



# THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extra Ordinary Jurisdiction)

## J U D G M E N T

### **SB Writ Petition No.15 of 2013**

1. Shri Bal Bahadur Tamang,  
S/o Shri Birkha Bdr. Tamang,  
R/o Chisopani,  
South Sikkim.
2. Shri Purna Bahadur Rai,  
S/o Pancha Bdr. Rai,  
R/o Chisopani,  
South Sikkim.
3. Shri Ram Prasad Limboo/Subba,  
S/o Sher Bdr. Limboo/Subba,  
R/o Chisopani,  
South Sikkim.
4. Shri Sarad Singh Rai,  
S/o Late Ratan Bijay Rai,  
R/o Namchi,  
South Sikkim.
5. Mrs. Sonam Panzom Gurung,  
D/o Late D. W. Barfungpa,  
R/o Nam Nang,  
Gangtok,  
East Sikkim.
6. Smt. Mamu Wangyal Lassopa,  
W/o Late Jigmie Wangyal Lassopa,  
R/o Namchi,  
South Sikkim.
7. Shri Phurba Wangyal Kazi,  
S/o Late Tenzing Wangyal Bhutia,  
R/o Nam Nang,  
Gangtok,  
East Sikkim.

WP(C) No.15 of 2013Shri Bal Bahadur Tamang and Others vs. State of Sikkim and Others

8. Mrs. Karma Ongmu,  
D/o Phurba Wangyal Kazi,  
R/o Nam Nang, Gangtok,  
East Sikkim. **... Petitioners**

**versus**

1. State of Sikkim  
through The Chief Secretary,  
Government of Sikkim,  
Gangtok,  
East Sikkim.
2. The Secretary,  
Land Revenue & Disaster Management Department,  
Government of Sikkim,  
Gangtok.
3. The Secretary,  
Power & Energy Department,  
Government of Sikkim,  
Gangtok, East Sikkim.
4. The District Collector,  
Office of the District Collector,  
South District,  
Namchi,  
South Sikkim.
5. The Managing Director,  
Sikkim Power Development Corporation (SPDC),  
Gangtok.
6. M/s Dans Energy Pvt. Ltd.,  
through The Director,  
Rabdenling Annex – II,  
Adjoining Hotel Royal Plaza,  
Upper Syari,  
Gangtok. **... Respondents**


WP(C) No.15 of 2013Shri Bal Bahadur Tamang and Others vs. State of Sikkim and OthersC O R A M**The Hon'ble Mr. Justice S. P. Wangdi, Judge**

DATE OF JUDGMENT : 01-05-2014

- For the Petitioners : Mr. K. T. Bhutia, Senior Advocate with Mr. Tashi Rapten Barphungpa, Advocate.
- For the Respondents No.1, 2, 3 & 4 : Mr. J. B. Pradhan, Additional Advocate General with Mr. S. K. Chettri and Mrs. Pollin Rai, Asstt. Govt. Advocates.
- For the Respondent No.5 : Mr. Thinlay Dorjee Bhutia, Advocate.
- For the Respondent No.6 : Mr. A. Moulik, Senior Advocate Advocate with Mr. Manish Kumar Jain, Advocate.

**Wangdi, J.**

By notice under Section 4(1) of the Land Acquisition Act, 1894 dated 29.11.2006, the Respondent No.1, Secretary, Land Revenue and Disaster Management, necessity of land belonging to the Petitioners for public purpose for the construction of approach road and working area in Tinik, Chisopani, Salghari, Poklok and Kitam Blocks in the South District by Sikkim Power Development Corporation ('**SPDC**' for short) to establish 96 MW Jorethang Loop Hydroelectric Project, was notified by invoking the urgency provision under Section 17(4) of the



Land Acquisition Act, 1894 ('**LA Act, 1894**' for short), directing that the provisions of Section 5-A of the Act shall not apply. This was followed by a declaration under Section 6 of the Land Acquisition Act, 1894 that the land was needed for a public purpose.

