

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 11th November, 2022

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

WP(C) No.22 of 2019

Petitioners : Chandra Shekhar Gautam and Another

versus

Respondents : State of Sikkim and Others

Application under Articles 226 of the Constitution of India

Appearance

Ms. Mr. A. K. Upadhyaya, Senior Advocate with Ms. Rachhitta Rai, Advocate for the Petitioners.

Mr. Sudesh Joshi, Additional Advocate General with Ms. Pema Bhutia, Assistant Government Advocate for the State-Respondent No.1.

Mr. Jorgay Namka, Senior Advocate for the Respondent No.2.

None present for the Respondent No. 3.

J U D G M E N T (O R A L)

Meenakshi Madan Rai, J.

1. The Petitioner No.1 was conducting business of "Fast Food Small (Class II)" and the Petitioner No.2 that of "Manihari Retail", respectively, at Star Cinema Hall Building premises at New Market, Gangtok, since the year 1970. They claim to have been tenants therein initially under the Palace and thereafter under the Urban Housing and Development Department, Government of Sikkim and were paying rent as required. The Prayers in the Writ Petition *inter alia* are as follows;

"Under the above facts and circumstances, it is, therefore prayed that this Hon'ble Court may be pleased to admit this petition, call for the records and issue Rule calling upon the Respondents to show cause as to why a writ of mandamus / Certiorari and appropriate writ / order or direction may not be issued

commanding and directing the Respondent authorities to show cause as to why;

- (i) The Demolition of old Star Hall Complex issued vide memo No.19/GMC/2019 and memo No.19/GMC/2019 dated 03.05.2019 shall not be quashed and set aside.
- (ii) The Respondent No.1 shall not be restrained from evicting the petitioners without making provision for allotting proportionate area in the rebuilt Star Hall Complex after demolition.
- (iii) The Respondent No.1 shall not be directed to make provision for alternative shop in a shopping complex for the petitioners so that they can earn their livelihood in the meantime till they are allotted suitable shop rooms in the rebuilt Star Hall complex.
- (iv) The Respondent No.2 shall not be directed to cancel/Withdraw the cancellation of Trade license Vide memo No.22/GMC/2019 dated 09.05.2019 and Vide memo No.23/GMC/2019 dated 09.05.2019.
- (v) The Respondent No.3 shall not be directed for allotment of suitable shop rooms in the rebuilt Star Hall complex to the Petitioners.”

2. Learned Senior Counsel for the Petitioners today submits that Prayers (i), (ii), (iii) and (iv) *supra* are not being pressed in view of the fact that the Star Cinema Hall has now been demolished and the Trade Licences of the Petitioners for carrying on trade in the said premises have also been cancelled, rendering the prayers infructuous. That, with regard to the Prayer (v) it is submitted that Respondent Nos.1 and 2 be directed to allot suitable shop rooms in the re-built Star Hall Complex to the Petitioners and issue Trade Licences to the Petitioners to enable them to run their business.

3. Learned Additional Advocate General for the State-Respondent No.1 submits that the Gangtok Rent Control and Eviction Act I of 1956 at Section 4 *inter alia* provides that the tenant who is evicted has the first right to re-occupy the premises, after it is rehauled, on such enhanced rate as may be fixed by the

concerned Authority. That, should the Petitioners be willing to pay the enhanced rent on market rate then the Respondents have no qualms in allotting suitable shop rooms to the Petitioners in the rebuilt Star Hall Complex.

4. Learned Senior Counsel for the Respondent No.2 submits that the Trade Licences can be issued to both the Petitioners in the event that such application is put forth before the concerned Authority, provided all necessary formalities are complete and they are able to furnish the required documentation of the area and the shops allotted to them before the Respondent No.2.

5. Learned Senior Counsel for the Petitioners responded by submitting that the Petitioners are willing to pay enhanced rent at market rate should business premises be allocated to them by the Respondents and that the Petitioners would ensure compliance of all requisite formalities for issuance of Trade Licences to them.

6. The submissions of Learned Counsel for the parties have been considered and all documents examined.

7. Section 4 of the Gangtok Rent Control and Eviction Act I of 1956 provides as follows;

“4. A Landlord may not ordinarily eject any tenant. When, however, the whole or part of the premises are required for the bonafide occupation of the landlord or his dependents or for thorough overhauling (excluding additions and alterations) or when the rent in arrears amount to four months rent or more, the landlord may evict the tenant on filing a suit of ejectment in the Court of the Chief Magistrate. **The tenant so evicted shall, however, have the first right to re-occupy the premises, after over-hauling, on such enhanced rent as may be fixed by the Sikkim Darbar before it is let out to any other tenant.**”

(emphasis supplied)

8. Indubitably the Star Hall Complex has been demolished and is being reconstructed. The State-Respondent No.1 has

extended an assurance that should the Petitioners be willing to pay the enhanced rent as per the market rate the shops required by the Petitioners to conduct their business will be allotted to them. The Petitioners for their part are willing to pay the enhanced rent that would be required for the said premises, in terms of Section 4 of the Gangtok Rent Control and Eviction Act I of 1956.

9. Having considered the submissions of Learned Counsel for the parties no directions need be issued by this Court.

10. Nothing further remains for adjudication in the matter, consequently Writ Petition stands disposed of with the expectation that parties will abide by their respective undertakings.

11. Pending Applications, if any, also stand disposed of.

(**Meenakshi Madan Rai**)
Judge
11-11-2022