

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 17th SEPTEMBER, 2015

S.B. : HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE

WP(C) No.19 of 2015

Petitioners : 1. Shri Padam Bahadur Tamang,
 S/o Chandra Bir Tamang,
 R/o Pamphok Busty,
 P.O. Namthang,
 P.S. Namchi,
 South Sikkim.

 2. Shri Purna Kumar Pradhan,
 S/o Late Bhim Bahadur Pradhan,
 R/o Namthang,
 P.O. Namthang,
 P.S. Namchi,
 South Sikkim.

versus

Respondents : 1. The Secretary,
 Land Revenue and Disaster
 Management Department,
 Government of Sikkim,
 Gangtok.

 2. The Secretary,
 Forest, Environment, Wildlife
 Management Department,
 Government of Sikkim,
 Gangtok.

 3. The Secretary,
 Energy and Power Department,
 Government of Sikkim,
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4. The Chairman,
Sikkim Power Development Corporation,
Government of Sikkim,
Gangtok.
5. The General Manager,
M/s. Lanco Energy Private Limited,
Teesta State-IV Hydel Power Project,
Majhitar,
East Sikkim.

Petition under Article 226 of the Constitution of India

Appearance

Mr. Nripendra Nath Das, Advocate with Mr. Ashish Das and Mr. Ranjit Prasad, Advocates for the Petitioners.

Mr. Karma Thinlay Namgyal, Senior Government Advocate with Mrs. Pollin Rai, Assistant Government Advocate for the Respondents No.1 to 3.

Mrs. Rita Sharma, Legal Retainer for Respondent No.2.

Ms. Sabina Chettri, Legal Retainer for Respondent No.3.

Mr. Thinlay Dorjee Bhutia, Advocate for Respondent No.4.

Mr. Jorgay Namka, Advocate with Ms. Chenga Doma Bhutia, Ms. Pema Bhutia and Ms. Panila Theengh, Advocates for Respondent No.5.

J U D G M E N T

Wangdi, J.

1. The Writ Petition involves two sets of properties, the first one of which is described in

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Schedule 'A' set out in the Writ Petition which pertains to plot numbers 495, 500 and 488/698 in all measuring 1.6020 hectares, as per the new survey record, that correspond to plot numbers 260 and 265 measuring 15.70 acres (as per the Petitioners) that originally stood recorded in the name of one San Maya Tamang, daughter of Pratap Singh Tamang and is presently recorded in the name of the Petitioner No.1. The second set of land are those bearing plot numbers 498, 499 and 500/697 in total measuring 0.6960 hectare as per the survey record of 1977-79 set out in Schedule 'B'. These plot numbers correspond to plot number 259 measuring 0.91 acre, as per the old survey of 1952-55, which originally belonged to one Ajabir Kami but, subsequently corrected in the name of the Petitioner no.2 who had purchased it from him.

2. The case of the Petitioners is that these properties were owned and possessed by their predecessors-in-interest and recorded in their names during the old survey operations of 1952-55. However, during the intervening period those were inundated by the river Teesta due to change in its course and when it

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reverted back to its original course and the land restored, it remained uncultivated and unused. During the last survey operations of 1977-79, it thus got recorded as "Government Forest Land". It is stated by the Petitioners that on their representations, the records in respect of the land were rectified and restored in their names in the revenue records. It is further the case of the Petitioners that later the entire properties were acquired by the State Government for a Hydel Project but, compensation has not been paid to them who were the rightful owners. It is thus essentially prayed that they be paid adequate compensation for the use and occupation as well as damages caused to the land by the User Agency, Respondent No.5.

3. In the counter-affidavit filed on behalf of the Respondent No.1, the Secretary, Land Revenue and Disaster Management Department, Government of Sikkim, the factual aspect as regards the correction of the revenue records has not been denied. However, in an additional counter-affidavit filed by them, it is stated that the correction of the land records in the names of

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the Petitioners was done erroneously. As per them, a large number of persons, who had land in the vicinity of the land of the Petitioners, whose land also had been recorded as 'Government Land', got the records rectified in their names from the name "Sikkim Sarkar". This was based upon the recommendation of the District Collector, South District, Namchi, contained in his order dated 21-08-2006, Annexure R-1 which was approved by the Cabinet. It is contended that the recommendations of the District Collector in his order dated 21-08-2006 did not find mention of the land of which the Petitioners claimed to be the owners. Also only plot number 260 had been referred to in the Cabinet Memo and, even this was an error as it had not been recommended for reversal in the order of the District Collector dated 21-08-2006. Thus, it is the case of the Respondent No.1 that the correction of the revenue records in respect of the land in question in the names of the Petitioners was on an erroneous assumption that the Cabinet approval also included those.

