
(2014) 08 SHI CK 0100
In the High Court Of Himachal Pradesh
Case No : LPA No. 343 of 2012

Paramjit Singh

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 436

Citation : (2014) 08 SHI CK 0100

Hon'ble Judges : Mansoor Ahmad Mir, C.J.; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Vandana Misra Panta, Advocate for the Appellant; Shrawan Dogra, Advocate General, V.S. Chauhan, Additional Advocate General, J.K. Verma, Kush Sharma, Deputy Advocate Generals and Janesh Mahajan, Central Government Counsel, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.—This appeal is directed against the judgment passed by the learned Single Judge whereby the petition filed by the petitioner (appellant herein) for compensation of Rs. 1.5 crores being ten times of the amount of total loss suffered by him due to burning of his shops during the anti Sikh riots as per policy and guidelines along with further claim of Rs. 5,00,000/- as compensation for mental torture, harassment and humiliation, has been dismissed.

2. The facts as are necessary for the adjudication of this case are that the appellant is alleged to be a Sikh by religion and claims to have been carrying a wholesale shoe and cosmetic business at Shimla since 1981 at Shop No. 4 along with Flat No. 4 at the Rink View Building, Rivoli Road, Shimla in the name and style of M/s. Shimla Footwear and was assigned CST No.-2453 dated 14.09.1981 and Sales Tax No.-SIMIII4186 dated 14.09.1981. It was also alleged that the appellant had been paying a sum of Rs. 10,000/- to 12,000/- quarterly as sales

tax during the years 1981 to 1984. In the anti Sikh riots which took place in the wake of assassination of late Smt. Indira Gandhi, the then Prime Minister of India, in November, 1984, the shop of the appellant was set ablaze at about 11 p.m. on 3rd November, 1984. The appellant approached the police, who not only refused to registered the FIR but connived with the rioters and in turn falsely implicated the appellant vide FIR No. 283 dated 04.11.1984 u/s 436 of the Indian Penal Code which was registered at Police Station, Shimla. Consequently, the appellant was arrested on 04.11.1984 and was coerced by the police to confess and when he refused to do so, he was kept in custody for next two days. Later, this case is reported to have been cancelled vide Cancellation Report dated 30.06.2006. On 16.01.2006, the Government of India, announced a Special Rehabilitation Package for the 1984 anti Sikh riots victims which formed the basis of the writ petition.

3. The respondents No. 1 and 2 had contested the writ petition on the ground that under the Rehabilitation Package the compensation was to be awarded only to those riot victims whose damages of commercial/industrial properties were uninsured. While in the case of the appellant, it was found that the damage caused to the business and property of the appellant was not due to communal clashes, but his shop had been gutted in fire due to natural calamity and, therefore, he was not entitled to the award of compensation under the Rehabilitation Package and was held entitled only to the ex-gratia payment to the tune of Rs. 4,000/- under the H.P. Emergency Relief Manual applicable in the year 1984. But, here also it is claimed that the second respondent had taken a sympathetic view in the matter and awarded a sum of Rs. 40,000/- i.e. ten times of Rs. 4,000/- in lump sum as compensation to the appellant. The third respondent in its reply stated that under the "Rehabilitation Package" sanctioned by the Union Government, the verification of the individual claims and payment of compensation was to be made by the respective State Governments and the Union of India was only required to reimburse the payment so made by the respective States to the victims under the package.

4. The learned Single Judge came to a categorical finding that the respondents No. 1 and 2 had never admitted the case of the appellant to be that of a victim of anti Sikh riots and further concluded that the appellant for the stocks gutted in fire had already received the insurance claim. Insofar as the claim of the appellant regarding the stock of uninsured cosmetic items worth Rs. 8,00,000/- which was stated to be lying in the first floor of the premises is concerned, the same was held to be highly disputed and the appellant was relegated to the appropriate forum for the redressal of his grievances.

5. The learned counsel for the appellant has strenuously argued that inspite of clear, cogent evidence on record prepared by the State Government Agencies that the appellant's shop was consigned to fire by riot mob whereby he suffered a total loss of Rs. 10 to 15 lakhs, the learned Single Judge had erred in returning the findings on the ground that these were disputed questions of fact. It is

further argued that the learned Single Judge erred in concluding that the appellant was not a victim of the anti Sikh riot. It is also contended that the learned Single Judge has over-looked the fact that the report submitted by the State Government is self-contradictory.

6. We have gone through the records of the case and considered the submissions of the learned counsel for the appellant and find no infirmity with the judgment passed by the learned Single Judge. Once the respondents have denied the claim of the appellant, then the same cannot be proved by way of affidavits and counter-affidavits before this Court in extraordinary jurisdiction under Article 226 of the Constitution of India which proceedings are summary in nature. The writ petition itself involves serious disputed questions of fact which can only be proved by evidence. Therefore, the learned Single Judge was right in concluding that the appellant for redressal of his grievances could approach the competent forum.

