

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 22nd OF MAY, 2024
WRIT PETITION No. 13236 of 2024**

BETWEEN:-

**BHASKARDUTT DWIVEDI, S/O
HRISHIKESH DWIVEDI, AGED ABOUT 67
YEARS, OCCUPATION RETIRED
GOVERNMENT EMPLOYEE, R/O
VILLAGE KULBAHERIYA, POLICE
STATION MAUGANJ, TEHSIL MAUGANJ,
DISTRICT MAUGANJ (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI CHANDRAHAS DUBEY- ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH SECRETARY,
PANCHAYAT AND RURAL
DEVELOPMENT DEPARTMENT,
VALLABH BHAWAN, BHOPAL
(MADHYA PRADESH)**
- 2. COLLECTOR, DISTRICT MAUGANJ
(MADHYA PRADESH)**
- 3. CHIEF EXECUTIVE OFFICER,
JANPAD PANCHAYAT MAUGANJ,
DISTRICT MAUGANJ (MADHYA
PRADESH)**
- 4. EXECUTIVE OFFICER, JANPAD
PANCHAYAT, MAUGANJ, DISTRICT**

MAUGANJ (MADHYA PRADESH)

5. **GRAM PANCHAYAT, KULBEHERIYA, THROUGH THE SECRETARY, GRAM PANCHAYAT KULEHERIYA, TEHSIL AND DISTRICT MAUGANJ (MADHYA PRADESH)**

6. **SADHNA SINGH, W/O UDAYNAAYAN SINGH, AGED ABOUT 48 YEARS, OCCUPATION: SARPANCH, R/O GRAM PANCHAYAT KULBEHERIYA, TEHSIL AND DISTRICT MAUGANJ (MADHYA PRADESH)**

7. **ARJUN SINGH BAGHEL, S/O SANTOSH SINGH BAGHEL, OCCUPATION: GOVERNMENT CONTRACTOR, R/O VILLAGE GARHCAP, TEHSIL AND P.S. MANIKPUR, DISTRICT CHITRAKOOT (MADHYA PRADESH)**

.....RESPONDENTS

(SMT. SWATI ASEEM GEORGE- DEPUTY ADVOCATE GENERAL AND SHRI MOHAN SAUSARKAR- GOVERNMENT ADVOCATE FOR THE RESPONDENT/STATE)

This petition coming on for admission this day, the court passed the following:

ORDER

Shri Manoj Kumar Dwivedi- Executive Engineer, PWD, Rewa Division, Rewa is present in person on his own.

2. This petition under Article 226 of Constitution of India has been filed seeking the following reliefs:-

(i) The Hon'ble Court may be pleased to direct the Respondent no 2 to take expeditious steps in deciding the representation dated 05.09.2023 (Annexure P-5) within a stipulated period and take necessary steps in relation to the same, in the interest of justice.

(ii) Any further be pleased to issue any other writ/order relief(s)/direction(s) which this Hon'ble Court deem fit and proper may also be given in the interest of justice.

3. It is the case of petitioner that respondents are constructing a road on a part of his private land and the said act of the respondents is contrary to the constitutional right as enshrined under Article 300-A of Constitution of India as well as human right and the State cannot encroach upon the land belonging to the private individual without acquiring the same under Land Acquisition Act.

4. On 20.05.2024, the State Government was directed to seek instructions in the matter and accordingly order dated 20.05.2024 was passed which reads as under:-

“Allegation of the petitioner is that without acquiring the land, respondents no. 6 and 7 are trying to put soil on the petitioner's land for the purposes of building a road under the Pradhan Mantri Gram Sadak Yojna.

Counsel for the State is granted a day's time to seek instructions in the matter.

List on 21.5.2024.”

5. Thereafter, on 21.05.2024 it was fairly conceded by counsel for the respondents that a road is being constructed on a part of a private land belonging to the petitioner but it was also submitted by counsel for the respondents that the road was in existence for last 40-50 years and now new road is being constructed and filling has also been done.

