

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (C) No.1007 of 2018**

Rajneesh Goyal S/o Rajkrishna Agrawal, Aged About 43 Years, R/o High Land Tower, A - Wing, Lokhandwala Township, Kandiwali Mumbai, 400101 Through Its Power Of Attorney Holder Rajkrishna Agrawal, S/o Late Gopikrishna Agrawal, Aged About 75 Years, R/o 105 Ramsharan Singh Marg, Champa District Janjgir - Champa Chhattisgarh

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through Secretary Urban Administration And Development, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur, Chhattisgarh
2. Sub - Divisional Officer (Revenue) Champa, District Janjgir Champa Chhattisgarh
3. Municipal Council Champa Through Its Chief Municipal Officer, Champa, District Janjgir Champa, Chhattisgarh
4. Chief Municipal Officer, Municipal Council Champa, District Janjgir Champa, Chhattisgarh
5. Collector, Janjgir – Champa, District Janjgir Champa, Chhattisgarh

---- **Respondents**

For Petitioner	:	Mr. Manoj Paranjpe, Advocate
For State	:	Ms. Akanksha Jain, Dy. Govt. Advocate
For Respondents 3 & 4	:	Mr. U. N. S. Deo, Advocate

Hon'ble Shri Justice P. Sam Koshy

Judgement On Board

27.07.2022

1. The instant writ petition has been filed seeking for direction to the respondents for initiating appropriate proceedings for acquiring the land of petitioner and to provide the benefits from the said acquisition



in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The petitioner has further sought for appropriate disciplinary proceedings against the erring officials who have not taken steps in this regard for last more than 10 years.

2. Brief facts which led to the filing of the present writ petition are that the petitioner is the owner of the land which situates at Khasra No.221/5 measuring 0.27 acres in village Jagdalla, Tahsil Champa, District Janjgir-Champa. In the year 2004, the respondents 3 & 4 entered into the private land of petitioner for construction of road and drainage. In the process, the respondents 3 & 4 used around 202.60 square meters which is roughly 2200 square feet of land for the construction of road and drainage. The respondents have forcefully entered upon the land of petitioner without compliance of any of the provisions of law either under the Municipalities Act or under the Acquisition Laws prevailing at that point of time. The petitioner was also not paid any sort of compensation whatsoever when the road and drainage was constructed.
3. The petitioner applied for demarcation of the said land and the concerned competent authorities conducted a demarcation. In the course of demarcation it was found that 0.05 acres of land has been used for the construction of road and drainage. The demarcation proceedings were conducted in the presence of the officials of the Municipal Council, Champa. The petitioner had been approaching the respondent authorities for a suitable compensation in lieu of the land which has been taken over by the respondents for construction of road and drainage but there was no positive response shown by

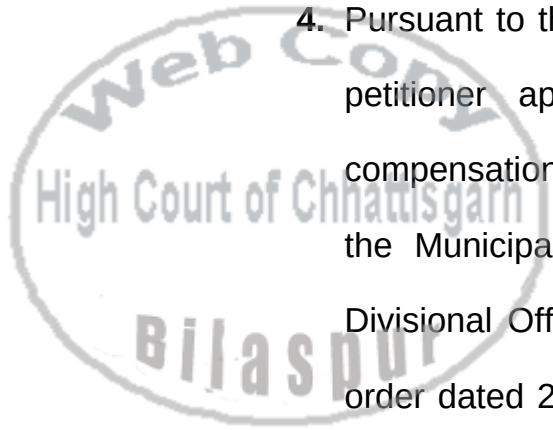




any of the respondents in this regard. The petitioner finally had to file a writ petition in the year 2011 which was registered as WPC No. 7452/2011. The said writ petition was disposed of by the High Court vide order dated 14.06.2013 wherein it was observed by the High Court as under:

“3) In view of the above, without expressing any opinion on the merits of the case, the Sub Divisional Officer (Revenue), Champa, District Janjgir-Champa, is directed to consider the case of the petitioner and pass an appropriate order, in accordance with law and on its own merits, as early as possible, preferably within a period of six weeks.”

