



། དཔལ་ལྷན་འབྲུག་པའི་བླ་མཁམས་ལྷན་སྡེ།

**ROYAL COURT OF JUSTICE**

**(DISSENTING OPINION)**

***In Re: A Case concerning the claim over excess land currently used as Taxi parking in the Municipality of Thimphu***

***Office of Attorney General (Ministry of Works & Human Settlement)***

***Vs.***

***Tashi Commercial Corporation***

We the Two Justices invoke section 95 (c) of the Civil and Criminal Procedure Code, 2001(CCPC) to write this dissenting opinion in a dispute concerning the ownership of excess land (Taxi Parking area under Thimphu Municipality) between Ministry of Works and Human Settlement *Versus* Tashi Commercial Corporation.

The decision was split into two votes each among the Four Justice of the High Court. By virtue of the casting vote vested with the Acting Chief Justice of the High Court along with another Justice, the decision was deemed to be of majority.

Section 95, of CCPC states that:

**“Court Deliberation by a Bench**

**Section 95**

If a case is heard by more than one *Drangpon*:

- (a) the decision of the majority shall prevail;
- (b) the judgment shall not be signed by a *Drangpon* who was not present during the hearing of the case; and
- (c) the dissenting *Drangpon* may give his/her reasons of dissent in the judicial opinion following the opinion of the majority.”

In our opinion, the current case extols historic significance as we venture into passing the dissenting opinion on the case. We affirm our independent conviction on the case by disagreeing with the decision of other two Hon’ble justices for the reasons cited herein in



། དཔལ་ལྷན་འགྲུག་པའི་བློ་ཁྲིམས་ལྷན་ལྗོངས།

ROYAL COURT OF JUSTICE

our opinion. We seize this historic opportunity to deliver for the first time a written dissenting opinion which forms the foundational basis of a compelling interest in maintaining an independent and impartial legal system that emanates from Article 21, Section 1 of the Constitution, which provides that:

*“The Judiciary shall safeguard, uphold, and administer Justice fairly and independently without fear, favour, or undue delay in accordance with the Rule of Law to inspire trust and confidence and to enhance access to Justice.”*

A non-partisan and impartial judiciary invariably links to an independent opinion of an individual judge, for which a security of tenure and the judicial careers of the judges are unimpeded by internal or external inhibition of repercussion on the reasoned decision that an independent judge makes in the discourse of a judicial duty. The mechanism enshrined to write dissenting opinion as per our laws was to ensure and protect independent views of the judges and the Court. Judges and Judicial deference protects public trust in the appellate courts when a reasoned written opinion becomes the part and parcel of the decision.

Through the scrutiny of relevant facts, appreciation of evidences and applicable laws exerts, that *Tashi Commercial Corporation* has no legal and legitimate basis for the claim of current public Taxi parking area which is a government land. It is a clear case wherein *Tashi Commercial Corporation* has illegally regularized excess land with 53,708 sqft. in 1984 from Plot No. L-1, which originally was allotted with only 16,800 sqft. in 1973.

**Background of the case:**

Tashi Commercial Corporation owns two Plots of land since 1973 being Plot No. L-1 measuring 16,800 sqft. or 38.58 decimals of land currently located in the Thimphu BOD and Plot No. I(22) measuring 21,750 sqft. or 49.93 decimals of land. Both the Plots were bought from the government.

As per the payment of Tax receipt of 1973 produced as evidence before the Court, Tashi Commercial Corporation had paid Nu.840 as per letter No. TGO/282/73-4038, dated 11.08.1973 while Plot No. I(22) was bought with the payment of Nu.21,750 as the cost for the land and Nu. 1,087.50 as land tax for the year 1973 as per letter No.



། དཔལ་ལྷན་འབྲུག་པའི་བླ་ཁྲིམས་ལྷན་སྡེ།

ROYAL COURT OF JUSTICE

LAND/REF(THIMPHU)/73-16 dated 10.08.1973. These documentary evidences proves that Plot No. L-1 was bought prior to Plot No. I(22).

