

2026:HHC:24823

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

**LPAs No. 52 & 53 of 2019
Reserved on : 30.05.2026
Pronounced on: 25.06.2026
Uploaded on:25.06.2026**

Hari Singh & another *.....Appellant(s)*
Versus

The Financial Commissioner (Appeals) and others

.....Respondent(s).

Coram:

**The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.
The Hon'ble Mr. Justice Bipin C. Negi, Judge.**

Whether approved for reporting? *Yes.*

For the Appellant(s): Mr. Lalit Kumar Sharma,
Advocate.

For the respondents: Mr. Varun Chandel, Additional
Advocate General, for
respondent No. 1/State in both
the appeals.

Mr. G.R. Palsra, Advocate, for
respondents No. 2(a) to 2(g) and
respondents No. 4(1) to 4(ii).

G.S. Sandhawalia, Chief Justice.

The present two appeals arise out of a common order passed by the learned Single Judge on 28.04.2015,

whereby he had been pleased to dismiss Civil Writ Petition Nos. 1706 of 2010 & 1731 of 2010, both titled as ***Hari Singh & another Vs. Financial Commissioner & others***, filed by the present appellants/tenants.

2. The said writ petitions had arisen out of the same proceedings, and, therefore, were heard together by the learned Single Judge, being a common subject matter.

3. While affirming the concurrent findings as such of the Authorities below, the learned Single Judge had dismissed the writ petitions, whereby challenge was raised by the present appellants, who are the tenants of the land in question, against the order of resumption of the land under the provisions of Section 104 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 and Rules thereunder.

4. Learned Counsel for the petitioners had taken objection before the learned Single Judge that the application filed for resumption of land under the provisions of the Rules, was not properly constituted and the same was sought to be rejected being time barred, having been filed after 31.03.1976. The learned Single Judge had also recorded a finding of fact that on the earlier round of

litigation, the objection regarding non-signing by two of the land owners, had led to the abandonment of the said plea and estopping it from agitating the said factum as it was taken up at a highly belated stage. Similarly, the application being within limitation having been filed in the year 1975, could not be said to have been whittled down on account of the subsequently issued notification when the law applicable to the *lis* was in operation at the time of the institution of the claim in the year 1975.

Arguments of the Counsel for the appellants:

5. Learned Counsel for the appellants has raised the said issues again by saying that although the application for resumption of land had initially been filed by Parma Nand, Hem Raj and Surajmani, Sons of Shri Bhikham on 03.12.1975, but was only signed by Hem Raj, and not by Parma Nand and Surajmani, and, therefore, was not tenable in the eyes of law.

6. The second argument raised was that the Rules initially provided the right of resumption to the landowners for a period of one month was from the date of coming into force of the principal Rules, which was 03.10.1975, as

provided under Section 104(8) and Rule 21. It is submitted that the cut off date for filing the application was initially 03.11.1975 and the application was filed beyond the said period on 03.12.1975. It is submitted that the subsequent substitution as such extending the period from 31.12.1975 only came into force on 15.12.1975 and would be prospective in nature as the application was filed on 03.12.1975 and there was no such valid vested right and the benefit as such of the provisions for resumption would not be available.

The factual matrix:

7. A perusal of the file would go on to show that this is the second round of litigation as such *inter-se* the parties, as apparently in the first round of litigation, the application in Form LRV under Rule 21 of the HP Tenancy and Land Reforms Act (for short 'the Act') had been filed before the Land Reforms Officer by Parma Nand, Hem Raj and Surajmani, which was contested by filing a reply on 12.08.1983, in which no such objection had been taken, that it was signed only by one of the landowners.

8. The application filed on 03.12.1975 by the landowners had been dismissed in default on 11.02.1976, which matter was then taken to the Collector by the land owners and he had been pleased to remand the issue by order on 20.01.1979 to the Land Reforms Officer. The present appellants had further carried the matter to the higher Courts and eventually, the Financial Commissioner vide order dated 13.11.1987 upheld the order of the lower Court, while coming to the conclusion that the dismissal of the application by the Land Reforms Officer on 11.02.1976 was not justified, as there is nothing on record to show that effective service had been conducted on the tenants and whether the proceedings had been held at the camp office at Patwarkhana or at the Tehsil Headquarter, wherein the application had been dismissed for reservation of the land comprising in 55 Kita, measuring 17-5-0 bighas, situated at Village Bahau, Tehsil Sadar, Mandi and directions were given to take suitable action against the Land Reforms Officer. It was at this stage, on remand for the first time, that an objection was raised regarding the signing of the said initial application filed under Rule 21 of the Act that it

suffered from the defect not having been filed by the other land owners who are brothers.

