

Sikkim High Court State Of Sikkim vs Smt. Pachey Khampa And Ors. on 29 February, 2000 Author: A Deb Bench: R Dayal, A Deb JUDGMENT Anup Deb, J. 1. This is an appeal filed by the State of Sikkim through the Secretary. Urban Development and Housing Department against the Judgment and decree of the Civil Judge, East Sikkim at Gangtok dated the 31st August, 1998 passed in Civil Suit No. 16 of 1993 in favour of the respondents-plaintiffs. 2. Case of the respondents who were the plaintiffs in the Civil Suit No. 16 of 1993 before the Civil Judge. East was that Anji Khampa late husband of the first respondent and late father of second and third respondents had constructed a wooden house consisting of one big room measuring 12' x 20' at the back side of Karma Hotel at M.G. Marg, Gangtok and the said structure was jointly owned by the respondents-plaintiffs, Late Anji Khampa had undertaken the construction with the permission and/or license of the then authorities in 1976 and it was further stated in the plaint that late Anji Khampa had constructed pucca structure acting on the license and the structure is of a permanent nature and considerable expenditure had to be incurred for completing the construction. Further case of the respondents-plaintiffs is that unless permission was given by the concerned authority to execute the works of construction of permanent nature in the year 1976 when Gangtok Municipal Corporation and the Local Self-Government Department were vigilantly looking after and maintaining the Bazar area including the allotments of sites. inspecting the construction sites and preventing encroachment on the Government lands, it would not have been possible to construct the structures thereon. After completion of the structure, late Anji Khampa possessed and enjoyed the said construction and used it as his servants' quarter, kitchen and store-room during his lifetime. It is further stated by the respondents-plaintiffs that the land in question could not be used beneficially by any other person and a public path divides the said land and the building of the hotel owned by the respondents-plaintiffs. In almost all cases small strips of land situated by the side of one's building had been settled with the adjacent owners on payment of salami and late Anji Khampa also made prayers to the authorities concerned to regularise the said land but this was made under a mistake of law as late Anji Khampa was not aware that the license was an irrevocable one and the authorities could not have revoked the same. The structure was completed in 1976 before the commencement of the Gangtok Municipal Corporation Building Bye-laws. Late Anji Khampa died in 1981 and after his death the respondents-plaintiffs inherited the same and have been continuously enjoying and possessing the said construction as their store-room, servants' quarter and kitchen. The authorities initiated proceedings against the respondents-plaintiffs after the death of Anji Khampa and such action was not taken when Anji Khampa was alive. The respondents-plaintiffs served a notice under Section 80 of the Civil Procedure Code which was duly served upon the appellant-defendant on 10th May, 1993, but no action was taken. The main reliefs sought for by the respondents-plaintiffs are for declaration that permission or license under which the building constructed of wooden/ CI sheet walls and G.C.I. sheet roof measuring 20 feet length and 12 feet breadth situated at back of Karma Hotel, Mahatma Gandhi Marg, Gangtok was irrevocable and for an

order of perpetual injunction restraining the appellant-defendant from disturbing the peaceful possession and enjoyment of the aforesaid building and also for an order of perpetual injunction restraining the appellant-defendant from demolishing the aforesaid structure. 3. The appellant-defendant in its written statement stated that the suit was not maintainable and barred by the law of limitation and was bad for misjoinder and nonjoinder of necessary parties. The vacant land measuring 12' x 20' upon which the construction of aforesaid structure was made is a Government land in the administrative control of the appellant department. Anji Khampa, the late husband of the first respondent and late father of the second and third respondents had illegally encroached upon the land in question and erected an unauthorised construction over the same. Local Self-Government Department, the predecessor of the appellant department, had directed late Anji Khampa by issuing notice, to remove the unauthorised structure from the land in question, but late Anji Khampa failed to comply with the notice. The respondent-defendant filed Civil Suit No. 25 of 1987 in the Court of Civil Judge, East Sikkim at Gangtok challenging the notice Issued by the Local Self-Government Department and the respondents-plaintiffs withdrew the said suit with liberty to file afresh on the same cause of action and filed the present suit in the year 1993. The appellant-defendant did not accord permission to the late Anji Khampa for construction of wooden shed and also denied that late Anji Khampa constructed the structure with the permission of the appellant-defendant. It was further stated that the structure was neither RCC nor permanent in nature nor was it constructed at a considerable expense. It was further submitted by the appellant-defendant that it is an admitted fact that late Anji Khampa applied for regularisation of the structures on the said land. The appellant-defendant also denied that the construction was completed in the year 1976 prior to enforcement of the Gangtok Municipal Corporation Building bye-laws. It was further stated that the plaintiffs never enjoyed and possessed the said construction nor they did possess the same continuously after the death of Anji Khampa and despite several notices to late Anji Khampa for demolition and removal of the structure, the respondent-plaintiffs did not remove the unauthorised structure over the land. It was submitted by the appellant defendant that the respondents-plaintiffs are not entitled to get any relief as they are in possession of unauthorised structure over the Government land. 4. On the basis of the pleadings of the parties, the following issues were framed :- "1) Is the suit maintainable? 2) Whether the provisions of the Sikkim Allotment and House Sites and Construction of Building (Regulation and Control) Act, 1985 is applicable in the present suit? 3) Whether the suit was constructed with the permission or license of the GMC and whether the license is irrevocable? 4) Whether the plaintiffs have perfected their right by way of adverse possession? 5) Whether the plaintiffs are entitled to the reliefs claimed by them?" 5. The respondents-plaintiffs examined Karma Lobzang, plaintiff No. 2 as their witness. Shri D.R. Bhattarai was examined as defendant's witness. By communication dated 5th June, 1979. (Exbt. D-1) the Executive Officer, Gangtok Municipal Corporation directed Anji Khampa, late husband of the first respondent and late father of the second and third respon-

