



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 1153 of 2026
Decided on: 25.02.2026

Pawan Wasant Borle

.....**Petitioner**

Versus

Union of India and others

.....**Respondents**

Coram

Ms. Justice Jyotsna Rewal Dua

Whether approved for reporting?¹Yes

For the Petitioner: Mr. N.K. Bhalla, Advocate.

For the Respondents: Ms. Sheetal Vyas, CGC, for respondent No.1.

Mr. Y.P.S.Dhaulta, Additional Advocate General for respondents No. 2 & 3.

Mr. Raman Ravi Verma, Advocate, for respondent No.4.

Jyotsna Rewal Dua, Judge

Notice confined to respondents No. 1 to 4 which is waived by Ms. Sheetal Vyas, learned CGC, Mr. Y.P.S. Dhaulta, learned Additional Advocate General and Mr. Raman Ravi Verma, learned Counsel for respondent No.1, respondents No. 2 & 3 and respondent No.4, respectively.

This writ petition has been filed for grant of following substantive reliefs:-

(a) To issue writ to the effect that the provision contained in State Legislation as contained in Section 118(1) and Section 118 (3) (D) of H.P. Tenancy and Land Reforms Act, 1972 as amended from time to time shall give way to the provisions as envisaged in Sections 11, 18, 19 and 40 of Parliamentary Legislation Real Estate (Regulation and Development) Act, 2016.

(b) To quash the Annexure P-6 and Annexure P-7 and Annexure P-8 to the extent the operation of recovery

¹Whether reporters of print and electronic media may be allowed to see the order? Yes.

certificate issued under Section 40(1) Annexure P-4 (Colly.) is precluded and hindered.

(c) To recover the total amount, declared as arrear of land revenue vide Annexure P-5 dated 14.11.2022 alongwith interest @9.3% per annum from the date of each payment by sale of properties as mentioned in Annexure P-2 or in alternate by and other mode.

(d) To issue mandate with direction to respondent No. 2 & 3 to execute and comply the orders passed by the respondent No.4 Annexure P-3 and Annexure P-4(Colly.) in terms of Section 103 of H.P. Land Revenue Act, 1954.”

After arguing for sometime, learned counsel for the petitioner submitted that he is under instructions to confine this writ petition only for relief (d) and other prayers be treated as having been given up. Prayer is accepted. This writ petition is accordingly being heard only for considering relief (d).

In view of writ petition having been confined only to relief (d), submissions made by learned counsel for the appearing parties, pleadings and nature of order being passed hereinafter, notice of this writ petition is not required to be issued to respondents No. 5 & 6. Matter has accordingly been heard at this stage with the consent of learned counsel for the parties.

2. The case set up by the petitioner:-

(i) Respondents No. 5 & 6 represented themselves as promoters of Community Housing Project by the name of “Aamoksh @ Kasauli” which was being constructed by them on land comprised in Khasra Nos. 142/35/2, 143/35/2,

125/13/2, 126/13/2 (Old Khasra Nos.) which have since been assigned new Khasra Nos. i.e. 129/1, 135, 128, 138/1, 146, 129, 136 at Mohal Joul, Tehsil Kasauli, District Solan, H.P. Respondents No. 5 & 6 had projected themselves to be the owners of the aforesaid land purchased by them in the year 2009 and further that they had all requisite permissions from the Competent Authorities for developing the project including all approvals for setting up housing colony from the Department of Town & Country Planning, H.P. The petitioner acted upon the representation of respondents No. 5 & 6 and booked one housing unit for sale consideration of ₹88,00,000/-. An agreement to sale was executed by respondents No. 5 & 6 with the petitioner on 26.05.2015. The petitioner paid ₹78,00,491/- as part consideration to respondents No. 5 & 6, they however, did not abide by terms and conditions of the agreement to sell dated 26.05.2015. Possession of the housing unit in question was however not delivered to the petitioner.

