

THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Appellate Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

R.F.A. No. 04 of 2022

Shri Mingyur Bhutia @Ingrik Dorjee
Aged about 83 years,
Son of Late Chiten Lama Bhutia
Tashiding,
P/o Tashiding and P.S. Gyalshing
Sikkim-737111.

*(Represented by the Constituted Attorney Shri Gyatso
Bhutia Son of Late Dorjee Tashi Bhutia, resident of
Tashiding. P.O. Seink and P.S. Gyalshing, Sikkim).*

..... Appellant/Plaintiff

Versus

- 1.** The Chief Engineer,
National Hydro Power Corporation Ltd.
Rangit Nagar-737111
South Sikkim.
- 2.** The General Manager,
National Hydro Power Corporation Ltd.
Rangit Nagar – 737 111
South Sikkim.
- 3.** Shri Karma Rinchen Bonpo (Bhutia),
S/o Late Sonam Dadul Bhutia,
Born Farm House,
P.O. Kewzing and P.S. Gyalshing,
Sikkim-737139.
- 4.** Shri Sonam Rinchen Bonpo,
S/o Late Sonam Dadul Bhutia,
Born Farm House,
P.O. Kewzing and P.S. Gyalshing,
Sikkim-737139.
- 5.** Shri Tashi Dorjee Bonpo (Bhutia)
S/o Late Sonam Dadul Bhutia,
Born Farm House,
P.O. Kewzing and P.S. Gyalshing,
Sikkim-737139.

6. Shri Chewang Bonpo (Bhutia)
S/o Late Sonam Dadul Bhutia,
Born Farm House,
P.O. Kewzing and P.S. Gyalshing,
Sikkim-737139.
7. The District Collector,
District Administrative Centre,
Gyalshing, Sikkim-737111.
8. The Sub-Divisional Officer,
Yuksom Sub-Division
Yuksom, Gyalshing District
Sikkim-737113.

..... Respondents/Defendants

Appeal under Order XLI, Rules 1 and 2 of the Code of Civil Procedure, 1908.

(Impugned Judgment and Decree dated 21.05.2022 passed by the Court of the learned District Judge at Gyalshing, Sikkim in Title Suit No. 01 of 2018 titled Shri Mingyur Bhutia @Ingrik Dorjee versus The Chief Engineer, National Hydro Power Corporation Ltd. Rangit Nagar and Others).

Appearance:

Mr. N. Rai, Senior Advocate (Legal Aid Counsel) with Mr. Yozan Rai, Legal Aid Counsel, Mr. Pradeep Tamang and Ms. Priscila Rai, Advocates for the Appellant/Plaintiff.

Ms. Sangita Pradhan, Deputy Solicitor General of India (*through V.C.*) assisted by Ms.Natasha Pradhan, Advocates for the Respondent Nos. 1 and 2/Defendant Nos. 1 and 2.

Mr. T. R. Barfungpa, Mr. Hem Lall Manger, Ms. Lahamu Bhutia and Ms. Parvin Manger, Advocates for the Respondent Nos. 3 to 6/Defendant Nos. 3 to 6.

Mr. Sujan Sunwar, Assistant Government Advocate for the Respondent Nos. 7 & 8/Defendant Nos. 7 and 8.

Date of Hearing	:	19.03.2024
Date of Judgment	:	25.04.2024

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. This regular first appeal is liable to be rejected on the ground that the appellant (the plaintiff) failed to establish his case as he did not examine himself and Gyatso Bhutia the plaintiff's power of attorney holder admitted that he had no personal knowledge about the present matter. It is settled law that a "*power of attorney holder can only depose about the facts within his personal knowledge and not about those facts which are not within his personal knowledge who he represents or about the facts that may have transpired much before he entered the scene.*" This has been held by the Supreme Court time and again and now reiterated once again in ***Manisha Mahendra Gala vs. Shalini Bhagwan Avatramani***¹. However, as this is a regular first appeal this Court shall consider all the issues examined by the learned District Judge, Gyalshing (the learned Trial Court).

