

(2012) 07 SHI CK 0186

In the High Court Of Himachal Pradesh

Case No : LPA No. 498 of 2011 Alongwith CWP No. 809 of 2010-B

Vinod Kumar

APPELLANT

Vs

Ranjit Kumar, State of Himachal Pradesh and Nagar
Panchayat Talai
 Ranjit Kumar Vs State of Himachal
Pradesh, Director Urban Development, Government of
Himachal Pradesh, Shimla, H.P., Nagar Panchayat, Talai and
Sh. Vinod Kumar

RESPONDENT

Date of Decision : 25-07-2012

Acts Referred:

Citation : (2012) 07 SHI CK 0186

Hon'ble Judges : R.B. Misra, J;Kurian Joseph, J

Bench : Division Bench

Advocate : Ajay Mohan Goel, in LPA No. 498 of 2011 and Mr. A.K. Vashishtha, in CWP No. 809 of 2010, for the Appellant; A.K. Vashishtha, counsel for respondent No. 1, Mr. Ankush Dass Sood, Additional Advocate General, for respondents No. 2 and 3 and Mr. Avnish Bhardwaj, counsel for respondent No. 4 in LPA No. 498 of 2011, Mr. Ankush Dass Sood, Additional Advocate General, for respondents No. 1 and 2. Mr. Avneesh Bhardwaj, counsel for respondent No. 3 and Mr. K.B. Khajuria, counsel for respondent No. 4 in CWP No. 809 of 2010, for the Respondent

Judgement

Justice Kurian Joseph, C.J.—The 4th respondent in CWP No. 809 of 2010 has come up in appeal aggrieved by the interim order, dated 19.9.2011, passed in the writ petition. Since the appeal is against the interim order, we have called for the writ petition before us and the same is also disposed of by this judgment. The writ petition is filed with the following prayer:-

A writ in the nature of mandamus may kindly be issued directing the respondent No. 3 to take action in accordance with the provisions of H.P. Municipal Act 1994 against illegal, unapproved and unauthorized construction raised by the respondent No. 4.

2. It is the stand of the 4th respondent that demarcation report was already

submitted before the Nagar Panchayat and an amount of Rs. 5,250/- was also remitted in 2008 by way of approval fee and thereafter NOC was issued for the electricity and water connections. It is the stand of the Nagar Panchayat that the 4th respondent had made unauthorized construction and that the Deputy Commissioner was approached for taking appropriate action against the 4th respondent. It is also stated that the NOC issued to the 4th respondent was not proper and appropriate action against the erring official was also taken.

3. By the impugned interim order, the learned Single Judge issued a direction to respondents No. 1 to 3 to complete the proceedings against the 4th respondent in a time bound manner. In order to facilitate the action, as above, a further direction was issued to demarcate the land by the Tehsildar in order to ascertain whether the 4th respondent had encroached upon the land of the writ petitioner. Still further, there was a direction to Assistant Town Planner to verify whether the building raised by the petitioner was in accordance with the norms of Municipal Council or not. There was a further direction to disconnect the water and electricity connections and to seal the building.

4. When the appeal came up for consideration before us, we found that, all the irregularities or illegalities apart, the basic issue is in fact among the members of the family. Therefore, an attempt was made to purchase peace and appointed Mr. S.C. Sharma, Advocate, as a Conciliator with the further direction to conduct a local inspection also and thresh out the possibility of settlement. It appears the conciliation did not fructify.

5. During the pendency of the appeal, it is seen that the Assistant Collector, Grade-I has completed the demarcation and it is seen from the report that there is an encroachment by way of Chhaja, measuring 3" x 9" and the same has been in the land of the writ petitioner, in Khasra No. 251. The 3rd respondent, Nagar Panchayat has framed building byelaws, 2003 and they have duly notified the same on 8th June, 2004. Byelaw 45 provides for regulation of unauthorized construction and a detailed procedure is also prescribed. Now that the entire matter is pending before the Nagar Panchayat and the prayer itself is for direction to the Nagar Panchayat to take appropriate action, the appeal and the writ petition are disposed of as follows:-

(i) The encroachment by way of Chhaja shall be demolished forthwith by the appellant/4th respondent. If it is not done within ten days from today, there will be a direction to the 3rd respondent to demolish the Chhaja, referred to above, with the assistance of the police.

(ii) There will be a direction to the 3rd respondent, Nagar Panchayat/competent authority to take appropriate action in accordance with law, including the action, if permissible under byelaw 45 with regard to the construction made by the 4th respondent, after affording an opportunity for hearing to the writ petitioner and the 4th respondent, within a period of two months from the date of production of the copy of this judgment by either party. The interim order passed by this Court

in the appeal will continue till such time and further continuance thereof will depend on the order passed by the 3rd respondent. The pending applications, if any, also stand disposed of.

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