9. In this background, the Authorities as such had taken a call that in view of the provisions of the Act, the landowner had a due authorization also, when he had filed the said application on behalf of his brothers and if the signatures were taken at the subsequent stage, the same validated re-filing, while placing reliance upon the judgment of this Court in **Karan Singh Vs. Rachpal Singh & others, 1977, Shimla Law Cases, 115**, and further placing reliance upon the judgment of the Apex Court in **All India Reporter Ltd. Vs. Ram Chandra Dhondo Datar AIR 1961, Bombay 292**, that an opportunity could be given to sign and verify the plaint. It was held that it was merely a matter of procedure and keeping in view the fact that the provision itself provides that there could be authorization as such under the Rules to submit the application in duplicate to the Land Reforms Officer in whose jurisdiction, the land is situated. Thus, the application having been filed on 03.12.1975 was accordingly

held to be filed within the prescribed period of limitation as it had been extended upto 31.03.1976.

10. It is to be noticed that the order dated 07.12.1988 (Annexure P-1), passed by the Land Reforms Officer is subject matter of challenge in Civil Writ Petition No. 1706 of 2010, which was upheld in appeal on 30.12.1988 (Annexure P-2), whereby the applicants were allowed to resume 17-4-14 bighas of land out of 34-9-8 bighas of land and order dated 03.03.1989 (Annexure P-1) is subject matter of challenge in Civil Writ Petition No. 1731 of 2010 which had been upheld in appeal on 28.08.1990 (Annexure P-2) and the final order of resumption had been passed, whereas vide earlier Order dated 30.12.1989, the Collector had also dismissed the appeal against the order dated 07.12.1988.

11. Two appeals were thus filed before the Commissioner, Mandi Division, which were clubbed together and decided on 27.05.1992 (Annexure P-3) and the said order was then upheld on 06.11.2009 by the Financial Commissioner (Annexure P-4) and, resultantly, led to the

dismissal of the writ petitions on 28.04.2015, which are subject matter of consideration in the present appeals.

Provisions in question:

12. Relevant provisions of Section 104(I), wherein the right as such was given to landowners to resume the land, which is in possession of the non-occupancy tenant. read as under:-

“104. Right of tenant other than occupancy tenant to acquire interests of landowner -

(1) Notwithstanding anything to the contrary contained in any law, contract, custom or usage for the time being in force, on and from the commencement of this Act, if the whole of the land of the landowner is under non-occupancy tenants, and if such a landowner has not exercised the right of resumption of tenancy land at any time since January 26, 1955, under any law as in force: -

(i) such a landowner shall be entitled to resume before the date to be notified by the State Government in the official Gazette and in the manner prescribed, either one and a half acres of irrigated land or three acres of un-irrigated land under tenancy from one or more than one tenants for his personal cultivation and the right, title and interest (including contingent interest, if any) of the tenant or tenants, as the case may be, therefrom shall stand extinguished free from all encumbrances

created by the tenant or tenants to that extent:

Provided that if the tenant has taken loan from the State Government, a co-operative society or a bank for the improvement of tenancy land which the landowner has resumed under clause (i) or clause (ii) and has used such loan for the improvement of such land, then the landowner shall be liable to repay the outstanding amount of such loan and to the extent actually used for the said purpose and interest thereon to the State Government or to the Cooperative Society or a bank, as the case may be, proportionate to the improved land resumed by him:

Provided further that the landowner shall not be entitled to resume from a tenant more than one half of the tenancy land;

(ii) in case the landowner holds less than one and a half acres of irrigated land or three acres of un-irrigated land in his personal cultivation, he shall be entitled to resume tenancy land only to make up the land under his personal cultivation to the extent of one and a half acres of irrigated land, or three acres of un-irrigated land, as the case may be, subject to the other conditions laid down in this section;

(iii) the right, title and interest in the rest of the tenancy land of the landowner, who is entitled to resume land under clauses (i) and (ii) shall vest in the tenant free from an encumbrances with effect from the date to be

notified by the State Government in the Official Gazette;

(iv) in case the land under the tenancy is partly irrigated and partly un-irrigated and the landowner intends to resume land of both these classes, he shall be entitled to do so in the ratio and manner to be prescribed."

