

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No.4814 of 2014

Decided on: 05.10.2026

Dhani Ram

.....Petitioner

Versus

The State of Himachal Pradesh
and others

.....Respondents

Coram

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹ *Whether approved for reporting? Yes*

For the petitioner: Mr. Anirudh Sood, Advocate.

For the respondents: Mr. Rahul Thakur, Deputy Advocate General, for respondents No.1 and 2-State.

Mr. Ajay Kumar, Senior Advocate with Mr. Vinay Kumar Thakur, Advocate vice Mr. Sumit Sood, Advocate, for respondent No.3.

Ranjan Sharma, Judge

Petitioner-Dhani Ram, claiming to be an aggrieved landowner, has come up in instant petition under Article 226 of the Constitution of India, *seeking the following relief:-*

- “16 (i) Issue an appropriate writ, order and directions as this Hon'ble Court deems fit in the facts and circumstances of the case in the nature of Certiorari and Mandamus or any other writ, order or direction as deem fit and proper in the facts and circumstances of the case for directing the respondents to compensate the petitioner for damaging his valuable land jointly and

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

severally or in the alternative the respondent No.1 and 2 may be directed to acquire the damaged land of the petitioner by paying compensation in accordance with law.”

FACTUAL MATRIX:

2. Case as set up by petitioner-Dhani Ram is that he is owner in possession of land measuring 11-10 Bighas, comprised in Khata No.42 min, Khatauni No.59 min, Khasra No.549 [old] and New Khasra No.1007, measuring 1 Bigha 8 Biswas, situated in Village Salana, MohalSalana, Tehsil and District Shimla and nature of land, as per revenue records is *Ghasani*. It is averred that the said share of land came to the petitioner by way a mutual consent. It is averred that in the year 2008, the State Authorities-Respondents No.1 and 2, awarded work for construction of Shoghi-Sari Road, through Respondent No.3-Contractor [Satish Kumar Vij], who started construction of the said road on the land comprised Old Khasra No.749 [New Khasra No.1007/1]. It is averred that the said portion of road is situated on the lower side, as is borne out from photographs [Annexure P-1]. Being the co-owner of the said land, the case set up by petitioner-Dhani Ram is that Respondent No.3-Contractor, without taking the

preventive measures to protect the property of the petitioner, threw huge garbage and debris and boulders on his land, which was protested by the petitioner and despite verbal complaints to Respondent No.2, no action was taken by Respondent No.3-Contractor, despite the fact that Respondents No.1 and 2 had Supervisory Authority on the said work, which was performable by the Respondent-Contractor.

2(i). It is averred that on the indulgence of Assistant Engineer of Shoghi Sub-Division, efforts were made, which is clear from *Annexure P-2*. It is averred that as per report submitted by Assistant Engineer, some mutual understanding was arrived at between the landowners and Contractor-Respondent No.3 for making payment as compensation, which is clear from communication dated 16.08.2013 [*Annexure P-3*] and despite mutual understanding and representations made on 20.08.2013 and 22.08.2013, no redressal action was initiated by Respondent No.3-Contractor. It is averred that on 29.08.2013 [*Annexure P-5*], Respondent-Assistant Engineer in the said communication mentioned that Respondent No.3-Contractor had thrown *malwa*/debris on *Ghasanil* and no payment of

damages has been made by the Contractor to the petitioner, namely, Dhani Ram. Petitioner is stated to have issued a Legal Notice, vide Annexure P-6, seeking redressal of his grievance. Petitioner has placed on record *Annexure P-9* i.e. Technical Report of qualified Architects, indicating the damage-loss suffered by the petitioner at the behest of Respondents No.1 and 2, including Respondent No.3-Contractor. It is in this backdrop that instant petition was filed, with the prayer to compensate the petitioner for damage-loss and/or to acquire the land of the petitioner.

