

# THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

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

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WP(C) No.33 of 2025

**Petitioners** : Karmapa Charitable Trust and Others

**versus**

**Respondents** : State of Sikkim and Others

Petition under Article 227 of the Constitution of India

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## 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. Sujan Sunwar, Assistant Government Advocate with Mr. Sedenla Bhutia, Legal Officer (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.

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Date of Hearing : 31-03-2026

Date of Order : 31-03-2026

Date of Uploading : 31-03-2026

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## JUDGMENT (ORAL)

Meenakshi Madan Rai, J.

1. Heard Learned Counsel for the parties.
2. The Court of the Principal District Judge, Gangtok, Sikkim, in Title Suit No.05 of 2025 (*The Karmapa Charitable Trust vs. The State of Sikkim, through the Chief Secretary and Others*), vide the impugned Order, dated 28-05-2025, *inter alia* recorded that;

".....

Contrary to the submission of Learned Senior Counsel for the plaintiffs, I am of the opinion that the examination of the local Commissioner (*or cross-examination by the parties*) is not necessary *firstly*, because the repairs in the buildings in question, is still under progress and not complete. *Secondly*, this report cannot form a part of evidence of either parties since the evidence (*by all parties*) has already come to close and the matter listed for final arguments. Furthermore, the application of plaintiffs filed under Order 39 Rule 2A CPC, 1908 (which I have heard) can be considered without cross-examination of the local

Commissioner, which otherwise would only result in further delay of this case pending since 31.07.1998.

The orders concerning the application of plaintiffs filed under Order 39 Rule 2A CPC, 1908 will be passed along with the final order/judgment as it does not affect the hearing of the main case.

.....”

**3.** The prayers *inter alia* in the instant Petition are as follows:

“.....

- B. Allow the petitioners to cross examination (sic.) of the Local Commissioner Shree Jigme Tshering.
- C. Direct inspection of the suit premises by a judicial officer in presence of the parties and technical experts to assess the nature of work/construction in the suit premises.
- D. Restrain the respondent no.3 from carrying out any further demolition/alteration/construction in the suit property.

.....”

**4.** Having heard Learned Counsel for the parties and having perused the impugned Order, it is evident that the Learned Trial Court has failed to comprehend the import of the Order of this Court, dated 28-10-2024, in WP(C) No.24 of 2024, wherein it was specified *inter alia* that, in terms of the Order of the Hon’ble Supreme Court 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.

**(i)** The Order in WP(C) No.24 of 2024 (*supra*) opines, on pain of repetition, that, the repairs cannot continue in perpetuity and the report of the Local Commissioner to be submitted on 01-03-2025, was to be treated as the Final Report. Accordingly, the

report submitted by the Local Commissioner on 01-03-2025 shall be considered by all parties as the Final Report. Consequently, there shall be no further reports or any continued constructions or repairs in the suit premises with immediate effect. This is agreed to by all Learned Counsel for the parties.

**5.** It is submitted by Mr. Anmole Prasad Learned Senior Counsel for the Respondent No.3 (Defendant No.3 therein), at this juncture that, an application under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 (hereinafter the "CPC"), for violation of the Courts order under Order XXXIX Rules 1 and 2 of the CPC was filed by the Petitioners (the Plaintiffs) before the Learned Trial Court, however the Local Commissioner whose conduct is in question has not been made a party to the said proceedings, depriving him of the opportunity to put forth his defense.

**6.** In light of the above circumstances, let the Learned Trial Court, before hearing the final arguments, firstly take up for consideration the Petition under Order XXXIX Rule 2A of the CPC filed by the Plaintiffs, uninfluenced by any of the observations of this Court and decide the matter on merits, in terms of the contentions that the parties will advance before the Learned Trial Court.

**7.** Pursuant thereto, the final arguments are to be heard and the Suit determined.

**8.** The matter is remitted to the Learned Trial Court with the above directions and to dispose of the matter at the earliest.

**9.** All parties shall endeavour to make efforts to ensure early hearings in the matter, as it has been pending since 1998.

**10.** Writ Petition stands disposed of accordingly.

**11.** Copy of this Judgment be transmitted to the Learned Trial Court for information and compliance.

**( Meenakshi Madan Rai )**

**Judge**

31-03-2026

Approved for reporting : **Yes**