

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

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

WP(C) No.45 of 2020

Petitioners : Puspa Mishra and Others

versus

Respondents : State of Sikkim and Others

Application under Article 226 of the Constitution of India

Appearance

Mr. A. Moulik, Senior Advocate with Mr. Ranjit Prasad, Ms. Neha Kumari Gupta and Ms. Laxmi Khawas, Advocates for the Petitioners.

Mr. Aarohi Bhalla, Additional Advocate General with Mr. Thinlay Dorjee Bhutia, Government Advocate for the Respondents No.1 to 10.

Mr. Hissay Gyaltsen and Mr. Lahang Limboo, Advocates for the Respondent No.11.

Date of Hearing	:	06-03-2026
Judgment reserved	:	06-03-2026
Judgment pronounced	:	06-04-2026
Judgment uploaded	:	07-04-2026

JUDGMENT

Meenakshi Madan Rai, J.

1. The Petitioners numbering a total of 101, are by birth Sikkimese women, married to non-Sikkimese men, who are citizens of India. They are aggrieved in the first instance, by Notification No.08/LR&DMD/R/2018, dated 07-06-2018, of the Land Revenue and Disaster Management Department, Government of Sikkim, which provides that any document regarding transfer of property, presented for registration by a Sikkimese woman, married to a non-Sikkimese, may ordinarily be registered. The sentence is however qualified by the words that follow viz., that, "..... ownership of her property, on her demise, shall be governed as per the existing rules and regulations prevailing in the

State". As per the Petitioners, "the existing rules and regulations" referred to in the impugned Notification is the "Married Women's Property Regulation, 1962" (Regulation of 1962), which provides that a Sikkimese woman married to a non "Sikkim Subject", shall have no right to acquire any immoveable property or any interest in such property, in the territory of Sikkim, subsequent to her marriage. The Regulation of 1962, it is averred, was never enforced in the State and despite being only an executive order, seeks to debar the children of Sikkimese women married to non-Sikkimese, from holding property in the State of Sikkim, which is thereby, discriminatory, *mala fide* and arbitrary. They are also aggrieved by the non-issuance of Certificate of Identification (COI) to their progeny, on account of the Petitioners' marriage to non-Sikkimese, thereby depriving their children of all facilities and rights available to COI holders, including their right to obtain Government employment in the State.

2. The Petitioners seek the following reliefs;

- ".....
- i.
 - ii. A writ or order or direction or declaration that on the death of a Sikkimese woman, married to a non-Sikkimese, her property shall devolve upon and owned by her children (sic.) duly quashing the part of the notification dated 7/6/18 namely **"The ownership of the property on her demise shall be governed as per the existing rules and regulations prevailing in the State."**
 - iii. A writ or order or direction or declaration that the children of Sikkimese women marrying to non-Sikkimese (sic.) shall not be debarred from getting employment under the Government of Sikkim;
 - iv. A writ or order or direction or declaration that, the offsprings of the Sikkimese women marrying to non-Sikkimese (sic.) shall be issued with Certificate of Identification and other similar documents with right of inheritance of immovable properties and all other benefits receivable from the Government like all other Sikkimese persons.

- v.
 - vi.
 - vii. A writ of mandamus and/or any other appropriate writ/order/direction or declaration that husband's SSC/COI so far claimed by the Respondents from Sikkimese women shall no longer be claimed from them for procurement of employment and for other purposes under the Government of Sikkim or in any region whatsoever.
 - viii. A writ of mandamus and/or any other appropriate writ/order/direction directing the state respondents in particular the Land Revenue & Disaster Management Department as well as District Collectors/ Registrar/ Sub-Registrar of four districts to register any deed of sale, gift, lease or will and/or any instrument of transfer of immovable properties from the names of Sikkimese women married to non-Sikkimese men to the names of their children.
 - ix.
 - x.
 - xi.
-”

The other prayers of the Petitioners have not been extracted *supra* as they are in pith and substance a repetition of the prayers above.

3. The contesting parties filed their respective returns and rejoinder thereto was filed by the Petitioners.

4. The submissions of Learned Senior Counsel for the Petitioners are summarized as follows;

(i) All “Sikkim Subjects” as defined in the Sikkim Subject Regulation of 1961, became Indian citizens on the 26th day of April, 1975 (*the appointed day*), consequent thereto, the Petitioners cannot be discriminated on grounds of gender, as males of Sikkimese origin, marrying non-Sikkimese women, including foreigners are beneficiaries of all facilities in the State, such as inheritance rights, education, employment and COI. However, the Petitioners, being women married to non-Sikkimese are deprived of all such facilities, including their right to marry persons of their choice and their children’s right to inherit property.

(ii) The Home Department, Government of Sikkim, on 15-05-2015, issued a Notification pertaining to issuance of Residential Certificate (RC), to persons falling in categories as enumerated therein, which includes “*non-Sikkimese Indian citizens*”. They are permitted to acquire land in Municipal areas of Sikkim and admittedly encompasses children of the Petitioners. Under the Notification they can also avail of other facilities available to Sikkimese. It is therefore unfathomable as to why the State would stop short of granting COI to progeny of a mother of Sikkimese origin, merely on account of her marriage to a non-Sikkimese. Such a stand is arbitrary and violative of Articles 14, 15, 16, 19 and 21 of the Constitution of India, more especially since the Sikkim Subject Regulation of 1961 was repealed on 26-04-1975.

(iii) In further discrimination of women, the State also requires an unmarried woman of Sikkim to furnish a certificate regarding her ‘marital status’, renewable every six months, in gross violation of the human rights of all Sikkimese women. Strength in this context was garnered from the Convention on Elimination of all forms of discrimination against Women (CEDAW).

(iv) Referring to the decision of this Court in ***Padma Kumari Ganesan vs. The State of Sikkim and Others***¹, Learned Senior Counsel argued that, it is held therein, that, immovable properties of a Sikkimese woman married to non-Sikkimese is transferable and they can also inherit the property of their parents and therefore ought to be complied with.

(v) That, in ***Nil Kumar Dahal and Another vs. Indira Dahal and Others***², this High Court has opined that, in the absence of a law of

¹ WP No.10 of 1991, decided on 16-09-1991, by a Division Bench of this High Court.

