IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 1028 of 2002
Reserved on 28.05.2025
Decided on: 05.08.2025

Punam Gupta and another

…….. petitioners

Versus

State of H.P. and others ……..respondents

Coram:
Hon'ble Mr. Justice Vivek Singh Thakur, Judge
Hon'ble Mr. Justice Bipin Chander Negi, Judge
Whether approved for reporting? [1] Yes

For the petitioners	**:**	Mr. Surinder Sharma, Advocate.
For the respondents	**:**	Mr. Anup Rattan, Advocate General with Mr. Varun Chandel, Additional Advocate General and Ms. Seema Sharma, Deputy Advocate General for respondents No. 1 & 2/State.
	:	Mr. Balram Sharma, Deputy Solicitor General of India, [Senior Advocate] with Mr. Rajiv Sharma, Advocate, for respondent No.3.
	:	Mr. B.N. Misra, Sr. Advocate with Ms. Vandana Misra, Advocate, for remaining respondents.

Bipin Chander Negi, Judge

By way of the present petition the constitutional validity of section 163-A of the HP Land Revenue Act (for purpose of brevity referred to as the Act) has been questioned whereby encroachments on Government land are sought to be regularised. The provision reads as under:-

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[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

> **163A.** Regularization of encroachment in certain cases- Notwithstanding anything contained in Section 163 of this Act, or any other law for the time being in force, the State Government may make rules regarding the regularisation of the encroachment on Government land.

2. In the response filed by the respondent state to the civil writ petition from the facts made available by the respondent state there exist approximately 57,549 cases of encroachments on Government land in the state covering an area of about 1,23,835 bighas of Government Land. There are about 12 bighas in one hectare. Hence the aforesaid encroachments exist on approximately 10,320 hectares of Government Land. Besides the aforesaid in terms of the rules framed under the impugned provision number of applications received as per the respondent state for regularisation till 15-08-2002 are 1,67,339 and the area involved is 24,198-27-58 hectares of land (Page 256 of the paper-book).

3. Qua encroachments committed involuntarily on account of inevitable circumstances not guided by choice the apex court in ***Olga Tellis v. Bombay Municipal Corpn., (1985) 3 SCC 545*** had declared as follows;

> "There is no doubt that the petitioners are using pavements and other public properties for an unauthorised purpose. But, their intention or object in doing so is not to "commit an offence or intimidate, insult or annoy any person", which is the gist of the offence of "Criminal trespass" under Section 441 of the Penal Code. They manage to find a habitat in places which are mostly filthy or marshy, out of sheer helplessness. It is not as if they have a free choice to

> exercise as to whether to commit an encroachment and if so, where. The encroachments committed by these persons are involuntary acts in the sense that those acts are compelled by inevitable circumstances and are not guided by choice".

4. To the contrary qua deliberate, designed, reckless or motivated infractions the apex court has categorically declared that there can be no compounding. In this regard reference can be made to case reported as ***Royal Paradise Hotel (P) Ltd. v. State of Haryana and others, (2006) 7 SCC 597*** (three-Judge Bench). Relevant extract whereof is being reproduced;

> "61. … If the laws are not enforced and the orders of the courts to enforce and implement the laws are ignored, the result can only be total lawlessness. ……. action is also necessary to check corruption, nepotism and total apathy towards the rights of the citizens." M.C. Mehta v. Union of India & others, (2006) 3 SCC 399 (three-Judge Bench)
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> "8. ……. Even otherwise, compounding is not to be done when the violations are deliberate, designed, reckless or motivated. Marginal or insignificant accidental violations unconsciously made after trying to comply with all the requirements of the law can alone qualify for regularization which is not the rule, but a rare exception….."

5. Deliberate, designed, reckless or motivated infractions/encroachments done voluntarily amount to an offence of "Criminal trespass" under Section 441 of the erstwhile Penal Code as they are done with an intent or object to "commit an offence or intimidate, insult or annoy any person", which is the gist of the offence of "Criminal trespass".

6. In the state of Himachal Pradesh before the H.P. Nautor Land Rules, 1968 were kept in abeyance, the cases of encroachments on Government land used to be decided under Rule 27-A of the said rules. Right from the year 1983, the instructions qua regularisation of encroachments were issued by the Government from time to time.

7. A detailed policy guidelines were issued on 4.7.1983 vide which regularisation was permitted for five bighas against nazrana @ of Rs. 50 per bigha. Ownership was contemplated to be granted upto 10 bighas against a penalty of three times of current market value of the land encroached upon. Above 10 bighas not exceeding 15 bighas against payment of 5 times of the market value; and encroachments exceeding 15 bighas upto 20 bhighas against 10 times of the market value. The encroachers were to be ejected from the land encroached upon beyond 20 bighas. These rates were modified by instructions dated 27.8.1983. Under these instructions the maximum penalty was three times of the market price for the slab between 15 to 20 bighas. The policy was revised on 27.4.1984 and on 20th August. 1987. In the 1987 Policy, the cutoff date was 30.8.1982 provided the encroachment was continuing since 30.6.1970 or earlier. In this Policy the encroachment in tribal areas was allowed upto 8 bighas and in other areas upto 5 bighas.

8. The aforesaid regularisation policy was ultimately revised in the year 1994. Under this policy the regularisation was permissible upto 2 bighas of the land contiguous to the ownership land. It was this Policy, when challenged by way of public interest litigation, which was struck down by the Hon'ble High Court in CWP No.122 of 1995, titled as Raj Kumar Singla v. State of H.P. and another (DB; 16.9.1997), wherein this court had expressed anguish on the failure of the Government to protect its property which is really a property of the people of the State rather to the contrary had indulged in legalising an illegality by an executive action in favour of unscrupulous people who had encroached by violating the provisions of law.

9. In the aforesaid backdrop a highpowered committee was constituted to examine the issue of encroachment in the state and was asked to suggest a viable solution to the endemic problem. The highpowered committee so constituted after deliberations proposed incorporation of section 163-A in the HP Land revenue act. The viable solution to the endemic problem of encroachment in other words was legalising an illegality. Besides the provision it proposed to the Government to frame rules within the following parameters:-

> i) The extent of area that may be granted and conditions of grant thereof:
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> ii) The categories of land which should be regularised and the category of eligible persons for such grant;

iii) The category of land of which the regularisation should not be allowed; and

iv) The amount of compensation and penalty to be imposed in different cases.

