

High Court of Sikkim

Record of proceedings

WP(PIL) No.01 of 2015

In Re : High Court of Sikkim

Date : 05-09-2019

**CORAM : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE**

For Petitioner

Mr. A. K. Upadhyaya, Senior Advocate as Amicus Curiae.
Mr. Jorgay Namka, Advocate as Amicus Curiae.

For Respondent

R-1 to R-5

Dr. (Ms.) Doma T. Bhutia, Advocate.
Mr. S. K. Chettri, Assistant Government Advocate.
Mrs. Pollin Rai, Assistant Government Advocate.

Home Department

Mr. Yogesh Gurung, Advocate.

ORDER

Rai, J.

Heard.

We have carefully perused the report dated 03-09-2019 filed on behalf of the Respondents No.1 and 2 by the Joint Secretary, Home Department, Government of Sikkim. It is stated therein that with regard to the construction of two storied male barrack and one storey female barrack in State Central Prison, Rongyek, Tenders were floated in which one Shri Chewang Chopel has quoted the lowest rate amongst the participating tenders, but this too is 45% above the Schedule of Rates (SoR). That, in this view of the matter the work order remains to be issued to the Contractor as sanction is yet to be obtained from the "Home Department" for a sum of Rs.9,92,091/- (Rupees nine lakhs, ninety two thousand and ninety one) only, for electrification works and other works which were not included in the tender bid.

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Firstly, we are constrained to notice that although the Joint Secretary, Home Department, has filed the Affidavit, she appears to be unaware of the status of the work order which is also with the Home Department. The Officer appears to be disjointed from the Department.

In view of the non-action of the Department evidently from the month of July, 2019, despite the tender having been accepted, let the Home Department sanction the amount *supra* within a period of three weeks from today, pursuant to which the Buildings and Housing Department will issue the work order within one week therefrom.

Construction of Sub-Jails

On reverting to the records of this matter, it is seen that vide Order dated 25-07-2017 of this Court Learned Additional Advocate General was then granted a week's time to submit a detailed proposal for construction of a proper Prison at Namchi, South Sikkim as well as at Gyalshing, West Sikkim.

Pursuant thereto, on 12-10-2017, the State Government by its Affidavit dated 09-10-2017 submitted that two areas had been identified in West District as well as in North District for construction of suitable Prisons and the matter was referred to the Mines, Minerals and Geology Department, Government of Sikkim, to examine the stability of the land.

On 01-11-2017, this Court has recorded that Learned Amicus Curiae had visited West District and identified certain lands which was forwarded to the Learned Additional Advocate General, who in turn had assured that these identified lands would also be inspected and report submitted.

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On 27-02-2018, the State Government further informed that the District Collector, West District as well as the District Collector, North District have assessed the estimate for acquisition of land followed by rehabilitation and resettlement. Financial approval or sanction was thereafter required from the State Government which was estimated to take about two months.

On 20-03-2018, Learned Senior Government Advocate informed the Court that the State Government had accorded approval in principle for the proposal to acquire the land in the West and North Districts for Sub-Jails for which a sum of Rs.90,00,000/- (Rupees ninety lakhs) only, was transferred to the Land Revenue and Disaster Management Department, Government of Sikkim, and sought to file progress report. On acquisition, the State Government was directed to take steps for construction of Jails in the two Districts taking into consideration of necessary requirements.

On 24-04-2018, the Buildings and Housing Department has directed to prepare a Contour map for the West as well as North Districts and to complete preparation of the Detailed Project Report (DPR) and Blue Print Plan within two weeks.

On 17-05-2018, it was recorded on the basis of submissions of the State that the Contour Map was prepared for the Sub-Jail at Serethang, West Sikkim, but for the North District the Contour map could not be prepared as the Field Engineers were not permitted by the land-owners to enter the area proposed to be acquired. We were informed as recorded in the Order dated 24-09-2018 that the Social Impact Assessment (SIA) is yet to commence with regard to the land in West Sikkim for construction of Sub-Jail.

That, on 20-05-2019, Learned Senior Government Advocate submitted that the SIA in the West District with regard the process

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of acquisition of land for construction of Sub-Jail is underway. Contrary to the submissions made then vide the instant Affidavit dated 03-09-2019 under consideration presently, the Joint Secretary has informed that the SIA study could not be conducted since there is land dispute in certain plots of the area to be acquired. A complaint for rectification of the records of rights for certain plots falling under acquisition was received from Pemayangtse Monastery. The Office of the District Collector, West is in the process of resolving the land disputes between the parties and once the same is resolved the SIA shall commence. The Affidavit dated 03-09-2019 is in contradiction to the information given by Learned Senior Government Advocate on 20-05-2019 wherein it was stated that SIA was underway.

So far as the North District was concerned, on 20-05-2019 it was submitted that the land is yet to be identified. It is informed that the Office of the District Collector is still scouting for suitable land in the District. It is seen that the no progress has taken place with regard to the identification and acquisition of land in the North District and SIA in the West District for almost a year which is indeed a state of affairs and is disheartening.

Let the Office of the District Collector, West District examine the area identified by Learned Amicus Curiae as reported to this Court vide Order dated 01-11-2017 and submit a report within three weeks.

The District Collector, North District shall identify land Court which is free from all encumbrances in North District and report the matter to this. Should he fail in the endeavour, a report in that context shall nevertheless be filed before this Court.

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Considering that the matter has not proceeded at all despite having been registered on 02-02-2015 in pursuance of the directions of the Hon’ble Supreme Court in Writ Petition (Civil) No.559 of 1994 dated 13-11-2014 and considering that this Court have been directed to monitor this matter, let the Chief Secretary, Government of Sikkim, file affidavits for all the directions given above.

List on 03-10-2019 along with WP (PIL) No.10 of 2017.

Judge
05-09-2019

Judge
05-09-2019

Index : Yes/No

Internet : Yes/No

ds/bp