² SLR (2020) SIKKIM 815

inheritance in Sikkim, the Hindu Succession Act, 1956, as amended in 2005 is applicable.

(vi) That, Notification bearing No.1520/H, dated 03-01-1963, "Rules to provide for registration and solemnization of a form of marriage in Sikkim", does not restrict Sikkimese women from marrying non-Sikkimese Indian citizens, hence, children born from such marriages should be extended all benefits of the COI.

(vii) It is also contended that Revenue Order No.1 of 1917, issued by an executive authority, does not prohibit transfer of agricultural land from Bhutias and Lepchas to a "*plainsman*". The circumstance applicable to a "*plainsman*" thus ought to apply to the Petitioners as well.

(viii) Merely because Sikkimese society is patriarchal, the Petitioners cannot be denied their legitimate rights, as they continue to be COI holders.

Hence, in view of the grounds advanced, the reliefs sought be granted.

5. Learned Additional Advocate General for the Respondents No.1 to 10, resisting the grounds raised by the Petitioners contended that;

(i) The Writ Petition is devoid of necessary details, regarding the religion of the Petitioners, their caste/tribe. Such details are imperative in light of the provisions of Section 2(2) of the Hindu Succession Act, 1956, which excludes Scheduled Tribes from its application. The name of the father of the children, the age of the children have also not been mentioned in the Petition. The children may well be adults now and if aggrieved on account of the restrictions imposed on them from registering their mother's property in their names, they ought to be the Petitioners. The

Petition is thus not maintainable as the Petitioners lack *locus standi*. Reliance on this facet was placed on ***Jasbhai Motibhai Desai*** vs. ***Roshan Kumar, Haji Bashir Ahmed and Others***³.

(ii) It was next urged that should the reliefs prayed for, be granted, it would tantamount to legislating, which is *dehors* the mandate of the Constitution of India. In this context, reference was made to ***Union of India and Others*** vs. ***K. Pushpavanam and Others***⁴.

(iii) That, Prayer (iv) in the Writ Petition, according to the Learned Additional Advocate General is the main prayer but the Petition is neither a Public Interest Litigation nor filed in a representative capacity, it is but an emotional prayer of mothers, in an effort to set aside the mandate of Article 371F of the Constitution.

(iv) The Learned Additional Advocate General elucidated, that male lineage, in terms of the Sikkim Subject Regulation promulgated vide Notification dated 03-07-1961 (Regulation of 1961), decides which person falls within the category of Sikkim Subjects. Regulation 6 of the Regulation of 1961, then, provided for the status of women married to Sikkim Subjects, allowing even women of foreign origin married to Sikkim Subjects to register as a Sikkim Subject, provided she renounced her former nationality. Regulation 7(b) however provides that a Sikkimese woman, married to a non-Sikkim Subject, shall not be entitled to Sikkim Subject, thereby drawing a distinction between Sikkim Subjects and others.

(v) The Regulation of 1961 makes it evident that status of "Sikkim Subjects" flows from the male lineage as the nature of

³ (1976) 1 SCC 671

⁴ (2023) 20 SCC 736

society in Sikkim is patriarchal, and the COI introduced in the year 1995 is in a similar vein.

(vi) The Government of India did not issue a fresh citizenship order *dehors* the Regulation of 1961 and the Sikkim (Citizenship) Order, 1975, dated 21-06-1975, in fact has saved the Regulation of 1961 in its entirety.

(vii) That, in *R. C. Poudyal vs. Union of India and Others*⁵ the Supreme Court has held that the provisions contained in Article 371F are not such as to negate the fundamental principles of democracy and do not violate the basic features of the Constitution.

(viii) On Sikkim becoming a State of the Union by the 36th Amendment Act, 1975, on 26-04-1975, a special provision for the State, being Article 371F, was inserted, which commences with a non-obstante clause, overriding the other provisions of the Constitution. This was for the safety and demographics of the State, duly incorporating terms and conditions deemed necessary to meet the special circumstances of Sikkim.

(ix) Under Section 7 of the Citizenship Act of 1955, which was enforced in Sikkim on 16-05-1975, the Government of India issued a Sikkim (Citizenship) Order, 1975, which provided that, every citizen who was immediately before 26-04-1975 a Sikkim Subject, under the Sikkim Subject Regulation, 1961, shall be deemed to have become a citizen of India on that day. The "*Adaptation of Sikkim Laws (No.1) Order 1975*" repealed the Regulation of 1961 but under Clause 2(b), explained the term "*law in force*" in the context of Sikkim. Thus, despite the application of the Act of 1956 to the State of Sikkim, a distinction continues to

⁵ 1994 Supp (1) SCC 324

exist between Sikkim Subjects and non-Sikkim Subjects, the test being the Regulation of 1961, to arrive at such a conclusion. This is crucial, as Rule 4(4) of the Establishment Rules, 1974, gives a preference to "Sikkim Subjects" to apply for employment in the State.

(x) That, on this aspect the Supreme Court in **State of Sikkim vs. Surendra Prasad Sharma and Others**⁶ observed that the reason why Article 371F begins with a non-obstante clause obviously is that, the matters referred to in the various clauses immediately following, required a protective cover, so that, such matters were not struck down as unconstitutional. Unless such immunity was granted the "*laws in force*" would have to meet the test of Article 13 of the Constitution.

(xi) Reference was also made to the Revenue Order No.1, dated 17-05-1917, issued under the instructions of the then Chogyal of Sikkim, imposing restrictions on sale, mortgage or subletting of land, belonging to the Bhutia-Lepcha community, to persons other than Bhutias or Lepchas. This law being one protected by Article 371F(k) of the Constitution, non-Sikkimese are debarred from holding and registering land in Sikkim.

(xii) Office Order bearing No.105/LR, dated 25-02-1961 another "*law in force*", provides that non-Sikkimese are not entitled to acquire any immovable properties in Sikkim and Notification No.28/LR, dated 21-04-1969, clarifies that woman follows the nationality and community of her husband.

(xiii) The impugned Notification bearing No.8/LR&DMD/R/2018, dated 07-06-2018, upholds the spirit of the afore

⁶ (1994) 5 SCC 282

enumerated Notifications, which continue to be protected by virtue of Article 371F of the Constitution.