10. In view of the above parameters in the Policy guidelines proposed by the highpowered committee the Government was also required to consider the following suggestions:-

i) The families whose holding is already to the extent of 5 bighas and above should not be granted any land under regularization scheme.

ii) The landless persons and persons whose holding is less than 5 bighas should be granted land at the rate of Nazarana bighas. 500 per bigha and in addition a penalty of 50% of the Nazarana to the extent of making their holding upto 5 bighas.

iii) The erstwhile shamalat lands on which the estate right-holders had constructed residential houses or cow-sheds before its vestment in the State should be regularized without any compensation.

iv) Cases of encroachments initiated for such erstwhile shamlat lands and also the cases of village common lands which were wrongly vested in the State, may be dropped.

11. The encroachment on the following categories of land was proposed by the highpowered committee not to be regularised:-

i) encroachments on land of common village use including properties belonging to Temples, Mosques, Gurudwaras where religious and other ceremonies are normally held. recorded and recognized paths both for human beings and Dargahs, lands used for village common purposes cattle and land under burial ghats/grounds, cemeteries, graveyards, village ponds/tanks and water harvesting facilities/check

dams, playing grounds, School and Dharmshalas etc.

ii) land where encroachments are under the enquiry by Police, Enforcement, Vigilance or investigation by these authorities or under the consideration of courts of law in criminal proceedings.

iii) land which is under forests and has been recorded in the land records as RF, DPF, UPF, PF, Class-III forests Jungle dehati, etc. after duly identified & notified under the Indian Forest Act.

iv) encroachments by a non-resident person of the 'Mohal' may not be regularised. However, a landless person who has been given land in 'Mohal' by the competent authority shall be deemed to be the resident of the 'Mohal' and his encroachment could be regularised.

v) No encroachment shall be regularised in contravention of the provisions of the H.P. Ceiling on Land Holdings Act and the Village Common Lands (Vesting and Utilization) Act, 1974.

12. How the recommendations of the HighPowered Committee were dealt with is best summarized in paragraph 6 (preliminary submissions) of the reply filed by the respondent state to the civil writ petition. The same is being reproduced here-in-below for a ready reference;

> “6. That on the recommendations of the High Powered Committee, response of public at large and Panchayati Raj Institutions and after the discussions at various levels convening meetings at Sub-Division levels associating all sections of society including advocates the draft rules were also published in the Rejpatra (Extra-ordinary) dated 24.5.2002 for inviting suggestions/objections from the general public despite of this fact the Government went further to inform the general public including all sections of the society by conducting meetings in each district of the State headed by Hon'ble Minister of State(Revenue) accompanied/assisted by the Deputy Secretary

(Revenue) to the Government of Himachal Pradesh between 18.5.2002 to 19.6.2002 which clearly shows the intention of the State Government to form a law beneficial to the down trodden, weaker and needy section of the society keeping in view their socio-economic status".

13. In the response filed reasons cited for bringing about the amendment i.e incorporation of section 163-A in the HP Land Revenue Act have been narrated. The same being; (a) to make the holdings of the small and marginal farmers economical; (b) was to carve out an exception to section 163 of the HP Land Revenue Act which deals with removal of encroachments on government land and (c) to generate revenue. Relevant paragraphs of the response in this regard to the civil writ petition are being reproduced herein below for a ready reference;

> "That in Himachal Pradesh Abolition of Land Revenue on Un-Economic Holding Act, 1978 land not exceeding two and a half acre i.e. 12-10 bigha has been defined as un-economic holding. In the Himachal Pradesh Relief of Agricultural Indebtedness Act, 1976 the person for the relief of Agriculture Indebtedness who holds land not exceeding one hectare i.e. 12-10 bighas of un-irrigated land or half hectare i.e.6-05 bighas of irrigated land has been defined as marginal farmers and an agriculturist who earns his lively hood mainly by agriculture and who holds more than one hectare (12-10 bighas) and less than two hectare (25 bighas) un-irrigated land or its 50% of irrigated land has been defined as small farmer. Keeping in view all this and limit prescribed for nautor grant, the limit has been fixed in the impugned rules for benefiting these small and marginal farmers which is primary duty of the government according to the directive principles.
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> That the contents of this para are denied as the provisions of Section 163-A is supplementary to provisions of Section 163. In any case it may be

considered as exception carved out to the provisions which is permissible under law. One exception has been carved out by legislating such provision and the regularization of encroachment has been allowed in certain cases i.e. land upto 200 Sq. metres/20 bighas in Urban/ Rural areas including own land of encroacher will only be regularized and in other cases stringent action has been enacted rather encroachment has been made a criminal offence which was not previously under section 163.

It is also pertinent to mention here that these rules will not only uplift the downtrodden but also add revenue to State Exchequer by collecting money in form of penalty, which is to be utilized for development purposes in public interest".

14. However in the statement of objects and reasons qua Section 163 A (legislative intent) the following has been stated;

"The Provisions regarding prevention and ejectment from encroachment upon Government land is being made more stringent so that this menace is curbed. The State Government framed a policy to deal with the cases of regularisation of encroachments on Government land. The policy was revised from time to time but the same was not implemented. In the meanwhile, the H.P. High Court struck down the last policy framed in 1994 being ultra virus of the provisions of the Act as it lacked statutory support. Hence, the State Government is being empowered to make rules regarding the regularisation of the encroachment on the Government land".

Attempt in the reply to the CWP is to supplement by fresh reasons validity of the impugned provision i.e. Section 163A of the H.P. Land Revenue Act. Besides the statement of objects and reasons reflect an incongruity. The state on the one hand sets out to deal with the menace of encroachment on government land by making the provision in this regard more stringent (section 163 of the act) and simultaneously sets out section 163-A (impugned provision) to legalise an illegality as pointed out in CWP No.122 of 1995, titled as Raj Kumar Singla v. State of H.P. and another (DB; 16.9.1997).

15. In the State of Himachal Pradesh the allotment of land to landless persons is made under the following three schemes:-

(i) The H.P. Utilization of Surplus Area Scheme, 1974.

(ii) The H.P. Grant of land to Landless Persons or other Eligible Persons Scheme, 1975.

(iii) The H.P. Village Common Land Vesting and Utilization Scheme, 1975.

The schemes at (i) & (ii) above are statutory schemes whereas, the scheme at (iii) above is in the nature of allotment of Government Waste Land on the pattern of H.P. Nautor Land Rules, 1968.