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4. The Respondent No.2, the PCCF-cum-Secretary, Forest, Environment and Wildlife Management Department, Government of Sikkim, has in a separate counter-affidavit, while reiterating the stand of the Respondent No.1, averred that the Forest Department was neither intimated nor any clearance obtained from them while correcting the land records in favour of the Petitioners. It is their categorical stand that for all intent and purposes the land being claimed by the Petitioners is a part of the Government Forest Land.

5. I have heard the Learned Counsel for the parties and examined the pleadings and documents on record and, also perused the file produced by the State-Respondents.

6. In the first instance, this is a joint Writ Petition filed by the two Petitioners who claim title and ownership of two different sets of properties which, in my view, would be impermissible. They ought to have filed separate Writ Petitions.

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7. Be that as it may, the Writ Petition in any case appears to involve disputed questions of fact which cannot be decided in the present proceedings even considering the materials on record for the reasons stated hereinafter.

8. As already observed, the claim of the Petitioners that the revenue records pertaining to their landed properties were rectified and restored in their names from the name of 'Sikkim Sarkar' which, as per them, had been erroneously entered during the land survey operations, is by itself seriously contested having been unequivocally denied by the State-Respondents.

9. On behalf of the Petitioners, several documents have been produced in support of their contentions but, its contents are found to be inconsistent.

10. As per the Petitioner No.1, land bearing plot numbers 260 and 265 situated at Pamphok Block, South Sikkim, as per the survey operations of 1952-55 measures 15.70 acres but, the office notes of the

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District Collectorate, South Sikkim (part of Annexure P7), indicate those as measuring 1.65 and 1.18 acres respectively. The Search Certificate and Non-Encumbrance Certificate dated 18-02-2013, Annexure P1, issued by the Land Revenue and Disaster Management Department, District Collectorate, South at Namchi, apart from the discrepancy in the area of plot numbers 260 and 265, is in direct conflict with the order dated 21-08-2006 (Annexure R-1 to the additional counter-affidavit) as we find no mention of the land being claimed by the Petitioners. Similarly, Search Certificate and Non-Encumbrance Certificate dated 10-06-2013, Annexure P12, suffers from the same vice as Annexure P1.

11. Apart from the above, the fundamental question as to whether or not the landed properties being claimed by the Petitioners indeed belonged to their predecessors-in-interest, is by itself a disputed question that can only be decided after adducing evidence.

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12. In view of the conflicting facts alluded to above, the other submissions of Mr. N. N. Das, Learned Counsel for the Petitioners, appear to be of no consequence. The decisions in *Rajiv Sarin and Another* VS. *State of Uttarakhand and Others* : *AIR 2011 SC 3081* and *Laxmi Chand and Others* VS. *Gram Panchayat, Kararia and Others* : *AIR 1996 SC 523*, were rendered on the facts obtaining those cases and have no application to the present case. The jurisdiction of High Courts in a proceeding under Article 226 of the Constitution of India as laid down in *Babubhai Muljibhai Patel* VS. *Nandlal Khodidas Barot and Others* : *AIR 1974 SC 2105* and in *Mohammed Hanif* VS. *The State of Assam* : *(1969) 2 SCC 782*, are well-settled. In the very case of *Babubhai Muljibhai Patel* (supra) it has been held that “*When the petition raises complex questions of fact, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in writ petition, the High Court may decline to try a petition*”.

13. For all the above reasons, it would not be appropriate for this Court to enter into the disputed

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questions of fact involved in the Writ Petition which, in my view, is quite complex.

14. In the result, the Writ Petition stands dismissed.

15. It is, however, made abundantly clear that the Petitioners are at liberty to seek remedy in an appropriate civil proceeding in a competent Court of law for the reliefs sought for in the Writ Petition.

Sd/-
(**S. P. Wangdi**)
Judge
17-09-2015

Approved for reporting : **Yes**

Internet : **Yes**