

# IN THE HIGH COURT OF SIKKIM

## ORDER SHEET

..... WRIT PETITION (CIVIL) ..... No. 29 of 2005

..... BIRKA BAHADUR BANIA ..... Petitioner / Appellant /

Versus

..... STATE OF SIKKIM & OTHERS ..... Respondent s

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
1.	25.07.2005	<p>Upon hearing Mr. D. P. Sharma, learned counsel for the petitioner and Mr. Karma Thinlay, learned Assistant Government Advocate for the State - respondents 1 to 5, and also on perusal of the available materials on record, we are of the view that this matter can be disposed of at this motion stage on its own merit with the following order and direction :-</p> <p>The grievance of the petitioner is that, after the award to the tune of Rs.15,000/- was made by the Land Acquisition Collector, East District, Gangtok, Sikkim on 19.10.2004 in the related case, the petitioner being not satisfied with the quantum of award, submitted an application on 4<sup>th</sup> December, 2004 for reference to the court concerned, namely, the District Judge, East and North, Sikkim at Gangtok having jurisdiction in it, but the Land Acquisition Collector failed to make reference of the matter to the concerned court without any <i>justification</i> jurisdiction.</p>	

*justification*  
jurisdiction.

*gim*



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		<p>For better appreciation of the matter, Section 18 of the Land Acquisition Act, 1894 is relevant, and accordingly, the same is quoted below :-</p> <p><b>“18. Reference to court</b></p> <p>(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.</p> <p>(2) The application shall state the grounds on which objection to the award is taken:</p> <p><b>PROVIDED</b> that every such application shall be made, -</p> <p>(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;</p> <p>(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.”</p> <p>In terms of the related provisions laid down under Section 18 of the Land Acquisition Act, 1894, the Collector is bound to make reference of the</p>	

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NO. OF  
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Order

Order with Signature

Office Note as to  
action (if any)  
taken on Order

matter to the court concerned if the person aggrieved or the person who has not accepted the award, filed written application to the Collector within the stipulated time. In the case in hand, we have seen that the present petition<sup>er</sup>/filed the written application to the Collector within the stipulated time prescribed under Section 18 of the Land Acquisition Act, 1894.

In our considered view, the learned District Collector, East District, Gangtok, Sikkim had failed to perform his lawful duties conferred upon him by law in the present case in hand as he did not make reference<sup>to</sup> to the matter to the court concerned as discussed above. In view of the above position, we have no alternative, but to direct the District Collector, East District, Gangtok, Sikkim to perform his lawful duties conferred upon him by law in the matter, thus making reference ~~of~~ the matter to the concerned court, i.e., the District Judge, East and North, Gangtok, for the determination of the court concerned in the matter under the related provisions of the Land Acquisition Act, 1894 within a period of 7 days from today, failing which necessary legal action shall be initiated against the Collector concerned in accordance with law.

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4

No. of  
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Order

Order with Signature

Office Note as to  
action (if any)  
taken on Order

For the reasons, observations and directions made above, this Writ Petition is finally disposed of, but no order as to costs.

Registry is directed to serve a copy of this order to Mr. Karma Thinlay, learned Assistant Government Advocate, during the course of the day, so as to enable him to highlight the existence of this order to the Collector concerned.

N. S. Singh

( **N. Surjamani Singh** )  
**Chief Justice (Acting)**

A. P. Subba

( **A. P. Subba** )  
**Judge**

A Copy of order  
forwarded to Asstt.  
Govt. Adv. on 27/5/05  
27/5/05  
27/5/05

At/