2. This is a regular first appeal filed by the plaintiff whose suit for declaration of title and recovery of possession was dismissed by the learned Trial Court.

¹ 2024 SCC OnLine SC 530

3. The respondent nos. 1 and 2 (the defendant nos. 1 and 2) are the Officers of the National Hydro Power Corporation Limited (NHPC) who has admittedly acquired plot no. 814/933 at Tashiding Block which is subject matter of dispute in the suit filed by the plaintiff.

4. The suit was filed by the plaintiff in the year 2018. The process of acquisition of the disputed plot started in the year 1996 and ended in 1998 when the award was made in favour of the grandfather of the respondent nos. 3 to 6 (defendant nos. 3 to 6) for grant of compensation.

5. Although the plaintiff claims that he is the absolute owner of the landed properties covered by plot no. 814 measuring about 1.1480 hectares he does not claim possession of the said property anywhere in the plaint.

6. It is the plaintiff's case that in the year 2015 the plaintiff received a notice from the respondent no.7 (defendant no.7) for demarcation of land acquired by defendant nos. 1 and 2.

7. In the pleadings in the plaint the plaintiff claims that it is only in the year 2015, after having received the notice for demarcation, that he made enquiries and realized that an area measuring 1.1480 hectares was found recorded in the name of late father of defendant nos. 3 to 6 from his total land holding which has been transferred to

defendant nos. 1 and 2 and the remaining portion 0.6020 hectares continued to be in the possession of late father of defendant nos. 3 to 6. With such pleadings the plaintiff approached the learned Trial Court for the following prayers:

- a. Declaring that the Legal heirs of Lt. Sonam Dadul Bhutia (Defendant nos. 3-6) and the National Hydro Power Corporation are in illegal occupation of the portion of plot No. 814.
- b. Declaring the recording of the names of Lt. Sonam Dadul Bhutia and The National Hydro Power Corporation in the record of rights to be illegal and void.
- c. Relief for correction of records of rights in favour of the plaintiff by duly deleting i.e. the names of Lt. Sonam Dadul Bhutia and The National Hydro Power Corporation.
- d. Order for recovery of Khas possession from Lt. Sonam Dadul Bhutia and The National Hydro Power Corporation and delivery of same to the plaintiff.
- e. An order for compensation by way of mense profit against the Legal heirs of Lt. Sonam Dadul Bhutia (Defendant nos. 3-6) and The National Hydro Power Corporation and in favour of the plaintiff as the Hon'ble Court may deem fit and proper.
- f. Any other relief or reliefs for which he plaintiff is entitled to.

8. The defendant nos. 1 and 2 has filed written statement taking various grounds both on facts and in law denying that the plaintiff was the absolute owner of the landed property. It is stated that the Government of Sikkim vide Notification No.42/902/11 /L.R. (S) dated 27.11.1996 published a Notice under section 4(1) of Land Acquisition Act, 1894 (L.A. Act, 1894) seeking to acquired various plots

including 814/933 for public purpose i.e. construction of Rangit Project concrete dam in Tashiding, West Sikkim. It was also stated that a declaration under section 6 of the L.A. Act, 1894 was also issued on 27.03.1997 which once again specified plot no. 814/933. According to defendant nos. 1 and 2 the defendant no.7 made an award under section 11 of the L.A. Act, 1894 and compensation was duly paid to the respective land owners.

