

(2025) 03 SIK CK 0707

In the Sikkim High Court

Case No : First Appeal From Judgment And Decree In Suit No. 03 Of 2024

Srijana Gurung & Anr

APPELLANT

Vs

Union Of India & Anr.

RESPONDENT

Date of Decision : 12-03-2025

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151

National Highways Act, 1956 — Section 3A

Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2

Citation : (2025) 03 SIK CK 0707

Hon'ble Judges : Bhaskar Raj Pradhan, J

Bench : Single Bench

Advocate : Jorgay Namka, Phu Doma Bhutia, Sangita Pradhan, Natasha Pradhan, Sittal Balmiki, Gita Bista, Pratikcha Gurung

Judgement

Bhaskar Raj Pradhan, J

1. The present appeal challenges the impugned order dated 01.08.2024 passed by the learned District Judge, Pakyong on an application under Order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure, 1908 (CPC) filed by the plaintiff here in appellant. The learned District Judge has come to the conclusion that although the plaintiff has shown a prima facie case in their favour, but they have not been able to show irreparable loss and damages which cannot be adequately compensated and that their inconvenience will far exceed the defendants.

2. In the plaint the appellants had stated that they jointly own and are in unencumbered physical possession of their "only" residential 4 storied RCC building built on land bearing plot no.290/2244 measuring 1.1040 hectares (1507 sq.ft) at Pachey Samsing Block, Pakyong Elakha, Sikkim.

3. It is the appellant's case in the plaint that a final notice dated 08.09.2022 was issued to the appellants stating that the property had been acquired by National Highways & Infrastructure Development Corporation Limited (NHIDCL) for the

construction/up gradation of existing lane to 2 lane road with paved shoulder NH-717A including geometric improvement from Ranipool, Pakyong km 0.0000 to km 16.167 in the State of Sikkim. The said notice also directs the appellants to vacate and handover the possession of the property within 10 days of the receipt of this notice. A copy of the said notice was also filed along with the plaint.

4. The appellants have also annexed the notification under section 3A of the National Highways Act, 1956 declaring its satisfaction that the lands mentioned and described therein were required for building (widening/two laning etc.) of the Ranipool-Pakyong Road National Highway No.717A and declaring its intention to acquire the said lands. On perusal of the notification it is quite evident that the appellants' property is not under acquisition. Ms. Gita Bista, learned counsel appearing for the respondent no. 2 fairly states that this fact is correct.

5. On examination of the pleadings before the Trial Court as well as the impugned order it is quite clear that the present appeal must be heard in greater detail. For the said purpose this Court adjourns this case to 02.05.2025 for final hearing.

6. In the meanwhile, the respondents are restrained from taking any coercive steps against the appellant's property as more clearly defined in the sale deed annexed to the plaint until further orders.

7. List on 02.05.2025 for hearing.