

IN THE HIGH COURT OF SIKKIM AT GANGTOK
(CONSTITUTIONAL JURISDICTION)

Writ Petition (C) No. 18 of 2009

Shri Jagat Bahadur Lohar,
S/o Late Surjya Bir Lohar,
R/o Development Area,
P.O. & P.S. Gangtok,
East Sikkim.

... **PETITIONER.**

- Versus -

1. State of Sikkim,
Through the Secretary,
Urban Development and Housing Department,
Government of Sikkim,
Gangtok, East Sikkim.
2. Sub Registrar,
District Collectorate, East District,
Gangtok, East Sikkim.
3. Smt. Urmila Sherpa,
R/O Sichey,
Dr. B. R. Ambedkar Road,
Kishor Rai Building,
Near Suren Dhara,
P.O. & P.S. Gangtok,
Sichey, Gangtok,
East Sikkim - 737101. ... **RESPONDENTS.**

For the Petitioner : Mr. A. K. Upadhyaya, Senior Advocate
with Mr. Dhurba Tewari, Mr. Ashim
Chettri, Ms. Binita Chettri and Ms. Mukul
Rani Parajuli, Advocates.

For the Respondents : Mr. J. B. Pradhan, Addl. Advocate
General with Mr. Karma Thinlay
Namgyal, Govt. Advocate and Mr.
Santosh K. Chettri, Asstt. Govt. Advocate
for the Respondent Nos.1 and 2.

BEFORE : HON'BLE MR. JUSTICE BARIN GHOSH, CHIEF JUSTICE.
HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE.



Last Date of Hearing: 09.06.2010.

Date of Judgment: 16.06.2010.

J U D G M E N T

Ghosh, CJ.

In this writ petition, petitioner is seeking regularisation of a part of a plot of land in his favour on payment of regularisation fee. The plot of land, of which a part, the petitioner is seeking regularization, has been settled by a Lease Deed dated 24.03.2009 in favour of respondent No.3. The case of petitioner is that on 13.11.1990 he was permitted to make construction on the plot of land settled in his favour as per the Site Plan with a condition that he should, amongst others, provide facility for good drainage and sanitary system/soak pit/septic tank. It is the contention of petitioner that the Site Plan, as was approved, did not indicate where the septic tank should be constructed. It is the contention of petitioner that in order to discharge his obligation to provide the facility of septic tank, he constructed a septic tank measuring an area of 28 sq. ft. on the plot of land adjacent to the plot of land settled in his favour, which 28 sq. ft. falls in the plot of land settled in favour of respondent No.3 by the Lease Deed dated 24.03.2009. Petitioner seeks settlement of only that 28 sq. ft. of land in his favour.

2. The Site Plan did not suggest the place where the septic tank should be constructed but the same was submitted for approval by petitioner. At the same time, the Site Plan thus submitted did not indicate that there is any proposal to construct a toilet or a kitchen.



Therefore, approval of the said Site Plan without indicating location of the septic tank cannot be questioned. However, the permission to construct did mention that there should be enough facility for good drainage and sanitary system/soak pit/septic tank. In the event, a toilet or kitchen is not proposed to be constructed, the condition that there should be enough facility for good drainage and sanitary system/soak pit/septic tank, becomes otiose. Faced with this situation learned counsel for petitioner drew our attention to the Notification dated 16.10.2001 issued by the Government of Sikkim in exercise of powers conferred by sub-section (2) of Section 7 of the Sikkim Allotment of house Sites and Construction of Building (Regulation and Control) Act, 1985, whereby in the Sikkim Building Construction Regulations, 1991, Clause (vi) was added in regulation 17 of the said Regulations of 1991. In terms thereof any structure beyond the permissible number of floors or allotted area or approved Blue Print Plan completed or under construction on or before the said notification was directed to be regularised after payment of regularisation fee to be prescribed by Notification by Government. It was contended that any structure beyond the permissible allotted area was thus directed to be regularised.

3. First of all, there is no evidence that the septic tank, in question, was constructed or was under construction before 16.10.2001. Secondly, the inserted clause meant that if the structure constructed or under construction is not permissible having regard to the allotted area, the same was to be regularized, but that did not authorise allotment of fresh area. Thirdly, our attention was not drawn to the Notification issued by Government prescribing payment

of regularisation fee in relation to regularisation of allotment beyond allotted area for a construction made or under construction.

4. The Writ Petition is, accordingly, merit less and the same is dismissed.

5. Before parting, it is our duty to record that learned Addl. Advocate General submitted that in the vicinity of the allotted plot of the petitioner, sewerage system has been laid and in the event, petitioner has constructed a toilet(s) and kitchen, he can discharge effluent thereof to the said sewerage system. It shall be open to petitioner to take such recourse.



Judge
16.06.2010



Chief Justice
16.06.2010

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