiated any proceedings for acquisition of the land of the petitioner, thus, deprived him of his proprietary land without following due process of law and without any authority. The further case set up by the petitioner is that in the year 2004, he has preferred an application before the Tehsildar Karnah [respondent no. 6] for seeking payment of rent viz-a-viz occupation of his proprietary land by the respondent no. 4 and pursuant thereto, the respondent no. 6 furnished a report to the respondent no. 5 [Sub-Divisional Magistrate Tangdhar Karna] viz-a-viz occupation of proprietary land of the petitioner measuring 12 Kanals, 14 Marlas falling under Khasra No. 391 till filing of the instant petition i.e., up to the year 2014.
3. Reliance has been placed by the petitioner upon a Communication dated 30th May, 2008, addressed by the Divisional Magistrate, Tangdhar Karnah to the Deputy Commissioner, Kupwara, whereby a report was furnished to the Deputy Commissioner, Kupwara, stating and acknowledging that the land of the petitioner in question was in occupation of respondent no. 4 from the year 1978 onwards and no compensation was paid to the petitioner. The petitioner has preferred various representations before the respondents from time to time for

payment of rental compensation, but the respondents turned deaf ear and it is this action on the part of respondents which is being challenged by the petitioner through the medium of instant petition, in which, following reliefs have been sought by the petitioner.

- i. A Writ of Mandam, commanding upon the respondents to pay the rent to the petitioner for the occupation and use of his proprietary land measuring 12 Kanals 14 Marlas falling under Khasra No. 391 from the year 1978 till date at the existing market rates with permissible rate of interest.*
- ii. A writ of Mandamus, commanding upon the respondents to vacate the land of the petitioner measuring 12 Kanals 14 Marlas falling under Khasra No. 391 forthwith and not to deprive the petitioner of his proprietary land aforementioned.*

4. Learned counsel appearing on behalf of the petitioner has vehemently argued that the non-payment of rental compensation for the occupation of petitioner's land in question is violative of Constitutional right of the petitioner as he is entitled for the rental compensation for occupation of his proprietary land since 1978 onwards. It has been also urged by learned counsel for the petitioner that no process as envisaged under law was ever issued by the respondents for acquiring the said land and, thus, the occupation of the land of the petitioner by the respondent no. 4 is illegal and violative of Constitutional right guaranteed under Article 300 A of the Constitution of India.

5. From the perusal of record, it appears that the instant petition is pending before this Court since 2014 and the Hon'ble Division Bench of this Court vide Order dated 20th September, 2022, has directed the Deputy Commissioner, Kupwara to get fresh survey conducted with regard to the land falling under Khasra No. 391 in presence of the petitioner as well as the Army officials and to submit report with regard to the possession of the aforesaid land. The said report was directed to be submitted within a period of six weeks.
6. *Per contra*, detailed reply has been filed on behalf of respondents 2,3,5 and 6, in which, they have specifically stated that as per the record the land measuring 12 Kanals 14 Marlas falling under Khasra No. 391 situated at village Tanghdar is in possession of defence department, for which, no compensation till date has been paid to the petitioner and in addition, the respondents have also filed a detailed compliance report in pursuance to the Order passed by the Hon'ble Division Bench of this Court dated 20th September, 2022. The concerned Deputy Commissioner, Kupwara requested the Sub Divisional Magistrate, Tangdhar, Karnah to conduct a fresh survey with regard to the land in question by submitting a detailed report with regard to the rental compensation of land. The Sub Divisional Magistrate, Tangdhar, thereafter in compliance to the directions passed by the Hon'ble Division of this Court submitted report vide communication dated 29th October, 2022, which has been placed on record with the compliance report. The report reveals that the Tehsildar Karnah along representatives of Assistant Defence Estate Officer, Baramulla, representatives of Army Unit Tanghdar, Naib Tehsildar,

Patwari Tanghdar , Lumbardar and Chowkidar Tanghdar visited the spot and as per the detailed report of the Naib Tehsildar Tanghdar, the land in question measuring 12 Kanals and 14 Marlas is Shamilat land. The perusal of aforesaid report further reveals that regarding the occupation of the said land, as per the report of the Naib Tehsildar, Patwari, Lumberdar and Chowkidar, the same was in the possession of Army since 1978 and at the time of submission of report the land was vacant on spot. The report further reveals that the exact date of possession by the Army could not be known as the record was not available in office of the Tehsildar Karnah. The report also reveals that the Army Authorities vide Letter No. TK/OQ/1258 dated 12th October, 2022 were requested to provide the exact information, but no such information has been provided by the Army Authorities and even the report vindicates the stand of the petitioner that no rental compensation has been paid to the petitioner.

