

(2023) 05 SIK CK 0085
In the Sikkim High Court
Case No : Writ Petition (C) No. 47 Of 2022

Srijana Gurung

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 29-05-2023

Acts Referred:

Citation : (2023) 05 SIK CK 0085

Hon'ble Judges : Bhaskar Raj Pradhan, J

Bench : Single Bench

Advocate : Jorgay Namka, Phu Doma Bhutia, Sangita Pradhan, Natasha Pradhan, Purnima Subba, Dr. Doma T. Bhutia, Debal Kumar Banerji, Gita Bista, Pratikcha Gurung

Final Decision : Disposed Of

Judgement

Bhaskar Raj Pradhan, J

1. The Writ Petitioner claims to be the owner, jointly with her husband, of an RCC building built on land bearing plot No.290/2244, measuring 0.0140 hectares (1507 square feet) at Pachey Samsing Block, Pakyong Elakha, Sikkim vide registered Sale Deed document dated 13.02.2007 and Parcha Khatiyon No.690, dated 03.11.2009. According to the Petitioner, they were shocked to have received Final Notice, dated 08.09.2022 issued by Respondent No.5 stating that her property has been acquired by Respondent No.6, for construction/upgradation of existing lane to two lane road with paved shoulder NH-717A including geometrical improvement from Ranipool-Pakyong kilometre 0.000 to kilometre 16.167 in the State of Sikkim directing her to vacate and hand over the possession of their property within ten days of receipt of the said Notice. The Petitioner claims that, on enquiry, she learned that although various Notifications under the National Highways Act, 1956 had been issued declaring its intention to acquire land for building (widening/two laning, etc.) including the bypasses, maintenance, management and operation of Ranipool-Pakyong Road i.e. portion of National Highway No.717A on the stretch of land for kilometre 0.000 to

kilometre 20.000 (Ranipool to Pakyong stretch) and thereafter declaring those lands to have vested with the Central Government, her property had not been notified. It is in these circumstances, that the Petitioner has approached this Court by filing the present Writ Petition seeking direction upon the Respondents to acquire the land as well as RCC dwelling house of the Petitioner by following due process of law at the prevalent market rate before taking its physical possession. The Respondents contests the Writ Petition on various grounds including that the Petitioner has encroached the road reserve.

2. The Petitioner, jointly with her husband, is the owner of land bearing plot No.290/2244, measuring 0.0140 hectares (1507 square feet) at Pachey Samsing Block, Pakyong Elakha, Sikkim. This fact is clearly recorded in Parcha Khatiyan No.690, dated 03.11.2009.

3. During the course of the final hearing, the Learned Additional Advocate General for the Respondents No.2 to 5 and the Learned Senior Advocate appearing for Respondent No.6 submit that they have no issue if the Petitioner restricts her claim to the Parcha Khatiyan and that they are willing to ensure that they do not carry out any of their activities in the areas specified in the Parcha Khatiyan to be the landed property of the Petitioner.

4. The Learned Senior Advocate for the Petitioner, on instructions received from the Petitioner, submits that if this Court would protect her ownership rights, as reflected in the Parcha Khatiyan, she would not protest the Project Work undertaken by the Respondents of expanding the National Highway.

5. 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 Petitioner's rights of ownership of the plot number, as specified above, without following the due process of law.

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

7. No orders as to costs.

8. Pending applications, if any, also stand disposed of accordingly.