

**IN THE HIGH COURT OF SIKKIM
CIVIL EXTRA ORDINARY JURISDICTION**

W. P. (PIL) No.

03

OF 2016

1. Smt. C. K. Sharma,
W/o Late B. P. Sharma,
R/o Upper Sichey Basti.
2. Shri Bir Bahadur Subba,
S/o Late Kabirman Subba,
R/o Upper Sichey Basti.
3. Shri K. B. Tamang,
S/o P. Tamang,
R/o Upper Sichey Basti.

----- Petitioners.

-VERSUS-

1. The Chief Secretary,
Government of Sikkim,
The Roads & Bridges Department,
2. The Secretary,
Urban Development & Housing Department,
Government of Sikkim, Gangtok.
3. The District Collector,
Office of the District Collectorate,
East Sikkim at Gangtok.

----- Respondents.

PETITIONER

ADVOCATE (S)

FOR ----- Mr. Jagan D. Thapa and Mr. Sunil Rai.

RESPONDENT

ADVOCATE (S)

FOR ----- Mr. J. B. Pradhan, Addl. Advocate General, Mr. Karma
Thinlay, Sr. Govt. Advocate, Mr. Santosh K. Chettri and
Ms. Pollin Rai Asst. Govt. Advocate.

Case No.

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01.	25.07.16 (Agnihotri, ACJ)	WP(PIL) No. 03/2016 C.K. Sharma & Ors. vs. State of Sikkim & Ors. BEFORE MR. JUSTICE SATISH K. AGNIHOTRI, ACJ. & MRS. JUSTICE MEENAKSHI MADAN RAI, J. Present: Mr. Jagan D. Thapa and Mr. Sunil Rai, Advocates for the Petitioners. Mr. J.B. Pradhan, Addl. Advocate General with Ms. Pollin Rai, Assistant Government Advocate for the Respondents. Alleging that the fundamental right of the petitioners to live with decency and dignity has been violated by not providing a passable road to the residents of Upper Sichey Basti below Sichey Co-operative, the instant petition is filed by way of Public Interest Litigation (PIL). The petitioners are stated to be the residents of Upper Sichey Area. Learned counsel appearing for the petitioners, referring and relying on a decision of the Supreme Court in State of Himachal Pradesh and another vs. Umed Ram Sharma and others : AIR 1986 SC 847, wherein the Supreme Court held as under: - "11. It appears to us that in the facts of this case, the controversy lies within a short compass. It is well-settled that the persons who have applied to the High Court by the letter are persons affected by the absence of usable road because they are poor Harijan residents of the area, their access by communication, indeed to life outside is obstructed and/or prevented by the

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		absence of road. The entire State of Himachal Pradesh is in hills and without workable roads, no communication is possible. Every person is entitled to life as enjoined in Art. 21 of the Constitution and in the facts of this case read in conjunction with Art. 19 (1) (d) of the Constitution and in the background of Art. 38 (2) of the Constitution every person has right under Art. 19 (1) (d) to move freely throughout the territory of India and he has also the right under Art. 21 to his life and that right under Art. 21 embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself. These propositions are well-settled. We accept the proposition that there should be road for communication in reasonable conditions in view of our constitutional imperatives and denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution. To the residents of the hilly areas as far as feasible and possible society has constitutional obligation to provide roads for communication." submit that the right of the petitioners as enshrined under Article 19 (1) (d) and Article 21 of the Constitution of India are violated. At this stage, it is apt to refer a passage from the judgment of the Supreme Court in Francis Coralie Mullin vs. Administrator, Union Territory of Delhi and others : (1982) 1 SCC 608: - "8. But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self."

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		Issue notice. Ms. Pollin Rai, learned Assistant Government Advocate assisting Mr. J.B. Pradhan, learned Addl. Advocate General, accepts notice and is granted three weeks' time to seek instructions and file response. List on 18.08.2016. Judge 25.07.2016 Acting Chief Justice 25.07.2016

ds/jk

Index : Yes / No
Internet : Yes / No