

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s).7077__ OF 2011
(arising out of SLP(C)No.7384/2005)

DANIEL LEPCHA

...Appellant(s)

VERSUS

PAWAN KUMAR CHAMLING AND OTHERS

...Respondent(s)

O R D E R

Leave granted.

This is an appeal for setting aside the order passed by the Division Bench of the Sikkim High Court whereby the writ petition filed by the appellant for quashing the allotment of various parcels of land to respondent Nos.10 to 20 in different parts of Sikkim was dismissed.

At the outset, we deem it fit to mention that the special leave petition could be dismissed because the appellant failed to comply with peremptory order passed by this Court on 31.7.2008.

The appellant and respondent Nos.21 and 22 (proforma respondents) challenged the allotment of land to the private respondents mainly on the ground of arbitrary exercise of power, mala fides, favoritism and nepotism. They claimed that about 200 persons were allotted land for extraneous

2

considerations and in violation of the provisions contained in the Sikkim Allotment of House Sites and Construction of Building (Regulation and Control) Act, 1985 (for short, "the Act"). According to the appellant and the proforma respondents, the land was acquired for a public purpose, namely, establishment of Rolling Flour Mill, but after the mill was closed down, plots were carved out by the Urban Development and Housing Department and allotted to the selected persons at a throw away price.

The Division Bench of the High Court negatived challenge to the allotment of land on the ground that the writ petition was highly belated and also on the ground that it was politically motivated.

Learned counsel for the appellant made efforts to convince us that the High Court committed an error by non-suiting the appellant and the proforma respondents on the ground of delay ignoring that they had filed the writ petition immediately after the matter was raised in the Sikkim Legislative Assembly by the Leader of Opposition Shri N.B. Bhandari, but we have not felt impressed. The averments contained in the writ petition filed by the appellant and the proforma respondents show that all of them are residents of Gangtok and are prominent members of a political party. In a small place like Gangtok any enlightened citizen would have

3

come to know that the State Government has allotted various parcels of land to the political functionaries and members of the Executive, who had considerable influence on the State apparatus. Therefore, it is not possible to believe that till 2002, the appellant and the proforma respondents did not come to know about the allotments made by the State Government in 1998-99. This being the position, the delay of about 4 years filing of the writ petition was fatal to their cause and the High Court did not commit any error by declining to entertain their prayer for quashing the allotment.

We may add that it will be wholly inequitable to quash the allotments at this belated stage by entertaining the prayer made by the appellant because majority of the allottees have already raised construction and some of them are using constructed buildings for residential purposes.

Before concluding, we deem it proper to mention that in response to query made by the Court whether notifications in terms of Section 3(1) and (4) of the Act have been issued and

whether the rules have been framed for allotment of sites,
Shri A.K. Ganguly, learned senior counsel appearing for the
State of Sikkim placed before the Court letter dated 17.8.2011
sent by Additional Chief Town Planner, Urban Development and
Housing Department, Government of Sikkim to the standing
counsel for the State Government stating therein that the

4

requirement of Section 3 of the Act will be complied with
within a period of six months for Gangtok Municipal area and
the rules will be framed for the whole State and that no
allotment would be made in the meantime.

In the result, the appeal is dismissed with the
direction that the State Government shall take action in
accordance with Section 3 of the Act and issue notification
under Section 3(1) and (4) for the entire State within a period
of six months. The rules for implementation of the provisions
of the Act shall also be framed within that period and till
then no allotment shall be made under the Act.

.....J.
(G.S. SINGHVI)

.....J.
(H.L. DATTU)

NEW DELHI,
August 17, 2011.

5

ITEM NO.1

COURT NO.10

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).7384/2005

(From the judgement and order dated 23/11/2004 in WP No.35/2003
of The HIGH COURT OF SIKKIM)

DANIEL LEPCHA

Petitioner(s)

VERSUS

PAWAN KUMAR CHAMLING & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 17/08/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE H.L. DATTU

For Petitioner(s) Mr. Sudarsh Menon, Adv.
For Respondent(s) Mr. A.K. Ganguly, Sr. Adv.
Mr. A. Saran, Sr. Adv.
Mr. A. Mariarputham, Sr. Adv.
M/S Arputham, Aruna & Co., Adv.
Mr. Pallav Shisodia, Sr. Adv.
Mr. Brijender Chahar, Sr. Adv.
Mr. K.R. Anand, Adv.
Mr. Vinay Garg, Adv.

UPON hearing counsel the Court made the following
O R D E R

In terms of signed order, the appeal is
dismissed with the direction that the State Government
shall take action in accordance with Section 3 of the
6

Act and issue notification under Section 3(1) and (4)
for the entire State within a period of six months.
The rules for implementation of the provisions of the
Act shall also be framed within that period and till
then no allotment shall be made under the Act.

(A.D. Sharma) (Phoolan Wati Arora)
Court Master Court Master
(Signed Order is placed on the file)