



2026:CGHC:261

AFR

## HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment Reserved on : 01/12/2025

Judgment Pronounced on : 05/01/2026

### FA No. 128 of 2019

**1** - Ramanuj Sharma S/o Late Gajanand Sharma Aged About 78 Years R/o Sikola, Durg, Tahsil And District- Durg, Chhattisgarh, Through Their General Power Of Attorney Holder Shri Ramanuj Sharma, S/o Late Gajanand Sharma, R/o Village Sikola, Durg, Tahsil And District- Durg, Chhattisgarh

**2** - Sandeep Sharma S/o Late Ramesh Kumar Sharma Aged About 42 Years R/o Sikola, Durg, Tahsil And District- Durg, Chhattisgarh, Through Their General Power Of Attorney Holder Shri Ramanuj Sharma, S/o Late Gajanand Sharma, R/o Village Sikola, Durg, Tahsil And District- Durg, Chhattisgarh

**3** - Sanjay Sharma S/o Late Ramesh Kumar Sharma Aged About 40 Years R/o Sikola, Durg, Tahsil And District- Durg, Chhattisgarh, Through Their General Power Of Attorney Holder Shri Ramanuj Sharma, S/o Late Gajanand Sharma, R/o Village Sikola, Durg, Tahsil And District- Durg, Chhattisgarh

**4** - Kamlesh Kumar Sharma S/o Late Gajanand Sharma Aged About 65 Years R/o Sikola, Durg, Tahsil And District- Durg, Chhattisgarh, Through Their General Power Of Attorney Holder Shri Ramanuj Sharma, S/o Late Gajanand Sharma, R/o Village Sikola, Durg, Tahsil And District- Durg, Chhattisgarh

**5** - Bhupendra Kumar Sharma S/o Late Gajanand Sharma Aged About 60 Years R/o Sikola, Durg, Tahsil And District- Durg, Chhattisgarh, Through Their General Power Of Attorney Holder Shri Ramanuj Sharma, S/o Late Gajanand Sharma, R/o Village Sikola, Durg, Tahsil And District- Durg, Chhattisgarh

**6** - Naresh Kumar Sharma S/o Late Gajanand Sharma Aged About 62 Years R/o Sikola, Durg, Tahsil And District- Durg, Chhattisgarh, Through Their General Power Of Attorney Holder Shri Ramanuj Sharma, S/o Late Gajanand Sharma, R/o Village Sikola, Durg, Tahsil And District- Durg, Chhattisgarh

**7** - Smt. Dayawati Sharma Wd/o Late Gajanand Sharma Aged About 100 Years R/o Sikola, Durg, Tahsil And District- Durg, Chhattisgarh, Through Their General Power Of Attorney Holder Shri Ramanuj Sharma, S/o Late Gajanand Sharma, R/o Village Sikola, Durg, Tahsil And District- Durg, Chhattisgarh

**8** - Smt. Kaushalya Sharma Wd/o Late Ramnighal Sharma Aged About 63 Years R/o Sikola, Durg, Tahsil And District- Durg, Chhattisgarh, Through Their

General Power Of Attorney Holder Shri Ramanuj Sharma, S/o Late Gajanand Sharma, R/o Village Sikola, Durg, Tahsil And District- Durg, Chhattisgarh

**9** - Sitendra Kumar Sharma S/o Late Ramnihaal Sharma Aged About 36 Years R/o Sikola, Durg, Tahsil And District- Durg, Chhattisgarh, Through Their General Power Of Attorney Holder Shri Ramanuj Sharma, S/o Late Gajanand Sharma, R/o Village Sikola, Durg, Tahsil And District- Durg, Chhattisgarh

**10** - Smt. Chetna D/o Late Ramnihaal Sharma Aged About 38 Years R/o Sikola, Durg, Tahsil And District- Durg, Chhattisgarh, Through Their General Power Of Attorney Holder Shri Ramanuj Sharma, S/o Late Gajanand Sharma, R/o Village Sikola, Durg, Tahsil And District- Durg, Chhattisgarh

**11** - Smt. Minita D/o Late Ramnihaal Sharma Aged About 34 Years R/o Sikola, Durg, Tahsil And District- Durg, Chhattisgarh, Through Their General Power Of Attorney Holder Shri Ramanuj Sharma, S/o Late Gajanand Sharma, R/o Village Sikola, Durg, Tahsil And District- Durg, Chhattisgarh

**12** - Smt. Shweta D/o Late Ramnihaal Sharma Aged About 32 Years R/o Sikola, Durg, Tahsil And District- Durg, Chhattisgarh, Through Their General Power Of Attorney Holder Shri Ramanuj Sharma, S/o Late Gajanand Sharma, R/o Village Sikola, Durg, Tahsil And District- Durg, Chhattisgarh

**... Appellants/Plaintiffs**

**Versus**

**1** - The Municipal Corporation Bhilai Through Its Commissioner, Bhilai, District- Durg, Chhattisgarh

**2** - Durg Bhilai Urban Public Transport Society, Through Its Chairman, Chamber No. 21-A, District- Office, Durg, District : Durg, Chhattisgarh

**3** - State Of Chhattisgarh Through The Collector, District -Durg, Chhattisgarh, District : Durg, Chhattisgarh

**... Respondents/Defendants**

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For Appellants/Plaintiffs : Mr. B.P. Sharma, Advocate along with Mr. Pushp Kumar Gupta, Advocate

For Respondents No. 1 & 2 / : Mrs. Fouzia Mirza, Senior Advocate assisted by Mr. Ali Afzaal Mirza, Advocate

For Respondent No. 3 / : Mr. Pramod Shrivastava, Deputy Government Advocate

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**Hon'ble Shri Justice Rakesh Mohan Pandey**  
**C A V Judgment**

1. This appeal under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') has been preferred by the

plaintiffs assailing the validity and propriety of judgment and decree dated 24.01.2019 passed by the learned 1<sup>st</sup> Additional District Court to the Court of learned 1<sup>st</sup> Additional District Judge, Durg, in Civil Suit No. 1236434-A/2015, whereby the suit of the plaintiffs was dismissed.

2. The plaintiffs filed a suit for declaration of title, demolition of illegal construction, possession and permanent injunction, inter alia, on the ground that they are owners of the land bearing Survey No. 294/1 (New Survey No. 294/12) admeasuring 3.566 hectares situated in Village Sikola, Patwari Circle No. 17, Durg and entitled to use and to enjoy the said property. They pleaded that in a proceeding initiated by the Competent Authority under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Act of 1976) against late Gajanand Sharma, a final order was passed and 3.566 hectares of land were declared surplus, but late Gajanand Sharma remained in possession of the property. Gajanand Sharma died in the year 1996. It is further pleaded that possession of the property was not taken by the State in accordance with the provisions of the Urban Ceiling Act. The plaintiffs further pleaded that the order passed by the Competent Authority i.e. Additional Collector under the provisions of Act of 1976 was challenged by filing WP No. 3424/1997 and it was disposed of vide order dated 19.10.2010, whereby the plaintiffs were permitted to move an application before the Competent Authority and the said Authority i.e. Additional Collector, Durg was directed to inquire into the matter with regard to possession and decide it in accordance with law. The plaintiffs moved an application on 02.11.2010, and the said Authority passed an order on 28.03.2011, wherein it was held that possession of the suit property was taken by

the State on 25.04.1988. The order passed by the Additional Collector-cum-Competent Authority was challenged by filing an appeal, which was allowed by the Additional Commissioner, Raipur Division, Raipur vide order dated 29.10.2011, and the order dated 28.03.2011 passed by the Additional Collector-cum-Competent Authority was set aside. The Appellate Authority passed an order to restore the names of the plaintiffs in the revenue records. They also pleaded that the order passed by the Appellate Authority dated 29.10.2011 attained finality as the same has not been modified, or reversed, or set aside by any Superior Authority.

