

COCp-1235-2021

Date of Decision: 26.08.2021.

Pawan Kumar

...Petitioner

vs.

K.M. Sharma

...Respondent

Coram : Hon'ble Mr. Justice B.S. Walia.

Present: Mr.Roopak Bansal, Advocate for the petitioner.

Mr. Chetan Mittal, Sr. Advocate with
Mr. R.S. Madaan, Advocate, Mr. Mayank Aggarwal, Advocate
and Ms. Deepshika Gupta, Advocate for the respondent.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.
2. Prayer in the petition is for initiating action against the respondent for intentionally and willfully disobeying order Annexure P-2 dated 17.02.2021 in CWP No.37194 of 2019.
3. Learned counsel contends that CWP No.37194 of 2019 was disposed of vide order dated 17.02.2021, in the light of statement of learned Sr. Counsel appearing on behalf of NHAI that pursuant to the observations made by Hon'ble the Division Bench, the authorities had re-examined the matter and after sitting with the concerned Sarpanches had taken a decision to deviate the Highway by extending the length of bridge by 50 mtrs. and also made a statement by way of an affidavit as well as during arguments that NHAI would ensure protection of the temple, pond and the ancient structures standing thereon. Learned counsel contends that on account of

failure of the respondent to comply with the undertaking as referred to above, the instant petition was filed. Learned counsel further contends that the petitioner had also filed CWP No.13460 of 2021 titled as “Pawan Kumar and Ors. Vs. NHAI and Ors., challenging the action of the respondent in not adhering to the undertaking as made before Hon’ble the Division Bench on 17.02.2021 in CWP No.37194 of 2019 but the same was dismissed by Hon’ble the Division Bench on 25.08.2021. Learned counsel further contends that reply has been filed on behalf of the respondent and in view of paragraph No.7 of the aforementioned reply, wherein stand has been taken that construction of the Highway is being carried out by extending the length of the bridge by 50 mtrs. to maintain the sanctity of the pond and temple etc., the petitioner does not wish to pursue the instant petition and the same may be disposed of in view of the stand of the respondent. Para No.7 of the reply filed by the respondent is reproduced as under:-

“That to further substantiate the fact that the respondent has been carrying out the construction of the Highway in compliance with the statement made therein in CWP No.37194 of 2019, a copy of the Site Plan as per Contract Agreement and the Final Plan after deviation of 50 meters are attached herewith as Annexure R-4 and R-5 and photographs are attached herewith as Annexure R-6, a perusal of which will evince that the construction of the Highway is being carried out by extending the length of the bridge of 50 meters so that the sanctity of pond and temple remains intact. Despite the same being done, the petitioner herein has not only filed the present contempt petition but has also filed a writ petition bearing CWP No.13460 of 2021 titled as Pawan Kumar & others Vs. NHAI

&others, which is pending adjudication before this Hon'ble Court for 25.08.2021".

4. Learned counsel for the respondent contends that in view of the position as noted above no action under the Contempt of Courts Act, 1971, is called for against the respondent and accordingly prays for dismissal of the contempt petition.

5. I have considered the submissions of learned counsel for the parties.

6. Admittedly as per the stand of the counsel for the petitioner based on paragraph No.7 of the reply filed by the respondent, the respondent is ensuring compliance with the undertaking held out before Hon'ble the Division Bench in CWP No.37194 of 2019. In the circumstances, no action under the Contempt of Courts Act, 1971, is called for against the respondent. Contempt petition is disposed of as such.

7. Rule discharged.

(B.S. Walia)
Judge

26.08.2021

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No