

(2016) 04 SHI CK 0063
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 3017 of 2015

Ramesh Kumar and another	Vs	APPELLANT
State of H.P. and others		RESPONDENT

Date of Decision : 01-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 HimLR 1419 : (2016) ILRHP 776 : (2016) 2 SimLC 609

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

Bench : Division Bench

Advocate : B.C. Negi, Senior Advocate, with Narender Thakur, Advocate, for the Appellant; Shrawan Dogra, Advocate General, with Romesh Verma and M.A. Khan, Addl.A.Gs., and J.K. Verma, Dy.A.G. and Dilip Sharma, Senior Advocate, with Nishi Goel, Advocate, for the Resp

Final Decision : Disposed Off

Judgement

Mansoor Ahmad Mir, C.J.—Petitioners, by the medium of the instant writ petition, have sought directions to the respondent/Authorities to prevent respondent No.11, namely, Ramesh Thakur, from causing any damage to the link road connecting Kandaghat Rest House, owned by the H.P. Public Works Department, and the office of the H.P. State Electricity Board, with National Highway 22, (hereinafter referred to as the link road). In case any damage is caused to the link road, directions are sought to restore the road to its original position and that necessary action, as warranted under the law, be initiated against respondent No.11. The petitioners have further prayed for initiating appropriate disciplinary departmental action against the officers/officials who have not taken appropriate prompt action against respondent No.11, on the grounds taken in the memo of writ petition. Along with the writ petition, the petitioners have annexed photographs and other documents, which, prima facie, do disclose that damage has been caused to the link road.

2. All the respondents have filed their respective replies. Respondent No.11, in

his reply, has admitted that damage was caused to the link road. The said respondent tried to defend his action on vague grounds.

3. Respondents No. 1 and 5, i.e. the Secretary, Public Works Department and the Executive Engineer, B&R Division, Public Works Department, have filed the joint reply, wherein they have admitted that on respondent No. 11 having caused damage to the link road by excavation work, the Junior Engineer/Prescribed Authority, in terms of the mandate of the Himachal Pradesh Road Infrastructure Protection Act, 2002, (hereinafter referred to as the Act), has issued notices to the said respondent. It has further been stated in the reply that respondent No. 11 has now done the required repair work and has made the road worthy of vehicular movement.

4. In reply, in paragraph 2 of preliminary submissions, respondents No. 1 and 5 have further stated that the Confirmatory Authority has reduced the penalty imposed by the Prescribed Authority upon respondent No. 11 to Rs. 50,458/-. However, while submitting reply on merits, it has been stated in reply to paragraph 2 that the Prescribed Authority imposed the penalty to the tune of Rs. 3,02,748/- upon respondent No. 11 as restoration cost and asked respondent No.11 to deposit the said amount within three days.

5. Respondents No. 2 and 9 have also filed the joint reply, which, on bare reading, appears to be evasive. However, in paragraphs 5 and 8 of the reply, they have stated that damage had been caused to the link road by respondent No. 11.

6. Respondents No. 3, 4, 7 and 8 have also filed the reply and in paragraph 10, it has been specifically stated that respondent No.11 never obtained prior permission from the Special Area Development Authority (hereinafter referred to as the SADA). It is only after the SADA issued notice to respondent No.11, the said respondent applied for permission before the office of the Member Secretary, SADA, Kandaghat, on 13th July, 2015 and the SADA again issued notice to respondent No. 11 upon detecting certain deficiencies and the case of respondent No. 11 was still under process.

7. In paragraph 11 of the reply, it has been admitted that though damage was caused to the link road, now it sands metalled and restored to its original position and there is no hindrance to the smooth flow of the traffic.

8. Respondent No. 6 i.e. the Member Secretary, SADA, Kandaghat, in paragraph 10 of his reply, has specifically averred that respondent No.11 has not applied for permission till 9th July, 2015. The reply filed by this respondent is quite evasive. Only paragraph 10 of the writ petition stands replied, wherein it has been stated as under:

"10:- The contents of this para are accepted to the extent that Respondent No. 11 has not applied for permission from this authority till 9.7.2015. In this respect, the site in question was visited by the representative of SADA office on

7.7.2015 and observed that cutting & development has been done at site and 30 nos. Columns have been erected upto plinth level and accordingly a notice under section 39 of HP Town & Country Planning Act, 19077 was served to Sh.Ramesh Chand S/o Sh.Chattar Singh vide this office letter No. SADA/KGT/UAC Case No. 179/2015/S.A.-161-163 dated 7.7.2015 (Copy enclosed). A planning permission case for construction of commercial building over Kh.No. 681/1, 682/2 & 683/3, Measuring 394 Sqm. At Up-mohal Sirinagar, Tehsil Kandaghat, Distt.Solan (HP) was also received from Sh.Ramesh Chand S/o Sh.Chattar Singh on 9.7.2015 (Dy.No.986 dated 13.7.2015). The case was examined by the authority and the shortcomings have been noticed in the case and accordingly observations were intimated to Respondent No.11 vide letter No.SADA/KGT/Case No. 346/KGT/2015-176 dated 16.7.2015 (Copy enclosed)."