STAND OF STATE AUTHORITIES IN REPLY-AFFIDAVIT:

3. Upon issuance of notice on 25.07.2014, Superintending Engineer, 4th Circle, HPPWD, Shimla, had filed Reply-Affidavit on 13.08.2014.

3(i). Perusal of the Reply-Affidavit indicates that Respondent No.3 was awarded work for construction of Shoghi to Salana Sari Road on 16.04.2007 by Executive Engineer, HPPWD, Shimla Division No.1, Shimla, under Rural Division at Dhami from K.M. 0/0 to 12/2025 under *Bharat Nirman* Scheme with the provision for maintenance of said road. Total cost of work was at Rs.2,19,09,195/-. Reply-Affidavit indicates that Respondent No.3-Contractor

started construction work on 11.05.2007 by starting formation and cutting of said road and construction was completed on 31.12.2008 as per *Annexure R-I*. Reply-Affidavit indicates that on 07.01.2010 [*Annexure P-2*], Respondent No.2 requested Respondent No.3-Contractor [*Satish Kumar Vij*], to compensate the petitioner for the damages, if any.

3(ii). Reply-Affidavit further indicates that the petitioner had served a Legal Notice and had submitted representations, which were replied to by the State Authorities, vide *Annexure P-7*. Reply-Affidavit further indicates that claim for damages or compensation for loss was belated claim and Respondent-State Authorities have no claim against the State Authorities, in view of Section 7, which specifically states that any damages to public or private property during the course of execution of work shall be the sole and exclusive responsibility of the Contractor. Reply-Affidavit further indicates that the petitioner has failed to prove the damages caused to his land, through Respondent No.3. Reply-Affidavit further indicates that construction work was completed on 31.12.2008 and even five years maintenance period

has elapsed on 31.12.2013 and therefore, the instant petition filed on 10.12.2013 [*Registered in 2014*] is highly belated. It is in this backdrop that prayer of the petitioner has been opposed by Official Respondents No.1 and 2.

**SEPARATE REPLY BY RESPONDENT NO.3-
CONTRACTOR:**

4. Respondent No.3-Contractor had filed a separate reply objecting to the maintainability of the Writ Petition, on the ground that allegations reveal civil nature of dispute based on disputed questions of fact, which can only be proved by adducing evidence, in accordance with law, in appropriate proceedings. Plea with respect to delay and laches has also been taken by private respondent.

4(i). Para 4 of the Reply-Affidavit of Respondent No.3-Contractor indicates that debris was dumped at the allocated site but Superintending Engineer, Solan, had initiated proceedings for violation against the Respondent, which led to arbitral proceedings and award as per *Annexure R-3/A*. Respondent No.3 had specifically denied any damages to the land of the petitioner at his behest. Respondent No.3 vide para 8 of the Reply-Affidavit had

denied that any such understanding was arrived at between the petitioner and Respondent No.3. Even the report of expert i.e. architect as in *Annexure P-9* has been denied by private respondent. In these circumstances, the claim for compensation-damages was denied by private respondent.

5. Heard, Mr. Anirudh Sood, Advocate, for the petitioner; Mr. Rahul Thakur, Learned Deputy Advocate General, for respondents No.1 and 2; and Mr. Ajay Kumar, Senior Advocate, assisted by Mr. Vinay Kumar Thakur, Advocate vice Mr. Sumit Sood, Advocate.

6. Before proceeding to analyze the matter, it is necessary to have recap of the mandate of law regarding ambit, scope and interference by the High Court in proceedings under Article 226 of the Constitution of India, involving civil disputes, including matters relating to private land invoking disputed questions of facts, in the following terms:-

MANDATE OF LAW:

6(i). While dealing with the scope of interference in proceedings under Article 226 of the Constitution of India matters relating to civil nature, involving disputed

questions of facts, which can only be proved by adducing oral and documentary evidence before appropriate Forum, has been answered by the Hon'ble Supreme Court in ***Thansingh Nathmal and others versus The Superintendent of Taxes, Dhubri and others, AIR 1964 SC 1419***, in the following terms:

- “(7) Against the order of the Commissioner an order for reference could have been claimed if the appellants satisfied the Commissioner or the High Court that a question of law arose out of the order. But the procedure provided by the Act to invoke the jurisdiction of the High Court was bypassed. The appellants moved the High Court challenging the competence of the Provincial Legislature to extend the concept of sale, and invoked the extraordinary jurisdiction of the High Court under Art. 226 and sought to reopen the decision of the taxing authorities on questions of fact. The jurisdiction of the High Court under Art. 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Article. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations.

Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Art. 226, where the petitioner has an alternative remedy which, without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. **The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Art. 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under Art. 226 of the Constitution, the machinery created under the statute to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up.”**

6(ii). While dealing with the scope of interference in proceedings under Article 226 of the Constitution of India,

where disputed questions of fact of a complex nature arose, which were determinable by oral or documentary evidence to be taken, then, in such an eventuality, the High Court may not appropriately adjudicate the dispute in writ petition, as outlined by the Hon'ble Supreme Court in ***Smt. Gunwant Kaur and others versus Municipal Committee, Bhatinda and others, 1969 (3) SCC 769***, in the following terms:-

- “14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioners right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. **When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that**

account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition.

Rejection or a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made, dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.”

6(iii). Claim in proceedings under Article 226 of the Constitution of India, which was relatable to private law rights, without there being any element of public law, could not be adjudicated in proceedings under Article 226 of the Constitution of India. While dealing with the scope of interference in proceedings under Article 226 of the Constitution of India, the Hon’ble Supreme Court of India, has outlined in the case of **Joshi Technologies International INC. versus Union of India and others, (2015) 7 SCC 728**, that the petition under Article 226 of the Constitution of India shall not lie where dispute involves private land character or is a civil nature,

involving serious disputed questions of fact, which require assessment of evidence for ascertaining the correctness and for adducing claim by detailed evidence involving examination and cross-examination of witnesses in appropriate proceedings, with the mandate that proceedings under Article 226 of the Constitution of India cannot be invoked where alternate remedy of civil suit is available to a party, *in the following terms:-*

- “69.1. The Court may not examine the issue unless the action has some public law character attached to it.
- 69.3. If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.
- 70.3. Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, Involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases court can

direct the aggrieved party to resort to alternate remedy of civil suit etc.

70.6. Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

71. Keeping in mind the aforesaid principles and after considering the arguments of respective parties, we are of the view that on the facts of the present case, it is not a fit case where the High Court should have exercised discretionary jurisdiction under Article 226 of the Constitution. First, the matter is in the realm of pure contract. It is not a case where any statutory contract is awarded.”

6(iv). While dealing with question regarding maintainability of writ petition, where alternate remedy existed and the matter involves seriously disputed questions of facts requiring production of evidence by invoking the remedy before alternate Forum, including Civil Court, the Hon’ble Supreme Court has reiterated that in such an eventuality, the parties must be relegated to remedy of a Civil Suit, in ***Punjab National Bank and others versus Atmanand Singh and others, (2020) 6 SCC 256***, in the

following terms:-

“22. We restate the above position that **when the petition raises questions of fact of complex nature, such as in the present case, which may for their determination require oral and documentary evidence to be produced** and proved by the concerned party and also because the relief sought is merely for ordering a refund of money, **the High Court should be loath in entertaining such writ petition and instead must relegate the parties to remedy of a civil suit.** Had it been a case where material facts referred to in the writ petition are admitted facts or indisputable facts, the High Court may be justified in examining the claim of the writ petitioner on its own merits in accordance with law.”

