



W.P.(PIL) No. 05/2017
Basanti Rai & Ors. Vs State of Sikkim & Ors.

BEFORE
MR. JUSTICE SATISH K. AGNIHOTRI, CJ &
MRS. JUSTICE MEENAKSHI MADAN RAI, J.

05. 31.07.17 Present : Dr. Doma T. Bhutia, Ms. Babita Rai and Ms. Sudha
(Agnihotri, CJ) Sewa, Advocates for the Petitioner.

Mr. Karma Thinlay, Senior Government Advocate
General with Mr. S. K. Chettri and Ms. Pollin Rai,
Assistant Government Advocates for the State-
Respondents.

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The Petitioners, stated to be married to non-Sikkimese, have come up with this petition, questioning the legality and validity of the Sikkim Succession Act, 2008, under Notification No.22/LD/P/2008, dated 24th July 2008 of the Law Department, Government of Sikkim (Annexure P-2), whereunder the women married outside Sikkim are deprived of rights to their ancestral properties.

2. The State Government in its reply has clearly stated that the said Act is on paper only and has not yet been notified, as required, to bring the same into force, thus, the Petition is pre-mature.

3. Learned counsel for the petitioners submits that the stand of the State Government is not correct, even if it is not notified, the Authorities are referring to and relying on the provisions of the said Act in deciding cases of this nature. There are several cases where the Authorities



have taken decisions on the basis of the provisions of the said Act.

4. On examining the reply filed by the respondents-State, it is evident that the Sikkim Succession Act, 2008 is not yet enforced, the same having not been notified as yet. Consequently, Orders, if any, passed by the Authorities, in terms of the provisions of the Sikkim Succession Act, 2008, are declared null and void *ab initio*. Examination of the validity of an enactment, which is non-existent, is not required, as it is pre-mature. However, the petitioners are at liberty to take recourse before the appropriate legal forum against any action of the Government, which is *de hors* the statutory provisions and violative of the constitutional philosophy and provisions.

5. Second challenge is to the legality and applicability of the Notification No. J(47)/335/GEN/DOP-Pt-II, dated 05th May 2011 of the Department of Personnel, Adm. Reforms Training, Public Grievances, Career Options and Employment Skill Development and Chief Minister's Self Employment Scheme, Government of Sikkim (Annexure P-4), whereunder the State Government has laid down guidelines for compassionate appointment. This cannot be examined for want of specific facts of individual case and also that cannot be a subject-matter of the Public Interest Litigation. Thus, reserving the liberty to the individual complainant, wherein there is an infraction of



statutory and constitutional provisions, no further adjudication is required. The writ petition is disposed of on this ground with aforesaid liberty reserved to the aggrieved individual, if any.

6. In such view of the matter, nothing survives for adjudication at this stage.

7. Consequently, the writ petition stands disposed of.
No order as to costs.

Judge
31.07.2017

Chief Justice
31.07.2017

jk/ds **Index : Yes / No**
Internet : Yes / No