

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

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

W.P. (C) No. 07 of 2023

Shri Hari Prasad Sharma,
S/o Shri Teknath Sharma,
Aged about 59 years,
R/o Yangtam Ranipool, Sikkim.
P.O. & P.S. Ranipool,
Sikkim-737 135.

..... Petitioner

Versus

1. Union of India,
Through the Secretary,
Ministry of Road Transport and Highways,
Government of India,
1. Sansad Marg,
New Delhi-110001.
2. The National Highways and Infrastructure
Development Corporation Limited (NHIDCL), PMU,
Ranipool,
Through its General Manager (P),
Smile Land, Gidang Busty,
P.O. & P.S. Ranipool, Sikkim-737135.
3. The District Collector,
District Administrative Centre (DAC),
Pakyong, Sikkim-737106.
4. The District Collector,
District Administrative Centre (DAC),
Sichey, Gangtok, Sikkim-737101.

..... Respondents

**Application under Article 226 of the Constitution of
India.**

Appearance:

Mr. Thupden G. Bhutia and Ms. Babita Kumari,
Advocates for the Petitioner.

Ms. Sangita Pradhan, Deputy Solicitor General of India assisted by Ms. Natasha Pradhan and Ms. Purnima Subba, Advocates for the Respondent No.1.

Mr. Debal Kumar Banerji, Senior Advocate with Ms. Gita Bista, Advocate. Ms. Sangita Pradhan, Deputy Solicitor General of India assisted by Ms. Natasha Pradhan and Ms. Purnima Subba, Advocates for the Respondent No.2.

Mr. Zangpo Sherpa, Additional Advocate General, Mr. Shakil Raj Karki, Government Advocate and Mr. Mohan Sharma, Advocate for the Respondent Nos. 3 & 4.

Date of hearing : 01.05.2024
Date of Judgment : 08.05.2024

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. The present writ petition has been filed by the petitioner seeking direction upon the respondents to acquire his landed and other immovable properties and restrain them from taking its forceful possession to carry out construction therein. The petitioner further seeks a direction to the respondents to abstain from demolishing his residential building and cottage and constructing therein.

2. The petitioner claims that he is the owner in possession of plot no.117 and 118 measuring an area of 0.0264 hectares bearing *khatiyon* no.81 in Aho Santi, Pakyong. It is stated that he has constructed a five storied

RCC building as per approved blue print plan and a cottage therein. It is claimed that the petitioner had purchased this land from Mr. Raghunath Sharma his father-in-law vide sale deed dated 14.02.1996 pursuant to which it was registered in his name. The petitioner further states that he had obtained a loan from State Bank of India keeping the land as collateral for the construction of the building. According to the petitioner he and his family do not have any residential dwelling house besides the building and the cottage which is on the verge of acquisition for the purpose of construction/up gradation of existing lane to two lane road NH 717A including geometric improvement from Ranipool to Pakyong.

3. The obvious reason for the petitioner to approach this Court was the issuance of notice dated 17.12.2021 and reminder notice dated 24.10.2022. The facts leading to the issuance of these notices as culled out from the writ petition is that on 29.08.2017 the Ministry of Road Transport and Highways (respondent no.1) issued a notification under section 3A (1) of the National Highways Act, 1956 (N.H. Act, 1956) declaring its intention to acquire land followed by notification under section 3(D) thereof declaring that the land specified in the schedule to be vested absolutely in the State Government. The petitioner's

land was not notified therein. However, in February 2020 some officers of the Building and Housing Department, Government of Sikkim along with an officer of National Highways and Infrastructure Development Corporation Limited (NHIDCL) (respondent no.2) carried out measurement of his land while he was away. On his query the officers of the Building and Housing Department informed him that compensation amount of Rs.1,22,56,000/- had been assessed for his property. When the petitioner approached the District Collector (respondent no.4) - the Competent Authority requesting him to increase the compensation amount he was asked to approach the arbitrator. The petitioner then hired a Chartered Engineer empanelled with Gangtok Municipal Corporation for the correct valuation of his five storied RCC building. The valuation was Rs.3,10,00,000/-.

4. Thereafter On 17.12.2021 the respondent no.4 issued a notice to the petitioner stating that his land had been acquired by respondent no.2; compensation assessed; respondent no.2 had further released the compensation amount to the respondent no.4 and the petitioner may collect 50% as part payment thereof. It was also stated that 50% remaining house compensation shall be released after receipt of clearance from respondent no.2.