6(v). Principles regarding scope of maintainability of proceedings under Article 226 of the Constitution of India have been culled out by the Hon’ble Supreme Court in ***M.P. Power Management Company Limited, Jabalpur versus Sky Power Southeast Solar India Private Limited and others, (2023) 2 SCC 703***, outlining that writ jurisdiction is a public law remedy and a matter which lies entirely within the private realm of affairs is not entertainable in the writ jurisdiction and if the matter involves entering upon findings of fact, involving construction

of document, requiring proof by adducing evidence, then, in such an eventuality, it is sound to relegate the party to alternate remedy, *in the following terms:-*

“82. We may cull out our conclusions in regard to the points, which we have framed:

82.1. It is, undoubtedly, true that the writ jurisdiction is a public law remedy. **A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.**

82.11. Termination of contract can again arise in a wide variety of situations. If for instance, a contract is terminated, by a person, who is **demonstrated**, without any need for any argument, to be the person, who is completely unauthorised to cancel the contract, there may not be any necessity to drive the party to the unnecessary ordeal of a prolix and avoidable round of litigation. The intervention by the High Court, in such a case, where there is no dispute to be resolved, would also be conducive in public interest, apart from ensuring the Fundamental Right of the petitioner under Article 14 of the Constitution of India. When it comes to a challenge to the termination of a contract by the State, which is a non-statutory body, which is acting in purported exercise of the powers/rights under such a contract, it would be over simplifying a complex issue

to lay down any inflexible Rule in favour of the Court turning away the petitioner to alternate Fora. Ordinarily, the cases of termination of contract by the State, acting within its contractual domain, may not lend itself for appropriate redress by the Writ Court. This is, undoubtedly, so if the Court is duty-bound to arrive at findings, which involve untying knots, which are presented by disputed questions of facts. Undoubtedly, in view of ABL Limited (supra), if resolving the dispute, in a case of repudiation of a contract, involves only appreciating the true scope of documentary material in the light of pleadings, the Court may still grant relief to an applicant. We must enter a caveat. The Courts are today reeling under the weight of a docket explosion, which is truly alarming. **If a case involves a large body of documents and the Court is called upon to enter upon findings of facts and involves merely the construction of the document, it may not be an unsound discretion to relegate the party to the alternate remedy. This is not to deprive the Court of its constitutional power as laid down in ABL.** It all depends upon the facts of each case as to whether, having regard to the scope of the dispute to be resolved, whether the Court will still entertain the petition. which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt

with under the writ jurisdiction of the Court.”

6(vi). While dealing with the scope of interference in proceedings under Article 226 of the Constitution of India, alleging damage to the property of the petitioner, during the execution of work by a Contractor, the Hon’ble Division Bench of this Court in ***Jai Dutt Sharma & Ors. versus State of H.P. & Ors., alongwith connected matter [CWP No.1105 of 2022 a/w CWP No.3894 of 2022]*** decided on 24.03.2023, has outlined that appropriate remedy for claiming compensation/damages lies before Civil Court and the writ petition is not maintainable, *in the following terms:-*

“6. According to the petitioners, it was on account of the unscientific methods used by the respondents for construction of **tunnel for the execution of the project that the houses and other properties of the petitioners came to be damaged. The petitioners continued to represent the authorities but to no avail.**

20. Now that we have held the compensation, as determined by the Deputy Commissioner to be not payable to the petitioners, therefore, the writ petition (CWP No. 1105 of 2022) filed by the individual(s)/land owners is not

maintainable and as regards the writ petition (CWP No.3894 of 2022) filed by M/s Greenko, the same has been rendered infructuous as the **proper remedy of claiming compensation/damages lies with the petitioners before the civil court for redressal of their respective grievances. However, we make it clear that in the event of the petitioners approaching the civil Court** within a period of thirty days from the receipt of this judgment, not only shall the petitioners be entitled to benefit of Section 80(2) of the Code of Civil Procedure, but even the period of limitation spent in pursuing these litigations shall be excluded.”

