

DHARNIDHAR MISHRA v. STATE OF BIHAR

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(BEFORE J.B. PARDIWALA AND MANOJ MISRA, JJ.)

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a DHARNIDHAR MISHRA (D) AND ANOTHER . . . Appellants;
Versus

STATE OF BIHAR AND OTHERS . . . Respondents.

Civil Appeal No. 6351 of 2024[†], decided on May 13, 2024

b **A. Constitution of India — Art. 300-A — Land acquisition — Failure to pay compensation for long period of 42 yrs — Writ petition for — Dismissal of, on ground of delay — High Court’s approach of accepting arbitrary figure of compensation determined by authorities concerned as value of land — Stringently deprecated**

c — Held, without enquiring whether just and fair compensation was paid dismissal of writ petition by Single Judge of High Court on ground of delay was illegal — Further, in appeal Division Bench of High committed an error in disposing of appeal asking appellants to file application before authority concerned for disbursement of amount of compensation determined by them — High Court should have enquired on what basis compensation had been determined — Matter remanded to High Court for fresh consideration — Land Acquisition Act, 1894, Ss. 23 and 4

e **B. Land Acquisition Act, 1894 — S. 5-A — Land acquisition — Right to make objections — Having regard to provisions contained in Art. 300-A of the Constitution, State in exercise of its power of “eminent domain” may interfere with right of property of a person by acquiring same but same must be for a public purpose and reasonable compensation therefor must be paid — Constitution of India, Art. 300-A**

C. Constitution of India — Art. 300-A — “Deprived of his property” — Meaning — Discussed

f **D. Constitution of India — Art. 300-A — Right to property — Nature and scope — Discussed**

g **E. Constitution of India — Arts. 226 and 32 — Maintainability of writ petition — Delay/Laches — When cannot be raised — Delay and laches cannot be raised in a case of a continuing cause of action or if circumstances shock judicial conscience of court — Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in facts and circumstances of case — It would depend upon breach of fundamental rights, and remedy claimed, and when and how delay arose — There is no period of limitation prescribed for courts to exercise their constitutional jurisdiction to do substantial justice**

h [†] Arising out of SLP (C) No. 10492 of 2023. Arising from the Judgment and Order in *Dharnidhar Mishra v. State of Bihar*, 2023 SCC OnLine Pat 11321 (Patna High Court, LPA No. 997 of 2019, dt. 7-2-2023) [Reversed]

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Allowing the appeal, the Supreme Court

Held :

It cannot be understood that on what basis figure of Rs 4,68,099 has been arrived at; at what point of time this amount came to be assessed; and the basis for the assessment of such amount. (Para 11)

First thing that the High Court should have enquired with the State is as to why in the year 1977 itself, that is, the year in which the land came to be acquired, the award for compensation was not passed. The High Court should have enquired why it took 42 years for the State to determine the figure of Rs 4,68,099. The High Court should also have asked State the basis of determination of amount towards compensation. It is a well-settled position of law that after the award towards compensation is passed, if the owner of the land is not satisfied with the quantum, he can even file an appeal for the enhancement of the same. The High Court proceeded on the footing that the amount of Rs 4,68,099 has been assessed and it was now for the appellant to file an appropriate application and get the amount disbursed in his favour. (Para 12)

Approach of the High Court while disposing of the appeal deprecated. (Paras 13 and 16)

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. (Paras 17 and 18)

Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai, (2005) 7 SCC 627; *N. Padmamma v. S. Ramakrishna Reddy*, (2008) 15 SCC 517, followed

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. The Supreme Court has recognised the right to property as a basic human right. (Paras 16 and 19)

K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414; *Delhi Airtech Services (P) Ltd. v. State of U.P.*, (2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673, followed

There has to be no deprivation without any sanction of law. (Paras 20 and 21)

Jilubhai Nanbhai Khachar v. State of Gujarat, 1995 Supp (1) SCC 596; *Tukaram Kana Joshi v. MIDC*, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491, followed

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. (Para 22)

State of Haryana v. Mukesh Kumar, (2011) 10 SCC 404 : (2012) 3 SCC (Civ) 769, followed

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In present case the Single Judge of the High Court did not deem fit even to enquire with the State whether just and fair compensation was paid to the appellant or not. The Single Judge of the High Court rejected the writ petition only on the ground of delay. 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, it would 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. (Paras 23 to 25)

Vidya Devi v. State of H.P., (2020) 2 SCC 569 : (2020) 1 SCC (Civ) 799; *P.S. Sadasivaswamy v. State of T.N.*, (1975) 1 SCC 152 : 1975 SCC (L&S) 22; *Tukaram Kana Joshi v. MIDC*, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491, *relied on*

Hence, the impugned order passed by the High Court set aside and the matter remitted to the High Court for fresh consideration. (Para 26)

Dharnidhar Mishra v. State of Bihar, 2023 SCC OnLine Pat 11321, *reversed*

Dharnidhar Mishra v. State of Bihar, 2019 SCC OnLine Pat 3412, *referred to*

Appeal allowed

RM-D/71450/CV

Advocates who appeared in this case :

Dharnidhar Jha, Senior Advocate [Jayesh Gaurav, Ms Diksha Ojha, Ishwar Chandra Roy and Ranjan Nikhil Dharnidhar (Advocate-on-Record), Advocates], for the Appellants; Anshul Narayan and Prem Prakash (Advocate-on-Record), Advocates, for the Respondents.

