



# THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 30.07.2019

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

FAO No.05 of 2018

**Appellants** : State of Sikkim & Others

**versus**

**Respondents** : Srauan Kumar Chettri & Others

Appeal under Order XLIII Rule 1 (r) read with  
Section 151 of the Code of Civil Procedure, 1908

## Appearance

Mr. Thinlay Dorjee Bhutia, Government Advocate for the  
Appellants.

Mr. Rajendra Upreti, Advocate for Respondents No.1 to 3 and 5.

Mr. Zangpo Sherpa, Advocate (Legal Aid Counsel) for  
Respondent No.4.

## O R D E R (ORAL)

Meenakshi Madan Rai, J.

**1.** Heard on I.A. No. 1 of 2018 which is an application  
seeking condonation of delay in filing the Appeal.

**2.** The Petition for condonation of delay is not seriously  
objected by learned Counsel for the Respondents.

**3.** Considered, the Petition is allowed, delay condoned  
and I.A. disposed of accordingly.

**4.** Reiterating the grounds put forth in the Appeal,  
learned Government Advocate urged that, the Respondents  
herein who are the Plaintiffs before the learned trial Court have  
claimed to be the absolute owners of the suit land, measuring  
0.8040 hectares, bearing Plots No.112, 113 and 114, as per the  
Land Survey Records of 1979-80. That, in fact the suit land has



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already been acquired by the Government and necessary compensation paid. However on an application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 filed by the Respondents before the learned trial Court, reliefs were granted to the Respondents vide the impugned Orders dated 02.12.2017 and 05.04.2018 by staying mutation of the suit property and ordering the Appellants to maintain status quo on the suit property. That a Power Sub-Station/Switchyard was commissioned on the disputed land in 1993 and is in operation ever since which includes a 66 KV Bay Switchyard which provides power supply to different categories of consumers. That, in view of the impugned Orders, the said Power Sub-Station/Switchyard is not being maintained. That the Appellants are required to enter into the disputed plot to carry out the maintenance to avoid disruption of power supply. Hence, the Appellants pray that the impugned Orders dated 02.12.2017 and 05.04.2018 be set aside.

**5.** Learned Counsel for Respondents No.1 to 3 and 5 to the contrary submits that a Title Suit is pending between the parties. The impugned Order of 02.12.2017 has directed a stay of any mutation of the suit property in favour of the Appellant No.2 or any other person and the Appellants were also directed to maintain status quo over the suit property, until further orders of the Court. Vide the impugned Order of 05.04.2018 the learned trial Court confirmed the impugned Order dated 02.12.2017. That, setting aside the orders would effectually grant the Appellants the reliefs on issues that are yet to be decided by the learned trial Court. Hence, the Appeal deserves a dismissal.

**6.** I have heard *in extenso* and considered the submissions of learned Counsel for the parties.

**7.** The learned trial Court vide the impugned Order dated 02.12.2017 has *inter alia* ordered as follows;



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"In view of the above submissions and considering the urgency into the matter (*sic*) and also to avoid any loss and injury, it is ordered that any mutation of the suit properties in favour of Defendant No. 2 or to any other Defendants or persons covered by plot Nos. 112, 113 & 114 having area 0.8040 hectares under Namcheybong Block, Pakyong Ilakha, Pakyong, East Sikkim is stayed. Further, all the Defendants are directed to maintain status-quo of the suit property until further orders of this Court."

The impugned Order dated 05.04.2018 *inter alia* records as follows;

"Hence, on account of all of the above-stated reasons, in the interest of justice, on finding the Plaintiffs/Petitioners have a *prima facie* case and as the balance of convenience is in their favour, the Defendant/Respondent No. 4 is hereby restrained from mutating the suit property in favour of the Defendant/Respondent No. 2, and the Defendants/Respondents directed to maintain status quo of the suit land till further orders of this Court.

Order dated 02.12.2017 hereby stands confirmed and the application dated 01.12.2017 under order XXXIX Rules 1 and 2 of the CPC, 1908 accordingly stands disposed of."

**8.** On careful perusal of the impugned Orders *supra* it is evident that the Orders are two fold *viz.* (i) there is a stay on the Appellant No.4 (Sub Divisional Magistrate/Officer, Pakyong Sub Division) from mutating the suit property in favour of the Appellant No.2 (Energy and Power Department, Government of Sikkim) and (ii) the Defendants/Respondents (the Appellants herein) are directed to maintain status quo on the suit property till further orders of the Court.

**9.** The impugned Order dated 02.12.2017 reveals that the area on which the Power Sub-Station/Switchyard was constructed was in the possession and enjoyment of the Appellants. The ordinary legal connotation of the term "status quo" implies the existing state of things at any given point of time. In such a circumstance, the Order of status quo is to be



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interpreted accordingly. No further elucidation need emanate on this aspect.

**10.** So far as the prayer for setting aside the entire impugned Orders dated 02.12.2017 and 05.04.2018, if the relief is granted the Suit would be infructuous. Since the title is disputed and the matter is in trial the prayer is rejected.

**11.** FAO No.05 of 2018 stands disposed of. However, the findings and observations hereinabove shall in no way be construed as being decisions on the merits of the matter.

**12.** I.A. No. 2 of 2019 also stands disposed of.

**( Meenakshi Madan Rai )**

**Judge**  
30.07.2019

ml Index : ~~Yes~~ / No  
Internet : Yes / ~~No~~