3. The State of Chhattisgarh preferred WP(227) No. 159/2013 before the High Court against the order dated 29.10.2011, and vide order dated 26.02.2013, it was dismissed as withdrawn, reserving liberty in favour of the State to avail the alternative remedy of appeal / revision.
4. Defendant No. 3 / State preferred a revision petition before the State Government, but it was dismissed vide order dated 01.03.2014 on the ground that the State Government had no jurisdiction to adjudicate the revision proceeding.
5. An application was moved by the plaintiffs before the Additional Collector-cum-Competent Authority under the provisions of Section 144 of CPC to enter their names in the revenue records against the suit property pursuant to the order passed by the learned Commissioner dated 29.10.2011, which was pending on the date of filing the civil suit. WP(227) No. 184/2015 was filed by the plaintiffs seeking direction to the authority concerned to decide the pending application filed under Section 144 of CPC expeditiously. The said writ petition was disposed

of vide order dated 28.07.2015 with a direction to the Additional Collector, Durg, to decide the said application within 04 months.

6. The plaintiffs came to know that the defendants had proposed to raise construction on the suit property; therefore, the plaintiff no. 1 moved applications before the Municipal Corporation, Bhilai, and Municipal Corporation, Durg on 16.02.2015. On 26.02.2015, a complaint was made before His Excellency Governor, through Sub-Divisional Officer (Revenue), Durg, with regard to illegal encroachment and construction of boundary-wall over the suit property. Legal notices were sent to defendants No. 1 to 3 on 09.05.2015, and a request was made to stop the construction work. Defendants No. 1 to 3 received notices on 11.05.2015, but they continued with the construction work, and thereafter the suit was filed on 21.09.2015.
7. The application moved by the plaintiffs for a temporary injunction was rejected by the learned II<sup>nd</sup> Civil Judge Class-II, Durg vide order dated 16.06.2015, and against the said order, an appeal was preferred, which was dismissed vide order dated 31.07.2015.
8. The plaintiffs pleaded that they have the right to the suit property and they cannot be dispossessed without following the due process of law.
9. Defendant No. 1 filed a written statement and denied the averments made in the plaint. Defendant No. 1 pleaded that the possession of the suit land was taken over by the State Government way back in the year 1988, and a bus stand was proposed on the suit land. It is further pleaded that the construction work was initiated and Rs. 30-40 lacs was invested. Defendant No. 1 specifically pleaded that the suit land was declared surplus in a proceeding initiated under the Act of 1976, and possession was taken over by the State. It is pleaded that physical

possession was taken over by the Revenue Inspector on 10.06.1988. Defendant No. 1 admitted that an order was passed by the Commissioner, Raipur Division, Raipur, in favour of the plaintiffs. A meeting was convened to float a tender on 21.01.2015 by the then Collector. The work order was issued in favour of M/s Vimal Kumar Saxena, Ganjpara, Shakti Choura, Durg on 28.01.2015. It is pleaded that the order passed by the Commissioner, Raipur Division, Raipur, is bad in law as the authority concerned had no jurisdiction, and the suit is barred by limitation as the same has been filed after 28 years.

10. Defendant No. 2 filed a separate written statement and almost repeated the contentions made by defendant No.1.
11. The learned trial Court framed issues on 24.08.2016.
12. The plaintiffs exhibited the following documents, i.e., Ex. P/1 to Ex. P/15 before the learned Trial Court:-

<b>Exhibits</b>	<b>Details</b>
Ex. P/1	Copy of the order passed in WP No 3424/1997 dated 19/10/2010.
Ex. P/2	Order passed in Ceiling Case by Additional Collector-Cum-Competent Authority dated 28/03/2011.
Ex. P/3	Order passed by the Additional Commissioner in favour of the plaintiffs dated 29/10/2011.
Ex. P/4	Order passed in WP(227) No. 159 of 2013 filed by the State, which was dismissed as withdrawn vide order dated 26/02/2013.
Ex. P/5	Order passed by Chhattisgarh Government, Department of Revenue and Disaster Management in Revision Case, whereby revision preferred by State was dismissed vide order dated 01/03/2014.
Ex. P/6	Order passed in WP(227) No. 184 of 2015, whereby direction was issued to the respondent authorities to

	decide the application moved by the plaintiffs under Section 144 of CPC dated 28/07/2015.
Ex. P/7 & Ex. P/8	Applications moved by Plaintiff No. 1 before the Municipal Commissioner, Bhilai, and Durg dated 16/02/2015.
Ex. P/9	Application moved by Plaintiff No. 1 before His Excellency Governor, Government of Chhattisgarh dated 26/02/2015.
Ex. P/10	Application preferred by Plaintiff No.1 before the Sub-Divisional Officer (Revenue), Durg dated 26.02.2015.
Ex. P/11	Order passed by the learned II <sup>nd</sup> Civil Judge Class-II, Durg in MJC No. 14/2015 dated 16.06.2015, whereby application seeking temporary injunction was rejected.
Ex. P/12	Order passed by II <sup>nd</sup> Additional District Judge, Durg dated 31/07/2015, whereby appeal preferred by the plaintiffs was dismissed.
Ex. P/13	Written statement filed on behalf of Municipal Corporation Bhilai in Civil Suit No. 14/2015 dated 26/05/2015.
Ex. P/14	Affidavit in support of written statement dated 26/05/2015.
Ex. P/15	Registered Power of Attorney executed by the plaintiff in favour of Plaintiff No. 1 namely Ramanuj Sharma dated 15/10/2003.

13. The defendants exhibited complete order-sheets and documents of Ceiling Case No. 229-A/70 Years 1977-78 vide Ex. D/1.
14. The plaintiffs examined Kamlesh Kumar Sharma, as PW-1.
15. Defendants examined Surendra Prasad Vaidya, Joint Collector, Durg, as DW-1.
16. The learned trial court, after appreciation of oral and documentary evidence, dismissed the suit.
17. Mr. B.P. Sharma, learned counsel appearing for the appellants/plaintiffs, would argue that vide legal notice dated 09.05.2015, the plaintiffs had called upon the respondents not to raise

any construction over the suit property, but the respondents ignored the said notice and completed the construction. He would contend that the valuable right to property, which has been crystallized as a human right, was jeopardized by the State Authorities. He would contend that DW-1 Surendra Prasad Vaidya, in cross-examination, has admitted that the proceeding to acquire possession of suit property was initiated under the provisions of Section 34 of the Chhattisgarh Land Revenue Code or under Order 21 Rule 35 of CPC and before initiating such a proceeding, a notice to the actual possession holder was mandatory, but there is no document to establish that such a notice was served upon late Gajanand Sharma. Mr. B.P. Sharma, counsel for the appellants, would further argue that the decision taken by the Competent Authority under the provisions of the Act of 1976 was challenged by filing WP No. 3424/1997, which was disposed of on 19.10.2010 and the plaintiffs were granted liberty to make a proper application before the Competent Authority to decide the issue with regard to possession of land. He would contend that the plaintiffs approached the Additional Collector, and the application moved by the plaintiffs was dismissed vide order dated 28.03.2011. He would further contend that the order dated 28.03.2011 was set aside by the Appellate Authority, i.e., Additional Commissioner, Raipur Division, Raipur, vide order dated 29.10.2011, and a direction was issued to the Revenue Authorities to restore the names of the plaintiffs. He would also submit that the order passed by the Commissioner attained finality as the same has not been challenged by the defendants before the appropriate forum. He would further argue that the Additional Commissioner, in its order dated 29.10.2011, recorded a specific

finding that the possession of the suit property was not taken in accordance with the law and compensation was also not paid. He would also contend that by virtue of the order dated 29.10.2011, the plaintiffs got possession of the property and thereafter, in the month of February, 2015, the defendants started raising construction of a bus stand on the suit land. Mr. Sharma would fairly submit that the defendants have completed the construction of the Bus Stand. He would state that the plaintiffs have sought relief of vacant possession of the suit property and a declaration of title, along with mesne profits. He would further state that a huge amount has been invested by the defendants in the construction of Bus-Stand and thus, the demolition of the illegal construction would hamper the public exchequer. He would also state that this Court may modify the relief therein directing the defendants to acquire the land in accordance with the Land Acquisition Act, 1894 (hereinafter referred to as the Act of 1894) and to make payment of compensation. In this regard, he has placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of **J. Ganapatha and Others Vs. M/S. N. Selvarajalou Chetty Trust Rep. By Its Trustees and Others**, reported in **2025 LiveLaw (SC) 353**.