Chronological list of cases cited

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1. 2023 SCC OnLine Pat 11321, *Dharnidhar Mishra v. State of Bihar (reversed)* 608a-b, 608f-g, 609d, 609e-f, 609g, 612e-f, 612f
2. (2020) 2 SCC 569 : (2020) 1 SCC (Civ) 799, *Vidya Devi v. State of H.P.* 612a
3. 2019 SCC OnLine Pat 3412, *Dharnidhar Mishra v. State of Bihar* 608e, 608f, 609f, 611g
4. (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491, *Tukaram Kana Joshi v. MIDC* 611e-f, 612b-c
5. (2011) 10 SCC 404 : (2012) 3 SCC (Civ) 769, *State of Haryana v. Mukesh Kumar* 611f
6. (2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673, *Delhi Airtech Services (P) Ltd. v. State of U.P.* 611b
7. (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414, *K.T. Plantation (P) Ltd. v. State of Karnataka* 610f-g
8. (2008) 15 SCC 517, *N. Padmamma v. S. Ramakrishna Reddy* 611a
9. (2005) 7 SCC 627, *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai* 610f-g
10. 1995 Supp (1) SCC 596, *Jilubhai Nanbhai Khachar v. State of Gujarat* 611d
11. (1975) 1 SCC 152 : 1975 SCC (L&S) 22, *P.S. Sadasivaswamy v. State of T.N.* 612b-c

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ORDER

1. Application for substitution to bring on record the legal heirs of the first petitioner is allowed. Cause-title be amended accordingly. Leave granted. a

2. This appeal arises from an order passed by the High Court of Judicature at Patna dated 7-2-2023¹ in Letters Patent Appeal No. 997 of 2019 in Civil Writ Jurisdiction Case No. 8408 of 2019 by which the Division Bench of the High Court disposed of the letters patent appeal by asking the appellant herein to file an appropriate application before the authority concerned for disbursement of the value of the land assessed at Rs 4,68,099. b

3. The facts giving rise to this appeal may be summarised as under: in the year 1976, a notification under Section 4 of the Land Acquisition Act was issued for the purpose of construction of State Highway as notified by the State of Bihar. The land owned by the appellant herein was included in Section 4 notification referred to above. Sometime in 1977, the land of the appellant was acquired. However, it is the case of the appellant that not a single penny was paid to him towards compensation. c

4. The appellant preferred an appropriate application addressed to the State Government immediately after his land came to be acquired and possession was taken over in the year 1977 for payment of compensation. It is the case of the appellant that the State did not even pass any award of compensation and kept the matter in limbo. Years passed by and the appellant kept on requesting the authorities to pass an appropriate award and pay the amount towards compensation. d

5. As the respondents did not pay heed to the say of the appellant, he was left with no other option but to file a writ petition in the High Court of Patna. The writ petition was heard by a learned Single Judge and by the order dated 19-7-2019² rejected the same only on the count that the petition had been filed after a period of forty-two years of the acquisition. While dismissing the writ petition, the learned Single Judge also observed that the appellant had failed to submit any paper or notification in connection with acquisition of his land for the purpose of payment of compensation. e

6. Being dissatisfied with the order² passed by the learned Single Judge rejecting his writ petition, the appellant went in appeal. The appeal came to be disposed of by a Division Bench¹ in the following terms: (*Dharnidhar Mishra case*¹, SCC OnLine Pat paras 1-7) f

“1. A hard copy of the supplementary affidavit on behalf of the State has been filed across the board. g

2. Let it be taken on record.

3. In view of the categorical stand of the State that the land of the appellants had been consumed and that the State is ready to compensate the appellants, nothing remains in this appeal to be decided. h

1 *Dharnidhar Mishra v. State of Bihar*, 2023 SCC OnLine Pat 11321

2 *Dharnidhar Mishra v. State of Bihar*, 2019 SCC OnLine Pat 3412

4. The appellants have been informed about the value of the land has been assessed at Rs 4,68,099.

a 5. All that the appellants have to do is to file an application before the authority concerned as to how the amount shall be apportioned between him and his son.