ii) Feeling aggrieved, the petitioner invoked Real Estate (Regulation and Development) Act, 2016. The complaint filed by the petitioner was contested by respondents No. 5 & 6. The Himachal Pradesh Real Estate Regulatory Authority (RERA) allowed the complaint on 26.02.2021 as under:-

i. The Complaints are allowed and the Respondent Promoters are directed to return/refund the amount to the Complainants as under:-

- a. Ms. Ashima Sharma- Rs. Twelve lakhs, seventy six thousand, six hundred and forty five (Rs.12,76, 645/-)
- b. Shri Pawan Wasant Borle- Rs. Seventy eight lakhs, four hundred and ninety one (Rs.78,00,491/-)
- c. Shri Saket Lakhotia- Rs. Sixty six lakhs, eleven thousand, nine hundred and eighty six (Rs. 66,11,986/-)
- d. Shri Sandeep Ahuja & Smt. Vinita Ahuja- Rs. Twenty four lakhs, twenty thousand, four hundred and thirty seven (Rs. 24,20, 437/-)
- e. Shri Deepak Kumar Puggal & Smt. Davinder Puggal- Rs. Eighty two lakhs (Rs.82,00,000/-).

In all these cases of refund, an interest at the SBI highest marginal cost of lending rate plus 2% as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation & Development) Rules, 2017 will be payable. The present highest MCLR of SBI is 7.3%. Hence the rate of interest would be 7.3% + 2% i.e. 9.3%. It is clarified that simple rate of interest shall be payable from the dates on which different payments were made by the Complainants to the respondent promoters.

ii. The refund along with interest is to be paid by the respondent promoters jointly and severally to the Complainants within four months from the date of this order.

iii. Non-compliance or any delay in compliance of the above directions shall further attract penalty and interest on the ordered amount of refund under Section 63 and Section 38 of the Act *ibid*, apart from any other action the Authority may take under Section 40 or other relevant provisions of the Act.

iv. The District Collector, Solan is directed to attach the land and property of the present project by making the necessary entries in the revenue record, till the Complainants (home buyers) get refund of the amount paid alongwith interest, as directed in this order.

The order passed by RERA was not agitated by respondents No. 5 & 6. It has attained finality.

iii) Respondents No. 5 & 6 did not comply with the aforesaid order.

Petitioner preferred execution petition before RERA/ respondent No.4. The authority issued recovery certificate in favour of petitioner on 17.10.2022 (Annexure P-4) for a sum of ₹1,21,61,450/-. The District Collector, Solan- respondent No.3 vide demand order dated 14.11.2022 (Annexure P-5) declared an amount of ₹1,21,61,450/- alongwith interest @9.3% per annum recoverable as land revenue in terms of Section 103 of H.P. Land Revenue Act, 1954 from respondents No. 5 & 6. The order were transmitted for recovery of amount in petitioner's favour to the office of Tehsildar (Recovery), Solan. The Tehsildar (Recovery), Solan initiated the recovery proceedings and passed zimini orders on few dates i.e. 17.04.2023, 08.05.2023, 31.05.2023 and 15.09.2023 (Annexure P-6). The last order so passed reads as follows:-

"15.09.2023

Case called. Process to attach property was already initiated with respect to which in the case of State of H.P Vs Data Ram and Ors. Land in question stands vested in State government.

Sd.
Assistant Collector 1st Grade
Solan, District Solan (H.P),
Announced."

(iv). Petitioner's grievance is that recovery proceedings are not being taken to their logical conclusion

by the Tehsildar (Recovery), Solan - Assistant Collector 1st Grade, Solan. That the proceedings are stopped w.e.f. 15.09.2023 onwards.