2. The rate for compensation of the land was initially assessed at Rs.8.47 per square feet and by letter dated 17.08.2006, statement of compensation amounting to Rs. 64,91,378.00 (Rupees sixty four lakhs ninety one thousand three hundred and seventy eight), being the total amount of compensation calculated at that rate, was forwarded by the District Collector, the Respondent No.4, to the Secretary, Land Revenue and Disaster Management Department, Government of Sikkim, the Respondent No.2, requesting release of the amount at the earliest. It is stated that 80% of the above amount, i.e., Rs.49,90,994/- (Rupees forty nine lakhs ninety thousand nine hundred and ninety four) was released to the land owners sometime in the year 2007.

3. It is stated that as the basis of assessing the rate was only the registered sale transactions in the

vicinity of the proposed area of acquisition, a very low rate of Rs.8.47 per square feet was arrived at and the Petitioners who were mostly farmers could not do much other than approach the authorities requesting them to have the rate revised to a more acceptable one.

4. Thereafter Public Notice under Section 9 of the LA Act, 1894 was issued by the District Collector vide Notices No.168, 169 and 170/DC(S) dated 22.10.2008 calling upon the interested persons in the land to appear and state the nature of their respective interests in the land and, in particular on the amount of compensation and, also their objections, if any, to the measurements under Section 8 of the LA Act, 1894, on or before 20.11.2008. This was followed by a declaration of award under Section 11 of the LA Act, 1894.

5. The State having invoked the urgency clause, the only opportunity available to the Petitioners to raise concerns related to the acquisition of the land was at the stage of the proceedings under Sections 9 and 11 of the LA Act, 1894 initiated by the Respondent No.4. Therefore, in pursuance of the notice issued under Section 9 of the LA

Act, 1894, some of the Petitioners and other land owners and tenants appeared before the Respondent No.4, and submitted their objections on various grounds against the acquisition of the land and the manner in which it was being carried out. The primary objection raised by the Petitioners was on the meager rate of Rs.8.47 per square feet at which their land was being acquired when the prevailing market rate was Rs.55/- per square feet and even the rate fixed by the Government for dry field was Rs.15/- per square feet and for agricultural land well over Rs.30/- per square feet.

6. Declaration award under Section 11 of the LA Act, 1894 was thus published on 12.01.2009 by the Respondent No.4 who on consideration of all relevant factors like the locality, connectivity, availability of power facility etc., and the genuine demand of the land owners, the rate of the compensation was revised to Rs.18.25 per square feet, thereby enhancing the total compensation to Rs.1,28,36,448.00 (Rupees one crore twenty eight lakhs thirty six thousand four hundred and forty eight). After deducting the sum of Rs.49,90,994/- released earlier, the balance of Rs. 83,61,998/- (Rupees eighty three lakhs

sixty one thousand nine hundred and ninety eight) thus remained to be released.

7. As would appear from the declaration under Section 11 LA Act, 1894, the Petitioners agreed to withdraw the objections and hand over possession of their land to the Respondents only on the assurance given by the Respondent No.4 that they will be paid at the revised rate of Rs.18.25 per square feet and that other concerns raised by the effected land owners would also be looked into. The Respondent No.6 having thus taken over possession carried out callous and random construction activities causing landslides and slips through the entire length of the road damaging even the un-acquired land of the Petitioners compelling them to approach the Respondent No.4 with a complaint against Respondent No.6, copies of which were submitted to the Governor of Sikkim, the Chief Minister and other concerned authorities including all the Respondents. These unfortunately were not responded to leading the Petitioners to file Title Suits No.1 of 2010, 2 of 2010, 3 of 2010, 4 of 2010 and 5 of 2010 in the Court of the Civil Judge, South Sikkim at Namchi. The Title Suits were ultimately disposed off by

order under Order VII Rule 10 by which the plaints were returned to be presented to the Court in which the suits should have been instituted as the reliefs claimed were beyond its pecuniary jurisdiction.

**8.** It is the case of the Petitioners that neither the State Respondents 1 to 3 nor the Respondent No.6 challenged the award dated 12.01.2009 passed under Section 11 of the LA Act by the Respondent No.4 before any forum. The Respondent No.6 has, however, remained adamant and refused to deposit the balance amount of Rs.83,61,998/- calculated at the revised rate depriving the Petitioners of their legitimate compensation. The Petitioners had also approached the High Court Lok Adalat in November, 2012, but the case was disposed off on 02.03.2013 without any settlement.

