

**HIGH COURT OF SIKKIM**

Record of Proceedings

**I.A No.01/2018  
IN  
WP(C) No.10 of 2018**

JIWAN KUMAR PRADHAN

..... Petitioner.

VERSUS

KEDARNATH PRADHAN & ANR.

..... Respondents.

Date: 09/05/2018

CORAM :

**HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, J.**

For Petitioner : Mr. Sangay Gurmey Bhutia, Advocate.

For Respondent No.1 : Mr. Prashant Pradhan, Respondent's son.

For Respondent No.2 : Mr. Thinlay D. Bhutia, Govt. Advocate with  
Mr. S.K Chettri and Mrs. Pollin Rai, Assistant  
Govt. Advocates.

.....

**ORDER (O R A L)**

- 1.** Heard.
- 2.** The Petitioner has approached this Court under Article 226 and 227 of Constitution of India seeking a mandamus to stop the disbursement of the compensation as well as quashing an order of the Respondent No.2 (without any further details of the order). Further prayers sought for in the Writ Petition is to stop the Respondent No.1 from utilizing 50% of the amount of compensation which was "alleged" to have been released on various dates as well as for an order setting aside the impugned order dated 09.10.2017 passed by the District Collector/ Magistrate, Gangtok in Misc. Case No.19/DM/East.
- 3.** The learned Counsel appearing for the Petitioner seeks to press the present application for stay of the operation of

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the order dated 09.04.2018 passed by the Respondent No.02 as well as to stop the "Respondent No.2" from utilizing the compensation amount if the same is released by the office of the "Respondent No.1".

4. Mr. Sangay Gurmey Bhutia, learned Counsel for the Petitioner submits that there is a clerical error in the prayer (b) of the application under consideration and the words "Respondent No.2" and the words "Respondent No.1" have been inadvertently interchanged. No application for amendment has been filed to this effect.
5. Vide order dated 09.04.2018 the Competent Authority under the Railways Act, 1989 has decided an application submitted by the Complainant / Petitioner herein requesting to stay the disbursal of the compensation to the Respondent No.1 in connection with the acquisition of "his" land situated at Khanikhola, Majhitar, which was acquired under the Railways Act, 1989 for the Sevoke-Rangpo new B.G. Railway Line project after hearing the respective parties.
6. The application which was considered by the competent authority was an application for stay of disbursal of the compensation amount filed on 31.03.2018 which reads as under:

*"Respected Sir,*

*With utmost humility, I the undersigned would like to lay down following facts for your kind information that;*

*The undersigned had filed a Title Suit in the Court of the District Judge, Special Division-I, Sikkim at Gangtok, Titled as Jiwan Kumar Pradhan –VS- Keshar Kumar Pradhan, Title Suit No.16 of 2015, wherein, your good office is also a party in the aforesaid Title Suit.*

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*That in the above said case the Ld. District Judge was pleased enough to pass an order dated 27/03/2018, wherein the petitioner has been given a liberty to approach the competent authority for the proper adjudication of the case. (Copy of the order dated 27/03/2018 is enclosed herewith).*

*That it is pertinent to mention that the undersigned has a legal remedy to file an appeal before the competent authority within sixty (60) days as per the legal procedure.*

*Therefore it is humbly requested that your good office may kindly maintain the Status quo in regard to disbursal of compensation amount for plot No.2309, 2310, 2311, 2314/P and 2315/P situated at Khani Khola, Mazitar, already acquired by the Central Government under Chapter IV-A for special railway project.*

*That it is also prayed that the principle of Natural Justice has to be applied in case of the undersigned, by giving sufficient opportunity to raise the issues at appropriate forum such as Hon'ble High Court, including your good office, as advice by the legal expert.*

*Further, it is also prayed that no order/ orders be passed in absence of the undersigned by your good office in any manner in regard to the abovesaid disputed plot of land.*

*Yours Truly,*

*Sd/-*

*Jiwan Kumar Pradhan"*

- 7.** It is an admitted fact that the proceeding for acquisition under the Railways Act is complete and award passed. At the hearing the learned Counsel for the Petitioner was asked to show any document by which the Petitioner's claim for half share of the property in the name of the Respondent No.1 which was acquired by the Railways may be *prima facie* established. No document as such, is available in the records of the present Writ Petition.

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- 8.** It is incumbent upon the Petitioner who seeks stay to satisfy the Court on the mandatory requirements of prima facie case, balance of convenience and irreparable injury.
- 9.** Mr. Thinlay Dorjee Bhutia, for the State submits that 80% of the compensation amount has already been disbursed to the Respondent No.1, the rightful owner. No material whatsoever has been placed before this Court that the Petitioner is *prima facie* entitled to 50% of the share of the property as per law in the name of the Respondent No.1. In view of the aforesaid, this Court is not inclined to grant the prayer as prayed for in the application for stay i.e. I.A No.01/2018. In any event to grant the prayer sought for to stop the Respondent No.1 from utilization of the compensation amount if the same is released by the office of the Respondent No.2 would be granting the main prayer in the Writ Petition itself i.e. to stop the Respondent No.1 from utilizing 50% of the amount of compensation "alleged" to have been released, which is not permissible.
- 10.** I.A No.01/2018 is dismissed.

**Judge**

09-05-2018