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IN THE HIGH COURT OF SIKKIM

WRIT PETITION NO. 60 OF 2000

Date of Decision: 21st July 2001

Nim Dorjee Bhutia
Tadong Bazar
Above Kalcha-Gaddi
Near Vivek Dry-clean
Tadong and 16 others. ... Petitioners.

- Versus -

1. Garrison Engineer
MES, Tadong.
2. The Officer Commanding
Head Quarters, 33 Corps
C/o 99 APO.
3. Garrison Engineer
New Cantt
Gangtok.
4. The Chief Engineer
Siliguri Zone
Sevoke Road
West Bengal
5. The District Magistrate
East District
6. Officer Commanding
Station Headquarters
Gangtok. ... Respondents.



Coram:*Hon'ble Mr. Justice Anup Deb, Judge.*

Present: None for the petitioners.

Mr. U.P. Sharma, Addl. Central Government
Standing Counsel for the respondents.

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JUDGMENT**DEB. J.**

A letter petition concerning matters of general importance of public interest was filed before the High Court on 3rd October 2000. It, inter-alia, stated in the petition that people living in Tadong directly below the Military Engineering Service (in short MES) godown in the new Cantonment have been living in constant danger and threat to their lives and properties for over a decade. A large drain starting from the Libing Helipad in the Cantonment area passes just below the MES godown and flows into college jhora. During monsoon, when there is heavy rainfalls this drain flows in spates and transform into a virtual river. The MES godowns have been constructed over retaining walls measuring at least about 40 feet in height and just below the retaining wall passes the drain. It reveals that the structure has huge cracks, which have been developed on these walls and may collapse any time. In the month of September 1991 the retaining walls had collapsed and blocked the drain causing the water to flow on to



the hillside damaging houses and lands. No human lives were lost as the incident had occurred late in the evening before people had gone to sleep. Damages were assessed by the District authorities but no payments were made for reasons best known to the authorities. Representations for removal of the godowns were being submitted to the Government and the military authorities from time to time right from the year 1989, but no response has been received leaving the public at the mercy of nature. The public on their own, and with the help of the State Government, has been repairing the drain. The repairs done by the MES is ritualistic and of no effect at all. It is further stated that the intensity of the flow of water in the drain is so great that a slight blockage in any part of the drain diverts the flow of water on to the hillside causing threat to the lives and properties of the people living there. Representations submitted to the Government and the Military authorities have borne no results. Information given to the civil defence of the area also has proved to be futile leaving the residents of the area with no alternative but to approach the High Court for necessary direction upon the military authorities and the state Government to take remedial/precautionary measures to avoid a catastrophe which is quite imminent. The following prayers have been made in the petition: -

- (a) To direct the MES at new cantonment, Gangtok to immediately remove the godowns and the retaining walls and to take precautionary measures by construction of appropriate



walls so that, the drains passing just below the present godowns are not blocked and strengthened;

- (b) to direct the MES to execute repair works of the drain comprehensively ; and
- (c) to direct the State Government of Sikkim through the Chief Secretary, to pursue with the MES to ensure that the woe of the public indicated above are removed.

The letter petition was signed by seventeen persons. As the matter was very urgent, telephonic direction was given asking the Superintendent of Police, East to visit the spot and verify the contents of the petition, genuineness of the signatories and to submit his report within 10th October 2000.

The Additional Superintendent of Police, East District submitted the spot verification report of MES Godown above Tadong on 10th October 2000, which is as follows: -

“1. That a Godown measuring 100 Ft length x 41 Ft. breadth stands directly above the Tadong Bazaar. The said Godown has cracked on the side walls measuring about 1 ½ feet width, the base of the building has sunk about 2 feet, retention wall of the building has protruded outward.

The structure poses immediate threat to the residence of the following persons whose house falls just below the precarious structure: -



1. Lakpa Bhutia.
2. Hemant Bdr. Chettri.
3. Lerap Bhutia
4. Seden Bhutia

Further the structure poses danger of blocking the main drainage above the bazaar the overflow of which would affect the entire Tadong Bazaar. It is verified and found that the signatories of PIL are resident of Tadong who could be directly or indirectly affected by the structure.”

The District Collector, East District was also directed to take necessary action.

Major Ajay Uniyal, Garrison Engineer, New Cantonment, Gangtok submitted that the godown in question has been demolished on 20th October 2000 and the works of retaining wall and drain are to be executed and for this purpose the office of the Garrison Engineer, Gangtok had submitted proposal to the Headquarters 33 Corps. The Station Headquarters Gangtok constituted a Board of Offices and they have recommended for construction of retaining wall and drain and the recommendation has been submitted to the Headquarters 33 Corps for approval.

Vide order dated 25th November 2000 direction was issued to the respondents that works and construction of retaining wall shall be undertaken. The Station Headquarter was directed to see that there shall be no loss of human lives due to collapse of retaining walls.



The District Magistrate, East District submitted a status reports on 13th November 2000 and 22nd November 2000 which read as follows: -

“REPORT REGARDING THE MES CEMENT GODOWN AT TADONG, EAST SIKKIM.

On receipt of a public complaint against the dilapidated cement godown near butchery house belonging to MES, Tadong. The following action has been taken:

The said godown had created a fear psychosis among the residents of the locality. Therefore a sport verification was conducted jointly by District Magistrate, East, Addl. D.M., East, Addl. S.P., East, Col. Pradeep Kumar and the S.D.M., Gangtok. On verification the godown was found to be in a precarious condition. Thereby the SDM was directed to write a letter to Col. Pradeep Kumar on 30.9.2000 for taking up demolition work immediately and to intimate the District Collector, East. Unfortunately, Adm. Comdt. did not respond. Hence, interim order U/S 133 Cr.P.C. dated 18.10.2000 was passed directing the Garrison Engineer for taking up effective measure regarding construction of a protective wall and for increasing capacity of drainage system.

Thereafter on 21.10.2000 Major Ajay Uniyal, Garrison Engineer was present in the Court of S.D.M. and submitted his compliance report that the godown had been demolished and for protective wall and drainage system he had requested that contact be made with Adm. Comdt., Station Head Quarter.

Subsequently, an interim order U/S 133 Cr.P.C. dated 21.10.2000 was issued to Adm. Comdt., Station Head Quarter, Gangtok directing him to be present on 24.10.2000 without fail. On failure to attend the court it was directed to adjudicate the matter ex-parte. However, on 3.11.2000 Col. Pradeep Kumar appeared in person in the Court of the District Magistrate and submitted that the dilapidated godown was demolished and the technical advice has been sought for construction of protective wall and for increasing the capacity of the drainage system and every action which is deemed necessary, will be taken up and the District Magistrate will be informed as and when necessary works are taken up.



The following interim order passed by S.D.M. U/S 133 Cr.P.C is attached as also the compliance report submitted by Adm. Comdt. for kind reference and perusal please.

Sd/- 13/XI/00
District Magistrate, East Dist. ”

“ STATUS REPORT IN CONNECTION WITH THE ORDER OF HON’BLE HIGH COURT DATED 18.11.2000 IN WRIT PETITION (C) NO. 60 OF 2000.

1. On 22.11.2000 the site where the MES had constructed a go-down in New Cantonment was inspected by the Addl. District Magistrate and it was seen that the dilapidated go-down in question Building No. P-55 (Storage Shed) had been demolished.

2. Col. D. Pradeep Kumar, Administrative Commandant has submitted to the District Magistrate vide their letter No. 1309/24/Demo/G dated 3.11.2000 that they have sought the Technical advise on repair of the retaining wall and the drain and necessary action will be taken as deemed necessary.

Dt: 22.11.2000

Sd/- 22/XI/00
District Magistrate, East,
Gangtok : Sikkim. ”

The Officiating Adm. Commandant, Station Headquarter, New Cantonment, Gangtok filed an affidavit on 2nd December 2000 and in paragraph 3 of the affidavit, it has inter-alia been stated as follows: -

“3. That in compliance to the aforesaid direction, it is submitted that the Office of the Station Headquarters, New Cantonment, Gangtok has already written to the Headquarters, 17 Mountain Division ‘Q’ for release of fund of Rs.9,66,000/- immediately for repairing the retaining wall and the drain below MES Cement Godown, Tadong. It is further submitted that the Headquarters, 33 Corps is the ultimate authority to



release the requisite fund. A copy of the letter written by the Officer Commanding is enclosed herewith and marked as Annexure P1.”

Annexure P-1 discloses that the Officiating Adm. Commandant, Station Headquarters, New Cantonment, Gangtok had written a letter to the Head Quarters, 17 Mtn Div ‘Q’ for provision of special repairs to retaining wall and drain below MES Cement Godown at GE Gangtok and paragraph 2 of the aforesaid letter reads as follows: -

“2. May this case kindly be expedited with higher HQ for release of fund of Rs.9,66,000/- (Rupees nine lacs sixty six thousand only) on OP Imdt basis since a PIL has been filed in Sikkim High Court whose hearing is listed on 02 Dec 2000 and GE Gangtok, Adm Comdt Stn HQ Gangtok and OC HQ 33 Corps are the respondents.”


Officiating Garrison Engineer, New Cantonment, Gangtok by filing an affidavit on 27th June 2001 stated that the contract bearing No. CWE/136-WE/05 OF 2001-2002 ‘Provision of Special Repair to retaining wall and drains below MES Cement Godown at New Cantt Gangtok’ has been concluded and the works will be commenced from 01st July 2001 and will be completed by 31st December 2001.

In future, the army authorities should be careful and they should not allow any dilapidated construction, which may take away human lives or danger to human beings. In this case, considering the urgency of the case telephonic direction was issued during vacation and in pursuance of telephonic direction, the Superintendent of Police, East, District Magistrate,



East and others took action which prevented loss of human lives. Since the army authorities have undertaken the works of provision of special repair to retaining wall and drains below MES Cement Godown at New Cantt, Gangtok no further order is necessary. However, in future if it transpires that there is no progress in work, the petitioners are at liberty to move this Court by filing a misc. application.

The writ petition is disposed of accordingly.


(Anup Deb)
Judge
21-07-2001