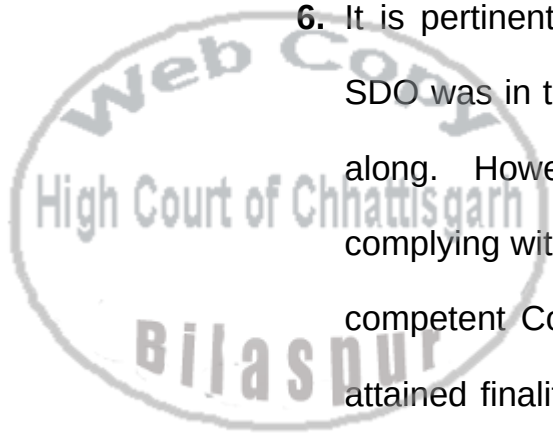
4. Pursuant to the direction given by the Writ Court on 14.06.2013, the petitioner approached the Sub Divisional Officer claiming for compensation for the aforementioned land which was taken over by the Municipality for construction of road and drainage. The Sub Divisional Officer (SDO) initially rejected the claim of petitioner vide order dated 26.07.2013. The rejection was firstly on the ground that the Municipal Council was not in a position for making any payment to the petitioner for want of necessary funds. The second ground for rejection was that the petitioner when the road and drainage was constructed did not raise any objection at that point of time.
5. The order of the SDO dated 26.07.2013 was subject to revision before the Collector who allowed the said revision and remanded the matter to the SDO vide its order dated 16.11.2015. The Collector reached to a specific conclusion that since the petitioner is being deprived of his property which is being taken over by the respondents, the finding of the SDO rejecting the claim on 26.07.2013





was set aside. While remanding the matter the Collector directed the SDO to pass a fresh order after affording an opportunity of hearing to all the interested parties. Consequently, the SDO finally passed another order on 08.06.2017 Annexure P-8. Based on the demarcation report submitted by the revenue department and also considering the fact that in other similar cases the Municipal Council has paid compensation to other persons whose land were taken over for similar purposes, the SDO vide order dated 08.06.2017 held that the petitioner is entitled for compensation and assessing the land on its present market value prevailing in the year 2017 quantified the compensation at Rs.41,12,800/-.

6. It is pertinent to mention at this juncture that the said order of the SDO was in the knowledge and notice of the Municipal authorities all along. However, no efforts whatsoever has been made either for complying with the said order or challenging the said order before any competent Court of law. Thus, by efflux of time the said order has attained finality. It was still when the respondents did not honour the order of the SDO, the present writ petition has been filed.
7. In between, the issue of the claim of petitioner was also placed before the General Body Meeting of the Municipal Council on 27.10.2017 and the Municipal Council also accepted the payment to be made to the petitioner. They made a reference in this regard to the State Govt. for grant of the required amount so that the compensation part can be paid to the petitioner.
8. In the present writ petition, the contesting respondents i.e. respondents 3 & 4 have entered appearance and in their response they have not disputed the factual matrix of the case but have raised

