

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 624/2023

**Reserved on 26.12.2025
Pronounced on 06.02.2026
Updated on 06.02.2026**

Whether the operative part or full
judgment is pronounced: Full

Dr. Posh Charak and others

.....Appellant(s)/Petitioner(s)

Through: Mr. Ajay Sharma, Sr. Adv. with
Mr. Navneed Naik, Adv.
Mr. Arjun Bharti, Adv.

vs

U. T. of J&K and others

..... Respondent(s)

Through: Ms. Monika Kohli, Sr. AAG for Nos. 1 and 3
Mr. Ravinder Gupta, AAG for Nos. 2, 4, 5 and

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The petitioners have filed this writ petition for the grant of following reliefs:

Writ petition under Article 226 of the Constitution of India, for issuance of writ, order or direction in the nature of Mandamus commanding the respondent Nos'1 to 5 to provide the suitable alternative land measuring 41 Kanals and 02 Marlas to the petitioners in the same village Birpur, in lieu of their equivalent land of Khasra No 1651 of the village Birpur, District Samba.

WITH

Further Writ, order or direction in the nature of Mandamus commanding/directing the respondents 1 to 5 to vacate and restore the land measuring 41 kanals and 02 marlas falling under khasra No. 1651, situated at Birpur, Tehsil Bari-Brahmana, District Samba, Industrial Complex, and/or in the alternative, directing the respondent Nos. 1 to 5 to acquire the aforesaid land under law and pay compensation to the petitioners and proforma-respondent No. 6 according to the present market value, under Right to Fair Compensation and Transparency and Resettlement Act, 2013.

with

Further Writ, order or direction in the nature of Mandamus commanding/directing the respondents 1 to 5 to pay rental value of its unauthorized use and occupation from the date of possession of the aforesaid land till it's actually acquired and compensation is paid.

and

Further the issuance of any other writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Factual Matrix:

2. The subject land, measuring 41 kanals 02 marlas under Khasra No. 1651 in Birpur, was owned by Thakur Lakshman Singh Charak. Upon his death on 15.07.1983, the estate devolved upon his four children, Posh Charak (Petitioner No. 1), Meera Charak (Petitioner No. 2), Heera Charak, and Rajinder Singh Charak. The latter two are now deceased, with their interests represented by Petitioner No. 3 and Proforma Respondent No. 6. Supported by revenue records i.e. Jamabandi and Khasra Girdawari 2018-2020, the petitioners allege that the official respondents have occupied the land unlawfully, without acquisition and providing just compensation.
3. The petitioners were previously unable to access revenue records for the subject land due to the seizure of Village Birpur's records by the Vigilance Organization. The petitioners first acquired knowledge of the current status of the land in March 2021 through the Tehsildar, Samba. Subsequent verification with the Patwari confirmed the petitioners' ownership and revealed that the official respondents had illegally occupied the land since 1983-84 without following due process of acquisition. Following an application for demarcation dated 20.03.2021 and payment of the prescribed fee, a spot inspection by the Naib-Tehsildar confirmed that the land is under the unauthorized possession of Respondent No. 5 (SICOP). Significantly, the revenue records do not reflect any right, title or interest in favour of Respondent No. 5. The Demarcation Report substantiating the aforesaid facts has been placed on record.

4. Subsequently, the petitioners filed an application under the Right to Information Act, 2005, dated 07.03.2022, seeking clarification from the Public Information Officer of Respondent No. 5 with regard to the status of the land. The petitioners specifically sought information as to whether the land had been legally acquired, whether any award of compensation had been passed, and, if so, to whom such compensation was disbursed. In response, the General Manager, SICOP, Birpur (Samba), vide communication dated 24.03.2022/19.03.2022, admitted that the land is in their possession and claimed that the same had been legally acquired. However, he notably failed to provide any details regarding the passing of an award or the payment of compensation to the rightful owners, thereby refusing to substantiate the claim of legal acquisition.
5. Thereafter, petitioner No. 1 sought verification from the revenue authorities by filing an application under the Right to Information Act, 2005 dated 26.04.2022, addressed to the Public Information Officer (PIO) for the Collector Land Acquisition, SDM Vijaypur. In a significant disclosure, the Tehsildar, Bari Brahmana, responded that the revenue records do not contain any entry in favour of SICOP, notwithstanding its physical possession of the land. In order to further clarify the timeline, petitioner No. 1 filed a follow-up RTI application dated 25.07.2022, specifically seeking information as to when SICOP's was recorded in the revenue records. Vide communication dated 13.08.2022, the Tehsildar reiterated that there is no record reflecting any right, title or interest of SICOP's in the revenue books, thereby confirming that SICOP's possession on the spot is entirely unsupported by any official or lawful entry.

