

(1996) 09 SHI CK 0014
In the High Court Of Himachal Pradesh
Case No : Civil W.P. No. 1855 of 1995

Raju

APPELLANT

Vs

The State of H.P. and Others

RESPONDENT

Date of Decision : 10-09-1996

Acts Referred:

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

Citation : (1997) 1 ShimLC 248

Hon'ble Judges : M. Srinivasan, C.J.; Kamlesh Sharma, J

Bench : Division Bench

Advocate : Meenakshi Sharma, for the Appellant; Inder Singh, General, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—The case of the Petitioner is that a two storeyed house belonging to the Petitioner was damaged by the debris caused by the construction of a road from Kangal to Kotighat. The Petitioner estimated the damage at Rs. 2 lacs and claimed the said amount in this writ petition with interest at the rate of 24% per annum with effect from 25-1-1994.

2. The Petitioner has annexed certain documents to the application. One of the Annexures shows that the Patwari of Kangal Circle, Tehsil Kumarsain, District Shimla estimated the damage at approximately Rs. 45,000. But the same Annexure shows that the Field Kanungo has refused to agree with that estimation and merely pointed out that the claim of the Petitioner was that two storeyed house had been damaged. The Kanungo has said that the estimate of damage should be carried out by the Public Works Department and the damage case should also be sent to the Public Works Department. The Public Works Department estimated it at Rs. 16,964.

3. In the reply filed by the Respondents, it is stated that the claim of the Petitioner that there was a two storeyed house was merely an illusion by the

Petitioner. On the other hand, there were two Cow sheds, one gallery in the house of the Petitioner in the ground floor and three rooms with kitchen and Verandah in the first floor. In paragraph 7 of the reply, it is stated that after inspection by the Technical Officer of the Respondent- Department at the level of the Assistant Engineer, the said Officer has estimated the damage at Rs. 16,964. The learned Advocate General represents that the Respondents are prepared to pay that amount to the Petitioner herein.

4. Having regard to the circumstance that the facts of this case are in dispute, it is not open to the Petitioner to get any relief in this writ petition under Article 226 of the Constitution of India. The only remedy to the Petitioner is to approach the Civil Court with a proper suit for damages. It is also open to the Petitioner to establish by evidence that he had suffered a damage as alleged by him on account of negligence of the Respondent-Department. It is open to both the parties to adduce evidence in such a case and it is for the Civil Court to decide after considering the entire evidence whether the Petitioner is entitled to claim any damage in the suit.

Hence, this writ petition deserves to be dismissed and it is hereby dismissed.

5. However, we find that an interim order has been passed in this case on 28-12-1995. The Court had directed the Respondents to deposit a sum of Rs. 1 lac in the Registry of this Court within 15 days therefrom and on such deposit, a sum of Rs. 50,000 was to be released to the Petitioner through Counsel. The Court also directed investment of the remaining amount with a nationalised Bank for a period of one year. In view of the dismissal of this writ petition, the Respondents are entitled to get back the amount, which is invested with the nationalised Bank, as per the directions of this Court. The Registry shall pay out the said sum of Rs. 50,000 immediately to the Respondents alongwith the interest accrued thereon.

6. In so far as the Petitioner is concerned, it is for the Petitioner to prove his claim before an appropriate Civil Court. Hence, we direct the Petitioner to file a Civil Suit in the appropriate forum on or before 4th October, 1996, in view of the fact that these proceedings have been pending and the Respondents had an opportunity to know the claim of the Petitioner and filed a reply in these proceedings, we are of the opinion that it is not necessary to issue a fresh notice u/s 80 of the CPC by the Petitioner to the Respondents. The suit can be filed without such a fresh notice. If the suit is not filed on or before 4-10-1996, the Petitioner shall refund the amount of Rs. 50,000 received by him from this Court after deducting a sum of Rs. 16,964 therefrom. On the other hand, if the Petitioner files the suit on or before 4-10-1996, the Petitioner can await the disposal of the suit. If the Court finds that the Petitioner is entitled to an amount more than Rs. 50,000 and passes a decree, it is open to the Petitioner to execute the decree for the balance amount over and above Rs. 50,000. If, on the other hand, the Court finds that the Petitioner is entitled to an amount less than Rs. 50,000 the Petitioner shall refund the excess amount to the Respondents within a

period, which may be fixed by the Civil Court. If the suit is dismissed by the Civil Court even then the Petitioner has to refund a sum of Rs. 50,000 with interest after deducting Rs. 16,964

7. With the above directions, this writ petition is dismissed.

Dasti copy on usual terms.

C.M.P. No. 3498 of 1995:

In view of the dismissal of the writ petition, the present application is also disposed of.