However, the current disputes arose as to the identification of Plot No. I(22) measuring 49.93 decimals of land. Tashi Commercial Corporation claimed that the current Taxi parking areas was I(22) while the City Corporation and Ministry of Work and Human Settlement represented by the Office of Attorney General and jointly prosecuted by the lawyers from the Ministry, contested through the production of several documentary evidences that Plot. No.I(22) was merged during the Survey carried out in 1984 with Plot No.L-1. They argued that Plot. I(22) was the current areas of Gas station and the then residential area of Tashi Commercial Corporation now currently used as the Office for Tashi Cell and not the Taxi Parking area which was since then used as Bus and Truck parking.

**Findings of the Court:**

1. The controversy involved in the case stems from the fact that in 1984, Plot No. L-1 which originally measured with only 16,800 sqft. (38.58 decimals) in the BOD station has been allotted with an excess of 36,908 sqft. (84.73 decimals) excess land by the then Chairman of the Central Town Planning Committee. The area of Plot No. L-1 has then measured with a total area of 53,708 sqft. or has become 1 acre 23 decimals of land.
2. The examination of the following documentary evidences proved that the public Taxi Parking area to be a government land:
  - 2.1. The records of tax paid for Plot No.I(22) between the period of 1974 till 1989 to the City Corporation mentions I(22) as “**show Room Complex**” and not as the Bus and Truck parking area as it was original called for the current public Taxi Parking area;
  - 2.2. In 1975 the then Thrompon of the City Corporation wrote vide its letter no. TOT(15)/75-76/616, dated 02.09.1975 to Tashi Commercial Corporation General



༄། དཔལ་ལྷན་འབྲུག་པའི་བླ་མཚོ་ལྷན་སྡེ།

**ROYAL COURT OF JUSTICE**

Manager stating that Plot No.I(22) was at the back side of the BOD had also proved that Plot No.I(22) was not in the Bus and Truck parking area as claimed;

- 2.3. In 1985 and 1986 when Tashi Commercial Corporation submitted approval note to construct staff quarters and gas godown to the City Corporation, their site plan or sketch maps of the area are shown with boundaries demarcated with that of Bus and Truck parking areas. This site plan was prepared and submitted by none other than Tashi Commercial Corporation themselves which proves that the Bus and Truck parking areas was never believed to be their allotted Plot I (22). If the areas were under Plot No. I (22), they would have also occupied the land since 1973;
- 2.4. It is also established that Tashi Commercial Corporation had submitted many inconsistent documents concerning the location of Plot no. I (22). In one such occasion in 1994, Tashi Commercial Corporation vide their own letter no. TGO/25/94/868, dated 18.03.1994 mentioned that their Plot No.I(22) was in Hotel Druk; and in 1997, vide their letter no. TCC/EST/Land/97-455, dated 06.03.1997 requested the City Corporation that their purported land shortages of L-1 of about 32,486 sqft. be replaced from the Taxi Parking areas consistently proved that Plot No. I(22) was never considered even by themselves to be their land;
- 2.5. In 1997, even Druk Petroleum Company had once requested City Corporation to allot the Taxi Parking areas for the installation of their fuel station which also corroborates the land to be a Government land; and
- 2.6. It is further established from the City Corporation's letter no. 20/TCC/UDC/97/8472, issued to Tashi Commercial Corporation on 27.06.1997 based on 1973 and 1975 records, officially clarified that Plot No.I(22) was illegally clubbed with Plot No. L-1. If at all there was an excess land under Plot



༄། དཔལ་ལྷན་འགྲུག་པའི་བླ་མཁའ་ལྷན་གྲེ།

ROYAL COURT OF JUSTICE

No. L-1, and its excess land cannot be claimed from the Taxi Parking area with Plot I (22) in between the two plots.

