IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No. 149 of 2026

Decided on: 30.03.2026

Bhavik Jain and Ors. ....Appellants.

Versus

State of H.P. and Ors. ...Respondents.

Coram

The Hon'ble Mr. Justice Gurmeet Singh Sandhawalia, Chief Justice.

The Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge.

Whether approved for reporting?[1]

For the appellants : Mr. Ajay Vaidya, Advocate.

For the respondents : Mr. Varun Chandel, Additional Advocate General.

G.S. Sandhawalia, Chief Justice *(Oral)*

The challenge in the present Letters Patent Appeal is to the order dated 25.02.2026, passed by the learned Single Judge in CWP No. 2052 of 2026, titled ***Bhavik Jain and others vs. State of H.P. and others*****,** whereby the petitioners have been relegated to avail their alternative statutory remedy under Section 43(5) read with Section 44 of

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

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the Real Estate (Regulation and Development) Act, 2016 (in short the 'Act').

2. Learned Single Judge has relied upon various judgments rendered in ***Radha Krishan Industries*** *Vs.* ***State of Himachal Pradesh and Others (2021) 6 SCC 771*** and of the Division Bench in ***LPA No. 492 of 2024, titled Himachal Pradesh Electricity Board Ltd.*** *Vs.* ***Kundan Hydro (Luni) Pvt. Ltd. and another***, decided on 09.01.2026.

3. Learned counsel for the appellants has relied upon judgment of the Apex Court in ***Surya Dev Rai Vs. Ram Chander Rai and Others (2003) 6 SCC 675*** and also judgment of the Apex Court in Radha Krishan Industries case (supra) to contend that the order passed by respondent No.2 is without jurisdiction. Therefore, it is argued that the learned Single Judge erred in not entertaining the writ petition and in dismissing the same by relegating the petitioners to an alternative efficacious remedy.

4. We have perused the order dated 12.12.2025 (Annexure P-7) which was subject matter of consideration before the learned Single Judge. A perusal of the same would reveal that a show cause notice, as such, had been issued to the petitioners, being the owners of the land, in respect of a

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private partition of the land purchased from Sh. Nipun Malhotra, vide registered sale deed dated 22.07.2021, pertaining to an undivided share in the property measuring 11,524 square meters. Eventually, the petitioners sold various plots out of the land that had been divided amongst them by way of a private partition. The respondent-Authority has taken exception to the procedure followed and has concluded that the petitioners were required to be mandatorily registered under the relevant provisions, and that they had promoted the project without such registration and therefore, imposed a penalty, as such, upon the present petitioners to the tune of Rs. 17,00,000/- (Rs.1,00,000/-) per plot for 17 plots for violation of Section 3.

5. Various directions have also been issued to the Additional Chief Secretary, as such, regarding the manner in which the partition took place and the manner in which plots have been sold, whereby the respondent-Authority was of the considered opinion that there was an apparent violation of the relevant rules also. It is also not in dispute that the total numbers of plots had been sold to 17 petitioners and that the two of the appellants had sold 6 plots while the third

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had sold five plots. The total area sold is stated to be 3,256 square meters, out of the divided share of 5511 square meters, whereas, the remaining 6,012 square meters still continues to remain under the joint ownership. In such circumstances, the authorities have concluded that the provisions of the Himachal Pradesh Town and Country Planning Act as well as the provisions under the Revenue Department have been violated.

6. In ***Raj Kumar Shivhare*** Vs. ***Assistant Director, Directorate of Enforcement and another*** **(2010) 4 SCC 772,** it was noticed that since there was provision of filing an appeal in the High Court and therefore, entertainment of writ petition as such could not be invoked by the litigant whereby the writ petition though dismissed on account of lack of territorial jurisdiction, the liberty had to be given to approach the Court of competent jurisdiction. Relevant portion of the said judgment reads as under:-

> *"30. The argument that writ jurisdiction of the High Court under Article 226 of the Constitution is a basic feature of the Constitution and cannot be ousted by Parliamentary legislation is far too fundamental to be questioned especially after the judgment of the Constitution Bench of this Court in L. Chandra Kumar*

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> *vs. Union of India and others - [(1997) 3 SCC 261]. However, that does not answer the question of maintainability of a writ petition which seeks to impugn an order declining dispensation of pre-deposit of penalty by the Appellate Tribunal.*
>
> *31. When a statutory forum is created by law for redressal of grievance and that too in a fiscal Statute, a writ petition should not be entertained ignoring the statutory dispensation. In this case High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go bye by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction. The High Court, with great respect, fell into a manifest error by not appreciating the aspect of the matter. It has however dismissed the writ petition on the ground of lack of territorial jurisdiction."*

7. In ***Om Prakash Saini*** Vs. ***DCM Limited and others*** **(2010) 11 SCC 622,** the Apex Court held that once there was a remedy of appeal before the National Consumer Commission, the High Court was not justified in entertaining the writ petition more so, keeping in view the fact that it was a complete code in itself and moreover, it was a special enactment for adjudication of the consumer disputes and had to be treated an effective alternative remedy.

8. It is a settled principle that once there is an alternate efficacious remedy, the Writ Court would not

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entertain the petition and this principle has been laid down by the Hon'ble Apex Court in ***United Bank of India*** *Vs.* ***Satyawati Tondon and others (2010) 8 SCC 110.*** In the said case the issue was of "Sarfaesi" proceedings and the alternative remedy was provided under the Act before the Tribunal. It was held that there was no reason why the High Court should entertain the petition. The Apex Court also placed reliance upon the earlier judgment in ***CCE*** Vs. ***Dunlop India Limited (1985) 1 SCC 260*** to hold that there should be good and sufficient reasons to bye pass an alternative remedy and that such petitions are filed solely for the purpose of obtaining interim orders and prolong the proceedings and such practice needs to be strongly discouraged.

9. In such circumstances, we are of the considered opinion that the petitioner is not without a remedy inasmuch as Section 43 (5), which reads as under:-

> *"(5) Any person aggrieved by any direction or decision or order made by the authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter.*
>
> *Provided that where a promoter files an appeal with the Appellate Tribunal, is shall not be entertained, without the promoter first having*

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> *depositing with the Appellate Tribunal at least thirty percent, of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard."*

10. It is not disputed that the Appellate Tribunal has been set-up and is existing, therefore, it does not lie in the mouth of the present appellants to submit that they have been divested of their right to avail the alternative remedy, keeping in view the settled position of law. Rather, a perusal of the writ petition would go on to show that it has been specifically mentioned that there is no alternate efficacious remedy available, which is contrary to the statutory provision.

11. We are of the considered opinion that the said provision also provides for the deposit of 30% of the penalty while filing an appeal, or such higher percentage as determined by the Appellate Tribunal, thus the writ petition has been filed to avoid depositing the penalty in the first instance. Therefore, we are of the considered opinion that once there is an alternate efficacious remedy available in such circumstances, there is no occasion to interfere with the well-

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reasoned order passed by the learned Single Judge in exercise of judicial process.

12. Keeping in view the fact that the issue of limitation would arise, if the appeal is filed within three weeks from today, the Appellate Tribunal shall be expected to decide the matter on merits, rather than, dismissing the appeal on the ground of limitation, since the matter remained pending before the Writ Court.

13. The appeal is, accordingly, disposed of, alongwith pending miscellaneous application(s), if any.

(G.S. Sandhawalia)
Chief Justice

(Jiya Lal Bhardwaj)
Judge

30th March, 2026
(sushma)