18. With regard to the entitlement of compensation, Mr. Sharma would submit that generally, the person whose land is acquired for a public purpose, the procedure provided under the Act of 1894 has to be followed by the respondent authorities, but the Act of 1894 has been repealed by the Act of 2013; therefore, the Act of 1894 cannot be followed. He would also submit that in the matter of **J. Ganapatha** (supra), the Hon'ble Supreme Court, in paragraphs No. 12, 20 and 24, observed as under:-

**“12.** The learned Single Judge holds that the Plaintiff Schedule being a vacant plot of land, the possession follows the title, and the contention of adverse possession is untenable and does not arise. It is also noted that, in the peculiar circumstances of the case, it is unnecessary to direct Dr. H.B.N. Shetty, Trustee of the Trust, to file another suit for setting aside the sale in favour of Defendant Nos. 3 to 6. The crucial circumstance noted for moulding the relief is that a few executors have passed away, and the surviving executor is fairly aged. Therefore, the reliefs have been moulded as follows:

*“56. Plaintiff Trust is not entitled to any decree. But the remedy is moulded for reasons mentioned supra, in passing a decree in favour of Mr. H.B.N. Shetty in his capacity as executor of Will, for*

*(i) setting aside the sale deeds in favour of defendants 3 to 6 by the 1<sup>st</sup> defendant relating to the suit property (through the 2<sup>nd</sup> defendant as Power Agent).*

*(ii) permanent injunction restraining the defendants 3 to 6 from in any manner dealing with the suit property and permanent injunction restraining the defendants from putting up any construction over the suit property; and for*

*(iii) a direction to the above executors of Will to execute the terms found in para 10 of Ex.P-3 Will of Mrs. Padmini Chandrasekaran (which was already probated) and as found therein.”*

**20.** The concept of moulding of relief refers to the ability of a court to modify or shape a relief sought by a party in a legal proceeding based on the circumstances of the case and the facts established after a full-fledged trial. The principle enables the court to grant appropriate remedies even if the relief requested in the pleading is not exact or could not be considered by the court or changed circumstances have rendered the relief obsolete. The court aims that justice is served while taking into account the evolving nature of a case. The above road map is pursued by a court based on the notion of flexibility in relief, equitable jurisdiction, and is tempered by judicial discretion. When moulding the relief, the court considers the issues and circumstances established during the

full-fledged trial, looks at shortening the litigation, and then in its perspective, renders complete justice to the issue at hand. The converse of the above is that the moulded relief should not take the aggrieved party by surprise or cause prejudice. The relief is moulded as an exception and not as a matter of course.

**24.** In the Civil Appeal, the consideration is not whether relief should be moulded or not, but the consideration would be whether moulding of relief in the circumstances of the case is tenable or warrants interference by this Court. The title and ownership acquired by the late Padmini Chandrasekaran on a full-fledged trial in the second round of litigation in the present proceedings have been accepted by the impugned judgments. The prayer to have the relief of declaration in favour of the Trust through the Trustees was not accepted. The court found that the Trust cannot claim the relief of declaration *vis-a-vis* the Plaintiff Schedule. The court also found that the testatrix made an independent disposition in favour of Vinayagamurthy and his children in the Plaintiff Schedule. The executor proved the entitlement of the late Padmini Chandrasekaran *vis-a-vis* the Plaintiff Schedule. Simultaneously, the claim of Defendant Nos. 3 to 6 through Defendant No. 1 is illegal and unsustainable. The findings on Issue No. 2 in the judgment of the learned Single Judge enable the moulding of relief even after answering Issue Nos. 4 and 5 against the first plaintiff. The issues have been agitated by the parties concerned in a full-fledged trial; however, the description of the plaintiff and the narrative in the plaint for claiming right and title to the Plaintiff Schedule is not accepted by the impugned judgments. While giving effect to these findings, in our considered view, the learned Single Judge and the Division Bench have appreciated the effect of finding on Issue No. 2. The objections of Defendant Nos. 3 to 6 that Somasundaram Chettiar died and his LRs were not represented in the sale deed are found to be factually incorrect by the impugned judgments. The non-challenge to the court sale and allowing the sale deed to remain intact would militate against even a strong plea, which could be stated in the next round of litigation. As a result, a fresh round of litigation for the same property, by applying judicious discretion, is avoided. In other words, the impugned judgments have exercised discretion in moulding the relief compatible and commensurate with the circumstances of the case.

It is in nobody's interest except Defendant Nos. 3 to 6 to prolong the litigation by leaving it open to the parties to get into another round of litigation. Therefore, the argument of Defendants Nos. 3 to 6 on the moulding of relief by the impugned judgments is an abstract objection. On careful scrutiny of preceding circumstances and the averments established by the parties, we are of the view that no exception is made out and the argument of Defendant Nos. 3 to 6 is accordingly rejected. We are not referring to the precedents on the point since the core consideration in any given case is the setting in which the parties agitate the issues and findings recorded by the court, finally resulting in the moulding of relief. We may hasten to add that the court of first instance, while exercising the discretion to mould the relief, juxtaposes the consideration with the established conditions of the original relief becoming inappropriate or shortening the litigation and enabling rendering complete justice between the parties. The scrutiny on the moulding of relief by the appellate court tests the exercise of discretion by the trial court, but not in all cases, sit in the very armchair of the court which moulded the relief and re-examine every detail unless prejudice and grave injustice are pointed out against the moulding of relief. In a further appeal on the moulding of relief, the examination by the second appellate court ought to be minimal and not unsettle the settled. In our considered view, the moulding of relief, in this case, is to shorten the litigation and not subject the Plaintiff Schedule to vagaries of certain and uncertain documents. We are in complete agreement with the findings recorded by the impugned judgments."