**9.** The Petitioners have thus prayed for a writ in the nature of mandamus commanding the Respondents to honour the award dated 12.01.2009 and to release the compensation to them forthwith with interest as prescribed by law.



**10.** The Respondents No.1 to 4 in their counter affidavit have not disputed any of the factual aspects raised in the Writ Petition. It is in fact re-emphasised that Public Notices under Section 9 being Nos. 168, 169 and 170/DC(S) dated 22.10.2008, were issued by the Respondent No.2 with a copy to all effected parties asking them to appear before the District Collector, South District, the Respondent No.4, and to make submissions on the nature of their respective interest in the land and, in particular, on the amounts of their claims for compensation. The effected parties in response had filed their objections and submissions, by which they categorically demanded the following:-

- (a) Enhancement of land compensation rate
- (b) 100% payment of compensation before starting work
- (c) Payment of part compensation to the tenant based on numbers of years of cultivation
- (d) Construction of retaining wall along with the road to be newly constructed.

**11.** Thereupon, the Respondent No.4 forwarded a copy of the award under Section 11 of the LA Act, 1894 by which the rate was revised from Rs.8.47 to Rs.18.25 per

square feet on the basis of the transaction which had taken place within the vicinity of the land to be acquired and also in consideration of factors like road connectivity, availability of electricity and water, etc. It is not disputed that the total amount of compensation was revised to Rs.1,28,36,448/- that included the value of the standing crop and 30% solatium and, that after deducting the interim payment of Rs.49,90,994/- made earlier, the balance amount of Rs.83,61,998/- was still to be released by the user agency, namely, the Respondent No.6.

**12.** The plea taken by the State Respondent in not disbursing the compensation to the Petitioners was the refusal on the part of the Respondent No.6 in depositing the amount.

**13.** On behalf of the Respondent No.6, the user agency also, there is no dispute on the facts as set out hereinbefore, except to state that it was not permissible for the Petitioners to have objected to the rate after more than two years of the payment of the entire amount of compensation of Rs.64,91,378/- calculated at that rate. It is averred that the reassessment of the value of the land

at Rs.18.25 per square feet was done only after issuance of the Notification under Section 9 of the LA Act, 1894 on 22.10.2008 and at the stage of passing of the award under Section 11 of the Act on 12.01.2009. It is the case of this Respondent that the rate, having been reviewed only on 12.01.2009, i.e., declaration of award under Section 11 which ought to have been done on 29.11.2006, when Notification under Section 4(1) was issued, was invalid as being impermissible under Section 23 of the Land Acquisition Act, 1894. This, as per the Respondent No.6, was the reason for it to have not disbursed the balance compensation. It is also his case that the rate arrived at is also not in conformity with and in excess of the rates of different categories of land and selective crops prescribed under Government of Sikkim Notification No.29/16/LR&DMD(S) dated 29.11.2006.

**14.** These are the essential facts that are material for the purpose of disposal of this Writ Petition.

**15.** The events and the controversies set out above arose as a culmination of the direction of the Respondents No.1 and 3 the State of Sikkim and the Secretary, Power


and Energy Department respectively, upon the Respondents No.2 and 4, the Secretary, Land Revenue and Disaster Management Department and the District Collector, South Sikkim at Namchi respectively to acquire the questioned land through the Respondent No.5, the Managing Director, Sikkim Power Development Corporation for the use of Respondent No.6, M/s. Dans Energy Pvt. Ltd., a company incorporated under the Indian Companies Act, 1956, for implementation of 96 MW Jorethang Loop Hydroelectric Project. The Petitioners are mostly farmers whose land were being acquired and are still awaiting full payment of the compensation of their lands acquired.

**16.** Mr. K. T. Bhutia, learned Senior Advocate, submitted that the Petitioners have been running from pillar to post for payment of their due compensation for the last 4 years and more after the declaration under Section 11 was issued on 12.01.2009. Having failed to evoke any response from the Respondents, they had even approached the Court of the Civil Judge, South Sikkim at Namchi with Civil Suits for reliefs although it was not the appropriate forum. The suits, as observed earlier, were

disposed off under Order VII Rule 10 of the Civil Procedure Code. It is submitted that objections as regards the rates of compensation having not been taken in the proceedings under Section 9 and the award having already been passed under Section 11 of the LA Act, 1894, it has now become final under Section 12 of the LA Act, 1894. As such, there is no option for the Respondents but to honour the award with the consequential reliefs as provided under the Land Acquisition Act, 1894.

