

(2015) 08 SHI CK 0039
In the High Court Of Himachal Pradesh
Case No : CWP No. 532 of 2014

H.C. Chandel

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 226

Citation : (2015) 08 SHI CK 0039

Hon'ble Judges : Piar Singh Rana, J

Bench : Single Bench

Advocate : J.S. Rana, Assistant Advocate General, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Piar Singh Rana, J—Present petition is filed under Article 226 of the Constitution of India for quashing the order of non-petitioner No. 2 i.e. Executive Engineer, IPH Division No. 1 Shimla-9 dated 29.12.2012 relating to providing of water supply to the farm house of petitioner situated at Jamu-ki-Galani from Lift Water Scheme. Additional relief sought directing non-petitioners No. 1 and 2 to provide free water services from affected gravity water schemes to the farm houses of petitioner in village Jamu-ki-Galani Daruban and Teer on public expenses. Further additional relief sought for abolishing the Water Management Committee and restraining Water Management Committee from any sort of interference in water supply to the farm houses of the petitioner from Government schemes. Further additional relief sought for grant of compensation of Rs. 10 lacs (Rupees ten lacs) in favour of petitioner towards damages, losses, mental agony harassment etc.

2. It is pleaded that between 1970 to 1977 HP PWD constructed two source tanks in the land of petitioner from where the water was tapped to a nearby storage tank. It is further pleaded that on dated 2.12.1994 and 15.2.1995 petitioner filed application before non-petitioners while the petitioner was in

service for providing drinking water to his farm house in village Jamu-ki-Galani, Chak Jungle Narenti, Pargna Matiana from other water scheme but department replied that there was no scheme for the said village. It is further pleaded that on 8.12.1996 and 8.6.1998 representations were sent to the IPH Department by the petitioner for linking up the farm house with the ongoing water scheme. It is further pleaded that on 11.7.2000 and 25.11.2000 representations were presented to the Government for providing water to the farm house of petitioner at public expense. It is further pleaded that on 14.8.2012 notice under Section 80 CPC was sent to the non-petitioners for providing water services to the farm house of petitioner. It is further pleaded that water supply scheme was tapped from the land of the petitioner.

3. Per contra response filed on behalf of non-petitioners No. 1 and 2 pleading therein that petitioner has no cause of action to file and maintain the present writ petition. It is further pleaded that no such Water Management Committee is registered with the IPH Department. It is further pleaded that 19 numbers of petitioners filed a joint writ petition in Hon''ble High Court for construction of water supply scheme to Village Karyal and it is further pleaded that the water supply scheme was executed after the decision of Hon''ble High Court in CWP No. 1739 of 1993. It is further pleaded that petitioner is residing in other village and no house exists except one temporary shed. It is further pleaded that department is not bound to provide any free water connection. It is further pleaded that petitioner did not apply for water connection and petitioner is claiming free water connection on the basis of oral agreement with PWD. It is further pleaded that free water service is not provided under law. It is further pleaded that matter of oral agreement falls within the jurisdiction of Civil Court and did not fall within the purview of Article 226 of the Constitution of India. It is further pleaded that department had already provided water connection to petitioner at village Rouni where petitioner is residing. It is further pleaded that other villagers are not allowing for connecting the water pipe line. It is further pleaded that department has commissioned a lift water supply scheme Mul Matiyana and there is a provision to connect the area of Jamu-ki-Galani from that water supply scheme and it is further pleaded that water supply scheme is nearly in completion stage and would be inaugurated in future. It is further pleaded that water facility from this scheme would be provided to petitioner under rules provided that petitioner completes the codal formalities. It is further pleaded that free water would not be provided to the petitioner. It is further pleaded that non-petitioners tried to lay water pipe line near the land of petitioner but residents of village Durban did not allow the non-petitioners to do so. It is further pleaded that petitioner is claiming water supply to a shed where he is not residing. It is further pleaded that Assistant Engineer has requested petitioner to apply private connection and deposit appropriate fee so that the action to sanction the water connection could be taken. It is further pleaded that petitioner did not apply for the water connection and petitioner also did not deposit the required fee under the rule. It is further pleaded that there is no agreement with petitioner to

provide free water connection. It is further pleaded that water supply scheme is maintained by the department and private committee has no authority to interfere with the functioning of the department. It is further pleaded that entire scheme was executed as per administrative approval and expenditure sanction. Prayer for dismissal of writ petition sought.

