

(2022) 08 SIK CK 0007
In the Sikkim High Court
Case No : Writ Petition (C) No. 10 Of 2022

Tej Bahadur Thapa

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 10-08-2022

Acts Referred:

Citation : (2022) 08 SIK CK 0007

Hon'ble Judges : Bhaskar Raj Pradhan, J

Bench : Single Bench

Advocate : Tej Bahadur Thapa, Sangita Pradhan, Alishiba Rai, Thinlay Dorjee Bhutia, Sujan Sunwar

Judgement

Bhaskar Raj Pradhan, J

W. P. (C) No. 10 of 2022

On the request of the learned counsel for the State as well as the Union of India, three weeks time is granted to them to file its response and further affidavit on subsequent developments. List thereafter, on 05.09.2022.

I.A. No. 01 of 2022

This application was filed along with the writ petition on 01.04.2022. The respondent nos.1 and 2 have filed their response on 03.08.2022. The State respondent has however not filed a reply in spite of service. The learned Government Advocate pleads that last opportunity to file a reply may be granted in view of the fact that there has been a reorganisation of the Districts and the relevant documents are now with the Pakyong District Collectorate. One week as prayed for, as final opportunity, is granted to the State respondent to file a response.

Mr. T.B. Thapa, petitioner in person submits, while relying upon the cadastral survey map annexed at page 48 of the writ petition, that the respondents are seeking to work on the acquired portions of his land shown as plot no. 68 and 69

and to do so it would be impossible for them without treading on the unacquired portions of his land which is sought to be reflected by the authorities as road reserve. It is asserted that the road reserve has not been acquired as yet and therefore, no compensation paid as well. Mr. T.B. Thapa submits that this is impermissible. It is therefore prayed that the authorities be directed not to trample upon the unacquired portions of the petitioner's property. While the learned Government Advocate seek a last opportunity to file a response, the learned Assistant Solicitor General seeks to rely upon a Memo No.605/SDM/Pky dated 28.09.2019 filed by the respondent nos.1 and 2 in response to the I.A. No. 01 of 2022. This is a communication addressed to the Divisional Forest Officer (I) Forest and Environment Department, Pakyong, Sub-Division written by the Sub-Divisional Magistrate/Officer Pakyong, Sub-Division which says "This is to bring to your information that the NHICDL, Branch office, Gangtok has taken up the construction/widening work of above mentioned road covering 50 feet on both sides of existing central line of the road (100 feet) as per the Cadastral Survey of 1979 -82". This document prima facie does not show that the road reserve falling in the property of the petitioner has been duly acquired and compensation paid. Besides this document the learned Assistant Solicitor General could not show any other document which reflects that the road reserve falling in the property of the petitioner has been acquired and compensation paid. In view of the circumstances, before the stay application is taken up for final consideration, the respondents would be well advised not to do any illegal works in the petitioner's property in question which have not been acquired by them so far.

List on 22.08.2022 for consideration of the stay application after a response is filed by the respondent no.3 and further affidavit, if any, by the respondent nos. 1 and 2.