



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Ex. Petition No. 563 of 2024

Date of decision: 09.01.2025

Pushpa Nand	...Petitioner
vs.	
State of H.P. & Ors.	...Respondents

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Mr. Justice Rakesh Kainthla, Judge.

Whether approved for reporting? No

For the Petitioner: Mr. Anshul Jairath, Advocate.

For the Respondents: Mr. Anup Rattan, A.G. with Mr. Navlesh Verma, Ms. Sharmila Patial, Addl. A.Gs. and Mr. Raj Negi, Dy. A.G.

Tarlok Singh Chauhan, Judge (Oral)

The petitioner had filed CWP No. 2977 of 2018, wherein he had sought directions for the respondents for the construction of Ambulance Road from NH-5 to his house.

2. Record reveals that it was only on account of non-sanctioning of the amount that the construction of the Ambulance Road was withheld.

3. Later on, after the Model Code of Conduct had come to an end, the Deputy Commissioner sanctioned an amount of Rs. 3,00,000/- for construction of the Ambulance Road and it was on this basis that the petition filed by the petitioner was allowed vide order dated 13.06.2019, which reads as under:-



“Fresh status report filed yesterday on 12.6.2019 on the affidavit of Deputy Commissioner Shimla reveals that the Block Development Officer Rampur vide letter No.RMP Grievance-2019-20 dated 2.4.2019 has submitted the estimate to the tune of Rs. 3,77,000/- for construction of the ambulance road from NH-5 to the house of Shri Pushpanand at village Nirsu. The amount could not be sanctioned upto the month of May, 2019 due to imposition of Model Code of Conduct. Now the Deputy Commissioner (Deponent) has sanctioned the amount of `3,00,000/- for construction of the ambulance road. In this view of the matter there remains nothing to be adjudicated upon in this writ petition on merits. The same is accordingly disposed of with a direction to the respondents to expedite the construction of the road preferably within three months from today. Pending application, if any, shall also stand disposed of.”

4. Since the road was not being constructed, the petitioner approached this court by filing contempt petition being COPC No. 125 of 2020, wherein even though the contempt petition was ordered to be closed on the ground that steps for construction of road in question have already been taken, however, further directions were again issued to the respondents to complete the construction of the Ambulance Road, if not already completed, as would be evident from the order dated 17.03.2020, which reads as under:-

“By way of present contempt petition, prayer has been made on behalf of the petitioner for initiation of contempt proceedings against the respondents for their having



willfully and intentionally disobeyed the directions contained in judgment dated 13.06.2019, passed by Division Bench of this Court in CWP No.2977/2018, titled Pushpa Nand vs. State of Himachal Pradesh & others, whereby this Court having taken note of the fact that Deputy Commissioner has sanctioned amount of Rs. 3,00,000/- for construction of ambulance road, directed the respondents to expedite the construction of the road preferably within three months. Since no action, whatsoever, came to be taken at the behest of the respondents qua implementation of aforesaid judgment, petitioner has approached this Court in the instant proceedings for initiation of contempt proceedings against the respondents.

2. Reply to the petition stands filed on behalf of respondents, perusal whereof, clearly reveals that steps for construction of road in question already stand taken. It has been categorically stated in the reply that path has been already constructed by laying tiles on it and width of the said path is 2 meters. In middle of the said path a drain/kuhal is passing and slab was to be laid, but since petitioner himself raised objection qua the same, further work could not be completed. Reply further reveals that petitioner himself raised objection and stopped construction of the road on the ground that width of ambulance road is not proper.

3. Having taken note of aforesaid reply filed on behalf of the respondents, this Court finds that respondents pursuant to directions contained in the judgment alleged to have been violated, have already taken steps for construction of ambulance road and as such, no act of them can be said to be contemptuous.



4. Consequently, in view of the above, this Court finds no reason to accede to the prayer made on behalf of the petitioner and as such, contempt proceedings are closed. Notices issued to the respondents are hereby discharged. Needless to say, respondents would complete the construction of the ambulance road, if not already completed, expeditiously.

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

5. Respondents No. 3 to 5 have filed their reply to the execution petition wherein completely a new stand has been taken to the effect that Tehsildar Rampur has reported that there is no recorded path/road in the revenue record and the land in question is ‘*abadi deh*’ in which spot demarcation and encroachment proceedings cannot be carried out. It has further been stated that as far as encroachments of Ram Singh, Uma Parmar and Kailash Thakur as pointed out by the petitioner are concerned, the encroachment Misal/proceedings cannot be made/ carried out against the said encroachers because of the land in question being ‘*abadi deh*’.

