
(2020) 09 SHI CK 0324

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2158 Of 2020

Ram Roop

APPELLANT

Vs

State Of H.P. And Ors

RESPONDENT

Date of Decision : 15-09-2020

Acts Referred:

Citation : (2020) 09 SHI CK 0324

Hon'ble Judges : Tarlok Singh Chauhan, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Ajay Sharma, Amit Jamwal, Ashok Sharma, Ranjan Sharma, Vikas Rathore, Desh Raj Thakur, Buphinder Thakur, Seema Sharma, Svaneel Jaswal, N.K. Thakur, Divya Raj Singh Thakur

Final Decision : Disposed Of

Judgement

Tarlok Singh Chauhan, J

1. The problem of water logging in Village Arniala has compelled the petitioner to file the instant petition for grant of following substantive reliefs:

a) That impugned acts of the respondents, detailed here-in- above, what to speak of prima facie but ex facie amount to executive inaction, may very kindly be quashed and set aside with directions to the respondents to immediately and forthwith construct drains at both sides of the road at Point C-D upto Point 'F' as per Annexure P-3, site plan and justice be done.

b) That in the case in hand, this Hon'ble Court may, on the request of the petitioner, take into consideration to view the matter seriously to condemn the unfair acts of the respondents and deprecate the same in strongest possible words so that the same may be an eye-opener for others not to act in such an unfair manner at any place in the State of H.P.

2 This Court vide its order dated 14.7.2020 had directed the petitioner and Pradhan, Gram Panchayat, Arniala Lower, Tehsil and District Una, H.P. to visit the

spot along with Superintending Engineer, HPPWD, Una, Executive Engineer, HPPWD, Una, Superintending Engineer, I&PH, Una, President and Office Bearers of the Municipal Council, Una, on 16.07.2020 at 11.00 A.M. and the report was to be submitted by the Superintending Engineer, HPPWD, Una, within a further period of three days.

3 In compliance to the directions, report of the spot inspection held on 16.7.2020 was placed before this Court for perusal, which revealed that Up-Pradhan of Gram Panchayat Lower Kotla and other residents were not willing to allow the HPPWD to construct side drains on Una-Takka Road within acquired width of the road at disputed site, which necessitated impleadment of Up-Pradhan, Gram Panchayat, Lower Kotla as respondent No.6.

4 It was after hearing the respective parties that the Court on 24.8.2020 passed the following order:-

"The grievance highlighted in this petition relates to the problem of water logging that has been faced by the local residents of Friends Colony, Gram Panchayat Lower Arniala and Gram Panchayat lower Kotla on account of construction of drains along Una-Takka-Dhamandri road.

2. The petitioner alongwith the residents of Friends Colony complained that the water in the already constructed drains on both sides of Una-Takka road accumulates over the land of the petitioner and Friends Colony and demanded that the drains may be constructed along the road which facilitate the discharge of storm water, which thereafter, instead of, entering into the catchment of petitioner's land could be regulated and discharged through the existing natural nallah.

3. On 14.07.2020, this Court after hearing the Engineer- in-Chief, HPPWD, Shimla, Er. N.P. Singh, S.E., HPPWD Circle Una and Er. S. K. Sharma, S.E., HP IPH Circle, Una alongwith the learned Counsel for the parties, passed the following orders:-

"It appears that the only plausible solution, at this stage, can be found out by visiting the spot. Therefore, let the petitioner and Pradhan, Gram Panchayat, Arniala Lower, Tehsil and District Una, H.P. visit the spot along with Superintending Engineer, HPPWD, Una, Executive Engineer, HPPWD, Una, Superintending Engineer, I&PH, Una, President and Office Bearers of the Municipal Council, Una, on 16.07.2020 at 11.00 A.M. and then the report be submitted by the Superintending Engineer, HPPWD, Una, within a further period of three days. List on 28.07.2020 in the open Court."

