

W.P.(C) No. 02/2015
M/s Sangh Enterprises Pvt. Ltd. Vs. The Appellate Authority, The
Secretary, L.R. & D.M. Dept. & Ors.

BEFORE
MR. JUSTICE SATISH K. AGNIHOTRI, CJ.

19. 16.03.17 Present: Mr. T.B. Thapa, Sr. Advocate with Mr. Ranjan Chettri and Mr. Khem Raj Sapkota, Advocates for the Petitioner.

Mr. J.B. Pradhan, Additional Advocate General with Ms. Pollin Rai, Asstt. Govt. Advocate for State-Respondents 1 and 2.

Mr. N. Rai, Sr. Advocate with Ms. Tamanna Chhetri, Mr. Suraj Chhetri, Advocates for Respondent No. 3.

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Assailing the legality and correctness of the order dated August 31, 2013 with the impugned communication dated May 28, 2011 of the respondent No. 2 read with impugned communication dated December 19, 2003 of the Revenue Officer-cum-Assistant Director, Land Revenue Department, Gangtok, the instant writ petition has filed.

2. Mr. T.B. Thapa, learned Senior Counsel appearing for the petitioner, would contend that the petitioner has preferred an appeal before the Court of the Prescribed Authority under the provisions of the Sikkim State Rules Registration of Documents, 1930, on June 27, 2011, whereunder, the petitioner has questioned the legality and correctness of the impugned communications dated May 28, 2011 read with impugned communication of the Revenue Officer-cum-Assistant Director, Land Revenue Department, Gangtok, dated December 19, 2003. Learned Senior Counsel would further contend that the impugned

communication dated May 28, 2011 informs the petitioner that his application for registration of lease agreement entered between the petitioner and respondent No. 3 herein could not be approved on the grounds that the Revenue Officer-cum-Assistant Director, Land Revenue Department, Gangtok, vide impugned communication dated December 19, 2003 has declined to register the lease deed on the following grounds: -

"1. This is an ancestral landed property and hence Shri Surendra Lama's son and daughter raised objection to the Lease Deed Registration proposal.

2. Surendra Lama is also a Scheduled Tribe and therefore, Scheduled Tribe land cannot be alienated as per the relevant Laws.

3. The land proposed for Lease Deed registration is situated in Rural area and land holding is also below 5 acres, under Upper Sichey block, East District, Sikkim."

3. Learned Senior Counsel would next contend that the Appellate Authority (respondent No. 1 herein), without examining the nature of challenge in the appeal, disposed of the appeal by order dated August 31, 2013, upholding the earlier order dated June 25, 2011 passed by the District Collector, East. It is further urged that the Appellate Authority has neither considered the averments made in the appeal, nor upheld the contents as stated in the impugned communications dated December 19, 2003 and May 28, 2011. The impugned order dated August 31, 2013 upholding the order dated June 25, 2011, when the communications under challenge were dated May 28, 2011 and December 19, 2003, deserves to be quashed and the

Appellate Authority be directed to consider the appeal on its own merit, in accordance with law.

4. *Per contra*, Mr. N. Rai, learned Senior Counsel appearing for the private respondent No. 3, would contend that order dated June 25, 2011 rendered by the District Collector, East concluded the earlier proceedings including the impugned communications sent to the petitioner. Thus, there is no irregularity or illegality in the order dated August 31, 2013. It is further contended that though there is no mention of the impugned communications dated May 28, 2011 and December 19, 2003, but the issue involved therein stands concluded by the order dated June 25, 2011. Thus, the Appellate Authority has rightly upheld the order dated June 25, 2011. It is further contended that the order may be read to have decided the appeal on merit whereunder the communications dated May 28, 2011 and December 19, 2003 were under assail.

5. Mr. J.B. Pradhan, learned Addl. Advocate General appearing for the State-respondents fairly submits that the matter may be referred for reconsideration to the Appellate Authority.

6. Examining the controversy involved herein and also the contentions advanced by the learned counsel appearing for the parties, I proceed to dispose of the petition.

7. Be that as it may, once the appeal assails particular orders, namely, communications dated May 28, 2011 and December 19, 2003, the Appellate Authority ought to have examined the contents of the said impugned communications specifically mentioning dates of the same, while disposing of the appeal. On perusal of the impugned order dated August 31, 2013, it is noticed that though there is a mention of the communication dated December 19, 2003, but no reference of even other communication dated May 28, 2011. The impugned order upholds the order dated June 25, 2011 and does not state as to whether the impugned communications dated December 19, 2003 and May 28, 2011 were upheld or set aside.

8. It is apparent that the said communications were the subject matter of the appeal which ought to have been adverted to by the Appellate Authority, though the contents may be one and the same. Thus, the impugned order dated August 31, 2013 cannot be held to have disposed of the appeal, whereunder the some other communications were under challenge.

9. It is well settled that there should be a specific mention of the order sought to be impugned in the appeal, while disposing of the appeal. It cannot be understood and read by implication. Without expressing any opinion on the merit of the case, I am of the considered view that

the impugned order dated August 31, 2013 deserves to be set aside. Accordingly, the writ petition is allowed.

10. The matter be remitted back to the Appellate Authority (respondent No. 1 herein), to decide the appeal, considering the grounds raised therein, on its own merit, in accordance with law, as early as possible.

11. No order as to costs.

Sd/-
Chief Justice
16.03.2017

jk/pm Index : ~~Yes~~ / No
 Internet : Yes / ~~No~~