

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 16th September, 2025

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

I.A. No.01 of 2025 in WP(C) No.34 of 2025

Petitioner : Rajendra Roy

versus

Respondents : State of Sikkim and Others

An application for interim relief/stay

Appearance

Dr. (Mrs.) Doma T. Bhutia, Senior Advocate with Ms. K. D. Bhutia, and Ms. Subaksha Pradhan, Advocates for the Petitioner.

Mr. S. K. Chettri, Government Advocate for the Respondents No.1 and 2.

Mr. Jorgay Namka, Senior Advocate with Mr. Lahang Limboo, Advocate for the Respondent No.3.

Mr. Karma Thinlay, Senior Advocate with Mr. Yashir N. Tamang and Mr. Zamyang N. Bhutia, Advocates for the Respondents No.4 and 5.

ORDER (ORAL)

Meenakshi Madan Rai, J.

1. Heard on I.A. No.01 of 2025 which is an application filed by the Petitioner seeking the following reliefs;

- “(a) Issue an ad-interim injunction, suspending the operation and effect of the impugned orders dated May 14, 2025 and May 31, 2025, issued by the Respondents No.2 and 3 (**Annexure P1 and P2**).
- (b) To allow the Petitioner to continue their business to usual location, duly consideration the provisions of Articles 19(1)(g) and 21 of the Constitution of India until the final disposal of this Writ Petition;
- (c) To pass such order or orders as this Hon’ble Court may deem fit and proper in the interest of justice.”

2. Learned Senior Counsel for the Petitioner while narrating the facts of the Petitioner’s case has walked this Court specifically

through the impugned Orders as well as the interim Order of the Learned Single Judge of this High Court dated 22-11-2021, in WP(C) No.39 of 2021, the Order dated 09-08-2023 and clarificatory Order dated 20-10-2023 in the same Writ Petition. It is submitted that, the interim order of this High Court recognises that, the livelihood of the Petitioner was at stake and therefore a temporary space was to be designated to the Petitioner to carry on his business of hawking goods. Pursuant thereto, on 15-04-2023, the licence of the Petitioner was renewed by the Gangtok Municipal Corporation (GMC, Respondent No.3). Following this development, the Petitioner intimated the Municipal Commissioner that his licence has been renewed and that he had occupied the same space as earlier, for hawking his goods. After the renewal of his licence, the private Respondents filed I.A. No.04 of 2023, in WP(C) No.39 of 2021, seeking a clarification of the interim order dated 09-08-2023. The clarification was given by the Learned Single Judge, on 20-10-2023. After such clarification, the private Respondents had apparently approached the Respondent No.3 (GMC) complaining against the occupation by the Petitioner. The Respondent No.3 (GMC), vide order dated 12-06-2024, informed the private Respondent No.5 (Kiran Devi) herein, that it had examined the matter in detail and the dispute being civil in nature, advised the Respondent No.5 (Kiran Devi), to approach the Civil Court. Aggrieved by this Order, the private Respondents No.4 and 5, i.e., Sharda Devi Agarwal and Kiran Devi, sent a communication to the Municipal Commissioner-cum-Chairperson, Town Vending Committee, on 30-11-2024. This communication was not responded to, instead the Petitioner was summoned by the Office of the District Magistrate (Respondent

No.2) evidently based on the letter of the private Respondents (*supra*) to the Municipal Commissioner. It is submitted by Learned Senior Counsel for the Petitioner, that, the Counsel appearing before the Respondent No.2 (District Magistrate) for the Petitioner, was informed verbally that, the Complaint being considered by the Respondent No.2 (District Magistrate), was one addressed to the Municipal Commissioner. After the parties were heard, the impugned Order (Annexure P1) was pronounced by Respondent No.2 (District Magistrate). It is submitted by Learned Senior Counsel, that, the Respondent No.2 (District Magistrate) exceeded his jurisdiction by issuing the impugned order, giving directions to the Respondent No.3 (GMC) regarding the removal of the Petitioner from his hawking space and relocating him. Upon the direction of the Respondent No.2 (District Magistrate), the Respondent No.3 (GMC), vide Notice dated 31-05-2025, directed the Petitioner to remove his hawking stall from the place he had occupied. It is further urged that, the new order of renewal of licence (Annexure P5), indicates that, the Petitioner's hawker licence was renewed on 20-05-2025 up to 31-03-2026 allowing him to thereby continue his trade. Hence, the prayers in the I.A. be granted to ensure that the Petitioner is not deprived *inter alia*, of his right to life as the balance of convenience and inconvenience is tilted in his favour.

3. Learned Senior Counsel for the Respondents No.4 and 5 (Sharda Devi Agarwal and Kiran Devi) objecting vehemently to the prayers put forth, submitted that, for the last approximately 10 to 15 years, with intervening intervals, the Petitioner has been in occupation of the space in front of the two buildings that belong to the Respondents No.4 and 5 (Sharda Devi Agarwal and Kiran Devi).