16. An enactment represents the will of the people. Hence carries with it a presumption of constitutionality. Court is expected to recognize the fundamental nature and importance of legislative process and accord due regard and deference to the same. Unconstitutionality of an enactment must be plainly and clearly established. In this respect reference can gainfully be made to *State of Bihar v. Bihar Distillery Ltd., (1997) 2 SCC 453*, at page 466 relevant extract whereof is being reproduced hereinbelow:

> "The approach of the court, while examining the challenge to the constitutionality of an enactment, is to start with the **presumption of constitutionality**. The **court should try to sustain its validity to the extent possible**. It should strike down the enactment only when it is not possible to sustain it. The **court should not approach the enactment with a view**

> **to pick holes or to search for defects of drafting**, much less in exactitude of language employed. Indeed, any such **defects of drafting should be ironed** out as part of the attempt to sustain the validity/constitutionality of the enactment. **After all, an Act made by the legislature represents the will of the people and that cannot be lightly interfered with.** The **unconstitutionality must be plainly and clearly established** before an enactment is declared as void. The same approach holds good while ascertaining the intent and purpose of an enactment or its scope and application.
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> Indeed, it is surprising that the Court has not even referred to the long **preamble** to the Act which clearly **sets out the context and purpose of the said enactment**. It was put in at such length only with a view **to aid the interpretation of its provisions**. It was **not done without a purpose**. To **call the entire exercise a mere waste** is, to say the least, **most unwarranted besides being uncharitable**. The **court must recognize the fundamental nature and importance of legislative process** and **accord** due **regard and deference** to it, just as the legislature and the executive are expected to show due regard and deference to the judiciary. It cannot also be forgotten that our Constitution recognises and gives effect to the concept of equality between the three wings of the State and the concept of "checks and balances" inherent in such scheme".
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> Though the above propositions are well settled, it

may not be out of place to refer to a few decisions. In ***Charanjit Lal Chowdhury v. Union of India Fazl Ali, J***. stated:

> " … it is the accepted doctrine of the American Courts, which I consider to be well founded on principle, that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles."

> In *Burrakur Coal Co. Ltd.* v. *Union of India* (AIR at p. 963), Mudholkar, J., speaking for the Constitution Bench, observed:
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> "Where the validity of a law made by a competent legislature is challenged in a court of law, that court is bound to presume in favour of its validity. *Further, while considering the validity of the law the court will not consider itself restricted to the pleadings of the State and would be free to satisfy itself whether under any provision of the Constitution the law can be sustained.*"

We may quote the pertinent propositions enunciated in **Ram Krishna Dalmia v. Justice S.R. Tendolkar** to the following effect:

> "(*b*) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;
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> * * *
>
> (*e*) *that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation*; and …"

We may also refer to the following perceptive observations in the decision of Lord Denning in ***Seaford Court Estates Ltd.* v. *Asher*:-**

> "Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A judge, believing himself to be fettered by the

> supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if **Acts of Parliament** were **drafted with divine prescience** and **perfect clarity**. In the absence of it, **when a defect appears** a judge cannot simply fold his hands and **blame the draftsman**. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he 468must supplement the written word so as to give 'force and life' to the intention of the legislature. That was clearly laid down by the resolution of the judges in *Heydon case*[5], and it is the safest guide today. Good practical advice on the subject was given about the same time by Plowden…. Put into **homely metaphor** it is this**: A judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases."**

17. **"Individual Responsibility";** it is a bounden duty of the citizen to obey, follow the rules made for their own benefits and which are in larger public interest. Disobedience thereof results in lawlessness. Article 51-A(g) casts a duty upon every citizen of India, inter alia, to protect and improve the national environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. Section 441 of the erstwhile Indian Penal Code (Section 329 of the Bharatiya Nyaya Sanhita (BNS) which dealt with Criminal trespass read as follows;

> "441. Criminal trespass.—Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".
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> In its application to the State of Uttar Pradesh and Orissa, for Section 441, the following was *substituted*:—
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> "441. *Criminal Trespass*.—Whoever enters into or upon property in possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, or having entered into or upon such property, whether before or after the coming into force of the Criminal Laws (U.P. Amendment) Act, 1961, with the intention of taking unauthorised possession or making unauthorised use of such property fails to withdraw from such property, or its possession or use when called upon to do so by that another person by notice in writing, duly served upon him, by the date specified in the notice, is said to commit 'criminal trespass'." [*Vide* U.P. Act 31 of 1961]"

18. In the backdrop of galloping trend of unauthorised occupation of public premises, the failure of Governments to control the growing tendency of unauthorised occupation of public premises, inaction/leisurely manner on the part of the authorities entrusted with the task of ensuring eviction of unauthorised occupants under the existing law and acting only when the court gives command forced the apex court in ***S.D. Bandi v. Karnataka SRTC, (2011) 15 SCC 695*** to direct the Governments of all the

States and Union Territories to consider the desirability of making amendment in Section 441 of the Penal Code, 1860 (Section 329 of the Bharatiya Nyaya Sanhita (BNS) in line with the State amendments made by the States of Orissa and Uttar Pradeshand to make unauthorised occupation of public premises a non-bailable offence.

19. The Union of India in its response stated that there was no necessity to amend the law as the number of unauthorised occupants is very small. Majority of the State Governments had also shown disinclination to make appropriate amendment. Seeing their attitude proceedings were closed.

20. **"State responsibility"** to protect the natural resources of the earth is clearly enunciated in the *United Nations Conference on the Human Environment*, Stockholm 1972 (Stockholm Convention), to which India was a party. The relevant clause therein states:

> "The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate."

21. Article 48-A directs that the State shall endeavour to protect and improve the environment to safeguard the forests and wildlife of the country. The constitutional mandate is also that the natural resources belong to the people of this country. The natural

resources are vested with the Government as a matter of trust to the people of India. It is the solemn duty of the State to protect the natural resources and to use the same in the interest of the country and not in private interest. ***(Reliance Natural Resources Ltd. v. Reliance Industries Ltd.2010(7)SCC 1, Assn. of Unified Tele Services Providers v. Union of India, (2014) 6 SCC 11).***

22. Duty of the State is to govern. Good governance includes implementation of the statutes in existence which deal with encroachment. Failure of the government, in having the provisions of such statute implemented, amounts to failure in governance. It promotes dishonesty and encourages violation of law.