13. Rule 21 provides that the application which has to be preferred and which provided that the same could be done till 31.11.1975, the initially prescribed period of one month from the date when the Rules came into force i.e. 03.10.1975, was then substituted by the Notification dated 15.12.1975, extending the limitation. The same reads as under:-

"21. Application for resumption of land by the landowner under section 104 -

(1) A landowner who intends to resume land for his personal cultivation under section 104 shall himself or through an authorised person submit an application in Form LRV in duplicate to the Land Reforms Officer in whose jurisdiction the land is situated. In filling up the Form the landowner shall be assisted by the Patwari concerned.

(2) The period for submission of application under sub-rule (1) above is :-

(l) for the landowners other than those mentioned in sub-section (8) of section 104 [Upto thirty first December, 1975]; [Substituted and deemed to have been substituted w.e.f. the date of coming into force of the Principal rules, by Notification No. 10-5-73 Revenue, A.A., dated 15th December, 1975, published in R.H.P., Extraordinary, dated the 18th December, 1975, pp. 1917.]

(ii) for the minors within 6 months from the date of attainment of majority;

(iii) for members of Armed Forces mentioned in clauses (c) and (d) of sub-section [(8)] [Substituted vide Notification published in R.H.P., Extraordinary, dated 10-12-1988, pp. 2239-2240.] [of section 104 within 3 years] [Substituted vide Notification published in R.H.P., Extraordinary, dated 10-12-1988, pp. 2239-2240.] from the date on which they cease to be the members of the Armed Forces.

(iii) for members of Armed Forces mentioned in clauses (c) and (d) of sub-section 2[(8)] [of section 104 within 3 years] from the date on which they cease to be the members of the Armed Forces.”

(3). The Land Reforms Officer shall issue receipt of the Form LRV received by him under sub-rule (1) to the landowner in Form LRVI. If the land of the landowner is with more than one tenant from whom he intends to resume land under the provisions of section 104, he shall select the land for resumption from the tenant holding the largest area of tenancy land and then from the tenants who hold lesser tenancy land in

descending order. The landowners who hold the tenancy land jointly, they shall resume the land with respect to their shares keeping in view the principles of consolidation of holdings.”

Reasons to uphold the concurrent findings:

14. It is not disputed that the application was filed in the intervening period on 03.12.1975 after the first one month had expired but before the expiry of 31.12.1975. It is also noted that the provisions were substituted, which would be clear from reading the same, and therefore, would have the effect as such of going back to 03.10.1975 because the purpose as such has to be kept in mind that the land owner had to be given the right as such to resume the land, but the option could only be exercised initially within a period of one month from the date of the Rules coming into force on 03.10.1975 by a person or by the landowner or through an authorized person.

15. Thus, the purpose of the legislation has to be kept in mind that the opportunity as such was granted to the landowners upto 03.11.1975 firstly had been extended till 31.12.1975 and there could be no ambiguity or grey area

in between, when the State substituted the said Rule period and extended it upto 31.12.1975 to make it obviously more workable. In such circumstances, the application having been filed in the intervening period, once Rules came into force on 03.10.1975 and filing the application on 03.12.1975 could not have been said to be barred by limitation or the argument that there was no vested right as such on 03.12.1975 since the amendment came only on a subsequent occasion on 15.12.1975 and, therefore, the application is nonest, would not be liable to be accepted.

16. It is a settled principle that the rules of procedure as such are handmaids of justice and giving clarity to the right of the landowner which could not have been taken away lightly and, therefore, while answering the second question firstly, we are of the considered opinion that the application filed was given within the prescribed period and there could be no grey area in between, since it is the settled principle that substitution takes place from the date the original provision as such was incorporated.

17. Reliance can be placed upon ***M/s National Insurance Co. Ltd. vs. Baljit Kaur and others, AIR***

2004 SC 1340, wherein while keeping in mind the *Heydon's* case [1584 3 Co Rep 7a], and the Halsbury's Laws of England, it was held that to add force and life to the cure and remedy according to the true intent of the makers of the Act has to be kept in mind to suppress the mischief and to advance the remedy.

18. In the present case, the whole purpose as such was to grant sufficient time to the landowners for filing their application for resumption of land, the initial period being just one month from the date the Rules came into force, was thus extended till 31.12.1975, and, therefore, it was beneficiary in nature and the clarification had been done by way of substitution which has to be done with retrospective effect.

