

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No.754 of 2025

Reserved on : 17.09.2026

Decided on : 25.09.2026

Uploaded on : 25.09.2026

The State of Himachal Pradesh and another

..... Appellants

Versus

**M/s R.D. Enterprises (Govt. Contractor), through its partner
Sh. Randhir Singh and another**

..... Respondents

Coram:

The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice

The Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting?¹

For the Appellants : Mr. Rakesh Dhaulta, Additional Advocate General.

For the Respondents : Mr. Nitin Yadav and Mr. Rajat Thakur, Advocates, for respondent No.1.

Mr. Arvind Sharma, Senior Advocate with
Ms. Kiran Sharma, Advocate, for respondent
No.2.

Bipin Chander Negi, Judge

The present appeal has been preferred against the impugned judgment dated 05.12.2024, passed by the learned Single Judge, in **CWP No. 7674 of 2024**, titled **M/s R.D. Enterprises vs. State of Himachal Pradesh and others**, whereby the writ petition preferred by respondent No. 1 herein, has been partly allowed and the present respondent No. 2-bank has been directed to consider and decide the

prayer made by the writ petitioner/present respondent No. 1 for cancellation of FDR strictly in terms of the banking rules and the present appellants have been given the liberty to take recourse to appropriate proceedings for recovery of loss suffered by them on account of re-auction conducted in the case at hand.

2. The appellant No.2, in the case at hand, vide notification dated 08.03.2019 (Annexure P-2 of the writ petition), had invited bids for the allotment of lease rights to collect toll under the H.P. Tolls Act, 1975 for various toll plazas located within the State of Himachal Pradesh from 01.04.2019 to 31.03.2020. The last date for submission of respective bids was extended on 25.03.2019 till 27.03.2019 (Annexure P-4 of the writ petition).

3. The present respondent No.1, being a Government Contractor, had submitted his bids, in pursuance to the aforesaid notification dated 08.03.2019 (Annexure P-2 of the writ petition), on 27.03.2019. The bids had been submitted by the present respondent No.1 for the toll units of Kala Amb and Behral.

4. The bids of respondent No.1 for the aforesaid two toll units, Kala Amb and Behral, respectively had been accepted for an amount of Rs.7,39,50,000/- and Rs.4,78,50,100/- (total amounting to Rs.12,18,00,100/-).

5. Prior to the submission of the bids on 27.03.2019, respondent No.1 had prepared one FDR in favour of the Deputy Commissioner of State Taxes and Excise, Nahan for an amount of

Rs.40,00,000/- vide FDR No.38349082567, issued by the State Bank of India, Branch Kondli, New Delhi. Other than the aforesaid, an amount of Rs.7,39,570/- and Rs.4,78,740/- had been deposited by respondent No.1 with the appellants.

6. On being successful at the auction, appellant No.2 had directed the writ petitioner to complete the necessary formalities on 29.03.2019. Thereafter, telephonically, respondent No.1 had informed the officials of appellant No.2 regarding withdrawal of bids made for the two toll units at Kala Amb and Behral.

7. According to respondent No.1, officials of appellant No.2 had approached respondent No.2-bank for encashment of the FDR number 38349082567. However, the Bank Manager did not accede to the said request on account of absence of the original FDR. Thereafter, respondent No.1 approached respondent No.2-bank to cancel the FDR for Rs.40,00,000/-. However, respondent No.2-bank did not cancel the same, as the same had been made in the name of appellant No.2.

8. For cancellation of the FDR number 38349082567, numerous letters/ representations were made from 2019 till 2024. Being aggrieved by the inaction on the part of the respondent No.2-bank, respondent No.1 finally preferred a writ petition bearing No. *CWP No.7674 of 2024*.

9. The appellants contested the writ so filed by respondent No.1, by filing a detailed reply. In the reply, it was categorically averred that on 27.03.2019, the bid made by respondent No.1 was accepted for a

sum of Rs.7,39,50,000/- and Rs.4,78,50,100/- for the toll units of Kala Amb and Behral respectively, total amounting to Rs.12,18,00,100/-.