6. Since the revenue records confirm the petitioners' title, the continued possession by Respondent No. 5 without legal sanction is a direct infringement of the petitioners' constitutional rights under Article 300-A. The petitioners have been subjected to significant hardship as the Revenue Department and SICOP have persistently shifted responsibility *inter se*, instead of taking steps to redress the illegal encroachment. Despite issuance of a formal legal notice calling upon respondent No. 5 to restore possession of the land to the petitioners, no response whatsoever has been received. The petitioners placed reliance upon the RTI correspondence and the legal notice, annexed herewith, to demonstrate the arbitrary, unreasonable and high-handed conduct of the official respondents.
7. Initially, the Jammu and Kashmir State Industrial Development Corporation (SIDCO) was not arrayed as party-respondent in the instant writ petition. However, pursuant to order dated 09.12.2024, the Managing Director, SIDCO has been impleaded as respondent No. 7 in the present writ petition.
8. In their response, respondent Nos. 1 and 3 have formally admitted that, as per the revenue records maintained by the Patwari Halqa Birpur, both ownership and possession of the subject land (41 kanals and 02 marlas under Khasra No. 1651) stand recorded in favour of the writ petitioners. They have further conceded that a demarcation conducted by the Naib Tehsildar, Bari Brahmana, on 03.06.2021, confirmed that the land is under the unauthorized occupation of SICOP, which has even constructed a road over the said land. Crucially, the respondents admit that the land in question i.e. 41 kanals and 2 marlas comprising khasra No. 1651 of Village Birpur is recorded as proprietary land of Devi Singh and others and under cultivation of Rajinder

Singh (son), Hira Charak and Posh Charak, daughters of Lakshman Singh Charak, as co-sharers. They further confirm that the subject land is in occupation of SICOP and road has also been constructed over the said land and there is no entry in the revenue records in favour of SICOP in respect to the land in question. The respondent Nos. 1 and 3 admit the correctness of the information provided by them to the petitioners.

9. Respondent Nos. 2 and 4, in their objections, have stated that the present writ petition involves questions of fact, which according to them, cannot be adjudicated in exercise of writ jurisdiction. It is further stated that the petitioners have not approached this Court with clean hands and have tried to misrepresent the facts because as per Jamabandi record of 1956-60, the ownership column clearly reflects the status of land owners and the predecessor-in-interest of the petitioner, namely, late Laxman Singh Charak was never conferred ownership rights. It is further stated that the land in question was transferred to SIDCO by the Revenue Department for establishment of the Industrial Estate and the writ petition having been filed by the petitioners after the lapse of more than forty years from the date, the land in question was transferred to the respondents for establishment of Industrial Estate, is hit by the principle of delay and laches.
10. It is further stated that the petitioners have not arrayed SIDCO as a respondent in the present petition. It is also averred that from a perusal of the notification No. 56/2002 Central Excise dated 14.11.2002 issued by the Central Government, it is evident that the industrial area run and managed by the Directorate of Industries and Commerce/SIDCO/SICOP at Village Birpur District Samba comprises of khasra Nos. 1643, 1644, 1645, 1646-

min, 1654-min, 1655, 1656, 1670, 1678, 1690, 212 to 216, 131, 131-min, 1680, 1688, 1690, 1691, 1703, 1706, 1697, 1705, 1734, 98m/25, 1692, 1707, 65/428 only and it does not include khasra No. 1651 situated at Village Birpur, District Samba.

