

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

SINGLE BENCH: BHASKAR RAJ PRADHAN, JUDGE.

F.A.O No. 01 of 2017

M/s JAL Power Corporation Ltd.
Through Shri H.B Thapa
Deputy Manager (H.R.)
Near San Francis School,
South Sikkim

.... Appellant.

Versus

1. M/s R.S.M Infra Project,
Through Sunil Kumar Agarwal,
Opposite State Bank of India
2. Erung Tenzing Lepcha
S/o Late Kinchok Tashi Tshering Lepcha
R/o Rinchenpong (P.S. Kaluk), West Sikkim.
3. The Principal Secretary-cum-PCCF,
Department of Forest Environment & Wildlife Management,
Government of Sikkim, Gangtok, East Sikkim.
4. The District Collectorate,
Office of the Collectorate, Gyalshing, West Sikkim.
5. The Sub Divisional magistrate,
Soreng Sub Division, Soreng, West Sikkim.
6. The Sub Divisional Magistrate-1
West Sikkim, Gyalshing, West Sikkim. Respondents.

**Appeal under Order XLIII Rule 1 of the
Code of civil Procedure, 1908.**

Appearance:

Mr. Jorgay Namka, Ms. Panila Theengh and Ms. Tashi D. Sherpa
Advocates for the Appellant.

Mr. Sudesh Joshi, Advocate for the Respondent No. 1 and 2.

Mr. S.K Chettri and Ms. Pollin Rai, Asst. Govt. Advocates for the
Respondent No. 3, 4, 5 and 6.

O R A L J U D G M E N T
(05.10.2017)

Bhaskar Raj Pradhan, J.

Amicable settlement of dispute perhaps is the highest benchmark to gauge the evolution of any civilized society involved in adversarial litigation.

2. On the request made by the learned counsel for the parties on 19.06.2017 before this Court, the matter was referred for Mediation.
3. A report has been submitted by the Sikkim State Legal Services Authority vide a communication bearing Reference no. 1032/SLSA/02/MC dated 25.09.2017 stating that the case was amicably settled before the Mediation Centre, East Sikkim at Gangtok and also forwarding the case records along with the Deed of Agreement dated 20.09.2017 entered between the parties to the FAO no. 01/2017 pending before this Court. The Deed of Agreement has been signed by all the parties to the litigation and in the presence of two witnesses who have also put their signatures in attestation thereof.
4. The Deed of Agreement so executed is reproduced herein below:-

"DEED OF AGREEMENT

This DEED OF AGREEMENT is made on this the 20th Day of September, 2017 between M/s Jal Power Corporation Ltd., through its Deputy Manager (HR), Shri H.B Thapa, S/O Shri P. Thapa, R/O Jorethang, South Sikkim (the plaintiff, hereinafter referred to as the FIRST Party [which term and expression shall unless repugnant to the content be deemed, mean and include its successors, representative, assigns, administrators and executors] of the FIRST PART.

AND

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1. *M/s RSM Infra Project, through Sunil Kumar Agarwal having its office opposite SBI, Jorethang Bazar, South Sikkim, (Second Party),*
2. *Shri Erung Tenzing Lepcha, S/o Late Kinchok Tshering Lepcha, R/o Rinchenpong (P.S Kaluk), West Sikkim, (Third Party),*
3. *The Principal Secretary-cum-PCCF, Department of Forests, Env. & Wildlife Management, Government of Sikkim, Gangtok, (Fourth Party),*
4. *The District Collectorate, Office of the District Collectorate, Gyalshing, West Sikkim, (fifth Party),*
5. *The Sub-Divisional Magistrate, Soreng Sub-Division, Soreng, West Sikkim (Sixth Party),*
6. *The Sub Divisional Magistrate-1, West District, Gyalshing, West Sikkim (Seventh Party).*

AND

WHEREAS, the suit land bearing Plot No. 229 and 231 as per the cadastral survey record of 1950-52 and corresponding plot no. 323 and 326 as per the cadastral survey record of 1978-80 is situated at Zeel Revenue Block, Rinchenpong, West Sikkim.

AND

WHEREAS, the First Party has instituted the Title Suit bearing T.S No. 01 of 2017 against the Second Party and Others before the Court of Ld. District Judge, West Sikkim at Gyalshing for Declaration, Recovery of Possession, Mandatory Injunction and other consequential reliefs under Order VII Rule 1 & 3 of the CPC, 1908

AND

WHEREAS, the First Party being aggrieved by the Order rejecting its injunction application filed an Appeal/FAO before the Hon'ble High Court of Sikkim at Gangtok and the same is pending.

AND

WHEREAS, during the pendency of the aforesaid case, a joint Inspection of the suit land situated at Zeel Revenue Block, West Sikkim was conducted on 21.06.2017 in presence of the following persons/Officers.