9. Defendant nos. 3 to 6 in their written statement also denied the assertion made by the plaintiff in their plaint that they were the absolute owner of the property in dispute. According to the defendant nos. 3 to 6 late Yongden Bhutia the grandfather of defendant nos. 3 to 6 had several plots of land under Tashiding Block. As per land survey operation of 1950-52 late grandfather of defendant nos.3 to 6 had five plots of land bearing nos. 756, 759, 760, 761 and 762 measuring a total area of 13.32 acres. They further claimed that the entire property was being looked after by one Late Kaluman Mangar, a caretaker of defendant nos. 3 to 6. Late Yongden Bhutia used to reside in Kewzing and although he was in physical possession of his landed properties, inadvertently a portion of his land was wrongly recorded in the name of the plaintiff during the survey operations of 1979-80 as part of

the plot no. 814 measuring a total area of 4.8500 hectares. According to defendant nos. 3 to 6 it was noticed in the year 1992 when defendant nos. 1 and 2 started survey of the area for construction of power project. It was accordingly corrected in the year 1992 vide Office Order No. 289/DCW (R) dated 09.01.1992 by the office of the defendant no.7, following the procedure for correction of land records with the consent and approval of the plaintiff. After the correction of the land records, the portion of the land measuring 1.1480 hectares which had wrongly been recorded in the name of the plaintiff during the survey operations of 1979-80 was accordingly renumbered as plot no.814/933, transferred and mutated in the name of late Yongden Bhutia. Late Yongden Bhutia had two sons Shri Lobzang Bhutia and Late Sonam Dadul Bhutia-father of defendant nos. 3 to 6. After the death of Yongden Bhutia the unacquired portion of plot no.814/933, after the land acquisition by defendant nos. 1 and 2, was inherited by the father of defendant nos. 3 to 6 as his share of ancestral property and was subsequently mutated in his name vide Office Order No. 224 DCW in the year 2000.

10. The defendant nos. 7 and 8 in their written statement stated that as per 1979-80 survey operations plot no. 814 measuring area of 4.85 hectares was recorded

in the name of the plaintiff. It is also stated that the same was corrected vide Office Order No.289/DCW (R) dated 09.01.1992 and new plot no. 814/933 measuring 1.1480 hectares has been recorded in the name of late Yongden Bhutia and a *khatiyān* was prepared with the said entries. The defendant nos. 7 and 8 also stated about the issuance of notifications under section 4 section 6 and the award under section 11 of the L.A. Act, 1894 by which compensation was paid to Late Yongden Bhutia for plot no. 814/933. It also pleaded that the entire land acquisition process was done after duly following the process of law and that no claim or objection was received under section 9 of the L.A. Act, 1894.

11. Based on the pleadings of the parties, the learned Trial Court framed the following issues:

- “(i) Whether the plaintiff is the actual owner of the suit property bearing plot no.814/933 measuring 1.1480 hectares after the survey operation of 1979-80 or whether plot no. 814/933 measuring an area of 1.1480 hectares belonged to and was in the possession of Late Yongden Bhutia, grandfather of defendants 3-6 as per the 1950-52 survey operation and was wrongly recorded in the name of the plaintiff after the survey operation of 1979-80? (Onus for first half of the issue on plaintiff and second half of the issue on defendants 3-6).
- (ii) Whether plot no. 814/933 was rectified as per proper procedure in the revenue records in the year 1992 and retransferred in the name of Late

Yongden Bhutia, grandfather of defendants 3-6?
(Onus on defendants 3-8).

- (iii) Whether Late Yongden Bhutia, grandfather of defendants 3-6 was entitled to the compensation for the suit land measuring 0.5460 hectares being the portion acquired by defendants 7 & 8 for defendants 1 & 2? (Onus on all the defendants).
- (iv) Whether the acquisition of the suit property bearing plot no. 814/933 (renumbered as 814/983 after acquisition) measuring 0.5460 hectares was valid and as per legal procedure? (Onus on defendants 1-2, 7 and 8).
- (v) Whether the defendants 3-6 being the legal heirs of Late Yongden Bhutia are the rightful owners of plot no.814/933 or whether they are in illegal possession of the same? (Onus on defendants 3-6).
- (vi) Whether the suit of the plaintiff is barred by law of limitation? (Onus on defendant 1, 2, 3-6).
- (vii) Whether the plaintiffs entitled to reliefs claimed? (Onus on plaintiff).