7. In the reply filed on behalf of the Revenue Authorities , it is specifically admitted that the land under Khasra No. 391 measuring about 12 Kanals and 14 Marlas situate in village Tangdhar is in possession of the Defence Department.
8. On the other hand, as per the submission made by Mr. T.M.Shamsi, learned DSGI, who filed response to the writ petition, has categorically stated that the land measuring 12 Kanals and 14 Marlas falling under Khasra No. 391 was neither occupied by the Army nor the same was being occupied at the time of filing of the reply. Thus, as per stand of defence, there is no question of payment of any rent of the said land to the petitioner.
9. Since there were two contradictory stands, the Hon'ble Division Bench of this Court, with the view to clinch the controversy in question deemed it proper, to

direct the Deputy Commissioner, Kupwara, to get a fresh survey conducted with regard to the land in question in presence of the petitioner as well as the Army officials and the report with regard to the possession of the aforesaid land was to be submitted within a period of six weeks. The report so submitted on the directions of this Court clearly indicates that the land in question is in possession of Army since 1978 and no rental compensation was ever paid to the petitioner.

10. From the bare perusal of the record, it appears that some supplementary affidavit has also been filed on behalf of respondent no. 4 on 3rd October, 2024 in pursuance to the Order dated 5th August, 2024, in which, it is specifically mentioned that the Army has not accepted the said report on the ground that same is not based on any documentary evidence. The respondent no. 4, in the reply affidavit, has also taken a specific stand that the Army had never occupied the land falling under Khasra No. 391 nor is presently in the possession of Army as claimed by the petitioner. Mr. T.M.Shamsi, learned DSGI, lastly submits that even a joint survey was conducted on 24th January, 2008 and 13th January, 2011 respectively and the Army has never occupied the said land.

11. Heard learned counsel for the parties at length and perused the material on record.

12. Since the stand taken by respondents 1 & 4 was contrary to the stand of the revenue Authority, the Hon'ble Division Bench of this Court vide Order dated 20th September, 2022, directed the Deputy Commissioner, Kupwara, to get fresh survey conducted with regard to the land under Khasra No. 391 in presence of the petitioner as well as the Army officials with the view to submit report with regard to the possession of the aforesaid land. It is further revealed from the record that the survey, so directed, was

conducted in presence of representatives of Assistant Defence Estate Officer, Baramulla, representatives of Army Unit Tanghdar, Naib Tehsildar, Patwari Tanghdar, Lumbardar and Chowkidar Tanghdar, who visited the spot and have reported that the land in question is in possession of Army since 1978 and the rental compensation, which was due to the petitioner, has not been paid to him. The record further reveals that the procedures as envisaged under law has not been followed by the respondents before acquiring the land of the petitioner and the possession of land in question since 1978 has been proved from the fresh survey conducted in pursuant to directions passed by this Court. Even, no rental compensation has been paid to the petitioner.

13. The right to property is now considered to be not only constitutional or statutory right but falls within the realm of human rights. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment etc and over the years, human rights have gained a multifaceted dimension.

14. Further, reliance is placed upon the judgment passed by the Division Bench of this Court in case titled ***“Shabir Ahmed Yattoo v. UT of J&K bearing WP(C) No. 174/2021,”*** decided on 30.06.2022, wherein it has been held as under:-

“5. The aforesaid facts and circumstances clear reveal that the private land of the petitioner has been taken over by the respondents forcibly without the consent of the petitioner and without taking recourse to any procedure prescribed in law. It is also an admitted fact that the petitioner has not been paid any compensation in respect of the said land though the determination/assessment of the compensation is under way as per the stamp duty rate.

