
(2010) 08 SIK CK 0005

Sikkim High Court

Case No: Writ Petition (C) No. 10 of 2010

Dugo Bhutia

APPELLANT

Vs

State of Sikkim and
Others

RESPONDENT

Date of Decision: Aug. 30, 2010

Hon'ble Judges: P.D. Dinakaran, C.J

Bench: Single Bench

Final Decision: Dismissed

Judgement

P.D. Dinakaran, C.J.

1.1 The petitioner has filed two Miscellaneous applications seeking to implead the following parties as respondents Nos. 2 to 6 in the above writ petition and to amend the cause title of the writ petition by adding the following parties as respondents No. 2 to 6:

1. The Secretary,
Ministry of Forest,
Government of Sikkim,
Gangtok.

2. Mr. Tashi Dawa,
Lhasa Restaurant near Lall Market,
C/o Tibetan Welfare Officer,
Tibet Hotel, Gangtok.

3. Mr. Nawong Norbu,
Bhusak Road, Chandmari,
C/o Tibetan Welfare Officer,
Tibet Hotel, Gangtok.

4. Mr. K.T. Gyaltsen,
Sikkim Legislative Assembly,
Gangtok, East Sikkim.

5. Mr. T.P. Dorjee,
Happy Hours School Building,
Lall Market,
Gangtok, East Sikkim.

1.2 Both the Miscellaneous applications are ordered as prayed for and the Registry is directed to carry out the amendment.

2. In the writ petition, the writ petitioner seeks the following prayers:

(a) Issue Writ of Certiorari or any other appropriate order directing the Government of Sikkim to discharge their statutory duty by demolishing illegal and unauthorized construction of Monastery at plot No. 83 at Chandmari, East Sikkim.

(b) Issue Writ of Mandamus or direction commanding the Respondents to abide by the mandate of the Hon"ble Supreme Court of India and also law of land.

(c) Issue Writ of Mandamus directing the Respondent to make an enquiry and investigation, if necessary with respect to the said construction and submit report before this Hon"ble Court.

(d) Issue a Writ forming a committee of reputed and impartial persons to make a spot enquiry and to substantiate the grievances of your Petitioner.

(e) Issue any other appropriate writ or Writs which could give relief to your Petitioner.

3. The writ petition has not yet been admitted.

4. According to the petitioner, the Maharaja of Sikkim as early as in the year 1947 granted 1.12 acres of land at Chandmari, Gangtok to the Tibetan Community where the Tibetans have constructed a big Monastery in the year 2000-2001 and also erected a statue of Lord Amitava Buddha. The petitioner's grievance is that by the said construction of a big Monastery at Plot No. 83 at Chandmari, East Sikkim, the respondents Nos. 3 to 6, who are representing the Tibetan Community have encroached on public property namely the National Highway. That apart, the petitioner relies upon the decision of the apex Court dated 16.02.2010 made in Special Leave to Appeal (Civil) No. 8519/2006, the relevant portion of which reads as hereunder:

...Therefore, it has become imperative to direct all the States and the Union Territories to formulate comprehensive policy regarding the removal/ relocation/ regularization of the unauthorized construction within six weeks from today. The policy should clearly indicate

within what period the States and the Union Territories are going to fully comply with its policy to remove/ relocate/ regularize the unauthorized construction.

We also direct all the States and the Union Territories to identify unauthorized construction of religious nature on public streets, public parks and public places within six weeks" from today.

(emphasis supplied regularized)

5. Learned Counsel for the petitioner fairly concedes that as per the said Order of the apex Court the State Government has got power to regularize the unauthorized construction, if any. In the instant case, even according to the petitioner, the construction of the impugned Monastery was already regularized by the Land Revenue Department of the State Government as early as on 26.12.2002, which remains unchallenged till date.

6. Mr. J.B. Pradhan, learned Additional Advocate General explained the circumstances under which the regularization order dated 26.12.2002 was passed and submits that the State of Sikkim constituted an Ecclesiastical Committee by a Notification dated 24.09.1998. As per the subsequent Notification dated 26.10.1998, all activities in such places of worship or religious institutions in the nature of restoration or construction could be undertaken only with the prior clearance of the State Government in the Ecclesiastical Department which is the nodal Department to deal with all such matters. When the impugned matter was referred to the said Committee, in its meeting held on 29.09.2001 the Committee observed that the entire complex of Bhodlhasola fall within the area of 1.12 acres of land. Ultimately, the Land Revenue Department by its proceedings dated 26.12.2002 regularized the construction of the said impugned Monastery on the said plot.

7. Accordingly, it was brought to the notice of the learned Counsel for the petitioner that the construction of the impugned Monastery had already been regularized by the State Government as early as in 2002, and as such there cannot be any grievance by the petitioner to contend that the construction of the impugned Monastery is contrary to the order of the Hon'ble Supreme Court dated 16.02.2010. Hence, the learned Counsel for the petitioner seeks permission of this Court to withdraw this writ petition. Permission granted.

Accordingly, the writ petition stands dismissed as withdrawn. No cost.