6. Accordingly, the counsel for respondents was directed to address on the question as to whether this Court after applying the principle of adverse possession can dismiss the petition on the ground of delay and laches because right to property is a constitutional right under Article 300-A of Constitution of India and passed the following orders:-

“It is submitted by Smt. Swati Aseem George that instructions have been taken and some private land is also involved in construction of the road. It is submitted that road was in existence for the last 40-50 years and now new road is being constructed and filling has also been done.

Accordingly, counsel for respondents is directed to address this question as to whether this Court after applying the principle of adverse possession can dismiss this petition on the ground of delay and laches because right to property is a Constitutional right under Article 300-A of Constitution of India and in the light of judgment passed by Supreme Court in the case of **Kolkata Municipal Corporation & Anr. Vs. Bimal Kumar Shah & Ors decided on 16/05/2024 in Civil Appeal No.6466 of 2024**, whether the act of respondents in illegally dispossessing the petitioner by constructing a new road can be upheld?

Counsel for the respondents prays for a day's time to address on this issue.

As prayed, list on **22/05/2024**.

Since it has been admitted by State counsel that some part of the road is being constructed over the private land belonging to the petitioner, therefore further construction on the land belonging to the petitioner is hereby **stayed** till further orders and the private land shall not be used for road purposes.”

7. When the case was taken up, this Court enquired from Smt. Swati Aseem George, counsel for the State as to whether the interim order passed by this Court on 21.05.2024 has been complied with or not and whether the road which is under construction on the private land of the petitioner has been blocked or not?

8. It was submitted by Smt. Swati Aseem George, Deputy Government Advocate that yesterday she has communicated to the responsible officers and she hopes and believes that the officers must have carried out the interim order granted on 21.05.2024 and must have blocked the road. However, Smt. Swati Aseem George on her own submitted that Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa is present in the Court.

9. Accordingly, it was enquired from Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa as to whether the interim order dated 21.05.2024 has been complied with or not?

10. It was submitted by Shri Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa that it is true that road is being constructed on a part of private land belonging to the petitioner but it was submitted that the road is in existence for last 40-50 years and it is being rebuilt but claimed that the said road is not being used but did not make a statement that whether interim order has been complied with or not?.

11. Considered the submissions made by Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa.

12. From the submissions made by Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa, it is clear that the interim order dated 21.05.2024 has not been complied with in spite of

the clear instructions given by the O/o Advocate General. Whether commuters are using road or not is not the question but the real controversy is whether the authorities have stopped the use of private land or not?

13. It is really unfortunate that the civil servants are not realizing the importance of O/o Advocate General which is a constitutional authority and they are out and out to carry out their illegal activity as per their own whims and wishes. On 21.05.2024, this Court had asked a specific question to the State Counsel as to whether the State can claim adverse possession against a private individual or not. However, Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa who was aware of the question which has been formulated by this Court by order dated 21.05.2024 has once again stuck to his original stand that since the road was in existence for last 40-50 years, therefore, they are not at fault.

14. It is submitted by Shri Mohan Sausarkar, Government Advocate who was also sitting in the Court that since the question of ownership is a disputed question of fact, therefore, what is the value of the land, what is the location of the land, what is the area of the land, who is the actual owner of the land cannot be adjudicated by this Court while exercising power under Article 226 of Constitution of India. Therefore, the petitioner may be directed to make a representation to the respondents so that they can decide the same in accordance with law.

15. To buttress his contention, the counsel for respondents has also relief upon a judgment passed by Co-ordinate Bench of this Court in the case of **Rajendra Singh Yadav Vs. The State of M.P. and Others**, decided on **19.03.2024** in **W.P. No. 20491 of 2021 (Indore Bench)**. It is

further submitted by the State Counsel that so far as the statement made by Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa is concerned, he does not know anything about the law and, therefore, his statement may not be taken note of and the respondents may be granted some time to file reply.

16. Heard learned counsel for parties.

17. On 21.05.2024, a categorical admission was made by counsel for respondents that the private land is also involved in construction of a road.

18. Once, the ownership of the petitioner has not been disputed by the respondents and once they have not disputed that by encroaching upon the land belonging to the petitioner they are constructing a road, then it is suffice to mention here that admission is the best evidence and under these circumstances, it cannot be said that any disputed question of fact is involved in the present case.

