

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 10th September, 2025

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

WP(C) No.51 of 2025

Petitioner : Dhan Bahadur Thapa and Others

versus

Respondents : State of Sikkim and Others

Petition under Article 226 of the Constitution of India

Appearance

Mr. N. Rai, Senior Advocate with Ms. Tara Devi Chettri, Advocate for the Petitioners.

Mr. Thinlay Dorjee Bhutia, Government Advocate with Mr. Sujan Sunwar, Assistant Government Advocate for the Respondents.

JUDGMENT (ORAL)

Meenakshi Madan Rai, J.

1. The Petitioners No.1 to 5 claim to be owners of landed property contiguous to one another, portions of which the Government required from all of them, for the purposes of construction of the Adampool Highway. Subsequently, the route of the highway was realigned, as a consequence of the realignment, some portions of the aforementioned lands lay unused. It is the claim of the Petitioner No.1 that, suddenly from 29-08-2025, construction of walls on a war footing has commenced on a portion of unused land, which belongs to him, hence the prayers in the Writ Petition seeking *inter alia* a direction to the Respondents to stay away from the unutilized portions of the properties of the Petitioners. A writ or direction to the Respondents for payment of compensation as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter, the "Land Acquisition Act, 2013). To

disburse the compensation with 100% solatium as per the said Act and to restrain the Respondents from trespassing or taking forceful possession of the Petitioners land, issue an ad interim or permanent injunction restraining the Respondents or their men, agent and any other person(s) from continuing any construction on the land of the Petitioners.

2. Having heard Learned Senior Counsel for the Petitioners, and perused the averments in the Petition and the documents annexed thereto, Notice dated 03-08-2021, indicates that the Petitioner No.1 had sold an area of 0.3700 hectares to the Government at a consideration value of ₹ 75,67,092/-. As per letter dated 29-11-2021, the Petitioner No.1 had requested for return of the unused land (measuring 0.1280 hectares) to him from the area of 0.3700 hectares, acquired for construction of the alternative highway. The document also reveals that 80% of the compensation amount against the acquisition of the land was received by the Petitioner No.1 (Annexure-P3).

(i) Correspondence dated 02-12-2021, addressed to the Respondent No.5 (The District Collector, Gangtok District) by Petitioner No.2 herein, reflects *inter alia* as follows;

".....
With due respect, in reference to your Notice No:East/Gangtok/11100771 dated 03/08/2021, I Dr. Mohan Thapa, S/O Dhan Bahadur Chettri, also legal heir of the land having Khatian No:304 and Plot No:45, with area of 2.5297 Hectares, situated at Ranka Revenue Circle, Salangthang would like to state the following:

1. That the said land is in the name of my father Shri Dhan Bahadur Chettri and is our ancestral property.
2. That 0.3700 Hectares of the total land was acquired by Roads and Bridges Dept. for the construction of Road at a consideration value of Rs.75,67,092/- of which we received about Rs. 32,19,293/- only.
3. That due to realignment of the Road some portion of the land acquired from us was left out.

4. Thus I request you to hand back the land left out by the road to us for which I am ready to return back the compensation that is owed.

5. Hence due to the above stated facts, I object to the registration of the above mentioned land to Secretary Roads and Bridges Department, till the matters are resolved.

.....” (Annexure P4)

The intent and purport of the correspondence of the Petitioner No.2 is clear and requires no further elucidation.

3. On 19-12-2024, the Respondent No.3 (The Additional Chief Engineer, Roads and Bridges Department) addressed a letter to the Respondent No.5 (The District Collector, Gangtok District), concerning the landed property owned by Petitioner No.3, identified as Plot No.71/P under Ranka Block, which was “*initially utilized*” during the planning of the double lane road, at Adampool Ranka Sichey. It was explained therein that, due to a subsequent change in the road alignment, the portion of land falling under the said plot remained unutilized and was not incorporated into the final construction plan. That, Petitioner No.3 has expressed his willingness to refund the compensation amount to the department and have the unused land returned to him. That, this transaction as per Respondent No.3 (The Additional Chief Engineer, Roads and Bridges Department) would be subject to the following caveats; (a) refund of the said compensation by the Petitioner No.3 to the department; and (b) thereafter reversion of the land under Plot No.71/P to the said Petitioner No.3 (Annexure P8).

(i) In response thereof, vide letter dated 01-04-2025 (Annexure P9), the Deputy Director of the office of Respondent No.5 (The District Collector, Gangtok District) department addressed to the Respondent No.3 (The Additional Chief Engineer, Roads and Bridges Department), submitted therein that, 80% compensation for an area of 0.0080 hectares was already received

by the Petitioner No.3 and 20% payment was pending. That, the office of the Respondent No.4 required the copy of the approval of the competent authority from the department of Respondent No.2 stating the reasons for cancellation of the acquired land and a direction to be given to the land owner as to whether the compensation received by him is to be deposited in the Government exchequer with or without interest.

4. Vide File notings of the Respondent No.2 (Roads and Bridges Department), the facts pertaining to the land of Petitioners No.1 and 2 is clarified as follows;

".....