11. The respondents have further contended that the petitioners' mere assertion that the subject land is situated on the right side of the Bari Brahmana-Birpur Road is a bald and baseless assumption. Such a claim does not, in law, confer any right of ownership upon the petitioners, especially in respect of land, which has been under their continuous and settled possession for the past forty years.
12. Supplementary affidavit has also been filed by respondent No. 5, wherein it is stated that upon a thorough examination of the records, they have identified several pertinent documents. These include a communication dated 30.05.1977 from the Joint Director of Industries, Jammu, to the Director of Industries and Commerce, Srinagar, concerning the allocation of funds for land acquisition at Village Birpur. Additionally, a letter dated 02.08.1978 from the General Manager, District Industries Centre, Jammu, referring to a list provided by the Deputy Commissioner (Jammu) detailing compensation amounting to Rs. 16,86,150/- and court fees of Rs. 17,054/- payable to the land owners. A further communication dated 26.05.1979 from the Director to the Secretary of Industries and Commerce is also relied upon to demonstrate that the acquisition followed official channels.
13. In its response, Respondent No. 7 (SIDCO) has questioned the maintainability of the petition on grounds of delay and laches but provides a factual update based on a demarcation report dated 24.10.2025. The

Tehsildar, Bari-Brahmana, reported that a joint verification team found 30 kanals 05 marlas in the possession of SIDCO and 306 kanals 10 marlas in the possession of SICOP. While the Respondents rely on a 1979 communication regarding the acquisition of 336 kanals 17 marlas, they simultaneously submit that the department is presently "short" of its original allotment.

14. Respondent No. 7 has adopted the stand of respondent Nos. 2, 4 and 5 regarding status of the land vis-a-vis Laxman Singh Charak. It is further stated that this Court vide its order dated 29.01.2024 directed the Deputy Commissioner, Samba to conduct demarcation by associating respondent No. 5 and the interested persons including the petitioners as well. In compliance with the order, the Deputy Commissioner, Samba constituted a committee to conduct demarcation of the land of 41 kanals and 2 marlas comprising khasra No. 1651. Subsequently, the demarcation was conducted in the presence of petitioners. The Committee has observed that as per revenue record (Jamabandi-1959-60), the land in question bearing khasra No. 1651 measuring 42 kanals and 02 marlas is recorded in the name of Onkar Singh and others, and Laxman Singh is recorded as Co-sharer. In cultivation column, the name of Laxman Singh (co-sharers), is recorded, who is the petitioners' father. Mutation No. 2359 (inheritance mutation) has been attested in favour of Rajinder Singh (son), Meera Charak, Heera Charak and Posh Charak daughters of Laxman Singh and entry of which has been recorded in the 'remarks' column. As per khasra Girdawari kharief 2024, land bearing khasra No. 1651 measuring 41 kanals and 02 marlas is recorded in the name of Devi Singh and others in the ownership column and

Rajinder Singh S/o. Laxman Singh, Meera Charak, Heera Charak and Posh Charak daughters of Laxman Singh Rajput Charak, Birpur in cultivation column. Respondent No. 7 has also referred to the supplementary affidavit made by respondent No. 5.

15. In the response to the supplementary affidavit by respondent Nos. 2, 4 and 5, the petitioners also submitted their response stating therein that their predecessor-in-interest was the owner in possession of big chunk of land measuring 31 kanals-14 marlas, 16 marlas, 34 kanals-4 marlas, 14 kanals- 4 marlas, 44 kanals-6 marlas, 23 kanals-18 marlas comprising khasra Nos. 1653, 1655, 1656, 1646, 1643 and 1644. In addition to the abovementioned pieces of land, he also possessed 37 kanals 8 marlas of land in various other survey numbers and 42 kanals and 03 marlas comprising khasra No. 1651. During his lifetime, the land comprising khasra Nos. 1653, 1655, 1656, 1643 and 1644 was acquired by the Industrial Department and compensation was paid to the landowners as well as other petitioners including Laxman Singh Charak, and Rajinder Singh Charak deceased son. Land comprising khasra Nos. 1643 and 1644 measuring 44 kanals 6 marlas and 23 kanals and 18 marlas respectively was acquired through private negotiation in the year 1977 and compensation was paid to late Rajinder Singh Charak, which is substantiated by the certificate dated 06.07.1983. So far as land in question measuring 42 kanals and 03 marlas comprising khasra No. 1651 is concerned, the same has never been acquired by the Industry Department and no compensation has ever been paid either to the petitioners or to their predecessor-in-interest.