19. So far as the submissions made by counsel for State that Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa has no legal knowledge and, therefore, they may be granted sometime to file return is concerned, the said submission is shocking even to the conscience of the Court.

20. If the State is of the view that their officers have no legal knowledge, then it is a high time for the State to consider as to whether such officers are to be retained in the service or not? How the State can promote the violation of the constitutional rights of the citizens of the country only on the ground that their officers have no legal knowledge?

21. Accordingly, the State Counsel was directed to justify the stand as to how the State can take a defence that their officers are innocent as they have no legal knowledge.

22. At this stage, it was submitted by counsel for State that in fact her intention was not to submit that their officers have no legal knowledge but it is submitted that her intention was to submit that he might not have understood the question formulated by this Court.

23. The aforesaid explanation given by the State Counsel cannot be accepted. At the beginning of the arguments, it was submitted by the State Counsel that they have issued instructions to the respondents and have communicated about the interim order dated 21.05.2024 and the State Counsel was sure that the officers must have complied that order but once, Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa made a statement in the open Court that the road is already in existence for last 40-50 years and merely a new road is being constructed, then it is clear that in spite of the clear communication by the A.G. Office to the Executive Engineer regarding question which was formulated by this Court, the Executive Engineer, PWD, Rewa Division, Rewa is still is of an adamant view that once the road is situated over the land in dispute for the last 40-50 years, then State has acquired title and, therefore, they can construct the road.

24. Accordingly, the explanation given by Smt. Swati Aseem George that the Executive Engineer had might have failed to understand the question formulated by this Court is nothing but a very weak attempt to save their officers who according to the State itself are incompetent having no knowledge of law.

25. Now the next question for consideration is as to whether the State can claim adverse possession against the private individuals or not?

26. The question is no more *res integra*. The Supreme Court in the case of **Vidya Devi Vs. State of Himachal Pradesh and Others**, reported in **(2020) 2 SCC 569** has held 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 [*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.”

27. Thus, it is clear that the State cannot take the defence of adverse possession against an individual. Surprisingly, the Advocate General Office is well aware of the law laid down by Supreme Court and in spite of clear communication by the A.G. Office to the Officers about the law as well as the question formulated by this Court and the interim order granted by this Court, Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa is adamant to say that since the road is in existence for last 40-50 years, therefore, they are right in constructing a new road by raising the height of the road. This attitude is the height of the arbitrariness and mala fide action on the part of Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa.

28. Thus, it is clear that the attitude of Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa is not indicative of lack of knowledge but it is indicative of the hostile attitude towards the law citizens of the state as well as the authority of the Court.

29. The Chief Secretary State of Madhya Pradesh is directed to take immediate action against Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa for having his hostile attitude in spite of the clear instructions issued by the O/o Advocate General and in spite of the interim order granted by this Court.

30. The Supreme Court in the case of **Kolkata Municipal Corporation & Anr. Vs. Bimal Kumar Shah**, decided on **16.05.2024** in **Civil Appeal No. 6466 of 2024** has held as under:-

“30. Following are the seven principles:

30.1. *The Right to notice* : (i) A prior notice informing the bearer of the right that the State intends to deprive them of the right to property is a right in itself; a linear extension of the right to know embedded in Article 19(1)(a). The Constitution does not contemplate acquisition by ambush. The notice to acquire must be clear, cogent and meaningful. Some of the statutes reflect this right.

(ii) Section 4 of the Land Acquisition Act, 1894, Section 3(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Section 3A of the National Highways Act, 1956 are examples of such statutory incorporation of the right to notice before initiation of the land acquisition proceedings.

(iii) In a large number of decisions, our constitutional courts have independently recognised the right to notice before any process of acquisition is commenced.

30.2. *The Right to be heard*: (i) Following the right to a meaningful and effective prior notice of acquisition, is the right of the property-bearer to communicate his objections and concerns to the authority acquiring the property. This right to be heard against the proposed acquisition must be meaningful and not a sham.

