

(1997) 08 SIK CK 0001
In the Sikkim High Court
Case No : Writ Petition 19 of 1997

Gulshan Rai and Another

APPELLANT

Vs

State of Sikkim and Others

RESPONDENT

Date of Decision : 12-08-1997

Acts Referred:

Citation : AIR 1999 Sikk 7

Hon'ble Judges : Malay Sengupta, Acting C.J.

Bench : Single Bench

Advocate : S.P. Wangdi and J.B. Pradhan, Asst. Government Advocate for the State, for the Appellant; B.B. Subha, J.K. Chandak and L. Sherpa for No. 2 and A. Moulik, for 3, for the Respondent

Judgement

Malay Sengupta, Actg. C.J.

1. This case started with an application filed by two individuals making certain complaints against the State Government for not taking appropriate steps for pulling down two of the buildings situated on the main road in a deplorable state after the calamity of nature on the 8th of June, 1997.

2. The petition, in the nature of P.I.L., was initially filed against the State of Sikkim represented through the Urban and Housing Development Department. Thereafter on the direction of this Court, the owners of the two buildings in question were made parties.

3. On the direction of this Court, the State-respondents conducted a thorough investigation into the condition of the buildings, the extent of damage caused to the building, reason thereof and remedial measures. The State-respondents submitted that a high level Technical Committee was formed with members from different departments including Mines and Geology and Irrigati on Department. The Technical Committee submitted report to the Government towards the end of July. The said report has been filed in this Court on behalf of the State-respondents by an affidavit. By two separate affidavits the owners of the two

buildings challenged the maintainability of the petition itself and also the dependability of the Expert Committee Report.

4. The buildings in question are popularly known as Hotel Himalchuli and Hotel Dreamland. We may take judicial notice of the event of loss of property and lives on account of the heavy downpour followed by massive landslides on the 8th June, 1997. Many buildings collapsed and numerous structures are in a very dilapidated or dangerous position.

5. On the question of locus standi and bona fide of the petitioners, it has been contended that the petitioners run a few hotels and to feed fat the business rivalry, they have chosen these two buildings as two famous and busy hotels are run in these two houses. There is no doubt that the city of Gangtok got a big jolt during the natural disaster on the aforesaid date. There is also no denial of the fact that some areas and some buildings were affected very badly and most of the occupants of these areas and houses were to be evacuated to safer places and these two buildings were amongst the most affected buildings. The petitioners, might be owners of some hotels but at the same time they are residents of Sikkim and have concern for the safety of the residents of the affected areas. The plea that they have some business rivalry with the owners of these two buildings/hotels might not be ruled out. But for the other reasons as pointed out, we do not find much substance in the allegations and we propose to hold that the writ petition in the form of P.I.L. is in order and can be proceeded with.

6. We find that the two impugned buildings which are popularly known as Hotels Himalchuli and Dreamland are situated on the National Highway and on the Palzor Stadium Road. It would be better if we look to the conditions of these two buildings through the eyes of the experts as available from the Technical Committee report. It would be pertinent to mention that the same Technical Committee as appointed by the Government submitted an exhaustive report identifying the locations of damage, extent of damage, reason behind the damage and the possible preventive measures to stop recurrence of such damage. The report submitted before us with respect to these two buildings are part of the whole report. It could not be made clear if the Government accepted or decided to act upon such a report. For the sake of convenience we may deal with the buildings one after the other in the light of the report of the Technical Committee.

Hotel Dreamland

7. It is a seven storeyed building presently unoccupied by most of the occupants which included the boarders in the hotels, owners of the Building and other tenants. Only one Shri Rama Shankar Prasad Gupta is occupying the ground floor and runs a shop styled as New Society Sweets in a portion of the third floor of that building. The Expert Committee found this building tilted 1° (one degree) towards the East where Hotel Mt. Juponon stood and the tilt is 5 1/2" shift with

respect to the floor below the road level. The Expert Committee was of the opinion that if there was movement of the building eastward and was in a continuous process, then transmission of load stress could take place endangering the adjacent structures. It was also observed that the tilt was purely on account of settlement of foundation towards hotel Mt. Jupon. The Committee did not, however, notice any sign of structural failure but overall assessment showed that there was sinking of the column foundation towards Hotel Mt. Jupon side and uprooting process towards Hotel Tibet. The Committee did not, find any symptom of instantaneous collapse of structure but at the same time the Committee could not guarantee the stability of the building in the event of the land base yielding by the stress developed on account of tilt of the structure added by soil saturation due to excessive seepage below foundation level.

8. The Committee recommended that a heavy section of protective walls as a slope retention structure needed to be immediately constructed along with catch water drain to collect the run-off water and discharge it to the nearby Diesel Power House Jhora for prevention of erosion. The Committee also recommended structural consultancy services with regard to study of foundation soil and the structural behaviour of the building. It also recommended demolition of the roof structure of the building.

9. From a study of the report with regard to Hotel Dreamland, we hold that respondent No. 2, the owner of Dreamland Hotel, is to take the following steps immediately--

(a) The entire roof structure be demolished and re-erected as per original position.

(b) Should ensure continuous flow of the waste water of the building keeping the drain leading to the Jhora near the Diesel Power House in proper condition.

(c) Cracks noticed on the supporting wall above the septic tank and in the additional toilet at the basement are to be made good forthwith.

(d) Regular sealing of the above noted cracks and other cracks noticed in the building should be made by cement grouting to prevent seepage of water.

(e) To keep vigilance over the places where tel-tales have been installed and any development in the area should be reported to the concerned Engineering Department.