(xiv) The submissions of the Petitioners are also contradictory as it is averred on one hand that Sikkim Subjects/COI induces discrimination between the Sikkimese and Indian citizens, while on the other hand they seek issuance of COI for their children.

Hence, the Writ Petition being without merit deserves to be dismissed.

6. Learned Counsel for the Respondent No.11 endorsed the submissions canvassed by Learned Additional Advocate General for the Respondents No.1 to 10 and submitted that the four primary prayers, being Prayers No. (ii), (iii), (iv) and (viii) in the Writ Petition face hindrances and even if the impugned Notification of 2018 was to be partly quashed, in terms of the prayers of the Petitioners, they would still be hindered by the provisions of the Office Order bearing No.105/LR, dated 25-02-1961.

(i) That, although the Petitioners seek rights of Sikkimese for their children, however none of them have filed any documents before this Court to indicate that they also derive any such rights from their mothers. All Petitioners have filed documents derived from their fathers, to claim their rights, revealing the Patriarchal nature of Sikkimese society. Most of the Petitioners, in any event, are not even identifiable as the same persons who appear in the documents filed by them.

(ii) It was canvassed that, the impugned Notification of 2018 does not provide any rights. It is through the COI that Sikkimese assume their rights. The issuance of COI however has not been challenged by the Petitioners, besides they are not

eligible under any category of the relevant rules for issuance of COI to them. Hence, the Petition deserves a dismissal.

7. In rebuttal, Learned Senior Counsel for the Petitioners put forth the view that, property and citizenship rights are independent of each other and the issues involved herein is the right of inheritance of the offspring of women married to outsiders. Reference was made to the provisions of Section 2(2) of the Hindu Succession Act, 1956 and urged that it is not applicable in the instant case as most of the Petitioners are Hindus, while the rest are Buddhists following the Hindu law. Hence, the prayers be granted.

8. The rival contentions of the parties have been heard *in extenso*, the pleadings perused as also the accompanying documents and citations made at the Bar.

9. The question germane to the instant matter is whether the non-issuance of COI to the Petitioners progeny, by virtue of the Petitioners having married non-Sikkimese is discriminatory and violative of their rights under Articles 14, 15, 16, 19 and 21 of the Constitution of India.

10. It is essential to briefly lay out the background of the State to comprehend the import of the Petitioners case. Sikkim is the 22nd State of the Indian Union, with an approximate area of 7,096 square kilometers and a population of 6,10,577 as per the Census of 2011. Prior to the 36th Amendment Act to the Constitution of India by which Sikkim became a part of the Indian Union, the erstwhile Kingdom of Sikkim was a protectorate of India with Defence, External Affairs and Communications under the Government of India. The then Monarch, known as the Chogyal, promulgated the Sikkim Subject Regulation, 1961, finding it

expedient at that time to define clearly the status of Sikkim Subjects and to make provision for the acquisition and loss of such status. The Regulation *inter alia* provided that;

- “.....
3. Certain persons domiciled in Sikkim Territory at the commencement of the Regulation to be Sikkim Subjects -
- (I) Every person who has his domicile in the territory of Sikkim immediately before the commencement of this Regulation shall be a Sikkim Subject if he -
- (a) was born in the territory of Sikkim and is resident therein, or
- (b) has been ordinarily resident in the territory of Sikkim for a period of not less than fifteen years immediately preceding such commencement :
- Provided that in counting the said period of fifteen years any absence from the said territory on account of service under the Government of India shall be disregarded ; or
- (c) is the wife or minor child of a person mentioned in clause (a) or clause (b)

-
7. Certain persons not to be Sikkim Subjects -
- (a)
- (b) **Any Sikkimese woman who marries a person who is not a Sikkim Subject; or**
- (c)
-”

[emphasis supplied]

(i) On the Sikkim Congress deciding to put an end to the monarchical rule, the Government of Sikkim Act, 1974, was consequently passed on 10-04-1975, by the Sikkim Assembly for progressive realization of a fully responsible Government in Sikkim for furthering its relations with India. This led to the Constitution 35th Amendment Act of 1974, which provided that Sikkim would be an “*associate State*”, and was brought within the framework of the Indian Constitution by inserting Article 2A and the 10th Schedule in the Constitution. As the Indian Constitution did not envisage any “*associate State*”, this amendment was followed by the 36th Amendment Act, 1975, omitting both Article 2A and the 10th

Schedule (*supra*). The 36th Amendment Act, 1975, was given retrospective effect from 26-04-1975 (*the appointed day*) and Sikkim was admitted into the Union of India as its 22nd State. Article 371F was inserted to make special provisions relating to the administration of Sikkim to meet the special needs and circumstances of the State while respecting its historical and local contexts.

(ii) The *Adaptation of Sikkim Laws (No.1) Order, 1975*, dated 13-09-1975, at 2(b) and 2(c) defines the following;

“.....
 In exercise of the powers conferred by Clause (I) of Article 371F of the Constitution, the President hereby makes the following order, namely:-
 I. (I) This Order may be called the Adaptation of Sikkim Laws (No.I) Order, 1975.
 (2) It shall be deemed to have come into force on the 26th day of April, 1975.
 2. (I) In this Order -
 2. (a) **“appointed day” means the 26th day of April, 1975.**
 (b) **“existing law” means any law in force immediately before the appointed day in the whole or any part of the territories comprised in the State of Sikkim.**
 (c) **“law” includes any enactment, Proclamation, Regulation, rule, notification or other instrument having, immediately before the appointed day, the force of law in the whole or any part of the territory now comprised in the State of Sikkim.”** [emphasis supplied]

At Paragraph 5 it is stated as follows;

“5. The laws mentioned in the Second Schedule to this Order shall until altered, repealed or amended by a competent Legislature or other competent authority, have effect subject to the adaptations and modifications directed by that Schedule.” [emphasis supplied]

(iii) With this background in place, while addressing the argument of Learned Senior Counsel for the Petitioners that all Sikkim Subjects have become Indian citizens on 26-04-1975, and cannot be discriminated on grounds of gender and thereby violate the provisions of Articles 14, 15 and 16, it is relevant to notice that

Article 371F, the special provision for Sikkim, begins with a non-obstante clause *viz.*, the introduction to the provision is with the words "*Notwithstanding anything in this Constitution*". A non-obstante clause as per ***Black's Law Dictionary, 10th Edition***, at **Page No.1218**, is "*a phrase used in documents to preclude any interpretation contrary to the stated object or purpose*". A non-obstante clause, is therefore, a legislating device, used to give a provision overriding effect over conflicting laws, to ensure that the specific rule prevails over contrary provisions, either in the same or other statutes. The word "*Notwithstanding*" gives precedence to the relevant provisions, over every other provision of the Constitution and thereby ensures the clear operation of the provisions of law in question. Article 371F which commences with a non-obstante clause therefore overrides the other provisions of the Constitution, by virtue of it being a special provision for the State of Sikkim, to meet the individual needs and circumstances of its people, in terms of the political commitments and solemn assurances given to the people of Sikkim, when it became a part of the Indian Union. It is a connection between its distinctive and unique past and its entry at the relevant time into the Indian Union.

