



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 17th OCTOBER, 2020

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

WP(C) No.31 of 2020

Petitioner : D. B. Thapa

versus

Respondent : Urban Development and Housing Department

Petition under Article 226 of the Constitution of India

Appearance

Mr. Yam Kumar Subba, Advocate for the Petitioner.

Mr. Santosh Kumar Chettri, Government Advocate for the Respondent.

O R D E R (ORAL)

Meenakshi Madan Rai, J.

1. By filing this Writ Petition the Petitioner seeks a writ of *mandamus* and/or other appropriate writs, orders and/or directions quashing the demolition Notice, issued vide Memo No.21/275/509, dated 03-07-2020 and letter No.21(275)197/UD&HD/628, dated 29-09-2020, to the Petitioner by the Respondent Department.

2. It is the Petitioner's case that he is a law abiding citizen and was twice elected as a Member of the Sikkim Legislative Assembly, viz., in 1994 and in 2009. He served as Minister in the Public Health Engineering Department (PHE) from 1994 to 1999 and as Minister, Urban Development & Housing Department (UD&HD) from 2009 to 2014.

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3. On an application filed by the Petitioner on 04-03-2013 before the Respondent Department seeking to construct a shed/garage for parking his vehicle, due to security reasons, permission was granted to that effect on 23-04-2013, vide letter bearing No.21(275)/1026/UD&HD. The Petitioner was allowed to construct a temporary shed/garage on certain terms and conditions as detailed in the said communication. Now, it is alleged that the Petitioner has been served with the impugned Notices arbitrarily, directing him to demolish the temporary shed. The Petitioner submitted his reply to the first Notice, *supra* but the Principal Chief Town Planner and Assistant Chief Town Planner were dissatisfied thereof and issued the final demolition order by invoking Section 8 of the Sikkim Allotment of House sites and Construction of Building (Regulation and Control) Act, 1985, violating his rights under Article 14 of the Constitution of India.

4. Learned Counsel for the Petitioner submits that the demolition order has been issued in the teeth of the permission granted earlier by the Government and is an attempt to victimize the Petitioner as he belongs to a rival political party. The parking of the Petitioner's vehicle has not caused any impediment to the flow of vehicular or pedestrian traffic and the issuance of the Notice is to harass the Petitioner as evident from the fact that there are other persons in the locality who are similarly situated with the Petitioner but no steps have been taken against them, hence the prayers in the Petition be granted.

5. *Per contra*, Learned Government Advocate submits that no right of the Petitioner has been violated and the permission



granted by the Government in 2013 was merely for construction of a temporary shed with the conditions given in the said permission letter dated 23-04-2013 and duly accepted by the Petitioner. The portion of land on which the shed stands was never allotted to the Petitioner at any point of time by the Government. In the light of the facts place before this Court no right accrues to the Petitioner with regard to the area on which he has constructed his garage. Hence, the Writ Petition deserves no consideration and ought to be dismissed *in limine*.

6. Having heard the rival contentions of the Learned Counsel I have given due consideration to the submissions and perused all documents placed before me.

7. The prayers in the Writ Petition are as follows;

- (i) *Issue a writ of Mandamus and/or any other appropriate writ, order or direction for quashing the impugned demolition Notices vide memo No.21/275/509 and 03.07.2020 and vide Memo No.21(275)97/UD&HD/1628 dated 29.09.2020 served through Principal Town Planner and Assistant town Planner of the Respondent to the Petitioner.*
- (ii) *Pass any other appropriate order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.*

8. The facts have already been put forth *supra* and for brevity are not being repeated. Relevant reference in this context may be made to the conditions put forth in the letter dated 23-04-2013 bearing No.21(275)/1026/UD&HD, wherein the Petitioner was granted permission to construct a temporary shed/garage, viz.;

- "(i) *That the permission is purely for security reasons;*
- (ii) *That, you shall have no right or claim over the land;*
- (iii) *That you shall demolish the same as and when the Government desires; and*



(iv) *That your car shall not be parked in a way that will obstruct the free flow of pedestrian movement."*

9. As admitted by Learned Counsel for the Petitioner these conditions have not been contested by the Petitioner since the year 2013. No change in the conditions were sought for by the Petitioner from the Respondent Department at any point in time, till date. It is also admitted that the shed stands on land which was never allotted to the Petitioner by the concerned Department or any other Department of the Government.

10. It is thus evident that the portion of land on which the Petitioner was allowed to construct the shed/garage was a temporary arrangement for security purposes at the relevant time as he was a sitting Minister to the Government of Sikkim. Admittedly, it was not a Government allotment made to him in terms of any Rules prevalent at that time. Evidently, he has no right over the said area sans allotment neither does he claim ownership upon it under any law. The conditions spelt out in the letter of permission allowing construction of the shed being clear and unambiguous do not require further elucidation.

11. In consideration of the submissions of Learned Counsel for the parties, the facts involved in the instant matter, the conditions laid down in the letter granting permission to construct the temporary shed and in the absence of any indication that the any right of the Petitioner has been violated, I am of the considered opinion that the matter merits no further consideration and nothing remains for adjudication thereof.

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12. The Writ Petition deserves to be and is accordingly dismissed and disposed of.

13. In view of the observation *supra*, I.A. No.01 of 2020, which is an application for stay and issuance of interim directions to restrain the Respondent from executing the impugned Notice and demolition order, also stands disposed of.

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(Meenakshi Madan Rai)
Judge
17-10-2020

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