

GAHC010231882022



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

Case No. : WA/105/2023

FATIK BHATTACHARJEE
S/O LT. KHAGENDRA BHATTACHARJEE, A PARTNER OF M/S AKSAH
GANGA CONSTRUCTION HAVING ITS REGISTERED OFFICE AT K K
BHATTA ROAD, HATIGOAN, GUWAHATI-6 DIST. KAMRUP M ASSAM R/O
ANANDANAGAR PANU FORT ROAD, GUWAHATI-22, DIST KAMRUP M
ASSAM AND ALSO A R/O SRISHTI RESIDENCY LANKESWAR JALUKBARI,
GUWAHATI-14 DIST. KAMRUP M ASSAM

VERSUS

THE STATE OF INDIA AND 11 ORS.
REP. BY PRINCIPAL SECRETARY POWER ELECTRICITY DEPTT. D BLOCK,
GROUND FLOOR JANATA BHAWAN ASSAM SECRETARIAT DISPUR,
GUWAHATI-781006

2:ASSAM POWER DISTRIBUTION COMPANY LTD. (APDCL)
REP. BY ITS CHAIRMAN BIJULEE BHAWAN PALTAN BAZAR GUWAHATI-
781001
DIST. KAMRUP M ASSAM

3:THE MANAGING DIRECTOR
BIJULEE BHAWAN PALTAN BAZAR GUWAHATI-781001
DIST. KAMRUP M ASSAM

4:THE GENERAL MANAGER APDCL
GUWAHATI ZONE BIJULEE BHAWAN PALTAN BAZAR GUWAHATI-781001
DIST. KAMRUP M ASSAM

5:THE DEPUTY GENERAL MANAGER
GUWAHATI II CIRCLE APDCL MALIGAON GUWAHATI-781009 DIST.
KAMRUP M ASSAM

6:THE SUB-DIVISIONAL OFFICER
AZARA

ELECTRICAL SUB DIVISION APDCL AZARA
GUWAHATI-781017
DIST. KAMRUP M ASSAM

7:THE CHIEF EXECUTIVE OFFICER
GUWAHATI ELECTRICAL CIRCLE II APCDL (LAR) JALUKBARI
GUWAHATI-12 GUWAHATI METROPOLITAN
DEVEOPMENT AUTHORITY
BHANGAGARH
GUWAHATI-5

8:AKAN SARMA
CHIEF EXECUTIVE OFFICER
GUWAHATI ELECTRICAL CIRCLE II APCDL (LAR) JALUKBARI
GUWAHATI-12 GUWAHATI METROPOLITAN
DEVEOPMENT AUTHORITY
BHANGAGARH
GUWAHATI-5

9:SRISHTI ASSOCIATES INDIA
A PARTNERSHIP FIRM HAVING ITS REGISTERED OFFICE AT MAZZAININE
B ITAG PLAZA
ABC
NEAR RAJIV BHAWAN G.S. ROAD
GUWAHATI-781005 DIST. KAMRUP M ASSAM REP. BY ONE OF ITS
PARTNER SRI PIUSH AGARWAL

10:PRAGATI FISH FIRM SOCIETY
A PARTNERSHIP FIRM REP. BY ONE OF ITS PARTNER SRI KHAGEN CH.
DAS
S/O LT. GAJI RAM DAS
R/O GARIGAON
P.S. JALUKBARI
GUWAHATI-781014 DIST. KAMRUP M ASSAM

11:MRIDUL HAZARIKA
PRESIDENT
SRISTHI RESIDENCY SOCIETY
BLOCK NO. 2 FLOOR NO. 6
FLAT NO. 26/B SRISTHI RESIDENCY LANKESWAR
JALUKBARI GUWAHATI-14 DIST-KAMRUP M ASSAM

12:THE CHIEF MINISTER SPECIAL VIGILANCE CELL
REP. BY PRINCIPAL SECRETARY TO THE CHIEF MINISTER
GOVT. OF ASSAM DISPUR
JANATA BHAWAN
GUWAHATI-

For the Appellant : Mr. P. Sarmah, Advocate.
For the respondents : Mr. P.N. Goswami, Additional Advocate General,
Assam for respondent Nos.2 to 7.
Ms. S. Konwar, Jr. Government advocate, Assam for
respondent Nos.1 & 2.
Mr. B. Pathak, Advocate for respondent No.9.

BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUMAN SHYAM

24.03.2023

This intra-court appeal filed by the writ petitioner in WP(C) No.5563/2021 seeks to question the legality and validity of the order dated 09.11.2022, whereby the learned Single Judge accepted the I.A.(Civil) No.863/2022 filed by the respondent No.9 in the writ petition under Article 226(3) of the Constitution of India and vacated the ad interim stay order dated 16.10.2021 passed in WP(C) No.5563/2021 whereby, it was directed that no electrical items including transformers etc. shall be installed over the land of the respondent No.10 in the writ petition i.e. Pragati Fish Firm Society.

2. We have heard and considered the submissions advanced by the learned counsel for the parties and also have gone through the materials available on record.

3. This Court is apprised that by way of making the installation of the electrical components (supra), 50 houses in the society, in relation to whose control the parties are litigating shall be provided electricity. Owing to the interim stay order dated 16.10.2021, the said process had been stalled.

4. In this background, we are of the firm opinion that vacation of the ad interim stay order dated 16.10.2021 would not cause any irreparable loss to the petitioner, rather the continuance thereof, was causing grave harm to the right of 50 home owners to get electricity supply which is an important civil right.

5. At this stage, the learned counsel for the appellant-petitioner sought liberty that he may be allowed to pursue the writ petition so as to seek a final disposal thereof. However, his submission was that the observations made in the interim order may not prejudice the outcome of the writ petition.

6. In this regard, we may note that at para No. 16 of the impugned order dated 09.11.2022, learned Single Judge has already clarified that the observations in the said order were being made only for the purpose of deciding the application for vacating stay and shall not affect the final adjudication of the writ petition on merits.

Thus, reiterating that the observations made in the order dated 09.11.2022 passed in I.A.(Civil) No.863/2022 shall not prejudice the final outcome of the writ petition, the parties are left at liberty to pursue the matter before the learned Single Judge for ventilating their grievances.

7. The instant writ appeal is disposed of.

8. No order as to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant