

THE HIGH COURT OF SIKKIM : GANGTOK

WRIT PETITION (C) NO. 35 OF 2003

In the matter of a petition under Article 226
of the Constitution of India

and

in the matter of

1. Sonam Bhutia,
r/o Arithang,
Gangtok, Sikkim.
2. Daniel Lepcha,
r/o P.N.G.S.S. Road,
Gangtok, Sikkim.
3. Biraj Adhikari,
r/o Tadong, Daragaon,
Gangtok, Sikkim.

... Petitioners

VERSUS

1. Pawan Kumar Chamling,
Chief Minister of Sikkim,
Tashiling Secretariat,
Gangtok, Sikkim.
2. State of Sikkim,
Through Chief Secretary,
Government of Sikkim,
Tashiling Secretariat,
Gangtok, Sikkim.
3. The Secretary,
Urban Development & Housing Department,
Government of Sikkim,
Gangtok, Sikkim.
4. The Secretary,
Department of Industries,
Government of Sikkim,
Gangtok, Sikkim.
5. The Secretary,
Forest Department,
Forest Secretariat,
Government of Sikkim,
Gangtok, Sikkim.

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6. The Secretary,
Sikkim Nationalised Transport,
S.N.T. Complex,
Government of Sikkim,
Gangtok, Sikkim.
7. The Secretary,
Education Department,
Government of Sikkim,
Gangtok, Sikkim.
8. The Secretary,
Land Revenue Department,
Government of Sikkim,
Tashiling Secretariat,
Gangtok, Sikkim.
9. The Secretary,
Power Department,
Power Secretariat,
Government of Sikkim,
Gangtok, Sikkim.
10. Garjaman Gurung,
Minister for Agriculture & Irrigation,
Government of Sikkim,
Tashiling Secretariat,
Gangtok, Sikkim.
11. Dorjee Dazom Bhutia,
Minister for Health,
Government of Sikkim,
Tashiling Secretariat,
Gangtok, Sikkim.
12. Dorjee Tshering Lepcha,
Minister for Power,
Government of Sikkim,
Tashiling Secretariat,
Gangtok, Sikkim.
13. Thutop Bhutia,
Minister for Ecclesiastical Affairs,
Government of Sikkim,
Tashiling Secretariat,
Gangtok, Sikkim.
14. Karna Bahadur Chamling,
Minister for Food & Civil Supplies,
Government of Sikkim,
Tashiling Secretariat,
Gangtok, Sikkim.

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15. Sher Bahadur Subedi,
Minister for S.N.T. & Motor Vehicle,
Government of Sikkim,
Tashiling Secretariat,
Gangtok, Sikkim.
16. Hishey Lachungpa,
Minister for Power,
Government of Sikkim,
Tashiling Secretariat,
Gangtok, Sikkim.
17. Ran Bahadur Subba,
Minister for Sikkim Public Works Department,
Government of Sikkim,
Tashiling Secretariat,
Gangtok, Sikkim.
18. Bhim Bahadur Goroong,
Political Advisor to the Chief Minister,
Tashiling Secretariat,
Gangtok, Sikkim.
19. Bhim Prasad Dahal,
Member of Parliament (Lok Sabha),
Chisopani,
P.O. 32nd Mile,
East District, Sikkim.
20. Kedar Nath Rai,
MLA & Chief Whip of the Sikkim Democratic Front,
S.D.F. Head Office,
Deorali,
31-A, National Highway,
Gangtok, Sikkim.

... Respondents

For the petitioners : Messrs S. K. Homchoudhury,
Senior Advocate, D. K. Singh
and H. L. Bhandari,
Advocates.

For the respondents 1 to 9 : Messrs S. P. Wangdi,
Advocate General, J. B.
Pradhan, Govt. Advocate and
Karma Thinley, Asstt. Govt.
Advocate.

For the respondents 10 to 20 : None appears.

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**PRESENT : THE HON'BLE SHRI JUSTICE R.K. PATRA, CHIEF JUSTICE.
THE HON'BLE SHRI JUSTICE N. SURJAMANI SINGH, JUDGE.**

Date of order : 23rd November, 2004.

ORDER

R.K. PATRA, C.J.

This writ petition has been filed by way of public interest litigation. The petitioners are three in number. They claim to have developed "a keen sense of probity in public life". They say that they want to expose the illegalities committed by the respondents in the matter of allotment of government land.

2. Secretaries of different departments of government of Sikkim are arrayed as respondents 2 to 9. Respondent no.1 is the Chief Minister of the State and respondents 10 to 20 are said to be the allottees of plots of lands.

Counter-affidavit has been filed on behalf of departmental Secretaries (respondents 2 to 9) sworn to by the Principal Secretary in the Urban Development and Housing Department of the government (respondent no.3). In the counter-affidavit, it has been asserted that the lands were allotted strictly as per the provisions contained in the Sikkim Allotment of Housing Site and Construction of Building (Regulation and Control) Act, 1985 and the petitioners have filed this case with the sole purpose of getting publicity and for political ends.

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3. The sum and substance of the allegations of the petitioners is that respondents 1 to 9 arbitrarily and illegally allotted number of plots and areas of the government land in and around Gangtok in favour of rich and economically well-off individuals who are close confidants of the Chief Minister.

4. When the case was called for admission Shri D.K. Singh, learned counsel for the petitioners submitted that facts have been mentioned in the counter-affidavit and he has nothing to argue leaving the matter to us to decide on merit.

5. We have carefully perused the counter-affidavit. It appears therefrom that in the year 1978 land measuring acres 13.65 at 5th mile, Tadong was acquired by the government in Industries Department for setting up a roller flour mill which was duly set up on the acquired land. Out of the total acquired land, about an acre of land was transferred to the Rural Development Department for construction of a store house and government staff quarters and some portion of land to M/s. Denzong Automobiles on lease basis. The mill was closed down in the year 1999 because it incurred losses. During 1998, as there was demand for providing house sites the Urban Development and Housing Department approached the Industries Department for transfer of small portion of the vacant land. Pursuant to the said request, the Industries Department

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transferred less than an acre i.e. 40,636 sq. ft. land in favour of the Urban Development and Housing Department for providing house sites. It was ascertained from the District Collector that market rate at the area was Rs.31.21 paise per sq. ft. On the basis of that rate, the Urban Development and Housing Department decided that the plots of land which were along the road side should be Rs.35 per sq. ft. and the plots lying at the back side i.e. away from the road would be Rs.22 per sq. ft. Accordingly the house sites had been allotted in favour of the respondents 10 to 20 strictly in accordance with the Sikkim Allotment of Housing Site and Construction of Building (Regulation and Control) Act, 1985. Plots were allotted during 1998-99 to those who had no house site in the urban areas and keeping in view the definition of family [section 2(c)] in the aforesaid Act.

6. From the above facts, it transpires that during 1998-99 different plots of lands were allotted in favour of the private respondents in accordance with the provisions contained in the Sikkim Allotment of Housing Site and Construction of Building (Regulation and Control) Act, 1985. The allegation that plots were allotted on nominal price is without any basis. On the basis of the report of the District Collector rate per sq. ft. was fixed at Rs.35 in respect of plots of lands adjoining the main road and Rs.22 per sq. ft. in respect of plots of lands lying at the back side which cannot

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be said to be nominal. The allottees have already constructed their houses on the plots of lands allotted to them. The allegation that the entire acquired land was allotted to private individuals is also not correct because a portion of it (less than one acre) had been allotted. As indicated, allotment was made during 1998-99 and the petitioners have approached this Court after lapse of more than three years in questioning the allotment. To our query as to how the petitioners explain the delay in approaching this Court, Shri Singh submitted that question was put in the State Assembly on 21.3.2002 asking the government to name the allottees of sites from the land initially acquired for establishing the flour mill and relevant answer was given vide annexure P1 and thereafter the writ petition was filed.

7. In the counter-affidavit (vide paragraph 17), it has been alleged that the petitioners are prominent members of political party opposed to the present government. There is no denial to the above allegation in the rejoinder filed by the petitioners. In the circumstances, we have no hesitation to hold that the petitioners are politically opposed to the present government in power. This is also clear from the above submission of Shri Singh because what they could not do on the floor of the Assembly they use this Court as the forum to get their political goal achieved. The petitioners seem to have approached this Court under the guise of

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redressing public grievance but their purpose was to achieve some political mileage.

8. For the reasons mentioned above, we decline to admit the writ petition as public interest litigation.

9. In the result, the writ petition is dismissed at the admission stage. There shall be no order as to costs.


(**R. K. Patra**)
Chief Justice
23.11.2004

I agree.


(**N. Surjamani Singh**)
Judge
23.11.2004

Dictation taken
&
typed by me
Dipak Saha