3. Learned counsel for the petitioner submits that recovery proceedings are not being held by the Tehsildar (Recovery) ever since 15.09.2023 for the reason that proceeding under Section 118 of H.P. Tenancy & Land Reforms Act, 1972 qua the land in question was initiated by the Revenue Authorities against respondents No. 5 & 6 during the year 2016. The final order (Annexure P-7) effective as on date was passed by the District Collector, Solan on 05.01.2023 ordering vestment of land in question in favour of State government. This order has been affirmed by the Divisional Commissioner, Shimla on 29.11.2024 (Annexure P-8). From the record, this assertion appears to be factually correct.

4. Consideration.

Merely on the ground that land with respect to which the petitioner had claimed redressal of his grievance before RERA has now been ordered to be vested in the State Government, the recovery proceedings for implementing the final order passed by RERA whereby the petitioner has been held entitled to monetary compensation from respondents No. 5 & 6, cannot be put on hold/stopped. Section 40 of

RERA provides for recovery of interest or penalty or compensation and enforcement of order as under:-

“40. Recovery of interest or penalty or compensation and enforcement of order, etc.

“(1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.

(2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed.”

RERA accepted petitioner's complaint against respondents No. 5 & 6 on 26.02.2021. Monetary compensation was ordered to be paid to him. The order has become final. As respondents No. 5 & 6 had not discharged their obligations towards petitioner under the order dated 26.02.2021, the RERA issued Revenue Recovery Certificate in petitioner's favour on 17.10.2022. The certificate for an amount of ₹1,21,61,450/- was issued in exercise of power under sub-Section 40(1) of RERA read with Rule 22 of H.P. Real Estate (Regulation and Development) Rules 2020 alongwith Himachal Pradesh Real Estate Regulatory Authority (Adjudication of Execution Petition) Regulation No.

3 of 2020. Accordingly, the District Collector, Solan issued Demand Order in favour of petitioner & against respondents No. 5 & 6 on 14.11.2022 & transmitted the order for execution & compliance to the Tehsildar (Recovery), Solan under Section 103 of H.P. Land Revenue Act.

Section 103 of the Himachal Pradesh Land Revenue Act, 1954 provides for recovery of other sums recoverable as arrears of land revenue as under:-

103. Other sums recoverable as arrears of land revenue.- In addition to any sums recoverable as arrears of land revenue under this Act or any other enactment for the time being in force, the following sums may be so recovered, namely:-

(a) fees, fines, costs and other charges, including the village officers cess payable under this Act;

(b) revenue due to the Government on account of pasture or other natural products of lands, or on account of mills, fisheries or natural products of water, or on account of other rights described in section 42 or section 43 in cases in which the revenue so due has not been included in the assessment of an estate;

(c) fees payable to local bodies including the Panchayats formed under the Himachal Pradesh Panchayati Raj Act, 1968 (19 of 1970) for the use of or benefits derived from the following works:-

(i) the constructions and repair of embankments and the supply, storage and control of water for agricultural purposes;

(ii) the preservation and reclamation of soil, and the drainage and reclamation of swamps;

(d) sums leviable by or under the authority of the State Government as water-rates, or on account of the maintenance or management of embankments and other irrigation works, not being sums recoverable as arrears of land revenue under any enactment for the time being in force;

(e) sums payable to the State Government on account of rent and other dues in respect of land; and

(f) sums payable to the State Government by a person who is surety for the payment of any of the foregoing sums or of any other sum recoverable as an arrear of land revenue.

Collection of land revenue has been provided under Chapter VI of the H.P. Land Revenue Act, 1954 more specifically Sections 74 to 84. Section 74 of the Act provides for recovery of arrears of land revenue as under:-

“74. Process for recovery of arrears:- Subject to other provisions of this Act, an arrear of land-revenue may be recovered by any one or more of the following processes, namely:-

- “(a) by service of a writ of demand on the defaulter;
- (b) by arrest and detention of his person;
- (c) by distress and sale of his movable property and uncut or ungathered crops;
- (d) by transfer of the holding in respect of which the arrear is due;
- (e) by attachment of estate or holding in respect of which the arrear is due;
- (f) by annulment of the assessment of that estate or holding;
- (g) by sale of that estate or holding;
- (h) by proceedings against other immovable property of the defaulter.”

