

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

Dated: 3rd May, 2019

S.B.: HON'BLE MR. JUSTICE VIJAI KUMAR BIST, CHIEF JUSTICE.

WP(C) NO. 11 OF 2019

Smt. Man Maya Limboo,
D/o Late Dhan Bdr. Limboo,
R/o Bojoghari, Fatak,
Upper Burtuk,
Gangtok,
East Sikkim.

... Petitioner

-versus-

1. State of Sikkim,
Represented by and through the Secretary,
Department of Animal Husbandry, Livestock,
Fisheries & Veterinary Services,
Government of Sikkim,
Krishi Bhawan,
Tadong,
East Sikkim.
2. The Commissioner of Food Safety,
Health Care, Human Services & Family Welfare
Department,
Government of Sikkim,
Convoy Ground, Tadong,
East Sikkim.
3. The Sub-Divisional Magistrate,
District Administrative Centre,
Government of Sikkim,
Sichey, Gangtok,
East Sikkim.
4. Gangtok Municipal Corporation,
Represented by & through its Mayor,
Deorali, Gangtok,
East Sikkim.

5. State Pollution Control Board,
Represented by & through its Member Secretary,
Forest, Environment & Wildlife Management
Department,
Government of Sikkim,
Forest Secretariat Annex – I,
Ground Floor, Deorali,
Gangtok – 737102.
6. Mr. Hangu Tshering Bhutia @ Hangu Bhutia,
R/o Bojoghari,
Upper Burtuk,
Gangtok,
East Sikkim.

... Respondents

Appearance:

Mr. A. Moulik, Senior Advocate with Mr. Ranjit Prasad and Mr. Karma P. Wangdi, Advocates for the Petitioner.

Mr. Karma Thinlay, Senior Government Advocate with Mr. S.K. Chettri and Ms Pollin Rai, Assistant Government Advocates, for respondents no. 1, 2 and 3.

Mr. Jigdal Gyatso Chankapa, Advocate for respondent no.5.

ORDER

Chief Justice

Heard learned counsel for the parties.

2. Petitioner has approached this Court seeking the following reliefs:-

- “(i) A Rule upon the respondent nos. 1 to 5 and each of them to show cause as to why trade licence of the respondent no.6 to run meat shop business at Bhojoghari in the schedule premises shall not be set aside, quashed and cancelled.

- (ii) A writ or order or direction or declaration that the respondent nos. 1, 2, 3, 4 and 5 shall take all necessary steps, measure to remove and relocate the meat shop business of the respondent no.6 from the schedule premises to any other location, not affecting interest of the public health and environment.
- (iii) A writ or order or direction or declaration that the petitioner as a Citizen of India has every right to reside in a pollution free air and environment and therefore the pollutant meat shop in the schedule premises shall be directed to be removed/relocated.
- (iv) A writ or order or direction or declaration that the respondent no.5 shall collect air sample from the affected place, analyze it and take needful action to restrain the respondent no.6 from carrying on the business of live meat sale in the schedule premises."

3. The petitioner claims herself a Sikkimese by birth and a permanent resident of Bojoghari, Upper Burtuk, Gangtok, East Sikkim. The place where the house of the petitioner is situated is a residential area. It is further stated by the petitioner that about 30 to 35 feet above her house and in its north, one Shri Hangu Tshering (respondent no.6) has constructed a tin shed with brick wall for selling different types of meat in the stall like beef, pork, mutton, buff, chicken, fish, etc. It is further stated that the shed is not fully covered and not at all well protected. The residential house of the petitioner is separated by a jhora (nala) from the meat shop of the respondent no.6 through which water and waste products including blood of animals passes throughout the year. It

is also stated that under licence from the appropriate authority/Gangtok Municipal Corporation, the respondent no. 6 has been running the meat shop. It is also stated that unbearable stench continuously emanates from the meat shop which is hazardous to the health of the petitioner, her family members and the inmates of neighbouring houses. Further, the smell or the stench are so pungent and noxious that the petitioner and her family can literally feel that their health is deteriorating day by day and if exposed for some more time, then they will surely be permanent victims of severe ailments. Furthermore, the petitioner submits that the meats are chopped daily till late at night and also offloaded early in the morning while the shop owners make a chaotic noise while doing so. Further during the day and night, the chopping of the meat and the noise it makes are unbearable and loud which is a constant threat for school going children of the area, so far, as their mental/physical health and studies are concerned.

4. The grievance of the petitioner is that even though she approached the Gangtok Municipal Corporation; the Urban Development and Housing Department, Government of Sikkim; the District Collector, East, as well as the State Pollution Control Board, no effort has been made by any of the authorities to stop the private respondent no.6 from creating nuisance. It is also submitted that the meat shop is being run by violating the

conditions of the norms fixed by the Municipal Corporation. Learned Senior counsel for the petitioner submits that though some order was passed by the Sub-Divisional Magistrate, East Sikkim at Gangtok, but the Order passed by him has not been complied by the private respondent no.6. He submits that in fact the Sub-Divisional Magistrate is not the competent authority and the Municipal Corporation alone is authorized to take appropriate action in the matter.

5. After considering the submissions of learned counsel for the parties and without expressing any opinion about the merit of the case, I am of the view that directions should be issued to the Competent Authority/ Municipal Corporation to take a decision on the application/representation filed by the petitioner. Therefore, I dispose of this petition in the following manner:-

- (i) The petitioner is permitted to approach the Competent Authority/Gangtok Municipal Corporation within a period of one week by filing a detailed application/representation.
- (ii) The Competent Authority shall get the matter inquired by some competent person.
- (iii) Thereafter, the Competent Authority shall issue notice, if required, to the respondent no. 6 asking him to submit his reply. Along with the notice, a

copy of the complaint and report shall also be supplied to respondent no. 6.

- (iv) The Competent Authority after considering the complaint, reply of respondent no. 6 and the report also, shall pass order in accordance with law.
- (v) Application/representation made by the petitioner shall be decided by the Competent Authority within a period of three weeks from the date of filing of the application by the petitioner.

6. The writ petition stands disposed of.

Chief Justice
03.05.2019

Index : No
Internet: Yes

jk/bp