(2026:HHC:31644)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 238 of 2019

Date of decision: 23.07.2026

The State of H.P.,through Secretary
(PWD) & another ...Appellants.

Versus

Hari Krishan ...Respondent.

Coram:

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

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

For the respondent : Mr. Giri Raj Chauhan, Advocate.

Romesh Verma, Judge (Oral):

The present appeal arises out of the judgment and decree, dated 29.06.2018, as passed by the learned District Judge, Shimla, H.P. in Civil Appeal No. 4-S/13 of 2017, whereby the appeal preferred by the present respondent/ plaintiff has been allowed and the judgment and decree dated 19.01.2017, as passed by the learned Civil Judge (Sr. Div.), Court No.1, Shimla, H.P., in Civil Suit No. 81.01 of 2008, titled as Sh. Hari Krishan vs. State of H.P. & another, was set-aside, whereby suit filed by the plaintiff was dismissed.

2. The facts as emerge in the present case are that plaintiff, Hari Krishan, filed a suit for recovery of possession of land measuring 0.06.39 hectares. It is the case of the plaintiff that he is recorded as

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

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owner-in-possession of the land as entered against Khata/Khatauni No. 3/3 min, Khasra No. 394, measuring 0.33.29 hectares, situated at Mauja Keeth Mai Kuftu, Tehsil Kotkhai, District Shimla, HP as per Missal Haqiat Bandobast for the year 2001-2002.

3. The predecessor-in-interest of the plaintiff and the plaintiff had planted apple orchard on the said land, and there were apple bearing trees on the said land. It is the case of the plaintiff that the defendants constructed a motorable road known as 'Keeth Link Road', Tehsil Kotkhai, District Shimla, and during the construction of the said road, the land of different persons was utilized by the defendants in the construction of road and the fruit-bearing trees and non-fruit-bearing trees were also uprooted by the defendants.

4. It is the case of the plaintiff that for the construction of the road, the land of the plaintiff was utilized and the apple fruit-bearing trees were uprooted during the construction work. The defendants have constructed the road from the land described by RD No. 1/480 to 1/630 and at least one bigha of the land has been utilized by the defendant for the construction of the road.

5. Though plaintiff as well as the similarly situated persons were assured by the defendants at the time of the construction of the road to pay the adequate amount of compensation for the land and the fruit-bearing trees so uprooted during the construction of the road, however, nothing was done by the defendants. Though the plaintiff

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kept on visiting the office of the defendants at Jubbal and the office of Assistant Engineer at Kotkhai for the purpose of adequate compensation, however, no steps were taken by the defendants to redress his grievances.

6. Thereafter, plaintiff issued a notice to the defendant for the purpose of acquisition of the land and for the payment of amount of compensation. Despite that fact, the defendants kept on lingering the matter on one pretext or the other. It is also the case of the plaintiff that the defendants also advised the plaintiff to get the suit land demarcated, over which the road was constructed. Thereafter, plaintiff obtained the demarcation of the spot by the revenue agencies on 20th December 2006, and accordingly, report was also given by the revenue agency on the very same day. That as per the demarcation report, the defendants are in possession of the land measuring 0.06.39 hectares entered against Khata Khatauni No. 3/3, Min Khasra No. 394. The revenue agency also prepared a shajra of site showing the land of the plaintiff to be in possession of the defendants. Therefore, from the demarcation, it is clear that the defendants have occupied/utilized the land measuring 0.06.39 hectares, which is described by the revenue agency as Khasra No. 394/1, as per the spot position. Since the defendants have not paid any amount of compensation to the plaintiff for the land so utilized and the fruit-bearing trees so uprooted,

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therefore, the possession of the defendants over the suit land is unauthorized, illegal, and void ab initio.

7. It is also the case of the plaintiff that the defendants have also caused extensive damage to the 42 apple fruit-bearing trees, and that the defendants are liable to pay the damages to the plaintiff on that count also. Therefore, under such circumstances, the plaintiff filed a suit for grant of decree for possession of the land measuring 0.06.39 hectares out of the total land measuring 0.33.29 hectares, entered against Khata Khatauni No. 3/3, Min Khasra No. 394, situated at Mauja Keeth, Mai Kuftu, Tehsil Kotkhai, District Shimla, as per aks-shajra/site plan prepared at the spot and for the restoration of the land in the same position as it was prior to the construction of the road.

