IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 210 of 2025
Decided on 08.04.2026

State of H.P. & others ...Petitioners.

Versus

Hem Raj .....Respondent.

Coram
Hon'ble Mr. Justice Romesh Verma, Judge.
Whether approved for reporting?[1]

For the petitioners: Mr. Manish Thakur, Deputy Advocate General.

For the respondent: Mr. Varun Chauhan, Advocate.

Romesh Verma, Judge

The present appeal arises out of the judgment and decree, dated 22.05.2025 as passed by the learned District Judge-I, Mandi, District Mandi, HP in Civil Appeal No. 13 of 2025, whereby the appeal preferred by the present appellants/ defendants has been ordered to be dismissed and the judgment and decree dated 26.03.2024, as passed by the learned Senior Civil Judge, Court No.1, Mandi, District Mandi, H.P., passed in Civil Suit No. 82 of 2020, have been affirmed, whereby the suit filed by the plaintiff/respondent for declaration and mandatory injunction was decreed.

[1] Whether reporters of Local Papers may be allowed to see the judgment?

2. Brief facts of the case are that the plaintiff/ respondent filed a suit for mandatory injunction in the Court of learned Senior Civil Judge, Court No.1, Mandi, HP on 26.03.2024 on the ground that the land comprised in Khewat Khatauni No. 45 min/ 49, Khasra No. 1123 measuring 00-04-05 bigha situated in Muhal Badyar/30, Mauja Bhardgaon, Tehsil Kotli, District Mandi, H.P is owned and possessed by the plaintiff. In the year 1994, the defendants No. 3 and 4 had constructed Gharwan to Taryasal –Dawahan road and for that purpose, the land owned and possessed by the plaintiff was utilized.

3. The officials of the defendants assured the plaintiff to compensate him for utilization of his land, however no steps were taken by them. When the plaintiff approached the defendants for the grant of compensation, no steps were taken by them for the reasons best known to them. Though, assurance was given to the plaintiff to compensate him, but till date, no compensation amount has been paid, therefore, the plaintiff was constrained to file a suit for declaration to the effect that he is the owner in possession of the suit land and for mandatory

injunction that since the defendants have utilized the suit land, therefore, the plaintiff sought vacant possession of the suit land.

4. The suit was contested by the defendants/State by raising preliminary objections qua maintainability, limitation, cause of action, estoppels, equity, valuation , mis joinder and non joinder etc. On merits, it was averred that the defendants No. 3 & 4 had constructed the road in question with the consent of the plaintiff in the year 1994 and the defendants had not given any assurance to the plaintiff to pay the compensation for the suit land. At the time of construction of the road, the plaintiff never raised any objection and now he cannot be permitted to raise objection that too after elapse of more than 30 years of the construction of road and consequently, the defendants sought dismissal of the suit.

5. On the pleadings of the parties, the learned trial court on 27.04.2022 framed the following issues:-

> 1. Whether the plaintiff is entitled to a mandatory injunction against the defendants, as prayed ? OPP
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> 2. Whether the plaintiff is entitled to a decree of possession, as prayed ? OPP
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> 3. Whether the suit in hand is not maintainable ? OPD

4. Whether the plaintiff has not approached the Court with clean hands, if so, its consequences ? OPD

5. Whether the plaintiff has concealed material facts from the Court, if so, its consequences ? OPD

6. Whether the plaintiff has no cause of action against the defendants ? OPD

7. Whether the suit in hand is bad for non joinder of necessary parties ? OPD

8. Whether the suit is bad for mis-joinder of parties ? OPD

9. Whether the suit is not properly valued for Court fee and jurisdiction ? OPD

10. Relief.

6. The learned trial court directed the respective parties to adduce evidence in support of their contentions to corroborate their respective case and ultimately, the learned trial court vide its judgment and decree dated 26.03.2024 decreed the suit of the plaintiff/respondent and mandatory injunction is issued in favour of the plaintiff directing the defendants to compensate the plaintiff for suit land comprised in Khasra No. 1123/1 situated in Muhal Badyar/30, Tehsil Kotli, District Mandi, H.P. within one year

from the date of passing of the judgment for its formal acquisition.

