

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 21st May, 2025

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

WP(C) No.50 of 2024

Petitioner : Jigme Lachungpa

versus

Respondents : District Magistrate, Gangtok and Others

Application under Article 227 of the Constitution of India

Appearance

Mr. Sajal Sharma and Mr. Kazi Sangay Thupden, Advocates for the Petitioner.

Mr. Yadev Sharma, Government Advocate for the Respondents No.1 and 5.

Mr. S. S. Hamal, Senior Advocate (Legal Aid Counsel) with Mr. Tashi Wongdi Bhutia, Advocate (Legal Aid Counsel) for the Respondent No.2.

Mr. Sangay G. Bhutia, Advocate (Legal Aid Counsel) for the Respondent No.3.

Mr. S. S. Hamal, Senior Advocate with Mr. Pradeep Sharma and Ms. Beneeta Gurung, Advocates for the Respondent No.4.

JUDGMENT (ORAL)

Meenakshi Madan Rai, J.

1. The Petitioner herein, the Complainant before the Learned District Magistrate, is aggrieved by the Order of the Learned District Magistrate, dated 17-10-2024, in an unnumbered Criminal Misc. Case of 2024, between the litigating parties herein and assails it.

2. The Petitioner's case is that he was in possession of a plot of land, bearing registration No.2246, measuring 0.0960 hectares, situated at Lingdum Busty, Ray Khola, Gangtok. He claims to have been dispossessed from the said plot of land from 14-02-2024, by the Respondents No.2, 3 and 4. As per the Petitioner, the

property stands recorded in the name of his father Late T. Lachungpa with no family partition having been effected thereto. The Respondents denied the allegations of dispossession.

(i) It is recorded in the impugned Order *inter alia* that, after receipt of the Complaint, apprehending breach of peace, the parties were directed to maintain *status quo* with regard to the disputed property, on 30-03-2024. Thereafter, on going through the pleadings of the parties and the Police report, the District Magistrate was of the view that as the parties were family members and there was no partition or settlement amongst them, the proceedings under Section 145 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), was inappropriate and accordingly rejected, reasoning that, the Magistrate had no jurisdiction to try cases of a civil nature. The Order dated 30-03-2024 was also consequently revoked.

3. Thus aggrieved, this Petition under Article 227 of the Constitution of India has been filed *inter alia* with the following prayers;

- (a) A rule upon the Respondent No.1 to show-cause why the impugned Final Order dated 17-10-2024, passed by the Respondent No.1 shall not be set aside;
- (b) A writ or order or direction or declaration that the Final Order/Judgment dated 17-10-2024 passed by the Respondent No.1 Learned District Magistrate, Gangtok is illegal and hence liable to be set aside;
- (c) A writ or order directing that the impugned Final Order dated 17-10-2024, be set aside, and the matter be remanded for adjudication by the Respondent No.1 by conducting the final hearing and cross-examination of witnesses, in a fair and impartial manner;
- (d) Costs of the proceedings;
- (e) Pass any other writ(s), order(s)/direction(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of this present Writ Petition.

4. It is submitted by Learned Counsel for the Petitioner that, the Petitioner is aggrieved by the irregularity in the

proceedings before the Learned District Magistrate, where all the parties marked their presence on 24-07-2024, as buttressed by Annexure P-14, the attendance sheet. The document indicates the attendance of the District Magistrate on the said date along with that of the Petitioner in person, the Learned Counsel for the Petitioner Mr. Kazi Sangay Thupden and Ms. Som Maya Gurung, while Mr. Mohan Sharma entered appearance for the Respondents No.2 and 3. That, on the said date, the District Magistrate verbally ordered the parties to file their evidence on affidavit on the next date. Pursuant to the said order, the evidence on affidavit was filed before the District Magistrate, by the Petitioner as fortified by Annexures P-16 and P-17 on 03-09-2024 and by the Respondents No.2 and 3 vide Annexure P-18 on the same date. The District Magistrate also gave the Respondents No.1 and 2 the liberty to file response to the Rejoinder filed by the Complainant. After all of the above measures were taken by the parties, it was ordered that the evidence on affidavit would be confirmed and cross-examination would be conducted before the concerned authority.

5. However, much to the surprise of the Petitioner, on 17-10-2024, sans any of the aforementioned steps being taken and despite the evidence on affidavit having been filed, the impugned Final Order was pronounced, devoid of an opportunity to the Petitioner to cross-examine the Respondents No.1 and 2. Consequently, on non-compliance of procedure prescribed by law there has been a violation of the principles of natural justice, to the prejudice of the Petitioner. It is submitted by Learned Counsel for the Petitioner that the impugned Final Order may be set aside and the District Magistrate be directed to take steps as per law and as

per the verbal orders issued by him to the parties pursuant to the attendance sheet dated 24-07-2024.

6. Learned Counsel for all the Respondents fairly admit the facts and circumstances as elucidated hereinabove and have no objection to the arguments advanced by Learned Counsel for the Petitioner.

7. Having given due consideration to the submissions of Learned Counsel for the parties and the fact that the opposing Counsel have no objection, the impugned Final Order of the District Magistrate dated 17-10-2024 is set aside, with a direction to the Learned District Magistrate to take necessary steps in terms of the procedure prescribed by Section 145 of the Cr.P.C.

8. Writ Petition stands disposed of accordingly.

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

(Meenakshi Madan Rai)
Judge
21-05-2025