8. The suit was duly contested by the defendants/appellants by raising preliminary objections in the written statement with respect to the maintainability, cause of action, non-joinder, mis-joinder, valuation, etc. On merits, all the averments as made in the plaint were refuted and denied.

9. It was admitted that defendants had constructed the ‘Keeth Link Road’ on the persistent demand of the inhabitants of the area, including the plaintiff, in the public interest. It was denied that the fruit-bearing trees were uprooted by the defendants during the construction of the road. It was reiterated that the road was

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constructed on the repeated demand of the plaintiff as well as other similarly situated persons.

10. It is the case of the defendants that the road has been constructed with the prior express and verbal consent of the plaintiff, as the same was never objected at the time of the construction work, rather he cooperated with the defendants at the time of the construction.

11. The replication was filed by the plaintiff to the written statement as filed by the State, whereby all the averments as made in the written statement were flatly refused and refuted.

12. The learned trial Court framed the issues in the matter on 30th April 2010 in the following manner:

> 1. Whether the plaintiff is entitled to a decree of possession in respect of suit land, as alleged? OPP
>
> 2. Whether the suit is not maintainable? OPD
>
> 3. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction, if so, what is the correct valuation? OPD
>
> 4. Whether the suit is bad for non-joinder of necessary parties, as alleged? OPD
>
> 5. Whether the plaintiff in the year 2000-01, had allowed the construction of the road through the suit land, as alleged, if so, its effect? OPD
>
> 6. Relief.

13. The learned trial Court directed the respective parties to adduce evidence in support of their contentions, and vide its judgment

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and decree dated 19th January 2017, dismissed the suit as filed by the plaintiff. Primarily, the suit of the plaintiff/respondent has been dismissed by the learned trial Court on the ground that there was an implied consent of the plaintiff for the construction of the road through the suit land and the suit either for possession or for compensation by the plaintiff was held to be not maintainable.

14. Feeling dissatisfied, plaintiff filed appeal under Section 96 of the CPC in the Court of learned District Judge, Shimla, on 16th March 2017. The First Appellate Court, vide its judgment and decree dated 29th June 2018, allowed the appeal as filed by the present respondent and decreed the suit of the plaintiff, whereby decree for possession of the suit land was passed in favour of the plaintiff and against the present appellants.

15. Feeling aggrieved, the defendants/appellants have approached this Court by filing the instant Regular Second Appeal, invoking the provisions of Section 100 of the CPC.

16. This Court had admitted the appeal on 20th August 2019 on the following substantial questions of law:

> 1. Whether the judgment and decree passed by the courts below are based on mis-interpretation of the evidence?

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2. Whether the appellate court could have entertained the civil suit which was apparently barred by period of limitation.

3. Whether a person who requests for construction of road for his benefit through his land is presumed to have corrected to suffer the consequential acts of construction of road?

17. It is contended by the Mr. Manish Thakur, learned Deputy Advocate General that the impugned judgment as passed by the learned First Appellate Court is erroneous and liable to be quashed and set aside. He submits that the suit as filed by the respondent-plaintiff is not maintainable as the road was constructed with the express and implied consent of the plaintiff. He submits that though the plea of limitation was not taken in their written statement before the learned trial Court, but the record reveals that suit filed by the plaintiff is time-barred. He further submits that in view of the findings as returned by the learned trial Court, which are legal, valid, and sustainable, the First Appellate Court ought not to have interfered in the well-reasoned judgment as passed by the learned trial Court.

18. On the other hand, Mr. Giri Raj Chauhan, Advocate, has defended the impugned judgment as passed by learned First Appellate Court. He submits that while exercising the power under Section 100 of the CPC, this Court will not interfere in the findings of fact as

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returned by the First Appellate Court. He further submits that the learned First Appellate Court has rightly appreciated the oral as well as documentary evidence placed on record and rightly decreed the suit by passing a decree of possession in favour of the plaintiff.

19. The plaintiff, in order to prove its case, has examined PW-1, Rattan Lal, who stated in his testimony that he had brought the record and, as per the same, the application was filed by the present plaintiff for the demarcation of the suit land. He stated that, for the purpose of demarcation, he had carried all the relevant record. The report is Ext. PW-1/A, and as per the record, it is correct. Statement of plaintiff is Ext. PW-1/D, and the statement of Shyam Lal is Ext. PW-1/C.

20. In his deposition, he denied that he is making false and incorrect statements in order to help the plaintiff. The defendants could not extract anything favorable in his cross-examination.