Elaborate provisions exist in the H.P. Land Revenue Act for recovering arrears of land revenue under subsequent sections as under:-

“75. Writ of demand.- A writ of demand may be issued by a Revenue Officer on or after the day following that on which an arrear of land revenue accrues.

75-A. Arrest and detention of defaulter.- (1) At any time after an arrear of land revenue has accrued a Revenue officer may issue a warrant directing an officer named therein to arrest the defaulter and bring him before the Revenue officer.

(2) When the defaulter is brought before the Revenue officer, the Revenue officer may cause him to be taken before the Collector, or may keep him under personal restraint or in the revenue lock up for a period not exceeding ten days and then, if the arrear is still unpaid, cause him to be taken before the Collector.

(3) When the defaulter is brought before the Collector, the Collector may issue an order to the officer-in-charge of the civil jail of the district, directing him to confine the defaulter in the jail for such period, not exceeding one month from the date of the order, as the Collector thinks fit.

(4) The process of arrest and detention shall not be executed against a defaulter who is a female, a minor, a lunatic or an idiot.

76. Distress and sale of movable property and crops.- (1) At any time after an arrear of land revenue has accrued, the movable property and uncut or ungathered crops of the defaulter may be distrained and sold by order of a Revenue Officer.

(2) The distress and sale shall be conducted as nearly as may be, in accordance with the law for the time being in force for the attachment and sale of movable property under the decree of Revenue Court constituted under the law for time being in force:

Provided that, in addition to the particulars exempted by that law from liability to sale, so much of the produce of the land of the defaulter as the Collector thinks necessary for seed grain and for the subsistence, until the harvest next following, of the defaulter and his family, and of any cattle exempted by that law, shall be exempted from sale under this section.

77. Transfer of holding.- (1) At any time after an arrear of land revenue has accrued on a holding, the Collector may transfer the holding to any person being a land owner of the estate in which this holding is situate and not being a defaulter in respect of his own holding, on condition of his paying the arrear before being put in possession of the holding, and on such

further conditions as the Collector may see fit to prescribe.

(2) The transfer may, as the Collector thinks fit, be either till the end of the agricultural year in which the defaulter pays to the transferee the amount of the arrear which the transferee paid before being put in possession of the holding, or for a term not exceeding fifteen years from the commencement of the agricultural year next following the date of the transfer.

(3) The Collector shall report to the Financial Commissioner any transfer made by him under this section, and the Financial Commissioner may set aside the transfer or alter the conditions thereof or pass such other order as he thinks fit.

(4) A transfer under this section shall not affect the joint and several liability of the land owners of the estate in which it is enforced.

(5) In respect of all rights and liabilities arising under this Act, the person to whom the holding is transferred shall, subject to the conditions of the transfer, stand in the same position as that in which the defaulter would have stood if the holding had not been transferred.

(6) When the transfer was for a term, the holding shall, on the expiration of the term, be restored by the Collector to the defaulter free of any claim on the part of the State Government or the transferee for any arrear of land revenue or rates and cesses due in respect thereof.

78. Attachment of estate or holding.- (1) At any time after an arrear of land revenue has accrued the Collector may cause the estate or holding in respect of which the arrear is due to be attached and taken under his own management or that of an agent appointed by him for the purpose or that of a Gram Panchayat.

(2) The Collector or the agent or Gram Panchayat shall be bound by all the engagements which existed between the defaulter and his tenancy, if any, and shall be entitled to manage the land and to receive all rents and profits accruing therefrom to the exclusion of the defaulter until the arrear has been satisfied, or until the Collector restores the land to the defaulter.

(3) All surplus profits of the land attached beyond the cost of attachment and management and the amount

necessary to meet the current demand for land revenue and rates and cesses shall be applied in discharge of the arrear.