6. It is well recognized that Right to Property is basic human right which is akin to a fundamental right as guaranteed by Article 300 A of the Constitution of India and that no one can be deprived of his property other than by following procedure prescribe in law.”

15. Admittedly, the joint survey was conducted in terms of Order dated 20th September, 2022, but no rental compensation was ever paid to the petitioner. The contention of Mr. Shamsi, learned counsel appearing for the respondents 1 & 4 that the Army Authorities have not acquired the land of the petitioner, is contrary to record and factually incorrect and the same is rejected outrightly. The subject matter of the survey was to ascertain the possession of the land in question as directed by the Hon’ble Division Bench of this Court, which, admittedly, as per the report submitted by the revenue Authorities is in possession of the Army. The respondents without following due process of law have acquired the land of the petitioner that too without paying the rental compensation to him, which is violative of the Constitutional right of the petitioner. Thus, the stand taken by the revenue Authorities that the land was occupied by the Army since 1978 vindicates the stand of the petitioner that the land in question was already in possession of Army. However, the stand taken by the respondents 1 & 4 in the supplementary affidavit is contrary to the report of the revenue Authorities which is the competent Authority in relation to revenue matters. Therefore, the stand taken by the respondents 1 & 4 does not sustain the test of law and is rejected.

16. It is emphatically clear that no one can be deprived of his/her property other than by following procedure prescribed under law. The facts mentioned

above clearly reveals that the respondents have violated the basic rights of the petitioner and have deprived him of valuable constitutional right without following the procedure as envisaged under law. The State and its agencies cannot dispossess a citizen of his property except in accordance with procedure established by law. The obligation to pay the compensation though not expressly included in Article 300 A can be inferred from the said Article.

17. 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 therefore, reasonable compensation must be paid. In a democratic polity governed by the rule of law, the Union of India could not have deprived the petitioners of their property without the sanction of law and it is obligatory on part of the Union to 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 itself to status beyond which is provided by the Constitution.

18. In this context, I am fortified by the view taken by the Hon“ble Supreme Court in case titled *Vidya Devi versus state of Himachal Pradesh* 27 OWP No. 1885/2017 reported in (2020) 2 SCC 569. The relevant paragraphs are reproduced as under:

“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, 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 in a welfare State, and a Constitutional right under Article 300 A of the Constitution. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300 A, can be inferred in that Article.

12.3. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300 A of the Constitution. Reliance is placed on the judgment in Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai, 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.”

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

21. If the right to 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.” 28 OWP No. 1885/2017

12.5. In Delhi Airtech Services Pvt. Ltd. & Ors. v. State of U.P., this Court recognized the right to

*property as a basic human right in the following words:
(SCC p. 379, para 30)*

“30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property.

"Property must be secured, else liberty cannot subsist" was the opinion of John Adams. Indeed the view that property itself is the seed bed which must be conserved if other constitutional values are to flourish is the consensus among political thinkers and jurists.”

12.6. In Jilubhai Nanbhai Khachar v. State of Gujarat, 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 & Ors. v. M.I.D.C. wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

12.10. This Court in State of Haryana v. Mukesh Kumar held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, 29 OWP No. 1885/2017 livelihood, health, employment, etc. Human rights have gained a multifaceted 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.

12.14. In Tukaram Kana Joshi & Ors. v. M.I.D.C., 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 30 OWP No. 1885/2017 acquisition, or requisition, or any other permissible statutory mode.”

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.”

18. Further, reliance is placed upon the judgment passed by the Division Bench of this Court in case titled “*Shabir Ahmed Yattoo v. UT of J&K*” bearing WP(C) No. 174/2021,” decided on 30.06.2022, wherein it has been held as under:-

“5. The aforesaid facts and circumstances clearly reveal that the private land of the petitioner has been taken over by the respondents forcibly without the consent of the petitioner and without taking recourse to any procedure prescribed in law. It is also an admitted fact that the petitioner has not been paid any compensation in respect of the said land though the determination/assessment of the compensation is under way as per the stamp duty rate.