19. Mr. Sharma would further argue that in the matter of ***Raj Kumar Johri and Another Vs. State of M.P. and Others***, reported in (2002) 3 SCC 732, the Hon'ble Supreme Court held that whenever a deemed date is given by creating a legal fiction then the court is required to ascertain for what purpose the fiction is created and after ascertaining this, the court is to assume all those facts and consequences which are incidental or inevitable corollaries to give effect to the fiction. The relevant paragraphs No. 5, 9, and 11 are reproduced herein below:-

**“5.** Keeping in view the peculiar facts and circumstances of the case, the date of notification under Section 4(1) was postponed to 1-1-1988 for the purpose of determination of the compensation. It was observed: (SCC pp. 330-31, para 4)

“Looking at the matter from these different angles, we have thought it appropriate to allow the appeal, vacate the judgment of the High Court and allow the acquisition to remain subject, however, to the condition that the notification under Section 4(1) of the Act issued in 1985 shall be deemed to be one dated 1-1-1988 and the market value of the land for the acquisition shall be determined with reference to that date. We would like to point out that the potential value of the land has substantially enhanced on account of the improvements made pursuant to the notification which had been assailed. We have directed the deemed date of the notification under Section 4(1) to be preponed (*sic* postponed) by almost three years and during this period the appellant has brought about the bulk of the improvements in the neighbourhood. We direct that 25 per cent of the potential value of the land relatable to the improvements made by the appellant would only be available to the respondents, but in fixing market value all other legitimate considerations shall be taken into account. We make it clear that we have no intention to extend the benefit under Section 28-A of the Act to the owners of the lands already acquired under the notification of 1980 or 1985 on the basis of our direction that the respondents' lands shall be deemed to have been notified under Section 4(1) of the Act on 1-1-1988. In fact our order must be deemed to be a separate notification for acquisition and, therefore, it would not be a common notification for the purpose of Section 28-A of the Act. The respondents should, therefore, be entitled to this benefit that instead of the notification under Section 4(1) of the Act being of 1985, it shall be treated to be of 1-1-1988. The Appellate Authority is now entitled to take position (*sic* possession) in accordance with law subject to the valuation of the compensation in the manner indicated.

**9.** Shri Siddhartha Sankar Ray, learned Senior Advocate appearing for the appellants contended that keeping in view the scheme of the Act, the

Authorities were required to issue a fresh declaration under Section 6 of the Act within one year of the deemed date of notification under Section 4(1) and an award within two years from the date of declaration under Section 6. And if the declaration under Section 6 is taken from the date of rendering of judgment by this Court i.e. 14-11-1991 then failure to make the award within two years from that date resulted in the lapsing of the entire acquisition proceedings.

**11.** This Court in *Mancheri Puthusseri Ahmed v. Kuthiravattam Estate Receiver*, (1996) 6 SCC 185 has held that whenever a deemed date is given by creating a legal fiction then the court is required to ascertain for what purpose the fiction is created and after ascertaining this, the court is to assume all those facts and consequences which are incidental or inevitable corollaries to give effect to the fiction. While construing the fiction it is not open to the court to extend the same beyond the purpose for which it was created. It cannot also be extended by importing another fiction. The deemed date to the notification under Section 4 was given by creating a legal fiction for giving enhanced compensation and it has to be limited to that only. It cannot be extended beyond it, leading to the issuance of fresh declaration under Section 6 or giving a fresh award under Section 11."

20. Mr. Sharma would further contend that in the matter of ***State of Madhya Pradesh and Another Vs. Medha Patkar and Others***, reported in (2011) 8 SCC 55, the Hon'ble Supreme Court accepted the suggestion of the State and directed the Collector to reconsider the market value of the property as if Section 4 notification had been issued on 2-8-2011, which was the date on which the judgment was pronounced in the matter by the Hon'ble Supreme Court. The relevant paragraph No. 29 is reproduced below:-

**"29.** The State has come forward with the most appropriate and valuable suggestion, thus, we accept the same. In view of the above, the Land Acquisition Collector is directed to reconsider the

market value of (*sic* the acquired land of) canal-affected persons as if Section 4 notification in respect of the same has been issued on date i.e. 2-8-2011 and make the supplementary awards in accordance with the provisions of the 1894 Act. Such concession extended by the State would be over and above the relief granted by this Court vide order dated 5-5-2010 as clarified/modified subsequently, as explained hereinabove and it is further clarified that further canal work would be subject to clearance/direction which may be given by MoEF."

21. Mr. Sharma would also contend that in the matter of ***Bernard Francis Joseph Vaz and Others Vs. Government of Karnataka and Others***, reported in **(2025) 7 SCC 580**, the Hon'ble Supreme Court has held that the land of the petitioner was acquired without following the due process of law, and the action of the respondents was in contravention of the spirit of the constitutional scheme of Article 300-A. He would contend that the relief sought for in the writ petition was moulded by the Hon'ble Supreme Court. The relevant paragraphs No. 36, 38, 39, 41, 42, and 48 are reproduced below:-

**"36.** The relief, therefore, granted by this Court in the aforesaid case was moulded in the form of para 15, which reads as under: (*Competent Authority v. Barangore Jute Factory case, (2005) 13 SCC 477, SCC pp. 488-89*)

**"15.** Normally, compensation is determined as per the market price of land on the date of issuance of the notification regarding acquisition of land. There are precedents by way of judgments of this Court where in similar situations instead of quashing the impugned notification, this Court shifted the date of the notification so that the landowners are adequately compensated. Reference may be made to:

(a) *Ujjain Vikas Pradhikaran v. Raj Kumar Johri, (1992) 1 SCC 328*

(b) *Gauri Shankar Gaur v. State of U.P.*, (1994) 1 SCC 92

(c) *Haji Saeed Khan v. State of U.P.*, (2001) 9 SCC 513

*In that direction the next step is what should be the crucial date in the facts of the present case for determining the quantum of compensation. We feel that the relevant date in the present case ought to be the date when possession of the land was taken by the respondents from the writ petitioners. This date admittedly is 19-2-2003. We, therefore, direct that compensation payable to the writ petitioners be determined as on 19-2-2003, the date on which they were deprived of possession of their lands. We do not quash the impugned notification in order not to disturb what has already taken place by way of use of the acquired land for construction of the national highway. We direct that the compensation for the acquired land be determined as on 19-2-2003 expeditiously and within ten weeks from today and the amount of compensation so determined, be paid to the writ petitioners after adjusting the amount already paid by way of compensation within eight weeks thereafter. The claim of interest on the amount of compensation so determined is to be decided in accordance with law by the appropriate authority. We express no opinion about other statutory rights, if any, available to the parties in this behalf and the parties will be free to exercise the same, if available. The compensation as determined by us under this order along with other benefits, which the respondents give to parties whose lands are acquired under the Act, should be given to the writ petitioners along with what has been directed by us in this judgment."*

(emphasis supplied)

38. In *Tukaram Kana Joshi v. MIDC*, (2013) 1 SCC 353, the land situated in Village Shirwame, Taluka and District Thane, stood notified under Section 4 of the 1894 LA Act on 6-6-1964 for establishment of Ulhas Khore Project i.e. a project for industrial development. However, no subsequent proceedings were taken up thereafter, and the acquisition proceedings lapsed. The respondent Authorities therein realised, in 1981, that grave injustice had been done to the appellants therein and so a fresh Notification under Section 4 of the 1894 LA Act was issued on

14-5-1981. However, no further proceedings were initiated and therefore, such proceedings also died a natural death. In the aforesaid case, when the appellants therein reached this Court, this Court in unequivocal terms observed that even after the *right to property* ceased to be a fundamental right, taking possession of or acquiring the property of a citizen most certainly tantamounts to deprivation and such deprivation can take place only in accordance with "law", as the said word has specifically been used in Article 300-A of the Constitution. In para 22 of the aforesaid case, this Court observed that the State concerned therein came forwarded with a welcome suggestion stating that in order to redress the grievances of the appellants therein, the respondent Authorities would notify the land in dispute under Section 4 of the 1894 LA Act and that the market value of the land in dispute would be assessed as it prevails on the date on which Section 4 notification is again published in the Official Gazette.

**39.** In the aforesaid case of *Tukaram Kana Joshi*, This Court observed that the *right to property* is now considered to be not only a constitutional or a statutory right but also a "human right". It was further observed that human rights are considered in the realm of individual rights, such as right to health, right to livelihood, right to shelter and employment, etc. This Court further observed that now, however, human rights are gaining an even greater multifaceted dimension and the *right to property* is considered very much to be a part of such new dimension.

