

HIGH COURT OF SIKKIM
Record of Proceedings

FAO No. 3 of 2019

THE KARMAPA CHARITABLE
 TRUST & ORS.

APPELLANTS

VERSUS

THE STATE OF SIKKIM & ORS.

RESPONDENTS

Date: 18.07.2019

CORAM:

THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

For Appellants

Mr. K.K. Rai, Senior Advocate.
 Mr. B. Sharma, Senior Advocate.
 Mr. Norden Tshering Bhutia,
 Advocate.

For Respondents
 R-1 & R-2

Mr. Thinlay Dorjee Bhutia,
 Government Advocate.
 Mr. S.K. Chettri, Assistant
 Government Advocate.

R-3

None.

ORDER

1. Heard learned Counsel for the parties.

2. The Appellants are before this Court assailing the Order dated 30.04.2019 passed in Title Suit No. 1 of 2017 (*Karmapa Charitable Trust & others v. State of Sikkim & others*) by the Court of the learned District Judge, Special Division-I, Sikkim at Gangtok (I/C). The arguments advanced by learned Senior Counsel for the Appellants are that the learned trial Court vide the impugned Order dated 30.04.2019 did not consider it necessary to restrain the Urban Development and Housing Department (hereinafter "UD&HD") from demolishing the Star

HIGH COURT OF SIKKIM
Record of Proceedings

Cinema building in which the Appellants are shareholders *inter alia* on grounds that the Appellants are minority shareholders having a share holding of 0.66%. Moreover the compensation amount of Rs.3,69,788/- (Rupees three lakhs, sixty nine thousand, seven hundred and eighty eight) only, was issued in respect of the concerned share holding of the Dharma Chakra Centre (hereinafter "DCC"). As per the learned Senior Counsel, the compensation amount was taken by the "Tshurpu Labrang," who however is not a party in the instant matter. That, in fact this Court had declined to allow "Tshurpu Labrang" to be impleaded as a party earlier in time which therefore holds good. That, the learned trial Court has ordered that "Tshurpu Labrang" file an Affidavit regarding the status of the said amount when it is a third party and is not a party to the instant proceedings and therefore the Order of the learned trial Court requires to be set aside and demolition of the property stayed.

3. Learned Government Advocate on the other hand submitted that the Government was unaware of the status of the "Tshurpu Labrang" and on the claim of one Tashi Wangyal claiming to be the authorized representative of the said body had handed over the compensation amount of Rs.3,69,788/- (Rupees three lakhs, sixty nine thousand, seven hundred and eighty eight) only, to them. Admittedly, no documentary evidence was filed before the concerned Department to establish the authority of "Tshurpu Labrang." Learned Government Advocate submits that steps are

HIGH COURT OF SIKKIM
Record of Proceedings

being taken to recover the amount of Rs.3,69,788/- (Rupees three lakhs, sixty nine thousand, seven hundred and eighty eight) only, from the "Tshurpu Labrang" which shall then be deposited either before the learned trial Court or with the Appellants.

4. I have carefully considered the rival submissions of learned Counsel and perused the impugned Order.

5. It is an admitted fact that the share of the Appellants in the concerned structure is approximately 0.66%. Considering the value of the share, the entire process of demolition which is for the purposes of required infrastructure (Annexure A-3) cannot be held at ransom by the Appellants. In view of the submissions made today, let the said amount, if recovered from "Tshurpu Labrang" be deposited before the learned trial Court. If the amount cannot be recovered from "Tshurpu Labrang" let the UD&HD pay the same before the learned trial Court by 31.08.2019. The Department is at liberty to recover the amount so paid, from "Tshurpu Labrang" since payment was released to the said entity by the Department sans verification of the *locus standi* of the person receiving the amount or that of the entity.

6. As prayed for by learned Senior Counsel for the Appellants, the Order of the learned trial Court dated 30.04.2019 passed in Title Suit No. 1 of 2017 (*Karmapa Charitable Trust & others v. State of Sikkim & others*) which *inter alia* reads as follows;

HIGH COURT OF SIKKIM
Record of Proceedings

"It may, however, be mentioned that the present status of the above amount of Rs.3,69,788/- is not known. Accordingly, Tshurpu Labrang is directed to file an affidavit regarding the status of the said amount as on today. The affidavit may be filed by its General Secretary or authorized representative, as the case may be."

is hereby set aside. The rest of the Order requires no interference.

- 7.** Consequently FAO No. 03 of 2019 stands disposed of.
- 8.** Pending applications, if any, also stand disposed of.
- 9.** Copy of this Order be forwarded to the learned trial Court for compliance.

Judge
18.07.2019