(ii) Section 5A of the Land Acquisition Act, 1894, Section 3(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 15 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Section 3C of the National Highways Act, 1956, are some statutory embodiments of this right.

(iii) Judicial opinions recognizing the importance of this right are far too many to reproduce. Suffice to say that that the enquiry in which a land holder would raise his objection is not a mere formality.

30.3. The Right to a reasoned decision: i) That the authorities have heard and considered the objections is evidenced only through a reasoned order. It is incumbent upon the authority to take an informed decision and communicate the same to the objector.

(ii) Section 6 of the Land Acquisition Act, 1894, Section 3(2) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Section 3D of the National Highways Act, 1956, are the statutory incorporations of this principle.

(iii) Highlighting the importance of the declaration of the decision to acquire, the Courts have held that the declaration is mandatory, failing which, the acquisition proceedings will cease to have effect.

30.4. The Duty to acquire only for public purpose: (i) That the acquisition must be for a public purpose is inherent and an important fetter on the discretion of the authorities to acquire. This requirement, which conditions the purpose of acquisition must stand to reason with the larger constitutional goals of a welfare state and distributive justice.

(ii) Sections 4 and 6 of the Land Acquisition Act, 1894, Sections 3(1) and 7(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 2(1), 11(1), 15 (1) (b) and 19(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Section 3A(1) of the National Highways Act, 1956 depict the statutory incorporation of the public purpose requirement of compulsory acquisition.

(iii) The decision of compulsory acquisition of land is subject to judicial review and the Court will examine and determine whether the acquisition is

related to public purpose. If the court arrives at a conclusion that that there is no public purpose involved in the acquisition, the entire process can be set-aside. This Court has time and again reiterated the importance of the underlying objective of acquisition of land by the State to be for a public purpose.

30.5. The Right of restitution or fair compensation: (i) A person's right to hold and enjoy property is an integral part to the constitutional right under Article 300A. Deprivation or extinguishment of that right is permissible only upon restitution, be it in the form of monetary compensation, rehabilitation or other similar means. Compensation has always been considered to be an integral part of the process of acquisition.

(ii) Section 11 of the Land Acquisition Act, 1894, Sections 8 and 9 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 23 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Sections 3G and 3H of the National Highways Act, 1956 are the statutory incorporations of the right to retribute a person whose land has been compulsorily acquired.

(iii) Our courts have not only considered that compensation is necessary, but have also held that a fair and reasonable compensation is the *sine qua non* for any acquisition process.

30.6. The Right to an efficient and expeditious process: (i) The acquisition process is traumatic for more than one reason. The administrative delays in identifying the land, conducting the enquiry and evaluating the objections, leading to a final declaration, consume time and energy. Further, passing of the award, payment of compensation and taking over the possession are equally time consuming. It is necessary for the administration to be efficient in concluding the process and within a

reasonable time. This obligation must necessarily form part of Article 300A.

(ii) Sections 5A (1), 6, 11A, and 34 of the Land Acquisition Act, 1894, Sections 6 (1A) and 9 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 4(2), 7(4), 7(5), 11(5), 14, 15(1), 16 (1), 19(2), 25, 38(1), 60(4), 64 and 80 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Sections 3C(1), 3D(3) and 3E(1) of the National Highways Act, 1956, prescribe for statutory frameworks for the completion of individual steps in the process of acquisition of land within stipulated timelines.

(iii) On multiple occasions, upon failure to adhere to the timelines specified in law, the courts have set aside the acquisition proceedings.

30.7. The Right of conclusion: (i) Upon conclusion of process of acquisition and payment of compensation, the State takes *possession* of the property in normal circumstances. The culmination of an acquisition process is not in the payment of compensation, but also in taking over the actual physical possession of the land. If possession is not taken, acquisition is not complete. With the taking over of actual possession after the normal procedures of acquisition, the private holding is divested and the right, title and interest in the property, along-with possession is vested in the State. Without final vesting, the State's, or its beneficiary's right, title and interest in the property is inconclusive and causes lot of difficulties. The obligation to conclude and complete the process of acquisition is also part of Article 300A.