9. Respondent No. 10 i.e. National Highway Authority has also filed the reply in which it has been stated that respondent No. 11 has raised the RCC structure, without obtaining No Objection Certificate from the National Highway Authority. It is apt to reproduce paragraph 5 of the reply hereunder:

"5. That as per the record of Executive Engineer (NH) Division Solan, respondent No.11 till day did not obtain NOC for construction of RCC structure which otherwise is a mandatory condition before approval of map by local bodies/Town & Country Planning Deptt. However, National Highway authorities can maximum initiate action under National Highway Act 1956 and HP Road Infrastructure Protection Act for raising construction on acquired width but as far as construction of controlled width is concerned, for checking this menace, it is the role of Town & Country Planning deptt./S.A.D.A. authority. Accordingly when through repeated oral as well as written directions respondent No. 11 failed to stop construction of RCC structure abutting to National Highway without obtaining NOC, left with no option, Executive Engineer (NH) Division Solan filed detailed application/complaint before SDO (Civil) cum Collector Kandaghat Chairman of S.A.D.A. authority i.e. respondent No. 6 on 20.08.2015 and sought initiation of action against respondent NO. 11. Along with this application revenue map, revenue record and notices issued to respondent No. 11 by prescribed authority under HP Road Infrastructure Protection Act have also been annexed. The copy of same is annexed herewith as Annexure R-1. Now it is for respondent No. 6 to initiate action in accordance with Town & Country Planning Act being Chairman of S.A.D.A. authority. Till now respondent No. 11 neither has applied for NOC from National Highway authority/Highway administrator nor granted therefore it is for respondents No. 6 & 7 to take action as provided under law under Town & Country Planning Act being case of violation of not leaving required front set back of 5 mtr. by respondent No. 11."

10. Mr. Shrawan Dogra, learned Advocate General, appearing for respondents No.1 to 10 and Mr.Dilip Sharma, Senior Advocate, appearing for respondent No.11, have argued that respondent No.11 has restored the road to its original condition, after carrying out the required repairs. It has further been argued that

since the penalty imposed upon the said respondent stands already deposited, nothing survives in the writ petition and prayed that the same be accordingly disposed of.

11. On the other hand, Mr. B.C. Negi, learned Senior Advocate appearing for the petitioners, argued that respondent No.11 has taken law in his hands by raising unauthorized construction and has caused damage to the public road, which action of respondent No.11 is illegal and not in accordance with the mandate of law.

12. We have heard the learned counsel for the parties and have gone through the material placed on record.

13. As discussed herein above, the respondents-Authorities, in their replies, have specifically admitted that respondent No.11, while raising the RCC structure, has caused damage to the link road. The respondents have also admitted that respondent No.11 has raised the construction without seeking necessary permission(s)/NOC from the concerned Authority(ies). It is beyond our comprehension how the said construction has been allowed to be raised. No action was drawn against respondent No.11 by the Authority(ies) concerned till the petitioners approached this Court and notices were issued is suggestive of the fact that the Authority(ies) were in deep slumber. It is again a mystery as to how the penalty of Rs. 3,02,748/-, imposed by the Prescribed Authority, came to be reduced to Rs. 50,458/-

14. The Apex Court, in a similar case, titled M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu and others, reported in (1999) 6 SCC 464, has held that action should be drawn against the person who had made unauthorized construction and also the officers should also be brought to book, who had not taken action. It is apt to reproduce paragraph 73 of the said judgment hereunder:

"73. The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorized. This dicta is now almost bordering rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the

Mahapalika to construct and maintain parking lots."

15. In view of the above, the Chief Secretary to the Government of Himachal Pradesh is directed to conduct an inquiry and pinpoint the officers who have not drawn action against respondent No.11 within time and also examine under what circumstances the penalty imposed upon respondent No. 11 was reduced from Rs. 3,02,748/- to Rs. 50,458/-. The inquiry be completed within two months and action be drawn, as warranted under the law/ rules, occupying the field.

16. The writ petition stands disposed of accordingly, so also the pending CMPs, if any.