23. The **'doctrine of public trust'**, which was evolved in ***Illinois Central Railroad Co. v. People of the State of Illinois, 146 US 387*** *: 36 L Ed 1018 (1892)*, has been held by the apex Court to be a part of the Indian jurisprudence in ***M.C. Mehta v. Kamal Nath 1997 (1) SCC 388*** and has been applied in ***Jamshed Hormusji Wadia v. Port of Mumbai2004 (3) SCC 214, Intellectuals Forum v. State of A.P.(2006) 3 SCC 549*** and ***Fomento Resorts and Hotels Ltd. v. Minguel Martins2009 (3) SCC 571***.

24. The notion of public interest is generally informed with the dictates of public trust doctrine. Welfare of the public is the supreme in law. Individual welfare shall, in cases of necessity,

yield to that of the public and collective good in the areas of health, law and order, peace, security and a clean environment. Private interest vis-a-vis public interest is lucidly explained in ***Sayyed Ratanbhai Sayeed (Dead) through LRs & others vs. Shirdi Nagar Panchayat & another, (2016) 4 SCC 631)***. Relevant extract whereof is reproduced hereinbelow;

> "58. The emerging situation is one where private interest is pitted against public interest. The notion of public interest synonymises collective welfare of the people and public institutions and is generally informed with the dictates of public trust doctrine – res communis i.e. by everyone in common. Perceptionally health, law and order, peace, security and a clean environment are some of the areas of public and collective good where private rights being in conflict therewith has to take a back seat. In the words of Cicero "the good of the people is the chief law".
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> 59. The Latin maxim Salus Populi Suprema Lex connotes that health, safety and welfare of the public is the supreme in law. Herbert Broom, in his celebrated publication, A Selection of Legal Maxims has elaborated the essence thereof as hereunder: "This phrase is based on the implied agreement of every member of the society that his own individual welfare shall, in cases of necessity, yield to that of the community; and that his property, liberty and life shall, under certain circumstances, be placed in jeopardy or even sacrificed for the public good."

25. According to Prof. Joseph L. Sax in his authoritative article "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", *Michigan Law Review*, Vol. 68, No. 3 (Jan. 1970) pp. 471-566] , three types of restrictions are imposed on governmental authority by the public trust doctrine:

> *1*. the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;
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> *2*. the property may not be sold, even for fair cash equivalent;
>
> *3*. the property must be maintained for particular types of use (*i*) either traditional uses, or (*ii*) some uses particular to that form of resources.
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> (See ***Intellectuals Forum v. State of A.P., (2006) 3 SCC 549,*** at page 575)

26. The debate between the present developmental, economic needs and that of the environment without compromising the ability of the future generations to meet their own needs has produced the concept of **"sustainable development"**. This concept, is defined in the 1987 report of the *World Commission on Environment and Development* (Brundtland Report) as "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs."

27. While dealing with the principle of **"Inter-Generational Equity"** i.e safeguarding natural resources for the benefit of the *present* and *future* generations the apex Court in ***A.P. Pollution Control Board v. Prof. M.V. Nayudu(1999) 2 SCC 718*** in para 53 held as under: (SCC p. 739)

> "*53*. The principle of inter-generational equity is of recent origin. The 1972 Stockholm Declaration refers to it in Principles 1 and 2. In this context, the environment is viewed more as a resource basis for the survival of the present and future generations.

> '*Principle 1*.—Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment *for the present* and *future generations*….
>
> *Principle 2*.—The natural resources of the earth, including the air, water, lands, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of the *present* and *future* generations through careful planning or management, as appropriate.

28. In making laws and in understanding the scope and purport of laws enacted by the State Legislatures the aforesaid principles, "Inter-Generational Equity", "sustainable development", "The Public Trust Doctrine", "State responsibility", Article 48-A(State shall endeavour to protect and improve the environment to safeguard the forests and wildlife of the country), "individual responsibility", Article 51-A(g)(duty of every citizen of India, inter alia, to protect and improve the national environment including forests, lakes, rivers, wildlife and to have compassion for living creatures), Article 21(which gives environmental protection and conservation of natural resources status of a fundamental right)of the Constitution are to be kept in mind.

29. Articles 48-A and 51-A(g) have to be considered in the light of Article 21 of the Constitution which provides that no person shall be deprived of his life and liberty except in accordance with the procedure established by law. Any disturbance of the basic environment elements, namely, air, water

and soil, which are necessary for “life”, would be hazardous to “life” within the meaning of Article 21 of the Constitution.(See ***Tata Housing Development Co. Ltd. v. Aalok Jagga, (2020) 15 SCC 784).***

30. Article 14 of the Constitution of India envisages equality before law and equal protection of law. Equality before law envisages that equals are to be treated alike and un-equals are not to be treated alike. By condoning the illegal acts of the violators, who carry out encroachments by violating the provisions of the law, State intends to treat such law breakers equal to those persons who abide by the law. This is arbitrariness, because by treating un-equals alike, the State is violating Article 14 of the Constitution of India. The impugned provision is in fact legislation for a class of dishonest persons, which is also prohibited. Also, it defies logic being capricious and unreasonable.

31. The object of the impugned provision, i.e. to regularize all illegal encroachments, in itself is violative of Article 14 of the Constitution of India. Article 14 is not meant to perpetuate illegality or fraud. It has a positive concept. Equality it is well settled cannot be claimed in illegality and therefore, cannot be enforced by a citizen or Court in a negative manner. ***(Fuljit Kaur v. State of Punjab and others, (2010) 11 SCC 455).***

32. Article 14 of the Constitution of India permits classification, however, the said classification has to be based on

an intelligible differentia and that intelligible differentia ought to have some nexus with the object to be achieved. In the present case, even if it is said that classification of the persons, so created by way of the impugned amendment, is based on intelligible differentia, as it consists of those persons who carried out encroachments in violation of the statutory provisions, yet this classification, in our considered view, is not a valid classification, as envisaged under Article 14 of the Constitution of India, because regularization of illegal encroachments cannot be said to have nexus with the object sought to be achieved, which in any case has to be lawful. ***Nagpur improvement Trust and Anr v Vithal Rao and Ors, 1973 (1) SCC 500***.

33. If the impugned provision is permitted to remain in the Statute, it would defeat the very purpose for which the Statute was created. In the Act, there exists Section 163 whereby a detailed mechanism has been provided under the statute for removal of encroachment from government land. As has already been stated earlier Section 163 has now been made more stringent. (See the object and reasons reproduced herein above qua section163-A).In other words, the impugned amendment violates the very edifice of the Principal Statute. Can the object sought to be achieved be said to be lawful. It is destructive of the aim and object of the Parent Statute; it defeats its laudable object; it defies the constitutional provisions; it is demonstratively and

excessively contradictory and mutually destructive. Such a statutory provision cannot be permitted to remain on the statute book.

