



# IN THE HIGH COURT OF SIKKIM

## ORDER SHEET

.....Writ Petition.....(C).....No. 5 of 2008

..Madhusudan..Ruchal..&..Others..... Petitioner / Appellant

Versus

The State of Sikkim & Another.... Respondent

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01.	11.3.08	<p>Present: Mr. A.K. Upadhyaya, Senior Advocate with Mr. Sudesh Joshi, Advocate for the Petitioners.</p> <p>Mr. J.B. Pradhan and Mr. Karma Thinlay, Government Advocates for State-Respondents.</p> <p>...</p> <p>This is a joint writ petition made on behalf of 10 writ petitioners, who are running businesses of Pan Gumties and such like on the M.G. Marg in Gangtok which is the main thoroughfare in the capital.</p> <p>They have come against notices dated 07.03.2008 separately issued to each of them, the purport of which is that they are to vacate their Gumties or Pan shops by 12.03.2008 failing which the Gumties shall be demolished.</p> <p>The urgency mentioned in the notice is that the improved M.G. Marg will be opened on 14.03.2008.</p>	



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Each of the writ petitioners has a separate cause of action, if any, but we do not take the point that they are embarrassing us by coming before the Court jointly. In fact, their grievances are similar and learned senior counsel appearing for them has also submitted that their cases are similarly circumstanced.

Leave was obtained to move the writ petition without prior notice to the State and without filing it in the Department as is the usual practice of the Court. A copy of the petition was served upon the learned Advocate for the State just a few minutes before the moving of the writ petition, but this is a well known practice in High Courts, when urgent orders are required.

On behalf of the State Govt. it was submitted that the papers have not yet been looked into but that they are fully aware that there is an International Flower Show to be held between 14<sup>th</sup> and 16<sup>th</sup> March, 2008 and the opening of the M.G. Marg on the 14<sup>th</sup> of March is urgently being planned for that reason.

One thing we make clear in the beginning, that beautification of the road or the State



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		<p data-bbox="349 397 1182 616">prestige or anything else, everything is subservient to the rule of law; when the law intervenes it intervenes in supervision of all else.</p> <p data-bbox="349 682 1182 1086">The first point is that these are basically property disputes and if the Gumty owner has a right to stay on in his own piece of land, be it however small, he has recourse to the ordinary Courts of law for filing a civil suit and obtaining an injunction, if necessary, against the Govt. and its officers, servants and agents.</p> <p data-bbox="349 1152 1182 1739">However, when the Govt. acts for summary removal, it has to comply with the usual administrative norms, failing which its action is stayed or even annulled by the writ Court. The first principle in these matters is the principle of natural justice. It is important for the Govt. to take persons in occupation of even small Pan shops into confidence before they are thrown out from their shops on the street by utilizing the Govt. power.</p> <p data-bbox="349 1805 1182 2024">It might not be necessary for a private landlord or land owner to do this, but a Government, State or other authority must abide by this principle.</p>	



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We find in the notice dated 7-3-2008 that there is a mention of an earlier notice dated 20-9-2007 in case of each of the writ petitioners. That notice of September, 2007 is not annexed to the writ petition, not even the copy of any of the ten writ petitioners. On query from Court, learned senior Advocate sent out his junior and obtained a copy of it from the papers. He had read it before. He read it out to the Court, as we asked him to do and in that notice there is reference of even earlier notices dated in June, 2007.

On query from Court, he submitted that at least in the case of respondent No.8 there was a reply to show cause given on his behalf by a learned Advocate. We were not told that respondent No.8 is special and thus we assume that replies were given in case of other writ petitioners also.

The above amounts to suppression of material from Court. We do not blame anybody and we assume that all this is unintentional. Even then, if an interim order were obtained on suppression of such important preliminary material showing the giving of an opportunity of hearing already, it would be open to the other



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side to come up to Court and, on old and settled principles, ask for vacating of the interim order and the dismissal of the application, on the ground of suppression and suppression alone. The position of the writ petitioner cannot be stronger because the other side is present today.

The last notice dated 7-3-2008 is not really a notice but it is a decision on a process which was continuing for several months previously. It was open to the writ petitioners to obtain any order of injunction from a suit Court or elsewhere earlier but they did not do so.

The writ petitioners have been in long possession and most certainly that is something in their favour but they have possessed on the basis of payment of licence fees etc. and the question of any adverse possession against the Govt. is out of the consideration.