- (a) Revenue Inspector, Sub Division Office, Soreng, West Sikkim.*
- (b) ACF, Block Officer and Assistant Surveyor, Survey and Demarcation Division, Forest, Env. & Wildlife Management Department.*
- (c) V.L.O, Rinchenpong Circle, Soreng Sub Division.*
- (d) Incharge, RSM Infra Project.*
- (e) The Deputy Manager, (HR), M/s Jal Power Corporation Ltd.*
- (f) Shri Erung Tenzing Lepcha, S/o Late Kinchok Tashi Tshering Lepcha R/o Rinchenpong, West Sikkim.*
- (g) B.O (T) Legship, Forest, Env. & Wildlife Management Department.*

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That during the said joint inspection the following facts were observed which are as follows;

- 1. As per the land records of 1950-52 the crusher plant constructed by the M/s RSM Infra Project falls within the part of plot no. 229 which is 'Sarkar Khasmal' and part of plot no. 231 which is 'Khasmal Vir'.*
- 2. As per the land records of 1950-52 the crusher plant constructed by JPCL falls within the part of plot no. 229 which is 'Sarkar Khasmal' and part of the plant falls within 'River Reserve'.*
- 3. Further, the joint Inspection Report which was conducted on 14.06.2017 remains same which was based on the land records of 1978-80.*

WHEREAS, during the course of hearing of the FAO, as suggestion for the matter to be referred to a Mediator came out from the parties and with the general consensus of the parties the Hon'ble High Court was pleased to forward the same to the Mediation Centre, East Sikkim at Gangtok for amicable settlement.

AND

WHEREAS, the amicable talk and deliberations took place in the Mediation Centre at Gangtok and gradual progress towards the amicable settlement of the matter was made.

AND

WHEREAS, the parties as well as their counsel including the Forest Department officials made efforts and endeavor to settle the matter amicably. Private caucused and long and through deliberation were made with both the parties. Ultimately, the parties agreed to settle the matter amicably in the terms and conditions as mentioned herein below.

NOW IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO:-

- 1. That Third Party shall allow all the parties, free ingress and egress to reach their respective crusher plants and access to the forest land at any time.*
- 2. That the First Party and the Second Party shall take necessary permissions from the Fourth Party for execution of their respective project works even for temporary use, as required under the relevant Legislations.*
- 3. That the Third Party, Erung Tenzing Lepcha have agreed to lease out whatever portion of his ancestral land required by the First Party and the Second Party at the existing rate.*
- 4. That the First Party and the Second Party shall not disturb and harass each other during the execution of their respective project works.*

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5. *That after the execution of this Deed of Agreement the First Party undertakes all necessary steps for disposal of the matter before the Hon'ble High Court and the Ld. Trial Court.*

6. *All disagreements and disputes arise with respect to the interpretation of the agreement or the agreements which cannot be mutually decided upon, shall be referred to and decided by the appropriate Court of law (both Civil & Criminal) having jurisdiction within the State of Sikkim.*

IN WITNESS WHEREOF, the parties hereto have set and subscribed their respective hands and seals on the day, months and year first herein above written.

Witnesses;

Sd/-
 1. *Rinzing Bhutia.*
Rincenpong

First Party. Sd/-

Sd/-
 2. *Naren Pradhan.*
Gangtok

Second Party. Sd/-

Third Party. Sd/-

Fourth Party. Sd/-

Fifth Party. Sd/-

Sixth Party. Sd/-

Seventh Party. Sd/-"

5. The Deed of Agreement dated 20.09.2017 is accordingly made a part of present judgment and the present appeal disposed of in terms thereof.

6. The learned Counsel for the parties submits that in view of the compromise and settlement deed nothing survives in the Title Suit no. 01/2017 pending before the Court of learned District Judge, West Sikkim. The said Title Suit is also therefore, settled in terms of the Deed of Agreement and disposed of.

7. A copy of this judgment may be transmitted to the Court of learned District Judge, West Sikkim for necessary compliance. A

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compromise decree in terms of above settlement may be drawn accordingly.

8. It is indeed heartening to note that the adversarial parties with the active involvement of their learned counsels have arrived at an amicable settlement of their disputes.

9. This Court records its appreciation of the positiveness of the parties hereto to settle the matter amicably, the efforts of the learned Counsels for the respective parties to assist in the settlement arrived at and of the Mediator, Ms. Yangchen D. Gyatso, Advocate who has successfully facilitated the parties to reach a common agreement for the resolution of their disputes.

10. The parties to bear their own costs.

Sd/-
(Bhaskar Raj Pradhan)
Judge
05-10-2017

Avi/

Approved for reporting: yes.
Internet: yes.