4. In compliance to the aforesaid order, the Superintending Engineers, IPH Circle Una and HPPWD

15 th Circle, Una have submitted the inspection report, which reads as under:-

"Report of the Spot Inspection held on 16.07.2020 at 11:00 AM by the

committee constituted by the Hon'ble High Court of H.P. for the verification/ examination of the issue of the Petitioner in compliance to the Order dated 14.07.2020 passed in CWP No. 2158 of 2020-Ram Roop vs. State of H.P. and others. The followings were present at the spot:-

- 1) Er. N.P. Singh, Superintending Engineer, 15th Circle, HPPWD Una.
- 2) Er. S. K. Sharma, Superintending Engineer, I&PH Circle, Una.
- 3) Er. S.K. Agnihotri, Executive Engineer, HPPWD Division, Bangana.
- 4) President, Municipal Council Una.
- 5) Executive Officer, Municipal Council Una.
- 6) Pradhan, Gram Panchayat Lower Arniala.
- 7) Shri Ram Roop s/o Shri Ram Rakha (Petitioner).
- 8) Smt. Parveen Saini (Advocate Petitioner)

The spot was inspected by the committee constituted by the Hon'ble High Court of H.P. to sort out the issue of disposal and accumulation of water in the lands of the petitioner and other residents of Friends Colony by way of construction of drains along Una-Takka-Dhamandri road. The local residents of Friends Colony, Gram Panchayat Lower Arniala & Gram Panchayat lower Kotla were also present during the spot inspection. The detail of the inspection is as under:-

The petitioner and residents of Friends Colony complained that the water in the already constructed drains on both sides of Una-Takka road after concurring at point 'C' crosses the road and the whole water spreads over the land of the petitioner and Friends Colony. Further, the petitioner demands that drains may be constructed along the road from point C&D to F (210 meter) on the left side of the road and from C-B-A)351 meter) on the right side of the road as per the drawing supplied by the petitioner, which will cost about Rs.20 lacs. By constructing this drain the storm water flow, instead of entering the catchment of petitioner's land & Friends Colony may be regulated upto the already existing Natural Nallah at point G & A.

HPPWD was already willing to construct side drains on Una- Takka road within acquired width of the road at disputed site which is required and a genuine demand of the local inhabitants but due to the refusal of the residents of Gram Panchayat Lower Kotla in past, the work could not be executed. Up Pardhan GP lower Kotla and other residents also threatened the committee during the spot inspection on dated 16.07.2020, that they will not allow the department officials to construct the drain and even further threatened to block the already existing drain in the portion F to G as marked on the drawing supplied by the petitioner.

HPPWD is ready to construct both these road side drains upto the existing Natural Nallah within the acquired width of the road as per the demand of the petitioner and the residents of Friends Colony. This measure will prevent the

accumulation of water in their land and prevent drainage congestion, but the residents of Village lower Kotla are showing non-cooperation and creating hindrance. They even threatened that they will not allow the department to construct the side drains, so police protection is required when the construction work of drains commences at site. It is therefore, requested that the Distt. Administration may kindly be directed for police assistance during the construction of drains."

5. On the basis of the inspection report, on 13.08.2020, this Court passed the following orders:-

"Report of the spot inspection held on 16.7.2020 is taken on record. This Court places on record its appreciation for the work carried out at the spot by the Inspection Committee.

A perusal of the report reveals that it is probably by the Up- Pradhan of Gram Panchayat Lower Kotla and other residents, who are not willing to allow the PWD to construct side drains on Una-Takka road within acquired width of the road at disputed site. Therefore, in such circumstances, the Up- Pradhan, Gram Panchayat, Lower Kotla is made as a party and is impleaded as respondent No.6. Issue Dasti notice for the service of newly added respondent, returnable for 20.08.2020.

Dasti notice be issued by the Registry within one day to the learned counsel for the petitioner."

6. Today, respondent No. 6 i.e. Up-Pradhan, Gram Panchayat, lower Kotla is present in person alongwith Shri Naresh K. Thakur, learned Senior Advocate. After hearing respondent No. 6, we are of the considered view that the residents of the Friends Colony and lower Kotla, have certain genuine grievances, which need to be looked into by the authorities.

