

(2023) 10 SIK CK 0036
In the Sikkim High Court
Case No : Contempt Case (C) No. 03, 04 Of 2023

Man Kumar Basnett And Others

APPELLANT

Vs

Tashi Chopel And Another

RESPONDENT

Date of Decision : 12-10-2023

Acts Referred:

Citation : (2023) 10 SIK CK 0036

Hon'ble Judges : Meenakshi Madan Rai, J

Bench : Single Bench

Advocate : N. Rai, Yozan Rai, Tara Devi Chettri, Zangpo Sherpa, Sujan Sunwar, Debal Kumar Banerji, Gita Bista, Pratikcha Gurung

Final Decision : Disposed Of

Judgement

Meenakshi Madan Rai, J

1. These two Contempt cases being Cont. Cas(C) No.03 of 2023 and Cont. Cas(C) No.04 of 2023 are being disposed of by this common Judgment.
2. The Learned Single Judge of this Court vide Judgments in WP(C) No.25 of 2022 and WP(C) No. 50 of 2022, both dated 29-05-2023, ordered inter alia as follows;

"5. During the course of the final hearing, the Learned Additional Advocate General for the Respondents No.3 and 4 and Learned Senior Advocate appearing for Respondent No.2 submit that they have no issue if the Petitioners restrict their claim to the respective Parcha Khatiyans and that they are willing to ensure that they do not carry out any of their activities in the areas specified in the Parcha Khatiyans to be the landed properties of the Petitioners.
6. The Learned Senior Advocate for the Petitioners, on instructions received from the Petitioners, submit that if this Court would protect their ownership rights as reflected in the respective Parcha Khatiyans, they would not protest the Project Work undertaken by the Respondents of expanding the National Highway.

7. In view of the clear understanding between the parties, this Court deems it appropriate to dispose of the Writ Petition without examining the merits of the issues raised by the parties by allowing the Respondents to continue with the infrastructural project of expansion of the National Highway duly ensuring that they do not infringe upon the Petitioners' rights of ownership of the plot numbers, as specified above, without following the due process of law."

(i) It is thus clear that the Learned Court had specifically ordered that without examining the merits of the issues raised by the parties, the Respondents be allowed to continue with the infrastructural project of expansion of the National Highway, duly ensuring that they do not infringe upon the Petitioners' rights of ownership of the plot numbers as specified in their respective Parcha Khatiyans, without following due process of law.

3. Alleging that there was a wilful disobedience of the said Order, the Contempt Jurisdiction of this Court was invoked by the Petitioners herein, i.e., Man Kumar Basnett, Prakash Subba and Bal Kumar Rai in Cont. Cas(C) No.03 of 2023, and Matrika Prasad Sharma, Kailash Rana Manger and Pavitra Maya Subba in Cont. Cas(C) No.04 of 2023.

4. After hearing Learned Counsel for the parties on 04-08-2023 in the presence of Learned Counsel for all the parties this Court recorded inter alia as follows;

".....In view of the averments made in the pleadings and the submissions put forth before this Court, Learned Additional Advocate General assures this Court that the State-Respondent will examine the allegations and take requisite appropriate measures....."

The State-Respondent No.1 was afforded time to enable it to act upon the assurance.

(i) On 17-08-2023, Learned Additional Advocate General submitted that there was a dispute with regard to the measurement of the property of two persons, while Learned Senior Counsel for the Petitioners submitted that all the parties were dissatisfied with the measurements carried out by the survey team of the concerned District. As sought for by the parties, two weeks' time was afforded to enable them to examine the possibilities of a settlement. Compliance Affidavit in terms of the Order of this Court dated 17-08-2023 was filed by the State-Respondent No.1 on 05-09-2023. The compliance report inter alia detailed the spot verification conducted on 24-08-2023. The joint inspection report, dated 29-08-2023, was annexed thereto along with sketch map showing the land holdings of the Petitioners.

5. On hearing the rival contentions of Learned Counsel for the parties today and on perusal of the documents submitted herein, it emanates that in Cont. Cas(C) No.03 of 2023, the property recorded in the name of the Petitioner No.1 are plot nos.290, 288 and 289. For the Petitioner No.2, the property recorded in his name are plot nos.83, 95 and 125. For the Petitioner No.3, the property recorded in his

name are plot nos.48/751, 903/955 and 904/956. The measurements of the afore-detailed plots of land are reflected in the joint inspection report dated 29-08-2023 and the sketch maps submitted by the Respondent No.1.

(i) In Cont. Cas(C) No.04 of 2023, the property recorded in the name of the Petitioner No.1 are plot nos.36 and 44. For the Petitioner No.2, the property recorded in his name is plot no. 64/768. For the Petitioner No.3, the property recorded in his name are plot nos.47/844, 48/845 and 49/846. The measurements of the afore-detailed plots of land are reflected in the joint inspection report dated 29-08-2023 and the sketch maps submitted by the Respondent No.1.

(ii) As per the submissions of the Learned Additional Advocate General for Respondent No.1 and Learned Senior Counsel for the Respondent No.2, it is found that the plot numbers and the areas said to belong to all the Petitioners mentioned hereinabove corresponds with the plot numbers and areas reflected in their respective Parcha Khatiyans and there is no encroachment made by the Respondent No.2 on their lands. Learned Senior Counsel for the Petitioners disputes the said contention on grounds that the Respondent No.2 while seeking to construct the road has entered into their properties.

6. Admittedly all the Petitioners were present at the spot on 24-08-2023 when the inspection was conducted by the concerned authority in the presence of the Petitioners. The joint inspection report was subsequently prepared on 29-08-2023 and was signed by the Revenue Officials of the District Collectorate, Pakyong District and the Deputy Director of the Land Revenue and Disaster Management Department, Government of Sikkim.

7. Having considered the submissions put forth, the intent and purpose of the Judgments in WP(C) No.25 of 2022 and WP(C) No. 50 of 2022 and having perused all documents on record, it is reiterated that the Judgments supra allows the infrastructural project of expansion to be carried out by the Respondent No.2 provided they do not infringe on the rights of the plot numbers of the Petitioners as reflected in their Parcha Khatiyans. As can be culled out from their submissions and the documents, I am of the considered opinion that for the present purposes, it cannot be said that the Respondents have violated or wilfully disobeyed the Judgments (supra) of this Court. The dispute between the parties with regard to the encroachment as asserted by the Petitioners and denied by the Respondent Nos.1 and 2, while relying on official land records, cannot be addressed by this Court, in its contempt jurisdiction.

8. Consequently, I am of the considered opinion that no further discussions need ensue in the matter and the Petitions deserve to be and are accordingly dismissed.

9. Learned Senior Counsel for the Petitioners draws the attention of this Court to the Notice dated 07-06-2023 served on all the Petitioners, except Petitioner No.1 in Cont. Cas(C) No.03 of 2023, by the District Collector, Pakyong District, inter

alia requiring them to vacate the areas on which they had constructed illegally on Government land, within twenty days from the date of receipt of the Notice and to collect the compensation amount so assessed for their structures. That, twenty days so afforded by the Notice be permitted to be availed by the Petitioners from tomorrow.

10. In view of the fact that the proceedings have continued before this Court from 04-08-2023 till date, the twenty days mentioned in the Notices supra shall be computed from tomorrow, i.e., 13-10-2023.

11. Both Contempt Petitions stand disposed of accordingly.