(iv) In ***Surendra Prasad Sharma*** (*supra*), the Supreme Court in a Bench comprising of A.M. Ahmedi, J and N. G. Venkatachala, J, in a Judgment authored by A.M. Ahmedi, J, was considering the impugned Judgment of the High Court being W.P(C) No.29 of 1982 (*Surendra Prasad Sharma vs. State of Sikkim*). The High Court *inter alia* was of the view that, since the Government of Sikkim Establishment Rules of 1974, was the subject matter of Adaptation Order issued by the President of India, vide Establishment

Department Notification No.202/Gen/Est., dated 17-11-1980, they ceased to be "laws" within the meaning of clause (k) of Article 371F and therefore the rules did not enjoy the protection of the non-obstante clause. It was next observed by the High Court that with the incorporation of Sikkim as a component State in the Union of India w.e.f. 26-04-1975, Sikkimese nationality ceased to exist as a politico-legal concept, hence the preference given to Sikkimese nationals in matters relating to employment or appointment under the then Government of Sikkim, under Rule 4(4) of the Establishment Rules of 1974 has become ineffective and unworkable.

(v) For the sake of clarity the said proviso of the Establishment Rules (*supra*) is extracted hereinbelow;

"(4) **Appointment.-** (A)
 (a)
 (b)
 (B)"

Provided these two types of appointment shall be made having due regard to the exact nature of specific duties and responsibilities and the qualification required for the post, **and further provided that (i) Non-Sikkimese nationals may be appointed only when suitably qualified and experienced Sikkimese nationals are available, and (ii) replacement of such appointees by suitable Sikkimese candidates may be made as and when available.**

....."

[emphasis supplied]

(vi) The Supreme Court in **Surendra Prasad Sharma** (*supra*) however was of the view that the entire approach of the High Court was wrong. It was of the view that the term "existing law" as defined in the "*Adaptation of Sikkim Laws (No.1) Order 1975*" brought within its fold any *enactment, proclamation, regulation, rule, notification or other instrument having, immediately before the appointed day the force of law in the whole or any part of the territory, comprised in the State of Sikkim* and held that the

Establishment Rules of 1974 were promulgated by the Chogyal of Sikkim as its absolute Monarch, for regulating the appointments to the Civil Services of the State and as they were undoubtedly in existence before Sikkim acquired the status of an "associate State" by the 35th Amendment and a full-fledged State of the Union of India by 36th Amendment, there can be no doubt that the Establishment Rules of 1974 which were in force in the territories comprised in the State of Sikkim prior to 26-04-1975 would stand covered by the expression all "*laws in force*", used in clause (k) of Article 371F and would continue to be in force even after the appointed date, as existing laws, until amended or repealed. The Supreme Court explained as follows;

"16. In the proviso to Rule 4(4) extracted earlier there is reference to Sikkimese nationals and non-Sikkimese nationals. The said proviso posits that non-Sikkimese nationals may be appointed only when suitably qualified and experienced Sikkimese nationals are not available and further provides for replacement of such non-Sikkimese nationals by Sikkimese candidates as and when the latter become available. The High Court has refused to construe the said proviso to mean local residents of Sikkim were to be preferred to non-residents of Sikkim. The High Court answers the contentions thus:

"But even with the aid of these provisions, it is not possible to construe the expression 'Sikkimese nationals' as 'locals' or permanent residents of Sikkim, as one can be a national of one country without being a resident in that country and may in fact be a permanent resident of another country with his domicile, whether of origin or of choice, in that country."

And caps the same as under:

"I have already noted that the provisions of Rule 4(4) of the Sikkim Government Establishment Rules, quoted hereinbefore, provided for preferential treatment to Sikkimese nationals in matters relating to employments or appointments under the then Government of Sikkim and that with the incorporation of Sikkim as a component State in the Union of India with effect from 26-4-1975, Sikkimese nationality having ceased to exist as a politico-legal concept, the preference sought to be given by Rule 4(4) has become ineffective and unworkable."

With respect we find it difficult to accept this highly technical approach. In the first place since this was an existing law which was continued ", it would naturally contain expressions which were in vogue before the appointed day. These expressions had to be understood in the sense in which they were defined in the Sikkim Subjects Regulations, 1961. Regulation 3 defines Sikkim subjects and Regulation 7 explains who shall not be Sikkim subjects. Therefore, if the expressions 'Sikkimese nationals' and 'non-Sikkimese nationals' used in the proviso to Rule 4(4) are read and understood in the context of the provisions of the aforesaid regulations, the difficulty expressed by the learned Judge in the High Court would appear to be imaginary.

17. The High Court has then taken the view that since the Establishment Rules of 1974 were the subject-matter of Adaptation Orders issued by the President of India, they ceased to be existing law within the meaning of clause (k) of Article 371-F and therefore they did not enjoy the protection thrown by the non obstante clause. It was further submitted that this was all the more so because the said Rules were modified under Article 309 of the Constitution with effect from 26-4-1975. The High Court's approach in this behalf is twofold (i) the non obstante clause in Article 371-F in relation to clause (k) has no efficacy as the said clause can quite effectively operate, just like Article 372, without the aid of the non obstante clause as there is nothing to show that it conflicts with any other provision in the Constitution and (ii) its operation in relation to certain clauses like (i) and (j) would lead to an absurd situation. We are afraid the entire approach of the learned Judge is, with respect, wrong. In the first place in relation to clause (k) the non obstante clause seeks to extend protection to all existing laws even if they may conflict with any of the provisions of the Constitution and in the absence of such protection would be declared ultra vires the Constitution. Since the laws which were in force before the appointed day had not to go through the test of satisfying the requirements of the Constitution, the possibility of those laws being in conflict with the provisions of the Constitution could not be ruled out and hence they had to be protected by the non obstante clause."