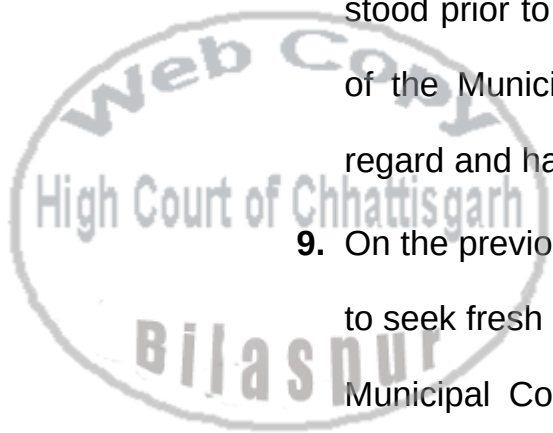




an objection firstly the compensation amount of Rs.41,12,800/- to be exorbitantly high. Secondly, the amount of compensation quantified is beyond the paying capacity of the Municipal Council. Thirdly, the petitioner at the relevant point of time i.e. in the year 2004 did not approach the competent authority or the judicial forum for compensation or else the compensation could have been quantified at the then prevailing rate. Lastly it was contended that the Municipal Council does not have the financial capacity to pay the amount of compensation determined by the SDO. It was further contended that if the petitioner is desirous the Municipal Council is ready to return the land to the petitioner after restoring the position of the land as it stood prior to the construction of drainage and road. The authorities of the Municipal Council have also filed a specific affidavit in this regard and have again taken the same stand.

9. On the previous date of hearing this Court had directed the authorities to seek fresh instruction in this regard. The President-in-Council of the Municipal Council, Champa again in its meeting dated 06.07.2022 passed a fresh resolution resolving that since the Council does not have the financial capacity to pay Rs.41,12,800/- as compensation to the petitioner, if the petitioner so wants, the area of 0.05 acre of Khasra No.221/5 over which the road and drainage was constructed can be returned and the Municipal Council does not have any objection in this regard.

10. At this juncture, learned counsel for petitioner submits that it is a case where now after efflux of almost 18 years if the respondents intend to return the land to the extent of the road and drainage constructed, the same would be of no use to the petitioner for the

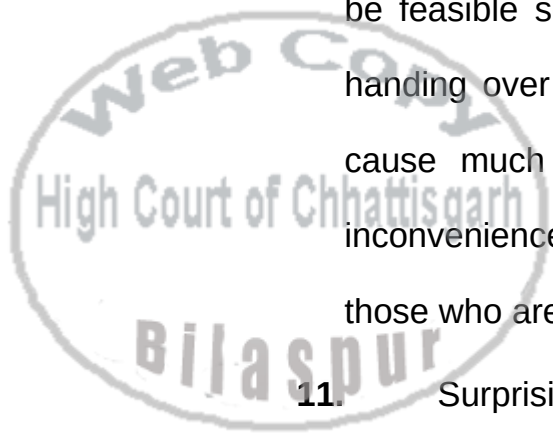




reason that all the adjoining lands of petitioner in the said vicinity have already been sold by the petitioner and now it would be only the patch of road and drainage which would be left to the petitioner and the same would be of no use whatsoever to the petitioner. Therefore, such a decision of the Municipal Council to return the land to the petitioner would not be acceptable to the petitioner nor would it be a justifiable solution to the grievance of the petitioner. According to the petitioner, as of now it is only the compensation which the petitioner would be entitled for. It is the further contention of petitioner that even though the Municipal Council has decided to return the land to the petitioner which is otherwise a road and drainage, it does not seem to be feasible solution for the reason that blocking the said road and handing over the portion of road to the petitioner back would again cause much unrest in the locality and also would cause great inconvenience to the general public at large of that vicinity and for all those who are using the said road and drainage.

11. Surprisingly for reasons best known neither the state authorities nor the authorities of the Municipal Council at any point of time have questioned the quantum of compensation determined by the SDO vide order dated 08.06.2017.

12. In the given factual matrix of the case which stands undisputed by any of the respondents, the point to be now considered at this juncture is whether the petitioner would be entitled for compensation for the land belonging to him which stood taken over by the respondents or whether the respondents can be directed to return the land to the petitioner after restoring its position to the stage as it stood prior to the construction of road and drainage.