- 2.7. It is also established that when Tashi Commercial Corporation was allotted Plot No. I (22) in 1973 and the Receipt for the payment of the cost and land tax amounting to Nu. 22,837.5 vide its Letter No. TGO/282/73-4037 dated 11.08.1973 mentioned that- “...in payment of Land Registration fees and Land Tax for Plot No.1(22), registered in the name of Tashi Commercial Corporation (B.O.D. back side).” This clearly infers as per section 4(b) of the Evidence Act, 2005 and had therefore proved as per section 14(a) of the said Act that Plot No. I(22) was allotted in “*B.O.D back side*” which indicated that Plot No. I(22) was the current Gas Godown areas which was clubbed with the illegal regularization of Plot No L-1 in 1984 and not the current public Taxi Parking area.
- 2.8. The total area of the land under Plot No. L-1 with 38.58 decimals and that of Plot No. I(22) with 21,750 sqft. or 49.93 decimals together were only 88.51 decimals in 1973. There is no substantive or reasonable ground to believe that the singular Plot size (L-1) in 1984 will measure with 1 acre 23 decimals of land as the original land holdings of both the plots together were only 88.51. The current total area within the stone and metal fencing boundary wall as per the City Corporation record is 49427 sqft. (1 acre 13 decimals land) which is in excess by 24.95 decimals from the original land holdings of 88.51 decimals.
- 2.9. Further, there are several other documentary evidences which proved that Plot I(22) was and is in the current Gas Godown area being occupied with clear boundaries demarcated by concrete walls and metal fencing which is visible to the public even as of today.
3. As per Section KA 4-2 of the Land Act, 1979, excess land cannot be allotted to land owners whose land has no proper boundaries. Since Tashi Commercial Corporation



༄། དཔལ་ལྷན་འབྲུག་པའི་བླང་ཁྲིམས་ལྷན་ལྗོངས་

**ROYAL COURT OF JUSTICE**

has been allotted with the specific area on payment of nominal fees, there cannot be any excess in the first place. Secondly, the allotment of 84.73 decimals of excess land in 1984 from only 38.58 decimals of land originally allotted in 1973 is in violation of Section KA 6-4 of the Land Act, 1979 which provides that –

*“In the absence of the description of the boundary of the land in the Thram, the excess land found during resurvey, in the case of Chhushing, Kamshing, Pangshing and vegetable-garden, can be registered @ 12 decimals per acre in the name of the Thram-holder on payment of the cost of land and the taxes for the number of years the land has been cultivated.*

*All land in excess of 12 decimals per acre will be treated as Government land.”*

Based on the above sections of the Land Act, 1979 the Central Town Planning Committee has no mandate to regularize the excess land and make allotment to Tashi Commercial Corporation in 1984. Therefore, the allotment of excess land in contravention of the laws was illegal and hence, void *ab initio*.

4. The decision of the Thimphu District Court ruled in favour of Tashi Commercial Corporation mainly on three grounds:
  - (a) registration of the land;
  - (b) ownership certificates of 1992 & 2007; and
  - (c) payment for excess land and annual taxes.

Based on the above reasoning, Plot no. L-1 with 53,708 sqft. (1 acre 23 decimals) of land and Plot No. I(22) with 21,750 sqft. (49.93 decimals) with total area of 75,458 sqft. (1 acres 73 decimals) was ruled to be entitled by Tashi Commercial Corporation. The Court without scrutiny of the original location of Plot L-1 and I (22) and their original size of land holdings and also without considering the land used during the construction of approach road towards BOD and Lungten Zampa bridge based the decision upon the illegal regularization of Plot no. L-1 with 53,708 sqft. in 1984 by clubbing with Plot No. I (22). Therefore, the Dzongkhag Court



༄། དཔལ་ལྷན་འབྲུག་པའི་བླ་མཁའ་ལྷན་གྲོ།

ROYAL COURT OF JUSTICE

erred in finding that Plot No.L-1 was within the compound wall and the public Taxi Parking area to be Plot no. I(22).

