



IN THE HIGH COURT OF SIKKIM : GANGTOK
(Writ Appellate Jurisdiction)

WA No. 04 of 2020

D.B. Thapa
S/o Late Shri Laxuman Thapa
R/o Tadong, Gangtok
East Sikkim.

...APPELLANT

Versus

Urban Development and Housing Department
Through Secretary
Government of Sikkim
Gangtok, Sikkim-737101

...RESPONDENT

BEFORE

HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE
HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

For appellant : Mr. Yam Kumar Subba, Advocate

For respondent : Dr. Doma T. Bhutia, Additional Advocate General,
Sikkim with Mr. S.K. Chettri, Government Advocate.

Date of hearing : 26.11.2020

Date of order : 26.11.2020

JUDGMENT AND ORDER (ORAL)

(*ARUP KUMAR GOSWAMI, CJ*)

This Writ Appeal is preferred under Rule 148 of the Sikkim High Court (Practice and Procedure) Rules, 2011 against a judgment and order dated 17.10.2020 passed by the learned Single Judge in WP(C) No. 31 of 2020, dismissing the writ petition, which was filed challenging a demolition notice issued under Memo No. 21/275/509 dated 03.07.2020 and the demolition order issued under Memo No. 21(275)97/UD&HD/1628 dated 29.09.2020.

2. We have heard Mr. Yam Kumar Subba, learned Counsel appearing for the appellant and Dr. Doma T. Bhutia, learned Additional Advocate General, Sikkim assisted by Mr. S.K. Chettri, appearing for the respondent.




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3. Mr. Subba submits that the learned Single Judge committed a manifest error of law as well as of facts in dismissing the writ petition, *in limine*. He contends that the appellant was granted a permission dated 23.04.2013 by the Assistant Town Planner, on an application submitted by him to construct a temporary shed/garage to keep his vehicle and on the strength of that permission, the appellant had constructed a garage. He submits that there are many in the locality where the appellant resides who had constructed garages without their being any permission whatsoever and the appellant has been singled out while issuing demolition notice inasmuch as he is a member of the Sikkim Democratic Front, which is in the opposition, out of political vendetta. He has submitted that the appellant had served as a Cabinet Minister during the period from 1994-1999 and from 2009-2014. It is contended by him that after filing the reply to the demolition notice dated 03.07.2020, no opportunity of hearing was granted before issuing the final demolition order and therefore, the impugned action of the respondent cannot be sustained in law, the same being in violation of principles of natural justice. In support of his submission, learned counsel refers to paragraph 45 of a judgment in the case of **Muni Suvrat- Swami Jain S.M.P. Sangh vs. Arun Nathuram Gaikwad & Ors.**, reported in **(2006) 8 SCC 590**.

4. Dr. Doma T. Bhutia submits that no vested right had accrued on the appellant. In the very first place, permission granted by the Department was unauthorized in law as the Sikkim Allotment of House-sites and Construction of Building (Regulation and Control) Act, 1985, for short, the Act, does not have any provision for grant of such permission. She submits that no interference is called for with the judgment and order under challenge.

5. The learned Single Judge at paragraphs 8, 9, 10 and 11 had observed as follows: -



"8. *The facts have already been put forth supra and for brevity are not being repeated. Relevant reference in this context may be made to the conditions put forth in the letter dated 23-04-2013 bearing No.21(275)/1026/UD&HD, wherein the Petitioner was granted permission to construct a temporary shed/garage, viz.;*

- "(i) That the permission is purely for security reasons;*
- (ii) That, you shall have no right or claim over the land;*
- (iii) That you shall demolish the same as and when the Government desires; and*
- (iv) That your car shall not be parked in a way that will obstruct the free flow of pedestrian movement."*

9. *As admitted by Learned Counsel for the Petitioner these conditions have not been contested by the Petitioner since the year 2013. No change in the conditions were sought for by the Petitioner from the Respondent Department at any point in time, till date. It is also admitted that the shed stands on land which was never allotted to the Petitioner by the concerned Department or any other Department of the Government.*

10. *It is thus evident that the portion of land on which the Petitioner was allowed to construct the shed/garage was a temporary arrangement for security purposes at the relevant time as he was a sitting Minister to the Government of Sikkim. Admittedly, it was not a Government allotment made to him in terms of any Rules prevalent at that time. Evidently, he has no right over the said area sans allotment neither does he claim ownership upon it under any law. The conditions spelt out in the letter of permission allowing construction of the shed being clear and unambiguous do not require further elucidation.*

11. In consideration of the submissions of Learned Counsel for the parties, the facts involved in the instant matter, the conditions laid down in the letter granting permission to construct the temporary shed and in the absence of any indication that the any right of the Petitioner has been violated, I am of the considered opinion that the matter merits no further consideration and nothing remains for adjudication thereof."

6. In his application dated 04.04.2013 addressed to the Additional Chief Town Planner of Urban Development and Housing Department for grant of permission it is stated that as it is dangerous to park his vehicle in open space along 31-A National Highway it is necessary to construct a shed measuring 15x13 S.ft. It is relevant to note that at the relevant point of time, the appellant himself was the Minister of Urban Development and Housing Department.

7. We asked a specific question to Mr. Subba as to whether there is any law in force in the State of Sikkim to grant permission of the kind granted to the appellant. Mr. Subba very fairly submits that he had not come across any law conferring a power to grant such permission. It appears that without there being any power, permission was granted to construct a shed/garage over a plot of land, which, admittedly, does not belong to the appellant, as a request was made by the departmental Minister.

8. No specific instances have been given and only sweeping and omnibus statements had been made in the writ petition that many temporary sheds/ garages had been constructed for parking vehicles on the National Highway by many people in his locality and as such, submission of Mr. Subba that the appellant has been subjected to hostile discrimination does not commend for acceptance.



9. The demolition notice dated 03.07.2020 was issued under Section 8 of the Act. The reply given by the appellant being not found satisfactory, demolition order dated 29.09.2020 was issued. The permission itself provided that the appellant shall demolish the structure as and when the Government wanted it to be demolished. The same was accepted by the appellant. In the attending facts and circumstances, submission advanced that denial of opportunity of hearing had resulted in violation of principles of natural justice cannot be countenanced.

10. In paragraph 45 of ***Muni Suvrat-Swami Jain*** (supra), the Hon'ble Supreme Court had extracted paragraph 35 of the judgment of Bombay High Court in the case of *G.J. Kanga vs. S.S. Basha*, reported in (1992) 2 Mah LJ 1573. Paragraph 35 contains submissions advanced by the learned Counsel for the Municipal Corporation. The High Court of Bombay had passed an order directing the Bombay Municipal Corporation, for short, BMC, to demolish an illegal and unauthorized construction despite noticing that the issue of regularization was a matter which rested with the BMC. The Hon'ble Supreme Court, in the context of Section 351 of the Bombay Municipal Corporation Act, 1888, had observed that the power under Section 351 of the Bombay Municipal Corporation Act, 1888, has to be exercised only by the Municipal Commissioner either to order or not to order the demolition of the alleged unauthorized temple. The above decision has no application in the facts of the present case.

11. In view of the above discussion, we find no merit in this appeal, and accordingly, the same is dismissed. No cost.

(Judge)

(Chief Justice)