Arguments:

16. Mr. Ajay Sharma, learned Senior Counsel appearing for the petitioners has vehemently argued that the land in question was owned by Laxman Singh Charak and in possession column of the revenue record, he was reflected as cultivator in possession, whereas there is no entry of SICOP in the revenue record though as per demarcation conducted by the revenue authorities time and again, the land in question has been found to be in an unauthorized and illegal possession of the SICOP. He has further submitted that the doctrine of delay and laches cannot operate as a bar against the petitioners, as right to property though not a fundamental right but continues to be a constitutional right and human right as well, and in terms of Article 300-A of the Constitution, no person can be deprived of his property without due process of law. In the instant case, it is an admitted position that the land in question has never been lawfully acquired by the respondents. He has placed much reliance upon the demarcation report submitted by the Deputy Commissioner, Samba pursuant to the order passed by this Court. He has placed reliance upon the judgments passed by the Hon'ble Apex Court in **Urban Improvement Trust v Smt. Vidhya Devi and others, 2024 INSC 980, Tukaram Kana Joshi and others v. M. I. D. C. and others, (2013) 1 SCC 353 and D. B. Basnett (D) Ltd. through LRs v Collector, East District, Gangtok, Sikkim and another, (2020) 4 SCC 572.**
17. On the contrary, Mr. Ravinder Gupta, AAG appearing for respondent Nos. 2, 4 and 5, has submitted that the instant petition is hit by the doctrine of *delay and laches* as this petition has been filed after forty years of the transfer of the land, therefore, the instant writ petition deserves to be dismissed on that ground only. He has further submitted that the department

is already short of its original allotment and further that the disputed questions of fact are involved in the instant petition, which cannot be adjudicated while exercising writ jurisdiction. He has placed reliance upon the judgment of the Hon'ble Apex Court in **HMT Ltd. v Smt. Rukmini and others, 2024 INSC 728**.

18. Heard learned counsel for the parties and perused the record.

Analysis:

19. Regarding the objection of delay and laches, the petitioners contend that such a doctrine cannot be used as a shield in the hands of the State to justify the unauthorized deprivation of private property. Judicial precedents establish that delay is not an absolute bar to the grant of relief, especially when the violation involves a continuing wrong. In the present case, the petitioners have been deprived of their land without following the due process of law, thereby resulting in a clear violation of Article 300-A of the Constitution of India. Dismissal of a petition involving a fundamental constitutional violation solely on the grounds of delay and laches would result in a miscarriage of justice and would effectively reward the State for its own high-handed conduct. A citizen's constitutional rights cannot be sacrificed at the altar of technicalities, especially when the State remains in unauthorized possession of private property. The State cannot be permitted to rely upon the doctrine of laches to legitimise an ongoing illegality, as a citizen's belated approach to the Court does not grant legitimacy to an otherwise unconstitutional action. To dismiss this petition on the ground of delay would be to condone the State's illegalities. In this context, it would be apposite to take note of the judgment of the Hon'ble Supreme Court in

Tukaram Kana Joshi's case (supra), relevant paragraphs are extracted as under:

9. The right to property is now considered to be not only a constitutional or a statutory right but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment, etc. Now however, human rights are gaining an even greater multifaceted dimension. The right to property is considered very much to be a part of such new dimension.