7. Feeling dissatisfied by the judgment and decree, dated 26.03.2024, the defendants/State preferred an appeal before the learned First Appellate Court on 02.05.2024, which came to be dismissed vide judgment and decree dated 022.05.2025.

8. Still feeling aggrieved by the aforesaid judgments and decrees, the appellants/State have preferred the present regular second appeal.

9. It is contended by Mr. Manish Thakur, learned Deputy Advocate General, appearing for the appellants/State that the learned courts below have not appreciated the real point of controversy inter se the parties and the impugned judgments and decrees passed by the learned courts below are perverse and thus, liable to be quashed and set aside. He has further contended that the learned Courts below have not appreciated oral as well as documentary evidence, therefore, on that count, the instant appeal deserves to be allowed.

10. On the other hand, Mr. Varun Chauhan, Advocate, learned counsel for the respondents has defended the judgments and decrees as passed by the learned courts below and has submitted that since the land of the respondent was utilized for the construction of the road in question, therefore, in view of the mandate as laid down by the Hon'ble Supreme Court, whereby it has been repeatedly held that no person can be deprived of his property without following the due process of law, therefore, the impugned judgments and decrees deserves to be upheld.

11. With the consent of the parties the appeal is finally heard at the admission stage.

12. In order to substantiate his case, the plaintiff, Hem Raj, has entered the witness box as PW-1. In his deposition, he has reiterated the averments as made in the plaint, and a copy of his affidavit has been placed on record as Ext. PW-1/A. As per the same, the plaintiff has stated that the defendants raised construction of the road, i.e., Gharwan to Taryasal–Dawahan road, in the year 1994 through the suit land comprised in Khasra No. 1123/1,

measuring 0.3.4 bighas, without the express or implied consent or permission of the plaintiff.

13. It has been stated in his examination-in-chief that, although an assurance was given by the officials of the defendants to follow the due process of law, including the payment of compensation, no steps were taken by them. Neither were acquisition proceedings initiated nor was any compensation paid to the plaintiff. In cross-examination, the defendants could not extract anything in their favour.

14. In order to rebut the evidence of the plaintiff, the defendants examined DW-1, Sohan Lal Chaudhary, who was posted as Junior Engineer, Bhargaon, sanctioned under the HPPWD Sub-Division, Kotli, during the year 1994. He stated that the road was constructed at the request and with the oral consent of the local public members, including the plaintiff, and that no one raised any objections regarding the construction of the road at the relevant time. He further stated that neither the defendants assured the plaintiff nor any other stakeholders of payment of compensation for the land used for the construction of the road.

15. DW-2 is the statement of Daya Ram Katoch, who was working as a Work Inspector during the construction of the road in the year 1994. He also reiterated the same points as stated by DW-1, Sohan Lal. He stated that the road was constructed at the request and with the oral consent of the local public members, including the plaintiff, and that no one raised any objections regarding the construction of the road at the relevant time. He further stated that no assurance was given to the plaintiff regarding the payment of compensation.

16. DW-1, in his cross-examination, admitted that at the time of construction, no written permission was obtained from the stakeholders. He stated that the road was constructed with the consent of the local residents. He further admitted that, with respect to such consent, no affidavit was obtained by the department. He acknowledged that, when the land was utilized for the construction of the road, a notification should have been issued under the provisions of the Land Acquisition Act, however, in the present case, no such notification was issued by the department. He also admitted that the

defendants/appellants had constructed the said road over Khasra No. 1123.

17. In order to prove his title, the plaintiff has placed on record a copy of the jamabandi, Ext. DW-1/B, with respect to Khasra No. 1123/1, which clearly demonstrates that the plaintiff is the owner in possession of the suit land. The Hon'ble Apex Court, in its various verdicts, has held that no person can be deprived of his property without following due process of law.

18. In the present case, in the absence of perfection of title by virtue of adverse possession, the State cannot deny the claim put forward by the plaintiff. On the basis of the plaintiff's title and in light of the admissions made by the defendants' witnesses that the road has been constructed on the suit land owned by the plaintiff, it becomes apparent that the land owned by the plaintiff has been utilized by the appellants/defendants for the construction of the road.

