



THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Extra Ordinary Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P. (C) No. 55 of 2022

1. Shri Netra Kumar Pradhan,
S/o Late Ganesh Kumar Pradhan,
R/o Changeylakha, Rongli Sub-Division,
East Sikkim-737 131.
2. Smt. Renuka Pradhan,
W/o Netra Kumar Pradhan,
R/o Changeylakha, Rongli Sub-Division,
East Sikkim-737 131.
3. Shri. Dambar Kumar Pradhan,
S/o Late Ganesh Kumar Pradhan,
R/o Changeylakha, Rongli Sub-Division,
East Sikkim-737 131.
4. Smt. Sita Pradhan,
W/o Dambar Kumar Pradhan,
R/o Changeylakha, Rongli Sub-Division,
East Sikkim-737 131.
5. Shri Narendra Kumar Pradhan,
S/o Late Devi Bahadur Pradhan,
R/o Rongli Bazaar, Rongli Sub-Division,
East Sikkim-737 131.
6. Shri Krishna Kumar Pradhan,
S/o Naerndra Kumar Pradhan,
R/o Rongli Bazar, Rongli Sub-Division,
East Sikkim-737 131.
7. Shri Dilip Kumar Pradhan,
S/o Narendra Kumar Pradhan,
R/o Rongli Bazar, Rongli Sub-Division,
East Sikkim-737 131.
8. Smt Chandra Kala Pradhan,
W/o Dilip Kumar Pradhan,
R/o Rongli Bazar Rongli Sub-Division,
East Sikkim-737 131.



9. Shri Rabin Kumar Pradhan,
S/o Narendra Kumar Pradhan,
R/o Rongli Bazar, Rongli Sub-Division,
East Sikkim-737 131.
10. Smt Geeta Pradhan,
W/o Rabin Kumar Pradhan,
R/o Rongli Bazar, Rongli Sub-Division,
East Sikkim-737 131.
11. Shri Rajesh Pradhan
S/o Narendra Kumar Pradhan,
R/o Rongli Bazar, Rongli Sub-Division,
East Sikkim-737 131.

..... Petitioners

Versus

1. The District Collector,
Office of the District Collectorate,
Gangtok 737 101
East Sikkim.
2. The Sub-Divisional Magistrate,
Rongli Sub-Division,
East Sikkim. 737 131.
3. Shri Benu Prasad Sharma,
S/o Rudra Prasad Sharma,
R/o Cangeylakha, Rongli Sub-Division,
East Sikkim- 737 131.

..... Respondents

Application under Article 226/227 of the Constitution of India.

(Impugned Orders dated 01.07.2019, 26.06.2020, 05.04.2022 and 19.09.2022 passed by the District Collector, East Sikkim, learned Sub-Divisional Magistrate, East Sikkim, learned Appellate Authority, Land Revenue and Disaster Management Department, and learned Appellate Authority, Land Revenue and Disaster Management Department).

Appearance:

Mr. B. Sharma, Senior Advocate with Mr. Sajal Sharma, Ms. Shreya Sharma, Ms. Puja Kumari, Ms. Sweta Karki and Ms. Roshni Chettri, Advocates for the Petitioners.



Mr. Zangpo Sherpa, Additional Advocate General and
Mr. Yadev Sharma, Government Advocate for the
Respondent Nos. 1 & 2.

None for the Respondent No.3.

Date of hearing : 06.03.2024
Date of Order : 06.03.2024

ORDER (ORAL)

Bhaskar Raj Pradhan, J.

1. The present writ petition assails the Order dated 01.07.2019 passed by the District Collector-respondent no.1 cancelling the Certificate of Identification (COI) of the petitioners. It also challenges the notice dated 26.06.2020 issued by the Sub-Divisional Magistrate-respondent no.2 stating that the petitioners had been given two months time to sell their landed properties and submit the status report. The Order of the Appellate Authority dated 05.04.2022 rejecting the appeal preferred by the petitioners on the ground that the delay in preferring the appeal of 819 days could not be condoned is also under challenge. The petitioners also challenges the Order dated 19.09.2022 by which review sought of the Order dated 05.04.2022 passed by the Appellate Authority was also rejected.