- 13.** The Hon'ble Supreme Court in the case of **Vidya Devi Vs. State of Himachal Pradesh and others, 2020 (2) SCC 569** has in very categorical terms held that under the constitutional right under Article 300A, no person can be deprived of his property save by authority of or procedures established by law. It has been further held by the Hon'ble Supreme Court that it is the obligation upon the agency acquiring the property to pay compensation. Even though it is not expressly included in Article 300A but it has to be safely inferred that way. So far as the delay part is concerned, in the very same judgment the Hon'ble Supreme Court has also held that delay and laches cannot be a ground for denying a person an appropriate compensation for the land of his which stood taken over by the Govt.. Further also that there can be no period of limitation for the Courts to exercise constitutional jurisdiction so as to do substantial justice. The Hon'ble Supreme Court in the said judgment was also of the view that expropriation of private property forcibly by the State without following any procedure or payment of compensation cannot be countenance.
- 14.** From the admitted factual matrix of the case, undisputedly, 18 years back, the petitioner's 0.05 acres land was taken by the respondent authorities particularly the respondents 3 & 4 for the construction of road and drainage. Admittedly, no proceeding whatsoever has been drawn while taking over the said property either under the Municipalities Act or under any of the acquisition law then prevailing. The petitioner also was not offered or paid any compensation whatsoever.
- 15.** In the judgment of the Hon'ble Supreme Court in the case of Vidya Devi (supra) the issue stands laid to rest that upon the



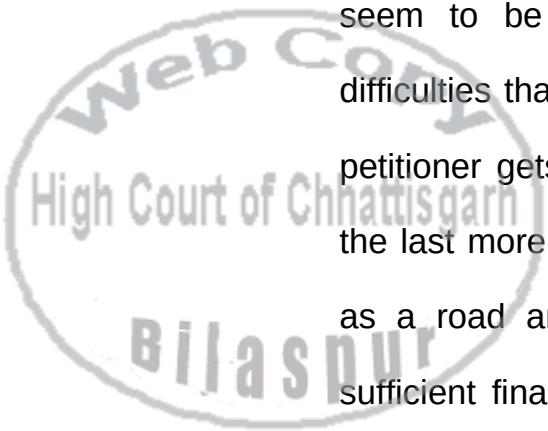


respondent-State taking over a portion of the private land/property of any individual, the authority shall have to compensate the person suitably. Entering upon anybody's private property at the first instance without consent or any authority of law and also without making any compensation or providing alternative land, subsequently, taking a stand that they do not have the financial capacity or any finance whatsoever to make payment to the person whose land has been taken over would not be proper, legal and justified nor can it be accepted under any circumstances.

16. So far as the stand of the respondents, that in case the land owner wants, the respondents can return the said land also does not seem to be a feasible solution. There can be many practical difficulties that the petitioner and the general public would face if the petitioner gets back the said property for the simple reason that for the last more than 18 years the said portion of land was being used as a road and drainage. If the Municipal Council did not have sufficient finance at that point of time, the Council should not have ventured upon the construction of road and drainage forcefully entering upon the private properties of the citizens.

17. The Constitution of India, Article 300A, while creating a right to properties on its citizen, has also specifically envisaged that no person can be deprived of his private property save by authority of law. The said right which stands enshrined under Article 300A also cannot be taken away invoking the powers which have been conferred upon the government under Article 162.

18. Another fact which needs appreciation at this juncture is that the SDO vide its report/order dated 08.06.2017 has specifically held





that the Municipal Council itself in the past had paid compensation to other similarly placed persons. This all the more entitles the petitioner also to claim compensation. The Municipal Council cannot be permitted to take a stand that they would pay compensation to one set of persons whose land have been taken, and at the same time to another set of persons they would deny compensation only because they do not have sufficient finance.

19. As has been earlier discussed, surprisingly, none of the respondents have challenged the order of the SDO dated 08.06.2017 whereby the compensation was quantified at Rs.41,12,800/-. Even during the pendency of this writ petition for more than 4 years, there has been no challenge whatsoever made by any of the respondents to the said order.

20. For all the aforesaid reasons, this Court is inclined to allow the writ petition. The respondents particularly respondent nos. 3 & 4 are directed to ensure that the amount of compensation as has been quantified and determined vide Annexure P-8 dated 08.06.2017 is paid to the petitioner within an outer limit of 3 months from the date of the order of this Court. In the event of failure to comply the above direction, the entire amount shall carry interest @ 6% per annum from the date of construction of road & drainage by the respondents till the actual payment is made.

21. The writ petition stands allowed.

**Sd/-
(P. Sam Koshy)
Judge**