6. It is expected that the decision in that regard by the State Authority shall be taken without any delay as already the matter has become five decades old.

b 7. The appeal stands disposed of.”

c 7. Mr Dharnidhar Jha, learned Senior Counsel appearing for the appellant submitted that the State conceded to the fact that the land of the appellant had been acquired and was put to use for the purpose the same was acquired. He would submit that if the State thought fit to acquire the land of his client, then it was obligatory on the part of the State to pass an appropriate award determining the amount towards compensation. He would submit that it is not the case that the appellant herein was lethargic in asserting his rights, but rather kept on requesting the authorities concerned to determine the amount towards compensation and pay the same.

d 8. On the other hand, the learned counsel appearing for the State of Bihar submitted that no error, not to speak of any error of law could be said to have been committed by the High Court in passing the impugned order¹. He would submit that it is not in dispute that the land of the appellant was acquired for a public purpose, but at the same time, it was the duty of the appellant to pursue the matter further for the purpose of getting appropriate compensation determined in accordance with law.

e 9. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned order¹.

f 10. We take notice of the fact that the Single Judge² of the High Court thought it fit to reject the writ petition only on the ground of delay and in appeal, the appellate court disposed of the appeal asking the appellant herein to file an application before the authority concerned for disbursement of the amount of compensation.

g 11. We take notice of two things: first, the High Court in its impugned order¹ has stated that the appellant herein has been informed about the value of the land assessed at Rs 4,68,099. We fail to understand on what basis this figure has been arrived at; at what point of time this amount came to be assessed; and the basis for the assessment of such amount. Secondly, the order of the High Court could be said to be a non-speaking order. Although at this stage, the learned counsel appearing for the State of Bihar submitted that it was an

h ¹ *Dharnidhar Mishra v. State of Bihar*, 2023 SCC OnLine Pat 11321
² *Dharnidhar Mishra v. State of Bihar*, 2019 SCC OnLine Pat 3412

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order obtained with the consent of the parties, yet there is nothing to indicate that any consent was given by the appellant herein to pass such an order.

12. The first thing that the High Court should have enquired with the State is as to why in the year 1977 itself, that is, the year in which the land came to be acquired, the award for compensation was not passed. The High Court should have enquired why it took forty-two years for the State to determine the figure of Rs 4,68,099. The High Court should also have asked the State the basis of the determination of the amount towards compensation. It is a well-settled position of law that after the award towards compensation is passed, if the owner of the land is not satisfied with the quantum, he can even file an appeal for the enhancement of the same. The High Court proceeded on the footing that the amount of Rs 4,68,099 has been assessed and it is now for the appellant to file an appropriate application and get the amount disbursed in his favour.

13. We are not convinced but rather disappointed with the approach of the High Court while disposing of the appeal.

14. There are many issues arising in this litigation and the High Court should have taken little pains to ask the State why it made the appellant run from pillar to post. It is sad to note that the appellant passed away fighting for his right to receive compensation. Now the legal heirs of the appellant are pursuing this litigation.

15. In 1976, when the land of the appellant came to be acquired 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.

16. 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. [See: *K.T. Plantation (P) Ltd. v. State of Karnataka*³.]

17. In *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai*⁴, 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)

³ (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414

⁴ (2005) 7 SCC 627

18. In *N. Padmamma v. S. Ramakrishna Reddy*⁵, this Court held that:

a “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)

b **19.** In *Delhi Airtech Services (P) Ltd. v. State of U.P.*⁶, this Court recognised the right to property as a basic human right in the following words: (SCC p. 379, para 30)

c “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)

d **20.** In *Jilubhai Nanbhai Khachar v. State of Gujarat*⁷, this Court held as follows: (SCC p. 627, para 48)

e “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)

f **21.** In *Tukaram Kana Joshi v. MIDC*⁸, this Court 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.

22. This Court in *State of Haryana v. Mukesh Kumar*⁹ held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multifaceted dimension.

g **23.** We regret to state that the learned Single Judge² of the High Court did not deem fit even to enquire with the State whether just and fair compensation was paid to the appellant or not. The learned Single Judge² rejected the writ

h ⁵ (2008) 15 SCC 517

⁶ (2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673

⁷ 1995 Supp (1) SCC 596

⁸ (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491

⁹ (2011) 10 SCC 404 : (2012) 3 SCC (Civ) 769

² *Dharnidhar Mishra v. State of Bihar*, 2019 SCC OnLine Pat 3412

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petition only on the ground of delay. As held by this Court in *Vidya Devi v. State of H.P.*¹⁰, 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. The condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of the case. As held by this Court, it would 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.

24. 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. [See: *P.S. Sadasivaswamy v. State of T.N.*¹¹]

25. In *Tukaram Kana Joshi v. MIDC*⁸, 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)

26. In such circumstances referred to above, we are of the view that we should set aside the impugned order¹ passed by the High Court and remit the matter for fresh consideration.

27. In the result, this appeal succeeds and is hereby allowed. The impugned order¹ passed by the High Court is set aside and the matter is remitted to the High Court for fresh consideration. Letters Patent Appeal No. 997 of 2019 is restored to its original file. The High Court shall hear both the sides and pass an appropriate order in accordance with what has been observed by this Court in this order. We request the High Court to decide the matter within a period of two months from today.

28. Pending applications, if any, stand disposed of.

10 (2020) 2 SCC 569 : (2020) 1 SCC (Civ) 799

11 (1975) 1 SCC 152 : 1975 SCC (L&S) 22

8 (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491

1 *Dharnidhar Mishra v. State of Bihar*, 2023 SCC OnLine Pat 11321