12. The matter then proceeded for trial. The plaintiff examined one Gyatso Bhutia-the power of attorney holder of the plaintiff, Megh Bahadur Kapil (Chettri) as P.W.1 and Thutop Bhutia as P.W.2. The plaintiff did not examine himself.

13. On behalf of the defendant nos. 1 and 2 one Mr. K. Jeyaram-the Senior Manager of defendant nos. 1 and 2 was examined. Sonam Rinchen Bonpo (defendant no.4) examined himself on behalf of defendant nos. 3 to 6.

Defendant nos. 3 to 6 also examined Tirtha Ram Rai (D.W.1), Dhan Bahadur Tamang (D.W.2), Dal Bahadur Manger (D.W.3) and Amrit Raj Rai (D.W.4). Defendant no. 8-Tshering T. Bhutia-the Sub Divisional Magistrate, Yuksom deposed on behalf of himself and defendant no.7.

14. 19 documents were exhibited by the plaintiff. The defendant nos. 1 and 2 exhibited 6 documents. Defendant nos. 3 to 6 exhibited 15 documents and defendant nos.7 and 8 exhibited 7 documents. The witnesses' evidence on affidavit were filed and they were duly cross examined by the opposite parties.

15. The learned Trial Court rendered its Judgment on 21.05.2022 whereby all the issues were held against the plaintiff. Accordingly the learned Trial Court came to the conclusion that the plaintiff had failed to prove his case and are not entitled to the relief claims. The plaintiff thus assails the impugned judgment of the learned Trial Court.

16. Heard Mr. N. Rai, learned Senior Counsel for the plaintiff who is the appellant in the present appeal. He reiterated that the learned Trial Court ought to have considered that the plaintiff's knowledge about the facts pleaded in the plaint was only in the year 2015 and therefore, the learned Trial Court ought not to have held that the suit was barred by limitation. It is also argued that

the records filed by the plaintiff did reflect that he was the owner of the disputed plot and authorities could not have corrected it in the year 1992 without informing him about the same.

17. Mr. Tashi Rapten Barfungpa, learned counsel for the defendant nos. 3 to 6 submits that the documents reflects that the plaintiff had clear knowledge that in the year 1992 the records had been rectified by the defendant no.7 and it was mentioned in the *parcha* which was issued to the plaintiff. It is also submitted that the plaintiff was unable to produce any evidence to back his claim that he was the absolute owner of plot no. 814 including 814/933 which was subsequently acquired by defendant nos. 1 and 2 and the remaining portion which continues to be in the name of father of defendant nos. 3 to 6. It is also submitted that the plaintiff having failed to produce any evidence to support his claim of ownership and suit was correctly dismissed by the learned Trial Court and therefore, the judgment may not be interfered with. On the question of limitation it is submitted that the suit was barred by limitation and therefore, that issue was also correctly held in favour of the defendants and against the plaintiff.

18. The learned Deputy Solicitor General of India appearing for defendant nos.1 and 2 submit that the

process of acquisition duly following the L.A. Act, 1894 got over way back in the year 1998 and both the notices under section 4 and 6 specifically provided that plot no.814/933 was to be acquired. This was enough notice to all interested parties to have raised their objection if they so desired to have it properly adjudicated before the concerned authorities. However, the plaintiff failed to do so and thus the suit was hopelessly barred by limitation.

19. The dispute is with regard to a plot of land i.e. plot no.814/983 measuring a total area of 0.5460 hectares. The plaintiff claims to be the absolute owner of landed property i.e. plot no.814 measuring about 4.8500 hectares situated in Tashiding Block, Tashiding Circle, West Sikkim in the plaint. The plaintiff however, does not claim that he has possession over the said property. The plaintiff did not give evidence. The plaint has been filed through Gyatso Bhutia, as the power of attorney holder of the plaintiff.

