

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Jurisdiction)

Dated : 25th June, 2024

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

Cont.Cas(C) No.01 of 2024

Petitioner : Mrs. Srijana Gurung

versus

Respondents : The Union of India and Others

Petition under the Contempt of Courts Act, 1971 and
under Article 215 of the Constitution of India

Appearance

Mr. Jorgay Namka, Senior Advocate (Legal Aid Counsel) with Ms. Mingma L. Sherpa, Advocate (Legal Aid Counsel) for the Petitioner.

Ms. Sangita Pradhan, Deputy Solicitor General of India for Respondent No.1.

Mr. Zangpo Sherpa, Additional Advocate General with Mr. Sujan Sunwar, Assistant Government Advocate for the Respondents No.2, 3, 4 and 5.

Mr. Sudipto Mazumdar, Senior Advocate with Ms. Gita Bista, Advocate for the Respondent No.6.

JUDGMENT (ORAL)

Meenakshi Madan Rai, J.

1. This Contempt Petition has been filed by the Petitioner claiming that the Respondents have wilfully disobeyed the Judgment of the Learned Single Judge of this Court, in WP(C) No.47 of 2022, dated 29-05-2023, hence Contempt proceedings be initiated against them.

2. In the Writ Petition (*supra*), the Petitioner with her husband, claimed to be joint owners, of an RCC building, on land bearing plot no.290/2244, measuring 0.0140 hectares (1507 sq. ft.) at Pachey Samsing Block, Pakyong Elakha, Sikkim, vide registered Sale Deed Document, dated 13-02-2007 and *Parcha Khatiyon* no.690, dated 03-11-2009. That, the Petitioner received a "Final Notice" dated 08-09-2022, issued by the Respondent No.5

the Sub-Divisional Magistrate (in the Writ Petition *supra*), stating that her property had been acquired by the Respondent No.6 [National Highways & Infrastructure Development Corporation Limited (NHIDCL)] for construction/upgradation of the existing lane to a two-lane road. She was directed to vacate and hand over possession of the property described above, within ten days of receipt of the Notice. That, there was no Notification issued by the concerned authorities for acquisition of her property. Hence, the Petitioner by filing the Writ Petition sought a direction upon the Respondents to acquire her land and the RCC building at the prevalent market rate, following the due process of law, before taking physical possession.

3. During the course of the hearing in WP(C) No.47 of 2022, Learned Additional Advocate General for the State-Respondents No.2 to 5 and the Learned Senior Counsel appearing for the Respondent No.6 submitted that, they had no issue if the Petitioner restricted her claims to her property, viz., land described in the *Parcha Khatiyani* and that they were willing to ensure that they do not carry out any of their activities in the areas specified in the said *Parcha Khatiyani*. The Petitioner agreed that if the Court would protect her ownership rights, as reflected in the *Parcha Khatiyani*, she would not protest the project works undertaken by the Respondents for expanding the National Highway. The Learned Single Judge taking into consideration the understanding between the parties and having concluded that the Petitioner and her husband were the owner of land bearing plot no.290/2244 as found recorded in *Parcha Khatiyani* no.690, deemed it appropriate to dispose of the Writ Petition, without examining the merits of the

issues raised by the parties, by allowing the Respondents to continue with the infrastructural project of expansion of the National Highway, duly ensuring that they do not infringe upon the Petitioner's rights of ownership of the plot number, as specified above, without following due process of law.

4. On 22-02-2024, the instant Petition for initiating Civil Contempt proceedings as mentioned *supra* was filed before this Court, submitting *inter alia* that the Respondent No.4 vide an Order dated 06-02-2024, addressed to Respondent No.6 (NHIDCL) stated that, the Petitioner had constructed the RCC building illegally by encroaching on Government land, recorded as plot no.287 of the *Khasra* records, situated at Pachey Samsing Revenue Block, Pakyong District (adjacent to plot no.290). That, the said structure on which the Petitioner had constructed was illegal as it was on Government land. That, the illegal structure, viz., RCC building, was assessed for payment of compensation to facilitate the widening of the National Highway road by the NHIDCL under the National Highways Act, 1956. That, the total area upon which the building was constructed was 1787 sq. ft. That, the area of the Government land under plot no.287 encroached by the Petitioner was 1199 sq.ft. (cone area). That, 50% payment of compensation for the said structure had already been released and received by the Petitioner. That, thereafter Notices under Section 3E of the National Highways Act, 1956, was issued to the Petitioner to vacate the structure, but despite lapse of period for both Notices, the Petitioner had not vacated the structure, as such, the Respondent No.4 authorised the Respondent No.6 to demolish the structure belonging to the Petitioner on 13-02-2024.

