

(2012) 09 SHI CK 0134
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 2327 of 2012-C

N.P. Thakur

APPELLANT

Vs

The State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 04-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133
Himachal Pradesh Municipal Corporation Act, 1994 — Section 137

Citation : (2012) 09 SHI CK 0134

Hon'ble Judges : Kurian Joseph, J; Dharam Chand Chaudhary, J

Bench : Division Bench

Advocate : Lalit K. Sharma, for the Appellant; J.K. Verma, D.A.G. for Respondents No. 1, 3 and 4, Mr. Vikrant Thakur, Advocate for Respondents No. 5 and 6 and Mr. P.S. Chandel, Advocate, for the Respondent

Judgement

Justice Dharam Chand Chaudhary, J.—By means of the present writ petition, the following reliefs have been claimed:

(i) That the impugned order dated 3.5.2008 Annexure P-11 order dated 9.6.2008 Annexure P-17 and order dated 5.1.2002 Annexure P-37, may kindly be quashed and set aside.

(ii) That the respondent No. 2 may be directed to invoke its power u/s 137 under H.P. Municipal Act, 1994 towards the laying of drainage or sewerage through the land of the respondent No. 5 with its link to the mains sewerage line constructed by the Irrigation & Public Health Department, the executing agency of respondent No. 2 adjoining to the ground of Maharaja Laxman Memorial College, Sundernagar.

(iii) That the respondent No. 5 may also kindly be directed to allow the joining of the sewerage line of the house of the petitioner alongwith the retaining wall of the house of the petitioner with its linkage to the adjacent main hole/chamber constructed by respondent No. 5 for the disposal of his drain/sewer to the mains

sewerage line of Municipal Council, Sundernagar

The record reveals that the petitioner and respondents No. 5 and 6 are neighbours having their houses adjacent to each other. They are litigating for the last so many years on the issue of disposal of waste water of the house of the petitioner. The complaint is that the petitioner has opened all sanitary and waste water outlets of his house towards that of the 5th and 6th respondents, resulting in collection of dirty water in their courtyard, which besides releasing foul odour, attracts flies and mosquitoes etc. Resultantly, the respondents and other members of their family are suffering from various infectious diseases on account of unhygienic conditions prevailing in that area on account of the fault attributed to the petitioner.

2. Respondents No. 5 and 6 had made an application u/s 133 Cr.P.C. to the 3rd respondent and during the trial thereof, the petitioner was held responsible vide order Annexure P-17 for throwing waste water and having opened sewerage system of his house in the courtyard of the house of the 5th and 6th respondents. He, therefore, was directed to stop throwing such dirty water into the courtyard of the house of the said respondents.

3. Order Annexure P-17 has been upheld by the learned Sessions Judge, Mandi, vide order Annexure P-37 in revision petition preferred by the petitioner.

4. The case in a nut-shell, as set out by the petitioner, is that he is being harassed and mentally tortured by the private respondents for no fault on his part, because pursuant to the direction of the 2nd respondent, he had applied for sanction of domestic sewerage connection and is ready to bear the legitimate expenses required for laying sewerage line from his house to the main sewerage line, already laid by the Irrigation and Public Health Department. However, according to him, he can only lay the sewerage line from his house to the main line through the courtyard of the house of 5th and 6th respondents and hence, a request was made by him to the 2nd respondent to exercise the powers vested in it u/s 137 of the Municipal Act, 1994 and make available a thoroughfare alongside the boundary of the property of respondent No. 5, but to no avail.

5. The respondents when put to notice have entered appearance. It is, however, the 3rd, 5th and 6th respondents, who alone have contested the petition as the remaining respondents did not file any reply thereto.

6. Keeping in view the fact that the petitioner and private respondents are neighbours, in stead of adjudicating the dispute on merits, the same was referred to Shri N.K. Sood, learned Mediator to resolve the same through mediation. It is on account of initiation of mediation, there arrived consensus between the parties qua providing thoroughfare by the private respondents alongside the boundary of their property on payment of some amount as compensation to them by the petitioner. On being persuaded further by us, the petitioner and private respondents had agreed to give/receive Rs. 3 lacs as compensation. Consequently, a sum of Rs. 3 lacs was paid by the petitioner to

the 6th respondent before this Court on the last date of hearing i.e. 17.8.2012. The order passed on that day reads as follows:

The parties are present. It is heartening to note that the matter is being settled among the parties. The compensation to the tune of Rs. 3 lacs has been settled and paid by the petitioner in the Court to the 6th respondent. For completion of the proceedings, the presence of the Executive Officers of respondents No. 2 and 4 is necessary. There will be a direction to the Executive Officers of the 2nd and 4th respondents to be present before this Court on 4th September, 2012. The parties shall also be present on that day.