No licence fees and no money were accepted by the Govt. from any of the writ petitioners after June, 2007 when apparently the first proposal of shifting the Pan shop owners was put.



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It appears that the proposal is that there will be a lottery system amongst the displaced shop owners and they will be re-located on the basis of the lottery results.

In the petition there is no allegation of mala fides. Learned Advocate for the writ petitioners said so. It is also his submission that there have been no other Court proceedings previously and the writ petitioners were simply continuing with their shops with the sword of possible eviction hanging on their heads all the time.

They submitted that they, or at least several of them, are possessors of the small shops from the time of the Chogyal and that they have abided by the law all through. This might be so, but then the Govt. is not compelled to keep licensees on road sides, even if, for reasonable needs, it requires eviction of them.

We put a question to the writ petitioners whether there was any allegation of discrimination made by them in the writ petition. We were shown paragraph 15 (j) in that regard and nothing else. It is not an allegation of fact but a submission only. It is in



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		<p>the grounds of the petition. It says that there are a number of wooden houses like the Pan Gunties along the MG Marg, and no order of demolition was issued in respect of those wooden structures. The said line is without any particulars, is not verified on oath and is most unsatisfactory, because wooden houses are apparently not the same Pan Gunties.</p> <p>The writ petitioners submitted that if they are thrown out they will lose their livelihood and the balance of convenience requires an order of stay be passed, even it is for a short period.</p> <p>It is our experience that an order of stay is never short; it has a tendency in Courts in India to spread over years and even become permanent.</p> <p>Either way, the Court is to take a drastic action today; either it has to stop the Government from its plan on the MG Marg and compel a appreciable length of time to pass, maintaining a part of MG Marg as it is, so far as the writ petitioners' shops are concerned; or the Court has to refuse an interim order, which is almost the dismissal of the writ petition, and allow the State Government to act reasonably and in accordance with law.</p>	



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		<p data-bbox="354 392 1187 555">We are of the opinion that the facts do not disclose highhanded or sudden action on the part of the State Government.</p> <p data-bbox="354 616 1187 896">The order and observations, however worded, are without prejudice, in so far as those can be without prejudice, because action very likely will be taken before the next date of hearing.</p> <p data-bbox="354 957 1187 1062">The writ petition is not thrown out in limine, but we are keeping it on record.</p> <p data-bbox="354 1079 1187 1242">Parties will be at liberty to mention the same or bring it for further hearing if it retains any life in it later on.</p> <p data-bbox="451 1303 862 1344">Interim order is refused.</p> <p data-bbox="354 1386 1187 1549">After we have passed the above order in open Court, we are constrained to modify/alter the order for the following reasons.</p> <p data-bbox="354 1566 1187 2036">It is true that if a Government dispossesses a private citizen from Government land by using summary force, the Specific Relief Act under Section 6 does not give him a right of obtaining restoration of possession by filing a summary possessory suit, which is given to a dispossessed person as against a private dispossessor.</p>	



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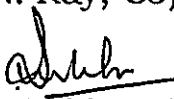
But the Government also cannot dispossess a person from his possessed land, without the due process of law. Such due process takes many routes and shapes. The simple classical route is the filing of a suit by the State Government and execution of the decree for possession obtained by it. There are also in the modern times several special Legislations, like Government Premises Tenancy Act or Government Premises Eviction of unauthorized Occupants Act where, after giving of a notice, the competent authorities are entitled to take decisions for eviction, which have practically the same force as a decree for eviction passed by an ordinary Civil Court.

In this case, however, we find that the Government is threatening to take possession by complying with all administrative requirements, but without obtaining an instrument of possession in its favour which will permit it to use force. There is no Act under which the 7.3.2008 notice threatening dispossession by force is issued. It is not in execution of a decree either. Thus, the notice appears to be issued after a hearing, without mala fides but without the primary and essential backing of an authority entitled to



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		<p>direct dispossession, giving that direction, and authorizing the Government to put the order into effect, if necessary, by force.</p> <p>Under the laws of civilized countries, the Government itself, without any enabling legislation, cannot in its administrative capacity, however high the administrative authority might be, pass administrative orders of eviction from land.</p> <p>Since the Government is threatening to break the law and the writ petitioners have approached the Court, we are compelled to intervene. Let there be an interim order directing maintenance of its status quo until further orders of Court. The matter is made returnable next Wednesday, i.e. 19.03.2008. Since we have dictated this radically altering order in our chamber in the absence of both the parties, liberty to mention and liberty to apply is reserved for the parties, at any time they might be so advised to do, including tomorrow morning in Court.</p> <p>Order and observations are without prejudice.</p> <div style="text-align: right;"> ( A.N. Ray, CJ)  ( A.P. Subba, J)</div>	



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19.03.2008

Present: Mr. A. K. Upadhyaya, Senior Advocate  
with Ms. Manita Pradhan, Advocate for  
the Petitioners.