5. The then High Court Benches have also upheld the Thimphu District Court's decision mainly based on the above grounds. The Office of Attorney General representing the Ministry of Works and Human Settlement appealed to His Majesty the King on 2<sup>nd</sup> August, 2008 and the case was re-directed through the Office of Gyalpoi Zimpon to be reviewed by the current justices since the appeal was post constitutional.
6. In the present Court Findings of the two other learned justices, they reasoned that the City Corporation representatives; Karma Dorji and Kelzang Tenzing had in fact admitted in the Thimphu District Court on 03.10.2007 for having issued the ownership certificate in 1992, certifying that the Plot No. L-1 with 53,708 sqft. and Plot No. I(22) with 21,750 sqft. belongs to Tashi Commercial Corporation. The justices further reasoned that the Land Record Officer vide letter no. ThimDzong/SaThram/06/07/4270 dated 25.10.2007 submitted that the current Taxi Parking area was 23912.26 sqft. which according to them was an expert opinion as per section 48 of the Evidence Act. However, we dissent the above ruling on the following grounds that:
  - (a) upon scrutiny of the said statement submitted by two officials from the City Corporation to the Thimphu District Court on 03.10.2007; we found that they have just narrated about the existence of the ownership certificate of 1992 and rather submitted that **“the land boundaries of Tashi Commercial Corporation are clearly demarcated by their stone wall and metal fencing and that the taxi parking area is not their land...”**. This establishes that the two officials had never admitted before the lower court as reasoned by the learned justices.
  - (b) the letter no. ThimDzong/SaThram/06/07/4270 dated 25.10.2007, submitted by the Thimphu Dzongkhag Land Record Officer was a survey



༄། དཔལ་ལྷན་འབྲུག་པའི་བླ་མཁམས་ལྷན་སྡེ།

ROYAL COURT OF JUSTICE

report of the disputed area which was carried out as per the direction of the lower court and not an expert opinion as to the location of I (22). Hence, the Land Record Officer's Survey Report of the survey conducted under the direction of the court which included the re-demarcation of the boundaries in disputed site cannot be considered in our interpretation as an expert opinion as per section 48 of the Evidence Act to justify the allotment of I(22) from public Taxi Parking area.

7. We the Justices, after going through several documentary and physical evidence containing more than 535 pages of case docket established that there is no legal basis for the ownership certificates.
  - 7.1. The purported ownership certificate issued in 1992 was based on the illegal regularization or increased size of Plot No. L-1 in 1984 by the then Chairman of the Central Town Committee Lhatu Wangchuk from 38.58 decimals to 1 acres 23 decimals. The lawful ownership of Plot No. I(22) with 21,750 sqft.(49.93 decimals) and Plot no. L-1 with 16,800 sqft. (38.58 decimals) in total was only 88.51 decimal prior to 1984. Hence, the ownership certificate issued in 1992 while clearing the tax of 1991 was based on the illegal regularization of Plot No. L-1 in violation of section KA 4-2 and KA 6-2 of the Land Act, 1979.
  - 7.2. Further it is proven that the contested ownership certificate of Plot No. L-1 with 53,708 sqft. was issued vide letter no. *TCC/REV/PF/c-157/92/914*, dated 27.10.1992 and for Plot no. I(22) with 21,750 sqft. was also apparently issued with same dispatch no. 914 on the same day vide letter no *TCC/REV/PF/c-33/92/914*, dated 27.10.1992. From these findings, it is concluded that the ownership certificate particularly regularizing the already disputed land without scrutiny of prior documents by the relevant authority and issuance of ownership certificate with same dispatch no. **914** on the same date is incomprehensible to uphold as legally registered land. It is a general



། དཔལ་ལྷན་འགྲུག་པའི་བླ་མཁའ་ལྷན་གྲོ།

ROYAL COURT OF JUSTICE

procedure to maintain a dispatch register and assign despatch numbers in seriatum in all the government institutions while sending official letters. Therefore, the argument of Tashi Commercial Corporation that the two letters with same dispatch numbers as distinctive is beyond our comprehension.