19. The contentions of the learned Deputy Advocate General that there was oral consent by the plaintiff are unsupported, as there is no material on record to demonstrate or show that any oral or written consent was

given by the plaintiff to the department. There is not an iota of evidence on record to show that oral consent was provided by the plaintiff. The plaintiff has based his case on the strength of his title, and as the absolute holder of the suit property, he is entitled to file a suit at any point in time, unless his claim is defeated by the perfection of adverse possession by the opposite party. In the present case, that is not the case of the State. Therefore, the suit could have been filed by the plaintiff at any time as the titleholder of the suit land. Admittedly, in the present case, the land has been utilized for the construction of the road. However, neither acquisition proceedings were initiated, nor has any amount of compensation been paid.

20. The Hon'ble Apex Court in ***Vidya Devi*** vs. ***State of Himachal Pradesh & others (2020) 2 SCC 569*** has held that no person can be forcibly dispossessed of his property without any legal sanction and without following the due process of law and depriving her payment of just and fair compensation. The State being a welfare State is governed by the rule of law cannot arrogate to itself a

status beyond what is provided by the Constitution. The Court has held as follows:

> *"12. We have heard learned Counsel for the parties and perused the record.*
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> *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. Vidaya Devi vs The State Of Himachal Pradesh on 8 January, 2020 Article 31 guaranteed the right to private property 1, which could not be deprived without due process of law and upon just and fair compensation.*
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> *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 2 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 The State of West Bengal v. Subodh Gopal Bose and Ors. AIR 1954 SC 92. 2 Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors. (2013) 1 SCC 353.*
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> *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 Constitution. Reliance is placed on the judgment in*

Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai4, wherein this Court held that:

“ 6. … Having regard to the provisions contained in Article 300A 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.” (emphasis supplied)

12.4 In N. Padmamma v. S. Ramakrishna Reddy5, this Court held that:

“21. If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article 300A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article 300A of the Constitution of India, must be strictly construed.” (emphasis supplied) 4 (2005) 7 SCC 627.

12.5 In Delhi Airtech Services Pvt. Ltd. & Ors. v. State of U.P. & Ors., this Court recognized the right to property as a basic human right in the following words:

“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." (emphasis supplied)

12.6 In Jilubhai Nanbhai Khachar v. State of Gujarat,7 this Court held as follows :

"48. …In other words, Article 300A 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 300A. In other words, if there is no law, there is no deprivation." (emphasis supplied) 10.3. 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, there is no deprivation."

12.6 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 6 (2011) 9 SCC 354. 7 (1995) Supp. 1 SCC 596. 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 in 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 & Ors. v. M.I.D.C. & Ors. 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 held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. 8 (2013) 1 SCC 353. 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.

12.11. We are surprised by the plea taken by the State before the High Court, that since it has been in continuous possession of the land for over 42 years, it would tantamount to "adverse" possession. The State being a welfare State, cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as has been done in the present case. 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.

12.14. In Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors.,10 this Court while dealing with a similar fact situation, held as follows : "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 9 P.S. Sadasivaswamy v. State of T.N. (1975) 1 SCC 152. 10 (2013) 1 SCC 353. 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. 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." (emphasis supplied)

13. In the present case, the Appellant being an illiterate person, who is a widow coming from a rural

> *area has been deprived of her private property by the State without resorting to the procedure prescribed by law. The Appellant has been divested of her right to property without being paid any compensation whatsoever for over half a century. The cause of action in the present case is a continuing one, since the Appellant was compulsorily expropriated of her property in 1967 without legal sanction or following due process of law. The present case is one where the demand for justice is so compelling since the State has admitted that the land was taken over without initiating acquisition proceedings, or any procedure known to law. We exercise our extraordinary jurisdiction under Articles 136 and 142 of the Constitution, and direct the State to pay compensation to the appellant.*

21. To the similar effect, the Hon'ble Apex Court in ***(2022) 7 SCC 508*** titled as ***Sukh Dutt Ratra and another*** vs. ***State of H.P. and others*** has held as under:

> *"14. It is the cardinal principle of the rule of law, that nobody can be deprived of liberty or property without due process, or authorization of law. The recognition of this dates back to the 1700s to the decision of the King's Bench in Entick v. Carrington17 and by this court in Wazir Chand v. The State of Himachal Pradesh18. Further, in several judgments, this court has repeatedly held that rather than enjoying a wider bandwidth of lenience, the State often has a higher responsibility in demonstrating that it has acted within the confines of legality, and therefore, not tarnished the basic principle of the rule of law.*
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> *15. When it comes to the subject of private property, this court has upheld the high threshold of legality that must be met, to dispossess an individual of their property, and even more so when done by the State.*