ANALYSIS:

7. Taking into account the entirety of facts and circumstances, this Court is of the considered view, that claim of the petitioner for compensation for loss-damage caused to his land and alternative prayer for directing the Respondents to acquire damaged land, does not cause any judicial scrutiny, *for the reason, firstly,* material on record does not point out that damage or loss was caused to the petitioner; *and secondly,* the allegation of the petitioner that damage or loss was caused, has been totally negated by the Official Respondents No.1 and

2 as well as Private Respondent No.3 *and thirdly*, in the absence of any conclusive proof regarding damage or loss, the disputed questions of facts cannot be adjudicated in the proceedings under Article 226 of the Constitution of India; *and fourthly*, the act and conduct of the petitioner disentitles him for raising a claim for damages or loss in proceedings under Article 226 of the Constitution of India, *for the reason*, that work for construction of road was awarded to Respondent No.3-Contractor who started construction work on 11.05.2007 by starting formation and cutting of said road and said work was completed on 31.12.2008, but the instant petition was filed after about five years on 10.12.2013 and that too when five years of maintenance period of said road had also elapsed and thus the conduct of the petitioner disentitles him for the relief in present proceedings; *and fifthly*, the primary case set up by the petitioner against Official Respondents No.1 and 2 has been totally negated in view of Reply-Affidavit by referring to Section 7 which specifically mentions that any damages to public and private property, during the course of execution of work, was the sole and exclusive responsibility of the Contractor and in these

circumstances, claim against the Official Respondents, is not tenable; *and sixthly*, so far as the claim, if any, against Private Respondent No.3-Contractor is concerned, this Court is of the considered view, that once the compensation necessities the proof for loss or damages and once nothing has been produced on record [*except stray photographs Annexure P-1*], then, in these circumstances, in the absence of conclusive proof of loss or damages to the land, the claim for compensation, cannot be looked into and adjudicated upon in the present proceedings; *and seventhly*, the material on record indicates that dispute primarily involves the petitioner vis-à-vis Private Respondent No.3-Contractor and the claim for damages against the Contractor, is in realm of private law, which require proof of allegations on the basis of oral and documentary evidence to be led, examined, weighed and adjudicated upon by a Civil Court and therefore, in these circumstances, the claim by the petitioner in proceedings under Article 226 of the Constitution of India are not maintainable; *and eighthly*, the proceedings under Article 226 of the Constitution of India can lie, in case, the matter falls in realm of public law, which relates to admitted facts and not otherwise for which

the matter involving disputes of a civil nature, have to be adjudicated by invoking the remedy before Civil Court, in accordance with law; *and ninthly*, it is not the case of the petitioner that the petitioner is remediless and once the alternate remedy by way of a Civil Suit is available, then, this Court refrains itself from entertaining the present proceedings under Article 226 of the Constitution of India; *lastly*, alternative prayer of the petitioner for directing the State to acquire the alleged damaged land, does not stand to rationale and reasons in view of the fact that land could only be acquired either by the State, if it is utilized by the State for public purposes and nothing has borne out from the instant case that the land of the petitioner was utilized by the Official Respondents for any public purposes. In these circumstances, this Court cannot look into and adjudicate disputed questions of fact, which necessities adducing of evidence in accordance with law.

8. No other points argued/raised.

DIRECTIONS:

9. In view of above discussion and for the reasons recorded hereinabove, the instant petition is **dismissed**, in the following terms:-

- (i) Claim of petitioner for compensation for loss or damage to his land in absence of any conclusive proof of damages or loss necessitating proof by adducing evidence, cannot be gone into, in the present proceedings;
- (ii) Alternative Claim for acquisition of land which was never utilized or acquired by the State for public purpose is turned down, as such a claim dehors the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, is misplaced and is accordingly disallowed;
- (iii) Sequel to direction No.(i), liberty reserved to the petitioner, to seek recourse to civil remedy, hereinafter, if so desired; and
- (iii) Parties to bear their own costs.

In the aforesaid terms, the instant petition stands disposed alongwith all pending miscellaneous application(s), if any.

(Ranjan Sharma)
Judge

October 05, 2026
[Bhardwaj]