



HIGH COURT OF SIKKIM, GANGTOK
(Civil Extraordinary Jurisdiction)

D.B.: HON'BLE SHRI SUNIL KUMAR SINHA, CHIEF JUSTICE
HON'BLE MR. SONAM P. WANGDI, JUDGE

Review Pet. No. 03 OF 2015

PETITIONER Defence Estate Officer,
 Siliguri Circle,
 Siliguri, West Bengal,

Versus

RESPONDENTS 1. Public of Lachen.

 2. Chief Secretary,
 Government of Sikkim
 Gangtok.

 3. Land Revenue and Disaster
 Management Department,
 Through the Secretary
 Government of Sikkim, Gangtok.

 4. District Collector (N),
 Gangtok, Sikkim.

 4. Commissioner of Commercial Taxes,
 District Collectorate Office, Mangan,
 North Sikkim.

Petition for Review of the Order dated 17.09.2014 passed
in W.P.(PIL) No. 17 of 2012.

Appearance :

Mr. Karma Thinlay, Central Govt. Advocate with Mr. Thinlay Dorjee Bhutia, Advocate for the Review-Petitioner.

Mr. Abhijit Sanap, Defence Estate Officer, Siliguri, in person.

Mr. Jorgay Namka and Ms. Zola Megi, Advocates for Respondent No. 1.

Mr. J.B. Pradhan, Addl. Advocate General with Mr. S.K. Chettri and Ms. Pollin Rai, Asstt. Govt. Advocates for Respondents 2, 3 and 4.



ORDER
(30.05.2015)

Following Order of the Court was delivered by
SUNIL KUMAR SINHA, CJ.

1. The Petitioner is seeking review of the order dated 17.09.2014 passed in W.P.(PIL) No. 17 of 2012.

2. The Pipon and People of Lachen had sent a letter dated 21.04.2012 to the Executive Chairman, Sikkim State Legal Services Authority, making allegations that Army and GREF had constructed their camps over their lands without payment of compensation, therefore, their cases may be considered for sanction of compensation. A similar letter was received by the Chief Justice also. The matter was taken up in Public Interest and W.P.(PIL) No. 17 of 2012 was registered.

3. During the proceedings of the PIL, the Writ Court directed the State to file details of the private lands occupied by the GREF and Army in Lachen area. Counter affidavits were filed and it revealed from the counter affidavits that the land measuring 2.38 acres at Thombu was under the occupation of the Army on the basis of 'No Objection Certificate' obtained from the landowners. Similarly, land measuring 860.47 acres (hired land) was also under the occupation of the Army, for which process of acquisition shall be initiated. The Writ Court found that no compensation was paid to the landowners. The Writ Court, therefore, issued certain directions on 12.08.2014 calling the Respondents to furnish details of all the landholders with their names and address, whose lands were occupied by the GREF and Army; how much amount was paid to them on account of hiring charges; whether the Respondents had finalized the hiring charges as per the prevalent market rate, after hearing the concerned persons/ landowners;



basis for calculating the amount of hiring charges and mode of payment of hiring charges to the landholders.

4. When the said details were filed, the Writ Court found that only 50% of the total hiring charges assessed by the Respondents were paid to the landholders without showing any justification or basis for deducting/reducing or not paying the remaining 50%. The Writ Court, therefore, issued the following directions vide paragraph 22 of the impugned order: -

“22. In view of above, the writ petition stands disposed off as under: -

- (i) The respondents-State will write a letter within a period of two weeks from today, to respondent-Army to make the payment of remaining 50% of the hiring charges to the occupier of the land.
- (ii) The respondent-Army will consider and make the payment as per letter of the State Government to the occupier of the land, as early as possible, but not later than a period of three months from the date of receipt of the letter from the State Government.
- (iii) Respondents-State will specifically clarify that occupier of land will be entitled to 50% of hiring charges from the date of taking actual possession of their land, details of which have been furnished in this Court.
- (iv) So far as interest on delayed payment of amount and enhancement of hiring charge are concerned, it will be open for the individual petitioner to agitate the matter before appropriate forum, in accordance with law.
- (v) The respondents will take necessary steps in respect of acquisition of land in dispute, in accordance with law, as early as possible. It is needless to mention that soon after completion of acquisition proceedings, the compensation in respect of land will be paid to landowners in accordance with law.”