**41.** This Court in *Vidya Devi v. State of H.P.*, (2020) 2 SCC 569, while surveying the earlier judgments on the issue, has observed thus: (SCC pp. 572-75, para 12)

12. ... 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, 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 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.

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 Constitutional. Reliance is placed on the judgment in *Hindustan Petroleum Corp. Ltd. v. Darius Shapur Chennai*, (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.'*

12.4. In *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 constitution 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.'*

12.5. In *Delhi Airtech Services (P) Ltd. v. State of U.P.*, (2011) 9 SCC 354, 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.*'

12.6. In *Jilubhai Nanhai 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.'

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 is 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*, (2013) 1 SCC 353 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*, (2011) 10 SCC 404 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.

12.13. 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)

(emphasis in original)

42. In *Ultra-Tech Cement Ltd. v. Mast Ram*, (2025) 1 SCC 798, this Court observed thus: (SCC pp. 820-22, paras 46-53)

*“D. Role of the State under Article 300-A of the Constitution*

46. The right to property in our country is a net of intersecting rights which has been explained by this Court in *Kolkata Municipal Corpn. v. Bimal Kumar Shah*, (2024) 10 SCC 533. A Division Bench of this Court identified seven non-exhaustive sub-rights that accrue to a landowner when the State intends to acquire his / her property. The relevant observations of this Court under the said judgment are reproduced below: (SCC pp. 550-51, para 30)

*‘30. ... Seven such sub-rights can be identified, albeit non-exhaustive. These are:*

- (i) *The duty of the State to inform the person that it intends to acquire his property – the right to notice,*
- (ii) *The duty of the State to hear objections to the acquisition – the right to be heard,*
- (iii) *The duty of the State to inform the person of its decision to acquire – the right to a reasoned decision,*

- (iv) *The duty of the State to demonstrate that the acquisition is for public purpose – the duty to acquire only for public purpose,*
- (v) *The duty of the State to restitute and rehabilitate – the right of restitution or fair compensation,*
- (vi) *The duty of the State to conduct the process of acquisition efficiently and within prescribed timelines of the proceedings – the right to an efficient and expeditious process, and*
- (vii) *The final conclusion of the proceedings leading to vesting – the right of conclusion.'*

This Court held that a fair and reasonable compensation is the sine qua non for any acquisition process.

47. In *Roy Estate v. State of Jharkhand*, (2009) 12 SCC 194; *Union of India v. Mahendra Girji*, (2010) 15 SCC 682 and *Mansaram v. S.P. Pathak*, (1984) 1 SCC 125, this Court underscored the importance of following timelines prescribed by the statutes as well as determining and disbursing compensation amount expeditiously within reasonable time.

48. The subject land came to be acquired by invoking special powers in cases of urgency under Section 17(4) of the 1894 Act. The invocation of Section 17(4) extinguishes the statutory avenue for the landowners under Section 5-A to raise objections to the acquisition proceedings. These circumstances impose onerous duty on the State to facilitate justice to the landowners by providing them with fair and reasonable compensation expeditiously. The seven sub-rights of the landowners identified by this Court in *Kolkata Municipal Corp.* are corresponding duties of the State. We regret to note that the amount of Rs.3,05,31,095 determined as compensation under the Supplementary award has not been paid to the landowners for a period of more than two years and the State of Himachal Pradesh as a welfare State has made no effort to get the same paid at the earliest.

49. This Court has held in *Dharnidhar Mishra v. State of Bihar*, (2024) 10 SCC 605 and *State of*

*Haryana v. Mukesh Kumar* that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. This Court held in *Tukaram Kana Joshi v. MIDC* that in a welfare State, the statutory authorities are legally bound to pay adequate compensation and rehabilitate the persons whose lands are being acquired. The non-fulfilment of such obligation under the garb of industrial development, is not permissible for any welfare State as that would tantamount to uprooting a person and depriving them of their constitutional/human right.

50. That time is of the essence in determination and payment of compensation is also evident from this Court's judgment in *Kukreja Construction Co. v. State of Maharashtra*, (2024) 14 SCC 594 wherein it has been held that once the compensation has been determined, the same is payable immediately without any requirement of a representation or request by the landowners and a duty is cast on the State to pay such compensation to the land losers, otherwise there would be a breach of Article 300-A of the Constitution.

51. In the present case, the Government of Himachal Pradesh as a welfare State ought to have proactively intervened in the matter with a view to ensure that the requisite amount towards compensation is paid at the earliest. The State cannot abdicate its constitutional and statutory responsibility of payment of compensation by arguing that its role was limited to initiating acquisition proceedings under the MOU signed between the appellant, JAL and itself. We find that the delay in the payment of compensation to the landowners after taking away ownership of the subject land from them is in contravention to the spirit of the constitutional scheme of Article 300-A and the idea of a welfare State.

52. Acquisition of land for public purpose is undertaken under the power of eminent domain of the government much against the wishes of the owners of the land which gets acquired. When such a power is of the owners of the land which gets acquired. When such a power is exercised, it is coupled with a bounden duty and obligation on the part of the government body to ensure that the owners whose lands get acquired are paid compensation/awarded

amount as declared by the statutory award at the earliest.

53. The State Government, in peculiar circumstances, was expected to make the requisite payment towards compensation to the landowners from its own treasury and should have thereafter proceeded to recover the same from JAL. Instead of making the poor landowners to run after the powerful corporate houses, it should have compelled JAL to make necessary payment."

(emphasis in original and supplied)"

48. It will also be appropriate for the purpose of the present discussion to refer to the Judgment of this Court in *K. Krishna Reddy v. Collector (LA)*, (1988) 4 SCC 163, specifically in para 12, it was observed thus: (SCC pp. 166-67)

"12. We can very well appreciate the anxiety and need of claimants to get compensation here and now. No matter what it is. The lands were acquired as far back in 1977. One decade has already passed. Now the remand means another round of litigation. There would be further delay in getting the compensation. After all money is what money buys. What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even one half of it. It is a common experience that the purchasing power of rupee is dwindling. With rising inflation, the delayed payment may lose all charms and utility of the compensation. In some cases, the delay may be detrimental to the interest of claimants. The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry. They have no savings to draw. They have nothing to fall back upon. They know no other work. They may even face starvation unless rehabilitated. In all such cases, it is of utmost importance that the award should be made without delay. The enhanced compensation must be determined without loss of time. The appellate power of remand, at any rate ought not to be exercised lightly. It shall not be resorted to unless the award is wholly unintelligible. It shall not be exercised unless there is total lack of evidence. It remand is imperative, and if the claim for enhanced compensation is tenable, it would be proper for

the appellate court to do modest best to mitigate hardships. The appellate court may direct some interim payment to claimants subject to adjustment in the eventual award."