Admittedly, the land on which he has put up his stall is Government land and a public thoroughfare. The stall of the Petitioner has disturbed the ingress and egress to the private property of the Respondents No.4 and 5 (Sharda Devi Agarwal and Kiran Devi) as well as to their place of business and therefore infringed their right as well. The renewal of the Petitioner's licence does not specifically mention that he shall resume his business in the previous premises i.e., in front of the property of the Respondents No.4 and 5 (Sharda Devi Agarwal and Kiran Devi) as Sl. No.2 of the renewed licence merely mentions that he shall run the trade in the building/house of Shri/Smt. – at Lall Market Road under 12, Upper M. G. Marg Ward. There is no name of any person entered in the Form to enable identification of the space specifically allocated to him. The impugned order of the Respondent No.2 (District Magistrate), is only a recommendation and the Respondent No.3 (GMC) is not bound by it. That, the impugned Notice, dated 31-05-2025, of the Respondent No.3 (GMC), was issued post the recommendation, but pursuant to a clearance drive initiated by the Respondent No.3 (GMC) to clear the thoroughfare on the *Tharo Line* as it was congested. The Petitioner was not isolated for relocation, there were several other hawkers who were shifted from *Tharo Line* to other places to clear the thoroughfare.

4. Learned Senior Counsel for the Respondent No.3 admits that in the renewed licence of the Petitioner, there is no entry of the name of the persons, as argued by Learned Senior Counsel for the Respondents No.4 and 5 (Sharda Devi Agarwal and Kiran Devi) neither has the exact location/address of the space where the Petitioner is to conduct his business, been mentioned. That, this

Court may issue orders as deemed necessary which the Respondent No.3 shall comply with.

5. Learned Government Advocate for the Respondents No.1 and 2 had no specific submissions to advance.

6. Heard Learned Counsel for the parties. I have given due consideration to the submissions. I have meticulously perused the impugned Orders and all documents relied on by the Petitioner including the Orders of the Learned Single Judge in WP(C) No.39 of 2021.

7. For a clear comprehension of the raging dispute between the parties, a brief summation of the Petitioner's case is essential. The Petitioner claims to have been running a business at the Lall Bazar road, colloquially identified as *Tharo line*, since the year 1980 under a hawker's licence, issued by the then Executive Officer, Gangtok Municipal Corporation, Gangtok, Sikkim on 12-02-1980, vide Memo bearing No.1384/GMC/80, which has been renewed from time to time. The Petitioner thus occupied the space on the eastern side of the said *Tharo line*, in front of the building of Respondents No.4 and 5 (Sharda Devi Agarwal and Kiran Devi) which was constructed later in time. That, vide the impugned Order, dated 14-05-2025, the Respondent No.2 (District Magistrate) directed the Respondent No.3 (GMC) to relocate the Petitioner to any place in *Tharo line*, on other side, i.e., National Highway side, as per the interim Order of this Court. Pursuant to such direction, the impugned Notice dated 31-05-2025 was issued by Respondent No.3 (GMC) requiring the Petitioner to conduct his business from the place where he had been relocated to by the Respondent No.3

(GMC) and not from the spot where he was carrying on his business (i.e., in front of the buildings of Respondents No.4 and 5).

8. Aggrieved thereof, he has approached this Court in WP(C) No.34 of 2025. For the purpose of deciding this application, it is relevant to Notice that in WP(C) No.39 of 2021, before a Single Judge of this High Court, vide Order dated 22-11-2021, the Learned Court was apprised of the fact that the Respondent No.2 (GMC) therein had suspended the licence of the Petitioner and also directed the Petitioner to remove his goods from his space within three days, failing which he would be evicted. The Learned Single Judge held as follows;

“

Considering the fact that the trade under the licence issued by the respondent No. 2 is the petitioner's bread and butter, this Court is of the view that pending disposal of the writ petition, the impugned order of suspension of the licence passed by the respondent No. 2 dated 11.11.2021 be stayed and the petitioner may be permitted to continue his trade in any free space in the Lall Bazar Road without causing any hindrance to anyone. The respondent No.2 may temporary designate a free space in the Lall Bazar Road to the petitioner for this purpose.

As this order has been passed *ex-parte*, the respondent No.2 on receipt of notice may seek variation of this order by filing an appropriate application, if they so desire.

.....”

(i) Vide the Order dated 09-08-2023, in the same Writ Petition (*supra*) the Learned Single Judge further ordered as follows;

“

1. The hawker license of the petitioner has been renewed by the Gangtok Municipal Corporation for the year ending 31.03.2024. A copy of the hawker license has been produced in court. The same shall be kept on record. In view of the same the writ petition has become infructuous and is accordingly disposed of.

2. All pending applications are also disposed of accordingly.

.....”

(ii) Pursuant to the disposal of the Writ Petition, the Petitioner, vide communication dated 11-08-2023 (Annexure P13), informed the Municipal Commissioner that he had started his hawking in the space allocated to him at the time of issuance of the hawking licence, i.e., in the year 1980. The private Respondents then filed I.A. No.04 of 2023, on 12-10-2023, seeking clarification of the Order dated 09-08-2023, passed by the Learned Single Judge. The Court while clarifying the said Order *inter alia* held that;

“.....

