

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

**ON THE 30<sup>th</sup> DAY OF SEPTEMBER, 2022**

**BEFORE**

**HON'BLE MS. JUSTICE SABINA**

**&**

**HON'BLE MR. JUSTICE SUSHIL KUKREJA**

**LETTERS PATENT APPEALS No.36 TO 41 of 2020**

**1. LETTERS PATENT APPEAL No.36 of 2020**

**Between:-**

**BIMLA DEVI D/O SH. SUNDER LAL,  
W/O SH. NARENDER KUMAR R/O  
VPO JAI NAGAR, SUB-TEHSIL  
RAMSHAHAH, DISTRICT SOLAN,  
H.P.**

**....APPELLANT**

**(BY MR. JAGAT PAUL, ADVOCATE)  
AND**

- 1. STATE OF HIMACHAL PRADESH  
THROUGH PRINCIPAL  
SECRETARY (PWD), TO THE  
GOVERNMENT OF HIMACHAL  
PRADESH.**
- 2. DEPUTY COMMISSIONER SOLAN,  
DISTRICT SOLAN, H.P.**
- 3. LAND ACQUISITION COLLECTOR,  
HPPWD, WINTER FIELD, SHIMLA,  
DISTRICT SHIMLA, H.P.**
- 4. ENGINEER-IN-CHIEF HPPWD,  
SHIMLA, H.P.**
- 5. EXECUTIVE ENGINEER ARKI,  
TEHSIL ARKI, DISTRICT SOLAN,  
H.P.**

**....RESPONDENTS**

**(BY MR. ASHWANI SHARMA,  
ADDITIONAL ADVOCATE GENERAL)**

**2. LETTERS PATENT APPEAL No.37 of 2020**

**Between:-**

**PRAKASH CHAND ALIAS ASHOK  
KUMAR S/O SH. SUNDER LAL, R/O  
VPO JAI NAGAR, SUB-TEHSIL  
RAMSHAHAR, DISTRICT SOLAN,  
H.P.**

**....APPELLANT**

**(BY MR. JAGAT PAUL, ADVOCATE)**

**AND**

- 1. STATE OF HIMACHAL PRADESH  
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HPPWD, WINTER FIELD, SHIMLA,  
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SHIMLA, H.P.**
- 5. EXECUTIVE ENGINEER ARKI,  
TEHSIL ARKI, DISTRICT SOLAN,  
H.P.**

**....RESPONDENTS**

**(BY MR. ASHWANI SHARMA,  
ADDITIONAL ADVOCATE GENERAL)**

**3. LETTERS PATENT APPEAL No.38 of 2020**

**Between:-**

**RATTAN LAL S/O SH. SUNDER  
LAL, R/O VPO JAI NAGAR, SUB-  
TEHSIL RAMSHAHAR, DISTRICT  
SOLAN, H.P.**

**....APPELLANT**

**(BY MR. JAGAT PAUL, ADVOCATE)**

**AND**

1. STATE OF HIMACHAL PRADESH  
THROUGH PRINCIPAL  
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2. DEPUTY COMMISSIONER SOLAN,  
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5. EXECUTIVE ENGINEER ARKI,  
TEHSIL ARKI, DISTRICT SOLAN,  
H.P.

....RESPONDENTS

(BY MR. ASHWANI SHARMA,  
ADDITIONAL ADVOCATE GENERAL)

4. LETTERS PATENT APPEAL No.39 of 2020

Between:-

BINTA DEVI D/O SH. SUNDER LAL,  
W/O SH. DES RAJ R/O VPO JAI  
NAGAR, SUB-TEHSIL  
RAMSHAHAR, DISTRICT SOLAN,  
H.P.

....APPELLANT

(BY MR. JAGAT PAUL, ADVOCATE)  
AND

1. STATE OF HIMACHAL PRADESH  
THROUGH PRINCIPAL  
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SHIMLA, H.P.

5. EXECUTIVE ENGINEER ARKI,  
TEHSIL ARKI, DISTRICT SOLAN,  
H.P.

....RESPONDENTS

(BY MR. ASHWANI SHARMA,  
ADDITIONAL ADVOCATE GENERAL)

5. LETTERS PATENT APPEAL No.40 of 2020

Between:-

MEERA DEVI D/O SH. SUNDER  
LAL, W/O SH. RAMESH CHAND  
R/O VPO JAI NAGAR, SUB-TEHSIL  
RAMSHAHAR, DISTRICT SOLAN,  
H.P.

....APPELLANT

(BY MR. JAGAT PAUL, ADVOCATE)  
AND

1. STATE OF HIMACHAL PRADESH  
THROUGH PRINCIPAL  
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TEHSIL ARKI, DISTRICT SOLAN,  
H.P.