10. In the case at hand, there has been no acquisition. The question that emerges for consideration is whether, in a democratic body polity, which is supposedly governed by the rule of law, the State should be allowed to deprive a citizen of his property, without adhering to the law. The matter would have been different had the State pleaded that it has right, title and interest over the said land. It however, concedes to the right, title and interest of the appellants over such land and pleads the doctrine of delay and laches as grounds for the dismissal of the petition/appeal.

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. There is a distinction, a true and concrete distinction, between the principle of "eminent domain" and "police power" of the State. Under certain circumstances, the police power of the State may be used temporarily, to take possession of property but the present case clearly shows that neither of the said powers have been exercised. A question then arises with respect to the authority or power under which the State entered upon the land. It is evident that the act of the State amounts to encroachment, in exercise of "absolute power" which in common parlance is also called abuse of power or use of muscle power. To further clarify this position, it must be noted that the authorities have treated the landowner as a "subject" of medieval India, but not as a "citizen" under our Constitution.

12. The State, especially a welfare State which is governed by the rule of law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion

more so, when no third-party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.

(emphasis added)

20. Further, the Hon'ble Supreme Court in **Urban Improvement Trust v Smt. Vidhya Devi and others (supra)**, while placing reliance upon various of its earlier pronouncements, has observed as under:

“46. As regards the appellant’s challenge to the inordinate delay of 21 years in filing of the writ petitions by the respondents, we are of the view that the same needs to be considered in the facts and circumstances of the case. **While it is true that the courts have consistently held that undue delay in approaching the court can be a ground for refusing relief, the courts have also recognized that in exceptional cases, where the impugned action is patently illegal or affects fundamental rights, the delay must be condoned.**

47. It is pertinent for us to consider the judgment of this Court in *Vidya Devi v. State of Himachal Pradesh* reported in (2020) 2 SCC 569, wherein it was held, inter alia, as follows:

“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.,*]”

[Emphasis supplied]

48. The aforesaid view has also been reiterated by this Court in *Sukh Dutt Ratra v. State of Himachal Pradesh* reported in (2022) 7 SCC 508 wherein the court opined that there cannot be a ‘limitation’ to doing justice. The relevant observations are reproduced below:

“16. Given the important protection extended to an individual vis-a-vis their private property (embodied earlier in Article 31, and now as a constitutional right in Article 300-A), and **the high threshold the State must meet while acquiring land, the question remains – can the State, merely on the ground of delay and laches, evade its legal responsibility towards those from whom private property has been expropriated? In these facts and circumstances, we find this conclusion to be unacceptable, and warranting intervention on the grounds of equity and fairness.**”

[Emphasis supplied]

49. Similarly, this Court in its decision in Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service reported in 1969 (1) SCR 808 held that:

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. **But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable.** Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

[Emphasis supplied]

50. This Court in its decision in Ramchandra Shankar Deodhar v. State of Maharashtra, reported in (1974) 1 SCC 317 held that:

“10. ... There was a delay of more than ten or twelve years in filing the petition since the accrual of the cause of complaint, and this delay, contended the respondents, was sufficient to disentitle the petitioners to any relief in a petition under Article 32 of the Constitution. We do not think this contention should prevail with us. In the first place, it must be remembered that the rule which says that the Court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition. Each case must depend on its own facts. The question, as pointed out by Hidayatullah, C.J., in Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110, 116 : (1969) 2 SCR 824] “is one of discretion for this court to follow from case to case. There is no lower limit and there is no upper limit It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose”. ...”(Emphasis supplied)

51. **The decisions of this Court have consistently held that the right to property is enshrined in the Constitution and requires that procedural safeguards be followed to ensure fairness and non-arbitrariness in decision-making especially in cases of acquisition by the State. Therefore, the delay in approaching the court, while a significant factor, cannot override the necessity to address illegalities and protect right to property enshrined in Article 300A. The court must balance the need for finality in legal proceedings with the need to rectify injustice. The right of an individual to vindicate and protect private property cannot be brushed away merely on the grounds of delay and laches.**

(emphasis added)