[emphasis supplied]

(vii) The Supreme Court while further considering that the special provisions may not be entirely in accordance with the other provisions of the Constitution, observed that;

"20. It may be noticed that even the laws which were prevailing in India under the British rule were not expected to accord with the Constitution of free India. That is why Article 13 provides that all laws in force in the territory of India immediately before the commencement of the Constitution, insofar as they are not consistent with the provisions in Part

III thereof, shall, to the extent of such inconsistency be void.

.....

22. Article 371-F, is as stated earlier, a special constitutional provision with respect to the State of Sikkim. The reason why it begins with a non obstante clause obviously is that the matters referred to in the various clauses immediately following required a protective cover so that such matters are not struck down as unconstitutional because they do not satisfy the constitutional requirement. Unless such immunity was granted 'the laws in force' would have had to meet the test of Article 13 of the Constitution. This being the objective, existing laws or laws in force came to be protected by clause (k) added to Article 371-F. The said laws in force in the State of Sikkim were, therefore, protected, until amended or repealed, to ensure smooth transition from the Chogyal's rule to the democratic rule under the Constitution. **Inherent in clause (j) is the assumption that many of such existing laws may be inconsistent with the Constitution and, therefore, the President came to be conferred with a special power to make adaptations and modifications with a view to making the said rule consistent with the Constitution. Of course this power had to be exercised within two years from the appointed day. If any adaptation or modification is made in the law in force prevailing prior to the appointed day, the law would apply subject to such adaptation and modification. It is thus obvious that the adaptation and modification made by the President in exercise of this special power does not have the effect of the law ceasing to be a law in force within the meaning of clause (k) of Article 371-F.** Therefore, on the plain language of the said provision it is difficult to hold that the effect of adaptation or modification is to take the law out of the purview of 'laws in force'.

23. The next question is whether the insertion of the introductory clause purporting to convey that the said rules are made under Article 309 of the Constitution with effect from 26-4-1975 amounts to substitution of the Establishment Rules of 1974 to deny them the immunity conferred by clause (k) of Article 371-F? We have extracted the introductory part earlier which shows that the Establishment Rules were merely 'adopted' with modification with effect from 26-4-1975. Rule 4(4) remains as it was and the Rules continue to be effective from 1-4-1974....."

[emphasis supplied]

(viii) The decision with lucidity thus explains the context of Article 371F, the immunity granted to "*laws in force*" in Sikkim, i.e., the laws immediately existing before Sikkim became a part of the Indian Union, the protection which thereby was given to Rule 4(4) of the Sikkim Government Establishment Rules, 1974 and consequently the difference between Sikkim Subjects and others.

11. Article 14 of the Constitution provides that the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India. The Article prohibits discrimination and mandates that all persons shall be treated equally before the law, it is thus a declaration of equality of all persons within the territory of India implying the absence of any special privilege in favour of any individual. The guarantee of equal protection of law and equality before the law, nonetheless does not prohibit reasonable classification. The State has the power to have a classification on the basis of rational distinctions relevant to the particular subject to be dealt with. However, it goes without saying that permissible classification must be founded on *intelligible differentia*, which distinguishes persons that are grouped together, from others, who are left out of the group. The differentia must have a rational relation to the object sought to be achieved by the legislation. The Supreme Court in **Surendra Prasad Sharma** (*supra*) has explained Rule 4(4) of the Government of Sikkim Establishment Rules, 1974, in this context and has protected the differentiation made between Sikkimese and non-Sikkimese.

12. Now, while addressing the issue of Article 15 of the Constitution, the said provision prohibits discrimination on grounds of religion, race, caste, sex or place of birth. The provision therefore makes room for gender equality, however it does not tantamount to a bar on classification on non-arbitrary considerations. The provisions of Article 15 have to be construed harmoniously with the provisions of Article 371F bearing in mind that, the special provision commences with a non-obstante clause. As pointed out in **Surendra Prasad Sharma** (*ibid*) that, it is well

settled by a long line of decisions that constitutional provisions must be liberally construed to the extent the language permits it and should not be interpreted in a narrow and pedantic manner, more so in the case of transitory provisions.

13. Article 16 of the Constitution of India guarantees equality of opportunity in public employment prohibiting discrimination on grounds enumerated therein. This aspect in the context of Sikkim has been dealt with at length in ***Surendra Prasad Sharma (ibid)*** and the issue given a quietus as already discussed in the foregoing paragraphs it thereby does away with the requirement of any further prolix discussions.

14. Consequently, the Petitioners ought to have taken note of the decision in ***Surendra Prasad Sharma (supra)*** and adhered to what has been held by the Supreme Court, the decision having accepted the differentiation made in the proviso to Rule 4(4) of the Government of Sikkim Establishment Rules, 1974 and therefore by implication allowing it to be tested on the anvil of the Regulation of 1961, as, a Sikkimese national can be identified only on the basis of entries made in the old Sikkim Subjects Register. The discussions above quell the arguments regarding discrimination on various grounds raised by the Petitioners.

15. In an additional argument, Learned Senior Counsel for the Petitioners reiterating the argument of gender based discrimination while relying on the decision in ***Association of Old Settlers of Sikkim and Others vs. Union of India and Another***⁷, urged that Supreme Court has *inter alia* observed therein that, pursuant to the merger of Sikkim with India, Sikkim Subjects and all Sikkimese domiciled in the territory of Sikkim have become Indian

⁷ (2023) 5 SCC 717

citizens, there cannot be a discrimination vis-à-vis Sikkimese woman marrying a non-Sikkimese. In this context, it may be pointed out here that the view expressed by the Supreme Court was that, Section 10 (26AAA) proviso of the Income Tax Act, 1961, should not have discriminated against Sikkimese women, only because a Sikkimese woman who, though, may have had her name registered in the Register of Sikkim Subjects, married a non-Sikkimese, that too only on or after 01-04-2008, as there is no justification for such exclusion. In my considered view, this finding will not support the case of the Petitioners *progeny* as the observation is limited to the "Sikkimese woman" whose name is in the Sikkim Subjects Register and does not in any manner discuss about whether the children of Sikkimese women, married to a non-Sikkimese, would be entitled to such exemption.