6. It is well recognized that Right to Property is a basic human right which is akin to a fundamental right as guaranteed by Article 300 A of the Constitution of India and that no one can be deprived of his property other than by following procedure prescribe in law.”

19. In the similar facts and circumstances of this case, the Division Bench of this Court in case titled “*Chuni Lal Bhagat vs State of J&K & Anr*,” 31 OWP No. 1885/2017 bearing OWP No. 682/2018, decided on 17.03.2023” has been pleased as held as under:

“47. There is no law permitting the deprivation of the property of the citizens, the respondents are either to restore the land to the land owners or pay them the requisite compensation, as no one can be

deprived of his Right to Property except in accordance with law in force in the State. The petitioners being small land owners are deprived of their property without payment of any compensation till date. The petitioners are, thus, entitled to payment of compensation as it has resulted in fraction of basic rights of Right to Property as guaranteed under Article-300A of the Constitution of India and are also entitled to use and occupation charges for the same.

48. In view of the aforesaid discussion, these petitions are also allowed. The respondents are directed to initiate the steps for acquiring the land under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within a period of eight weeks. The Deputy Commissioner concerned shall pay rent for use and occupation of the land of the petitioners" from the date, the respondents have taken possession of the same."

20. The law has been settled at naught by the Hon^{ble} Supreme Court in various authoritative pronouncements that right to property in view of the Article 300-A of the Constitution of India is a very important human right and no one can be deprived of his/her property, otherwise, than following due procedure of law and it is a recurring cause of action. The petitioner in the present case was dispossessed from their land way back in the year 1978 admittedly, without legal sanction or following the due process of law and yet, no compensation has been paid to the petitioner. Thus, the Union of India is under legal obligation to pay the rental compensation to

the petitioner and to initiate the process to formally acquire the land, if they so desire in accordance with law.

21. Thus, this Court is of the view that the action of the respondent-Union of India is illegal and unconstitutional which cannot sustain the test of law in the light of the stand taken by the Revenue Authority.

22. For the forgoing reasons and in the light of facts and circumstances of the case, as also with the consent of learned counsel for the parties, the instant writ petition is taken up for final disposal at this stage in the following manner:-

- i.** The Deputy Commissioner, Kupwara, shall constitute a team of revenue officers within two weeks headed by Tehsildar concerned by associating the petitioner and other stake holders who shall take necessary steps for assessment of rental compensation with regard to the occupation of land in question by the Army. The assessment report to be made by the Revenue Authority after proper verification shall be forwarded to the respondent-Union of India within a period of two weeks, thereafter.
- ii.** The respondent-Union of India is directed to pay the rental compensation after due verification to the petitioner on the basis of the assessment report for which he is entitled w.e.f. 1978 till the same was in active possession of the Army with respect to the land measuring 12 Kanals 14 Marlas falling under Survey No. 391, within a period of one month from the

date of receipt of assessment report to be submitted by the Revenue Authority.

- iii.** It is made clear that in case the rental compensation as directed hereinabove is not released in favour of the petitioner within the aforesaid period, the petitioner will be entitled to claim interest @ 6% per annum from the date the rental compensation was payable to the petitioner and denied by the respondents.
- iv.** It is further provided that in case the aforesaid land of the petitioner is further required by the respondent-Union of India or any other Agency for any public purpose or otherwise, they are under legal obligation to follow the procedure as envisaged under law for acquiring the land by affording an opportunity of hearing to all the interested parties including the petitioner, and in such eventuality, the compensation be paid to the petitioner after following due process of law and necessary verification.
- v.** A further writ in the nature of Mandamus is issued to pay a token compensation of Rs. 1.00 lac to the petitioner to be borne by the respondents 1 & 4 for illegally depriving the petitioner of his land without any authority of law and, thus, violating his human right. This amount in addition to the rental compensation be paid to the petitioner by respondents 1 & 4 within a period of two weeks from the date copy of this Judgment is served upon them.

23. The writ petition is **disposed of** in the manner indicated hereinabove along with all the connected CM(s).

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:
20.11.2024
"Shamim Dar"

Whether the Judgment is reportable? Yes/No

Whether the Judgment is Speaking? Yes/No