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State cannot acquire property without proper procedure: Supreme Court

The right to private property is protected as a constitutional right and has even been interpreted to be a human right, says Bench of Justices P.S. Narasimha and Aravind Kumar in a judgment that clarified the duties of the govt. before takeover

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KRISHNADAS RAJAGOPAL



A view of Supreme Court of India, in New Delhi. | Photo Credit: The Hindu

The Supreme Court on Thursday took a significant step to protect private property from arbitrary state takeover for a “public purpose”, holding that compulsory acquisition

without following mandatory procedures followed by a grant of compensation to the owners will not make the accession constitutional.

The right to property is protected as a constitutional right and has even been interpreted to be a human right, a Bench of Justices P.S. Narasimha and Aravind Kumar declared in a judgment.

“It is generally assumed that for a valid acquisition all that is necessary is to possess the power of eminent domain [power of the sovereign to acquire property of an individual for public use without consent] to acquire, followed by grant of reasonable and fair compensation... Compulsory acquisition will still be unconstitutional if proper procedure is not established and followed before depriving a person of his/her right to property,” Justice Narasimha, who authored the verdict, observed.

The judgment upheld a Calcutta High Court order rejecting an appeal filed by the Kolkata Municipal Corporation defending its acquisition of a private land. The court ordered the corporation to pay ₹5 lakh as costs within 60 days.

The judgment noted that though the 44th Constitutional Amendment omitted the right to property as a fundamental right, Article 300A, which was simultaneously inserted into the Constitution, provided that “no person shall be deprived of his property, save by authority of law”.

A person’s rights, even the history of liberty, have been safeguarded through the prescription and observance of mandatory procedures and processes of law. Procedure is an integral part of the ‘authority of law’ in Article 300A. The phrase ‘authority of law’ in the Article should not be understood as merely the power of eminent domain vested in the state. The requirement of a ‘law’ in Article 300A does not end with the mere presence of a legislation which empowers the state to deprive a person of his property, Justice Narasimha clarified.

Seven basic rights

The court laid down seven basic procedural rights of private citizens which constitute the “real content of the right to property under Article 300A” that the state should respect before depriving them of their private property.

They include, the right to notice or the duty of the state to inform the person that it intends to acquire his property; the right of the citizen to be heard or the duty of the state to hear the objections to the acquisition; the right of the citizen to a reasoned decision or the duty of the state to inform the person of its decision to acquire property; the duty of the state to demonstrate that the acquisition is exclusively for public purpose; the right to fair compensation of the citizen; the duty of the state to conduct the process of acquisition efficiently and within prescribed timelines; and finally, the conclusion of the proceedings leading to vesting or the right of conclusion.

“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,” Justice Narasimha laid down the law.