**17.** Mr. J. B. Pradhan, learned Additional Advocate General appearing on behalf of Respondents No.1 to 4, does not dispute the submissions made on behalf of the Petitioners and further adds that the Respondent No.6 has failed to comply with the repeated requests sent by the State Respondents to release the balance amount of the compensation that had been assessed and declared in the award under Section 11 referring to the very letters relied upon on behalf of the Petitioners.

**18.** Mr. A. Moulik, learned Senior Advocate, on the other hand, submits that the Respondent No.6 was not obliged to honour the award passed under Section 11 of



the LA Act as the Respondent No.6 was not at all given notices in respect of the proceedings under Sections 9 and 11 of the LA Act. He states that vide letter dated 11.05.2009 it had been categorically brought to the notice of the Managing Director of the Respondent No.5, Sikkim Power Development Corporation, that they had not received any letter from the Land Revenue Department nor from the Sikkim Power Development Corporation regarding the revision of the land rates.

**19.** It is further stated that even in the Civil Suits before the Civil Judge at Namchi specific pleading was taken on this.

**20.** It is his further case that the earlier rate having been fixed on or immediately after 29.11.2006 and 80% of the compensation calculated at that rate having already disbursed on 19.01.2006, it was impermissible for the Respondent No.4 to have revised the rates under Section 11 on 12.01.2009.

**21.** Mr. Moulik strongly contended that no opportunity was afforded to the Respondent No.6 to exercise its rights provided under sub-section 2 of Section

50 of the LA Act, 1894 entitling them to appear and adduce evidence for the purpose of determining the amount of compensation.

**22.** Referring to the Constitution Bench decision in **U.P. Awam Vikas Parishad v. Gyan Devi : AIR 1995 SC 722**, it was argued that adequate notice ought to have been given by the Collector to the Respondent No.6 of the date on which the matter of determination of the amount of compensation was being taken up. This having not been done, the award passed under Section 11 of the LA Act was invalid and not binding upon the Respondent No.6.

**23.** I have given careful consideration to the entire matter. There is no dispute that the land of the Petitioners had been acquired by the Respondents by virtue of the notice under Section 4(1) of the Land Acquisition Act, 1894 dated 29.11.2006 and the declaration award under Section 6 dated 29.01.2006. It is also not disputed that for the purpose of the acquisition, the urgency clause under Section 17(4) of the Act had been resorted to, making the provisions of Section 5-A

thereof inapplicable. The only bone of contention between the parties is the revision of rates arrived at by the Respondent No.4, purported failure on his part in not issuing notices to the Respondent No.6 of the proceedings under Section 9 of the LA Act, 1894 and the declaration on the basis of that rate under Section 11 of the Act on 12.01.2009.

**24.** Therefore, the question that falls for consideration is as to whether the assertion raised on behalf of the Respondent No.6 that it was mandatory for the Respondent No.4 to have issued to it a separate notice under Section 50(2) of the LA Act, 1894. In order to answer this, we may examine the relevant portion of Section 9 of the Land Acquisition Act i.e., sub-section 1 thereof and is accordingly reproduced hereunder: -

**"9. Notice to persons interested – (1)**  
 The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him." ( **underlining mine** )

**25.** On a bare perusal of the above, the very fact that "public notice is given at convenient places on or near



the land to be taken" would connote that notice to all interested in respect of claims to compensation had been duly given. In the present case, this obviously was done on 21.10.2008, as would appear from Sl. No.6 of the declaration of award under Section 11 of the LA Act filed as Annexure 4 to the Writ Petition. We may also reproduce below Sl. No.6 of the declaration award for convenience :-

"6. Public Notice U/S 9 of Land Acquisition Act 1894, was issued by the undersigned vide Notice no.168,169 and 170/DC(S) dated 22/10/08 calling upon the persons interested in the land to appear personally or by agent before the undersigned to state their nature of their respective interest in the land and amount and the particulars of their claims to compensation for the same and their objections, if any, to the measurements made U/S 8 on or before 20/11/08."

