

# PRIVATE PROPERTY IS A FUNDAMENTAL RIGHT, SAYS SC

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to Fundamental Rights, Directive Principles and Fundamental Duties

A citizen's right to own private property is a fundamental right. The State cannot take possession of it without following due procedure and authority of law, the Supreme Court held in a judgment.

The State cannot trespass into the private property of a citizen and then claim ownership of the land in the name of 'adverse possession', the court said, adding that grabbing private land and then claiming it as its own makes the State an encroacher.

In a welfare state, right to property is a human right, a Bench of Justices Indu Malhotra and Ajay Rastogi said in the January 8 verdict.

"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," said Justice Malhotra.

The court was hearing a plea filed by Vidya Devi, a widow, whose four acres of land was taken over by the Himachal Pradesh government in 1967. "The appellant [Ms. Devi, 80] being an illiterate widow, coming from a rural background, was wholly unaware of her rights and entitlement in law, and did not file any proceedings for compensation..." said Justice Malhotra.

When Ms. Devi learnt about her rights in 2010 from her neighbours, who had also lost their property, she approached the Himachal Pradesh High Court. However, when the HC asked her to file a civil suit in the lower court, she moved the Supreme Court.

## Authority of law

Ordering the state to pay her Rs. 1 crore in compensation, the Supreme Court noted that in 1967, 'right to private property was still a fundamental right' under Article 31 of the Constitution.

Property ceased to be a fundamental right with the 44th Constitution Amendment in 1978. Nevertheless, Article 300A required the State to follow due procedure and authority of law to deprive a person of his or her private property, the Supreme Court reminded the government.

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