34. The Court cannot be a silent spectator and is bound to perform its constitutional duty for ensuring that the public property is not frittered by unscrupulous elements in the power corridors and acts of grabbing public land are properly enquired into and appropriate remedial action taken. ***(Dina Nath v. State of U.P., (2010) 15 SCC 218).***

35. It promotes dishonesty and encourages violation of law. Significantly, no action stands taken against the erring officials, who, in connivance, allowed such encroachments to happen, throughout the State. It is not that thousands of encroachments came up overnight. The officials failed to discharge their duties. The functionaries adopted an ostrich like attitude and approach.

36. Any indulgence on the part of the State/ Legislators, in protecting such dishonesty, would lead to anarchy and destroy the democratically established institutions, also resulting into indiscrimination. This is manifest arbitrariness. Also, it is excessive and capricious.

37. In the Act under section 163, an encroacher against whom proceedings for removal of encroachment have been initiated can invoke a plea of adverse possession. Though we got

the law of adverse possession from the British, the apex court in ***State of Haryana v. Mukesh Kumar, (2011) 10 SCC 404*** noticed the negative view of the English courts towards the law of adverse possession in the judgment of ***Beaulane Properties Ltd. v. Palmer (2005) 3 WLR 554 : (2005) 4 All ER 461***.The archaic, outmoded law of adverse possession which ousts an owner on the basis of inaction within limitation was observed by the apex court to be irrational, illogical, wholly disproportionate, in conflict with justice and one which an ordinary Indian citizen would find reprehensible. Such a lawwhich placed premium on dishonesty by legitimising possession of a rank trespasser and compelling the owner to lose his possession in the considered view of the apex court required a re-look by the legislature. Relevant extract of ***State of Haryana v. Mukesh Kumar, (2011) 10 SCC 404*** is being extracted hereinbelow;

> 36. In HemajiWaghaji Jat case2009 (16) SCC 517 this Court ultimately observed as under: (SCC p. 529, paras 32-33)
> "32. Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had

wrongfully taken possession of the property of the true owner.

33. We fail to comprehend why the law should place premium on dishonesty by legitimising possession of a rank trespasser and compelling the owner to lose his possession only because of his inaction in taking back the possession within limitation."

43. It is our bounden duty and obligation to ascertain the intention of Parliament while interpreting the law. Law and justice, more often than not, happily coincide, only rarely we find serious conflict. The archaic law of adverse possession is one such. A serious relook is absolutely imperative in the larger interest of the people.

44. Adverse possession allows a trespasser—a person guilty of a tort, or even a crime, in the eye of the law—to gain legal title to land which he has illegally possessed for 12 years. How 12 years of illegality can suddenly be converted to legal title is, logically and morally speaking, baffling. This outmoded law essentially asks the judiciary to place its stamp of approval upon conduct that the ordinary Indian citizen would find reprehensible. The doctrine of adverse possession has troubled a great many legal minds. We are clearly of the opinion that time has come for change.

38. With respect to adverse possession vis-à-vis property dedicated to public use the apex court in ***Ravinder Kaur Grewal v. Manjit Kaur, (2019) 8 SCC 729*** has stated the following;

> **"63.** When we consider the law of adverse possession as has developed vis-à-vis to property dedicated to public use, courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh

> consequences, hence, we are constrained to observe that it would be advisable that concerning such properties dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession".

39. Learned counsel for the petitioner has also submitted that during pendency of present Writ Petition, State of HP in the year 2017 vide Notification dated 19.04.2017 had notified Draft Rules for regularization of encroachment by publishing the same in the Rajpatra of Himachal Pradesh for inviting objections. He has further submitted that though Rules were never finalized but on the basis of said Draft-Notification, a large number of persons had approached this Court for staying the eviction proceedings initiated by Competent Authorities for removal of encroachment from the Government land on account of the pending proposal to frame such Rules for regularization of encroachment, and in number of cases, including ***CWP No. 2559 of 2016 titled as Vimla Devi vs. State of HP***, this Court has granted stay/protection against removal of such encroachers till formation of such Rules but subject to judicial scrutiny of those proposed Rules. It has been further submitted that for the ground already taken in present case, framing of such proposed Rules also deserve to be interfered with.

40. Learned Advocate General during hearing had made statement at Bar, as was also informed by him in ***CWP No. 179 of 2017 titled Rajiv vs. State of HP and other connected matters***

decided on **26.9.2024** and similar matter i.e. ***CWP No. 685 of 2017 titled Bahadur Singh vs. State*** decided on ***23.10.2024***, ***CWP No. 2317 of 2025,*** titled ***Jagdish vs. State of HP and others connected matters*** decided on ***18.6.2025,*** that State Government is not going to finalize or frame any Rules for regularization of encroachment on the basis of Draft Rules published vide Notification dated 19.4.2017 or otherwise and as on date, there is no proposal pending with this Government for framing any Rule or framing Policy for regularization of encroachment.

41. It is also relevant to refer here to the directions issued by this Court in ***CWPIL Nos. 17 of 2014 and 9 of 2015*** decided on **8.1.2025** regarding detection, reporting, initiation of proceedings against and removal of encroachment which assume relevance in present matter on account of the view being taken qua Section 163-A of the H.P. Land Revenue Act. The directions issued in ***CWPIL Nos. 17 of 2014 and 9 of 2015*** are as follows:-

> "35. In aforesaid backdrop, these petitions are disposed of with following directions:-
>
> (i) The concerned Officers and Officials of all Departments/ Authorities, especially of the Revenue, Forest Department as well as National Highway Authority of India, shall ensure that there is no fresh encroachment on the Government/Forest land/Public

Roads/Public Paths in future by any other person including ex-encroachers.

(ii) Forest Guard(s), Patwari(s) and Work Inspectors shall report all existing and/or any fresh encroachment upon Government/Forest land/Public Road/Public Path in their respective beat/area/ jurisdiction to the respective Deputy Ranger/Kanungo/Junior Engineer with endorsement of copy of such information to Divisional Forest Officer(s)/ Tehsildar(s)/Naib Tehsildar(s)/Assistant Engineer concerned immediately on receiving information or on detection of such encroachment without any delay and concerned Officer shall ensure immediate action thereon in accordance with law to remove encroachment, to protect the Government/Forest land/ Public Road from encroachment by taking preventive measures.

