

(2017) 06 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : 1014 of 2017

Bansi Lal

APPELLANT

Vs

State of Himachal Pradesh and others

RESPONDENT

Date of Decision : 01-06-2017

Acts Referred:

Citation : (2017) 06 SHI CK 0006

Hon'ble Judges : Tarlok Singh Chauhan, Chander Bhusan Barowalia

Bench : Division Bench

Advocate : Rajiv Jiwan, V.S. Chauhan, J.S. Guleria, Vinod Thakur

Judgement

1. Petitioner has filed this pro bono publico petition in the larger public interest claiming therein the following substantive reliefs:

"i) That the Respondent State may very kindly be directed to immediately remove the encroachment from the land of hospital in Karsog particularly encroachments on the Govt. land wherein the ambulance road is being constructed started from Old Bazaar Karsog to Civil Hospital Karsog, after conducting demarcation and identifying the land of the hospital.

ii) That the respondents including contractor, respondent No. 8, may be directed to construct the road after the demarcation is obtained and every single inch of the government land be utilized for the construction of road and no land be left open which may be later on susceptible to encroachment."

2. When the petition came up before this Court on 18th May, 2017, the following order was passed in CMP No. 3510 of 2017:

"Notice in the aforesaid terms.

It is unfortunate that despite repeated directions of this Court, the respondents have virtually taken no effective steps for removing the encroachments in and around Karsog. A reference in this regard can conveniently be made to CWP No.7879 of 2014, titled Mehar Singh versus State of Himachal Pradesh & others,

decided on 01.07.2015 and this Court had passed the following directions:

" The writ petitioner has sought the following reliefs amongst others, on the grounds taken in the memo of writ petition:

"(i) That writ in the nature of certiorari, mandamus or other appropriate writ, order or directions as this Hon''ble Court deems fit directing the respondents authorities to act immediately in removing the unauthorized construction, encroachments on the ShimlaMandi road via Tatapani, (Karsog line in Muhal Sanarli to Bazar Karsog including hospital, in terms of the Himachal Pradesh Road Infrastructure Protection Act, 2002 and other applicable Acts within a time bound manner.

(ii) Issue a writ of mandamus directing the respondents to proceed against the erring officials on whose account the unauthorized construction/ encroachment over the Government/ HPPWD took place."

2. Respondents have filed the replies. It is apt to reproduce paras 7, 9 and 12 of the reply on merits filed on behalf of respondents No. 2 to 4 herein:

"7. That in reply to this para, it is submitted that on the request of the PWD authorities, the respondent No. 3 i.e. Tehsildar Karsog has got demarcated the land in question through the Revenue Field Agency and 192 cases of encroachment have been prepared and submitted to the HPPWD authorities for taking further legal action against the encroachers under the H.P. Road Infrastructure Protection Act, 2002.

8.

9. That the contents of this para are denied as the respondent No. 3 has got demarcated the land in question and 192 cases of encroachment have been sent to the HPPWD for taking legal action against the encroachers.

10.

11.

12. That in reply to this para, it is respectfully submitted that the demarcation of the road going towards Civil Hospital was conducted detecting thereby 4 cases of encroachment on the land of Health department and the department concerned filed these cases under the H.P. Public Premises and Land (Eviction & Rent Recovery) Act, 1971 out of which two cases i.e. BMO Karsog Vs. Nayaku Devi and BMO Karsog Vs. Hans Raj have already been removed the encroachment and the possession of the said land has also been taken by the concerned department and in remaining two cases the Tehsildar Karsog has apprised that the eviction process is under progress and soon after eviction, the possession will be handed over to the department concerned. It is pertinent to mention here that in a fresh demarcation process of the road going towards Civil Hospital, no encroachment has been detected."

3. Keeping in view the averments contained in paras (supra), we deem it proper to dispose of this writ petition by directing the respondents to pass requisite final orders within four months and report compliance. However, the respondents are at liberty to seek extension.

4. The writ petition is disposed of accordingly alongwith all pending applications."

As regards the instant petition, it has been averred therein that various encroachments have been made over the land belonging to the Civil Hospital, Karsog and now road being constructed from Old Busstand to the Civil Hospital is being constructed without there being any demarcation and it is being aligned in the manner so as to ensure that the encroachments made are not disturbed. This, indeed, is a serious issue.

Accordingly, we direct respondent No. 5 to forthwith remove all the encroachments over the Government land at Karsog, more particularly, over the land belonging to the Civil Hospital, Karsog. In addition thereto, he is directed to carry out the demarcation of the land of the Health Department whereupon the road is being laid.

Needless to say, all the Government Agencies i.e. civil, police and revenue authorities including respondents No. 3, 4 and 6 shall render all necessary assistance to ensure that this order is complied with in its letter and spirit. Any let or hindrance or obstruction by any authority or person shall be construed as contempt of the order passed by this Court.

Status report be filed within four weeks.

List on 01.06.2017."

3. In compliance to the aforesaid directions, respondents No. 1 and 3 through Superintending Engineer, HPPWD 1st Circle Mandi, have filed compliance affidavit wherein it has been clearly pointed out that the demarcation was conducted by the Tehsildar, Karsog on 2425 May, 2017, in which at least on the link road towards the hospital side, five cases of encroachment were detected, that too, upon the land belonging to the State of Himachal Pradesh and not upon the land belonging to the Health Department. It has further been averred that the average width of this link road is fully available on the spot. Lastly, it has been pointed out that the ambulance road is being constructed as a deposit work by the Public Works Department upon providing of funds by the Health Department and the encroachments, as found existing on the land, shall be removed in accordance with law.

4. To similar effect is the compliance report submitted by the Sub Divisional Officer (Civil) Karsog, wherein he has stated that five encroachments had been detected after demarcation was conducted over the land and the concerned departments have already been directed to file cases under the H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971.

5. In view of the aforesaid compliance affidavits, we see no reason to keep this petition alive. Suffice it to say that as undertaken by the respondents, eviction proceedings be filed against the encroachers and thereafter, taken to its logical end within a period of three months from today.

6. The petition is disposed of in the aforesaid terms alongwith all pending applications leaving the parties to bear the costs.