

(2023) 07 SIK CK 0021
In the Sikkim High Court
Case No : Writ Appeal No. 06 Of 2023

Tej Bahadur Thapa

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 11-07-2023

Acts Referred:

Citation : (2023) 07 SIK CK 0021

Hon'ble Judges : Biswanath Somadder, CJ; Meenakshi Madan Rai, J

Bench : Division Bench

Advocate : Sangita Pradhan, Natasha Pradhan, Purnima Subba, Gita Bista, Pratikcha Gurung, Thinlay Dorjee Bhutia, Yadav Sharma, Sujan Sunwar

Final Decision : Disposed Of

Judgement

Biswanath Somadder, CJ

This Intra-Court mandamus appeal arises in respect of a judgment and order rendered by a learned Single Judge on 29th May, 2023, in WP(C) No. 10 of 2022 (Shri Tej Bahadur Thapa vs. Union of India and Others).

By the impugned judgment and order, the learned Single Judge was pleased to dispose of the said writ petition, observing inter alia as follows;

"21. The Petitioner contends that although the State-Respondent nos.3 and 4 claim plot no.54 to be 'road reserve', they have not been able to demonstrate that they are the owner thereof and therefore this Court must necessarily examine whether by merely declaring a particular land to be 'road reserve', the State-Respondent could claim that it vests upon the State. This Court is afraid that although the question of whether mere declaration of a particular land to be 'road reserve' would vest the land upon the State, is an arguable question, it would not arise in the facts of the case. Disputed questions of fact cannot be examined in Writ jurisdiction. The Writ Petitioner is required to demonstrate clearly that either his fundamental right or his statutory legal right has been violated by the State which would compel this Court to interfere. The question

whether plot no.54 shown as 'road reserve' is actually owned by the State-Respondent does not fall for consideration in the present Writ Petition as the Petitioner has nowhere claimed or shown that this plot no.54 is owned by him. Although the petitioner claims that the additional land contiguous to khasra plot nos.68 and 69 is his, there is no record filed by him which establishes it. During the course of the present proceedings, the Petitioner has filed various documents relating to the land originally purchased by his father late Kaiser Bahadur Thapa. None of these documents however, establishes what the Petitioner claims in the Writ Petition that he is the owner of the additional land. More importantly all these documents relate to the period prior to the decree passed by this Court in the year 1986. The expansion of the National Highway is an infrastructural project which must be given due precedence. In the circumstances, this Court is of the view that the Respondents should be allowed to go ahead with the project. While doing so, the Respondents shall ensure that the Petitioner's property rights on plot nos.67, 68, 69, 70/753 and 72/754 having a total area of 1.456 hectares is not interfered with, without following the due process of law. The petitioner, however is not entitled to the prayers as sought for, which are accordingly rejected.

22. The Writ Petition is disposed of in the above terms. Pending applications also stand disposed of accordingly."

The appellant before us is the writ petitioner who appears in-person. It is the specific contention of the appellant/writ petitioner that the learned Single Judge failed to take into consideration the fact that the bone of contention, namely, a portion of plot no.54, was a subject-matter of a civil suit wherein the right, title and interest of the predecessor-in-interest of the appellant/writ petitioner have been clearly established. A portion of plot no.54, therefore, could not have been acquired by the State without giving adequate compensation to the appellant/writ petitioner or his predecessor-in-interest.

We are afraid to point out the fact that this issue centering around plot no. 54 has been extensively considered and discussed by the learned Single Judge in the impugned judgment and order. Paragraph 21 of the impugned judgment and order, which has been quoted above, clearly takes note of the fact that the learned Single Judge squarely applied his mind over the issue centering around plot no. 54 while disposing of the writ petition.

In an Intra-Court mandamus appeal, interference is usually warranted only when palpable infirmities or perversities are noticed on a plain reading of the impugned judgment and order. In the facts and circumstances of the instant case, we do not notice any such palpable infirmity or perversity. That apart and in any event, the impugned judgment and order is supported with cogent reasons. However, we would only like to clarify that dismissal of the writ petition by the learned Single Judge — for reasons stated therein — does not take away any right, if at all such right is existing at this stage in favour of the appellant/writ petitioner and provided the same can be established by him, strictly in accordance with law.

The appeal stands disposed of accordingly.