21. It goes without saying that though the right on the land is no longer a fundamental right but still it remains a constitutional right under Article 300-A of the Constitution of India and if a person is to be divested of such a right, it has to be in accordance with law. (See: **D. B. Basnett (D) Ltd. through LRs v Collector, East District, Gangtok, Sikkim and another, (2020) 4 SCC 572**).
22. In the instant case, the petitioners are challenging the high-handed and unauthorized occupation of their proprietary land by Respondent Nos. 5 and 7 (SICOP/SIDCO). It is a settled principle of law that the State and its instrumentalities cannot adopt the posture of a private litigant to justify the illegal seizure of property through the plea of delay. Furthermore, the petitioners have provided a clear and justifiable reason for the timing of this petition by demonstrating their inability to access the requisite revenue records, seized by the authorities in connection with the Birpur land scam.
23. In **Madras Port Trust v. Hymanshu International, IR1979SC1144**, the Hon^{ble} Supreme Court of India has held as under:

We do not think that this is a fit case where we should proceed to determine whether the claim of the respondent was barred by Section 110 of the Madras Port Trust Act (II of 1905). **The plea of limitation based on this section is one which the court always looks upon with disfavor and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable.** Here, it is obvious that the claim of the respondent was a just claim supported as it was by the recommendation of the Assistant Collector of Customs and hence in the exercise of our discretion under Article 136 of the Constitution, we do not see any reason why we should proceed to hear

this appeal and adjudicate upon the plea of the appellant based on Section 110 of the Madras Port Trust Act (II of 1905).

Emphasis added.

24. Thus, in the facts and circumstances of the present case, the doctrine of delay and laches is wholly inapplicable and cannot be invoked to defeat the petitioners' legitimate claim for justice arising out of the State's continuing and unauthorized deprivation of their property.
25. The respondents further object that the petition involves "disputed questions of fact" unsuitable for adjudication under Article 226 of the Constitution of India. However, this objection is misplaced. There is no longer a factual dispute, as the official demarcation report and the admission made by the Revenue Department have conclusively established the petitioners' title and the respondents' unauthorized possession. When the State's own records confirm the illegality, the matter becomes a question of law and constitutional enforcement rather than a factual dispute. While it is generally true that disputed questions of fact are not adjudicated in writ jurisdiction, this principle applies only when the Court finds itself unable to resolve such issues based on the material placed on record. In the present case, where the official records and the respondents' own admissions clearly establish the petitioners' title, no complex factual dispute exists that would preclude the exercise of jurisdiction under Article 226. In this context, it would be appropriate to take note of the judgment of the Hon'ble Apex Court in '**M/S A.P Electrical Equipment Corporation v The Tahsildar and others** , 2025 INSC 274, wherein it has been held as under:

47. One stock argument available with the State in this type of cases is that the question whether the actual physical possession of the disputed land had been taken over or not is a seriously disputed question of fact, which the High Court should not adjudicate or determine in exercise of its writ jurisdiction. **As a principle of law, there need not be any**

debate on such a proposition, but by merely submitting that it is a seriously disputed question of fact, the same, by itself, will not become a question of fact. To put it in other words, having regard to the materials on record, which falsifies the case of the State Government, then such materials should not be overlooked or ignored by the Court on the principle that the issue with regard to taking over of the actual physical possession would be a disputed question of fact.

48. Normally, the disputed questions of fact are not investigated or adjudicated by a writ court while exercising powers under Article 226 of the Constitution of India. But the mere existence of the disputed question of fact, by itself, does not take away the jurisdiction of this writ court in granting appropriate relief to the petitioner. In a case where the Court is satisfied, like the one on hand, that the facts are disputed by the State merely create a ground for the rejection of the writ petition on the ground of disputed questions of fact, it is the duty of the writ court to reject such contention and to investigate the disputed facts and record its finding if the particular facts of the case, like the one at hand, was required in the interest of justice.