5. It is urged by Learned Senior Counsel for the Petitioner that there has been a non-compliance of the Judgment of this Court by which specific directions were issued to protect the property of the Petitioner, i.e., the RCC building constructed on plot bearing no.290/2244. Admitting that, 50% of the compensation has been received by the Petitioner it is submitted that the compensation for the RCC structure was computed at approximately ₹ 97,90,287/- (Rupees ninety seven lakhs, ninety thousand, two hundred and eighty seven) only, that too not in terms of the Land Acquisition Act as ordered by this Court and the Petitioner has been short changed on that aspect as well. That, in the arbitration proceedings preferred by the Petitioner which ensued between the parties, in which the Arbitrator was the Law Secretary, Government of Sikkim, the compensation awarded is ₹ 2,21,10,804/- (Rupees two crores, twenty one lakhs, ten thousand, eight hundred and four) only, for the RCC structure, which however has been challenged by the Respondent No.6, being in excess of their expectations. That, before the Writ Court, when the Judgment dated 29-05-2023 was pronounced the State-Respondents made no allegation that the property of the Petitioner was constructed on a part of plot no.287, which the Petitioner is alleged to have encroached, sans proof. That, this is being raised for the first time before this Court. That, the questions put forth in the Order of this Court dated 04-04-2024 have not been clearly responded to by the State-Respondents, who have instead now resorted to the 1979-80 cadastral records, for their convenience, devoid of reasons, as the measurement of both plot nos.287 and 290 had been made by the Office of the Respondents No.4 and 5,

demarcated by their officer after which the construction of the building commenced and was completed several years ago. The claim of encroachment and illegality have been raised rather belatedly now. That, in view of the foregoing submissions as the building of the Petitioner has been constructed legally on her own plot of land, the protection granted by this Court in WP(C) No.47 of 2022 ought to be allowed to continue.

6. Learned Additional Advocate General submits that 50% of the compensation has already been paid and the remaining 50% is yet to be disbursed but there is no doubt that the Petitioner has encroached on plot no.287. That, the Learned Single Judge in the Writ Petition *supra* had protected the property of the Petitioner but the Judgment does not protect any illegally constructed property on a portion of the plot no.287. It is further submitted that in fact the issue of plot no.287 had been raised before the Learned Single Judge in the Writ Petition (*supra*), in its Counter-Affidavit. Because of the understanding between the parties, the Judgment of the Learned Single Judge had not discussed the merits of the matter.

7. Learned Senior Counsel for the Respondent No.6 canvassed that, 50% of the computed compensation has already been released and they are willing to release the remaining 50%. That, the work of expansion of the Highway should be allowed to continue unobstructed for larger public good and convenience. The Arbitrator, issued an award of ₹ 2,21,10,804/- (Rupees two crores, twenty one lakhs, ten thousand, eight hundred and four) only, and being aggrieved thus the Respondent No.6 is in fact before the concerned Learned Court under Section 34 of the Arbitration and Conciliation Act, 1996. That, the Respondent after depositing 50%

of remaining compensation may be permitted to continue with the construction.

8. Having heard Learned Counsel for the parties, it is evident that the crux of the matter as can be culled out from the averments, documents and submissions advanced are that, according to the Petitioner, their RCC building has been constructed legally on plot no.290/2244, measuring 0.0140 hectares (1507 sq. ft.) at Pachey Samsing Block, Pakyong Elakha, Sikkim, which they own, vide registered Sale Deed Document dated 13-02-2007 and *Parcha Khatiyon* no.690 dated 03-11-2009. That, due process has not been followed for acquisition of their property or for computing compensation, to their detriment and prejudice. Contrarily, it is the case of the State-Respondents that half the portion of the RCC building has been illegally constructed by the Petitioner on the road reserve land by encroaching upon it when it is Government land, being plot no.287, which is adjacent to plot no.290. It therefore emerges with clarity that the dispute between the parties has taken the nature of a civil dispute, which this Court is not in a position to adjudicate. It appears that the parties each have their own interpretation of the Judgment in the Writ Petition (*supra*), and consequently there is no wilful disobedience of the Judgment of the Court.

9. In the facts and circumstances, the Learned Senior Counsel for the Petitioner submits that he seeks to obtain necessary reliefs from the Civil Court and prays for protection of the property of the Petitioner till he approaches the appropriate Civil Court.

10. To avoid prejudice to the Petitioner, at this juncture and in light of the Judgment of the Learned Single Judge in WP(C) No.47 of 2022, dated 29-05-2023 and in consideration of the foregoing discussions, the Respondents shall not take any coercive measures with regard to the property of the Petitioner which has been afforded protection by the Judgment *supra*. The said protection shall continue for thirty days or till the Petitioner approaches the Learned Civil Court, whichever is earlier.

11. With the above observations, the Contempt Petition stands disposed of.

**(Meenakshi Madan Rai)
Judge**

25-06-2024

Approved for reporting : **Yes**

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