In Bishandas v. State of Punjab19 this court rejected the contention that the petitioners in the case were trespassers and could be removed by an executive order, and instead concluded that the executive action taken by the State and its officers, was destructive of the basic principle of the rule of law. This court, in another case - State of Uttar Pradesh and Ors. v. Dharmander Prasad Singh and Ors. 20, held: "A lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. The use of the expression 're-entry' in the lease-deed does not authorise extrajudicial methods to resume possession. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law. In the present case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of Government and Governmental authorities should have a 'legal pedigree'".

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.

17. When seen holistically, it is apparent that the State's actions, or lack thereof, have in fact compounded the injustice meted out to the appellants and compelled them to approach this court, albeit belatedly. The initiation of acquisition proceedings initially in the 1990s occurred only at the behest of the High Court. Even after such judicial intervention, the State continued to only extend the benefit of the court's directions to those who specifically approached the courts. The State's lackadaisical conduct is discernible from this action of initiating acquisition proceedings selectively, only in respect to

the lands of those writ petitioners who had approached the court in earlier proceedings, and not other land owners, pursuant to the orders dated 23.04.2007 (in CWP No. 1192/2004) and 20.12.2013 (in CWP No. 1356/2010) respectively. In this manner, at every stage, the State sought to shirk its responsibility of acquiring land required for public use in the manner prescribed by law.

18. There is a welter of precedents on delay and laches which conclude either way – as contended by both sides in the present dispute – however, the specific factual matrix compels this court to weigh in favour of the appellant-land owners. The State cannot shield itself behind the ground of delay and laches in such a situation; there cannot be a 'limitation' to doing justice. This court in a much earlier case - Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, held:

'11……"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."

19. The facts of the present case reveal that the State has, in a clandestine and arbitrary manner, actively tried to limit disbursal of compensation as required by law, only to those for which it was specifically prodded by the courts, rather than to all those who are entitled. This arbitrary action, which is also violative of the appellants' prevailing Article 31 right (at the time of cause of action), undoubtedly warranted consideration, and intervention by the High

Court, under its Article 226 jurisdiction. This court, in Manohar (supra) - a similar case where the name of the aggrieved had been deleted from revenue records leading to his dispossession from the land without payment of compensation – held: 6"Having heard the learned counsel for the appellants, we are satisfied that the case projected before the court by the appellants is utterly untenable and not worthy of emanating from any State which professes the least regard to being a welfare State. When we pointed out to the learned counsel that, at this stage at least, the State should be gracious enough to accept its mistake and promptly pay the compensation to the respondent, the State has taken an intractable attitude and persisted in opposing what appears to be a just and reasonable claim of the respondent.

Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(1)(f) was deleted by the Forty-fourth Amendment to the Constitution, Article 300-A has been placed in the Constitution, which reads as follows: "300-A. Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law." 8.This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities. In our view, this case was an eminently fit one for exercising the writ jurisdiction of the High Court under Article 226 of the Constitution… 20. Again, in Tukaram Kana Joshi (supra) while dealing with a similar fact situation, this court held as follows: (SCC p. 359 para11)

"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."*
> *21. Having considered the pleadings filed, this court finds that the contentions raised by the State, do not inspire confidence and deserve to be rejected. The State has merely averred to the appellants' alleged verbal consent or the lack of objection, but has not placed any material on record to substantiate this plea. Further, the State was unable to produce any evidence indicating that the land of the appellants had been taken over or acquired in the manner known to law, or that they had ever paid any compensation. It is pertinent to note that this was the State's position, and subsequent findings of the High Court in 2007 as well, in the other writ proceedings."*

22. The similar position has been reiterated by the Hon'ble Division Bench of this Court in ***CWP No. 491 of 2022***, titled as ***Sakuntla Devi and another*** vs. ***State of Himachal Pradesh & another*** dated 20.10.2023. After relying upon the judgment of the Apex Court in Vidya Devi & SukhDutt Ratra's case, the Court held as follows:

