

GAHC010064592021



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

Cont.Cas(C)/190/2021

MAHENDAR MOHAN KHERKATARY AND 15 ORS
S/O- LATE DEBENDRA KHERKATARY
R/O- VILL.- KATHALARTARY
DIST.- BARPETA
ASSAM.

2: SANATAN NATH
S/O- BANCHA RAM NATH
R/O- VILL.- GATHIA PARA
DIST.- BARPETA
ASSAM.

3: MIZANUR RAHMAN
S/O- ABDUS SUBAN
R/O- VILL.- SUKMANAH
DIST.- BARPETA
ASSAM.

4: MUJAMMEL HOQUE
S/O- AIEN UDDIN
R/O- SUKMANAH
DIST.- BARPETA
ASSAM.

5: JOYNAL ABDIN
S/O- DAROK ALI
R/O- VILL.- SUKMANAH
DIST.- BARPETA
ASSAM.

6: NUR HUSSAIN
S/O- LATE SADAR KHAN
R/O- VILL.- SUKMANAH
DIST.- BARPETA

ASSAM.

7: FARUK ALI
S/O- HABIBUR RAHMAN
R/O- VILL.- SUKMANAH
DIST.- BARPETA
ASSAM.

8: JEHERUL HOQUE
S/O- MOHAMMAD ALI
R/O- VILL.- SUKMANAH
DIST.- BARPETA
ASSAM.

9: BARKAT ALI DEWAN
S/O- DEWAN MOKIBUL USSAIN
R/O- VILL.- SUKMANAH
DIST.- BARPETA
ASSAM.

10: MAKIBUL ISLAM
S/O- ABDUR RAHMAN
R/O- VILL.- SUKMANAH
DIST.- BARPETA
ASSAM.

11: SAHERA BEGUM
D/O- NURUL HAQUE
R/O- VILL.- SUKMANAH
DIST.- BARPETA
ASSAM.

12: ESAB ALI
S/O- MAHIZ UDDIN
R/O- VILL.- NOUKUCHI PATHER
DIST.- BARPETA
ASSAM.

13: ABDUL ALI
S/O- LATE MUNCHI HABIL UDDIN
R/O- VILL.- KARAGARI GAON
DIST.- BARPETA
ASSAM.

14: MAFIZ UDDIN JAMADAR
S/O- LATE HAMED JAMADAR
R/O- VILL.- GOLIA
DIST.- BARPETA

ASSAM.

15: APSAR ALI
S/O- LATE HAJARAT ALI
R/O- VILL.- KARAGARI GAON
DIST.- BARPETA
ASSAM.

16: DIBAKAR DAS
S/O- LATE BHUBANESWAR DAS
R/O- VILL.- TAPA
DIST.- BARPETA
ASSAM.
VERSUS

MUNINDRA SHARMA
DEPUTY COMMISSIONER
BARPETA
IN THE DISTRICT OF BARPETA
ASSAM
PIN- 781301.

Advocate for : DR. B AHMED
Advocate for : appearing for MUNINDRA SHARMA

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

22.05.2023

Heard Mr. A.U. Ahmed, learned counsel for the petitioners.

2. The petitioners had earlier preferred a writ petition, W.P.[C] no. 564/2020 alleging non-assessment of the damages, etc. in respect of the petitioners' respective plots of land over which the Power Grid Corporation of India [PGCIL] Limited erected the 400 KV D/C [Quad] Balipara – Bongaigaon transmission line. The Court having regard to the provisions contained in Section 67 & Section 78 of the Electricity Act, 2003 and Section 10 & Section 16 of the Indian Telegraph Act, 1885 and after taking note of the Guidelines contained in the

Circular of the Ministry of Power, Government of India laying down with the guidelines for payment of compensation towards damages, etc. in regard to Right of Way [RoW] for transmission line, disposed of the writ petition by an order dated 31.01.2020.

2.1. The operative part of the order dated 31.01.2020 reads as under :-

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 line 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, such petitioner/petitioners shall take necessary shelter under Section 16 of the Indian Telegraph Act, 1885 thereby, approaching 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 they are entitled to approach the concerned District Judge under Section 16 of the Indian Telegraph Act, 1885.

Mr. Ahmed, learned 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 guidelines could 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 cannot be used for any purpose but the ownership remains with the affected petitioner.

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

3. This Court on 09.12.2022 made a query to Mr. Ahmed, learned counsel for the petitioners regarding first part of the direction of the Court which was to be fulfilled by the petitioners. Today, Mr. Ahmed has submitted that the petitioners have, in the meantime, submitted individual applications with regard to their claims before the jurisdictional Deputy Commissioner. From the order dated 31.01.2020, the consequential steps regarding verification of the genuineness of the claims of the petitioners are to be undertaken by the jurisdictional Deputy Commissioner through the Circle Officer and in the event the claims of the petitioners are found to be genuine after such verification, the next stage is to assess the damages, etc. as per the Guidelines contained in the Circular dated 15.10.2015. As the petitioners have, till the filing of the instant application did not complete their obligation of submission of individual applications and it is only of 19.12.2022, they have submitted individual applications, the instant contempt application is found to be premature as it does not contain any specific averments as regards any kind of non-compliance of the direction on the part of the jurisdictional Deputy Commissioner. Therefore, the instant contempt application is closed as premature.

4. The petitioners are at liberty to file appropriate remedy in the event of any subsequent cause of action.

JUDGE

Comparing Assistant