Mr. S. P. Wangdi, Advocate General with  
Mr. J. B. Pradhan and Mr. Mr. Karma  
Thinlay, Government Advocates for the  
State-Respondents.

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The writ is admitted.

Interim order to continue. Affidavit-in-  
opposition be filed within three weeks. Reply, if any,  
be filed within two weeks thereafter.

List it on next available working day thereafter.

( A. N. Ray, C.J.)

( A. P. Subba, J.)



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03.	29.4.08	<p>Present: Mr. A.K. Upadhyaya, Sr. Advocate with Mr. Sudesh Joshi, Advocate for the Petitioners.</p> <p>Mr. J.B. Pradhan, Government Advocate for the State-Respondents.</p> <p>...</p> <p>By consent of the learned counsel appearing for the parties, let this matter come up on 23.06.2008 so as to enable the learned counsel to file affidavit-in-opposition.</p> <p>The State-respondents shall file the counter affidavits within five weeks, reply, if any, thereto shall be filed by the petitioners within two weeks thereafter.</p> <p>The interim order passed earlier shall continue.</p> <p><i>(Signature)</i> (A.N. Ray, CJ)</p> <p><i>(Signature)</i> (A.P. Subba, J)</p>	<p><i>As directed please list the case on 21.7.08, in front of parties accordingly.</i></p> <p><i>(Signature)</i> 21/7/08</p> <p><i>Counter not filed hence 9/8/08</i></p>



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	4. 21.7.08	<p data-bbox="324 426 1169 560">Present: Mr. A.K. Upadhyaya, Sr. Advocate with Ms. Manita Pradhan, Advocate for the Petitioners.</p> <p data-bbox="519 584 1169 718">Mr. S.P. Wangdi, Advocate Generala with Mr. J.B. Pradhan, Govt. Advocate for the State-Respondents.</p> <p data-bbox="714 730 747 755">...</p> <p data-bbox="324 791 1169 925">By consent of the parties, this matter stands adjourned to 13.08.2008.</p> <div data-bbox="909 962 1201 1218"><p data-bbox="974 962 1153 1047"><i>A.N. Ray</i></p><p data-bbox="925 1035 1169 1084">(A.N. Ray, CJ)</p><p data-bbox="990 1096 1120 1169"><i>A.P. Subba</i></p><p data-bbox="909 1157 1169 1205">(A.P. Subba, J)</p></div>	




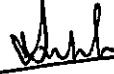
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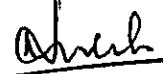


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05. 13.8.08		<p>Present: Mr. A.K. Upadhyaya, Sr. Advocate with Ms. Manita Pradhan, Advocate for the Petitioners.</p> <p>Mr. Karma Thinlay, Govt. Advocate for the State-Respondents.</p> <p>...</p> <p>By consent of the parties, this matter be listed on 29.08.2008.</p> <p> (A.N. Ray, CJ)</p> <p> (A.P. Subba, J)</p>	



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6	29.8.08	<p data-bbox="332 426 1177 548">Present: Mr. A.K. Upadhyaya., Sr. Advocate with Mr. Sudesh Joshi, Advocate for the Petitioners.</p> <p data-bbox="527 584 1177 718">Mr. J.B. Pradhan and Mr. Karma Thinlay, Govt. Advocates for the State-Respondents.</p> <p data-bbox="722 767 763 791">...</p> <p data-bbox="332 828 1177 1278">As the impugned notification has been withdrawn, the writ petition is disposed of without any further orders. However, the interim order passed is confirmed. Parties are at liberty to take future steps in accordance with law.</p> <div data-bbox="917 1278 1209 1534"><p data-bbox="974 1278 1209 1364"></p><p data-bbox="933 1364 1169 1400">(A.N. Ray, CJ)</p><p data-bbox="974 1412 1136 1485"></p><p data-bbox="917 1485 1169 1534">(A.P. Subba, J)</p></div>	



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