2. This litigation has a chequered history. On 27.07.2005 a complaint was filed by the respondent no.3 against some of the petitioners for cancellation of their COI. On 11.01.2006 the respondent no.2 held that the COI of



those petitioners had not been fraudulently obtained. Thereafter, Educated Unemployment Youth of Regu seem to have filed another complaint. An inquiry was initiated once again by the respondent no.2 on 28.09.2005 which culminated in the respondent no.2 on 11.01.2006 holding that the COI of the petitioner no.5 and his family members are genuine.

3. The respondent no.3 seems to have filed yet another complaint against some of the petitioners and on 30.10.2006 the respondent no.1 cancelled the COI of Ganesh Kumar Pradhan and petitioner nos. 1 to 4. The respondent no.1 also directed the cancellation of land records/parcha issued in respect of Ganesh Kumar Pradhan issued on the basis of false COI with a further direction that Ganesh Kumar Pradhan may be given an opportunity to sell his land to a person having valid Sikkim Subject Certificate within a period of one month. By yet another Order dated 07.08.2008 the other petitioner's COI were also cancelled by the respondent no.1.

4. The petitioners thereafter, approached this Court by filing Writ Petition (C) No. 40 of 2010 challenging the Orders dated 30.10.2006 and 07.08.2008 passed by the respondent no.1. The plea that the reports of the Special Branch Sikkim Police and the Vigilance Department



against them had not been furnished before passing impugned Orders dated 30.10.2006 and 07.08.2008 was accepted by this Court. Accordingly the impugned Orders were set aside without examining the merits of the case remitting it to the Competent Authority with a direction to furnish the copies of the reports and hold a fresh inquiry. Thereafter, the respondent no.1 after examining the matter afresh cancelled the COI of petitioner nos. 1 to 11 and Ganesh Kumar Pradhan.

5. The respondent no.2 was also directed to scrutinize all land transactions done using the COI of the petitioners and initiate proceedings as the transfer of property was based on the COI which were cancelled.

6. The petitioners on legal advice received however, filed a civil suit after issuance of a legal notice. Although this legal notice is dated 18.02.2019 the learned Senior Counsel for the petitioners submits that it was a typographical error and it ought to have been 18.02.2020. The civil suit however, was rejected under Order VII Rule 11 (d) of the Code of Civil Procedure, 1908 on the ground that the petitioners ought to have approached the Secretary, Land Revenue and Disaster Management Department by filing an appeal against the Order dated 01.07.2019 as provided in Notification No. 119/Home/2010 dated 26.10.2010.



7. It was only thereafter, that on 26.09.2021 an appeal was preferred to the Secretary, Land Revenue and Disaster Management Department in terms of the relevant clause of Notification No.119/Home/2010 dated 26.10.2010 which reads as under:-

“The issuing authority is also authorized to cancel the Certificate of Identification of a person if it is reasonably established that the Certificate has been obtained by him/her or on his/her behalf by misrepresentation or suppression of any material fact.

Any person aggrieved by the refusal to grant or cancellation of his/her Certificate of Identification by the Issuing Authority may apply within one month of such refusal or cancellation to the Secretary Land Revenue & Disaster Management Department for redress.”

8. The learned Appellate Authority was of the view that the delay of 819 days could not have been condoned in the facts of the case and rejected the appeal on that ground alone without examining it on merits.

9. As seen above the cancellation of COI has serious civil implications. In that view of the matter this Court is of the view that the delay although substantial should be condoned in the peculiar facts of the case to enable the petitioners to ventilate their grievances before the Appellate Authority on merits. More so when apparently the petitioners seem to have been advised to file a civil suit against the cancellation of their COI although an appeal was provided for in Notification No.119/Home/2010 dated



26.10.2010. The records reveal that the petitioners from at least 18.02.2020 till 03.09.2021 were bonafide pursuing a remedy before the Civil Court against the impugned Order dated 01.07.2019. Considering the serious implications of the cancellation of COI of the petitioners, this Court is of the view that it would be unfair to non suit them in the statutory appeal on the ground of delay in preferring the appeal.

10. Accordingly, the impugned Order dated 05.04.2022 and note-sheet dated 19.09.2022 are set aside. The Writ Petition is allowed. The matter is remitted to the Secretary, Land Revenue and Disaster Management Department for its re-examination on merits after granting opportunity of hearing to the parties. The Appellate Authority shall hear the matter afresh on merits and decide the case.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**
Internet : **Yes**

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