
(2016) 04 SHI CK 0062
In the High Court Of Himachal Pradesh
Case No : CWP No. 9494 of 2013

Gian Chand Sharma	Vs	APPELLANT
State of Himachal Pradesh and others		RESPONDENT

Date of Decision : 18-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 HimLR 1448 : (2016) ILRHP 1185

Hon'ble Judges : Tarlok Singh Chauhan, J.

Bench : Single Bench

Advocate : Sanjeev Kuthiala, Advocate, for the Appellant; Meenakshi Sharma, Additional Advocate General with Parul Negi and Pankaj Negi, Deputy Advocate Generals and Vijay Arora, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Tarlok Singh Chauhan, J.—This writ petition has been filed for the following reliefs:-

"(a) To call for the record of the case pertaining to the petitioner from the respondents and after seeing the same to direct the respondents to make compensation to the petitioner in terms of evaluation report annexed as Annexure P-25 to the petition.

(b) To direct the respondents to consider the representation of the petitioner as also the legal notice and decide the same within a time bound period and to compensate the petitioner for the damages so occurred.

(c) To direct the respondents to decide the application Annexure P-16 and conduct a joint inspection of the spot and give compensation to the petitioner in terms of the Evaluation report annexed as Annexure P-25.

(d) To direct the respondents to take appropriate steps to acquire the property of the petitioner at the market rate and to make him the requisite compensation for

the damages as also to give the award for the property so acquired."

2. The petitioner claims to have sustained damage to his property on account of construction of a new road known as "Sainj to Manham Road" by respondents No. 3 and 4 for their project known as "Parbati Hydro Electric Project". It is averred that during the course of construction of the road, the debris which had accumulated on account of excavation both by way of manual and mechanical means was disposed of by respondents No. 2 to 4 by haphazardly dumping the same at the side of the road. The debris that comprised of mud stone and muck was dumped adjacent to the residential house, saw-mill, land and other property of the petitioner. When this debris began rolling down due to heavy rain on 27.06.2008, the petitioner represented orally and by way of written communication, asking the respondents to take preventive measures but to no avail resulting in heavy damage to the property of the petitioner. On the basis of the aforesaid allegations, the petitioner has claimed compensation as per evaluation report Annexure P-25. However, a perusal of Annexure P-25 would go to show that the same is not a evaluation report and in fact the evaluation report has been annexed with the rejoinder as Annexure P-29 wherein the total loss has been calculated to be Rs. 26,80,931.35/- or say Rs. 26,81,000.00/-.

3. In response to the petition, the State Authorities i.e. respondents No. 1 and 2 have denied their liability or responsibility by claiming that the road in question has been constructed by respondents No. 3 and 4 and damage, if any, caused to the petitioner is to be compensated by the said respondents. Respondents No. 1 and 2 have also raised the objection regarding the petition being barred by delay and laches.

4. Respondents No. 3 and 4 in their reply have stated that though the road in question was constructed by them in the year 2008 to carry the material for the project, however, the debris or excavated earth was dumped only in pre-defined dumping site and, therefore, there was no question of causing any damage to the petitioner's property due to construction of this road. It is also averred that the damage, if any, caused to the house and saw-mill of the petitioner has not been caused due to the act of the answering respondents, but the same might have been caused due to the rain water passing through a nullah across "Sainj Bypass Road" which was constructed by respondents No. 1 and 2 and, therefore, they are not liable for any damage or loss allegedly sustained by the petitioner. It was also averred that the petitioner was still residing in the same house which he is alleging to have been damaged and rendered inhabitable and at the same time the house of one Shiv Ram located in close proximity to the house and saw-mill of the petitioner coming first in the way of nullah has suffered no damage. The current photographs of the houses showing the status of the petitioner's house and the adjacent houses have been annexed with the reply. Similar contentions have been raised in reply on merits of the case.

I have heard the learned counsel for the parties and have gone through the records of the case.

5. Evidently, it is the case of the petitioner himself that it was on account of heavy rains on 27.06.2008 that his property including house and saw-mill was damaged. If that be so, then what prevented him from approaching a competent Court of law for seeking redressal of his grievance within the period of limitation is not forthcoming. Rather, this Court is of the firm opinion that the instant petition has been filed only to give slip to the law of limitation or else why the same has been filed only on 25.11.2013 i.e. nearly 5? years after the alleged incident. The claim for compensation was obviously time barred before the Civil Court and that is why the petitioner resorted to the remedy under Article 226 of the Constitution of India.

6. No doubt, the provisions of the Limitation Act cannot be invoked in the proceedings under Article 226 but then the principle is that a person who seeks extraordinary jurisdiction under Article 226 must come to the Court at the earliest opportunity. It is a well settled principle of law that while no period of limitation is fixed for entertaining writ petitions but in the normal course of events, the period the parties require for filing the civil proceedings ought to be the guiding factor. (Refer: Municipal Council, Ahmednagar and another v. Shah Hyder Beig and others (2000) 2 SCC 48).

7. The real test would be whether the petitioner is guilty of laches and in every case this fact will have to be tested. Though, there is no hard and fast rule that the High Court should refuse to grant relief only on account of delay and laches, but then delay and laches have been considered to be the important factor in exercise of discretionary relief under Article 226 of the Constitution of India.

8. That apart, the other question which would arise for consideration is as to whether in view of the disputed facts, the writ petition for awarding compensation under the garb of there being violation of constitutional rights would be maintainable. There can be no doubt qua the proposition that the petition under Article 226 making out a case of violation of either the constitutional right or any other right would be maintainable under Article 226 or by way of suit etc. depending upon the facts and circumstances of the case.

9. The only question which remains to be determined is as to whether this Court in exercise of its writ jurisdiction can award compensation when admittedly the basic facts regarding the alleged damage at whose instance and further to what extent are all disputed.

10. It would be noticed that in the writ petition it has been specifically averred that it was respondents No. 3 and 4, who had undertaken the execution of the work for construction of "Sainj to Manham Road" and while doing so had dumped the debris on the side of the road. On account of unscientific dumping, this debris rolled down because of heavy rains on 27.06.2008 and caused damage to the residential house and saw-mill of the petitioner. No allegations at that time were made against respondents No. 1 and 2, save and except, that respondent No.2 was also stated to be a party to the execution of "Sainj to Manham Road"

along with respondents No. 3 and 4.

11. Evidently, it is only when respondents No.3 and 4 filed their reply wherein it was alleged that insofar as they are concerned, they have dumped the debris in the pre-defined dumping site on account whereof no damage was caused to the petitioner's property due to the construction of the "Sainj to Manham Road" and had further averred that the damage, if any, caused to the petitioner was on account of respondents No. 1 and 2 having constructed "Sainj Bypass Road", that the petitioner turned around completely and then targeted his guns against respondents No. 1 and 2 and claimed that all the respondents were jointly liable to make good the damage and compensate the petitioner for the damage caused to his property.

12. As observed earlier, in the absence of there being any material to actually establish on record the alleged damage, the exact cause thereof and the extent of damage, I am afraid that this Court cannot grant any relief to the petitioner.

13. In view of the aforesaid discussion, I find no merit in this petition and the same is accordingly dismissed, leaving the parties to bear their own costs. Pending application, if any, also stands disposed of.