- 7.3. It is further observed that the than Thrompon, in 2007 had issued yet another ownership certificate for the same Plot no. L-1 with plot size of 53,708 sqft. while paying the annual land tax of 2006 vide letter no. 64/TCC/REV/07/30 dated 07.06.2007. The concerned official has failed to examine the official records concerning the irregularity of excess land and issued the purported ownership certificate while receiving annual tax.
- 7.4. We established that the issues related to the identification of plots, merger of plots and other documents maintained by the City Corporation clearly demonstrate that the concerned officials have remained complacent. If at any point and the issuance of the ownership certificate could be considered as lawful, there is no reason to issue or acquire subsequent certificate in 1992 and then another one in 2007, as the ownership certificate are not given each time when the annual land taxes are paid. Otherwise Tashi Commercial Corporation should have such ownership certificates of every year and each time when annual taxes were paid as both contested ownership certificate of 1992 and 2007 were issued with the clearance of annual tax and not as title to the plots owned.
- 7.5. Therefore, we are fully convinced that the purported ownership certificate issued in 1992 was based on illegal regularization of plot size of 1984 and the further issuance of the certificate in 2007 based on 1992 contested ownership certificate with same dispatch number **914**. Since the excess land registration was done in the violation of Sections KA 4-2 and KA 6-2 of the Land Act, 1979; any ownership certificate issued subsequent to such unlawful acts cannot become lawful on the grounds that the competent



། དཔལ་ལྷན་འབྲུག་པའི་བློ་ཁྲིམས་ལྷན་སྐུ་

**ROYAL COURT OF JUSTICE**

authorities have issued such ownership certificate. Section 7 read with section 12 of the Evidence Act does not recognize legitimacy of those certificate which are issued or derived through the violation of laws. For instance, if a particular student have acquired university degree without having undergone the legitimate courses but the university authorities have issued degree certificate upon payment of cost and fees by the student; it does not mean that such certificate will become legitimate because it was issued by the competent authority.

**Ruling of the Court (dissenting opinion)**

Based on the above findings, it is proved that Plot no. L-1 with 16,800 sqft. and Plot no.I(22) with 21,750 sqft. are established within the currently occupied areas and within the stones and metal fencing walls of the business establishment of Tashi Commercial Corporation. The Bus and Truck parking area which, is currently being used as public Taxi Parking area with continuous usage by the general public since 1973 without any slightest of doubts is proven to be Government Land as per sections 3, 4(b&c), 14(a), 80 and section 94(a) of the Evidence Act, 2005. It is also proven that the illegal regularization of Plot L-1 in 1984 has not only clubbed Plot I (22) but the registration of illegally regularized land had also violated sections KA 3-1, KA 4-2, KA 1-1 and KA 6-2 of the Land Act, 1979. Since our dissenting opinion is not binding unless the Supreme Court otherwise upheld as such; we the justices have not determined the nature of commission or omission of those officials who were involved in the illegal regularization and also keeping in view that they were not charged by the Ministry or by the prosecution.

Through this dissenting opinion, the Court observes that land is the precious gift of the nature, limited and most treasured possession of mankind. Issues and case related to land have always dominated our courts and the Justice System. When it relates to land issues whether private or public; it apparently involves sovereign (State interests or public interests), legal and emotional issues. Since the courts and the judges are vested to interpret our laws fairly and independently without fear, favour or



། དཔལ་ལྷན་འབྲུག་པའི་བླ་མ་ཁྲིམས་ལྷན་གྲེ།

**ROYAL COURT OF JUSTICE**

prejudice, we observe that any judicial decision must be based on facts, evidence, appreciation of evidence and the laws.

With Dissent: ON THIS THIRTEENTH DAY OF DECEMBER TWO THOUSAND AND TWELVE.

Sd/-

(Lungten Dubgyur )  
Justice

Sd/-

(Tshering Namgyel)  
Justice