22. Mrs. Fouzia Mirza, learned Senior Advocate appearing for the respondents / defendants No. 1 and 2, would oppose. Mrs. Fouzia Mirza leading the arguments would submit that the suit filed by the plaintiffs has been dismissed by the learned Trial Court as the plaintiffs failed to prove that the suit land was in their ownership and possession and possession was not taken over by the State-respondent / defendant No. 3. She would argue that a notification under Section 10(3) of the Act of 1976 was issued on 25.04.1988 and possession was taken over on 10.06.1988. She would argue that in WP No. 3424/1997, the petitioners were granted liberty and the matter was sent to the Competent Authority to adjudicate on the question with respect to the possession of the suit property, and it was decided in favour of the State vide order dated 28.03.2011. She would further submit that the suit property is still recorded in the name of the State in the revenue records. Learned Senior Counsel would also submit that an order was passed by the Additional Commissioner, Raipur Division, Raipur, dated 29.10.2011, but the Act of 1976 was repealed on 22.03.1999 by the Urban Land (Ceiling and Regulation) Repeal Act, 1999. She would contend that Section 4 of the Repeal Act, 1999 delineates that except the proceeding relating to Sections 11, 12, 13 and 14 of the Act of 1976, all other proceedings would abate and as per the saving clause, the repeal of the principal Act would not affect the vesting of any vacant land under Section 10 (3), whose possession

has already been taken over by the State. She would further contend that the Commissioner or Additional Commissioner had no authority of law to adjudicate and decide the appeal preferred by the plaintiffs; therefore, the order passed by the Commissioner dated 29.10.2011 was void ab initio. She would also contend that the order dated 29.10.2011 was challenged by filing WP(227) No. 159/2013 before the High Court, which was dismissed as withdrawn, and a liberty was granted to avail the alternative remedy available under the law. She would argue that the order dated 29.10.2011 was challenged by filing an appeal before the State Government, but it was dismissed for want of jurisdiction, and again liberty was granted to prefer an appeal / revision before the Board of Revenue. She would further argue that a revision was preferred before the Board of Revenue on 26.05.2015, but its outcome is not known. She would also argue that the revision preferred by the State was admitted by the Board of Revenue, and the said order was challenged by the plaintiffs before the High Court. She has placed reliance on the judgments passed by the Hon'ble Supreme Court in the matter of **S. Shivraj Reddy (Died) Thr His LRs. and Another Vs. S. Raghuraj Reddy and Others, 2024 INSC 427 (Passed in Civil Appeal @ SLP (Civil) No (s). 4237 of 2015, Dated May 16, 2024)**.

23. Mrs. Fouzia Mirza, learned Senior Advocate, would submit that the Urban Public Transport Society, Durg, has already completed the construction of a Bus-Stand over the suit property. She would contend that the suit was filed by the plaintiffs in the year 2015, with a delay of 28 years, and thus, the suit is barred by limitation. She would further contend that the plaintiffs are not in possession, and they have not

sought any consequential relief. She would also contend that the plaintiffs have not challenged the notification issued under Section 10(1) of the Act of 1976 dated 04.03.1988, under Section 10(3) dated 22.04.1988, and the order declaring the land of the plaintiffs surplus dated 25.04.1988 and therefore, the suit filed by the plaintiffs is not maintainable. She has further placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of **State of M.P. Vs. Ghisilal, in Civil Appeal No. 2153 of 2012, Dated November 22, 2021.**

24. Mrs. Fouzia Mirza, learned Senior Counsel, would argue that after the Repeal of the Ceiling Act 1976, the order, if any, passed by the Additional Commissioner would be void ab initio. In this regard, she has placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of **The State of Haryana Vs. The Hindustan Construction Company Limited, passed in Civil Appeal No(s). 10792-10794 of 2011, Dated September 15, 2017.** She would contend that any order passed by the authority without jurisdiction is nullity and reliance has been placed in the matter of **Gurnam Singh (D) Thr. Lrs. & Ors. Vs. Gurbachan Kaur (D) By Lrs. & Ors.**, passed by the Hon'ble Supreme Court in **Civil Appeal No. 5671 of 2017.**
25. Mrs. Fouzia Mirza, learned Senior Advocate, would state that a prayer for moulding of relief cannot be granted as the suit has been filed with a specific pleading and moulding of relief is not permissible in civil law. The relief can only be moulded when it shortens the litigation between the parties, but such a prayer should not be taken by the party, surprisingly.

26. Mrs. Fouzia Mirza, learned Senior Advocate, would contend that PW-1 Kamlesh Kumar Sharma has admitted in his evidence that the suit land was recorded in the name of the State in the year 1988, and all the proceedings pertaining to the Ceiling Act were conducted while his father, late Gajanand Sharma, was alive. Lastly, she contended that the land has already been handed over to Durg Bhilai Urban Society vide Gazette notification dated 20.05.2014, and the construction of the Bus-Stand has already been completed.

27. I have heard learned counsel for the parties, considered their rival submissions made herein above and perused the records of the Courts below with utmost circumspection.

28. The question for determination would be -

*(i) Whether the learned trial Court rightly dismissed the suit filed by the plaintiffs, ignoring the order passed by the learned Additional Commissioner dated 29.10.2011, and whether the relief sought for by the plaintiffs can be moulded?*

29. In the matter of **Ghisilal (supra)**, the suit filed by the plaintiff was held to be belated and not maintainable on the ground that notifications were issued under Section 10 of the Act of 1976, and thereafter the subject land was utilized for the construction of houses for the poor by spending huge amounts. The plaintiff therein failed to challenge the order passed by the competent authority declaring the land as surplus land. The relevant paragraph No. 7 is reproduced herein below:-

“7. The aforesaid impugned judgment is questioned in this appeal mainly on the ground that after necessary notifications were issued under Section 10 of the ULC Act, appellant has taken possession and utilised the subject land for construction of houses for the poor by spending huge amounts. It is the case of the appellant that

the respondent has not questioned the orders passed by the competent authority declaring the land as surplus land, it is not open to seek declaration by the respondent – plaintiff as prayed for. A specific ground was raised in the grounds of appeal that after taking possession, land was recorded in the name of the Government and the surplus land was allotted to Bhopal Development Authority for the benefit of slum dwellers and the said Authority has already constructed 100 (hundred) houses on the land by spending about Rs.1.50 Crores by the time the appeal was preferred to this Court. It is also the case of the appellant that relief as sought in the suit is a belated attempt, though such suit is not maintainable in law.”

30. In the present case, the orders passed by the authorities under the Act of 1976 were challenged by the plaintiffs by filing WP No. 3424/1997, and it was disposed of vide order dated 19.10.2010, reserving liberty in favour of the plaintiffs to move an application before the Competent Authority to decide the issue with regard to possession. Thus, the decision taken by the Competent Authority under the Act of 1976 was challenged by the plaintiffs. The application so moved by the plaintiffs was rejected by the Additional Collector vide order dated 28.03.2011, which was challenged by the plaintiffs by filing an appeal before the Additional Commissioner and the said appeal was allowed vide order dated 29.10.2011 and, therefore, the facts of the present case are different from the facts of the cited case.
31. In the matter of ***Hindustan Construction Company Ltd. (supra)***, the Hon'ble Supreme Court held that there were no proceedings pending against the respondent under the Act of 1973, when the new Act came into force on 01.04.2003. The suo-moto revisional power was exercised by the revisional authority thereafter. The repeal and saving clause, Section 61 of the Act 2003, saved only pending proceedings

under the repealed Act. Thus, it was held that after repeal, suo-moto revisional power under Section 40 of the former Act was not sustainable. The relevant paragraph No. 10 is reproduced herein below:-

**“10.** The assessment under the Act of 1973 having been completed and refund ordered, the exercise of suo-moto revisional powers under Section 40 of the same after repeal was clearly unsustainable in view of the contrary intention expressed under Section 61 of the Act of 2003, saving only pending proceedings. Section 4 of the Punjab General Clauses Act, 1858 will have no application in view of the contrary intention expressed in Section 61 of the repealing Act. Had a contrary intention not been expressed, the issues arising for consideration would have been entirely different. The observations in ***State of Punjab vs. Mohar Singh Pratap Singh***, (1955) 1 SCR 893, as extracted below are considered relevant:-

“8.....Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them.....”

The observations in ***Gammon India Ltd.*** (supra) at paragraph 73 are to the same effect.”

