



Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
4.	28.5.08	<p>WP No. 32/07</p> <p>Present: Mr. N.B. Khatiwada, Sr. Advocate with Mr. N. Rai and Mr. Dhurba Tewari, Advocates for the Petitioners.</p> <p>Mr. J.B. Pradhan, Govt. Advocate for the State-Respondent.</p> <p>...</p> <p>Mr. Karma Thinlay, learned Advocate would be embarrassed to appear for the State in this matter since he represents the Central Government in many matters. The Central Government in this case is represented by the learned Senior Advocate appearing for the Army; as such Mr. Karma Thinlay is given leave to retire and he can retire instantly. He submits that his name has wrongly been recorded earlier; the above order is passed out of abundant caution; it is also recorded that he never actually appeared for the State of Sikkim in this case.</p> <p>The first order in this matter, which was passed by a single bench on 09.10.2007, has been re-examined by us as a Division Bench, and after hearing learned counsel on both sides, we are of the convinced opinion that the said order should be confirmed. It is so done. As such, the present exclusive possession of the Army with regard to the area in question shall</p>	

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be maintained, subject to whatever is stated hereinafter, and the status quo shall continue, again subject to whatever said hereinafter.

It is well known that the State of Sikkim is a sensitive border State and the international border is very near from almost everywhere excepting the extreme Southern portion of the State. The army occupation of the instant land is, naturally, like all other army occupation, of an exclusive nature; it would not be possible to maintain this if forest officers were also to be allowed in, and the land became a sort of area of joint occupation between the Army and the Forest Department. This type of joint occupation is not possible with the Army. They have their own strategy and discipline and that has to be maintained not only in their interest but in the interest of the whole of the Nation.

The order passed by the Court and confirmed today is, however, always to be treated as secondary to any agreement or settlement that might be reached in regard to the land in question herein as between the Union of India and the State of Sikkim. The Union of India is sovereign, and in our federal



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		<p>structure, there are elements of sovereignty in the State of Sikkim also, especially because land is a List II item.</p> <p>Our order will no doubt flex to these settlements but we emphasize that the settlement has to be at the highest level possible, i.e. between the Union and the State. This is not a case where any officer under the Forest Act can be empowered and any Committee can be constituted by the Court. The Committee or the deputation of the officer has to be by the Union of India and the State of Sikkim themselves. They have to settle the matter themselves if they want any variation from the situation which is obtaining today. Subject to the above the position as on date shall remain confirmed but it shall not in any manner disturb or impede the path or way of settlement as between the Union of India and the State of Sikkim. The writ petition is finally disposed of on these terms.</p> <p style="text-align: right;">  (A.N. Ray, CJ) </p> <p style="text-align: right;">  (A.P. Subba, J) </p>	