

GAHC010039222020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/544/2020

THE POWER GRID CORPORATION OF INDIA LTD AND ANR
REP. BY THE CHAIRMAN-CUM-MANAGING DIRECTOR, POWER GRID,
HAVING ITS REGISTERED OFFICE AT B-9, QUTAB INSTITUTIONAL AREA,
KATWARIA SARAI, NEW DELHI-110016. DIST. KAMRUP, ASSAM

VERSUS

UNION OF INDIA AND 30 ORS
THROUGH THE SECRETARY, MINISTRY OF POWER, GOVERNMENT OF
INDIA, SHRAM SHAKTI BHAWAN, RAFI MARG, NEW DELHI-110001

2:THE POWER GRID CORPORATION OF INDIA LTD.
REP. BY THE CHAIRMAN CUM MANAGING DIRECTOR
POWER GRID
HAVING ITS REGISTERED OFFICE AT B-9
QUTAB INSTITUTIONAL AREA
KATWARIA SARAI
NEW DELHI- 110016.

3:THE EXECUTIVE DIRECTOR

THE POWER GRID CORPORATION OF INDIA LTD. 6TH FLOOR MONAL
TOWER
G.S. ROAD

OPPOSITE ASSAM SECRETARIAT
DISPUR
GUWAHATI- 781006.

4:THE STATE OF ASSAM

THROUGH THE CHIEF SECRETARY

GOVT. OF ASSAM

ASSAM SACHIVALAYA
DISPUR
GUWAHATI- 781006.

5:THE ADDITIONAL CHIEF SECRETARY

GOVT. OF ASSAM

POWER (ELECTRICITY DEPARTMENT
ASSAM
SACHIVALAYA
DISPUR
GUWAHATI - 781006.

6:AKHIL GOGOI
SON OF LATE BOLO RAM GOGOI
OFFICE OF KRISHAK MUKTI SANGRAM SAMITI
DAKSHA PRASAD DEKA BHABAN
NEAR KALIMANDIR
GANDHIBASTI
PO AND PS. CHANDMARI
GHY-03
DIST. KAMRUUP(M)
ASSAM

7:NALIN MOMIL
S/O LT. BHADRA SANGMA
R/O VILL- SOTAI GARO GAON
P.O. GAMANI
P.S. RANGAPARA
DIST. SONITPUR
ASSAM

8:ANSISH SANGMA
S/O LT. RAJAN MARAK
R/O VILL- SATAI GARO GAON
P.O. GAMANI

P.S. RAGAPARA
DIST. SONITPUR
ASSAM

9:LATIM MARAK
S/O MILTAN MARAK
R/O VILL- SATAI GARO GAON
P.O. GAMANI

P.S. RANGAPARA
DIST. SONITPUR
ASSAM

10:MANASH PRATIM BRAHMA
S/O UMESH BRAHMA
R/O VILL- 1 NO. TANGABARI
P.O. NEHRUBAZAR
P.S. BIJN
DIST. CHIRANG (BTAD)
ASSAM

11:BIRDAO BASUMATARY
S/O LT. BANESWAR BASUMATARY
R/O VILL- THORIBARI
P.O. BETONAPARA
P.S. BIJNI
DIST. CHIRANG
(BTAD)
ASSAM

12:KHISTISH DAS
S/O LT. MAKHAN LAL DAS
R/O VILL- PADMAPUR
P.O. KAJALGAON
P.S. SIDLI
DIST. CHIRANG (BTAD)
ASSAM

13:JAIUDUL ISLAM
S/O MD. AAIJUDDIN ALI
R/O VILL- JAYANTIPUR
P.O. BURHA
P.S. SIPAJHAR
DIST. DARRANG
ASSAM

14:MD. AFAJUDDIN AHMED
S/O LT. AARAF ALI
R/O VILL- JAYANTIPUR

P.O. BURHA
P.S. SIPAJHAR DIST. DARRANG
ASSAM

15:ABDUL JALIL DEWAN
S/O TAIMUDDIN DEWAN
R/O VILL- PORABHORAL

P.O. SUKMANAH
P.S. BHABANIPUR
DIST. BARPETA
ASSAM

16:AYUB ALI
S/O LT. JALAUDDIN ALI
R/O VILL- PORABHORAL
P.O. SUKMANAH
P.S. BHABANIPUR

DIST. BARPETA
ASSAM

17:ABDUL SALAM
S/O ABDUL KARIM
R/O VILL- PORABHORAL
P.O. SUKMANAH
P.S. BHABANIPUR
DIST. BARPETA
ASSAM

18:SMT. BHANITA DAS
W/O TILAK DAS
R/O VILL- UTTAR PIPLA
P.O.NITYANANDA
P.S. PATACHARKUCHI
DIST. BARPETA
ASSAM

19:SMT. PURNIMA DAS
W/O LT. BIRAJ DAS
R/O VILL- UTTAR PIPLA P.O.NITYANANDA
P.S. PATACHARKUCHI
DIST. BARPETA
ASSAM

20:SMT. SABITA MUCHAHARY
W/O BOKUL MUCHAHARY
R/O VILL- GOLDINGPARA
P.O. POMUAPATHAR
P.S. MUSALPUR
DIST. BAKSA
ASSAM.

