IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 136 of 2026

Date of decision: 29.07.2026

The Government of Himachal Pradesh and another.
...Appellants.

Versus

Banti Devi & others ...Respondents.

Coram:

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

For the appellants : Mr. Diwakar Dev Sharma, Additional Advocate General.

For the respondents : Mr. Bhupinder Singh Ahuja, Advocate.

Romesh Verma, Judge (Oral):

The present appeal arises out of the judgment and decree, dated 3.12.2024, as passed by the learned District Judge, Bilaspur, H.P. in Civil Appeal No. 22/13 of 2024, whereby the appeal preferred by the present appellants/ defendants has been ordered to be dismissed and the judgment and decree dated 06.04.2024, as passed by the learned Civil Judge, Jhandutta, District Bilaspur, H.P. in Civil Suit No. 258-1 of 2021, titled Banti Devi & others vs. Government of H.P. & another, have been affirmed, whereby the suit filed by the

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

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plaintiffs/respondents was partly decreed by directing the State to pay compensation to the plaintiffs alongwith statutory benefits.

7. Brief facts of the case are that the plaintiffs/ respondents filed a suit for permanent prohibitory, mandatory injunction and compensation in the Court of learned Civil Judge, Jhandutta, District-Bilaspur, HP on the ground that the defendants/State constructed a road, namely, Panol-Jhandutta-Nand-Nagraon through the land being owned and possessed by the plaintiffs comprising khewat No. 29min, khatauni No. 29min/30, khasra Nos. 68/61/52 and 80/67/51, situated at Village Nagraon, Tehsil Jhandutta, District Bilaspur, H.P.

8. It was averred by the plaintiffs that the Government notification was duly issued for acquisition of some of the lands of the adjoining villages but no action was taken to make the payment to the affected persons including plaintiffs. The plaintiffs requested the officials of the appellants/State to pay the amount of compensation on account of utilization of the land of the present respondents but except for making assurances, no effective steps were taken by the appellants/State in that regard. It was further averred that the defendants are very

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influential, resourceful and clever persons. They are trying to grab the suit land and also trying to dig road, change the nature, threatening to cut trees and destroy the crops without any right, title and interest over the suit land.

9. As per plaintiffs, servants and agents of the appellants/ defendants threatened to dig the adjacent land of the road, to destroy the crops, to cut the trees, break stones, and to change the nature of the suit land. Therefore, decree for permanent prohibitory, mandatory injunction and compensation was sought from the learned trial Court.

10. The suit was contested by the defendants/State by raising preliminary objections qua maintainability, limitation, cause of action, valuation, jurisdiction, estoppel etc.

11. On merits, it was averred that the road in question had been constructed by Gram Panchayat in the year 1995 with verbal/express consent of the plaintiffs and their predecessor in interest including other land owners. It is further submitted that defendants started maintaining the said road during the year 2002 after which HRTC buses started plying over the said road. The total length of the road is 21.250 kms on both sides and the land falls in Village Nagraon. The road was constructed in the year 1995 by the Gram Panchayat

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with the express/implied/verbal consent of the plaintiffs and his predecessor in interest. The road is in existence since 1995 and has been passed for the vehicular traffic during 2002. Since the road was constructed with the consent of the plaintiffs, therefore, they are estopped to file the present suit. The defendants have spent huge amount to provide all weather road connectivity to the public at large, therefore, the defendants prayed for dismissal of the suit filed by the plaintiffs.

12. The plaintiffs filed replication to the written statement wherein the contents of the plaint were reiterated.

13. On the pleadings of the parties, the learned trial court on 20.08.2022 framed the following issues:-

"1. Whether the plaintiffs are entitled for relief of injunction(s), as prayed for ? .....OPP

2. Whether the plaintiffs are entitled for relief of compensation, in alternative or in addition to aforesaid relief? .....OPP

3. Whether the present suit is not maintainable, as alleged? .....OPD

4. Whether the suit is time barred, as alleged? .....OPD

5. Whether the plaintiffs have not come to the court with clean hands, as alleged? .....OPD

6. Whether the plaintiffs are estopped to file the present suit by their own, acts, conducts, omissions and commissions, as alleged? .....OPD

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7. Whether the suit is not properly valued for the purpose of court fee and jurisdiction, as alleged?

.....OPD

8. Whether the plaintiffs have not complied with the mandatory provisions of section 80 CPC, as alleged?

.....OPD

9. Relief."

14. The learned trial court directed the respective parties to adduce evidence in support of their contentions to corroborate their respective case. The learned trial court vide its judgment and decree dated 06.04.2024 partly decreed the suit of the plaintiffs/respondents and defendants/State were directed to pay the compensation to the plaintiffs alongwith statutory benefits including solatium, interest etc. within the period of three months, treating it as a case of deemed acquisition in line with Ext. PW-1/B, Ext. PW-1/C and Ext. PW-1/D awarded by it. The defendants/State were further directed to pay legal costs and expenses of Rs. 10,000/- to the plaintiffs.