> *"7. In the aforesaid judgments, Hon'ble Apex Court has categorically held that contention advanced by the State of delay and laches of the appellant in moving the Court is liable to be rejected especially when it is not in dispute that petitioner are suffering continuous loss coupled with the fact that they repeatedly requested the authorities to initiate acquisition proceedings.*
> *8. If the aforesaid judgments are read in their entirety, it clearly emerges that land owners cannot be deprived of their land, without following due process of law. If it is so, ground raised by the respondents*

that petitioners have made their land available with consent, is of no consequence rather, this court, having taken note of the fact that the land of petitioners stands utilized for the construction of road in question, is compelled to agree with the submission of learned counsel for the petitioners that her clients are entitled for compensation qua the land utilized by respondents for construction of road in question.

10. Admittedly, land of the petitioners stands utilized for construction of road but till date, they have not been paid any amount, which action of the respondent-State certainly amounts to forcible dispossession of the petitioners from their land, which is violative of provision contained under Art. 300-A of the Constitution of India.

14. In case titled, State of Himachal Pradesh v. Umed Ram Sharma (1986) 2 SCC 68, Hon'ble Apex Court has held that entire State of Himachal Pradesh is a hilly area and without workable roads, no communication is possible; every person is entitled to life as enjoined in Article 21 of the Constitution of India; every person has right under Article 19 (1) (b) of the Constitution of India to move freely, throughout the territory of India; for the residents of hilly areas, access to road is access to life itself. Stand taken by the respondents that there was a policy for providing roads on demand of residents as a favour to them on conditions that they would not claim compensation, cannot be sustained because such stand is violative of Article 300A of the Constitution of India.

15. In case titled Hari Krishna Mandir Trust v. State of Maharashtra and others, 2020 9 SCC 356, Hon'ble

> *Apex Court has held that though right to property is not a fundamental right, but it is still a constitutional right under Article 300A of the Constitution of India and also a human right; in view of the mandate of Article 300A, no person can be deprived of his property save by the authority of law. No doubt, State possesses the power to take or control the property of the owner of the land for the benefit of public, but at the same time, it is obliged to compensate the injury by making just compensation."*

23. The Courts below, after appreciating the oral as well as documentary evidence placed on record and on the basis of the title, decreed the suit as filed by the respondent and have rightly came to the conclusion that he is entitled for mandatory injunction with the direction to acquire the portion of the suit land which has been utilized by the present appellants for the construction of the road.

24. The Hon'ble Apex Court has repeatedly held that no person can be deprived of his property without adopting due process of law, therefore, under such circumstances, the plea as set up by the appellants-State is not tenable in the facts and circumstances of the case, once they have utilized the land of the villagers without adopting due process of law. Now the plea as raised by the present appellants is not permissible that too at

the stage of Regular Second Appeal. There are concurrent findings of fact by the Courts below.

25. The Hon'ble Supreme Court in catena of judgments has held that the first appellate is the final court of the fact. No doubt, second appellate court exercising the power under Section 100 CPC can interference with the findings of fact on limited grounds such as - (a) where the finding is based on inadmissible evidence; (b) where it is in ignorance of the relevant admissible evidence; (c) where it is based on misreading of evidence; (d) where it is perverse, but that is not case in hand.

26. The Hon'ble Supreme Court while dealing with scope of interference under Section 100 in ***Hero Vinoth (minor)*** vs. ***Seshammal, (2006) 5 SCC 545*** has held as under:

> *"18. It has been noted time and again that without insisting for the statement of such a substantial question of law in the memorandum of appeal and formulating the same at the time of admission, the High Courts have been issuing notices and generally deciding the second appeals without adhering to the procedure prescribed under Section 100 of the CPC. It has further been found in a number of cases that no efforts are made to*

distinguish between a question of law and a substantial question of law. In exercise of the powers under this section in several cases, the findings of fact of the first appellate court are found to have been disturbed. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in the section must be strictly fulfilled before a second appeal can be maintained and no court has the power to add or to enlarge those grounds. The second appeal cannot be decided on merely equitable grounds. The concurrent findings of facts will not be disturbed by the High Court in exercise of the powers under this section. Further, a substantial question of law has to be distinguished from a substantial question of fact. This Court in Sir Chunilal V. Mehta and Sons Ltd. v. Century Spg. & Mfg. Co. Ltd. (AIR 1962 SC 1314) held that : "The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free

from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.