16. Women in Sikkim having to submit "marital status" before obtaining Government employment in Sikkim, necessarily flows from the reasons as explained in the Notification dated 25-02-1961 which is extracted hereinbelow, Notification of 1969 and the difference between a "Sikkimese national" and "non-Sikkimese national" having been explained at length in **Surendra Prasad Sharma** (*supra*) which needs no further clarity. The relevant portion of the Regulation of 1961 has already been extracted *supra*, which at Regulation 7(b) provides that a Sikkimese woman who marries a non-Sikkimese ceases to be a Sikkim Subject. The Notification of 1961 reads as follows;

"GOVERNMENT OF SIKKIM
LAND REVENUE DEPARTMENT
O.O.No. 105/L.R.
Dated Gangtok the 25th February, 1961.

It is hereby informed for the general guidance of all the Darbar Officers dealing specifically with registration of documents in Sikkim, that the following

procedures should be strictly followed and observed in cases of transaction relating to transfer of immovable properties.

.....
 if she is married, in which case such other particulars of her husband including the community to which he belongs, his home address, what landed property he holds already in Sikkim etc., should be enquired into first. In the case of transfer otherwise than by sale also such as gift etc., similar particulars of the husband of the woman if she is married are to be furnished.”

The Notification of 1969 provides as follows;

“Land Revenue Department

Notification No.28/LR

Dated Gangtok, the 21st April, 1969.

There has been some doubts about the right of a woman to purchase or sell land after her marriage to a person of other community due to restrictions imposed by Revenue Order No.1 of 1917 and in order to clarify the position in this regard. It is hereby notified as follows;

- (a) **Women follows the nationality and community of her husband.**
- (b) Bhutia-Lepcha women marrying a person of community other than her own community only if such land was acquired by her prior to her marriage.
- (c) Land acquired by her after her marriage to a non Bhutia-Lepcha may be sold to any community.
- (d) Sikkimese of Tibetan and Bhutanese origin enjoy all rights and privileges of Bhutia/Lepcha except that they may not buy land from the latter community.

.....”

[emphasis supplied]

17. On the question of the right of a woman to marry a person of ones choice, strength was drawn from **Laxmibai Chandaragi B. and Another vs. State of Karnataka and Others**⁸, by Learned Senior Counsel for the Petitioners to buttress his argument. The decision (*supra*) pertains to an FIR registered by the father of a missing girl who had without the notice of her parents married the Petitioner No.2, in the said matter. The Court observed that educated adults were choosing their life partners,

⁸ (2021) 3 SCC 360

which is a departure from the earlier norms of society, where caste and community played a major role. The FIR was quashed by the Supreme Court with the expectation that the parents of the Petitioner No.1 would have better sense to accept the marriage. For the purposes of the instant matter, no law in Sikkim, restricts a Sikkimese woman from opting for her choice of partner, however the existing laws of Sikkim as extracted earlier, are protected laws and the insertion of Article 371F made with a solemn promise to the Sikkimese. The State was just joining the mainstream then and the population would have been overwhelmed, if no protective measures were put into place. It was therefore with the intention of protecting the local populace and the local context that the old laws were protected and continue to be so. In the said circumstances, the laws have to be complied with unless amended or repealed.

18. While traversing the arguments of Learned Senior Counsel for the Petitioners regarding the decision of this Court in ***Padma Kumari Ganesan*** (*supra*), there were two rounds of litigation between the Petitioner, a Sikkimese woman married to a non-Sikkimese in 1953 and the State. In the first Writ Petition, being No.02 of 1977 (*Mrs. Padma Kumari Ganesan vs. Secretary, Land Revenue Department, Govt. of Sikkim*), the facts pertained to non-registration of a deed of gift executed by the Petitioner's mother in her favour, in respect of properties situated at Aritar Block, Rhenock, East Sikkim. The Court passed its Judgment on 17-08-1977 ordering that;

"11. In view of what has been stated above and the position clearly emerging from the registration rules it has been established beyond doubt that the orders of the Secretary, Land Revenue are wholly without jurisdiction and have no basis in law. There is,

therefore, no option but to quash these two letters of the Land Revenue Department dated 7th May, 1974 and 18th April, 1977 and it is ordered accordingly. It would now be open to the petitioner to approach the Registrar for the registration of the gift deed and I have no doubt that he will deal with the matter in accordance with law and pass appropriate orders keeping in view the procedure laid down in the Rules regarding registration. The petition is, therefore, allowed as indicated above but the parties are left to bear their own costs."

The deed of gift came to be registered in the Petitioner's name on 22-02-1978. Needless to reiterate here that she was a woman of Sikkimese origin.

(i) In Writ Petition No.10 of 1991 (*Mrs. Padma Kumari Ganesan vs. The State of Sikkim and Others*), the Petitioner's grievance was that the District Registrar-cum-Collector, East District, Gangtok, had refused to register the deed of gift executed by the Petitioner on 08-05-1989, in favour of her two sons. The High Court observed that the Married Women's Property Regulation of 1962 had never been brought into force in the State of Sikkim as the Respondents not only did not deny the Petitioner's assertion on oath to that effect, but also failed to produce any order or notification of His Highness the Maharaja of Sikkim bringing the said Regulation into force. In view of the above findings, the larger question whether the Married Women's Property Regulation of 1962 was *ultravires* being violative of Article 15(1) of the Constitution was not considered. The High Court finally observed that;

"6.

(i) the deed of gift dated 8.5.89 executed by the petitioner in favour of her two sons, Venugopal and Nandagopal, the application of the petitioner and other accompanying documents shall now be considered afresh by the District Registrar-cum-Collector, East District, Gangtok.

(ii) the petitioner or her representative shall be given an opportunity to be heard in the matter of registration.

(iii) the District Registrar-cum-Collector, East District, Gangtok shall take a decision in the matter of registration within two months from the date of appearance of the petitioner before her, strictly in accordance with law and without taking into consideration the Married Women's Property Regulation of 1962; and

(iv) the petitioner as undertaken shall appear before the District Registrar-cum-Collector, East District, Gangtok on 23.9.91 to receive directions as to further proceedings in the matter of registration.