7. No doubt, under Article 226, this Court has jurisdiction to try issues both in fact and law, but then the exercise of jurisdiction is discretionary where the discretion must be exercised on sound judicial principles. In the present case, it can safely be concluded that the petition raises questions of fact of a complex nature which for their determination require oral and documentary evidence to be taken and, therefore, the dispute cannot be appropriately tried in writ petition. The petition is one which cannot be decided merely on the basis of affidavits and counter-affidavits because the respondents have categorically denied the very foundation and basis of the claim of the appellant of his being a victim of anti Sikh riots. The gutting of the shop of the appellant has not been denied, but then it has been alleged that this was a natural calamity and was not the result of any anti Sikh riots. It is further claimed by the respondents that save and except one case of Sardar Rawel Singh, there was no reported case of damage to the properties after the assassination of late Smt. Indira Gandhi, the then Prime Minister of India.

8. It is not a case where the questions of fact raised by the parties are elementary, but as observed earlier, the respondents in their reply have denied the entire claim of the appellant giving rise to disputed questions of complex nature which can only be determined by leading clear, cogent and convincing evidence.

9. Taking into consideration the entire facts and circumstances and the nature of controversy, we are in agreement with the view taken by the learned Single Judge and not inclined to go into highly complicated and disputed questions of fact, lest it prejudices the case of the parties.

10. In a recent decision rendered by this Bench in LPA No. 48 of 2011 and other connected matter, titled Shri Satija Rajesh N versus State of Himachal Pradesh and others, decided on 26.08.2014, this Court has dealt with in detail the legal position regarding the entertaining of writ petitions which raise disputed

questions of fact and this Court has held as under:-

29. The disputed questions of facts have been raised by the writ petitioners, particularly in paras 8, 9 and 10 of the writ petition, which cannot be gone through by the writ Court. It was for the writ petitioner to prove, at least, prima facie, the grounds taken in paras 8, 9 and 10 of the writ petition.

30. The writ Court has made discussions in the judgment as if it was determining a civil suit, after going through the entire trial, i.e. after framing issues and leading evidence.

31. The writ Court has also brushed aside the affidavit filed by the Chief Executive Officer of writ respondent No. 2-HIMUDA, who has mentioned in the affidavit that the bid of the successful bidders-appellants in LPA No. 1 of 2011 was received on 14th September, 2006. How the writ Court came to the conclusion that the affidavit of the Chief Executive Officer is not correct or it should have been supported by other affidavits. It appears that the writ Court has fallen in error in returning findings on disputed questions of facts.

32. The Apex Court in a case titled as D.L.F. Housing Construction (P) Ltd. Vs. Delhi Municipal Corpn. and Others, , has held that the disputed question of facts cannot be gone through by the writ Court and the writ Court cannot return findings on disputed questions of facts. It is apt to reproduce para 18 of the judgment herein:

18. In our opinion, in a case where the basic facts are disputed, and complicated questions of law and fact depending on evidence are involved the writ court is not the proper forum for seeking relief. The right course of the High Court to follow was to dismiss the writ petition on this preliminary ground, without entering upon the merits of the case. In the absence of firm and adequate factual foundation, it was hazardous to embark upon a determination of the points involved. On this short ground while setting aside the findings of the High Court, we would dismiss both the findings of the High Court, we would dismiss both the writ petition and the appeal with costs. The appellants may if so advised, seek their remedy by a regular suit.

33. The same principle has been laid down by the Apex Court in D.L.F. Housing Construction (P) Ltd. Vs. Delhi Municipal Corpn. and Others, and Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another, .

34. The Apex Court in a case titled as State of Karnataka and Others Vs. KGSD Canteen Employees Welfare Association and Others, , has held that High Court should not exercise its powers under Article 226 of the Constitution of India in cases where disputed questions of facts have been raised. It is apt to reproduce paras 37 and 40 of the judgment herein:

37. In a case of this nature, where serious disputed questions fact were raised, in our opinion, it was not proper for the High Court to embark thereupon an

exercise under Article 226 of the Constitution. The High Court in its judgment relied upon a large number of decisions of this court, inter alia, in Reserve Bank of India (supra) and State Bank of India and Others Vs. State Bank of India Canteen Employees" Union (Bengal Circle) and Others, ignoring the fact that all such disputes were adjudicated in an industrial adjudication.

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40. It was, furthermore, reiterated that a disputed question of fact normally not be entertained in a writ proceeding.

35. The same view has been taken by the Apex Court in Orissa Agro Industries Corporation Ltd. and others versus Bharati Industries and others, reported in AIR 2006 Supreme Court 198 and Rajinder Singh Vs. State of Jammu and Kashmir and Others, .

11. In view of detailed discussion above, we find no merit in the appeal and the same is dismissed with liberty reserved to the appellant to approach the appropriate forum in terms of the judgment passed by the learned Single Judge and in case the appellant chooses to avail such remedy, then needless to say, the period spent in pursuing this litigation shall be excluded. In view of the dismissal of the appeal, pending application(s) also stands disposed of.