

Review Pet. (C) No. 01/2020

D.B. THAPA

PETITIONER (S)

VERSUS

URBAN DEVELOPMENT & HOUSING DEPARTMENT

RESPONDENT (S)

For Petitioner : Mr. Yam Kumar Subba, Advocate

For Respondent : Dr. Doma T. Bhutia,

Date: 17/03/2021

CORAM :

HON'BLE MR. JUSTICE JITENDRA KUMAR MAHESHWARI, CJ.
HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, J.

PER J.K. MAHESHWARI, CJ

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Being aggrieved by the Order dated 26.11.2020 passed in **W.A No. 04 of 2020**, this petition has been preferred seeking review.

Learned Counsel for the appellant has raised three points (i) any house construction on the road side is required to compulsorily construct a garage in the house on the land, (ii) it is further contended that in all the houses situated in the road side are having garage, out of them several persons have constructed the garage on the Government land and (iii) the notice for demolition suffers with inherent defects without specifying the violation of any of the provisions of the Sikkim Allotment of House sites and Construction of Building (Regulation and Control) Act, 1985, therefore, there is an error apparent on the face of the record in the order under review, which warrants interference in this petition.

On the other hand learned Additional Advocate General argued in support of the Orders passed by this Court *inter alia* contending that the construction of a garage has been made on the Government land attached to public road for which demolition notice has rightly been issued and the actions has rightly been taken. Learned Single Bench as well as Writ Appellate Court has refused to

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interfere assigning the detailed reasons, therefore, there is no error apparent on the face of record in this case.

After hearing learned Counsel for the parties, the first argument advanced by the learned Counsel for the appellant do not attract in the present case because the said provisions are applicable in the cases where a person after purchasing a land construct a house on the road side. In such houses construction of garage is made compulsorily. It do not give right to them to construct the garage on Government land adjacent to public road, therefore, the said argument is wholly misplaced and cannot be countenanced.

So far as resume of the construction of garage of various persons on Government land are concerned, the said issue is not involved in the present case, looking to the nature of notice issued to the petitioner, therefore, we are not inclined to entertain the said point.

The issue regarding inherent defect in notice is concerned it is suffice to observe that construction of garage on the Government land situated road side is not permissible at all, therefore, we are not inclined to interfere in the order impugned in exercise of the power of Review in absence of any error apparent on the face of the order.

Accordingly, this Review Petition is dismissed with a cost of ₹ 25,000/- (Rupees Twenty Five Thousand). The amount be deposited to the Sikkim State Legal Services Authority within a period of 15 (fifteen) days from today.

Judge

Chief Justice