49. There is nothing in Article 226 of the Constitution to indicate that the High Court in the proceedings, like the one on hand, is debarred from holding such an inquiry. The proposition that a petition under Article 226 must be rejected simply on the ground that it cannot be decided without determining the disputed question of fact is not warranted by any provisions of law nor by any decision of this Court. A rigid application of such proposition or to treat such proposition as an inflexible rule of law or of discretion will necessarily make the provisions of Article 226 wholly illusory and ineffective more particularly Section 10(5) and 10(6) of the Act, 1976 respectively. Obviously, the High Court must avoid such consequences.

(emphasis added)

26. Given the clarity of the revenue records and the official demarcation report, this petition should not be knocked out on the technicality of 'disputed facts' unless it is demonstrated that the matter requires extensive oral and documentary evidence, which the existing record cannot satisfy. This Court is fully empowered to adjudicate the grievance under Article 226 of the Constitution of India. The respondents' reliance on the HMT case (supra) is misplaced. The dismissal in that matter was predicated on the petitioners' failure to approach the Court with clean hands, characterized by inconsistent pleadings and the suppression of facts. The instant petition stands on a fundamentally different footing, as the petitioners' claim is based on verified

revenue entries and a Court-ordered demarcation, leaving no room for allegations of misrepresentation or shifting stands.

27. The petitioners claim ownership of 41 Kanals and 02 Marlas in Khasra No. 1651, Village Birpur. This claim is expressly supported by the response filed by Respondent Nos. 1 and 3, which identifies the land as the proprietary holding of Devi Singh & others and the petitioners as the recorded successors in cultivation column. However, the respondent Nos. 1 & 3 also admit a critical illegality that Respondent No. 5 (SICOP) is in actual possession of the land despite the total absence of any corresponding entry or title in the official revenue records. Respondent Nos. 1 and 3 have also annexed demarcation report and the contents whereof are extracted as under:

“With due regards it is submitted that as per the order of case titled Posh Charak and others vs. U. T. of J&K and others. In this context, it is submitted that in reference to the vide letter No. DCS/ARA/2022-2023/829-831 dated 22.03.2023, in the matter of the above titled case with respect to khasra No. 1651 measuring 41 kanals 2 marals situated at Village Birpur, after perusal of the record, it has been found that said khasra Number, **In the ownership column proprietary land of Devi Singh and others while in cultivation column in the name of Rajinder Singh Son Meera Charak, Heera Charak and Posh Charak of Laxman Singh recorded in revenue record. No entry of Industry Department recorded in the said khasra Number.** Copy of Girdhawari Rabi 2024 and copy of Jamabandhi for the year 1959-60 enclosed herewith.”

(emphasis added)

28. Respondent Nos. 1 and 3 along with demarcation report have also placed on record the copy of Jamabandi and Khasra Girdawari to substantiate this fact.
29. Subsequently, this Court, vide order dated 29.10.2024, directed the Deputy Commissioner, Samba, to conduct a fresh and comprehensive demarcation in the presence of Respondent No. 5 (SICOP) and all interested parties, including the petitioners. In strict compliance with the said directions, the Deputy Commissioner, Samba, issued an order on 04.11.2024 constituting a

high-level committee. This committee, chaired by the Sub-Divisional Magistrate (SDM), Vijaypur including the Tehsildar and Naib Tehsildar of Bari Brahmana, as well as representatives from SICOP/SIDCO, conducted the demarcation. The findings of the Committee's report are reproduced as follows:

“As per revenue record (Jamabandi-1959-60) land bearing khasra no. 1651 measuring 42 kanals and 02 marlas is recorded in the name of Onkar Singh and others, and Laxman Singh is recorded as Co-Sharer. In cultivation column recorded in the name of Laxman Singh (Co-Sharers), who is the petitioners' father. Mutation no. 2359 (inheritance mutation) has been attested in favour of Rajinder Singh Son, Meera Charak, Heera Charak and Posh Charak daughters of Laxman Singh entry of which has been done in the remark's column. As per khasraGirdawariKharief 2024, land bearing khasra No.1651 measuring 42 kanals 02 marlas is recorded in the name of Devi Singh and others in the ownership column and Rajinder Singh S/o. Laxman Singh, Meera Charak, Heera Charak and Posh Charak daughters of Laxman Singh Rajput Charak R/o. Birpur in cultivation column.