21:AMBIKA SARGAYARI
S/O LT. SONESWAR SARGAYARI
R/O VILL- DONGPAR

P.O. DONGPAR
P.S. TAMULPUR
DIST. BAKSA
ASSAM

22:DIPEN DEKA
S/O LT. RATIKANTA DEKA
R/O VILL- KOTAHBARI
P.O. PADMAPAR
P.S. TAMULPUR
DIST. BAKSA
ASSAM

23:HARKANTA HALOI
S/O LT. DHANESWAR HALOI
R/O VILL- BENNABRI
P.O. BENNABARI
P.S. BORGURI
DIST. BAKSA
ASSAM

24:BISHWA BORO
S/O JUNGA BORO
R/O VILL- GOLDINPARA

P.O.POMUAPATHAR
P.S. MUSALPUR
DIST. BAKSA
ASSAM

25:DAEGO BASUMATARY
S/O LT. AMALA BOSUMTOARY
R/O VILL- SIKHARGAON
P.O. BONARGAON
P.S.DOTOMA

DIST. KOKRAJHAR
ASSAM

26:ROHILAL BOSUMOTARY
S/O SUDHIR CHANDRA BOSUMOTARY
R/O VILL- SIKHARGAON
P.O. BONARGAON
P.S.DOTOMA
DIST.KOKRAJHAR
ASSAM

27:HON KUMAR RABHA

S/O BOLENDRA RABHA
R/O VILL- DHULGURI
P.O. CHANDRAPARA
P.S. KOKRAJHAR
DIST. KOKRAJHAR
ASSAM

28:HAMEN BRAHMA
S/O TIKARAM BRAHMA
R/O VILL- DOLOUABARI
P.O. DOLOUABARI
P.S. KOKRAJHAR
DIST. KOKRAJHAR
ASSAM

29:BIMAL CH. HAJONG
S/O LT. JOGESWAR HAJONG
R/O VILL- 2 NO. JAMDOHA

P.O. GERUKAJORI
P.S. MANIKPUR
DIST. BONGAIGAON
ASSAM

30:MD. ABDUL BASIK
S/O NURBUX AHMED
R/O VILL-MOULUA
P.O.MANIKPUR
P.S. MANIKPUR
DIST. BONGAIGAON
ASSAM

31:MD. HUJUR ALI
S/O LT. TUFANU SHEIKH R/O VILL- 1 NO. KABADI
LOU PATILA DOHA

P.O. MANIKPUR
P.S. MANIKPUR
DIST. BONGAIGAON
ASSA

Advocate for the Petitioner : MR. M Z AHMED

Advocate for the Respondent : MR. P K TIWARI

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

12.05.2023

Heard Mr. M.Z. Ahmed, learned Senior Counsel assisted by Mr. A.M. Dutta, learned counsel for the applicants; Ms. B. Sarma, learned Central Government Counsel [CGC] for the opposite party no. 2; Mr. B. Deori, learned Junior Government Advocate, Assam for the opposite party no. 4; and Mr. P.K. Tiwari, learned Senior Counsel assisted by Mr. A.R. Gogoi, learned counsel for the opposite party nos. 6 to 31.

2. The opposite party nos. 6 to 31 as the writ petitioners, had instituted the connected writ petition, W.P.[C] no. 3776/2018 seeking inter alia a direction to the respondents, more particularly, the respondent no. 2 therein i.e. the applicant no. 1 herein viz. Power Grid Corporation of India Limited and the respondent no. 3 therein i.e. the applicant no. 2 herein to ensure payment of adequate compensation to them for use of the petitioners' parcels of land for Right of Way [RoW] for installation of an electric line under the [i] 400 KV [Quad] Balipara-Bongaigaon Transmission Line; [ii] 400 KV D/C Kameng-Balipara Transmission Line; and [iii] 800 KV [HVDC] Biswanath Chariali-Tangla-Barobisa-Agra Transmission Line in terms of the Guidelines laid down by the Ministry of Power, Government of India for payment of compensation towards damages in regard to Right of Way for transmission lines in the Circular dated 15.10.2015. As indicated hereinabove, the applicants were arrayed as the respondent no. 2 and the respondent no. 3 in the writ petition.

3. The writ petition, W.P.[C] no. 3776/2018 came to be disposed of by an order dated 20.01.2020 with the following directions :-

Accordingly, I dispose of this writ petition with the following direction :-

No. 1: The individual petitioners shall approach the concerned Deputy Commissioner specifying and identifying the land which falls within the Right of Way [RoW] of the transmission lines whereafter the concerned Deputy

Commissioner of the respective district shall verify about the genuineness of the claim through the Circle Officers and in the event their claims are found to be genuine, the damages shall be assessed as per the guideline.

