

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

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

W.P.(C) No. 17 of 2023

Reshab Kumar,
S/o Late Vijay Kumar Prasad,
Permanently residing at
Village: Jogijhora Barabak,
P.O. Ethelbari,
District: Alipurduar,
West Bengal – 735204.
Temporarily residing at
C/o Anand Center,
(Opposite: Truck/Taxi Stand)
Ranipool, Sikkim
Pin - 737135

..... Petitioner

versus

The State of Sikkim & 8 others

..... Respondents

Application under Article 226 of the Constitution of India

Appearance:

Mr. Jagriti Mishra, Advocate and Ms Lidya Pradhan, Advocate for the petitioner.

Mr. Sudesh Joshi, Advocate for the private respondent no.8.

ORDER (oral)

1st September, 2023

1. Heard learned counsel for the parties. The petitioner has preferred this writ petition under Article 226 of the Constitution of India. Various authorities under the State of Sikkim, i.e., respondents no. 1, 2, 3, 4, 5, 6 and 7 have been arrayed, respondents no.8 is the private respondent and respondent no.9 is the proforma respondent.

2. A perusal of the writ petition reflects that the petitioner claims to be the descendant of one late Darsanram who had constructed two storied wooden house with GCI roof situated at Upper Rangpo Bazaar, East Sikkim. According to the petitioner, late Darshanram was the absolute owner of the two storey wooden house along with the godown. It is claimed that he was the secondary holder of parcha of the land situated at Rangpo Bazaar. Copy of the parcha is annexed.

3. According to the petitioner, after the demise of late Darshanram, the petitioner's grandfather came into possession of the said property and was running a grocery shop vide trade licence dated 10.05.1971. A certificate referred to as legal heirs' certificate along with a family tree is also annexed to the writ petition.

4. The petitioner further claims that the father of the petitioner and the father of the proforma respondent no.9 along with grandfather of the petitioner were running Atta Mill in the name and style of *Binod Atta Mill* since 1987.

5. The grandfather, it is claimed expired on 29.10.2000. Thereafter, the petitioner's uncle – respondent no.8, was engaged as *Muniv* to look after the grocery and *Atta Mill* on monthly salary basis.

6. It is claimed that on 13.10.2009, the entire two storey wooden structure was destroyed in a fire and the father of the petitioner lodged a complaint before the Rangpo Police Station.

7. In paragraph 7, it is stated that after the incident of fire the entire property was destroyed; the land remained vacant and the private respondent no.8 took advantage of the absence of the petitioner's father and illegally started constructing house on the said land. It is stated that when the father of the petitioner learnt about the illegal construction, various complaint were lodged at the Rangpo Police Station on 28.10.2009, 28.11.2009 and 01.12.2009 to stop the illegal construction. However, the private respondent no.8 did not do so and continued with the illegal construction.

8. It is also claimed that the petitioner initiated a proceeding under section 145 of the Cr.P.C., a copy of which is annexed.

9. It is further claimed that on 26.01.2009, the father of the petitioner died intestate leaving behind seven legal heirs. It is claimed that the scheduled property is the ancestral property of the petitioner which has not been partitioned.

10. The writ petition also mentions about the earlier writ petition preferred by the private respondent no.8, being W.P (C) No. 16 of 2016 (*Satyendra Prasad vs. State of Sikkim and Others*) in which he had falsely narrated that he is the only legal heir to late Janardhan Prasad and late Janardhan Prasad was the only legal heir of late Darshanram. A copy of the writ petition is also annexed.

11. Besides, there is also mention of statements made by the private respondent no.8 before the learned Civil Judge (Senior Division) Alipurduar in a partition suit filed by private respondent no.8

where he has made contradictory statement. Copy of the partition suit no. 13 of 2023 is part of the writ petition.

12. The petitioner also alleges about the various contradictory statements and illegal acts of the respondent no.8.

13. It is claimed that the respondent no.8 has acquired a lease deed in his favour which has been registered before the Sub-Registrar on 02.06.2022 making false averments therein and obtaining residential certificate. It is claimed that in the month of November 2022, respondent no.8 has illegally initiated construction over the said plot of land based upon the alleged documents of lease which according to the petitioner is a sham document.

14. Reference is also made by the petitioner to a complaint made by him to the respondent no.5 in the year 2022 and 2023 and the steps taken by respondent no.3 based on the complaint. It is the petitioner's case that private respondent no.8 did not bother about the orders passed by the respondent no.3 and continued with illegal construction.

15. On these facts, the petitioner seeks the following prayers:-

“a) A writ in the nature of certiorari calling upon the respondents to produce/caused to be produce/bring on records all records and documents pertaining to plot no. 21, khasra no. 72 situated at Upper Rangpo Bazaar, Sikkim; petition under section 145 dated 03.11.2009; Writ Petition (C) no. 16/2016 disposed by the Hon'ble High Court of Sikkim at Gangtok; partition suit bearing Partition Suit No. 13 of 2023 pending before the court of Civil Judge, Senior Division, Alipurduar, West Bengal; Residential Certificate dated 04.09.2020 of Private Respondent No. 08, the affidavit dated 23.11.2020 of the respondent no.01 filed before the respondent no.03 and Lease Deed dated 02.06.2022 executed between the respondent no.03 and 08; complaints dated 21.11.2022 to the respondent no.5 and dated

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22.11.2022 and 13.02.2023 to the respondent no.3 filed by the petitioner and notice dated 31.03.2023 bearing Memo No. 13(3)10/UDD/1428 of Urban Development Department, Government of Sikkim.