10. It is further contended in the reply that post approval/ confirmation by the Commissioner of State Taxes and Excise, Himachal Pradesh, the aforesaid units were allotted to respondent No.1 for the period 01.04.2019 to 31.03.2020. The petitioner is stated to have deposited the earnest money equal to 1% of the reserve price in the shape of FDRs for a sum of Rs.7,39, 570/- and Rs.4,78,740/-. Further, it is contended in the reply that as per Condition No.2.3.13 of the Toll Announcements, for the years, 2019-2020, respondent No.1 was required to deposit 20% of the bid amount within 10 days. In this context, it is contended in the reply that respondent No.1 had furnished a copy of FDR bearing No. 38349082567 dated 26.03.2019 for a sum of Rs.40,00,000/-. Time was sought to furnish the original FDR by respondent No.1.

11. On 29.03.2019, respondent No.1 had been requested to comply with the codal formalities. However, on 30.03.2019, respondent No.1 had backtracked. Consequently, the appellants were forced to put the two toll barriers to re-auction. At the re-auction, the price fetched was Rs.10,94,50,000/- for the two barriers at Kala Amb and Behral. Hence, according to the appellants, on account of re-auction, the government suffered a loss of Rs.1,23,50,100/-.

12. As per Condition No.2.3.12 of the Toll Announcements for the years, 2019-2020, loss occasioned on account of re-auction is

recoverable from the previous toll lessee as arrears under the H.P. Land Revenue Act.

13. Other than the aforesaid, in the reply filed, Condition No.2.3.15 of the Toll Announcements of the years, 2019-2020 has been reproduced. Based on the aforesaid, it is contended that if the highest bidder at the auction withdraws, then the lease in such a case may be granted by any arrangement, specified in Condition No.1.2 of Chapter-I of the Toll Announcements and any deficiency in the amount of bid shall be recoverable from the highest bidder who has withdrawn, as arrears of land revenue.

14. Besides the aforesaid, attention is also invited to Condition No.1.5 of the Toll Announcements, wherein it has been specifically provided that a lessee is bound to comply with the provisions of the Toll Announcements.

15. In the aforesaid backdrop, in the reply filed, it has been contended that on account of loss caused due to re-auction, the appellants have forfeited the amount deposited as earnest money equal to 1% of the reserve price which had been furnished in the shape of FDRs by respondent No.1 for a sum of Rs.7,39,570/- and Rs.4,78,740/- in respect of Kala Amb and Behral units, respectively.

16. It is further categorically averred in the reply that the request made by respondent No.1 with the respondent-bank to cancel FDR bearing No. 38349082567 dated 26.03.2019 for an amount of Rs.40,00,000/- is not tenable, as the same is also liable to be forfeited to

compensate the appellants for loss sustained on account of re-auction of the bid in the case at hand.

17. Heard learned counsel for the parties and perused the writ records.

18. In the impugned judgment, Condition No.2.3.15 of the Toll Announcements of the years, 2019-2020, has been reproduced. Based on the aforesaid, learned Single Judge has correctly held that since respondent No.1, after being held to be the highest bidder qua two toll units, namely Kala-Amb and Behral, had withdrawn, hence on account of the aforesaid, re-auction with respect to the aforesaid two toll barriers was conducted and at the subsequent re-auction price fetched was lower than what had been offered by respondent no 1 at the initial auction, thereby loss of revenue had been caused to the appellants. Hence, the learned Single Judge has correctly held that in terms of Condition No.2.3.15 of the Toll Announcements for the years, 2019-2020, the appellants were entitled to recover the same from respondent No.1. Qua the same, respondent No.1 has not preferred any appeal.

19. On account of the backtracking of respondent No.1, earnest money amounting to 1% of the reserve price (Rs.7,39,570/- and Rs.4,78,740/- in respect of Kala Amb and Behral units, respectively), deposited in the shape of FDRs, qua the two units, for which respondent No.1 had submitted his bid and had been held to be the highest bidder, was correctly forfeited by the appellants. In this respect, respondent No.1 has no grouse.

20. The grievance of the appellants is with respect to the directions given by the learned Single Judge in the impugned judgment with respect to FDR bearing No. 38349082567 dated 26.03.2019 for an amount of Rs.40,00,000/-, which had been got prepared in favour of the Deputy Commissioner of State Taxes & Excise, Nahan, Himachal Pradesh to comply with deposits, which were required to be made, in terms of the Toll Announcements by respondent No.1, once the said respondent had been declared to be successful at the bid whereby the present respondent No. 2-bank has been directed to consider and decide the prayer made by the writ petitioner/present respondent No. 1 for cancellation of the FDR strictly in terms of the banking rules .

