

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

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

FAO No. 03 of 2024

1. Mrs. Srijana Gurung,
Aged about 45 years,
W/o Mr. Praveen Pradhan,
R/o Pachey Samsing,
Pakyong, Sikkim
Pin No.-737106.
2. Mr. Praveen Pradhan,
Aged about 45 years,
S/o Mr. P.P. Pradhan,
R/o Pachey Samsing,
Pakyong, Sikkim
Pin No.-737106.

..... Appellants/Plaintiffs.

Versus

1. The Union of India,
Through the Ministry of Road Transport &
Highways,
Government of India,
1, Sansad Marg,
New Delhi-110001.
2. The General Manager,
NHIDCL, PMU Office, Ranipool,
Ranipool- 737102, Sikkim.
3. District Magistrate/Collector,
Pakyong District,
Sikkim-737106.

.....Respondents/Defendants

**Appeal under Section 104 read with Order XLIII (R) of
the Code of Civil Procedure, 1908.**

*{Memorandum of appeal against the impugned order dated 01.08.2024
passed by the learned District Judge, Pakyong, in Title Suit No. 10 of
2024 between Mrs. Srijana Gurung and Another vs. The Union of India*

and Another rejecting the application filed by the appellants under Order XXXIX rule 1 and 2 of the Code of Civil Procedure, 1908.

Appearance:

Mr. Jorgay Namka, Senior Advocate (Senior Legal Aid Counsel) with Ms. Phu Doma Bhutia, Advocate (Assisting Legal Aid Counsel) for the Appellants/Plaintiffs.

Ms. Sangita Pradhan, Deputy Solicitor General of India along with Mr. Amit Kr. Sharma, Advocate for the Respondent/Defendant no.1.

Mr. Sudipto Mazumdar, Senior Advocate with Ms. Gita Bista, Advocate for the Respondent/Defendant no.2.

Mr. S. K. Chettri, Government Advocate for the Respondent no.3.

Date of Hearing	:	06.04.2026
Date of Judgment	:	06.04.2026
Date on which uploaded	:	06.04.2026

J U D G M E N T (ORAL)

Bhaskar Raj Pradhan, J.

1. The issue before this Court is very limited. The plaintiffs i.e. the appellants herein challenges the impugned order of the learned District Judge dated 01.08.2024 declining to grant injunction on an application under Order XXXIX, Rule 1 and 2 read with section 151 of the Code of Civil Procedure, 1908 (CPC).

2. The learned District Judge was of the opinion that although the appellants had shown a prima facie case in their favour they failed to show that they would suffer

irreparable loss and damages which cannot be adequately compensated and that their inconvenience will far exceed the convenience of the defendants i.e. the respondents herein. Holding so the application for injunction was rejected.

3. The suit filed by the appellants is based on a factual assertion in the plaint which pleads that the appellants are in unencumbered physical possession of their “only residential four storied RCC building” built on land bearing plot no.290/2244 measuring 0.0140 hectares (1507 square feet) at Pachey Samsing, Block Pakyong Elakha, Sikkim (the suit land). The history of purchase of the suit land is also pleaded in the plaint. A registered sale deed of the suit land dated 13.02.2007 (Annexure-P3) in favour of the appellants has also been placed before the learned District Judge through the plaint. Therefore, prima facie the suit land as well as the dwelling house built thereon belongs to the appellants.

4. Admittedly, the respondent no.2 is in the process of construction of National Highway which passes along the suit land. According to the learned Senior Counsel for respondent no.2 it is nearly completed. Since the construction of the National Highway is considered as an infrastructure project there is no question of granting any

injunction involving a contract relating to it. However, the application under Order XXXIX Rule 1 and 2 had not sought for such a prayer. What the appellants had prayed for was an injunction against the respondent nos. 1 and 2 from proceeding with any further construction “*on the suit land/property belonging to the plaintiffs...*”.

5. The constitutional safeguard provided in Article 300A of the Constitution of India is that “*No person shall be deprived of his property save by authority of law*”.

6. As is seen, these matters are in the Courts because of notices issued by the District Collector/CALA, East Sikkim, Pakyong, on 17.12.2021 and thereafter by Sub-Divisional Magistrate, Pakyong on 08.09.2022. Both these notices, which are on record, reflect the assertion made by the State authorities that the property of the appellants have been “acquired”. Consequently, the notice dated 08.09.2022 gave the appellants time to “*vacate and handover the possession of the property within ten days of the receipt of the notice*”.

7. On being asked, the learned Government Advocate fairly states that the suit land/property of the appellants have not been acquired under the National Highways Act, 1956 or under any other law and there are no documents on record which reflect the correctness of the statement made by the State authorities in the notices mentioned

above. Therefore, prima facie, the assertion of the State authorities that the property of the appellants have been acquired is factually incorrect.

8. Yet another question was asked by this Court to the learned Government Advocate i.e. whether any proceeding has been initiated against the appellants as it is submitted that the appellants had encroached upon Government land. The answer was again a categorical “no”.

9. Therefore, there was nothing on record before the learned District Judge to conclude that the appellants would not suffer irreparable loss or injury and balance of convenience/inconvenience was tilted in favour of the respondent nos. 1 and 2.

10. It is noticed that the appellants had categorically stated that it was their “only dwelling house” and there was no other material to show otherwise. Directing the appellants to vacate their only dwelling house on a prima facie factually incorrect assertion made by the State authorities that the property had been “acquired” does involve a human right issue when it is the duty of the State to protect it.

11. I am therefore, not in agreement with the impugned order passed by the learned District Judge. The impugned order dated 01.08.2024 is set aside.

12. The suit land as clearly described in the sale deed and the dwelling house thereon is to be protected until the issues raised in the title suit is finally decided or due process of law to establish what the State asserts regarding illegal encroachment by the appellants is initiated and completed. Therefore, there shall be a stay of demolition of the dwelling house of the appellants built on the suit land as described in the sale deed or disturbing their possession of the suit land until the decision in Title Suit No. 10 of 2024.

13. In light of the above, the appeal is allowed and accordingly disposed of after hearing the learned counsel for all the parties. A copy of the judgment shall be forwarded to the learned District Judge, Pakyong, East Sikkim. The record shall be remitted to the court of the learned District Judge, Pakyong, East Sikkim.

**(Bhaskar Raj Pradhan)
Judge**

Approved for reporting : **Yes**
Internet : **Yes**
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