(iii) The Forest Guards, throughout the State, during first week of each month, shall furnish in writing the report through Deputy Rangers, to concerned Divisional Forest Officers, submitting the details of encroachment on the Government/ Forest land in his beat(s) with known probable date of such encroachment or a written certificate declaring that there is no unreported encroachment in his area.

(iv) Every Patwari posted in the field, during first week of each month, shall furnish in writing the report through Field Kanungo, to

concerned Tehsildar(s)/Naib Tehsildar(s), submitting the details of encroachment on the Government/ Forest land in his Patwar Circle(s) with known probable date of such encroachment or a written certificate declaring that there is no unreported encroachment in his area.

(v) Every Work Inspector posted in the field, during first week of each month, shall furnish in writing the report through Junior Engineer, to concerned Assistant Engineer, submitting the details of encroachment on the Public Roads/Public Path with known probable date of such encroachment or a written certificate declaring that there is no unreported encroachment in his area.

(vi) Deputy Ranger/Kanoongo/Assistant Engineer on receiving information from Forest Guard/ Patwari, or otherwise, shall immediately report the same to the concerned DFO/Tehsildar/Naib Tehsildar/Assistant Engineer and also take any possible action on their part necessary in the given facts and circumstances to prevent/remove the encroachments upon Government/Forest Land/Public Roads.

(vii) On receiving information regarding encroachment, if any, on Government/Forest land, concerned Divisional Forest Officer or Assistant Collector 1st Grade/Assistant Collector 2nd Grade/Assistant Engineer, as the

case may be, shall ensure prompt action and initiation of proceedings for removal/eviction of such encroachment immediately but not later than one month of receipt of such information.

(viii) Divisional Forest Officer/Assistant Collector 1st Grade/Assistant Collector 2nd Grade/Assistant Engineer shall submit his half yearly report to his next superior Officer with respect to number of detected fresh cases of encroachment, action taken thereon, previous pending cases with status thereof during last three working days of month of June and December of every year.

(ix) It shall be personal responsibility of Office bearers of the Panchayat including Secretary(ies) to report of cases of encroachment within their jurisdiction, in writing to the concerned Divisional Forest Officer/Assistant Collector 1st Grad/Assistant Collector 2nd Grade, as the case may be, with endorsement of copy of such information to concerned Deputy Commissioner(s).

(x) The respondent/State is also directed to make suitable changes in law by amending relevant Act/Rules appropriately to assign such duty upon office bearer of Panchayat including the Secretary as well as consequences of violation of such duty.

(xi) The Deputy Commissioner shall monitor the action taken on the information of

encroachment submitted by the Forest Guard/Patwari/officer bearer of the Panchayat/Work Inspectors by calling periodical quarterly reports during first week of January, April, July and October of every year related to previous quarters.

(xii) The H.P. State Electricity Board and Jal Shakti Vibhag shall ensure that no electricity and/or water connection is provided to illegal structure raised over Government land irrespective of nature of structure i.e. permanent, temporary or simple tin structure. In case electricity and water connections have been provided to such illegal structures, the Board and Department shall initiate appropriate action for disconnecting such connections by giving one month's notice to the encroachers by ensuring disconnection of such connection within one month after expiry of one month's notice.

(xiii) The concerned Department including the Revenue, Forest and Public Works Departments shall initiate recovery proceedings for undue profit earned by encroachers by not only cutting down the trees but also utilizing the land by sowing crops and raising orchards. This exercise shall be undertaken in all cases of encroachment where encroachments have already been removed or are being removed or will be removed in future.

(a) To assess the amount to be recovered in lieu of forest trees illicitly felled or removed from the land shall be computed/worked out on the basis of 5 years average yield/market value of such trees.

(b)The benefit earned by utilizing the land shall also be calculated on the basis of period of encroachment/ possession claimed by encroachers or ex-encroacher;

(c) Where no such period is claimed by encroacher, the period for calculating the recovery of amount shall be decided by determining the age of fruit growing trees standing on the encroached land or estimated age of construction raised upon the encroached land or any other relevant evidence available to determining the period of encroachment upon the Government land as the case may be.

(d) In cases where period of encroachment is not possible to be calculated on the basis of aforesaid factors, the amount to be recovered may be calculated by determining the period of encroachment from the date of detection thereof but with reasons for not calculating the amount on basis of aforesaid paras (a), (b) and (c).

(xiv) In all aforesaid cases where amount is recoverable from encroachers or ex-encroachers and demand shall be raised by concerned Department/Authority within two months from today if not already raised and in case such amount is not paid within reasonable period, to be determined on the basis of quantum of amount to be recovered, but not more than 6 months from the date of demand,

the same shall be recovered as arrears of land revenue under the H.P. Land Revenue Act, 1954. Demand in pending cases may be raised within two months after finalization of proceedings.

(xv) The amount so recovered/collected from the encroachers shall be utilized for afforestation in the land evicted by encroacher or any ancillary purpose as may be deemed fit and proper by the Department with expressed permission of the concerned Deputy Commissioner.

(xvi) Cost of removal or eviction shall be recovered from encroachers. Where encroachers did not remove the illegal structure raised on encroached land, the same shall be removed, if not required by concerned Department for any beneficial use in the larger interest of public, the same shall be removed by the Department and cost thereof shall also be recoverable from encroachers.

(xvii) In all cases where encroachment has been removed or is to be removed, the evicted land shall be fenced with barbed wire at the cost of encroacher by fixing permanent boundary marks with angle arms using the concrete.

(xviii) Where fruit growing trees are there on evicted Government land, the concerned Department including he Revenue and Forest Departments shall sale out the proceeds of fruits by way of auction if practically viable to do so, otherwise the fruits of such orchards may be left for consumption of wild animals.

(xix) In case of sale of fruits, the amount shall be utilized for afforestation or any other ancillary purpose. Such action shall be conducted under the supervision of concerned Deputy Commissioner who shall be responsible to monitor the entire exercise in just and lawful manner.

(xx) Videography of all proceedings or demarcation, identification of Government land, eviction of encroachers therefrom and auction of fruit's sale, if any, shall be preserved in the offices of concerned Divisional Forest Officer(s) and Deputy Commissioner(s).

(xxi) No encroacher after finalization of eviction proceedings shall be allowed to enter in the encroached land save and except permitted by the competent Court of law.

(xxii) In addition to the proceedings for removal of encroachment as already observed in various directions passed by the Court in numerous cases including the present petitions, the criminal cases/ FIR shall also be lodged for trespass and other offences pending under the applicable panle of laws. However, it is made clear that lodging of FIR shall not amount of dispensing the authorities from initiating the separate process for removal of encroachment.