b) A writ in the nature of prohibition directing the respondents particularly the respondent no.3 to prohibit the respondent no.3 to prohibit the respondents to give effect to the Lease Deed dated 02.06.2022 registered vide Book No. IV, Volume No.1, Serial No.2 issued in favour of the Private Respondent no.8; notice bearing memo no. 13(3)1252 dated 03.02.2023 and the stop/Demolition order bearing no. 55/UDD/Town Planner dated 23.02.2023.

c) Writ in the nature of mandamus commanding the respondents particularly the respondent no.3 to forthwith issue a stop work/illegal construction demolition notice/order upon the private respondent no.8 to stop illegal construction on the scheduled plot of land.

d) Writ in the nature of mandamus directing the respondent authorities to declare the alleged construction on plot no.21, khasra no.72 situated at Upper Rangpo Bazaar, East Sikkim as illegal/unauthorized construction and forthwith demolish the same.

e) Writ in the nature of mandamus commanding the responding no.3 to forthwith initiate appropriate criminal proceedings against the private respondent no.8 under the appropriate provisions of law.

f) A writ in the nature of certiorari to cancel or rescind the Lease Deed dated 02.06.2022 registered vide Book No. IV, Volume No.1, Serial No. 2 issued in favour of the private respondent no.8.

g) Ad-interim relief in terms of prayer (b) and (d) above till the pendency of this writ petition.

h) Any other appropriate writ/writs, order/orders, and/or directions as your Lordship may deem fit and proper.

i) Cost and incidental to this application may be paid by the respondents.”

16. A perusal of the writ petition clearly reflects that the dispute is a civil dispute between the petitioner and the private respondent no.8. The narration in the writ petition also clearly reflects that the issue involved are complex issue of facts which seems to be disputed.

17. Mr. Mishra relied upon a judgment of the Supreme Court in **Dipak Kumar Mukerjee vs. Kolkata Municipal Corporation and Others**¹. In

¹ (2013) 5 SCC 336

that case, the appellant, an enlightened resident of Kolkata, succeeded in convincing the learned Single Judge of the Calcutta High Court to order demolition of unauthorised construction of multi-storeyed building by respondent no.7, on the plot owned by respondent no.8, but could not persuade the Division Bench to affirm the order of the learned Single Judge and the matter travelled to the Supreme Court. The facts of this case are clearly distinguishable *inasmuch* as in the present case, the petitioner is an interested litigant claiming to be an heir to the disputed property.

18. The next judgment referred to by Mr. Mishra is the judgment of the learned Single Judge of the Calcutta High Court in ***Jamila Khatoon and Others vs. State of West Bengal and Others***², in which the learned Single Judge took the view that as unauthorised construction is a public wrong. Anyone can approach the authority complaining of such unauthorised construction. A responsible citizen can always approach the authority alleging violation of law and the authority is duty bound to take cognizance of such complaint and act in accordance with law. Where public interest and public wrong are involved, question of locus of the complainant shall not be strictly viewed. The petitioners having interest in a portion of the property where the alleged construction has been made, they have a right to compel the Corporation to perform its duty imposed by the statute. This case is also distinguishable *inasmuch* as in the present case the petitioner contends that after his complaint the authorities acted on it but the respondent no.8 violated the same.

² 2022 SCC OnLine Cal 2478

19. As against the judgments cited by Mr. Mishra, Mr. Sudesh Joshi, learned counsel for respondent no.8 who appears on advance notice, drew the attention of this Court to the judgment of the Supreme Court in **Sri Sohan Lal vs. Union of India and Another**³, in which the Supreme Court examined the judgment passed in a writ petition under Article 226 of the Constitution of India and it had been ordered that the respondent Union of India and the appellant to forthwith restore possession of a house involved therein. In paragraph 5, the Supreme Court observed as follows:

“5. We do not propose to enquire into the merits of the rival claims of title to the property in dispute set up by the appellant and Jagan Nath. If we are to do so, we would be entering into a field of investigation which is more appropriate for a civil court in a properly constituted suit to do rather than for a Court exercising the prerogative of issuing writs. There are questions of fact and law which are in dispute requiring determination before the respective claims of the parties to this appeal can be decided. Before the property in dispute can be restored to Jagan Nath it will be necessary to declare that he had title in that property and was entitled to recover possession of it. This would in effect amount to passing a decree in his favour. In the circumstances to be mentioned hereafter, it is a matter of serious consideration whether in proceedings under Article 226 of the Constitution such a declaration ought to be made and restoration of the property to Jagan Nath be ordered.”

20. In **State of Rajasthan vs. Bhawani Singh and Others**⁴, the Supreme Court once again held that question of title to land when disputed cannot be satisfactorily gone into or adjudicated upon in a writ petition. Yet again in **D.L.F. Housing Construction (P) Ltd. vs. Delhi Municipal Corpn. and Others**⁵, the Supreme Court held where basic facts are disputed and complicated questions of law and fact depending on evidence are involved, the writ court is not the proper forum for

³ 1957 SCR 738

⁴ 1993 Supp (1) Supreme Court Cases 306

⁵ (1976) 3 Supreme Court Cases 160

seeking relief. In *Roshina T. vs. Abdul Azeez K.T. and Others*, the Supreme Court was pleased to hold that dispute between private parties relating to property rights involving questions of facts ought not to be entertained by way of a writ petition and the alternative remedy by way of suit in civil court ought to be followed. It was held that the filing of the writ petition was misconceived and it deserved a dismissal in *limine* on the ground of alternative remedy of filing a civil suit.

21. In the present case, this Court has heard learned counsel for the parties prior to issuance of notice. The narration of facts in the writ petition clearly reflects that it is a civil dispute which must be tried and tested in a civil court. Writ courts are not to examine such disputes. In such view of the matter, the writ petition is dismissed in *limine* without commenting on the merits of the claims made by the petitioner permitting the petitioner to approach the civil court to establish his right and seek his remedy. No order as to costs.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes/No**
Internet : **Yes/No**

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