15. Feeling dissatisfied by the judgment and decree, dated 06.04.2024, the defendants/State preferred an appeal before the learned First Appellate Court on 30.05.2024, which came to be dismissed vide judgment and decree dated 3.12.2024.

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

17. It is contended by Mr. Diwakar Dev Sharma, learned Additional Advocate General appearing for the State that the impugned judgments and decrees, as passed by the learned courts below, are erroneous and are liable to be quashed and set aside. He submits that the suit, as filed by the plaintiffs/respondents is not maintainable, since the claim as put forth by the plaintiffs/respondents is highly belated and the plaintiffs/respondents are not entitled for any compensation on account of the fact that the road was constructed on the implied and express consent of the present respondents.

18. On the other hand, Mr. Bhupinder Singh Ahuja, learned counsel for the respondents has defended the judgments and decrees as passed by the learned courts below. He submits that the land of the respondents 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,

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the impugned judgments and decrees deserve to be affirmed by imposing huge and special cost upon the appellants/State.

19. I have heard the learned counsel for the parties and have also gone through the material available on the case file.

20. With the consent of the parties, the case is finally heard at admission stage on the following substantial question of law:-

> *"Whether the judgments and decrees passed by the learned Courts below are based on mis-appreciation and misinterpretation of the oral as well as documentary evidence placed on record."*

21. The Court of the first instance as also the First Appellate Court have concurrently held that the land of the plaintiffs/respondents was utilized for construction of road, namely, Panol-Jhandutta-Nand-Nagraon without payment of compensation to them. No dispute has been raised as to such findings of fact. It has only been contended on behalf of the defendants/State that the suit filed by the plaintiffs was time barred. In alternative, it was contended that since the plaintiffs/respondents remained silent for such a long period, they were estopped from raising the stale claim. Principle of acquiescence has also been sought to be applied against the plaintiffs/respondents on the premise that they were aware

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about the construction of road and the road was constructed with their implied consent and now they cannot, turn around to raise objections against the construction of road.

22. The defendants/appellants are constituents of a welfare State. It is well settled that the welfare State cannot claim adverse possession against its citizens. Thus, the suit on the basis of title cannot be said to be time barred, which right could only be defeated by proof of perfection of title by way of adverse possession by the other.

23. Admittedly, the respondents/plaintiffs are the title holders of the suit land. Being owners of the suit property, they may file a suit at any stage until and unless the said right is defeated by the present appellants/ defendants by perfection of title by way of adverse possession.

24. Being the owners of the suit land, the plaintiffs/respondents are well within their right to file a suit for permanent prohibitory and mandatory injunction, since the suit land was utilized by the State for construction of the road in question without adopting due process of law including the payment of compensation.

25. Admittedly, the appellants/defendants were not in possession of any document to show that the plaintiffs had

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consented for construction of road through their lands. When specifically asked this question from the learned Additional Advocate General, he is unable to answer the query of the Court in this regard. No document has been appended with the present proceedings which may demonstrate that the present respondents had orally consented for the construction of the road in question.

26. 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 payment of just and fair compensation. 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. The Court has held as follows:

> *"12. We have heard learned Counsel for the parties and perused the record. 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.*
>
> *12.2. The right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act,*

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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.

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*

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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."

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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

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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

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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.

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

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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

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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*

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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,

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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,

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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."

28. The learned Courts below have duly appreciated the oral as well as documentary evidence placed on record and have rightly come to the conclusion that the plaintiffs are entitled for grant of decree for compensation against the defendants.

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29. The Hon'ble Apex Court has repeatedly held that no person can be deprived of his properties without adopting due process of law, therefore, under such circumstances, 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.

30. DW-1 has admitted in his deposition that qua the construction of similar road certain persons have been paid the amount of compensation. The defendants have adopted the policy of pick and choose which is not permissible in the eyes of law. Once the defendants have chosen to pay the compensation to similar situated persons, in that event, the plaintiffs cannot be discriminated. However, in the present case, decree for compensation has been passed in favour of the plaintiffs. Therefore, the said finding does not call for any interference by this Court.

31. 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*

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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

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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

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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."

32. 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 (Ext. 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 Ext. A-2 is not proved. In our

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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."

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33. No other point was raised by the learned counsel for the parties.

34. Both the Courts below have rightly appreciated the point in controversy after considering the oral as well as documentary evidence placed on record. The substantial question of law is answered accordingly.

35. 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

29th July, 2026.
(Guleria)

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