(4) Land shall not be attached for the same arrear for the longer term than five years from the commencement of the agricultural year next following the date of the attachment, but, if the arrear is sooner discharged, the land shall be released and the surplus receipts, if any, made over to the land-owner.

79. Annulment of assessment of estate or holding.- (1) When an arrear of land revenue has been due for a longer period than one month, and the foregoing processes are not deemed sufficient for the recovery thereof, the Financial Commissioner may, in addition to or instead of all or any of those processes, order the existing assessment of the estate or holding in respect of which the arrear is due to be annulled.

(2) The provision of this section shall not be put in force for the recovery of an arrear of land revenue which has accrued on land:-

(a) while under attachment under the last foregoing section; or

(b) while under the charge of the Court of Wards.

(3) When the assessment of any land has been annulled, the Collector may, with the previous sanction of the Financial Commissioner, either manage the land himself or through an agent, or let it in farm to any person willing to accept the farm, for such term and on such conditions as may be sanctioned by the Financial Commissioner:

Provided that the term for which land may be so managed or farmed shall not be longer than fifteen years from the commencement of the agricultural year next following the date of annulment.

(4) At some time before the expiration of that term the Collector shall determine the assessment to be paid in respect of the estate or holding for the remainder of the term of the current assessment of the district or tehsil, and, when that assessment has been sanctioned by the Financial Commissioner, shall announce it to the land owner.

(5) The land-owner may give notice to the Collector of refusal to be liable for the assessment within thirty days

from the date on which the assessment was announced to him.

(6) If notice is so given, the Collector may, with the previous sanction of the Financial Commissioner, take the estate or holding under direct management or farm it for the remainder of the term of the current assessment of the district or tehsil, or for any period within that term which the Financial Commissioner may fix.

(7) When the assessment of holding is annulled, the joint responsibility of other land-owners of the estate for the land revenue of that holding becoming due after the annulment shall be in abeyance until a new assessment takes effect.

(8) The Financial Commissioner may direct that any contract made by the defaulter, or by any person through whom the defaulter claims, with respect to any land comprised in an estate or holding of which the assessment has been annulled, shall not be binding on the Collector or his agent or farmer during the period for which the estate or holding remains under the management of the Collector or his agent or is let in farm.

80. Proclamation of attachment or annulment of assessment and consequence of the proclamation.- (1) When any land is attached under section 78, or when the assessment of any land has been annulled under the last foregoing section, the Collector shall maintain proclamation thereof.

(2) The surplus shall not, except under an order of a Court, be making of the proclamation on account of rent or any other asset in anticipation of the usual time for the payment shall, without the special sanction of the Collector, be credited to that person or relieve him from liability to make the payment to the Collector or his agent or farmer.

(3) No payment made after the making of the proclamation on account rent or any other asset of the estate or holding to any person other than the Collector or his agent or farmer shall be credited to the person making the payment or relieve him from liability to make the payment to the Collector or his agent or farmer.

81. Sale of estate or holding.- When an arrear or land revenue has accrued and the foregoing processes are not deemed sufficient for the recovery thereof, the Collector, with the previous sanction of the Commissioner, may, in addition to, or instead of, all or any of those processes, and subject to the provisions hereinafter contained, sell the estate or holding in respect of which the arrear is due:

Provided that land shall not be sold for the recovery of :-

(a) any arrear which has accrued while the land was under the charge of the Court of Wards, or was so circumstanced that the Court of wards might have exercised jurisdiction over it under the law in force:

(b) any arrear which has accrued while the land was under attachment under section 78 of this Act; or

(c) any arrear which has accrued while the land was held under direct management by the Collector or in farm by any other person, under section 79, after either an annulment of assessment or a refusal to be liable therefor.

82. Effects of sale on encumbrances.- (1) Land sold under the last foregoing section shall be sold free of all encumbrances, and all grants and contracts previously made by any person other than the purchaser in respect of the land shall become void as against the purchaser at the sale.

