

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**CWP No. 1364 of 2026
Decided on: 03.07.2026**

Bhagwan Dass

.....Petitioner**Versus**

State of H.P and others

..Respondents**Coram****Ms. Justice Jyotsna Rewal Dua****Whether approved for reporting?¹**

For the Petitioner: Mr. Dinesh Thakur, Advocate.

For the Respondents: Mr. Sikander Bhushan, Deputy
Advocate General.**Jyotsna Rewal Dua, Judge**

The grievance of the petitioner was noticed as under in the order dated 02.03.2026 passed in this writ petition:-

"2. Petitioner's grievance is that due to inaction of the respondents in not restoring the fallen portion of the land comprised in Khasra No.114 and not constructing the retaining wall, his owned land comprised in Khasra No. 116, Mohal Dhasmai, Post Office Ladrour, Tehsil Bhoranj, District Hamirpur, H.P., which is situated at a higher level from the road has become prone to natural calamities. It has been urged that respondents have already estimated the amount for construction of the protection wall, as is apparent from Annexure P-9, however, on account of frivolous ground that the aforesaid would be a new work, therefore, the retaining wall is not being constructed.

3. Let learned Additional Advocate General have instructions from the respondents for

¹Whether reporters of print and electronic media may be allowed to see the order? Yes.

ensuring and providing protection to the petitioner's property in his owned and possessed land comprised in Khasra No. 116 by the next date."

2. Heard learned counsel for the parties and considered the case file.

3. Apparently, the landed property of the petitioner is suffering damage due to not raising of protection wall by the respondents alongside the road in question. The documents on record are pointer to the fact that officials of District Administration have corresponded with officials of Public Works Department for taking immediate necessary action to save the property. Pursuant to this, cost of the proposed protection wall at the spot was assessed @₹1,30,027/- on 22.07.2025 by the Public Works Department. Petitioner's grievance is that protection wall has still not been constructed. Office letter dated 01.11.2025 (Annexure P-9) addressed by the District Revenue Officer, Hamirpur to the Executive Engineer, H.P.P.W.D, Divn. Bhoranj, District Hamirpur, H.P. indicates that District Administration did not release the requisite funds citing that construction of proposed protection wall would be a new construction and would not fall in the category of repair of the work affected due to disasters (rain damages). Several documents on record

reflect that even the District Administration considers construction of protection wall to be of utmost importance as would be apparent from office letter dated 09.12.2025 (Annexure P-11) whereunder the attempts were made to construct the protection wall under the masonry funds of Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA). The fact remains protection wall has not been constructed till date.

4. In the reply filed by respondents No. 1 to 5, their liability and duty to build protection wall at the spot has not been disputed. Facts have not been disputed. The issue being highlighted is scarcity of funds. Relevant paras from reply is extracted hereinafter:-

“It is further submitted that after receiving the grievance of the petitioner, the officials of the department visited the spot and apprised the petitioner about the position of the spot and estimate was prepared but as the replying respondent do not have any funds to construct a protection wall as such an estimate of 1,30,027/- was prepared and sent to the O/o Deputy Commissioner, Hamirpur, District Hamirpur (respondent No.3) for approval vide letter No.4804-05 dated 19.07.2025 (The copy of letter is attached as Annexure R-4. It is further submitted that the respondent No.3 vide letter dated 01.11.2025 has intimated that as per the relief norms the funds are sanctioned only for repair works that have been affected due to disaster (rain damage) and not for new construction work and as such directed to examine the case at own level so that damaged portion may be protected but due to scarcity of funds the

protection wall could not be constructed. It is pertinent to mention here that as soon as the funds are approved from any head, the breast wall/ protection wall will be constructed.”

Once it is admitted that the protection wall at the spot in question is required to be raised in order to protect the property of petitioner as also the road; When it is not disputed and is also evident from the documents on record i.e. internal office letters as also the photographs (not disputed) and the stand taken by the respondents in the reply that in case this protection wall alongside the road is not raised, there is likelihood of petitioner's property being wiped out, the ground of scarcity of funds would not stand in the way of providing relief to the petitioner in order to protect his property thereby also saving the road in public interest. The Hon'ble Supreme Court in ***Municipal Council, Ratlam versus Shri Vardichan and others***² held that financial constraints or lack of funds cannot be accepted as a valid excuse for the non-performance of duties by public authorities.

Portion of judgment relevant to context is as under:-

“24....Why drive common people to public interest action? Where Directive Principles have found statutory expression in Do's and Dont's the court will not sit idly by and allow municipal government to become a statutory mockery. The law will relentlessly be enforced and the plea of poor finance will be poor alibi when people in misery cry

²(1980) 4 SCC 162

for justice. The dynamics of the judicial process has a new 'enforcement' dimension not merely through some of the provisions of the [Criminal Procedure Code](#) (as here), but also through activated tort consciousness. The officers in charge and even the elected representatives will have to face the penalty of the law if what the Constitution and follow-up legislation direct them to do are defied or denied wrongfully. The wages of violation is punishment, corporate and personal."

Any further delay in raising protection wall would also escalate costs of construction and may cause danger to petitioner's property.

In view of above, this writ petition is disposed of with directions to respondents No. 3-4/Competent Authority to ensure the construction of protection wall at the spot in question in order to protect the petitioner's property by providing requisite funds. The funds be provided within two weeks whereafter efforts be made to raise and complete construction of the protection wall as expeditiously as possible preferably within four weeks thereafter.

The writ petition stands disposed of in the above terms, so also the pending miscellaneous application(s), if any.

July 03, 2026
yogesh

Jyotsna Rewal Dua
Judge