.....”

[emphasis supplied]

(ii) A careful reading of the Judgment (*supra*) clearly falsifies the submissions of Learned Senior Counsel for the Petitioners that the Judgment had held that the immovable properties of Sikkimese woman married to a non-Sikkimese is transferable, neither was it propounded that she was also free to inherit the property of her parents. It is clearly a misinterpretation of the pronouncement. The Court only gave directions to the District Registrar as extracted (*supra*). Suffice it to remark that neither party furnished before this Court the further fate of the said matter.

19. Now, turning to the argument of Learned Senior for the Petitioners pertaining to issuance of Residential Certificates (RCs) to non-Sikkimese Indian citizens and also the contention that property rights and citizenship rights are independent of each other, it is worth remarking that no one has denied the Petitioners Indian citizenship. In addition, the Petitioners are also COI holders. Relevant reference is made to Notification No.120/Home/2010, dated 26-10-2010, published in the Sikkim Government Gazette on 01-11-2010, vide which the Government authorized the concerned authorities to issue RCs to persons falling in different categories as indicated in the Notification, on the recommendations of the Gram Panchayat or the Nagar Panchayat/Municipality.

(i) In supersession of the Notification of 2010 (*supra*), Notification No.23/Home/2015, dated 15-05-2015, was published in the Sikkim Government Gazette on 18-05-2015, the relevant portion of the Notification is extracted hereinbelow;

“
No.23/Home/2015 **Dated : 15.05.2015**

NOTIFICATION

I. In supersession of Home Department's Notification No.120/Home/2010 dated 26/10/2010, the State Government is pleased to authorize the District Collectors within their respective jurisdictions and with the prior clearance of the Secretary, Home Department and Secretary, Land Revenue & Disaster Management Department to issue **Residential Certificates** to persons falling in the different categories as indicated below on the recommendation of the Gram Panchayat or the Nagar Panchayat/Municipality and being duly satisfied with such recommendation after proper police verification with immediate effect:-

1. **An applicant who has established beyond all reasonable doubt that the applicant was a resident of the State of Sikkim on or before 26th April 1975 and has been continuously residing in the State of Sikkim since then, or**
2. An applicant who has established beyond all reasonable doubt that the applicant is the natural legal descendent of the person referred to in category 1 above and has been continuously residing in the State of Sikkim since birth.

.....” **[emphasis supplied]**

(ii) Vide Notification No.12/Home/2018, dated 10-03-2018, published in the Sikkim Government Gazette on 19-03-2018, the State Government enumerated the benefits that would accrue to holders of RC, issued under Home Department's Notification dated 15-05-2015 (*supra*). The Notification dated 10-03-2018 reads as follows;

“

**GOVERNMENT OF SIKKIM
HOME DEPARTMENT
GANGTOK**

No.12/Home/2018

Dated : 10.03.2018

NOTIFICATION

The State Government is hereby pleased to notify that the following benefits will accrue to the holders of Residential Certificate issued under Home Department's Notification No.23/Home/2015 dated 15/05/2015, as amended:

1. Ration Card.
2. Trade Licence in Municipality and Nagar Panchayat jurisdiction.
3. **Purchase/lease of immovable property in Municipality and Nagar Panchayat jurisdiction with the prior approval of the State Government.**
4. Taxi Permits for BPL Residential Certificate holders.
5. Driving Licence (NT/T).
6. Admission in Government Educational Institutions.
7. Free Books, Uniforms and Midday Meals in Government Schools for BPL Residential Certificate holders.
8. Exemption of College Fees in Government Colleges for BPL Residential Certificate holders.
9. Free medical services in Government Hospitals for BPL Residential Certificate holders.
10. Other Social Welfare Schemes as per fulfillment of scheme specific eligibility for BPL Residential Certificate holders.

By order and in the name of the Governor.

**S. C Gupta, IAS
Additional Chief Secretary
Government of Sikkim**

File No.Home/Confdl/158/2015/01/Vol:III”
[emphasis supplied]

(iii) RC holders, therefore in light of the afore extracted Notifications are entitled to benefits *inter alia* of purchase/lease of immovable property in Municipality and Nagar Panchayat jurisdiction with the prior approval of the State Government. The Government may have stopped short of grant of COI to the Petitioners progeny, on account of the existing laws which are protected, however it does not debar them from obtaining RC from the Government, which by and large offers the same facilities as

those extended to COI holders. RC holders are not prohibited from purchase, lease or sale of immovable properties, as seen reflected in the Notification (*supra*), subject to the limitations prescribed thereof.

(iv) That having been said, it is now relevant to look at the provisions of the Revenue Order No.1 of 1917, dated 17-05-1917 to address the argument of the Petitioners regarding this law. The relevant portion reads as follows;

"REVENUE ORDER NO.1

With reference to Order **dated the 2nd January 1897**, it is hereby again notified to all Kazis, Thikadars and Mandals in Sikkim that no Bhutias and Lepchas are to be allowed to **sell, mortgage or sub-let** any of their land to any person other than a Bhutia or a Lepcha without the express sanction of the Darbar or officers empowered by the Darbar in their behalf, whose order will be obtained by the landlord concerned. If anyone disobeys he will be severely punished.

....." [emphasis supplied]

(v) The 1897 Notification referred to in the Revenue Order No.1 of 1917 was issued on 2nd January, which provides as follows;

"NOTICE

Is hereby given to all the Kazis and Mondals in Sikkim, that no Bhutias and Lepchas are to be allowed to sell or sublet any of their lands without the express sanction of the Council. If anyone disobeys this order, he will be punished severely.

....."

(vi) There is an erroneous interpretation of the Revenue Order No.1 of 1917 by Learned Senior Counsel for the Petitioners who in his argument contended that it does not debar the land from being transferred to a "*plainsman*". Revenue Order No.1 of 1917, as extracted above with clarity lays down that the Bhutias and Lepchas are not permitted to *sell, mortgage or sub-let* any of their land to "*any person*" other than a Bhutia or a Lepcha. The interpretation that the land in Sikkim can be transferred to a "*plainsman*" is not only erroneous but also misleading. Neither

party agitated before this Court whether Revenue Order No.1 was notified in the Sikkim Darbar Gazette at any time. The two laws extracted above debar the transfer of land of Bhutias-Lepchas to any other community in the State. This law is a protected law. Despite every Sikkimese including a COI holder being an Indian, the above laws debar transfer of land on the basis of community, which are apparently discriminatory but the law has to be complied with as already stated, until amended or repealed.