32. In the case at hand, the plaintiffs challenged the orders passed by the Competent Authority under the Act of 1976 by filing WP No. 3424/1997, which was entertained, and finally, liberty was granted to the plaintiffs to move an application before the Competent Authority to decide on the

issue with regard to possession. The Repeal Act came into force on 10.03.2000, and prior to the said date, the decision taken by the Competent Authority was challenged. Thus, the facts of the cited case are different from the facts of the present case.

33. In the matter of ***Gurnam Singh(D) (supra)***, the Hon'ble Supreme Court has held that it is a fundamental principle of law that a decree passed by the Court, if it is a nullity, its validity can be questioned in any proceeding, including in execution proceedings or even in collateral proceedings. The relevant paragraph No. 22 is reproduced herein in below:-

**“22)** It is a fundamental principle of law laid down by this Court in ***Kiran Singh's case*** (supra) that a decree passed by the Court, if it is a nullity, its validity can be questioned in any proceeding including in execution proceedings or even in collateral proceedings whenever such decree is sought to be enforced by the decree holder. The reason is that the defect of this nature affects the very authority of the Court in passing such decree and goes to the root of the case. This principle, in our considered opinion, squarely applies to this case because it is a settled principle of law that the decree passed by a Court for or against a dead person is a “nullity” (***See-N. Jayaram Reddy & Anr. Vs. Revenue Divisional Officer & Land Acquisition Officer, Kurnool, (1979) 3 SCC 578, Ashok Transport Agency vs. Awadhesh Kumar & Anr., (1998) 5 SCC 567 and Amba Bai & Ors. Vs. Gopal & Ors., (2001) 5 SCC 570.***”

34. It is true that any order or judgment passed by any authority or the court having no jurisdiction is void, but, at the same time, it is also settled legal proposition that even if an order is void, it requires to be so declared by a competent forum, and it is not permissible for any person to ignore the same, merely because in his opinion, the order is void. The Hon'ble Supreme Court in the matter of ***Krishnadevi***

**Malchand Kamathia and Others Vs. Bombay Environmental Action Group and Others**, reported in (2011) 3 SCC 363, in paragraphs No. 16, 17, 18, and 19, held as under:-

**“16.** It is a settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. In *State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil*, (1996) 1 SCC 435, *Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.*, (1997) 3 SCC 443, *M. Meenakshi v. Metadin Agarwal*, (2006) 7 SCC 470 and *Sneh Gupta v. Devi Sarup*, (2009) 6 SCC 194, this Court held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum.

**17.** In *State of Punjab v. Gurdev Singh*, (1991) 4 SCC 1 this Court held that a party aggrieved by the invalidity of an order has to approach the court for relief of declaration that the order against him is inoperative and therefore, not binding upon him. While deciding the said case, this Court placed reliance upon the judgment in *Smith v. East Elloe RDC*, 1956 AC 736, wherein Lord Radcliffe observed: (AC pp. 769-70)

“... An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity [on] its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.”

**18.** In *Sultan Sadik v. Sanjay Raj Subba*, (2004) 2 SCC 377, this Court took a similar view observing that once an order is declared non est by the court only then the judgment of nullity would operate *erga omnes* i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity.

**19.** Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person.”

35. The Coordinate Bench in the matter of ***State of Chhattisgarh and Another Vs. Smt. Indrawati and Others*** reported in ***ILR 2019 Chhattisgarh 34***, while dealing with the similar issue in para 16, 17, 18, 19 held as under :-

“**16.** It is well settled law that even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an order will, in fact, be effective inter partes until it is successfully avoided or challenged in a higher forum.

**17.** The Supreme Court in the matter of *State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (Dead) and others* (1996) 1 SCC 435 : (1996 AIR SCW 301) has clearly held that even a void order or decision rendered between parties will be effective inter partes until it is successfully avoided by observing as under: -

“7. ... even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an order will, in fact, be effective inter partes until it is successfully avoided or challenged in a higher forum. Mere use of the word 'void' is not determinative of its legal impact. The word 'void' has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal. It can be avoided. ...”

**18.** The Supreme Court following the principle of law laid down in *M.K. Kunhikannan Nambiar's case* (1996 AIR SCW 301) (supra), in the matter of

Krishnadevi Malchand Kamathia and others v. Bombay Environmental Action Group and others (2011) 3 SCC 363 : (AIR 2011 SC 1140) again held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum. Their Lordships of the Supreme Court observed in paragraphs 17, 18 and 19 as under: -

"17. In State of Punjab v. Gurdev Singh (1991) 4 SCC 1 : (AIR 1991 SC 2219) this Court held that a party aggrieved by the invalidity of an order has to approach the court for relief of declaration that the order against him is inoperative and therefore, not binding upon him. While deciding the said case, this Court placed reliance upon the judgment in Smith v. East Elloe RDC, 1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855, wherein Lord Radcliffe observed: (AC pp. 769-70)

"... An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity [on] its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

18. In Sultan Sadik v. Sanjay Raj Subba (2004) 2 SCC 377 : (AIR 2004 SC 1377), this Court took a similar view observing that once an order is declared non est by the court only then the judgment of nullity would operate erga omnes i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity.

19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may

be void for one purpose or for one person, it may not be so for another purpose or another person."

**19.** Similarly, in the matter of *Shyam Sundar Sarma v. Pannalal Jaiswal and others* (2005) 1 SCC 436 : (AIR 2005 SC 226), a three-Judge Bench of the Supreme Court has clearly held that an appeal which is dismissed for default or as barred by limitation is nevertheless an appeal in the eyes of the law for all purposes and a decision in the appeal and the same cannot be treated on par with non-filing of an appeal or withdrawal of appeal."

36. Thus, the order passed by the Additional Commissioner, Raipur, dated 29.10.2011, cannot be ignored on the ground that it was passed by the authority having no jurisdiction. The order dated 29.10.2011 is still in existence as the same has not been reversed, rescinded or modified by any Court of law. The Additional Commissioner, Raipur, vide order dated 29.10.2011, set aside the order passed by the Additional Collector cum Competent Authority and restored the possession of the plaintiffs.
37. With regard to moulding of relief, the Hon'ble Supreme Court in the matter *J. Ganapatha (supra)* held that the concept of moulding of relief refers to the ability of a court to modify or shape a relief sought by a party in a legal proceeding. The principle enables the court to grant appropriate remedies even if the relief requested in the pleading is not exact or could not be considered by the court, or changed circumstances have rendered the relief obsolete. Looking to the facts of the case, this Court deems it proper to mould the relief from vacant possession of the suit property to the grant of adequate compensation.
38. It is not in dispute that the suit property has already been handed over to Durg Urban Public Transport Society vide Gazette Notification dated

20.05.2014, and the construction of the Bus-Stand has already been completed. The relief sought for by the plaintiffs can be granted as the order passed by the Competent Authority dated 28.3.2011 has already been set aside by the Additional Commissioner, Raipur, vide order dated 29.10.2011, but it will hamper the public exchequer as the construction of the bus stand has already been completed. The Additional Commissioner, in its order dated 29.10.2011, has categorically held that on 10.06.1988, a memo was sent to the Revenue Inspector to take possession, and according to the order-sheet dated 25.06.1988, possession of the suit property was taken over by the State, but no memo was issued by the Tehsildar Nazul to take physical possession of the suit property. It is further observed that along with the report, possession *panchanama* is not available and thus possession was not taken over according to the provisions of Section 10(6) of the Act of 1976, resultantly the Additional Commissioner, Raipur set aside the order passed by the Additional Collector dated 28.03.2011 and directed the revenue authorities to enter the names of the plaintiffs in the revenue records. The respondents/defendants challenged the said order by filing WP(227) 159/2013, but it was withdrawn on 26.02.2013, and the revision preferred by the State before the Chhattisgarh Government, Department of Revenue and Disaster Management was dismissed for want of jurisdiction vide order dated 01.03.2014, and thus, the order passed by the Additional Commissioner dated 29.10.2011 attained finality.