dents to remove the temporary shed constructed by Anji Khampa behind the Karma Hotel, M.G. Marg. Gangtok and vacate the area immediately within a week, Exbt. D-2 is a reminder dated 28th June, 1979 to the notice dated 5th June, 1979, Exbt. D-1 and Anji Khampa was once again directed to remove the temporary shed constructed by him since the land will be required by the Corporation for putting up a small garden thereon. Exbt. D-3 is a letter dated 21st April, 1981 Issued by the Deputy Secretary, Local Self-Government and Housing Department to the Executive Officer, Gangtok Municipal Corporation requesting the Executive Officer, Gangtok Municipal Corporation to inform the State Government whether late Anji Khampa had been paying ground rent to Gangtok Municipal Corporation for the unauthorised shed, as aforesaid, and the Executive Officer, Gangtok Municipal Corporation sent a reply on 30th May, 1981 being Exbt. D-4 by which the Deputy Secretary, Local Self-Government and Housing Department was informed that Gangtok Municipal Corporation has not realised any rent from late Anji Khampa for the land occupied by him at the back of Karma Hotel and statement given by late Anji Khampa is not correct. Exbt. D-5 shows that late Anji Khampa sought for grant of permission for the construction of a pucca kitchen-cum-store and it was stated by the defendant's Witness No. 1 that Exbt. D-5 is an application filed by Anji Khampa, late husband of the first respondent and late father of second and third respondents for regularisation of the afore said site which was not conceded to by the department and Shri D.R. Bhattarai defendant's witness No. 1 was not cross-examined on this point. Moreover, the Schedule of the plaint reads as follows :—" SCHEDULE All that building made up of wooden/c.i. sheet walls und G.C.I. sheet roof measuring 20 ft. long and 12 feet broad situated at the back of Karma Hotel, Mahatma Gandhi Marg, Gangtok. Bounded on the East by the R.C.C. Building of Smt. R. Dolma. On the West by the gully and Hotel Karma On the North by the RCC Bldg. of T.P. Ghimiray On the South by Rajasthan Lodge building." 6. The Civil Judge, East has rightly decided that the Allotment of House Sites and Construction of Building (Regulation and Control) Act, 1985 is not applicable to the present case, as the said Act came into force with effect from 28th June, 1985. whereas the constructions were made prior to the enforcement of the aforesaid Act. The Civil Judge, East, while deciding issue No. 3, observed that the respondents-plaintiffs made a structure of which the Government was aware, but chose not to take any action. It waited for a number of years before deciding to take any action and, in the opinion of the Civil Judge, East the area was given under license and the licensee acting upon the license executed work of a permanent character and incurred expenses in the execution of works of construction and hence the license cannot be revoked. Issue No. 3 was decided in favour of the respondents-plaintiffs. We are afraid, we are not able to agree with the Civil Judge for reasons given below. Issue No. 4 was rightly decided against the respondents plaintiffs. While deciding issue No. 5 it was held by the Civil Judge, East, that the license under which the building was constructed is irrevocable and consequently the appellant-defendant has been perpetually restrained from disturbing the peaceful possession and enjoyment of the aforesaid building in any manner whatsoever and from demolishing the

structure. The building as described in the schedule cannot be said to be a pucca structure. The defendant's witness specifically stated that the plaintiffs raised an unauthorised construction on the disputed land. The Exbt. D-5 completely demolishes the case of the respondents-plaintiffs as made out in the plaint. The learned Civil Judge held "It is now a well established principle that the grant of license need not be in writing and the plaintiffs' oral evidence is also to be taken into consideration." The Civil Judge further held "the plaintiffs made a structure of which the Government was aware, but chose not to take any action. It waited for a number of years before deciding to take any action." The Civil Judge held "the area was given under license and the licensee acting upon the license has executed a work of a permanent character and incurred expenses in the execution hence the license cannot be revoked." 7. The learned Civil Judge arrived at such conclusion without there being any materials on record and did not apply mind to the fact that Anji Khampa had applied for regularisation for the grant of permission for construction of pucca kitchen, as would appear from Exbt. D-5. Grant of license cannot be inferred from the mere fact that the unauthorised structures continued to be in existence for considerable length of time. So, the decision arrived at by the learned Civil Judge with regard to issue No. 2 cannot be sustained and has to be set aside. 8. In the result, the appeal is allowed, the Judgment and decree of the learned trial Court is reversed and the suit is dismissed. Parties shall bear their own costs.