(2) Nothing in sub-section (1) shall affect:-

(a) a tenant's right of occupancy, unless the right was created by the defaulter himself; or

(b) any lease at a fair rent, temporary or perpetual, for the erection of a dwelling house or manufactory, or for a mine, garden, tank, canal, place of worship, or burial ground, so long as the land continues to be used for the purposes specified in the lease; or

(c) any encumbrance, grant, contract or right of occupancy specially saved by order of the Financial Commissioner and proclaimed as hereinafter provided.

83. Proceedings against other immovable property of defaulter.- (1) If the arrear cannot be recovered by any of the processes hereinafter provided, or if the Commissioner considers the enforcement of

any of those processes to be inexpedient, the Collector may, where the defaulter owns any other estate or holding or any other immovable property, proceed under the provisions of this Act against that property as if it were the land in respect of which the arrear is due:

Provided that no interests save those of the defaulter alone shall be so proceeded against, and no encumbrances created, grants made or contracts entered into by him in good faith shall be rendered invalid by reason only of his interests being proceeded against.

(2) When the Collector determines to proceed under this section against immovable property other than the land in respect of which the arrear is due, he shall issue a proclamation prohibiting the transfer or charging of the property.

(3) The Collector may at any time by order in writing withdraw the proclamation, and it shall be deemed to be withdrawn when either the arrear has been paid or the interests of the defaulter in the property have been sold for the recovery of the arrear.

(4) Any private alienation of the property, or of any interest of the defaulter therein, whether by sale, gift, mortgage or otherwise, made after the issue of the proclamation and before the withdrawal thereof shall be void.

(5) In proceeding against property under this section the Collector shall follow, as nearly as the nature of the property will admit, the procedure prescribed for the enforcement of process against land on which an arrear of land revenue is due."

Finality of the order passed by RERA on 26.02.2021 is a matter of record, whereby petitioner has been held entitled to specific monetary compensation. The recovery certificate has also been issued in his favour for payment of monetary compensation to him by respondents No. 5 & 6 as arrears of land revenue.

In the given facts and circumstances, not proceeding further with the recovery proceedings only on the ground of property with respect to which the dispute was adjudicated by the RERA had vested in the State government, is not justified and is not in consonance with law. Adequate safeguards are available in RERA & H.P. Land Revenue Act for protecting the rights of the petitioner for recovery of monetary compensation from respondents No. 5 & 6, for enforcement of order passed by RERA under the provisions of H.P. Land Revenue Act. The action of Tehsildar (Recovery), Solan in not proceeding with the recovery proceedings for the last more than two years, therefore, cannot be countenanced. Where statute prescribes explicit procedure for the recovery of arrears, such procedure must be scrupulously adhered to in its entirety. No deviation is permissible. The vesting of the subject land in the State pursuant to a separate order does not defeat or render the recovery order nugatory. The Act itself provides alternative mechanism for execution. The order is to be executed in its earnest. The statutory alternatives-such as by service of a writ of demand on the defaulter or by arrest & detention of his person or by distress and sale of his movable property or by proceedings against other immovable property of the defaulter etc. ensure the order's enforceability despite changes in the debtor's asset profile. To hold otherwise

would undermine the legislative intent and frustrate the creditor's right. Thus, the recovery proceedings shall proceed forthwith in accordance with the prescribed modes. Accordingly, this writ petition is disposed of with direction to respondents No.3- The District Collector, Solan to ensure that recovery proceedings initiated by the Competent Authority pursuant to the orders dated 26.02.2021 passed by RERA (Annexure P-3), recovery certificate issued by RERA dated 17.10.2022 (Annexure P-4) and the Demand Order issued by respondent No.3 on 14.11.2022 (Annexure P-5) are taken to their logical conclusion expeditiously in accordance with law. Pending miscellaneous application(s), if any, shall also stand disposed of.

February 25, 2026

yogesh

Jyotsna Rewal Dua
Judge