4. Petitioner also filed rejoinder and re-asserted the allegations mentioned in the petition.

5. Submission of petitioner to quash office order dated 29.12.2010 issued by the IPH Department is rejected being devoid of any force for the reasons hereinafter mentioned. Court has carefully perused office letter issued by the IPH Division No. 1 Shimla-9 dated 29.12.2010 No. IPHDS-CB-Rep.-Matiana/10-11-24328-. There is recital in the letter issued by the IPH Department that administrative approval and expenditure sanction was granted by the Superintending Engineer IPH Circle Shimla-9 vide letter No. 9794-97 dated 21.11.1995 amounting to Rs. 5,20,000/- (Five lacs twenty thousand) relating to gravity water supply scheme named as GWSS Dharali Sheela Naun Karyal in Gram Panchayat Rouni during the year 1995-96 by tapping the water from Reltu source. There is further recital in the office letter cited supra that main storage tank of the said scheme was constructed at Drauman and scheme is also known as Reltu to Drauman scheme. There is further recital in the office letter cited supra that while constructing the scheme house of petitioner Sh. Harish Chandel could not be covered due to the fact that main storage tank was situated at lower level than the house of the petitioner. There is further recital in the office letter cited supra that to end the controversy an estimate was prepared and work was awarded to the contractor and contractor had also executed part work but some people did not allow the work to the house of the petitioner. There is further recital in the office letter dated 29.12.2010 that Sh. Durga Singh Chandel, Mohinder, Mast Ram, Parkash Lal, Gian Chand, Gian Hetta, Liaq Ram, Amer Chand, Sita Ram, Bimla, Lagnu, Lachi Ram Chet Ram, Tara Chand, Narany, Narian Singh Keshav Ram, and Pritam, did not allow to provide water connection and did not allow to lay the water pipes in their own land. There is further recital in the letter cited supra that water supply to the house of petitioner would be provided after commissioning the lift water supply scheme Mool Matiana and adjoining villages. It is held that in view of the above stated facts in the office order dated 29.12.2010 it is not expedient in the ends of justice to quash letter dated 29.12.2010 issued by the Executive Engineer IPH Division No. 1 Shimla-9 in the public interest. It is well settled law that when there is conflict between private interest and public interest then public interest always prevail over the private interest. It is also well settled law that disputed question of facts cannot be decided in a writ petition. See 2015 (4) SCC page 2014 titled Swati Ferro Alloye (P) Ltd. v. Orissa Industrial.

6. Another submission of petitioner that non-petitioners No. 1 and 2 namely State of H.P. and Executive Engineer IPH Division No. 1 Shimla-9 be directed to

provide free water service to the farm house of petitioner situated in Jamu-ki-Galani, Daruban and Teer on public expense is also rejected being without any force for the reasons hereinafter mentioned. It is proved on record that private connection had already been issued to the house of the father of petitioner at village Rouni and said connection is in operation and petitioner is not paying any water bill. It is well settled law that first priority should be given to the drinking water facility and thereafter if water in natural source is in excess then water could be supplied to the farm houses for agriculture work. It is held that it is not expedient in the ends of justice to provide free water connection to the farm house of petitioner. However petitioner will be at liberty to apply for the connection after completing all codal formalities and after payment of requisite water charges. It is well settled law that natural source of water is not the property of an individual but natural source of water is property of the State and State is under legal obligation to utilize the natural source of water for the benefit of general public in accordance with law. H.P. Water Supply Act 1968 extends to whole of H.P. as per Section 1(2) of H.P. Water Supply Act 1968. As per Section 7(4) of H.P. Water Supply Act 1968 development management and control of scheme shall from date of notification shall vest in State Government. As per Water Supply Rule 3 framed under H.P. Water Supply Act 1968 water shall be tapped from source situated within territory of H.P. for benefit of general public. As per rule 15 of Water Supply Rules a person who intends to get private connection shall submit application in form "A" and would deposit security. Water charges shall be at flat rates where facilities of installation of water meters is not available and where facilities of water meters is available water charges shall be as per consumption of water.

7. Another submission of petitioner that Water Management Committee be abolished and same be restrained from causing any sort of interference in water supply to petitioner is also rejected for the reasons hereinafter mentioned. Non-petitioners have specifically stated in their response that there is no Water Management Committee and it is well settled law that utilization of water from natural sources should be controlled by public authorities in accordance with law. No private authority is legally entitled to interfere in the distribution of water from natural sources. It is held that public authorities are under legal obligation to distribute drinking water facility equally to all residents of the area in view of the gravity of water in the natural source in accordance with H.P. Water Supply Act 1968.

8. Another submission of petitioner that compensation of Rs. 10 lacs (Rupees ten lacs) in favour of petitioner be awarded towards damages, losses, mental agony, harassment etc. is also rejected without any force for the reasons mentioned hereinafter. It is held that natural water source is the property of State under H.P. Water Supply Act 1968 and it is held that State is under legal obligation to utilize the water for the benefit of general public. Plea of petitioner that oral agreement was executed with PWD department for providing free water connection cannot be decided in civil writ petition. Oral agreement is disputed by

the PWD Department. It is well settled law that disputed oral agreement should be proved before a Civil Court in accordance with law. It is held that matters of oral agreements relating to supply of free water cannot be decided in a civil writ petition being complicated question of facts. Hence it is held that no relief can be granted to petitioner on the basis of oral agreement for providing free water connection and petitioner will be at liberty to file civil suit before competent Civil Court for enforcement of oral agreement in accordance with law if executed inter-se the parties at any point of time.

9. It is also proved on record that CWP No. 1739 of 1993 titled Devi Ram & others v. State of H.P. & another was filed and same was disposed on on 11.4.1994 by Division Bench of the Hon"ble High Court with a direction to the State of H.P. and Chief Engineer South IPH US Club Shimla to take necessary steps as expeditiously as possible so that petitioners and other villagers are provided with drinking water from a source near Reltu rivulet. The order passed by the Division Bench in CWP No. 1739 of 1993 has attained the stage of finality. There is no documentary evidence on record in order to prove that order passed in CWP No. 1739 of 1993 was modified or set aside by any competent authority of law.

10. In view of the above stated facts it is held that non-petitioners No. 1 and 2 will provide water facility to the petitioner from new lift water scheme LWSS Mul Matiyana strictly as per H.P. Water Supply Act 1968. Other reliefs sought by petitioner are declined in the ends of justice. No order as to costs. Petition is disposed of. Pending applications if any also disposed of.