7. Taking into consideration all the attending facts and circumstances of the case, we direct the District Judge, Una to inspect the spot from Takka-Amb road and after visiting the same submit his report highlighting therein the problems/cause thereof and the remedial measures for both short and long term that can be taken for solving the issue of water logging. The District Judge, Una, shall visit the spot on 30.08.2020 at 10:30 AM and shall be accompanied by the following:-

- 1) Er. N.P. Singh, Superintending Engineer, 15th Circle, HPPWD Una.
- 2) Er. S. K. Sharma, Superintending Engineer, I&PH Circle, Una.
- 3) Er. S.K. Agnihotri, Executive Engineer, HPPWD Division, Bangana.
- 4) President, Municipal Council Una.
- 5) Executive Officer, Municipal Council Una
- 6) Pradhan, Gram Panchayat Lower Arniala

7) Up-Pradhan, Gram Panchayat, lower Kotla

8) Shri Ram Roop s/o Shri Ram Rakha (Petitioner)

8. Apart from above, the learned District Judge is free to associate any other person/expert in not only carrying out the inspection but also while finding out the cause and solution of the problem.

9. Report in this regard be submitted to this Court on or before 09.09.2020."

5 When the report was submitted to the Court, then on 10.9.2020, following order came to be passed:-

"Inspection report submitted. This Court places on record appreciation for the two reports that have been submitted pursuant to orders passed by this Court from time to time.

Let copy of the report submitted by the learned District Judge, Una (pages 52 to 59) be supplied by the registry to the learned counsel for the parties within 24 hours. Suggestions, if any, to the report may be exchanged before the next date of hearing.

List for consideration on 15.9.2020."

6 Today when the case was taken up for consideration, the parties jointly stated that they have no objection to the short- term and long-term solutions, suggested by the learned District Judge, Una, in his report and the only caveat entered on behalf of the residents of Gram Panchayat Lower Kotla is that while executing the work their interest be also protected.

7 Accordingly, we proceed to dispose of the petition by directing the respondents to execute following short-term and long-term solutions:-

SHORT TERM SOLUTIONS

i) In view of prevailing situation of the spot, the blocked culverts/drainage on the Una-Amb National Highway be opened by concerned authority, immediately.

ii) The roadside drainage (both side) of Una-Takka- Dhamandri Road as constructed earlier by HP.P.W.D., now blocked, be opened, repaired and cleaned immediately by the HPPWD, Department as the drain constructed on the right side of above road has been blocked at point C and the water has been diverted through underground drain on the road towards left side of the above road which is coming at point D of the site plan.

iii) As per site plan submitted by the Superintending Engineer, I&PH Department (Annexure C at page 58 of the paper-book), the drain from point C of the plan be constructed upto the point A and from Points D to G, so that the blocked water could be regulated to some extent to the Nallah at Point G and A. However, some portion of the drain is existing at the spot from point F to G, which though requires its repair. A pucca Nallah AG covering certain distance in the proposed

pathway for draining water is existing on the spot, thereafter, it takes shape of kacha Nallah which requires to be channelized/cemented upto last point i.e. Lalsingi Khad.

LONG TERM SOLUTIONS:

i) The logged water be drained out to solve the problem of the people of the area. The proposal be made by the I&PH Department for construction of drain from point D to Friends Colony side as shown in the Annexure-D (page 59 of the paper book) because the natural flow is towards that side and dirty water could also be drained out in that drain and then to take the same to the Nallah flowing from points GA or to Lalsingi Khad so that the water may not spread in other area of locality. There is vacant land through which proposed drain shall go, for which department is directed to acquire the land from the owners for channelization of Nallah, which may take time.

8 Short-term solutions be executed by the Superintending Engineers, HP PWD and IPH as expeditiously as possible and in no event later than 15.11.2020, whereas long-term solutions be executed within a period of six months from today. However, it is made clear that while executing the work, the respondents shall keep it in mind the interest of all stake holders including residents of Gram Panchayat lower Kotla.

9 For compliance of short-term solutions, to come up on 24.11.2020 and for execution of long term solutions on 15.3.2021.

10 Copy of report along with accompanying documents, more particularly, site plan shall be read as part and parcel of this order.

11 Before parting, the Court once again places on record its appreciation for the two reports that have been submitted pursuant to the orders passed by this Court from time to time.

Pending application(s), if any, also stands disposed of.