

THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Extra Ordinary Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P. (C) No. 50 of 2021

Shri. Palzor Thendup Bhutia,
Son of Late Sonam Tashi Bhutia,
Resident of Penlong Bazaar,
P.O. and P.S. Gangtok,
East Sikkim-737103.

..... Petitioner

Versus

- 1.** State of Sikkim,
Through the Chief Secretary,
Government of Sikkim,
Gangtok, East Sikkim-737101.
- 2.** Urban Development Department,
Government of Sikkim,
Through its Secretary,
Gangtok, East Sikkim-737101.
- 3.** The Chief Executive Officer,
Gangtok Smart City Development Limited,
Level 5, Kisan Bazaar Building,
Lall Market Road,
Gangtok, East Sikkim – 737101.

.....Respondents

**Writ Petition under Article 226 of the Constitution of
India.**

*(Notice dated 06.10.2021 issued by the Urban Development Department,
Government of Sikkim, vide letter No.UDD/25/405/SA/439 ordering the vacation of
the premises/site legally allotted to Late Sonam Tashi Bhutia).*

Appearance:

Mr. N. Rai, Senior Advocate with Mr. Pradeep Tamang
and Ms. Tara Devi Chettri Advocate for the Petitioner.

Mr. Sudesh Joshi, Additional Advocate General, Mr.
Yadev Sharma, Government Advocate and Mr. Sujan
Sunwar, Assistant Government Advocate for the
State-Respondents.

Date of hearing : 07.09.2022

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

Bhaskar Raj Pradhan, J.

1. Heard Mr. N. Rai, learned Senior Counsel assisted by Mr. Pradeep Tamang and Ms. Tara Devi Chettri, learned counsel for the petitioner and Mr. Sudesh Joshi, learned Additional Advocate General for the State-respondents.
2. The writ petition has been filed by one Palzor Thendup Bhutia against the State-respondents challenging notice dated 06.10.2021 (incorrectly mentioned as 06.10.2018 in the writ petition) claiming it to be in violation of the site allotment Order dated 31.05.2002. The writ petition also prays in the alternative for a direction upon the State-respondents to allot a similar site premises in an around Gangtok town to him.
3. The documents filed by the petitioner as well as the State-respondents reflect that on 16.02.2000 Sonam Tashi Bhutia (since deceased) made an application to the concerned Minister of the UDHD respondent no.2 requesting for allotment of site for canteen at private bus stand which was newly constructed. He claimed to be unemployed and a Sikkim Subject Holder. Late Sonam Tashi Bhutia thereafter, seem to have filled a form of

application for allotment of site addressed to the Secretary of the respondent no.2 applying for allotment under the relevant provisions of Sikkim Allotment of House Site and Construction of Building (Regulation and Control) Act, 1985 (the Act). The form required the applicant to also provide the name of the members of the family and their occupation. In serial number 6(d) thereof the name of Palzor Bhutia, the petitioner herein, is mentioned as one of the members of the family of late Sonam Tashi Bhutia. On 31.05.2002 the Assistant Town Planner of the respondent no.2 vide site allotment Order No. 3054/UD&HD allotted 185 square feet of site at new car park Gangtok to late Sonam Tashi Bhutia. The site allotment order referred to a letter dated 12.04.2002 of late Sonam Tashi Bhutia accepting the terms and conditions mentioned in the department's letter No.1976/UD&HD dated 21.05.2002. The letter dated 21.05.2002 contained the following terms and conditions :

“.....

1. *The site salami (premium) of Rs.37,000/- (Rupees thirty seven thousand) only shall be deposited by you in the name of the Secretary, UD & HD under the head “0045-O.T.D.”- other taxed and duties and site salami fee and submit the Bank receipt within one month from the date of issue of this letter;*

2. *That you shall pay ground rent @ Rs.93/- (Rupees Ninety Three) only per annum from the date of allotment which will not however be a basis for the claim of ownership of the site if no construction is started within the stipulated time;*
3. *That the construction of building should come up as per approved Blue Print Plan;*
4. *No residential site shall be converted into a commercial one unless the site has a Godown and a parking space reserve within the given site after leaving the road.*
5. *That any extension for the ground of extending your building beyond the area already allotted, in the Government land shall be presumed to be a trespass and necessary legal action taken against you.*
6. *That the site allotted to you or the building which you may be construct thereon shall not be transferred to any other party in any manner whatsoever without the prior approval of the Government.*
7. *That the allotment of site shall be on a lease basis for a period of sixty years to be commence from the date of allotment order renewable in such conditions and for such period as the Government may decide. A registered copy of the lease Deed shall be submitted to this Department before construction order is issued.*
8. *That the ground rent shall be increased every ten years of the period of lease by 50%.*
9. *That you shall abide by the building by laws as well as all other Acts and Rules applicable of the Urban Development & Housing Department or any other Department of the Government of Sikkim.*
10. *That you will confine the construction exclusively within the site allotted to you for which a Blue Print Plan has to be submitted for approval to this Department and any encroachment beyond the site allotted to you will be liable to be demolished as per law.*

The building (built up area may not exceed) will have to be built so that a minimum of 4 ft on the 3 sides & 5 feet in the front is kept from the edge of the building boundary.

The Blue Print Plan should show the following:-

- i) garbage chute for disposal of wastes.*
- ii) drainage plan showing where the rain water and waste water will be disposed off.*
- iii) sewerage plan showing the disposal of night soil with reference to the PHE sewer network.*
- iv) proposed water and power connections.*

Please note that no sewer or water pipe should cross or pass inside a drain or water course failing which they will be removed without notice.

