

(2003) 05 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 539 of 2001

Ghulam Mohammad Beigh

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 24-05-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 JKJ 518

Hon'ble Judges : Bashir-Ud-Din, J

Bench : Single Bench

Advocate : S.H. Thakur, for the Appellant; N.A. Shah, Dy. AG., for the Respondent

Judgement

Syed Bashir-Ud-Din, J.—Petitioner has approached this court in writ jurisdiction with petition allegation that in the year 1995 Urban

Engineering Environment Department through City Drainage Division Srinagar carried out the drainage programme via Qadim Masjid, Qureshi

Mohalla lane Lal Bazar Srinagar, adjacent to the house of the petitioner. The digging and excavation of soil on spot was done negligently, without

taking proper precautions. It exposed petitioner's house risk and damage. The house was actually damaged by the erosion of the trench walls and

cracks developed in his house. Petitioner and his family had to flee for their lives and left the house. It was unsafe and dangerous to live in the

house. The department caused the damage to the house consequent or excavation, erosion and taking of the soil and on his presentation the

department took notice and Asstt. Engineer was deputed. On verification he reported that the damage is cause as alleged and recommended an

amount of Rs. 45,000/- for payment to petitioner to redress and address his

grievance. The matter went up and down in the administrative ladder in U.E.E. Deptt. without any relief to the petitioner, though the damage caused to the petitioner's house is recommended to be recovered from the Contractor (Annexure C to D1). On these allegations the petitioner prayed for Mandamus for release of Rs. 1,17,000/- on different counts.

2. The respondent have yet to file reply. The case has been admitted to hearing on 10.6.2002. Despite opportunities the reply is not filed even at post admission stage. In CMP 913/2001, the court passed the following direction:--

Objections within above said period, Meanwhile, keeping in views the Annexure B, C, and D, respondents/competent authority shall consider the case of petitioner and take a decision in the matter.

Respondents in compliance to order dated 10.6.2002 filed an application CMP No. 191/03, where the compliance report and orders of the Chief Engineer of the UEE Department Srinagar, are placed on record.

On consensual submissions of the counsel for the parties the main matter as also the CMP is taken up for final disposal.

3. In the report regarding compliance of order dated 10.6.2002 of the court in CMP No. 913/2001 in the main writ, it is stated that the matter has

been considered. The submission of report by the Asstt. Executive Engineer. Left River Drainage Sub Div. Srinagar is acknowledged. It is stated

that the maximum expenditure involved to restore the damage would be in the order of Rs. 35,000/- and the respondents are prepared to redress

the grievance of petitioner to this extent. Petitioner had filed a civil suit which was withdrawn later on. The respondents have stated that the liability,

if any, is not of the department, but of the contractor, carrying of the work on spot is not refuted. It is interesting to note that the so called

compliance report and the order passed by the Chief Engineer in the matter are not even on affidavit. The reply to main matter is not even filed.

In such circumstances, the petition allegations cannot be said to be refuted. Apart from the communication referred as annexure to the compliance

report, CMP 191/03 and the enclosed compliance report, the liability is not denied by the department and in any case not at all on affidavit. From

record it is manifestly evident that the petitioner's house has sustained damages and developed cracks because of digging and soil excavation on

spot by engineering wing of the UEE Deptt, may be through some contractor. The damage to the house was caused as no proper care and caution

was observed. The trench walls gave way and led to cracks. The circumstances are so glaring that they speak for themselves to show negligence

and lack of proper care and caution on the part of the department. The department cannot escape the liability for the damages. The damages

assessed rather quantified in money terms is by concerned engineer in the sum of Rs. 35,000/-. The concerned AEE Drainage Sub Div. Srinagar

has stated that the estimated cost in restoring the damage is at the most Rs. 35,000/- and payment of this amount should redress the grievance of

the petitioner. There is no other assessment of the damage. Therefore, the prayer of the petitioner regarding award of huge damages prayed for in

the petition, cannot be acceded and that too in public law jurisdiction of the writ court. The detail issues will have to be addressed on enquiry after

the parties have opportunities to lead evidence regarding the factum and quantum of damage caused and estimation thereof. All this can be

addressed to in suit under general law (torts). The petitioner is free subject to all just and legal exceptions to pursue remedies available to him

under law.

Placed in the above situation, the counsel for the respondents/State submits that the State Government and its UEE Department is prepared to pay

the estimated approximate amount of Rs. 35,000/- as assessed by the concerned engineer, recoverable from the contractor to whom work was

allotted.

4. The counsel Mr. S. H. Thakur, receives well the above suggestion and submits that he would settle down for the amount of Rs. 35,000/-,

leaving the adjudication of recovery of full compensation/damages in appropriate civil proceedings before appropriate forum.

In the above view of the matter reinforced by the consensus of the parties, the writ petition on agreement is disposed of as under.

5. A mandamus is issued to command the respondents to pay Rs. 35,000/- with interest 8% per annum from October 1995 (after submission of

report by the concerned Asstt. Executive Engineer, Annexure-B) till actual payment. The prayed relief of compensation on other counts as prayed

in the writ is declined. However, the writ petitioner is free to pursue remedy as

may be available to him before proper forum under law. In the event of petitioner electing to pursue such proceedings before the proper forum, then the aforesaid amount with interest awarded under Public Law Jurisdiction shall be taken into consideration and adjusted towards the over all payments/compensation/damages, if any, awarded, consequent on the damage to the property in question. All other interim matters shall also stand disposed of in terms of the above Disposed of.