

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

Dated : 28th October, 2024

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

WP(C) No.24 of 2024

Petitioners : Karmapa Charitable Trust and Others

versus

Respondents : State of Sikkim and Others

Petition under Article 227 of
the Constitution of India

Appearance

Mr. K. K. Rai, Senior Advocate and Mr. B. Sharma, Senior Advocate with Mr. S. K. Pandey and Mr. Norden Tshering Bhutia, Advocates for the Petitioners.

Mr. S. K. Chettri, Government Advocate with Mr. Sedenla Bhutia, Legal Officer (R-2) and Mr. Sonam Palden Tamang, Legal Retainer (R-2) for the State-Respondents No.1 and 2.

Mr. Anmole Prasad, Senior Advocate and Mr. N. Rai, Senior Advocate with Mr. Sagar Chettri and Ms. Yangchen D. Gyatso, Advocates for the Respondent No.3.

ORDER

Meenakshi Madan Rai, J.

1. Two Orders are being assailed before this Court in the instant Petition;

- (i) Order dated 20-06-2023, of the Court of the Learned District Judge, at Namchi, in Title Suit No.04 of 2022 (*Karmapa Charitable Trust and 3 Others vs. State of Sikkim and 3 Others*), which was to decide an application filed by the Petitioners on 15-03-2023 before the Learned Trial Court. Vide the Application the Petitioners sought to cross-examine the Local Commissioner, in view of his interim report dated 05-12-2022.

(ii) The second Order that is impugned before this Court is dated 20-05-2024, which was to decide an application filed by the Petitioners under Section 151 of the Code of Civil Procedure, 1908 (hereinafter the, "CPC"), seeking directions of the Court to restrain the Defendant No.3 from carrying out any demolition/alteration/construction in the suit property in violation of the status quo order granted by the District Court and the Higher Courts and directing the Defendant No.1 to use police force to stop demolition/alteration/construction in the suit property in violation of the said orders.

2. Heard Learned Counsel for the parties.

3. The crux of these two applications arise from the Petitions filed by the Petitioners under Order XXXIX Rule 2A read with Section 151 of the CPC and Section 151 of the CPC on 03-12-2022 before the Learned Trial Court. Pursuant thereto, an interim report was filed by the Local Commissioner on 05-12-2022 and another report on 01-05-2024. The reports of the Local Commissioner came to be filed as the Petitioners alleged in their Petitions (*supra*) that despite the Order of the Hon'ble Supreme Court dated 07-01-2013, there had been violation of the same by demolition of the main gate as well as construction of fresh structures in the area.

4. To comprehend the matter, the relevant portion of the Order of the Supreme Court dated 07-01-2013, is extracted below which *inter alia* reads as follows;

"7. In our considered opinion, essential repairs to the buildings in dispute should not be prevented by any order of status quo passed by the trial Court of by

the High Court as essential repairs have to be taken up immediately to make the buildings habitable.

8. We, therefore, modify the impugned order of the High Court and permit the appellant to carry out the essential repairs in the buildings in question in the presence of a Local Commissioner to be immediately appointed by the trial Court. **We further direct that after the repairs are carried out, the Local Commissioner will submit a report to the trial Court indicating therein the exact nature of the repairs carried out by the appellant.**

9. We make it clear that we are not permitting the appellant to carry out any demolition or new construction in the buildings in question and have permitted the essential repairs to be carried out in the presence of the Local Commissioner. We also make it clear that we have not expressed any opinion on the merits of the case of either party.” [emphasis supplied]

5. A bare reading of the Order indicates that there was no scope for filing of interim reports by the Local Commissioner and a report by the Local Commissioner was to be submitted before the Learned Trial Court only after repairs were carried out indicating the exact nature of the repairs carried out by the Respondent No.3.

6. In light of the specific direction in the order of the Supreme Court extracted (*supra*), I am of the considered opinion that the Learned Trial Court has exceeded its jurisdiction by calling for interim reports from the Local Commissioner and allowing the parties to file their objection to the interim report dated 05-12-2022. These interim reports are therefore to be and are disregarded and accordingly set aside.

7. Both impugned Orders of the Learned Trial Court are consequently quashed and set aside.

8. In terms of the Order of the Hon'ble Supreme Court (*supra*) and as agreed between the Learned Counsel for the parties the Local Commissioner shall submit his report on 01-03-2025, before the Learned Trial Court indicating the exact nature of the repairs which has been carried out, as the Order of the Hon'ble Supreme Court was pronounced on 07-01-2013 and almost a

decade has elapsed since and the repairs cannot continue in perpetuity.

9. Petition stands disposed of accordingly.

10. Copy of this Judgment be transmitted to the Learned Trial Court for information.

(Meenakshi Madan Rai)
Judge
28-10-2024

Approved for reporting : **Yes**