(xxiii) In future, the Government shall also ensure imparting training to all concerned Officers before the appointment to the post assigned with duty to perform the function of Collector under H.P. Public Premises Act and under Section 163 of H.P. Land

Revenue Act. The training to the concerned Officers likely to be promoted/appointed to the post assigned with duty of Collector/Assistant Collector under PP Act and Section 163 of H.P. Land Revenue Act shall be ensured in advance before their such promotion/appointment. In case of appointment by way of direct recruitment to such post, before the posting, the aforesaid training to such officer shall be made compulsory/mandatory.

(xxiv)The respondents and all concerned Officers/authorities are also directed to ensure removal of all encroachments from the Government land as expeditiously as possible by concluding the proceedings in a time bound manner keeping in view the timeline notified by ACS (Revenue) vide communication/instructions dated 6th January, 2025 referred in para 24. It shall be personal responsibility of all concerned Divisional Forest Officer(s)/Tehsildar(s) and Appellate and Revisional Authorities to ensure compliance of aforesaid directions.

(xxv) It shall be the responsibility of the concerned Superintendent of Police to ensure safety and security of the Officers/staff engaged for detecting/ removing encroachments in/from Government/Forest Land, and also to render adequate necessary prompt assistance to them in performing their job. Failing in compliance, the concerned Officer/official of the Police shall also be liable for Departmental Proceedings, in addition to other proceedings/consequences.

(xxvi)In absence of plausible explanation for any delay in reporting and/or taking action shall invite civil, criminal and departmental action as required in given facts and circumstances.

(xxvii) Concerned Competent Authority, for giving effect to the aforesaid directions by incorporating the same in duty and also to provide action/ consequences of dereliction of such duty, including civil/criminal/ Departmental Proceedings, shall amend the relevant law including Acts/Rules/Service Rules suitably. Till such amendments, directions passed in this regard in these petitions, shall hold the field as law for implementing the directions and also for consequences on dereliction of duty for not complying/adhering to the directions.

36. .....

37. It is made clear that if the affidavit placed on record along with documents thereto in these petitions or information/certificates submitted by officials/officers in furtherance to compliance of directions passed by the Court is found to be false, then appropriate action in law shall be initiated against the erring official/officers.

38. Concerned officials/officers in performing their duty, shall ensure steps to protect the Government/Forest land from any type of encroachment. On detecting encroachment on Government land, they (field staff) shall report the same to the next Higher Authority/Officer, who, in turn, shall ensure taking of immediate action for

> removal of such encroachment. Encroachers shall not be allowed to regain their unauthorized occupation/possession on any portion of Government/Forest land. In case of dereliction of duty, Field Staff/concerned Higher Authority, as the case may be, shall be liable to face, apart from contempt proceedings, the criminal as well as departmental proceedings after immediate suspension on finding unreported/overlooked encroachment/re-encroachment on the Government/ Forest land. Departmental proceedings, in such a case, shall be initiated for removal/dismissal from service.

42. It is apt to record here that Direction Nos. 35(xvii) to 35(xix) referred to herein supra, passed in CWPIL No.17 of 2014 and CWPIL No.9 of 2015, the State had expressed an inability to comply with the same, i.e. fencing, maintenance, management of the orchard raised on encroached Government land, and the State was also facing difficulty to take care of the orchard, because there was paucity of funds, resources and staff with the Department and the ousted encroachers were re-occupying the same. As Section 2 of the Forest (Conservation) Act, 1980 creates an impediment for putting forest land for “non-forest purpose”, explanation whereof categorically provides that planting of horticulture crop on forest land is a “non-forest purpose” and Apple crop, admittedly, is a horticulture crop, it was submitted that apple orchards were required to be replaced with forest species.

43. In aforesaid backdrop, request made by the State was acceded on 2.7.2025 and 14.7.2025, and on 14.7.2025 following order was passed by making reference to previous order dated 2.7.2025:

> "14.07.2025
>
> …. … …
>
> "S/Sh. Dinesh, Sanjay, Sandeep, Manda Gopal, Vikrant and Rajkumar, S/Smt. Kamla Devi, Leela, Sheela, Rita and Meera, are present in person.
>
> Mr. Arsh Chauhan, Advocate, appearing under instructions Mr. Ravi Tanta, Advocate further submits that one Ms. Daya is also not present today. However, all other persons to whom bailable warrants were issued, except Sh. Sohan Lal and Sh. Mast Ram, are present in person.
>
> According, to the learned counsel there was no arrangement for looking after the work at home and arrangement could not be made because of paucity of time, therefore, Ms. Daya could not come and therefore, he has prayed for exempting presence of Ms. Daya also. Prayer is accepted for today with direction to remain present in person on next date.
>
> Learned Advocate General has placed on record instructions received from Additional Chief Secretary (Forest) dated 11.07.2025 and Director General of Police dated 02.07.2025, as well as communications sent from DFO, Theog to CCFT, Shimla. The same are taken on record.
>
> At this stage, learned Advocate General also submits that removal of apple trees is being undertaken only in those cases/areas where encroachers were re-asserting unauthorized possession upon the orchards raised on the forest land because, according to him, on 02.07.2025, the order for removal of apple plants was passed in addition to the earlier instructions/directions passed in order dated 08.01.2025, but only with respect to

those cases where there was attempt to reoccupy the unauthorized possession. Though he has also reiterated that micro-management of the orchards throughout the State, wherefrom encroachers have been removed, is not possible for the Forest Department or the Government of Himachal Pradesh.

Plea with regard to understanding of order is misconceived, as direction of removal of apple plants was with respect all orchards raised on Govt./Forest land, as evident from following paras of order dated 02.07.2025:-

“Learned Advocate General, has placed on record instructions dated 02.07.2025, including Annexure R-2, communication dated 31.01.2025, copy of GD entry No.31 recorded in Police Station, Kotkhai, on 01.07.2025 and Joint Committee Report dated 01.07.2025. Based on the aforesaid, the Advocate General has submitted that persons/encroachers mentioned in communication dated 31.01.2025 are obstructing the Officers and Officials of the Government of Himachal Pradesh, who are going on the spot to implement the judgment/directions passed by this Court qua removal of encroachments. He has further submitted that the Government of Himachal Pradesh, especially the Forest Department is finding it difficult to manage the apple orchards planted on the encroached lands and the persons/encroachers referred in the aforesaid documents are persistently and continuously trying to reoccupy lands where from they have already been evicted or dispossessed on account of illegal encroachments. He has further submitted that even otherwise apple trees are not the forest species and, therefore, Forest Department intends to replace the apple trees with the forest species on the encroached land.