....RESPONDENTS

(BY MR. ASHWANI SHARMA,  
ADDITIONAL ADVOCATE GENERAL)

6. LETTERS PATENT APPEAL No.41 of 2020

Between:-

SHYAM LAL S/O SH. SUNDER LAL,  
R/O VPO JAI NAGAR, SUB-TEHSIL

**RAMSHAHAR, DISTRICT SOLAN,  
H.P.**

**....APPELLANT**

**(BY MR. JAGAT PAUL, ADVOCATE)  
AND**

- 1. STATE OF HIMACHAL PRADESH  
THROUGH PRINCIPAL  
SECRETARY (PWD), TO THE  
GOVERNMENT OF HIMACHAL  
PRADESH.**
- 2. DEPUTY COMMISSIONER SOLAN,  
DISTRICT SOLAN, H.P.**
- 3. LAND ACQUISITION COLLECTOR,  
HPPWD, WINTER FIELD, SHIMLA,  
DISTRICT SHIMLA, H.P.**
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SHIMLA, H.P.**
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TEHSIL ARKI, DISTRICT SOLAN,  
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**....RESPONDENTS**

**(BY MR. ASHWANI SHARMA,  
ADDITIONAL ADVOCATE GENERAL)**

*This appeal coming on for admission this day, **Hon'ble Ms. Justice Sabina**, delivered the following:*

### **J U D G M E N T**

Vide this order, above mentioned appeals would be disposed of as they involve common issue.

2. Appellants have filed the Letters Patent Appeals challenging the order dated 17<sup>th</sup> August, 2020, passed by learned Single Judge, whereby the writ petitions filed by the appellants were dismissed.

3. Learned counsel for the appellants has submitted that learned Single Judge has erred in dismissing the petitions filed by the appellants. Appellants had never given their consent for construction of the link road. Hence, the appellants were entitled to receive compensation *vis-à-vis* land utilized by the respondents for construction of link road. The other villagers have been granted compensation and it was only the appellants, who have been discriminated. The land in question came to the appellants from their mother.

4. In support of his arguments, learned counsel for the appellants has placed reliance on the judgment of Hon'ble Supreme Court in ***Civil Appeal No. 3189 of 2022***, titled ***Kalyani (Dead) through LRs & Ors. versus The Sulthan Bathery Municipality & Others***, wherein it was held as under:-

*“20. Article 300A clearly mandates that no person shall be deprived of his property save by authority of law. In the present case, we do not find, under which authority of law, the land of the appellants was taken and they were deprived of the same. If the Panchayat and the PWD failed to produce any evidence that appellants have surrendered their lands voluntarily, depriving the appellants of the property would be in violation of Article 300-A of the Constitution.*

21. A Constitution Bench of this Court in the case of K.T. Plantation Private Limited and another vs. State of Karnataka (2011) 9 SCC 1, apart from others, dealt with

an issue relating to payment of compensation where a person is deprived of his property after deletion of Article 31(2). It laid down that there are two requirements to be fulfilled while depriving a person of his property. Requirement of public purpose is a pre-condition and right to claim compensation is also inbuilt in Article 300-A. While answering the reference in paragraph 221(e) It provided as follows:

‘221. We, therefore, answer the reference as follows:

xxx

xxx

xxx

(e) Public purpose is a precondition for deprivation of a person from his property under Article 300-A and the right to claim compensation is also inbuilt in that article and when a person is deprived of his property the State has to be justify both the grounds which may depend on scheme of the statute, legislative policy, object and purpose of the legislature and other related factors.’

Construction/widening of road no doubt would be a public purpose but there being no justification for not paying compensation the action of the respondents would be arbitrary, unreasonable and clearly violative of Article 300-A of the Constitution.”

5. Learned Additional Advocate General has opposed the appeals and has submitted that the father of the appellants has given his consent for utilization of the land for constructions of link road. In this regard, reliance has been placed on Annexure R-1, attached to the reply to the writ petition filed by the respondents.

6. In rebuttal, learned counsel for the appellants has submitted that Annexure R-1, did not bear the signature of the father of the appellants. In fact, the name of the father of the appellants is 'Sunder Lal' and not 'Sunder Ram' as depicted in Annexure R-1.

7. In the above factual background, learned Single Judge rightly came to the conclusion that the case involves disputed questions of fact, which cannot be adjudicated by this Court, while exercising extraordinary jurisdiction under Article 226 of the Constitution of India. Parties will have to lead evidence in support of their respective pleas.

8. The judgment relied upon by learned counsel for the appellants fails to advance the case of the appellants as in the present cases it is the case of the respondent-State that the father of the appellants had given consent for construction of the road.

9. Hence, we are of the opinion that the learned Single Judge has rightly dismissed the writ petitions filed by the appellants, by granting liberty to them to agitate their claims before the Civil Court, if so advised.

10. Accordingly, the appeals are dismissed.

**(Sabina)  
Judge**

**(Sushil Kukreja)  
Judge**

**September 30, 2022<sup>(ps)</sup>**