21. PW-2 is the statement of Sh. Shyam Lal. He stated that he is a resident of Tehsil - Kotkhai and is residing just adjacent to the main road. He stated that, for their village, a road was constructed, and during the construction of the said road, a certain portion of the road was constructed from the land of the plaintiff. He stated that where the road has been constructed an apple-bearing orchard, is existing there on the spot. He stated that at the time of construction, the plaintiff was having about 40 to 42 apple-bearing

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trees, and the said trees were 25 to 30 years old. He stated that while raising the construction, the defendants uprooted the said trees. That plaintiff obtained the demarcation, and in the said report, it was found that the defendants have utilized the land of the plaintiff for the construction of the road.

22. In his cross-examination, he stated that the road was constructed on the demand of the villagers. He denied the suggestion that during the construction of the road, the plaintiff and the other similar persons did not raise any objection.

23. PW-3 is the statement of Mast Ram. In his deposition, he stated that from 2005 to 2008, he was working as Field Kanungo at Tehsil Kotkhai. He stated that the demarcation was carried out on the application filed by the plaintiff, and the same was done in the presence of the plaintiff and Shyam Lal. He stated that for the purpose of construction of the road the Public Works Department had utilized 0.06.39 hectares over the spot. He stated that, to that effect, the Tatima was prepared by the Revenue Agency, and the copy of the demarcation report is Ext. PW-1/A. He stated that the said report has been written and signed by him. Similarly, Ext. PW-1/C and Ext. PW-1/D are the statements of the plaintiff and witness Shyam Lal.

24. PW-4 is the statement of the plaintiff, Sh. Hari Kishan. He stated that his land is situated at Kuftu, and the extent of the land is 0.33.29 hectares. He stated that he has raised the apple orchard over

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the suit land. He stated that while carrying out the construction of the road, the defendants utilized the land, and in that process his apple-bearing trees were uprooted by the defendants. He further stated that the defendants damaged the trees situated in the suit land in his absence. Now, over the suit land, the road as constructed by the defendants is being shown. He further stated that during the construction of the road, the defendants uprooted 42 apple-bearing trees, and the said trees were about 20 to 25 years old. While raising the construction, the defendants utilized 0.06.39 hectares of the suit land. PW-4 stated that he requested the officials of the defendants, to pay compensation to him on account of uprooting of the trees and the utilization of the suit land, however, no steps were taken by the defendants.

25. The officials of the defendants advised the plaintiff to obtain the demarcation so that the truth may come. After obtaining the demarcation, he again went to the officials of the defendants, however, they did not register any action in the matter. He issued notice Ext. PW-4/A, and the AD of the same is Ext. PW-4/B.

26. In the cross-examination, he stated that when the road was constructed, at the relevant time, he was in Shimla along with his family members. When he came to know about the construction of the road, he did not register any FIR against the department. The construction work of the road was started in the year 2000. He denied

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the suggestion that he, along with co-villagers, had requested the department for the construction of the road. He further denied that the land was given free of cost to the officials of the defendants for the construction of the road. He stated that the road has been constructed through the orchard owned by him. He stated that with respect to the uprooting of the apple trees, the spot was not inspected by the officials of the Horticulture Department. He denied the suggestion that while constructing the road, he did not raise any objection as the same was constructed with his implied consent.

27. PW-5 is the statement of Ramesh Rana, Junior Engineer, HP Public Works Department. PW-6 is the statement of Vidya Sagar Sharma.

28. PW-7 is the statement of Virender Singh, Junior Engineer, HP Public Works Department. He stated that the road was constructed by the department over the land from RD No. 1/480 to 1/630. He stated that the land of the plaintiff from which the road was constructed is situated at the distance of 480 meters. He stated that he does not have any document, which shows that the plaintiff had given no objection certificate for the construction of the road, nor he can show any document that the road was constructed on the implied or express consent of the plaintiff.

29. In order to rebut the case of the plaintiff, the defendants examined B. R. Sharma, who was working as Assistant Engineer. He

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stated that the work of link road was started in 2000–2001 and the road was constructed on the demand of the villagers. He stated that while raising the construction of road the officials of department did not quarrel with anyone in the village. He admitted that the link road was also constructed from the land of the plaintiff. He admitted that he does not possess any record to substantiate that the plaintiff had given any consent for the construction of road. He admitted that the plaintiff had got conducted the demarcation in order to verify whether his land has been utilized by the defendants for the purpose of construction of road. He stated that he cannot say that the possession of the department over the suit land is unauthorized. He admitted that the defendants have got no right, title, or interest over the suit land.