" 19. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences of fact are possible, one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible. The High Court will, however, interfere where it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or

was based upon inadmissible evidence or arrived at by ignoring material evidence. 20. to 22 xx xx xx xx

23. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

27. The Hon'ble Supreme Court in ***Annamalai*** vs. ***Vasanthi, 2025 INSC 1267***, has held as follows:-

"16. Whether D-1 and D-2 were able to discharge the aforesaid burden is a question of fact which had to be determined by a court of fact after appreciating the evidence available on record. Under CPC, a first appellate court is the final court of fact. No doubt, a second appellate court exercising power(s) under Section 100 CPC can interfere with a finding of fact on limited grounds, such as, (a) where the finding is based on inadmissible evidence; (b) where it is in ignorance of relevant admissible evidence; (c) where it is based on misreading of evidence; and (d) where it is perverse. But that is not the case here.

17. In the case on hand, the first appellate court, in paragraph 29 of its judgment, accepted the endorsement (Exb. A-2) made on the back of a registered document (Exb. A-1) after considering the oral evidence led by the plaintiff-appellant and the circumstance that signature(s)/thumbmark of D-1 and D-2 were not disputed, though claimed as one obtained on a blank paper. The reasoning of the first appellate court in paragraph 29 of its judgment was not addressed by the High Court. In fact, the High Court, in one line, on a flimsy defense of use of a signed blank paper, observed that genuineness of Exb. A-2 is not proved. In our view, the High Court fell in error here. While exercising powers under Section 100 CPC, it ought not to have interfered with the finding of

fact returned by the first appellate court on this aspect; more so, when the first appellate court had drawn its conclusion after appreciating the evidence available on record as also the circumstance that signature(s)/thumbmark(s) appearing on the document (Exb.A2) were not disputed. Otherwise also, while disturbing the finding of the first appellate court, the High Court did not hold that the finding returned by the first appellate court is based on a misreading of evidence, or is in ignorance of relevant evidence, or is perverse. Thus, there existed no occasion for the High Court, exercising power under Section 100 CPC, to interfere with the finding of the first appellate court regarding payment of additional Rs. 1,95,000 to D-1 and D-2 over and above the sale consideration fixed for the transaction. 18. Once the finding regarding payment of additional sum of Rs.1,95,000 to D-1 and D-2 recorded by the first appellate court is sustained, there appears no logical reason to hold that the plaintiff (Annamalai) was not ready and willing to perform its part under the contract particularly when Rs. 4,70,000, out of total consideration of Rs. 4,80,000, was already paid and, over and above that, additional sum of Rs.1,95,000 was paid in lieu of demand made by D-1 & D-2. This we say so, because an opinion regarding plaintiff's readiness and willingness to perform its part

> *under the contract is to be formed on the entirety of proven facts and circumstances of a case including conduct of the parties. The test is that the person claiming performance must satisfy conscience of the court that he has treated the contract subsisting with preparedness to fulfill his obligation and accept performance when the time for performance arrives."*

28 In view of the law laid down by the Hon'ble Apex Court, this Court finds that there is neither any error nor perversity in the impugned judgments and decrees passed by the courts below. No question of law, much less a substantial question of law, arises in the present case.

29 Both the courts below have rightly appreciated the point in controversy after considering the oral as well as documentary evidence placed on record and have rightly come to the conclusion that the plaintiff/respondent is entitled to a decree, directing the defendants/appellants to compensate the plaintiff for the suit land comprised in Khewat Khatauni No. 45 min/49, Khasra No. 1123, measuring 00-04-05 bigha, situated in Muhal Badyar/30, Mauja Bhardgaon, Tehsil Kotli, District Mandi, H.P., within one year from the date of passing of the judgment. There is no jurisdictional error on the part of the courts below.

30. In view of above, the present appeal being devoid of any merit deserves to be dismissed. Ordered accordingly. Pending application(s), if any, also stands disposed of.

(Romesh Verma)
Judge

April 8, 2026
(Nisha)