7. However, then arose another question qua the feasibility of laying the sewerage line alongside the boundary of the property of the private respondents from technical point of view and in a manner that no harm is caused to the property of the 5th and 6th respondents while laying the sewerage line and the same is also laid in a manner to rule out the possibility of blockade and leakage etc. Thus on 30.7.2012, the following order came to be passed in this writ petition:

Pursuant to our order passed on the previous date, the 5th and 6th respondents are present in person. Petitioner is also present.

2. As has been noticed in the previous order, the petitioner and 5th and 6th respondents have already settled the controversy qua the space in the land of the 5th and 6th respondent thorough which the sewerage line of the house of the petitioner has to be laid by the 2nd respondent through the executing agency viz. 4th respondent. The only dispute left to be settled is qua the quantum of compensation to be paid by the petitioner to the said respondents. Both the respondents though have claimed a sum of Rs. 5,00,000/- as compensation, however, on being persuaded with the assistance of Learned Counsel representing them, they have agreed to receive a sum of Rs. 3,00,000/- in lump sum on this score.

3. The parties have further agreed that the feasibility to lay down the sewerage pipe line from technical point of view will be decide by the 2nd and 4th respondents in their presence in a manner that no harm is caused to the property of the 5th and 6th respondents and the sewerage line also laid down properly in order to avoid blockade etc. and thereby becoming a source of nuisance to them. The parties intend to reduce into writing the terms and conditions of the amicable settlement so arrived at between them. It will be open for them to do so. In the meanwhile, the petitioner may also arrange a sum of Rs. 3,00,000/- for onward payment to the 5th and 6th respondents as per the above settlement.

4. Accordingly, the 2nd and 4th respondents are directed to visit the spot on 7.8.2012 at 11.00 a.m. and chalk out the feasibility of laying down the sewerage pipe line from technical point of view and also in terms of the observations made hereinabove. The executive officer of 2nd respondent and the 4th respondent

shall remain present before this Court alongwith report on the next date.

8. As noticed supra, vide order dated 30.7.2012, the 2nd and 4th respondent were directed to conduct the spot inspection in the presence of the parties and after chalking out the feasibility of laying the sewerage pipe line to their satisfaction, report back to this Court. Since there were certain doubts in the mind of the private respondents qua laying of sewerage pipe line by the petitioner upto the main line alongside the boundary of their property, therefore, the 2nd and 4th respondents were directed to be present in person on the previous date of hearing.

9. Consequently, the said respondents are present in person. The petitioner and private respondents are also present in person. The 4th respondent has explained the factual position prevailing on the spot vis-?-vis the inspection report, which was filed on the previous date. The petitioner and the private respondents were given time to sit together with the 2nd and 4th respondents so as to clear the remaining doubts, if any, still persisting in their mind. They have reported back with a document, i.e. agreement deed, which bears the signatures of the petitioner, 5th & 6th respondents as well as the 4th respondent and the Junior Engineer concerned. Inspection report is annexed as Annexure C-1 to the agreement, whereas the sketch of the proposed route of the sewerage line of the house of petitioner as Annexure C-2.

10. In view of the agreement deed & documents annexed thereto placed on record, there hardly remains any dispute between the parties to be adjudicated upon on merits. As a matter of fact, the parties have resolved all kinds of disputes amicably. Though the 6th respondent even at present also is apprehensive of throwing waste water by the petitioner in his courtyard, however, the petitioner while submitting that he has taken all the precautionary steps has denied such apprehension of the said respondent being wrong. Otherwise also, we are of the considered view that with the laying of sewerage line from the house of the petitioner to the main hole, already constructed by the Irrigation and Public Health Department, the problem, if any, which still exists on the spot, will stand tackled as all waste and sewerage water of the house of the petitioner will be diverted to the main sewerage line.

11. In view of the amicable settlement arrived at between the parties and the fact that there hardly remains any controversy between them, we feel that the impugned orders Annexures P-17 and P-37 also cease to remain in force.

12. The writ petition is accordingly disposed of in terms of the agreement and the documents Annexures C-1 & C-2 annexed thereto, which shall form part of this judgment, with a direction to the petitioner that he will execute the work of laying of sewerage pipe line of his house strictly as per the terms and conditions contained in the deed of agreement as well as the sketch Annexure C-2, positively within three months from today, under the supervision of respondent No. 4. Pending application(s), if any, shall also stand disposed of.