30. Defendants examined DW-2 Hardayal Sharma, Work Inspector, who also reiterated the averments as made by DW-1. He stated that while raising the construction of road, Hari Krishan, plaintiff, did not raise any objection for the same. He admitted that he does not possess any record to substantiate that the road was constructed on the written consent of the plaintiff. He also admitted that during the construction of the road, various trees were uprooted by the department.

31. The copy of the demarcation report has been placed on record as Ext. PW-1/A. It clearly establishes that for the purpose of construction of road, the defendants utilized the land of the plaintiff

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measuring 0.06.39 hectares. The copy of shajra has been placed on record, Ext. PW-1/B, statement of plaintiff is Ext. PW-1/D and the statement of witness Sh. Shyam Lal is Ext. PW-1/C. The copy of jamabandi, Ext. PW-2/A, clearly reveals that the suit land is owned by Hari Krishan, plaintiff, and the classification of the land has been shown to be Bagicha Bakhal Awal Khudkasht. The copy of the notice is Exhibit PW-4/A and Ext. PW-4/B. The revenue record, as placed on record by the plaintiff, clearly shows that he is the owner of the suit land and he has been able to establish that the defendants, while raising the construction of the link road, occupied/utilized the suit land comprising of 0.06.39 hectares, and the said fact is corroborated from the demarcation report, Ext. PW-1/A.

32. The learned First Appellate Court has relied upon the oral as well as documentary evidence placed on record while decreeing the suit of the plaintiff.

33. In the present case, when the oral evidence of the parties, in conjunction with the documents as placed on record, is perused, it clearly shows that from the suit land, which is owned by the plaintiff, the defendants have raised the construction of the road without adopting due process of law including payment of compensation.

34. The First Appellate Court has held that the land of the plaintiff was utilized for the construction of the road, namely, ‘Keeth

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Link Road', without payment of compensation to him. No dispute has been raised as to such finding of the fact.

35. It has only been contended by Mr. Manish Thakur, learned Deputy Advocate General, that the suit filed by the plaintiff was time-barred. In alternative, it was contended that since the plaintiff remained silent for such a long period, he was estopped from raising the stale claim.

36. Principle of acquiescence has also been sought to be applied against the plaintiff/ respondent on the premise that he was aware about the construction of the road, and the road was constructed with his implied consent, and now he cannot turn around to raise the objection against the construction of the road.

37. The defendants/appellants are the constituents of the welfare state. It is well settled that the welfare state cannot claim adverse possession against its own citizens. Thus, the suit on the basis of the 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. Admittedly, the plaintiff/ respondent is the title holder over the suit land. Being owner of the suit property, he may file a suit at any stage until and unless the said right is defeated by the appellants by perfection of title by way of adverse possession.

38. Being the owner of the suit land, the plaintiff is well within his right to file a suit for possession as the suit land was utilized by the

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State for the construction of the road in question without adopting due process of law and including the payment of compensation amount.

39. Admittedly, the appellants are not in possession of any document to show that the plaintiff had consented for the construction of the road through his land. When specifically asked this question from the learned Deputy Advocate General, he is unable to answer the query of the Court in this regard. No document has been appended with the present appeal which may demonstrate that the present respondent had consented for the construction of the road or the same was constructed on the request of the plaintiff or the co-villagers.

40. 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*

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without due process of law and upon just and fair compensation.

12.2. The right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act, 1978, however, it continued to be a human right 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

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Article 300A of the Constitution of India, must be strictly construed." (emphasis supplied) 4 (2005) 7 SCC 627.

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

"30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property.

"Property must be secured, else liberty cannot subsist" was the opinion of John Adams. Indeed the view that property itself is the seed bed which must be conserved if other constitutional values are to flourish is the consensus among political thinkers and jurists." (emphasis supplied)

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

"48. …In other words, Article 300A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300A. In other words, if there is no law, there is no deprivation." (emphasis supplied) 10.3. In this case, the Appellant could not have been forcibly dispossessed of her property without any legal sanction, and without following due process of law, there is no deprivation."

12.6 In this case, the Appellant could not have been forcibly dispossessed of her property without any legal sanction, and without following due process of law, and depriving her 6 (2011) 9 SCC 354. 7 (1995) Supp. 1 SCC 596. payment of just compensation, being a fundamental right on the date of forcible dispossession in 1967.