It is to mention that 0.3700 hectare of land from plot no.45/P at Ranka Block recorded in the name of Shri Dhan Bdr Thapa was involved in the alignment of road for which the total compensation including land & standing properties was assessed as Rs.40,24,117/-. Further, it is to state that the land is being purchased at the rate of Rs.100 per sq.ft by Road & Bridges Department.

The registration process was initiated and notice was issued on 03/08/21 but the registration is pending till date. However, after issuance of notice 80% payment of Rs.32,19,293/- has been received by the land owner.

Now, the land owner has objected for registration of land and is requesting to revert back the unused portion of land for which he is willing to return the compensation back to the Road & Bridges Department.

In order to ascertain the actual status of his claim of unused portion of land a joint inspection may be carried out along with Road & Bridges Department. Further, the land owners may be informed to approach Road & Bridges Department for reversion of his land.

....." (Annexure P10)

5. The Petitioner No.2, vide another letter which is dated 28-03-2025 (Annexure P11), addressed to the Respondent No.5 (The District Collector, Gangtok District), requested for return of the portion of unused land and his willingness to handover the compensation received in lieu of the said land. Pursuant thereto, a

joint inspection of the land appears to have been planned on 19-04-2025 as apparent from Annexure P12.

(i) Letter dated 08-05-2025, indicates that the joint inspection was conducted and report thereof was forwarded to the Superintending Engineer of the Respondent No.2 (Roads and Bridges Department) by the Deputy Director of the Respondent No.5 (The District Collector, Gangtok District) department, reiterating the request of the Petitioner No.2 for return of the unused portion of the land.

(ii) This correspondence for the first time clarifies that the joint inspection revealed that an area of 0.1280 hectares out of the total of 0.3700 hectares acquired from Petitioner No.1 was unutilized for the construction of the road.

6. Following this development correspondence dated 27-08-2025 reveals that, the Revenue Officer cum Assistant Director of the Respondent No.8 (Land Revenue and Disaster Management Department) was informed by the Respondent No.4 (Assistant Engineer, Roads and Bridges Department), that the department was in receipt of a letter from the Member of the Legislative Assembly, 28-Upper Burtuk Constituency, regarding a joint survey and proper demarcation of private and Government land along Adampool Highway, below Khelgaon, Gangtok. It was further informed that, the letter states that a local organic market was being established in the said area where local produce was being sold by the local entrepreneurs and youth.

7. From all of the above correspondence, it appears that the Petitioners each claim to have given some land for construction of the road, which they now seek reversion of more especially Petitioners No.1, 2 and 3 as can be gauged from the documentary

evidence relied on by the Petitioners and their averments in the Writ Petition.

(i) From Paragraph 3 of the Writ Petition it can be culled out that *"3. That among the Petitioners' lands, the first two portions of the land directly border the Adampool Highway and the other three lie contiguously behind it."*. There is evidently no exact identification of the land or its specific location. It is not possible for this Court to come to a conclusive finding of which property belonged to the Petitioners on the basis of such averments and documents, which on the other hand establishes that there are disputes on factual aspects, including demarcation of land used and unused by the Respondents after acquisition.

(ii) As the Petitioners claim to have land contiguous to each other which were acquired for construction of the alternative route, the Petitioners have to be able to identify exactly who the land on which the construction is taking place belongs to. There is ambiguity in the identification of the lands in the Writ Petition. In fact, Learned Senior Counsel for the Petitioners after annexing and relying on all the documents filed with the Petition, wherein the lands of the Petitioners are referred to as 'acquired lands' for the purposes of the construction of the Adampool Highway, now alleges that, the lands were not acquired in terms of the Land Acquisition Act, 2013. The stance of Learned Senior Counsel for the Petitioners is that the Respondents have now encroached into the land of the Petitioners i.e., unused portion of land which they seek reversion of.

8. Learned Government Advocate who has appeared on advance Notice submits that he has clear instructions that Respondents No.2, 3 and 4 have not commenced any construction

on any land of the Petitioners nor given any direction to any person, or Government authority, to construct any structure on any portion of land which the Petitioners claim to be owners and are seeking reversion of. It is urged that the Petitioners have not been able to clarify in the Writ Petition, as to the location and area of land where the alleged construction is taking place and the copies of photographs furnished do not assist in such identification.

9. Having given due consideration to the foregoing submissions and having meticulously perused the averments in the Petition and the documentary evidence relied on by the Petitioners, I am of the considered view that the matter is essentially a civil dispute between the Petitioners and the Respondents, resting on several factual aspects. Questions of fact regarding the acquisition or non-acquisition of lands of the Petitioners, ownership of the contiguous lands of the Petitioners and its identification by way of joint inspection and consequent demarcation, possession of the said lands, whether compensation was paid to the Petitioners as per law, are all issues which are to be tested on the anvil of evidence to be furnished by the parties and cannot be determined in the ambit of the jurisdiction of this Court under Article 226 of the Constitution of India.

10. The Petitioners may accordingly approach the correct forum for redressal of their grievances, if so advised.

11. The Writ Petition is consequently dismissed and disposed of.

(Meenakshi Madan Rai)
Judge

10-09-2025

Approved for reporting : **Yes**