**26.** Moreover, it is an admitted position on the part of the Respondent No.6 that soon after payment of the initial compensation at the rate earlier prescribed when the notice under Section 4(1) and declaration under Section 6 were issued, the Respondent No.6 had taken possession of the land in question. It is not disputed that the Respondent No.6 had taken possession of the land in the year 2007 and had commenced with the

implementation of the project as asserted by the Petitioners. The notice issued under Section 9 was obviously given on or near this land. In these circumstances, Respondent No.6 cannot be heard to say that it was unaware of the public notice. In my view, this notice is also in substantial compliance to the notice contemplated under sub-section 2 of Section 50 of the Land Acquisition Act, 1894.

27. In the very case of **U. P. Awas Evam Vikas Parishad v. Gyan Devi** (supra), relied upon by Mr. Moulik, it has been held as under: -

"9. .... Service of such a notice, being necessary for effectuating the right conferred on the local authority under S.50(2) of the L.A.Act, can, therefore, be regarded as an integral part of the said right and the failure to give such a notice would result in denial of the said right unless it can be shown that the local authority had knowledge about the pendency of the acquisition proceedings before the Collector or the reference Court and has not suffered prejudice on account of failure to give such notice." ( underlining mine)

From the aforesaid extract of the decision, it stands settled that although service of notice for effectuating the right conferred on the Respondent No.6 under Section 50(2) of the LA Act was necessary, being an integral part

of the right, failure to give such a notice would result in denial of such right unless it can be shown that the Respondent No.6 had the knowledge about the pendency of the proceedings before the Collector. It would thus follow that notice under Section 50(2) of the Act may be considered to have been given to the Respondent No.6 on the publication of the notice under Section 9 of the LA Act, 1894 on the land. Moreover, the Sikkim Power Development Corporation, the Respondent No.5, was aware of the proceedings as would appear from the records. The assertion that the Respondent No.6 was unaware of the proceedings under Section 9 and declaration under Section 11 of the LA Act would, therefore, stand clearly belied.

**28.** The stand and conduct of the Respondent No.6, in my view, appear to be quite unreasonable, unfair and rather defiant. It was time and again requested to disburse the amount for payment to the land owners who are mostly farmers and who had been deprived of the possession and use of their land ever since the year 2007. By letter dated 04.03.2009, the Managing Director, SPDC, the Respondent No.5 in whose name the land was being

acquired for its use by the Respondent No.6, had been informed of the revision and the declaration under Section 11 by which the revised compensation had been conveyed. The General Manager of the Respondent No.6 Company had been directly asked by the Respondent No.4 by his letter dated 27.09.2011 to release the additional compensation. This was followed by another letter dated 25.07.2012 addressed to the Vice President of the Respondent No.6 Company by the Senior Manager (IPP Projects) under the Energy and Power Department, the Respondent No.3, making the same request for release of the balance compensation amount as per the declaration under Section 11 of the LA Act. It is also an admitted fact that the Respondent No.6 had contested the suits filed by the Petitioners in the year 2010 in the Court of the Civil Judge at Namchi, South Sikkim. This was so even before the High Court Lok Adalat which was approached by the Petitioners in the year 2012.

**29.** As can be seen from the above, the Respondent No.6 was time and again requested to release the amount of compensation for disposal to the land owners, but the Respondent No.6 remained absolutely adamant. It had

neither chosen to challenge the award nor did it agree to make the payment. It is relevant to note that although proviso to Section 50(2) precludes a legal authority from seeking reference, it does not deprive it of the right to invoke remedy under Article 226 of the Constitution as well as the remedies available under the LA Act, if it feels aggrieved by the determination of the amount of compensation by the Collector or by the reference Court. This position is trite as laid down in **U. P. Awas Evam Vikas Parishad v. Gyan Devi** as would appear from the following portion of the judgment: -

“3. The proviso to S. 50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the collector or by the reference Court to invoke the remedy under Art. 226 of the Constitution as well as the remedies available under the L.A. Act.”

**30.** The proceedings under Section 9 having taken place in the year 2008 and, the declaration of award under Section 11 also having been made on 12.01.2009, in my view, it is too late in the day for the Respondent No.6 to question the correctness of the valuation of the compensation and refuse payment of it, on the plea that it

was not correctly arrived at. In any case, once award under Section 11 is passed, it becomes final under Section 12 of the Land Acquisition Act, 1894 and nothing further would lie against it, except otherwise provided under the Act.