21. In the response filed to the writ petition preferred by respondent No.1, it has been categorically averred by the present appellants that a photocopy of the FDR number 38349082567 (Rs. 40,00,000/-) had been furnished to appellant No.2 and respondent No.1 had agreed to furnish the original. The said fact has not been controverted by respondent No.1, by filing a replication. While considering Condition No.2.3.15 of the Toll Announcements (reproduced in the impugned judgment), the learned Single Judge has considered the aspect of recovery of the loss occasioned on account of re-auction as arrears of land revenue, however, the aspect of deposits made as contained in the last sentence of Condition No.2.3.15, being liable to be forfeited, has been overlooked. The said claim reads as under:-

“2.3.15. If any person, who is the highest bidder at the auction, either indulges in pooling by deliberately withdraw or fails to make the deposit of the amount of security or on approval of his bid by the Excise and Taxation Commissioner refuses to accept the lease, the lease in such a case may be granted by any arrangement specified in Condition No. 1.2 of Chapter-1 and any deficiency in the amount of bid and all expenses incurred on such grant or attempted grant shall be recoverable from the said person as arrears of land revenue. In addition, all deposits made by such a person shall be forfeited.”

Thus for the balance of the amount, the same could have been recovered by way of land revenue proceedings.

22. In view of the same, direction issued by the learned Single Judge qua considering and deciding the prayer made by respondent No.1 for cancellation of FDR in question, in term of the banking rules, is liable to be set aside.

23. Learned counsel appearing on behalf of respondent-bank submits that the FDR bearing No. 38349082567 dated 26.03.2019 for an amount of Rs.40,00,000/-, stands cancelled in the month of March/April, 2025. The jurisdiction of the High Court under Article 226 of the Constitution being extraordinary permits doing of complete and substantial justice, keeping in view the principles of equity to promote honesty and fair play. In this respect reference can be made to the Apex Court judgement in ***Shangrila Food Products Ltd. v. LIC, (1996) 5 SCC 54***, relevant extract, whereof reads as under:-

“11. It is well settled that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognisance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party priorly, before invoking the jurisdiction of the High Court, the court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief. What precisely has been done by the learned Single Judge, is clear from the above emphasised words which may be re- read with advantage. The question of claim to damages and their ascertainment would only arise in the event of the Life Insurance Corporation, respondent, succeeding to prove that the appellant Company was an unlawful sub-tenant and therefore in unauthorised occupation of public premises. If the finding were to go in favour of the appellant Company and it is proved to be a lawful sub-tenant and hence not an unauthorised occupant, the direction to adjudge the claim for damages would be rendered sterile and otiose. It is only in the event of the appellant Company being held to be an unlawful sub-tenant and hence an unauthorised occupant that the claim for damages would be determinable. We see therefore no fault in the High Court adopting such course in order to balance the equities between the contestants especially when it otherwise had power of superintendence under [Article 227](#) of the Constitution in addition. We cannot be oblivious to the fact that when the occupation of the premises in question was a factor in continuation of the liability to pay for the use and occupation thereof, be it in the form of rent or damages, was also a continuing factor. The cause of justice, as viewed by the High Court, did clearly warrant that both these questions be viewed inter-dependently. For those who seek equity must bow to equity.

12. Besides, it is noteworthy that the Principal Judge of the City Civil Court, had negated the claim of damages on taking a technical view of the matter because in his view the assessment had been made more on assumptions than on concrete evidence which was required to be adduced. Nowhere was the finding recorded by that Court that damages were altogether not due or that the appellant Company was not liable; the period involved therein being from 1-3-1979 to 28-2-1992. Much time has elapsed thereafter. The respondent Company continues to be in possession of the premises in question. It would in any case be liable to pay for the

use and occupation thereof and that liability was only required to be given a legal, character, depending upon the quality of occupation. The High Court, in our view, committed no wrong in putting the negated claim of damages on the scale of justice as a balancer, before granting relief, in setting aside the orders of eviction and effecting a remand, for fresh disposal in accordance with law.”

24. In the aforesaid factual & legal matrix, the direction to recover loss caused, as arrears of land revenue by the appellants, on account of re-auction, calls for no interference, and the appeal, is partly allowed to the extent that the direction issued by the learned Single Judge qua considering and deciding the prayer made by respondent No.1 for cancellation of the FDR in question, in term of the banking rules, is set aside with a further direction to respondent No.1 to deposit a sum of Rs.40,00,000/-with the appellants within two months from today.

25. List for compliance on **1st December 2026**.

26. In view of the above, present appeal stands disposed of, so also, the pending miscellaneous application(s), if any.

(G.S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

25th September, 2026 (KS)