5. On 24.10.2022 the respondent no.4 sent a reminder notice to the petitioner reiterating what had been stated in the notice dated 17.12.2021.

6. Pursuant thereto the petitioner sent a series of communications to the respondent no.4 as well as respondent no.2 requesting them not to release the compensation amount without resurvey and reassessment of his landed properties; requesting for reassessment of the properties and revaluation of his five storied building and the cottage; and for increasing the compensation amount. When the authorities did not respond to any of his request the petitioner approached this Court by filing the present writ petition.

7. In the counter affidavit filed by the respondent nos. 1 and 2 it is claimed that they had followed due procedure for acquisition of land stipulated in the N.H. Act, 1956. The respondent nos. 1 and 2 states that they have no knowledge about ownership of the land claimed by the petitioner as his. It is also claimed that as per the record of the State authorities portion of petitioner's building falls on Government land bearing plot no.99 as per cadastral survey records of 1978-79. They contest the blue print plan as not having been approved by the concerned authority. It is stated that the compensation amount as had been

determined by the respondent no. 4 has been deposited by them but the petitioner had not accepted the payment. It is submitted that since the Government land does not need to be acquired there was no need to mention the same in the notification issued under the N.H. Act, 1956.

8. The respondents' no. 3 and 4 have jointly filed their counter affidavit. According to them the petitioner's land was not notified as it was not required to be acquired. It was further claimed that the petitioner had constructed one RCC building and one cottage partly on Government land. According to the respondent nos. 3 and 4 the petitioner had encroached 387 square feet under plot no.358 for construction of the RCC building and 86 square feet in plot no.358 for construction of the cottage. As such the compensation was assessed for standing structures of the petitioner's five storied RCC building and cottage. They admit the issuance of notice dated 17.12.2021 and reminder notice dated 24.10.2022. The respondent nos. 3 and 4 submits that in both the notice as well as reminder notice they have inadvertently used the word "acquired" instead of "vacate".

9. The records filed by the petitioner which forms the basis of his claim as the owner of the landed properties have two substantial and glaring inconsistencies. They are :

- (i) *The sale deed dated 14.02.1996 records that the property sold was khatiyan plot no. P/98 having a total area of .0060 hectares. However, the parcha khatiyan made thereafter on 01.02.2022 records khasra no.118 and 117 having a total area of 0.0264 hectares. However, there is no explanation how khatiyan plot no. P/98 having a total area of .0060 hectares purchased by him vide sale deed dated 14.02.1996 increased to 0.0264 hectares in parcha khatiyan dated 01.02.2022.*
- (ii) *The blue print plan dated 23.04.2011 records that the construction was to be in plot no.98 having an area of 0.0269 hectares which is also much more than the total area of 0.0060 hectares purchased by him vide sale deed dated 14.02.1996. However, there is no explanation in the writ petition about the difference.*

10. Although the respondent nos. 3 and 4 seeks to clarify the notice dated 17.12.2021 and reminder notice dated 24.10.2022 by stating that they had inadvertently used the word “acquired” instead of “vacate” it is obvious that it is an afterthought. Neither the records nor their own pleadings support this contention. The learned Additional Advocate General fairly concedes and states that the Notice dated 17.12.2021 and reminder Notice dated 24.10.2022 shall be withdrawn. In view of the categorical undertaking of the learned Additional Advocate General on behalf of respondent nos. 3 and 4 that the Notice dated 17.12.2021 and reminder Notice dated 24.10.2022 shall be withdrawn

this Court refrains from making any further comments on them.

11. The prayer of the petitioner for a direction to the respondents to acquire his landed properties cannot be granted. The glaring unexplained inconsistencies in the size of the land of the petitioner in the sale deed dated 14.02.1996, the *parcha khatiyani* and the blue print plan coupled with the stand of the respondent nos. 3 and 4 that the building and the cottage of the petitioner has been partly built on Government land the discretionary relief sought for by the petitioner cannot be granted. The disputed facts and issues need to be adjudicated upon before a proper forum in an appropriate proceeding. The parties are free to take appropriate legal recourse as advised. The respondent nos. 3 and 4 can, if permissible, take appropriate legal steps in this regard but not on the strength of the Notice dated 17.12.2021 and reminder Notice dated 24.10.2022 which shall be withdrawn.

12. Nothing further is required to be adjudicated in the present writ petition which is accordingly disposed of.

13. The parties shall bear their respective costs.

**(Bhaskar Raj Pradhan)
Judge**

Approved for reporting :
Internet :

Yes
Yes

to/