5. Mr. Karma Thinlay, learned counsel appearing on behalf of the Review Petitioner has argued that the deduction of 50% was on the basis of Notification No. 1208/L & F dated 20.05.1950 of Land Revenue Department as also on the Sikkim Cultivators' Protection Act, 1985 (hereinafter referred to as 'the Act, 1985'). He referred to Section 6 of the aforesaid Act, 1985.



6. On the other hand, learned Additional Advocate General appearing on behalf of the State opposed these arguments and submitted that the above deduction was without any basis and the Notification as also Section 6 of the Act referred to by the Review Petitioner would not apply in such cases.

7. We have heard learned counsel for the parties.

8. Notification No. 1208/L & F dated 20.05.1950 in its definition clause defines 'Primary Holders' and 'Secondary Holders'. 'Primary Holders', according to the said Notification, means lessees in their home farm areas, and bustiwalas, in their holdings. Likewise, 'Secondary Holders' means kutiadars and adhiadars, that is, persons deriving an interest either from the lessees, in his home farm area, or a bustiwala, in his holding. Sub-clauses (i) and (ii) of clause (c) further defines 'Kutiadar' means a person who engages to cultivate on condition of rendering a stipulated amount of crop or cash to the primary holder, and 'Adhiadar' means a person who engage to cultivate on condition of rendering half the produce to the primary holder.

9. So far as Section 6 of the Act, 1985 is concerned, it deals with limited liability of cultivators and provides that for the cultivation of any land, no cultivator shall be required to pay or deliver to the owner and no owner shall be entitled to receive from the cultivator, more than half of the principal produce of the land or the price thereof, as the case may be, as rent or share or on any other account.

10. Mr. Karma Thinlay has argued that firstly the value of the land produce was taken out at the Government rate and thereafter on the logic of using land in the capacity of 'Adhiadar', which would have paid only 50%



of the produce as rent of the land, the said 50% amount was paid to the landholders as hiring charges and the remaining 50% was reduced.

11. The argument does not appear to be correct in light of the various provisions contained in the Act, 1985 itself. The Act 1985 was enacted to make provisions for protection of cultivators against termination of cultivation of lands cultivated by them, for restoration of such lands in case of illegal termination, for limiting the liability of the cultivators for termination of cultivation by the owner in certain circumstances and for other matters connected therewith. The opening words of Section 6 itself would make it clear that all the provisions contained therein were for the purpose of cultivation of any land and not for any other purpose. It is not that somebody would capture the land and would use them for any other purpose and in such situation also the rental values would be determined on the basis of the above provisions.

12. The provisions of the Act, 1985 are benevolent. They protect the interest of cultivators who take the land for cultivation, so that they are neither exploited nor put to the verge of starvation. Thus, none of the provisions of the Act, 1985 including that of Section 6 would be made applicable in any other case where the land in question was occupied for any purpose other than the purpose of cultivation. We find no force in the arguments of Mr. Karma Thinlay that, in fact, the 50% of the hiring charges was reduced on the logic of Section 6 of the Act, 1985 and was just and proper on the basis of above provisions.

13. If we look into the reply filed by State-Respondents, i.e. Respondents 2, 3 and 4 herein, they have also stated on affidavit that the deduction of 50% are applicable for those tenants who are farmers and who till the land for agriculture. It is clearly stated that the Army had occupied



the land not as secondary holders, i.e. as Kutiyadars or Adhiadhars, nor for the agricultural purpose. It has further been reiterated that on this account the State had admitted in the writ petition that there was no basis for deduction of 50% of total hiring charges as had been assessed by the authorities. (See paragraph 6 of the reply).

14. The Review Petitions are generally entertained on the grounds of (i) discovery of new and important matter or evidence; or (ii) mistake or error apparent on the face of the record; or (iii) any other sufficient reason. Underlying object of this provision for review is neither to enable the Court to write a second judgment nor to give a party a second opportunity to insist upon his case. Even a subsequent event does not authorize the review of an order.

15. In the instant case we do not find any mistake or error apparent on the face of the record or any other sufficient reason like discovery of new fact or important matter, etc. warranting interference by this Court.

16. The Review Petition is liable to be dismissed and is accordingly dismissed without any orders as to costs.

(Sonam P. Wangdi)
Judge
30.05.2015

(Sunil Kumar Sinha)
Chief Justice
30.05.2015

Approved for Reporting : Yes/~~No~~
Internet : Yes/~~No~~