20. Gyatso Bhutia in his evidence on affidavit stated that the father of the plaintiff late Angdak Bhutia had vast landed properties recorded in his name under Tashiding Block in the first cadestal survey operation of 1950-52 which fact was not mentioned in the plaint since he recently got hold of the documents after filing application under the Right to Information Act i.e. the *parcha* (exhibit-

3) and the sketch map (exhibit-4). He further stated that during the cadestal survey operation of 1979-80 those properties were transferred in the plaintiff's name and he was the absolute owner of plot no.814 measuring 4.5800 hectares as per 1979-80 survey operations.

21. However, Gyatso Bhutia in his cross examination admitted that he had no personal knowledge about the present matter till 2015. He also admitted that the suit had been filed 25 years after acquisition of the suit property and after construction of the project. He admitted that the landed properties of late Cheten Lama as per the survey operation of 1950-52 were distributed equally amongst his four sons and two daughters. He admitted that late Sonam Kinga was the second son of late Cheten Lama. He admitted that the original of exhibit-P6 (computerized record of rights/*parcha*) in two pages has been deposited to the SISCO Bank by the plaintiff sometime in the year 2015 and that it was issued by the concerned authority on 09.05.2011 after depositing the previous *parcha* which was hand written to the authorities for the issuance of exhibit-P6. He further admitted that he was born in 1973 and therefore, he did not have personal knowledge of the status of landed properties of his ancestors during the survey operation of 1950-52 or survey operation of 1979-80. He

stated that he did not know how the disputed plot no.814 came to be recorded in the name of the plaintiff in 1979-80. He admitted that plaintiff had never been in possession of plot no.814/933.

22. To substantiate the claim of the plaintiff to be the absolute owner of plot no.814 Gyatso Bhutia produced:

- (i) *Khatiyan Parcha* (exhibit-P3) in the name of late Cheten Lama showing the landed properties in his name.
- (ii) Sketch map (exhibit-P4) in the name of late Cheten Lama showing landed properties recorded in his name during 1950-52 survey operation.
- (iii) *Parcha Khatiyan* (exhibit-P6) in the name of the plaintiff showing landed properties recorded in his name during 1977-82 survey operations.

23. Megh Bahadur Kapil Chettri (P.W.1) deposed in favour of the plaintiff. He claimed that late Cheten Lama had vast landed properties in and around Tashiding. He stated that in the year 2016 he was summoned by the SDM Yuksom to attend a joint inspection at Tashiding where the family of the plaintiff claimed that they had never sold property to anybody including late Sonam Dadul Bhutia. He further stated that late Sonam Dadul Bhutia claimed that he had purchased certain landed properties from the plaintiff.

24. Thutop Bhutia (P.W.2) in his evidence on affidavit stated that when he was the '*mondal*' of Tashiding

the family of the plaintiff used to deposit revenue rent to him as they had vast landed properties at Tashiding.

25. Sonam Rinchen Bonpo (defendant no.4) stated that he was the grandson of late Yongden Bhutia and the second son of late Sonam Dadul Bhutia. According to him his grandfather had several plots of land under Tashiding Block. As per land survey operations of 1950-52 his grandfather had five plots of land bearing nos. 756, 759, 760, 761 and 762 measuring a total area of 13.32 acres under Tashiding Block. These properties were being looked after by one late Kaluman Manger and his family from 1984 till 2014 as caretaker. Dhan Bahadur Tamang (D.W.2) and his family lives on a plot of land adjacent to plot no.814/933 as current caretaker and he has been looking after the properties for the last 21 years. His grandfather used to reside in Kewzing and therefore, he was not aware of the survey operations of 1979-80. Although his grandfather was in physical possession of all his landed properties under Tashiding Block inadvertently a portion of his land was wrongly recorded in the name of the plaintiff during 1979-80. This was noticed in the year 1992 when defendant nos. 1 and 2 started surveying the area for construction of a power project and accordingly corrected vide Office Order No.289/DCW (R) dated 09.01.1992 by the

