
(2012) 05 SIK CK 0005
In the Sikkim High Court
Case No : Writ Petition (C) No. 1 of 2012

Srila Targain

APPELLANT

Vs

District Collector, East Sikkim and Others

RESPONDENT

Date of Decision : 29-05-2012

Acts Referred:

Citation : AIR 2013 Sikk 5

Hon'ble Judges : S.P. Wangdi, J

Bench : Single Bench

Advocate : Gulshan Rai Nagpal, for the Appellant; J.B. Pradhan, A.A.G., Karma Thinlay Namgyal, Govt. Advocate, S.K. Chettri, Asst. Govt. Advocate, A. Moulik, Ms. Kesang Diki Bhutia, Manish Kr. Jain and Pujan Kharka, for the Respondent

Judgement

S.P. Wangdi, J.—This Writ Petition is directed against the impugned order dated 14-6-2011 passed by the District Collector, East District, filed as Annexure P-1 to the Writ Petition, by which mutation proceedings in respect of title property described in the parcha khatian, Annexure P-2, was kept on hold directing the petitioner and the objectors-respondents 2 to 8 to approach the Civil Court for relief. Mr. Gulshan Rai Nagpal, the learned Counsel appearing on behalf of the petitioner, submits that the Sub-Registrar ought to have allowed the mutation as prayed for as the documents undoubtedly establishes that the property is owned and is recorded in the name of the husband of the petitioner, and that such vague order will result in the petitioner languishing without a decision by the Civil Court in the event the respondent Nos. 2 to 8 fail to approach the Civil Court for deciding the dispute.

2. Mr. J.B. Pradhan, the learned Additional Advocate General appearing for the respondent No. 1, submits that there is no difficulty in understanding the essence of the order when considered with Rule 23 of the Registration of Documents Rules, 1930, which clearly provides that in the event of any objection, the Registering Authority shall not go into the merits of the disputes, but rather adjourn the proceedings to enable the parties to move the Court. Mr.

Moulik in substance agrees to the proposition placed by Mr. Pradhan, but questions the jurisdiction of this Court to enter into the is as disputed questions of fact are involved and that no civil consequence against the petitioner has resulted on account of the impugned order.

3. Having heard the learned Counsel and having perused the pleadings and the documents available in the records, I find that the question for determination in the present case is quite limited and, contrary to what Mr. Moulik has submitted, the question for determination in this case is a question of law as to whether the impugned order of the District Collector is in consonance with the Rules as referred to by the learned Additional Advocate General. This Court certainly has the jurisdiction to decide such question. It is all the moreso, as there is no statutory remedy provided under the Rules against such orders. In my view, it will be a travesty of justice if this Court does not step in aid and leave the citizens to suffer without a remedy.

4. The impugned order reads as follows:-

We may provide the certified copies of the papers asked for.

On perusal of this case, I feel this has to be dealt by the Civil Court. Since there is an objection into the objection of the land in favour of the applicant and enquiry into the objection will involve examining the witnesses and deciding on the title of the property in dispute, you may advise the parties to approach the Civil Court for relief.

Sd/- 14-6-11

5. The question that arises is whether this Order falls within the ambit and scope of Rule 23 of the Registration of Document Rules, 1930, and for this, it would be necessary to examine Rule 23 which is reproduced as under for convenience:-

23. The Registering Officer in his discretion gave a public notice of the fact of a document having been presented for registration and invite objections. In hearing objections raised against the registering of a document, the registering Officer shall make no enquiry into the merits of a disputed claims relating to any property mentioned in an instrument presented for registration. He shall adjourn the proceeding in registration to enable the parties to move the Courts.

6. Rule 23 therefore vests the Registering Officer with discretion to issue public notice and invite objections to any application for registration. The next is the jurisdiction and scope of hearing on the objections that may be filed in response to the notices which the Registering Authority may issue in his discretion. This appears to be limited in as much as it is circumscribed by the Rules that he shall "make no enquiry into the merits of a disputed claim relating to any property mentioned in an instrument presented for registration" and that "he shall adjourn the proceeding in registration to enable the parties to move the Courts". Inherent in the above, therefore, is that, it is the objector who is expected to move the Civil Court to establish his or her rights, if any, and thereafter get back to the

Registering Authority for carrying on with the proceeding further. In the event of the objector failing to do so or place before the Registering Authority the proof of having moved the Civil Court, it shall not bar the Registering Authority in proceeding further with the matter pending before him and take it to its logical conclusion.

7. In this case, discretion has been exercised by the Sub-Registrar in issuing a notice and, an objection has been filed in pursuance thereto. However, I find that the order of the learned District Collector, the Registering Authority, after the hearing being the one presently under challenge, is quite vague and nebulous which may result in causing injustice more than furthering the cause of justice, justifying the apprehension of the petitioner. The learned Counsel for the parties are also quite unanimous in their views that the impugned order ought to be more specific. It would, therefore, be appropriate for this Court to give certain clarity to the impugned order without setting it aside. Therefore, while the impugned order shall remain undisputed, it is directed that the objectors shall move the Civil Court having competent jurisdiction within a period of 90 days and shall inform the respondent No. 1 with necessary proof of having done so. It is made clear that in the event of the objectors, i.e., the respondent Nos. 2 to 8, failing to take the steps as directed herein, it shall be open for the respondent No. 1 to proceed further with the mutation proceedings as if no objections had been filed. With the above directions, the Writ Petition stands disposed of.