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12.8. The contention of the State that the Appellant or her predecessors had "orally" consented to the acquisition is completely baseless. We find complete lack of authority and legal sanction in compulsorily divesting the Appellant of her property by the State.

12.9. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors. wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

12.10. This Court in State of Haryana v. Mukesh Kumar held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. 8 (2013) 1 SCC 353. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi− faceted dimension.

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

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12.12. The contention advanced by the State of delay and laches of the Appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice. 12.13. In a case where the demand for justice is so compelling, a constitutional Court would exercise its jurisdiction with a view to promote justice, and not defeat it.

12.14. In Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors.,10 this Court while dealing with a similar fact situation, held as follows : "There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases, etc. Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, under Article 9 P.S. Sadasivaswamy v. State of T.N. (1975) 1 SCC 152. 10 (2013) 1 SCC 353. 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. Functionaries of the State took over possession of the land belonging to the Appellants without any sanction of law. The Appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply with the procedure laid down for acquisition,

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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.

41. 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

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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 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

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has been expropriated? In these facts and circumstances, we find this conclusion to be unacceptable, and warranting intervention on the grounds of equity and fairness.

17. When seen holistically, it is apparent that the State's actions, or lack thereof, have in fact compounded the injustice meted out to the appellants and compelled them to approach this court, albeit belatedly. The initiation of acquisition proceedings initially in the 1990s occurred only at the behest of the High Court. Even after such judicial intervention, the State continued to only extend the benefit of the court's directions to those who specifically approached the courts. The State's lackadaisical conduct is discernible from this action of initiating acquisition proceedings selectively, only in respect to the lands of those writ petitioners who had approached the court in earlier proceedings, and not other land owners, pursuant to the orders dated 23.04.2007 (in CWP No. 1192/2004) and 20.12.2013 (in CWP No. 1356/2010) respectively. In this manner, at every stage, the State sought to shirk its responsibility of acquiring land required for public use in the manner prescribed by law.

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

'11……."Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his

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conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material.

But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

19. The facts of the present case reveal that the State has, in a clandestine and arbitrary manner, actively tried to limit disbursal of compensation as required by law, only to those for which it was specifically prodded by the courts, rather than to all those who are entitled. This arbitrary action, which is also violative of the appellants' prevailing Article 31 right (at the time of cause of action), undoubtedly warranted consideration, and intervention by the High Court, under its Article 226 jurisdiction. This court, in Manohar (supra) - a similar case where the name of the aggrieved had been deleted from revenue records leading to his dispossession from the land without payment of compensation – held: 6"Having heard the learned counsel for the appellants, we are satisfied that the case projected before the court by the appellants is utterly untenable and not worthy of emanating from any State which professes the least regard to being a welfare State. When we pointed out to the learned counsel that, at this stage at least, the State should be gracious enough to accept its mistake and promptly pay the compensation to the respondent, the

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State has taken an intractable attitude and persisted in opposing what appears to be a just and reasonable claim of the respondent.

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

20. Again, in Tukaram Kana Joshi (supra) while dealing with a similar fact situation, this court held as follows: (SCC p. 359 para11)

"11"There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases, etc. Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, under Article 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. The functionaries of the State took over possession of the land belonging to the appellants without any sanction of law. The appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply

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> *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."*

42. The learned First Appellate Court has duly appreciated the oral as well as documentary evidence placed on record and has rightly come to the conclusion that the plaintiff is entitled for grant of decree for possession against the defendants.

43. The Honorable Apex Court has repeatedly held that no person can be deprived of his properties without adopting due process of law, including the payment of amount of compensation amount, therefore, under such circumstances, the plea as set up by the appellants State is not tenable in the facts and circumstances of the case.

44. Once the State have utilized the land of the villagers, including the plaintiff, without adopting due process of law, now the plea as raised by the present appellants is not admissible, that too, at

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this stage of regular second appeal. The official defendants have admitted in their deposition that qua the construction of the road, no written consent has been given by the plaintiff or any other co-villager.

45. The findings as recorded by the learned First Appellate Court are legal, valid, and sustainable, and do not suffer from any infirmity or illegality.

46. No other point raised by the learned counsel for the parties. Learned First Appellate Court has rightly appreciated the point in controversy after considering the oral as well as documentary evidence placed on record. The substantial questions of law are answered accordingly.

47. In view of the 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

July 23, 2026.
(Nisha)

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