office of the District Collector. After the correction the plot was renumbered as plot no.814/933, transferred and mutated in the name of the actual owner i.e. his grandfather. It was further stated that after the demise of his grandfather the unacquired portion of plot no.814/933 measuring about 0.6020 hectares, after the land was acquisition by defendant nos. 1 and 2, was inherited by his grandfather as his share of the ancestor property and subsequently mutated in the name of his father vide Office Order No.224/DCW in the year 2000. He stated that the plaintiff was never in possession of the suit property. He asserted that from exhibit-6 (the computerized record of rights/*parcha*) exhibited by the plaintiff itself makes it evident that he was aware about the mutation in favour of Yongden Bhutia in the year 1992 since the remarks column clearly reflects that correction had been made vide Order No.289/DCW (R) dated 09.01.1992. He further asserted that defendant nos. 1 and 2 had acquired the suit property 26 years ago and the entire acquisition process was long over. He exhibited certified copy of *khatiyon parcha* for plot no.814 and 814/933 (exhibit-D2); certified copy of survey map as per survey operation of 1950-52 showing the land holdings of late Yongden Bhutia (exhibit-D3); details of land acquisition proceedings for plot no.814/933 by defendant nos. 1 and 2 for Rangit Power Project (exhibit-D4).

26. Tirtha Ram Rai (D.W.1) deposed on behalf of defendant nos. 3 to 6. According to him he was a tenant of late Yongden Bhutia and had cultivated the land in dispute in the year 1962 and 63 for two years during which time the principal tenant was one Kalungay Babu to whom he would give his "*kuth*" to give it to late Yongden Bhutia. He also described the boundaries of the suit property and asserted that it belonged to late Yongden Bhutia and that he was in possession of the same when he was cultivating it.

27. Dhan Bahadur Tamang (D.W.2) also deposed for defendant nos. 3 to 6. According to him he was a tenant of late Sonam Dadul Bhutia and currently residing in a wooden house in the land belonging to him near Rangit River at Tashiding. He stated that he earlier worked as helper for late Kaluman Manger who had taken the lands of late Yongden Bhutia for cultivation. He also knew the boundaries of the suit property and named the boundary holders. He stated that he had cultivated the land in dispute on "*kuth*". He asserted that the disputed land belonged to late Yongden Bhutia. According to him the plaintiff was the youngest brother of the boundary holder i.e. Acchu Maila alias Sonam Kinga Bhutia. According to him the plaintiff had land above the road at Tashiding but

did not have any land near the river belt. The plaintiff's land was cultivated by Daniel Biswakarma, Suren Biswakarma and Harkey Biswakarma.

28. Dal Bahadur Manger (D.W.3) was the Revenue Officer-cum-Assistant Director of the Land Revenue Disaster Management, Department who produced the original map for 1950-52 survey of Tashiding Block (exhibit-D-15) showing the relevant portion for plot no.760, 761, 762, 769, 756 and 742. He identified the portion of the map on the basis of which exhibit D-10 (rough sketch map of survey operation of 1950-52) was prepared. He identified the signatures appearing in exhibit D-10 as he had worked with the signatories.

29. Amrit Raj Rai (D.W.4) was posted at Yuksom Sub-Division Office as Revenue Officer-cum-Assistant Director. He produced the original *khasra khatiyān* registers for Tashiding Block pertaining to the survey of 1976-79 (exhibit-D16 and D17) which were maintained by the office of the District Collector, Geyzing initially and thereafter, by the office of the Sub-Divisional Magistrate at Yuksom as Tashiding Block falls under its jurisdiction. He proved that exhibit-D9 were the copies of the extracts of relevant pages from exhibit D16 and D17. He also produced the original map for the survey operation of 1976-79 for the entire