From the material placed on record, including the photographs, it is apparent that encroachers are time and again re-encroaching the areas from where they have already been evicted/ dispossessed. The

same is evident from the photographs placed on record wherefrom it is clear that the evicted encroachers are making attempts to protect the standing apple crop on the encroached lands wherefrom they have been evicted by placing hail protection nets.

Moreover, micro management of the Orchard has become difficult for the State Government as the encroachers are time and again trying to re-occupy the areas from where they have already been evicted/dispossessed. Mr. J.L. Bhardwaj, learned Amicus Curiae as well as Mr. Anup Rattan, learned Advocate General submit that in the given facts and circumstances of the case, an appropriate order needs to be passed.

Considering the aforesaid submissions, the Forest Department is directed to remove the apple trees/orchards from the forest lands, which were previously encroached and wherefrom encroachers have been removed in the entire State of Himachal Pradesh. Further, where ever possible post felling of the apple trees/removal of the stumps, planting of forest species in such areas either through the Forest Department or by taking help of the Non Government Organizations or other private persons working in the field of plantation/forestation be undertaken. The needful be done at a war footing. The on-going monsoon is a conducive period to plant forest species. Cost of removal, i.e., cutting, removal of stumps and plantation of forest species be recovered from the encroachers. The same be recovered as arrears of land revenue."

44. Even otherwise, it is admitted position that apples are non-forest species.

It is also admitted fact that the orchards and food bearing trees requires spray of insecticides, pesticides and fungicides and this exercise would not be possible to be undertaken by any Department of the State and in case such orchards are permitted

> to exist, then they will cause huge loss to the neighboring contiguous orchards planted on legally owned and possessed land by the orchardists and, therefore, though order dated 02.07.2025, is unambiguous, however, we are clarifying again that order for removal of apple trees from the forest land is not limited to the orchards, where attempts are being made to reoccupy Government land, which had earlier been got vacated from the encroachers as the State is expected to deal with all cases in equal terms, by removing the apple trees from the every encroached forest land, wherever it has been raised on Govt./Forest Land in the State of Himachal Pradesh, because any conduct contrary to the aforesaid, shall be in violation of mandate of Article 14 of the Constitution of India.
>
> Fresh instructions by the State, response to the notices by the persons to whom notices were issued, or any other material intended to be filed, be filed by tomorrow i.e. 15.07.2025. By taking all steps, it be ensured that the same be placed on record before the next date of hearing.
> ……"

45. However, on approaching the Apex Court by one Tikender Singh Panwar by filing SLP Diary No.40056 of 2025, wherein State is also a party and duly represented, against order dated 2.7.2025 passed in CWPIL No.9 of 2015, the Apex Court has ordered, in interim, that until further orders, the direction(s) issued by the High Court regarding the felling of trees shall remain stayed and that the State shall be at liberty to conduct the auction of fruits from the harvest.

46. Considering the material placed before us, pronouncements of Courts including the Apex Court and

submissions made by learned counsel for parties, we find merit in present petition and the same is allowed and disposed of with following directions:-

(1) Section 163-A of H.P. Land Revenue Act is manifestly arbitrary and unconstitutional and as a consequence thereof, Section 163-A of H.P. Land Revenue Act and Rules framed thereunder (Section 163-A) of the said Act are quashed;

(2) Taking into account the magnitude of encroachments made on Government land in the State of Himachal Pradesh, the State Government should consider amendment in the law pertaining to “criminal trespass” by bringing it in consonance with the State amendments as have been made in the State of Uttar Pradesh, Karnataka and Orissa;

(3) The respondents are directed to ensure removal of encroachment on the Government land, in accordance with law, by initiating suitable proceedings against encroachers and taking such proceedings to its logical end as expeditiously as possible preferably on or before ***28th February, 2026.***

(4) Any stay/protection granted against removal of encroachment for pendency of this petition or any other ground including the ground with reference to Rule/Draft Rules notified by the Government or regularization of encroachment including Draft Rules notified in the year 2017

shall stand vacated and any such order is declared ineffective and unenforceable against the proceedings pending or to be withheld for removal of encroachment from the Government land.

(5) Directions issued in ***CWPIL Nos. 9 of 2015*** and ***17 of 2014*** in para 35 of judgment dated ***8.1.2015*** are extended for removal of encroachment from all type of Government land/premises including the proceedings initiated or to be initiated under H.P. Public Premises Act and/or Section 163 of H.P. Land Revenue Act as well.

(6) The respondent/State is also directed to make suitable changes in law by amending relevant Act and Rules appropriately to assign duty on the office bearers of concerned Nagar Panchayat, Nagar Parishad and Nagar Nigam as well as Executive Officer(s)/Commissioner(s) to report the encroachment, to take action for removal of encroachment and regarding consequences of violation of such duty.

(7) Other than the aforesaid, insofar as removal of encroachments from Government land is concerned, the same has been dealt with under Section 163 of the H.P. Land Revenue Act. The said provision provides for the encroacher to claim title thereupon in terms of the law of adverse possession. In light of the law laid down by the Apex court in ***State of***

Haryana vs. Mukesh Kumar, (2011)10 SCC 404 and ***Ravinder Kaur Grewal vs. Manjit Kaur (2019)8 SCC 729,*** the State Government should consider removal of the provision from Section 163 of the H.P. Land Revenue Act, whereby an encroacher can claim title thereupon in terms of the law of adverse possession.

(8) In cases, where land has been acquired for public purpose including Roads/Path vesting its possession to the Court/Public Authority and previous owner has either not vacated the land or property to the Government/Public Authority or re occupied such acquired land by raising construction or otherwise, during eviction from such possession/encroachment, plea of adverse possession shall not be available, instead such possessor/encroacher apart from cost of removal, shall also be liable to pay use and occupation charges as well as receiving of benefits deserved from such land/property.

47. Learned Advocate General is directed to transmit the copy of this judgment to the Chief Secretary to the Government of Himachal Pradesh and all concerned for immediate compliance, with directions to take appropriate action against the Revenue Authorities as per law in whose jurisdiction land has been permitted to be encroached upon.

Petition is disposed of in the aforesaid terms, so also the pending miscellaneous applications, if any.

(Vivek Singh Thakur)
Judge

(Bipin Chander Negi)
Judge

August 05, 2025
Tarun