

(2023) 05 SIK CK 0086
In the Sikkim High Court
Case No : Writ Petition (C) No. 25 Of 2022

Man Kumar Basnett & Others

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 29-05-2023

Acts Referred:

Citation : (2023) 05 SIK CK 0086

Hon'ble Judges : Bhaskar Raj Pradhan, J

Bench : Single Bench

Advocate : N. Rai, Yozan Rai, Pradeep Tamang, Tara Devi Chettri, Sangita Pradhan, Natasha Pradhan, Purnima Subba, Debal Kumar Banerji, Gita Bista, Pratikcha Gurung, Dr. Doma T. Bhutia

Final Decision : Disposed Of

Judgement

Bhaskar Raj Pradhan, J

1. The three Writ Petitioners claim to be owners of various landed properties in the newly formed Pakyong District of Sikkim. The Petitioners state that although the Respondent No.1 has issued various Notifications under the provisions of the National Highways Act, 1956 declaring its intention to acquire land for building (widening/two laning, etc.) including the bypasses, maintenance, management and operation of Ranipool-Pakyong Road National Highway No.717A and thereafter declaring those lands to have vested with the Central Government, the properties of the Petitioners have not been notified for acquisition. It is alleged that however the Respondent No.2 while taking up the work for widening of the road has started marking, digging and cutting huge portions of their landed properties. It is further alleged that when confronted, the Respondents No.3 and 4 insisted that the road reserve, as per law, was 50 feet from the centre of the road for National Highways. The Petitioners contend that it is not so. Being aggrieved, the Petitioners have approached this Court by filing the present Writ Petition seeking a direction upon the Respondents to acquire the landed properties of the Petitioners by the sides of the Ranipool-Pakyong Road by due

process of law. The Respondents contests the Writ Petition on various grounds including that the Petitioners have encroached the road reserve.

2. The Petitioner no.1 is the owner of khatiyani plot no.269 with an area of 0.0400 hectare and khatiyani plot no. 290/2435 with an area of 0.1568 hectare, totalling to 0.1968 hectare in Pachey Samsing Block, Pakyong Elakha and Pakyong District, Sikkim. This fact is clearly recorded in Parcha Khatiyani no.813.

3. The Petitioner no.2 is the owner of khatiyani plot no.83 with an area of .0720 hectare; khatiyani plot no.95 with an area of .8320 hectare and khatiyani plot no.125 with an area of .2880 hectare totalling to 1.1920 hectare situated at Yentam Block, Naitam Elakha, Pakyong District, Sikkim. This fact is clearly recorded in Parcha Khatiyani no.118.

4. The Petitioner no.3 is the owner of khatiyani plot no.48/751 with an area of .0080 hectare; khatiyani plot no.903/955 with an area of .0120 hectare; khatiyani plot no.904/956 with an area of .0060 hectare; khatiyani plot no.46/1013 with an area of .0200 hectare and khatiyani plot no.47/1014 with an area of .0250 hectare, totalling to .0710 hectare situated at Chota Singtam, Naitam Elakha, Pakyong District, Sikkim. This fact is clearly recorded in Parcha Khatiyani no.159/169.

5. During the course of the final hearing, the Learned Additional Advocate General for the Respondents No.3 and 4 and the 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.

8. The Writ Petition is disposed of in the above terms.

9. No orders as to costs.

10. The order of status quo passed by this Court on 22.11.2022 in I.A. No.01 of 2022 hereby stands vacated. Pending applications stand disposed of accordingly.