19. For the said purpose, we can fall back on the three-Judge Bench Judgment of the Apex Court in ***Collector of Central Excise, Shillong Vs. Wood Crafts Products Ltd. & others, (1995) 3 SCC 454***, wherein the controversy was that whether the “block board” was to be classified under which heading as the controversy related to various periods in view of the amendment made in the

concerned Chapter under the Central Excise Tariff Act, 1986. In the said case, the decisions of the Tribunal and that of the High were reversed giving the benefit as such to the manufacturer and the benefits granted had to relate back and the clarification made w.e.f. 01.03.1992 had to be read from 19.03.1990.

20. The said view was thereafter followed in another three-Judge Bench Judgment of the Apex Court in ***W.P.I.L Ltd. Ghaziabad Vs. Commissioner of Central Excise Meerut (2005) 3 SCC 73***, wherein it had been held that once the notification had been rescinded and a consolidated notification had been issued from 01.03.1994, the clarification and subsequent notification dated 24.04.1994 would take effect retrospectively. The relevant paras of the said judgment read as under:-

“15. The learned counsel for the appellant is also right in relying upon a decision of this Court in Collector of Central Excise, Shillong v. Wood Craft Products Ltd., [1995] 3 SCC 454. In that case, this Court held that a clarificatory notification would take effect retrospectively. Such a notification merely clarifies the position and makes explicit what was implicit.

Clarificatory notifications have been issued to end the dispute between the parties.

16. In view of the consistent policy of the Government of exempting parts of power driven pumps utilized by the factory within the factory premises, it could not be said that while issuing notification No.46/94 of March 1, 1994, the exemption in respect of said item which was operative was either withdrawn or revoked. The action was taken only with a view to rescinding several notifications and by issuing a composite notification. The policy remained as it was and in view of demand being made by the Department, a representation was made by the industries and on being satisfied, the Central Government issued a clarificatory notification No.95/94 on April 25, 1994. It was not a new notification granting exemption for the first time in respect of parts of power driven pumps to be used in the factory for manufacture of pumps but clarified the position and made the position explicit which was implicit.”

21. In **State Bank of India Vs. V. Ramakrishnan & another, 2018 AIR (SC) 3876**, the subject matter of consideration was the provisions of Section 14 of the Insolvency and Bankruptcy Code, 2016, whether the moratorium would apply to a personal guarantor of a

corporate debtor. Accordingly, it was held that the clarificatory amendment was retrospective in nature and is a declaratory statute, since it was an amendment and reliance was placed upon a Constitution Bench judgment of the Apex Court in ***Commissioner of Income Tax Vs. Vatika Township, (2015) 1 SCC 1***, wherein it was held that if a statute is curative or merely declaratory of the previous law, retrospective operation is generally intended and resultantly, the judgment of the National Company Law Appellate Tribunal was set aside, wherein it had been held that the benefit would also apply to the personal guarantor.

22. The second aspect which is to be examined is whether there was any application given by the other landowners for resumption of the land. It is not disputed that the landowners as such were brothers and the application was preferred. It was not objected to at that time on the said issue at all on 17.08.1983, but rather, on merits there was no such issue as such that it had not been signed by all the landowners, which would be clear from the written statement then preferred and objections of the respondents, which read as under:-

“The respondents state as under:-

- 1. That the application for reservation is not within the period of limitation, and as such is liable to be dismissed.*
- 2. That the applicants have got more land that fixed under the Act and as such their application for reservation is not maintainable, and they are not entitled to reservation of any land.*
- 3. That the whole of the land is not land as defined under the Act and as such the same is liable to be excluded.*
- 4. That in case of reservation the respondents would file separate tatima as their choice would be the first to be considered.*
- 5. That the respondents have already been conferred the proprietary rights and they have also paid the 'nazama' in the treasury. As such the application is not maintainable.*
- 6. That the application is not legally instituted and correctly constituted and as such the application is liable to rejection.*
- 7. That the respondents have also preferred an appeal before the Hon'ble FC and as such the proceedings be stayed.*
- 8. It is therefore prayed that the application be rejected with costs.”*

23. As noticed at the earlier point of time, the case had been dismissed in default on 11.02.1976, which order had been set aside by the Collector on 21.01.1979 and the matter had been remanded. The present appellant had

never been able to point out before the Authorities that the application was not maintainable in the present form. The remand order had been upheld by the Financial Commissioner on 13.11.1987, as noticed above and action had been directed to be taken against the Land Reforms Officer, who had dismissed the application without even perusing the file whether the service was complete or not on the tenants and whether the case had been taken at the Camp office or at the Tehsil Headquarter. The present appellants-writ petitioners before the Financial Commissioner, at that point of time, had taken no objection to the effect that the application was signed by only one landowner, and they had already filed their reply before the Land Reforms Officer in which they had taken no such objection.