(vii) The Sikkim State Rules, Registration of Document, 1930 (hereinafter, the "Registration of Document Rules"), is saved by the *Adaptation of Sikkim Laws (No.1) Order, 1975*. The said Rule is extracted as follows;

"22. The Registration Officer **after satisfying himself that the contents of the document do not conflict with the existing land laws and rules regarding the holding of immovable property in Sikkim**, shall proceed with the registering of the document in accordance with procedure specified in paragraph (7)."

[emphasis supplied]

(viii) These Rules are to be read in tandem in the spirit of the Regulation of 1961 and Notification No.28/LR, dated 21-04-1969, as already discussed. In light of the existence of this law, when the registration of a document is to be made in the State of Sikkim, it must essentially be of a Sikkimese woman married to a Sikkimese man.

20. The argument of Learned Senior Counsel for the Petitioners with regard to the denial of the Petitioners right on account of Sikkim following the norm of a patriarchal society also has no legs to stand, in light of the existence of Notification No.28/LR, dated 21-04-1969 (extracted *supra*).

(i) Reliance on **C. Masilamani Mudaliar and Others** vs. **Idol of Sri Swaminathaswami Swaminathaswami Thirukoil and Others**⁹ by Learned Senior Counsel for the Petitioners to urge that the children of the Petitioners are entitled to inherit their properties is not applicable to the facts and circumstances of the instant case as also the decision in **Revanasiddappa and Another** vs. **Mallikarjun and Others**¹⁰, which was dealing with Section 16(3) of the Hindu Marriage Act, 1955, children of voidable marriages and legitimacy of children from such marriages.

21. The argument of Learned Senior Counsel for the Petitioners that this Court has held in **Nil Kumar Dahal** (*supra*) that in the absence of Succession Rights in Sikkim, the Hindu Succession Act of 1956, as amended, would be applicable, is to be comprehended in its correct perspective. That, pronouncement has no bearing in the instant matter. It was observed in **Nil Kumar Dahal** (*supra*), that, in the absence of any statutory provision dealing with Succession in the State, and as the Hindu Succession Act, 1956, has not been extended and enforced in the State, but at the same time considering that the Courts in Sikkim have applied the provisions of law of the country, where the laws in Sikkim are inadequate, or do not cover a specific area, it stands to reason that the provisions of the Hindu Succession Act, 1956, can be invoked and applied for the purposes of determining matters relating to succession in Sikkim, involving *parties to whom the personal law is applicable, till specific laws occupy the field.*

22. On the question of the Petitioners not having *locus standi*, I have perused the decision in **Jasbhai Motibhai Desai** (*supra*) relied on by Learned Additional Advocate General. The ruling lays

⁹ (1996) 8 SCC 525

¹⁰ (2011) 11 SCC 1

down that as a general rule the Petitioners ought to be aggrieved by the infringement of some legal right or prejudice caused to some legal interest inhering in the Petitioner. It goes on to explain that Article 226 provides that an applicant should "ordinarily" be one who has a person or individual right in the subject matter of the application. The expression "ordinarily", it was explained, is not a cast-iron rule, it is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in subject matter. Having given due consideration to the arguments advanced and the grievance of the Petitioners, despite the Learned Additional Advocate General relegating the case of the Petitioners to one as being an emotional cry of mothers, in my considered view, it cannot be confined to such an adjective, by virtue of the fact that, the property that they own by acquisition or have inherited cannot be registered in the names of their rightful inheritors. In fact in ***Jasbhai Motibhai Desai (ibid)***, it has even been held that in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority but has a substantial and genuine interest in subject matter of the proceedings will be covered by this rule. The Petitioners are indeed affected by the existing laws which prevent them from legally handing over their properties to their children. Hence, in view of the foregoing discussions, the question of the Petitioners not having *locus standi* does not have weight and is thus disregarded.

23. It is now apposite to discuss public policy and legislation. In ***Gujarat State Petroleum Corpn. Ltd. vs. Union of India***

and Others¹¹, word “policy” was explained and it was observed that anything that is done contrary to the “public policy” is a harmful thing, though the concept of what is public good or in the public interest, or what would be injurious or harmful to the public good or public interest has varied from time to time. The Learned Additional Advocate General had drawn strength on this facet by relying on **BALCO Employees’ Union (Regd.) vs. Union of India and Others**¹², wherein it was observed that it is *not* for the Courts to consider the relative merits of different economic policies and consider whether a better policy may be evolved.

(i) In **Kirloskar Ferrous Industries Limited and Another vs. Union of India and Others**¹³, reference was made to a plethora of decisions of the Supreme Court which held that, policy decisions are in the domain of the Executive authority of the State and the Courts should not embark on the uncharted ocean of different authority nor question the efficacy or otherwise of such policy, so the same does not offend any provision of the Constitution of India.

(ii) Ergo, this Court is of the view that every branch of the Government be it the Executive, Legislature and the Judiciary, each has a defined role and is expected to operate within the ambit of the boundaries set out for them. The separation of powers essentially is to ensure that there is no overlapping or encroachment by one branch into the working of another branch.

24. In the instant matter, the old laws of Sikkim being protected laws as clearly laid down in the special provision for Sikkim *viz.*, Article 371F(k) of the Constitution and duly saved by

¹¹ AIR 2008 (NOC) 2761 (GUJ.)

¹² (2002) 2 SCC 333

¹³ (2025) 1 SCC 695

the *Adaptation of Sikkim Laws (No.1) Order 1975*, cannot be tinkered with by this Court for the reasons which have been discussed *in extenso*. In my considered view, it falls in the domain of the Executive and the Legislature. The Court surely cannot arrogate to itself powers that are reserved for the Legislature nor can it interfere in Executive policy decisions.

25. In light of the foregoing detailed discussions, the Writ Petition being devoid of merit stands dismissed and disposed of.

26. Pending applications, if any, also stand disposed of.

(Meenakshi Madan Rai)
Judge

06-04-2026

Approved for reporting : **Yes**