Tashiding Block. He proved that exhibit D-11 (copy of rough sketch map of the survey operation of 1979-80) was the certified copy prepared on the basis of exhibit-D18 (copy of the map for the survey operation of 1979-80 for entire Tashiding Block). He also proved that the corresponding plot no.814 as per the survey operation of 1950-52 was 761, 762 and portions of 694, 741 and 763 as reflected in its report dated 01.02.2022. According to him he found that plot no.814 was corrected vide Office Order No.289/DCW (R) dated 09.01.1992 and a new plot no.814/933 measuring an area of 1.1480 hectares had been recorded in the name of Yongden Bhutia son of Thinlay Bhutia. He also asserted that as per the records available at his office vide Notification No.4/902/11/LR(S) dated 27.11.1996 under section 4 (1) of the L.A. Act, 1894 plot no.814/933 was declared to be needed for public purpose for construction of Rangit Project Concrete Dam in Tashiding Block. He asserted that as per the records vide Notification No.4/902/2/LR(S) dated 27.03.1996 under section 6 of the L.A. Act, 1894 plot no. 814/933 was notified to be needed for public purpose and that after the acquisition by defendant nos. 1 and 2 an area of 0.5460 hectare of plot no.814/933 was recorded in the name of Power Corporate, Government of India vide Office Order No.113/DCW dated 06.07.1998 and that the remaining

area of plot no.814/933 was recorded in the name of Sonam Dadul Bhutia son of Yongden Bhutia vide Office Order No.224/DCW/2000.

30. Tshering T. Bhutia (Defendant No.8) deposed on behalf of both defendant nos. 7 and 8. He deposed that as per office records survey operation 1979-80 plot no.814 measuring an area of 4.8500 hectares was recorded in the name of the plaintiff which was later corrected vide Office Order No.289/DCW (R) dated 09.01.1992 and new plot no.814/933 measuring 1.1480 hectares had been recorded in the name of Yongden Bhutia. He produced and exhibited certified copies of the Notification No.42/902/11/L.R.(S) dated 27.11.1996 under section 4(1) (exhibit-D24) and Notification No.4/902/II/L.R.(S) dated 27.03.1997 under section 6 (exhibit D25) of the Land Acquisition Act, 1894. He produced the certified copies of the award (exhibit D26) in favour of Yongden Bhutia passed under section 11 of the L.A. Act, 1894. He produced and proved the money receipt signed by Yongden Bhutia (exhibit D27). The defendant no.8 also produced the certified copy of the *khatiyani parcha* (exhibit D23) in the name of Yongden Bhutia and proved the same.

31. K. Jeyaram-the Senior Manager of NHPC gave his evidence on affidavit on behalf of defendant nos. 1 and 2.

He proved that plot no.814/933 had been duly acquired by Government of Sikkim for NHPC and produced the notifications under section 4, 6 of the L.A. Act, 1894 (exhibit D1 and D2). He also proved that payment of compensation had been duly made.

32. During the cross examination of the witnesses of the defendant nos. 3 to 6 as well as the witnesses for the other defendants the plaintiff could not extract anything that would cloud their evidence.

33. From the above it is clear that the plaintiff did not lead any concrete evidence to support his contention that he was the actual owner of the suit property bearing plot no.814/933 measuring an area of 1.1480 hectares. The plaintiff did not examine himself and Gyatso Bhutia the power of attorney holder had no personal knowledge about the property prior to 2015. Megh Bahadur Kapil (Chettri) (P.W.1) and Thutob Bhutia (P.W.2) deposed on behalf of the plaintiff but could not give any substantive evidence in support of the plaintiff's case. Their deposition was unspecific and vague. The defendant no.4 who deposed on behalf of defendant nos. 3 to 6 on the other hand was specific about their lineage and how the disputed property was transferred in the name of late Yongden Bhutia his grandfather. The deposition of defendant no.4 could not be