6. If at all, respondents had any objection, especially, of the kind now sought to be canvassed, it should have been taken before the learned Writ Court. This Court being an Executing Court, it is bound by the judgment and has to ensure that the same is complied with in its letter and spirit.



7. Moreover, the contention of the respondents that no proceedings for ejectment can be carried out only because the land is classified as an '*abadi deh*', does not appear to be legally correct in view of the provisions as contained in Section 163 of the H.P. Land Revenue Act, which reads as under:-

163. Prevention of encroachment on lands.- [(1)

Where Government land or land which has been reserved for the site of the village or for common purposes or uses of the estate right holders or of the co-sharers therein, has been encroached upon by any person or co-sharers for any purpose including the construction of a building or other structures or by planting trees therein, then-

(a) the Revenue Officer may of his own motion or on the report of the patwari of the circle duly verified by the Kanungo of the Circle or on the application of any estate right holder or co-sharers, after giving reasonable opportunity of being heard, shall eject him from such land by order 4[within six months from the date of taking of cognizance or from the date of receipt of such report or from the date of filing of such application, as the case may be, however, the period may further be extended upto three months for the reasons to be recorded in writing], in the manner prescribed;

(b) if the encroacher has erected any building or other structure or has planted trees on the encroached land, the same shall, in the prescribed



manner, vest in the State Government free from all encumbrances:

Provided that if the building or structure and attachments thereto are situated partly in the owned land of the encroacher and partly on the encroached land, the Revenue Officer shall be competent to demolish the portion of the building or structure on the encroached land if the encroacher fails to demolish it himself as ordered by the Revenue Officer; and

(c) the Revenue Officer shall impose upon the encroacher a fine upto Rs. 1[20,000/- or the prevalent market value of the land, whichever is higher] per bigha or part thereof, which shall be recoverable, as if it were an arrear of land revenue.

(2) If a person who has been evicted from any land under this section again occupies the land without authority for such occupation, he shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees or double the prevalent market value of the land, whichever is higher or with both:

Provided that no court shall take cognizance under this sub-section of an offence unless a report in writing is made by a Revenue Officer not below the rank of Assistant Collector First Grade.

(3) When there is a question as to title or to the adverse possession, wherein the possession is claimed by an encroacher for a period beyond thirty years in relation to



the land from which ejectment is made or is to be made under this section, the Revenue Officer, not below the rank of an Assistant Collector of the First Grade, 4[may proceed] to determine the question, as if he were a civil court and shall exercise all such powers as are exercisable by a civil court.

(4) For the determination of the question under sub-section (3), the Revenue Officer shall follow the same procedure as is applicable to the trial of an original suit by a civil court, and he shall record a judgement and decree containing the particulars required by the Code of Civil Procedure, 1908 (5 of 1908) to be specified therein.

(5). An appeal from the decree of the Revenue Officer made under sub-section (4) shall lie to the District Judge as if that decree were a decree of a Subordinate Judge in an original suit.

(6) A further appeal from the appellate decree of a District Judge upon an appeal under sub-section (5), shall lie to the High Court only if the High Court is satisfied that a substantial question of law is involved.

(7) No suit or other legal proceeding shall lie against the Revenue Officer or any person acting under this section in respect of anything in good faith done or purported to have been done under the provisions thereof or the rules made thereunder.

Explanation.- For the purposes of this section, any person who holds land under a lease granted by the Government for a fixed term and continues to be in possession of the land beyond the expiry of the period of lease shall be



deemed to be an encroacher unless such person gets the lease extended or renewed.

8. Moreover, as observed above, once the judgment has attained finality, it is for the respondents to ensure that the same is executed in its letter and spirit.

9. From the counter affidavit filed on behalf of the petitioner, it is clearly evident that the respondents have not cared to construct the Ambulance Road as per the directions of this Court. It is evidently clear from the photographs annexed alongwith the counter affidavit that a four wheeler cannot pass on the said road and in this context, the petitioner was absolutely right in objecting to the wastage of the funds when he noticed that the width of the Ambulance Road was such that a four wheeler vehicle could not pass the same.

10. In the given facts and circumstances, we deem it appropriate to direct the respondents to comply with the judgment passed by this Court on 13.06.2019 in its letter and spirit and report compliance by the next date of hearing.

11. The Secretary, DLSA, Kinnaur is directed to monitor the construction of the road on fortnightly basis and submit his report before the next date of hearing. It shall be open to the official respondents to demolish any un-authorised construction coming in the way of the Ambulance Road.

12. Accordingly, the execution petition is disposed of.



For compliance to come up on **06.03.2025**.

(Tarlok Singh Chauhan)
Judge

9th January, 2025
(sanjeev)

(Rakesh Kainthla)
Judge