39. Admittedly, the suit property got recorded in the name of the State on 25.06.1988, and the plaintiffs are out of possession therefore they

sought the relief of possession by virtue of the order dated 29.10.2011. The possession of the plaintiffs can be termed as de jure possession by virtue of the order dated 29.10.2011, and in order to acquire de facto possession, they filed a civil suit. Thus, the above discussed facts make it abundantly clear that actual possession was taken over by the State in a proceeding under the Act of 1976 on 25.6.1988, but the Additional Commissioner set aside all earlier orders passed by the Competent Authority.

40. With regard to limitation, the plaintiffs challenged the order passed by the Competent Authority, including the entire proceedings, by filing WP No. 3424/1997 before the High Court, and it was disposed of vide order dated 19.10.2010, whereby the plaintiffs were granted the liberty to move an application before the Competent Authority to decide on the issue of possession of the suit property. The writ petition filed by the plaintiffs was the continuation of the actual proceedings of the Ceiling Act, 1976. The competent authority decided the application moved by the plaintiffs on 28.3.2011. The plaintiffs challenged the said order by filing an appeal before the Additional Commissioner, Raipur, which was allowed vide order dated 29.10.2011. The order dated 29.10.2011 attained finality. Thus, the cause of action arose in favour of the plaintiffs when the defendants started raising the construction of the Bus Stand, ignoring the order dated 29.10.2011 and from the said date, the suit is within limitation.
41. With regard to the effect of repeal act, the proceedings including the order passed in Ceiling Case were challenged by the plaintiffs by filing WP No. 3424/1997 prior to the enactment of repeal act by filing writ

petition and in the said writ petition, liberty was granted to the plaintiffs to approach the Competent Authority, thus the application moved by the plaintiffs pursuant to the order passed by the High Court was in continuation of the actual proceedings of the Ceiling Act, 1976 and the Repeal Act would not come in the way.

42. The learned trial Court dismissed the suit filed by the plaintiffs on the ground that the possession of the suit property was taken over by the State in the year 1988, the name of the State was entered into the revenue record, and it is held that the compensation was assessed, but the plaintiffs did not accept it. The documents filed by the defendants would reveal that a proceeding under the Act of 1976 was initiated, and the suit land was declared surplus land. It is also held that a notification under Section 10(1) of the Act of 1976 was issued on 04.03.1988, the notification under Section 10(3) of the Act was issued on 22.04.1988, and thereafter an order was passed by the Competent Authority directing the Tehsildar Nazul to take over possession, and resultantly possession was taken over on 10.06.1988. The learned trial Court also held that the suit property was transferred to Durg Urban Public Transport Society vide Gazette notification dated 20.05.2014 and a Bus-Stand has been constructed over the suit property; therefore, it would not be proper to ignore the huge fund spent by the State for construction of the Bus Stand and to grant a decree to hand over vacant possession of the suit property to the plaintiffs.

43. Perusal of the judgment passed by the learned Trial Court would reveal that the order passed by the Additional Commissioner dated 29.10.2011 has not been taken into consideration properly, whereby

the order passed by the Additional Collector dated 28.03.2011 was set aside.

44. In the matter of ***Bernard Francis Joseph Vaz (supra)***, the Hon'ble Supreme Court has held that the right to property is a human as well as a Constitutional right under Article 300-A of the Constitution of India and the obligation to pay compensation, though not expressly included, can be inferred in that Article. In the said matter, the Hon'ble Supreme Court further held that normally, compensation is determined as per the market price of the land on the date of the issuance of the notification regarding the acquisition, and instead of quashing the impugned notification, the date of notification can be shifted so that the landowners are adequately compensated. In the matter of ***Raj Kumar Johri (supra)***, the date of notification issued under Section 4(1) of the Land Acquisition Act, 1894, was postponed to 01-01-1988 for the purpose of determination of the compensation.
45. With regard to prayer for moulding of relief, certainly the plaintiffs have a case as their possession has been secured by the Additional Commissioner, Raipur vide order dated 29.10.2011 but at the same time it can't be ignored that a bus stand has already been constructed over the suit property, therefore instead of vacant possession of the suit property, the plaintiffs are held entitled for compensation against the acquisition of their land.
46. ***Raj Kamar Johri (Supra), Medha Patkar (Supra) and Bernard Francis Joseph (Supra)*** are the cases where land acquisition proceedings were initiated according to the Act of 1894 and the Hon'ble Supreme Court pleased to fix another date of notification under Section 4(1) of the Act of 1894 but the present is a case where the suit

land was declared surplus according to the provisions of the Act of 1976 and possession was also taken over; therefore the date of notification cannot be shifted to any other date but at the same time, the plaintiffs cannot be deprived of their right to property; therefore, they are held entitled to get adequate compensation according to the provisions of the Act of 1894.

47. The documents filed by the defendants establish that possession was taken over on 10.06.1988, but said orders have been set aside by the Additional Commissioner, and thereafter the plaintiffs filed a suit claiming possession; therefore, the respondents are directed to determine and make payment of proper compensation.
48. As a result, the judgment and decree passed by the learned Trial Court are set aside. The relief(s) sought by the plaintiffs are modified, and they are held entitled to compensation according to the provisions of the Act, 1894. The respondent authorities shall determine and make payment of the compensation based on its fair market value, specifically in the year 1988.
49. Accordingly, the question for determination No. *(i)* is decided in favour of the plaintiffs.
50. Resultantly, the appeal is allowed to the extent indicated herein above.

Sd/-

**(Rakesh Mohan Pandey)  
Judge**

### **HEAD NOTE**

- It is true that any order or judgment passed by any authority or the court having no jurisdiction is void. But, at the same time, it is also settled legal proposition that even if an order is void, it requires to be so declared by a competent forum, and it is not permissible for any person to ignore the same merely because, in his opinion, the order is void.

यह सत्य है कि किसी प्राधिकारी या न्यायालय द्वारा बिना किसी क्षेत्राधिकार के पारित किया गया आदेश या निर्णय शून्य होता है, साथ ही साथ, यह भी विधि का स्थापित सिद्धांत है कि, यदि आदेश शून्य हो तब भी उसे सक्षम फोरम द्वारा शून्य घोषित किया जाना आवश्यक है, तथा किसी व्यक्ति के लिये यह अनुज्ञेय नहीं है कि वह उक्त का केवल इसलिये अवज्ञा करें कि, उसके मतानुसार आदेश शून्य है ।

- The concept of moulding of relief refers to the ability of a court to modify or shape a relief sought by a party in a legal proceeding. The principle enables the court to grant appropriate remedies even if the relief requested in the pleading is not exact or could not be considered by the court, or changed circumstances have rendered the relief obsolete.

अनुतोष प्रदान करने की अवधारणा का अर्थ, कानूनी कार्यवाही में न्यायालय द्वारा किसी पक्ष द्वारा मांगे गये अनुतोष को उपांतरित करने या स्वरूप प्रदान करने की क्षमता से है । यह सिद्धांत, न्यायालय को उचित उपचार प्रदान करने में सक्षम बनाता है, भले ही अभिवचन में चाहा गया अनुतोष वैसा न हो या न्यायालय द्वारा उक्त को स्वीकार न किया जा सके या बदले हुये परिस्थितियों के कारण, चाहा गया अनुतोष अप्रचलित हो गया हो ।