tarnished during his cross examination and corroborated by the deposition of the Sub-Divisional Magistrate (defendant no.8). The fact that the disputed property had been acquired by the respondent nos. 7 and 8 for respondent nos. 1 and 2 and compensation duly paid has been sufficiently proved by their witnesses. Therefore, the conclusion of the learned Trial Court that the plaintiff had failed to prove that plot no.814/933 was actually owned by him cannot be faulted. The learned Trial Court has dealt with the evidence produced by the plaintiff in great length and concluded that the plaintiff had failed to prove his case. The learned Trial Court has also held that plot no.814/933 measuring 1.1480 hectares is the property of the defendant nos. 3 to 6 since it is found to be the property of their grandfather late Yongden Bhutia but erroneously recorded along with Government forest land in the name of plaintiff during the 1979-80 survey operation. Issue No.1 was rightly decided by the learned Trial Court.

34. The learned Trial Court held that there was no error in rectification of plot no.814/933 in the revenue records in the year 1992 and its re-transfer in the name of late Yongden Bhutia, grandfather of defendant nos. 3 to 6 based on the evidence of Dhan Bahadur Tamang (D.W.2) Tirtha Ram Rai (D.W.1) and Amrit Raj Rai (D.W.4). The

learned Trial Court held that defendant nos. 3 to 6 being the grandson and legal heirs of late Yongden Bhutia have lawfully inherited plot no.814/933 and therefore are in lawful possession as legal owners. Accordingly, the learned Trial Court also decided issue nos.2 and 5 in favour of defendant nos. 3 to 6 and against the plaintiff.

35. The learned Trial Court held that late Sonam Dadul Bhutia was entitled to payment of compensation for acquisition of the suit land measuring 0.5460 hectares by defendant nos. 7 and 8 and on behalf of defendant nos. 1 and 2. Accordingly, the learned Trial Court decided issue no.3 in favour of defendant nos. 3 to 6 and against the plaintiff.

36. The learned Trial Court held that the acquisition of plot no.814/933 (renumbered as 814/983) after acquisition measuring 0.5460 hectares was done validly duly following the procedure of law and decided issue no.4 in the affirmative in favor of the defendant nos. 3 to 6 and against the plaintiff.

37. The records reflect the acquisition process for plot no.814/933 ended in the year 1998. Exhibit P6 (computerized records of rights/*parcha*) produced by the plaintiff himself clearly reflects, in the remarks column, that the correction in plot no.814 was done vide Office

Order No.289/DCW (R) dated 09.01.1992. According to Gyatso Bhutia the power of attorney holder of the plaintiff exhibit P6 was issued on 09.05.2011 after depositing the previous hand written *parcha* to the authorities for issuance of new *parcha* i.e. exhibit P6. He also admitted the endorsement in the last column under the head "*Kaifiyat*" stating "*vide Office Order No.289/DCW (R) dated 09.01.1992*". According to Amrit Raj Rai (D.W.4), the Revenue Officer and Assistant Director, as per the records plot no.814 was corrected vide Office Order No.289/DCW (R) dated 09.01.1992 and new plot no.814/933 measuring an area of 1.1480 hectares had been recorded in the name of Yongden Bhutia. He also proved that after the acquisition the same plot no.814/933 was recorded in the name of the Power Corporate on 06.07.1998 and the remaining area of plot no.814/933 was recorded in the name of Sonam Dadul Bhutia. The factum of the acquisition and the award having been made in the year 1998 has been adequately proved by the defendant nos. 1 and 2 and defendant nos. 7 and 8. The suit which was filed in the year 2018 for the reliefs as prayed for were grossly barred by limitation as has been rightly held by the learned Trial Court. All the issues were examined in detail by the learned Trial Court and decided correctly. This Court finds no fault in the judgment of the learned Trial Court.

38. Resultantly, the judgment and decree passed by the learned Trial Court is upheld. The appeal fails. The parties shall bear their respective costs.

**(Bhaskar Raj Pradhan)
Judge**

to/ Approved for reporting : **Yes**
Internet : **Yes**