24. In such circumstances, it has been rightly held that they were estopped as such to take the said plea on remand. Even otherwise, now they cannot take the plea that there was a forged application which has now been sought to be raised in the present Letters Patents Appeals and as noticed by the Authorities, in the second round of

litigation, since the said application was admittedly filed only on 01.08.1988 for leading additional evidence on the plea that Parma Nand and Surajmani were not there during the proceedings and the application had been signed only by one brother-Hem Raj.

25. The said application had been filed as a joint petition at that time and objection had been taken after 13 years. In such circumstances, the Court below have rejected the arguments that in the remand proceedings, the same issue could not be raised having not been raised till the level of the Financial Commissioner, which would be clear from the objections of the appellants reproduced above.

26. In such circumstances, we are of the considered opinion that having given up the said objection at the initial stage, the ground could not be taken subsequently. Even otherwise, it was a joint application filed by the landowners and the right as such could be of the land owners as under the provisions of the Act and one person would be duly authorized on behalf of the brothers and therefore, the

reliance upon the judgment placed by the Authorities below would also validate such action.

27. It is a matter of fact, that following four issues were framed before the Land Reforms Officer:-

1. *Whether the application is not within time? OPP*
2. *Whether the applicants have got more land than the prescribed limit, if so effect? OPR*
3. *Whether the application is not legally instituted or constituted? OPR*
4. *Whether whole of the land is not land as defined, and its effect? OPR*
5. *Relief.*

28. Eventually, while over-ruling the objection that the application had been duly authorized by the other brother and it was filed only to delay the proceedings, the findings on merits were given that the application had been filed as per Rules, before 31.12.1976 and the landowners as such did not have more lands than the prescribed limits and had the entitlement to resume the land and resultantly, out of 34-9-8 bighas of land, permission had been given to resume 17-4-14 bighas of land.

29. The balance land as such was to be vested with the tenants free of compensation and the first choice of

selection in their favour was given, which apparently they did not avail and led to the passing of the order dated 03.03.1989 and the matter was then clubbed together after the initial order dated 07.12.1988 was upheld by the Collector, who had dismissed the appeal on 03.12.1989 (Anexure P-2) by coming to the conclusion that the tenants were estopped from raising the contention that the matter had been taken in the earlier round of litigation upto the Financial Commissioner.

30. Similarly, vide order dated 28.08.1990, the Collector, Mandi Division had dismissed the appeal of the tenants by holding that the appellants had been given the sufficient opportunities to accept the choice of resumption of the land and were also granted time on their request for compromising the matter amicably. It was noticed that the application was filed way back on 03.01.1975 and till the decision of the Land Reforms Officer, dated 03.03.1989, the landowners were still contesting but the tenants were not present at the site when choice of selection of the land had to be made and the Court could not wait as such for a long time.

31. The Divisional Commissioner, Mandi had noticed all the factual matrix as such and come to the conclusion that despite of ample opportunities to choose the land, the tenants did not exercise the right of selection of land and resultantly, found no irregularity in the orders by taking into consideration the orders of the Field Kanungo dated 21.09.1989 while dismissing the second appeal.

32. The Financial Commissioner, while upholding the said orders, also noticed that the second appeal was not maintainable and same could have been dismissed on the ground of jurisdiction keeping in view the provisions of Sections 61(ii) of the 1972 Act and came to the conclusion that the tenants were trying only to linger on their case and the deficiency of the certain aspects had been done by the Court while keeping in view the interest as such of the parties and the fact that the interest of the parties in the application would be only filed by one of them. The learned Single Judge has also rightly upheld the said orders.

33. Resultantly, keeping in view the above discussion, this Court is of the considered opinion that the application was filed within the prescribed period in view of

the substitution of the provisions that the objection is without any basis and secondly, having been filed by one of the brothers, and the objections having not been taken at the earlier stage in the first round of litigation, thus, the application would be maintainable being filed by an authorized person. The Authorities thus have not erred in any manner in upholding the orders in question.

34. Resultantly, we do not find any plausible reason to interfere with the well reasoned order passed by the Authorities below and and duly upheld by the learned Single Judge and accordingly dismiss the said appeal.

35. Pending application(s), if any, also stand disposed of.

(G.S. Sandhawalia)
Chief Justice

(Bipin C. Negi)
Judge

June 25, 2026.
(Hemlata)