No. 2: If any of the petitioners are aggrieved by the assessment made by the Deputy Commissioner, the petitioners shall take necessary shelter under Section 16 of the Indian Telegraph Act, 1885 thereby, moving the territorial District Judge for enhancement of the damages inasmuch as in order to invoke the jurisdiction by the territorial District Judge, under Section 16 of the Indian Telegraph Act, 1885, there must be a dispute in respect of the compensation. Similarly, if the respondent PGCIL is aggrieved on the assessment made by the Deputy Commissioner, it shall also be at liberty to approach the District Judge concerned.

No. 3: If the district authority had already assessed the compensation and petitioners are not satisfied such claim of petitioners are entitled to approach the concerned District Judge under Section 16 of the Indian Telegraph Act, 1885.

Mr. Tiwari, learned Senior Counsel for the petitioners pointed out that vide Notification No. PEL.2019/2015/91 dated 10.03.2017 issued by the Government of Assam, Power [Electricity] Department, the guideline dated 15.10.2015 issued by the Ministry of Power, Central Government of India had made its application restricted to the extent of new transmission line/projects where construction started after 15.10.2015. There is no doubt to that effect but in order to make the basis of assessment, the guideline can be taken into consideration keeping in view the technicality involved in the issue of determination of the compensation inasmuch as the said compensation cannot be equated with the one under the Land Acquisition Act as in most of the cases ownership of the land shall always remain with the petitioners except the area of land under the tower base which shall have to be abandoned.

With the aforesaid observation, this writ petition is disposed of.

4. The instant interlocutory application has been preferred by the respondent no. 2 and respondent no. 3 in the writ petition W.P.[C] no. 3776/2018 as the applicant no. 1 and the

applicant no. 2 respectively seeking modification/clarification of the order dated 20.01.2020. The applicants have urged two grounds, firstly, as per the Indian Telegraph Act, 1885, the Power Grid Corporation while constructing such transmission lines, does not acquire any right other than that of user only in the property, and is required to pay compensation in the form of surface damage compensation, if in case any surface damage is caused, as prepared by the Revenue Authority as per procedure prescribed by law; and secondly, the ownership of the land remains with the land-owners and further, the area of land under the tower base remains the same, and is not degraded. As such the landowners can, in fact, use the said portion for any other purposes and they are not required to be abandoned for the same, as indicated in the aforesaid Order dated 20.01.2020. It is the case of the applicants that the opposite party nos. 6 to 31 i.e. the writ petitioners are utilizing the portion of the lands under the tower base for various purposes, such as cultivation, etc., and as such, the order dated 20.01.2020 ought to be modified and the portion appearing in the penultimate paragraph of the order dated 20.01.2020, "except the area of land under the tower base which shall have to be abandoned" ought to be deleted.

5. Having regard to the operative portion of the order dated 20.01.2020, extracted hereinabove, the Court is of the view that such a relief sought for in the instant interlocutory application seeking modification/clarification cannot be granted as the same will only be in the ambit and scope of appeal and such a prayer cannot be allowed in an application seeking modification/clarification. This Court, thus, is of the view that it would be within the appellate jurisdiction only such a prayer can be allowed.

6. Mr. Ahmed, learned senior counsel for the applicant has fairly submitted that he is not pressing the first prayer. He has further submitted that the lands of the opposite party nos. 6 to 31, that is, the original writ petitioners are being utilized for exercising the RoW for the installation of the afore-mentioned transmission lines prior to 2015 and as such, the criteria of assessment laid down in the Guidelines dated 15.10.2015 cannot be enforced as a basis of assessment of damages. In view of the matter, the portion, 'the damages shall be assessed as per the guideline' appearing in direction no. 1 of the order dated 20.01.2020 requires correction.

7. Mr. Tiwari, learned senior counsel appearing for the opposite party nos. 6 to 31 - writ petitioners has submitted that the direction no. 1 of the order dated 20.01.2020 has to be read conjointly with the last line of the penultimate paragraph of the order dated 20.01.2020.

8. Admittedly, the portions of land of the opposite party nos. 6 to 31- writ petitioners were utilized exercising the RoW by the applicant Power Grid Corporation of India for installation of the afore-mentioned transmission lines prior to 15.10.2015 and the Guidelines have been framed for assessment of damages with different criteria on 15.10.2015. This Court while accepting the position of the Guidelines which came to be published on 15.10.2015, has already clarified in the absence of any established criteria prior 15.10.2015, to take the Guidelines dated 15.10.2015 into consideration as a basis of the assessment of compensation by the assessing authorities keeping in view the technicality involved in the issue of determination of compensation in a case of such nature. There is no ambiguity in the order dated 20.10.2020 inasmuch as it is clearly discernible that the Guidelines contained in the Circular dated 15.10.2015 are not to be strictly enforced in respect of making assessment for compensation but those Guidelines can certainly be taken into consideration for guidance by the assessing authorities while making the assessment for comparison as the process of assessment of compensation in such case involves some technicality. As there is no ambiguity in the order dated 20.01.2020, this Court does not find any necessity to make any further modification/clarification in the order dated 20.01.2020.

9. This order disposes of the interlocutory application.

JUDGE

Comparing Assistant