6. The disposal of the writ petition vide Order dated 09.08.2023 has brought an end the *lis* in the writ petition and the interim order passed therein merged with it. The Order dated 09.08.2023 was passed in the presence of all the parties including the present applicants. The Order dated 09.08.2023 is clear and requires no clarification as sought for by the applicants.

7. Accordingly, the application is dismissed.

.....”

(iii) On such clarification having been issued, the Respondent No.5 (Kiran Devi) approached the Respondent No.3 (GMC) as stated (*supra*), who opined that the dispute was civil in nature and to approach the relevant forum.

(iv) The private Respondents then addressed a Complaint to the Municipal Commissioner against the Petitioner, which in pith and substance were on the same grounds as agitated in the Writ Petition (*supra*). Admittedly, no response was received from the said Authority. Summons however was received by the Petitioner from the Respondent No.2 (District Magistrate) and after the parties were heard by the Respondent No.2 (District Magistrate), the impugned Order dated 14-05-2025, was issued. The Order *inter alia* reads as follows;

“.....

Hence, the GMC should relocate Mr. Rajendra Roy in another place in Tharo line but on the other side

i.e. National Highway side as per the interim order of Hon'ble High Court.

Aggrieved party is directed to approach appropriate authority for his/her redressal.
.....”

(v) Although it was argued by Learned Senior Counsel for the Respondents No.4 and 5 (Sharda Devi Agarwal and Kiran Devi) that it was only a recommendation to the Respondent No.3 (GMC). However, it has to be noticed that the word “should” has been used by the concerned authority. He has further qualified the intent of the word by employing language that it should be on the National Highway side, as per the interim Order of the Hon'ble High Court.

(vi) That having been said, this is a clear misunderstanding of the interim Order of the High Court in WP(C) No.39 of 2021, which at no place directs that the relocation of the Petitioner's stall should be on the National Highway side. The Order *inter alia* directs that the Respondent No.2 (GMC) therein may temporarily designate a free space in the Lall Bazar road to the Petitioner to enable him to continue his trade.

(vii) Admittedly the Respondent No.3 (GMC) was a party before the Respondent No.2 (District Magistrate), the Licensing Authority of the Respondent No.3 (GMC), on 20-05-2025, renewed the hawking licence of the Petitioner, allowing him to carry on trade till the year ending 31-03-2026. Sl. No.2 of the said document reads *inter alia* as follows;

“.....

2. You shall run the trade in the building/house of Shri/Smt. – at Lall Market Road under 12, Upper M. G. Marg Ward.

.....”

(viii) Unfortunately, the exact location of the place where the Petitioner was to hawk his goods from has been left vacant in the Form by the Respondent No.3 (GMC) as there is no mention of any

name after the honorofics 'Shri/Smt' in the said document, which in my considered view amounts to utter callousness and lack of accountability on the part of the Licensing Authority, in view of the fact that, the Respondent No.3 (GMC) was also present before the Respondent No.2 (District Magistrate) and was aware of the fact that the matter had been keenly contested by the parties, not only before the Respondent No.2 (District Magistrate) but also before this High Court. Consequent upon the renewal of the licence the Petitioner has continued to occupy the same space earlier allotted to him.

(ix) From the records relied on by the Petitioner, there is ostensibly no objection from any quarter on his business location after the renewal of his licence in 2025 up to March, 2026, as can be gauged from the documents relied on by the Petitioner. It is submitted by Learned Senior Counsel for the Respondents No.4 and 5 (Sharda Devi Agarwal and Kiran Devi) that an opportunity should be afforded to the Respondents No.4 and 5 (Sharda Devi Agarwal and Kiran Devi) to file their Counter-Affidavit to enable an answer to the query of this Court, regarding any objection against the Petitioner continuing to occupy his earlier space for hawking purposes. Be that as it may, it appears that the licence of the Petitioner has been renewed up to 31-03-2026. Hence, having given due consideration to the submissions advanced before me and after careful examination of all the documents on record, I am of the considered view that for the present purposes, the balance of convenience and inconvenience and irreparable loss and injury lies with the Petitioner herein.

(x) Consequently, the impugned Order dated 14-05-2025 and the impugned Notice dated 31-05-2025, are suspended till further orders of this Court.

(xi) The Petitioner shall continue his trade at the location where he was doing so till date.

9. The Respondent No.3 (GMC), shall ensure that adequate space is left for the ingress and egress to and from the shop of the private Respondents No.4 and 5 (Sharda Devi Agarwal and Kiran Devi) and no disturbance is caused to their business by the Petitioner's hawking stall.

10. I.A. No.01 of 2025 stands disposed of on the above terms.

(Meenakshi Madan Rai)
Judge
16-09-2025

Approved for reporting : **Yes**