10. Following precautions or measures should be taken through the Engineering Department of the State-respondents.

(a) Decisions over the report of the Expert Committee is to be taken up by the State Government at appropriate level without any further delay if the same has not yet been accepted.

(b) Regular inspection of the building with special reference to the places where tel-tales have been installed.

(c) A high level decision is to be taken at the State level for construction of a heavy section of protective wall as a slope retention structure along with catch water drain to collect the run-off water and discharge of the same to the nearby Diesel Power House Jhora for prevention of erosion. In this respect the Government should confer with the owners of the buildings of that area and decide as to who would bear the cost of such construction. The Govt. should also decide if such a protective wall should correspond to the particular building or also with respect to other contiguous buildings.

(d) A high level decision is to be taken as to how structural and soil consultancy service can be obtained and utilised.

Hotel Himalchuli

11. This building known as Hotel Himalchuli is owned by respondent No. 3. The Technical Committee while dealing with this building observed that this building is in the closest proximity of the area which was affected on 8-6-1997, destroying a number of houses and killing at least a dozen of habitants of that area. The owners of the house claims that the building is designed and constructed in such a manner that not only on this occasion but also on an earlier occasion when massive earthquake in 1980 caused heavy casualties of structures and lives in Gangtok, this building stood unaffected. From the report we find that the disposal drain which was in use for waste and rain water of that building and of that area was completely washed away. The Committee found that some protective wall on the left side of the building which was existing to control surface run-off had been totally destroyed during the calamity. The slide debris which entered into the ground floor made a forceful impact during the occurrence of the slides some cracks were noticed on the partition walls of the front room and in most of the floors. Tel-tales were installed to observe movement.

12. From the observations and the recommendations made by the Technical Committee, we consider it wise to direct respondent No. 3 in the following terms;

(a) The disposal drain if it was not a public drain should be restored by respondent No. 3 immediately. Even if it be a public drain, till an alternative drain is provided, respondent No. 3 should arrange for constructing a drain for disposal of the waste and rain water from the building in question. Watch should be constantly made to ensure that no blockage is caused to the regular flow through the drain.

(b) Proper arrangement should immediately be made to stop further intrusion of debris in the ground floor. Steps for repairs with respect to the damages caused to the front rooms of the ground floor should immediately be taken.

(c) The protective wall which was in existence to control surface run-off is to be reconstructed immediately.

(d) Proper attention should be given to the cracks in the building where tel-tales

were made. Any development in that area should immediately be taken care of and brought to the notice of the appropriate Department of the Government.

(e) The septic tank of the building which is now deep under slide cover should be traced out, repaired, and if necessary, should be reconstructed.

(f) Steps be taken to diver the run-off water from falling into the building area to prevent extensive seepage affecting the foundation underneath the building and the land as a whole.

13. The Committee made a study on remedial measure and suggested that arrangements for diversion of surface run-off in the area was necessary. The Committee recommended the necessity of catch water drain, to collect slope run-off as well as the waste water discharge of the building, to be constructed for creating safety condition of the building in particular and the area in general. A heavy section of toe wall as per the slope has been recommended as a preventive measures. Analysis of the existing structure of the building in depth and study of sub-soil geostrata with the help of competent consultancy service has been recommended. We hold that the State owes positive duty in this regard.

14. .The State is, therefore, to follow the following terms:

(i) Structural and geological remedial measures be taken up;

(ii) Prevention of seepage of rain water is to be regularly undertaken;

(iii) Heavy section of toe wall as per the slope is to be constructed as a preventive measure;

(iv) Catch water drain to collect the slope runoff water as well as rain water discharge is to be constructed;

(v) Analysis of existing structural condition of the building and study of sub-soil geostrata is to be done by engaging competent consultancy service.

15. We have already noted that the occupants of both the buildings have been evacuated excepting Shri Rama Shankar Prasad Gupta who has been staying with his family in a portion of the Dream Land-Hotel Building and also running a business in the said building. He appeared before this Court only to submit that he is a poor businessman and has no alternative accommodation to reside with his family or to run his business and if he is evacuated from the building, it would entail endless misery for him. Submission of the owner of Himalchuli is that though he does not find any danger in staying in the house and as he himself is staying there with other members of his family he had to, under the instructions of the Government, vacate most of the portion of the premises where boarders of the hotel were staying. If this continues for sometime more, he would face virtual starvation.

16. We have already passed some direction on the State to observe. We may add to it that after petty repairs to the damage are effected to the satisfaction of the

concerned engineers, the Government should sit with the owners of these two buildings and other houses of like nature and take a decision, obviously on recommendation of the experts if the owners would be allowed to occupy or to put up others to occupy the buildings or any portion of the buildings which would appear to be safe for staying.

17. The State Government should take an early decision in the matter of sanctioning plans for further constructions in the township and surrounding areas and that should preferably be done after obtaining the consultancy of experts in appropriate fields from within or outside the State. Arrangement should be made for frequent inspection during construction to prevent deviation from the approved plan.

18. We may sum up with the observation that the respondent No. 2 is to comply with the directions enumerated in Paragraph 9 and respondent No. 3 with the directions at Paragraph 12. The State would follow the directions given in Paragraphs 10, 14, 16 and 17. These directions are, however, without prejudice to the provisions of Act 11 of 1985 including enforcement of Section 9 of the said Act in appropriate cases.

19. With these observations and directions we dispose of this writ petition with liberty to the parties to move the Court to urge any point of like nature if and when occasion would arise. There will be no order as to costs.