- 11. That you will be responsible for any damage to private or public properties due to your construction work;*
- 12. That you shall not dump earth and debris recovered from the site at place other than what has been earmarked for such purposes by this Department, failing which the construction will be stopped.*
- 13. That you will not unload any building materials on the road side and in the event of any wilful violation, the department shall auction the materials without giving any notice to you.*
- 14. That this proposal for allotment issued to you will be automatically cancelled without any intimation if all of the following documents are not produced by you;*
 - 1) Sikkim Subject Certificate or Certificate of Identification*
 - 2) No Landed Property Certificate,*
 - 3) No Housing Flat Certificate,*
 - 4) Site application form with photograph*

A formal allotment order will be issued in your favour after you have conveyed, with the required documents, your acceptance of the above terms and conditions and also paid site salami (premium) within one month of issue of this order failing which this allotment will stand automatically cancelled without any intimation to you.

15. *That the construction should be two storey only.*
16. *Where the Government has developed the site, you shall pay the development cost also with the site salami.*
17. *That you shall start the construction only after the Department demarcates and pegs your site and in case it is found that you have started the construction without demarcation of the site by the Department, the same shall be demolished and the cost of such demolition recovered from you.*
18. *The side of any of the Roads/Highway, you shall not encroach ever by way of cantilever upon the road reserve which are as follows:-*

Gangtok

1. *Bye-Pass
(Western as well as Northern Bye-Pass) – 45' from the centre of the road.*
2. *National Highway – 27' from the edge of the road.*
3. *Other roads – 27' from the edge of the road.*

Please note that the road reserve is required to be kept vacant in your own interest as you may require it for your own vehicular parking/road expansion in future.

19. *That you shall not ask for additional site in future.*

.....”

4. **The site allotment order also contained certain terms and conditions which are as follows:**

“.....

1. That you shall submit the Blue Print Plan of the proposed building in quadruplicate to this Department for approval after the demarcation of the site has been done by the Engineer of this Department.
2. That you shall not start the construction work without demarcation of the site and approval of the Plan.
3. That since the site being transferred to you on a lease basis you shall sign the Approved lease deed agreement containing the terms and conditions of the transfer as early as possible and not later than three months from the date of this order failing which the execution of work on the site will be stopped for which you will keep in touch with this office immediately.
4. That the lease deed will have to be registered and you shall have to bear all expenses involved in the registration including the cost of the forms to be supplied by this department.
5. That you shall complete the construction within one year from the date of this order and submit the completion report of this department failing which the site allotted to you would be liable to be cancelled and
6. That the construction for the building should come up within the area of 185.0 sft only.

.....”

5. In the counter affidavit filed by the State-respondents it is seen that on 02.08.2008 the Assistant Town Planner of the respondent no.2 had issued an order of cancellation of site to late Sonam Tashi Bhutia informing him that the allotment stood cancelled since there is a proposal from the Government to take up mega project in that area. The

State-respondents have also filed yet another document dated 04.11.2008 purportedly written by late Sonam Tashi Bhutia and addressed to the Secretary of the respondent no.2 which also contains certain notes thereon of the official of the department. The petitioner however, contests this document as according to the petitioner it is not the signature of his late father Sonam Tashi Bhutia.

6. From the documents on record it seems that on 30.10.2011 late Sonam Tashi Bhutia expired. However, ground rent continued to be paid in his name. The petitioner has also filed various documents for payment of water supply bills which also reflects that the water supply bills were also made in the name of late Sonam Tashi Bhutia. According to the petitioner after the death of late Sonam Tashi Bhutia the petitioner applied for trade license before the Gangtok Municipal Corporation and he was accordingly issued a trade license to run his business in the same property as that of his late father on 02.03.2012 which was further renewed on 03.06.2019.

7. The writ petition seeks to challenge the impugned notice dated 06.10.2021 in the name of Mr. Sonam Bhutia by his son, the petitioner. This notice had been addressed to late Sonam Tashi Bhutia who had since expired in the year 2011 itself. Obviously respondent no.2 had been

oblivious of his death. It is not in dispute that the petitioner is still in possession of the property which is allotted to his late father. From the documents on record it is also clear that the site allotment order to late Sonam Tashi Bhutia mandated the signing of the lease agreement between late Sonam Tashi Bhutia and the respondent no.2. Neither the petitioner nor the State-respondents have filed any lease deed signed between them. Quite clearly it does not exist. Since the State-respondents desired to rely upon the cancellation Order dated 02.08.2008 issued to late Sonam Tashi Bhutia this court asked the learned Additional Advocate General to enlighten this court on the relevant provision of the Act which permitted them to cancel the allotment so granted.

8. The learned Additional Advocate General fairly submits that there seems no provision specifically permitting cancellation of sites allotted. It was his further submission that if therefore, there is no provision for cancellation of site allotment in the Act it would be incumbent upon them to issue a notice under Section 106 of the Transfer of Property Act, 1882. A perusal of Section 106 of the Transfer of Property Act, 1882 reflects that a lease of immovable property for any other purpose other

than what has been specified in the first part of sub-section (1) thereof mandates a 15 days' notice.

9. The impugned notice addressed to late Sonam Tashi Bhutia dated 06.10.2021 grants only 7 days notice to a dead person to vacate the premises. Faced with this situation, the learned Additional Advocate General submits that they would proceed against the petitioner as per law for eviction in the manner required. In view of the same the impugned Notice No.D/UDD/25/405/SA/439 dated 06.10.2021 is hereby quashed. The State Government may take any necessary legal action which may be required and permissible in the circumstances they are in.

10. In such view of the matter the writ petition needs no further consideration and it stands disposed of accordingly. The pending application also stands disposed.

**(Bhaskar Raj Pradhan)
Judge**

Approved for reporting : **Yes**
Internet : **Yes**

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