**31.** In the present case, it is not the Respondent No.6 who has approached this Court but the Petitioners, and, therefore, this plea is not available to it. No doubt, there is a remedy of reference under Section 18, but that pertains to persons interested who have not accepted the award. This provision and other provisions cognate thereto would not be available to the user agencies like the Respondent No.6. As held in **Steel Authority of India Limited vs. Sutni Sangam and Others : (2009) SCC 16** "..... The expression "person interested" for the purpose of Section 18 of the Act may be given a restricted meaning. A State is not a person interested. A company or a local authority for whose benefit the lands are acquired, having regard to the provisions of sub-section (2) of Section 50 of the Act, is not entitled to file any application for reference." (underlining supplied). The only remedy available for them was under Section 50(2), but as observed earlier, even this appears to have been exhausted.

**32.** Mr. Moulik then attempted to engage this Court on the various errors said to have been committed by the Respondent No.4, the District Collector, while arriving at the rates during the proceedings under Section 9, but has chosen not to get drawn into that area being beyond its jurisdiction, the scope of the Writ Petition as well as the ambit of the Land Acquisition Act, 1894. Moreover, after the award had been declared under Section 11 it had assumed finality and is binding under Section 12 of the Act.

**33.** From the sequence of events alluded to above the indifferent and defiant attitude of the Respondent No.6 appear to be obvious. The Petitioners most of whom are poor farmers and tillers of the land which had been acquired were deprived of the use of their land since the year 2007 or soon thereafter when the Respondent No.6 had assumed possession of those. While the Respondent No.6 began to reap the benefit of the land by commencing with the implementation of the hydro project which is now said to be at an advanced stage, the Petitioners were made to run from pillar to post in desperation seeking due

compensation which had been legitimately assessed. Even the demands made by the State-Respondents, particularly the Respondents No.2 and 4 for depositing the amount were ignored with brazenness by Respondent No.6 on frivolous grounds even when it chose not to assail the assessment in accordance with law. This certainly is opposed to the object of Article 300A of the Constitution of India.

**34.** For the reasons stated hereinbefore, I am of the view that the Writ Petition deserves to be allowed, and it is accordingly allowed with the following directions: -

- (a) The Respondent No.6 shall deposit with the Respondents No.2 and 4 the balance amount as stipulated in the declaration of award under Section 11 of the Land Acquisition Act, 1894 and the Respondents No.2 and 4 shall, on such deposit by the Respondent No.6, disburse to the Petitioners their respective amounts of compensation.
- (b) The Respondent No.6 shall through the Respondents No.2 and 4 pay to the Petitioners interest @ 9% from the time of taking possession of their lands. As per



the pleadings the year of possession is 2007 but the exact date shall be ascertained by the Respondent No.4 from the records of its proceedings.

- (c) In terms of Section 34 of the L.A. Act, 1894, the rate of interest at 9% shall be applicable for one year from the date of taking possession.
- (d) After the first year, the Petitioners shall be entitled to interest @ 15% per annum until full and final payment of the dues.

**35.** It is made clear that the entire compensation shall be disbursed to the respective Petitioners not later than 30 days from the date of this judgment.

**36.** The Respondent No.6 shall pay Rs.1,00,000/- (Rupees One Lakh) only as cost of the proceedings. The amount shall be deposited in the bank accounts of the following @ Rs.20,000/- each: -

- (i) Sing-Chit Gonpa Monastic School (Sing-Chit Ngadak Gonpa), Manul, North Sikkim;
- (ii) Destitute Home, Chakung, West Sikkim;

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- (iii) Kingstone Destitute Home, Rhenock, East Sikkim;
- (iv) Children from Special School for Hearing & Speech Impaired, Gangtok; and
- (v) Mayal Lyang Mission Society, Namchi, South Sikkim.

**37.** Compliance report of the directions contained in this judgment shall be filed on or before 07-06-2014.

**38.** In the result, the Writ Petition is allowed.

**( S. P. Wangdi )**  
**Judge**  
01.05.2014