

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

DATED : 21st May, 2025

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.20 of 2023

Petitioner : Chung Chung Lepcha

versus

Respondents : State of Sikkim and Others

Application under Article 226 of the Constitution of India

Appearance

Mr. Dewen Sharma Luitel and Mr. Bhaichung Bhutia, Advocates for the Petitioner.

Mr. Thinlay Dorjee Bhutia, Government Advocate with Mr. Sujan Sunwar, Assistant Government Advocate for the Respondents No.1 to 3.

Ms. Sangita Pradhan, Deputy Solicitor General of India with Ms. Natasha Pradhan and Ms. Sittal Balmiki, Advocates for the Respondent No.4.

JUDGMENT (ORAL)

Meenakshi Madan Rai, J.

1. The prayers in the instant Writ Petition *inter alia* are as follows;

- (a) Consider and admit the instant Writ Petition;
- (b) To pass a writ in the nature of mandamus directing the Respondent No.3 to correct the revenue records in regard to Plot No.176 by recording the name of the Petitioner as the owner of Plot No.176, measuring an area of 2.0440 hectares;
- (c) Kindly cancel the Office Order No.536/SDO/C, dated 04-04-2009, issued by the Respondent No.3 and direct the Respondent No.3 to remove the name of Respondent No.4 as the owner of Plot No.176, measuring an area of 2.0440 hectares, situated at Rangma, Chungthang;
- (d) Kindly direct the Respondents to pay charges and damages suffered by the Petitioner;
- (e) And pass such order(s) to secure the ends of justice.

2. It is averred in the Writ Petition that the Petitioner is the rightful owner of land, bearing Plot No.176, measuring an area of

2.0440 hectares, situated at Rangma, Chungthang, Mangan, Sikkim. The said land was ancestral property and mutated in the name of the Petitioner. That, during 2008 the Petitioner sought to obtain loan from the State Bank of India, Chungthang Branch, Sikkim, for which a search report was required. In the search report issued by the Office of the Sub-Divisional Magistrate, Chungthang, under Memo No.256/A/SDO(C), dated 16-01-2008, it was categorically mentioned that *"The Plot No.176/506 Area 2.0440/.8180 hect situated at Rangma and Changring, Chungthang North Sikkim, found recorded in the name of Shri Chuden Lepcha. At present the above mentioned plot of land is found recorded in the name of Shri Chungchung Lepcha S/o Shri Chuden Lepcha."* However, in the year 2019, the Petitioner learnt that Plot No.176 with the area described hereinabove has been wrongly recorded and transferred in the name of the Respondent No.4, viz., the Indo-Tibetan Border Police. Hence, the prayers above.

3. *Per contra*, the Learned Government Advocate for Respondents No.1 to 3 submits that the Writ Petition is not maintainable as the matter is essentially a civil dispute, since the land was acquired by 17 Assam Rifles as proved by receipt Annexure R4. The receipt indicates that Cheque No.T162569, dated 08-11-1985, was received by Chuden Lepcha, father of the Petitioner herein for the disputed land. That, Annexure R3 the Handing/Taking Over Certificate indicates that the said plot was acquired and taken over by the 17 Assam Rifles along with other plots of land of other persons, measuring a total of approximately 5.37 acres.

4. Learned Deputy Solicitor General of India for Respondent No.4 endorses the submissions put forth by the Learned

Government Advocate and has also placed reliance on all the Annexures in the Counter-Affidavit of Respondent No.4.

5. In the Rejoinders to the Counter-Affidavits, the Petitioner asserts that he belongs to the Scheduled Tribe and Plot No.176 is his property. His land has been erroneously recorded in the name of the Respondent No.4 without adherence to the due process of law.

6. Heard Learned Counsel for the parties at length and perused the documents annexed in the Petition and Counter-Affidavits as also the Rejoinders.

7. Having considered the submissions, it is clear that amongst others, the title of the land, i.e., Plot No.176, measuring 2.0440 hectares, is in dispute. As can be culled out for the averments and the rival submissions of the Learned Counsel for the parties, the dispute essentially pertains to a plot of land, the title and possession of which is claimed by the Petitioner and the Respondent No.4. The above circumstances have obviously given rise to disputed questions of fact. It requires no reiteration that disputed questions of fact as in the instant case cannot be determined in proceedings under Article 226 of the Constitution of India.

8. This Court in ***Guru Singh Sabha and Another vs. State of Sikkim through the Secretary, ecclesiastical Department and Others***¹ observed that;

"15. Article 226 of the Constitution confers extraordinary jurisdiction on the High Court to issue prerogative writs for enforcement of fundamental rights or for any other purpose and the jurisdiction is discretionary and equitable. However, a writ

¹ 2023 SCC OnLine Sikk 97

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proceeding cannot be a substitute for a Civil Suit, the jurisdiction of the Civil Court having wide amplitude.

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16. In light of the foregoing discussions, it emanates that where the determination of the constitutional question depends upon the investigation of complicated questions of fact or of taking evidence, the High Court may dismiss the application under Article 226 of the Constitution. The issues placed before this Court as put forth in the foregoing Paragraphs require extensive evidence, which falls within the ambit and powers of a Civil Court.”

9. Consequently, in view of the questions of fact involved which have to be tested on the anvil of evidence furnished by both disputing parties, I am constrained for the aforementioned reasons to dismiss the Writ Petition.

10. Writ Petition stands disposed of accordingly.

11. Pending applications, if any, also stood disposed of.

(Meenakshi Madan Rai)
Judge
21-05-2025

Approved for reporting : **Yes**

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