(ii) Section 16 of the Land Acquisition Act, 1894, Sections 4 and 5 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 37 and 38 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act,

2013, and Sections 3D and 3E of the National Highways Act, 1956, statutorily recognise this right of the acquirer.

iii) This step of taking over of possession has been a matter of great judicial scrutiny and this Court has endeavoured to construe the relevant provisions in a way which ensures non-arbitrariness in this action of the acquirer. For that matter, after taking over possession, the process of land acquisition concludes with the vesting of the land with the concerned authority. The culmination of an acquisition process by vesting has been a matter of great importance. On this aspect, the courts have given a large number of decisions as to the time, method and manner by which vesting takes place.”

31. Thus, the action of the respondents in constructing a road on the private land of the petitioner is held to be unconstitutional, violative of constitutional right of the petitioner as enshrined under Article 300-A of Constitution of India as well as violative of his Human Rights.

32. Therefore, the respondents are directed to immediately remove the road situated on the private land of the petitioner and submit the report latest by **tomorrow** before the Registrar General of this Court.

33. So far as the judgment relied upon by the counsel for the respondents decided by Co-ordinate Bench of this Court in the case of **Rajendra Singh Yadav (supra)** is concerned, this Court in exercise of power under Article 226 of Constitution of India is not required to decide the quantum of compensation. This can be done only by the land acquisition officer, therefore, this Court is not required to consider the location of the land, the existing market price of the land, the extent of the private land encroached upon by the State Authorities.

34. Furthermore, in the case of **Rajendra Singh Yadav (supra)**, the Coordinate Bench has also held that such a petition cannot be dismissed

on the ground of delay and laches. Thus, a judgment relied upon by the State Counsel is in fact against the state rather than supporting the cause of the State.

35. Since, the respondents have illegally encroached upon the land belonging to the petitioner and are raising construction of a road without acquiring the same and in spite of the notices issued on 20.05.2024 and in spite of interim order dated 21.05.2024 have not stopped the use of land as a road, therefore, the respondents are directed to pay a mesne profits at the rate of Rs.15,000/- per day to the petitioner till the road is actually dismantled from the land belonging to the petitioner, or the land is acquired.

36. Since, the said illegal activity of not complying the interim order is of Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa, therefore, this Court would not like to put an additional pressure on the public exchequer and, therefore, it is directed that mesne profits shall be recovered from the salary of Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa.

35. The Principal Secretary, PWD, State of Madhya Pradesh is directed to submit his affidavit to the Registry of this Court clarifying that how much mesne profit has been paid to the petitioner and whether it has been deducted from the salary of Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa or not and if the mesne profit is not paid or said amount is not recovered from the salary of Executive Engineer, PWD, Rewa, then the Principal Secretary, PWD, State of Madhya Pradesh shall also be under obligation to explain that why no such action has been taken.

36. Let the report be filed latest by **31st of May, 2024.**

37. With aforesaid observations, the petition is **allowed** with cost of **Rs.25,000/-** to be deposited by Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa within a period of one month from today, failing which the Registrar General shall not only initiate the proceeding for recovery of cost but shall also register a case for Contempt of Court.

38. As already pointed out that Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa had made a statement that road is already in existence and it has not been blocked. However, it was his contention that it is not being used as road.

39. Whether it was being used as road or not is a disputed question of fact but once this Court by its interim order dated 21.05.2024 had directed the respondents that the private land shall not be used for road purposes, then it was obligatory on the part of Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa to ensure that the hurdles are placed so that no one can encroach upon the private land of the petitioner. In spite of the fact that the State Counsel was under a misconstrued hope and believe that Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa must have carried out their instructions about the stoppage of use of the private land as road, surprisingly and shockingly Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa did not listen even to the O/o Advocate General.

40. Since Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa has violated the interim order dated 21.05.2024, therefore, issue show cause notice to Shri Manoj Kumar Chaturvedi, Executive Engineer, PWD, Rewa Division, Rewa as to why he may not

be punished for committing Contempt of Court by violating the order dated 21.05.2024.

41. Office is directed to register a separate case for the said purposes and list the said case after the notices are served.

(G.S. AHLUWALIA)
JUDGE

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