



THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Extraordinary Jurisdiction)

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

W. P. (C) No. 15 of 2017

M/s Dans Energy Pvt. Ltd.
Through its Senior Assistant General Manager,
Shri. Krishna Bahadur Gurung,
Upper Shyari,
P.O. & P.S. Gangtok, East Sikkim.

.... Petitioner

versus

- 1.** State of Sikkim
Through the Chief Secretary,
Government of Sikkim,
Gangtok.
- 2.** District Collector/ Magistrate,
District Collectorate Office
Namchi, South Sikkim.
- 3.** Shri Tej Gurung
R/o Hotel Four Seasons,
Namnang-Deorali Road,
P.O. & P.S. Gangtok,
East Sikkim.
- 4.** Irrigation and Flood Control Department,
Through its Secretary,
Government of Sikkim.
- 5.** Land Revenue and Disaster Management Department,
Through its Secretary,
Government of Sikkim

.... Respondents

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

Appearance:

Mr. Rahul Rathi and Ms. Phurba Diki Sherpa, Advocates
for the Petitioner.



Mr. Thinlay Dorjee Bhutia, Government Advocate with Mr. S.K. Chettri, Assistant Government Advocate for Respondent Nos. 1, 2, 4 & 5 along with Ms. Kanchan Rai, Advocate (Irrigation & Flood Control Department Government of Sikkim.

Mr. Zangpo Sherpa and Mr. Jushan Lepcha, Advocates for Respondent. No. 3.

J U D G M E N T (O R A L)
(21.05.2019)

Bhaskar Raj Pradhan, J

1. On 14.09.2016 the District Collector/Magistrate, South District, Namchi passed the impugned order on one of the issues raised by the Respondent no.3 in his complaint dated 07.04.2011. By the impugned order the Petitioner was directed to release payment of compensation of damages immediately to the tune of Rs.10,83,050/- (Rupees ten lakhs eighty three thousand and fifty) only to the concerned Department for payment. It was further ordered that if payment is not made within the period of three months from the date of the impugned order the Petitioner is liable to pay interest on the total amount of compensation as per the rate under the relevant rules and norms. The Petitioner has preferred the present Writ Petition challenging the impugned order and it is prayed that it be quashed. The Petitioner's contention is that the District Collector/Magistrate did not have the jurisdiction to decide upon the claim for compensation sought for by the Respondent no.3 as the



proceedings under the Land Acquisition Act, 1894 had already been completed. It was pointed out that the jurisdictional issue was raised by the Petitioner on 09.06.2016 itself when the Petitioner filed written statement/objection to the claim made by the Respondent no.3 before the District Collector and on being so directed. The learned District Collector however, did not decide upon the jurisdictional issue raised and instead proceeded to decide upon the merits of the claims. The Respondent no.3 had filed a complaint on 07.04.2011 before the District Collector. However, the record reveals that it was only on 13.02.2016 that the complaint was taken up and finally decided on 14.09.2016. The Writ Petition was preferred on 20.03.2017. The State-Respondent as well as the learned Counsel for the Respondent no.3 fairly concede that the District Collector did not have the authority to decide a civil dispute of this nature and more so when the Petitioner has keenly contested its liability.

2. The Respondent no.3 who is also personally present in Court therefore, desires to approach the Civil Court to redress his grievance. However, the learned Counsel for the Respondent no.3 submits that he may be thrown out on the ground of limitation. It is seen that the Respondent no.3 has



proceeded before an authority which admittedly did not have the jurisdiction to decide the dispute.

3. A perusal of the two reports of the Irrigation and Flood Control Department, Namchi sub-division, South Sikkim under the signature of the Divisional Engineer and the Assistant Engineer and the damage assessment made by the Revenue Authorities does reflect that the merits of the claim made by the Respondent no.3 must be examined by a Court of competent jurisdiction.

4. In the circumstances, the impugned order dated 14.09.2016 passed by the District Collector/Magistrate, South Sikkim at Namchi is quashed. The Respondent no.3 is permitted to approach the Civil Court of appropriate jurisdiction within a period of two months from the date of this order. If the Respondent no.3 approaches the Civil Court within the said period the matter shall be decided on merits.

5. This Court vide order dated 07.04.2017 had directed the Petitioner to deposit the amount of compensation determined in the Registry of the High Court within a period of one week and the amount so deposited to be kept in a fixed deposit account earning interest. The learned Counsel for the Petitioner submits that the amount has been deposited and it may be directed to be repaid to the Petitioner. The Registry



is directed to refund the said amount to the Petitioner along with the interest accrued, if any.

6. Writ Petition (C) No. 15 of 2017 is disposed of accordingly.

(Bhaskar Raj Pradhan)
Judge
21.05.2019

to/

Approved for reporting: no.
Internet: yes.