

HIGH COURT OF SIKKIM : GANGTOK
Record of Proceedings

WP(C) No. 52/2016

RUTH KARTHAK LEPCHANI

PETITIONER (S)

VERSUS

D.C, SOUTH, NAMCHI, SOUTH SIKKIM

RESPONDENT (S)

For Petitioner : Mr. A. Moulik, Sr. Advocate as Amicus Curiae.
Ms. K.D. Bhutia, Advocate.
Mr. Ranjit Prasad, Advocate.

For Respondent : Mr. Sudesh Joshi, Addl. Advocate General.
Mr. Thinlay Dorjee Bhutia, Govt. Advocate.
Mr. Sujan Sunwar, Asst. Govt. Advocate.

Date: 02/09/2022**CORAM :**

HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE

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JUDGMENT : (per the Hon'ble, the Chief Justice)

This writ petition was filed before this Court way back in the year 2016, wherein the following reliefs were prayed for: -

"a. A Writ and/or order or orders and/or directions in the nature of a Writ Mandamus commanding the Respondent, District Collector (South) at Namchi to rectify, demarcate and restore the original mouza boundary outlines of maps dated 13.09.1988 and 25.10.2008 as per the mouza Map of 1.03.1983 in annexure P-B of 6.24 acres in case no.23 of 1980 after road and road reserve for .3580 hectare (.8846 acre) on 9.12.1968 and compensation paid to her for 484.50 np in jail, according to the authentic map of plot no. 33 (old) in new plot nos. 58,59 and 129 for 2.53 hectares (6.24 acres) with authentic original mouza boundary outlines as in maps of 1951-52 and 1.03.1983 vide, parcha 26.11.1982 with mutation of 25.11.1982, in file no.1(53) 81 - 83, SL no. 214; attested on 11.10.2000 by the Land Revenue Office vide case no. 23 of 1980, Judgement Decree order of 9.01.1986.

b. And for, order or further orders for vacation of trespass by late Mrs. Chou Lhamu Bhutia of .37 acre (.1563 hectare) on North boundary of plot no. 58, was absorbed into her plot no. 31 illegally by the Land Revenue Office by false mutation of 25.09.2003, without the knowledge of Petitioner vide, map of 13.09.1988 for twenty years, vide map of 25.10.2008.

c. And for any other further order or orders as Your Honor may deem fit and proper, to compensate your humble Petitioner for decades of nightmarish quantity horrors, deprivation and sufferings; together with costs for loss of her youth, freedom, wealth and income; cumulatively."

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Several orders have been passed from time to time. One of such is the order dated 17th June, 2022, which is setout hereinbelow:

" Having heard the learned advocates for the parties, this Court is of the view that the only issue which requires consideration is centered around a survey map, being Annexure P-7 at page 40 — where on the face of it there appears to be a slight discrepancy — vis-à-vis the map, being Annexure P-3 at page 22.

Learned Additional Advocate General may take instructions on this so that on the next date this matter can be effectively disposed of.

List this matter on 1st July, 2022."

Pursuant to the aforesaid order, the D.C. South, Namchi, South Sikkim, filed an affidavit before this Court on 24th August, 2022, through its Sub-Divisional Officer, Ravangla Sub-Division, wherefrom it appears that a survey was conducted on 12th July, 2022. Consequent upon such survey, the authorities found the land which was recorded in the name of the writ petitioner, Ruth Karthak Lepchani, also has certain portions under the physical possession of two other persons, namely, Mr. Chewang Dorjee Bhutia and Mr. Tashi Thendup Bhutia. The total area of the land in possession of these two persons have been morefully described in paragraph 5 and 6 of the said affidavit.

Since neither Mr. Chewang Dorjee Bhutia nor Mr. Tashi Thendup Bhutia are parties to the instant writ proceeding, this Court is of the view that the entire matter may be relegated before the District Collector, South, Namchi, South Sikkim, who shall take a decision with regard to whether the entire land in question belongs to the writ petitioner or some portions belong to Mr. Chewang Dorjee Bhutia and Mr. Tashi Thendup Bhutia, based on the judgment and order dated 09th January, 1986 of the learned Civil Judge, South Sikkim, Namchi, rendered in Civil Suit No. 23/1980 (*Ruth Karthak Lepchani vs. Chewang Dorjee Bhutia and Sonam Gyamki Bhutiani*) read with judgment and order dated 29th September, 2020, passed by this High Court in RSA No.03/2016 (*Shri Chewang Dorjee Bhutia vs. Smt. Ruth Haleem @ Ruth Karthak Lepcha & Ors.*), after giving adequate opportunity of hearing to all concerned including the writ petitioner as well as Mr. Chewang Dorjee Bhutia and Mr. Tashi Thendup Bhutia.

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The entire exercise in terms of this order shall be completed by the District Collector, South, Namchi, South Sikkim as expeditiously as possible within a period of four (4) months but not later than six (6) months from date of communication of a photostat certified copy of this order.

The writ petition stands disposed of accordingly.

(Biswanath Somadder)
Chief Justice

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