In order to locate the boundaries of khasra No. 1651, demarcation proceedings were started alongside PWD(R&B) link road from khasra No. 1656 and khasra No. 1657 present on the Hadbast of village Birpur. The boundaries of khasra no. 1651 were located and it has been found that khasra No. 1651 measuring 42 kanals 02 marlas is physically in possession of SIDCO/SICOP.

It has been concluded that the land measuring 19 kanals 11 marals is in possession of SICOP and land measuring 22 kanals 11 marlas is in possession of SIDCO on spot comprised in khasra No.1651 village Birpur but as per revenue record there is no entry of SICOP/SIDCO in khasra No. 1651 village Birpur, Tehsil Bari Brahmana.”

(emphasis added)

30. As per the findings of the Committee's report extracted above, the physical possession of Khasra No. 1651 is split between Respondent No. 5 (SICOP), holding 19 Kanals 11 Marlas, and Respondent No. 7 (SIDCO), holding 22 Kanals 11 Marlas. Crucially, the report confirms that neither SIDCO nor SICOP has ever been reflected in the revenue records for this survey number. Conversely, the Khasra Girdawari (Kharief 2024) continues to record the land (totalling 42 Kanals 02 Marlas) in the ownership column of

Devi Singh & Others, with the petitioners specifically recorded in the cultivation column as the rightful successors in interest.

31. It is pertinent to note that in the response filed by SICOP, Khasra No. 1651 is conspicuously absent from the list of survey numbers purportedly acquired for the Birpur Industrial Estate. While Respondents 2, 4, and 5 rely on communications from 1977, 1978, and 1979, these documents are irrelevant as they do not pertain to the land in question. In contrast, the petitioners have produced an undisputed certificate dated 06.07.1983, confirming that the Industries Department acquired Khasra Nos. 1643 and 1644 from Shri Rajinder Singh Charak through formal negotiation. The compensation mentioned in the 1978 communication was clearly restricted to those specific parcels and did not extend to Khasra No. 1651. Had the respondents legally purchased Khasra No. 1651, a corresponding entry would have been reflected in the revenue records, as was done for the other acquired land. Furthermore, even in their supplementary affidavit, the respondent Nos. 2, 4 and 5 have failed to plead that they ever purchased the land under Khasra No. 1651. On the contrary, their own response contains an admission that this specific survey number was never part of the land formally acquired for the establishment of the industrial estate. This omission is fatal to the respondents' case, as it confirms they are in possession of the land of the petitioners without any authority of law.
32. In view of the foregoing facts and analysis, this Court is of the considered view that the occupation of land measuring 41 Kanals and 02 Marlas under Khasra No. 1651 (Min), Village Birpur by Respondent Nos. 5 and 7 (SICOP and SIDCO is a clear act of trespass, as they hold neither title nor valid

revenue records in respect thereof. Under the law of the land, the State cannot seize private property through high-handedness. Consequently, the respondent Nos. 5 and 7 have only two legally sustainable options, they must either vacate the land immediately and restore it to the petitioners or initiate formal acquisition proceedings in accordance with law.

Conclusion:

33. Accordingly, the instant writ petition is **allowed**. The respondent Nos. 2, 4, 5 and 7 are directed to either return the land measuring 41 kanals and 02 marlas comprising khasra No. 1651 situated at Village Birpur, Tehsil Bari Brahmana, District Samba to the petitioners within a period of three months from today or initiate acquisition proceedings for the same in terms of the Right to Fair Compensation and Transparency and Resettlement Act, 2013 within the aforesaid period. In the event respondent Nos. 2, 4, 5, and 7 choose to restore possession of the subject land to the petitioners, the Deputy Commissioner, Samba, is directed to assess rental compensation payable to the petitioners from the date of the respondents' initial unauthorized entry until the date of actual restoration of possession to the petitioners.

(Rajnish Oswal)
Judge

JAMMU
06 .02.2026
Rakesh PS

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes