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(2011) 01 SHI CK 0097

In the High Court Of Himachal Pradesh

Case No : CWP No. 8107 of 2011

Subhash Chand Sud and Others — APPELLANT

Vs

Jagdish Prasad Gupta and Others — RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 89

Citation : (2011) 01 SHI CK 0097

Hon'ble Judges : Kurian Joseph, C.J;V.K. Ahuja, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.—The petitioners approached this Court with the following prayers:-

"a) The Respondent No. 1 and 2 be directed not to commence the reconstruction work of the fallen retaining wall of Garden House Estate, Jakhu, Shimla as detailed in Annexure P-5 and P-6 unless the plan/drawings of the proposed reconstruction are approved and sanctioned from Respondents no 3 and

4. b) Respondents No. 3 and 4 be also directed to proceed against the Respondents No. 1 and 2 and take action under the Municipal Corporation Act, 1994 as amended from time to time and rules and by-laws framed there under in case the Respondents No. 1 and 2 carry on the reconstruction work of the retaining wall without sanction of the plan/drawing of the proposed reconstruction. c) That annexure P-6 being arbitrary and having been issued by Respondent No. 4 in excess of its authority be set aside and quashed. d) that in case it is found that the Respondents No. 1 and 2 or their contractor or labourers are necessarily to be provided access by the Petitioners through their property (Summer Lyton Estate) for carrying out reconstruction of the retaining wall in that case Respondents no 1 and 2 be directed not to create new openings/entries but to use only the existing approach passage starting from Municipal Road which according to the Respondents no 1 and 2 the residents of summer lyton estate are also using. Time bound directions be also given to the Respondents no

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1 and 2 to ensure the completion of the reconstruction. e) That Respondents be further directed to take appropriate steps for ensuring the safety of the property of the Petitioners while carrying out the reconstruction work and Respondent No. 1 and 2 be also directed to remove all the debris and excavated material from the Compound of Summer Lyton Estate

2 and restore the said portion to its original condition and also to compensate the Petitioners for the damage already caused."

2. Having heard the learned Counsel we found that it is a matter for application of Section 89 CPC and it is heartening to note that the learned Counsel on both the sides have volunteered to take steps in that regard. It is seen that the parties have reached a settlement. The following are the terms of settlement between the parties:

"1. That Respondents no 1 and 2 agree and undertake that all the debris of the fallen retaining wall of the Garden House Estate in the compound of the Summer Lyton Estate shall be got removed and cleared by them at their expense by all means by or before 15/2/2011 by employing adequate men and machinery so as to achieve the target with in the aforesaid time limit.

2. That for the purpose of removing and clearing of the debris only and for no other purpose men and machinery of the Respondent no 1 and 2 shall be provided access into the affected portions of Summer Lyton Estate by the Petitioners. This way compound of Summer Lyton cottage (a double storeyed) structure shall be restored to the original ground level of the Summer Lyton Cottage. Likewise the compound of main Summer Lyton Kothi which is located at a lower level to the above ground level of Summer Lyton Cottage shall also be restored to its original condition i.e to the ground level of the main Kothi within the aforesaid time limit.

That while undertaking and executing the work of clearing and removing of the debris no damage whatsoever shall be caused to any portion of the Summer Lyton Estate.

The Respondent no 1 and 2 also agree and undertake that the process of clearing and removal of the debris on spot shall be started positively by 10/1/2011, In no case, men and machinery of the

3 Respondent no 1 and 2 shall be permitted to come in any portion of the Summer Lyton Estate after 15/2/2011.

That the reconstruction work of the retaining wall shall be carried out and completed by 30/4/2011 by taking all steps and measures so as not to cause any further damage to any portion of summer Lyton Estate.

Completion of the reconstruction work of the retaining wall, its structural soundness shall be subject to the satisfaction and approval of Municipal Engineer from Buildings and Roads department and / or from any other concerned

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department of Municipal Corporation Shimla who so ever is deputed in this behalf by Respondent No. 4.

That other pending civil disputes between the parties shall be subject to final outcome of the pending Civil Suit and the execution petition in the lower court(s) at Shimla."

3. Learned Counsel for the Municipal Corporation however, has certain observations with regard to clause-6. The counsel on both the sides and the parties have no objection of substitution of the said clause as follows:

Approval of completion of the retaining wall on reconstruction will be subject to the final decision of the competent authority concerned as this is a restoration work of wall damaged during last heavy rainy season.

4. Therefore, this Writ Petition is disposed of in terms of the terms settled between the parties and extracted as above, except for the settlement clause-6, which will be substituted as suggested by the Municipal Corporation and as extracted above. We record our appreciation for the thoughtful and sincere steps taken by the counsel on both the sides and on the cooperation extended by the parties and also the Municipal Corporation, Shimla.

5. The Writ Petition is disposed of, so also the pending application(s), if any.

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