

GAHC010263962023



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

Case No. : I.A.(Civil)/3442/2023 in
WP(C)/4700/2023

THE NATIONAL HIGHWAY INFRASTRUCTURE DEVELOPMENT
CORPORATION LIMITED
REPRESENTED BY ITS REGIONAL MANAGER,
2ND FLOOR, AGNISHANTI BUSINESS PART,
G.N.B. ROAD, AMBARI,
GUWAHATI- 781001.

VERSUS

AGATHA PATWAT AND 12 ORS
R/O- VILLAGE- DURGACHERRA KHASI PUNJI, P.O.- DAMCHERRA, P.S.-
BORKHOLA, DISTRICT- CACHAR, ASSAM, PIN- 788817.

2:HEMLI SUCHIANG
S/O- LT. DELIN KSHIAR

R/O- VILL. DABI NALA KHASI PUNJI

P.O. DAMCHERRA
P.S.- BORKHOLA

DISTRICT- CACHAR
ASSAM

PIN- 788817.

3:JOLNA MUKHIM
W/O- EKLITISH BAREH

R/O- VILLAGE DORBINTILLA KHASI PUNJI

P.O. DAMCHERRA
P.S.- BORKHOLA

DISTRICT- CACHAR
ASSAM

PIN- 788817.

4:THE STATE OF ASSAM

REPRESENTED BY THE COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPARTMENT
DISPUR
GUWAHATI- 781006.

5:THE SECRETARY TO THE GOVERNMENT OF ASSAM
FOREST AND ENVIRONMENT DEPARTMENT
DISPUR
GUWAHATI- 781006.

6:THE DIRECTOR OF LAND RECORDS AND SURVEY
ASSAM
RUPNAGAR
GUWAHATI.

7:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST
ASSAM
BATAHGULI
PANJABARI ROAD

GUWAHATI
ASSAM- 781037.

8:THE DEPUTY COMMISSIONER
CACHAR
SILCHAR
DISTRICT- CACHAR

ASSAM
PIN- 788001.

9:THE DIVISIONAL FOREST OFFICER
CACHAR
SILCHAR
CLUB ROAD

NEAR DC OFFICE

SILCHAR

PIN- 788001
DISTRICT- CACHAR

ASSAM.

10:THE HILL MOUZADAR
VILLAGE DHOLAICHERRA
P.O.- KANAKPUR EAST

DISTRICT- CACHAR
ASSAM.

11:THE CIRCLE OFFICER
UDHARBOND REVENUE CIRCLE
UDHARBOND
DISTRICT- CACHAR

ASSAM
PIN- 788030.

12:THE RANGE OFFICER
UDHARBOND FOREST RANGE
UDHARBOND
DISTRICT- CACHAR

ASSAM
PIN- 788030.

13:THE POWERGRID CORPORATION OF INDIA
REPRESENTED BY ITS CHIEF MANAGER

SILCHAR SUB-DIVISION
SRIKONA

DISTRICT- CACHAR
ASSAM

PIN 788026

Advocate for the Petitioner : MRS. R BORAH

Advocate for the Respondent : MR. R MAJUMDAR

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

24.11.2023

Heard Ms. R. Borah, learned counsel for the applicant, who has filed this petition for vacation / modification of the interim order dated 25.08.2023 passed in the connected writ petition being WP(C)/4700/2023.

By the aforesaid order, while notice was issued in the writ petition, it was directed that till the next date fixed, the petitioners shall not be evicted from the land in question.

Ms. Borah, the learned counsel for the applicant which is the NHIDCL has submitted that the NHIDCL is entrusted with the development of a stretch from Balachera in the district of Cachar to Harangajao in the district of Dima Hasao which is a part of NH 54. The construction is of a 4-lane facility which is a part of the East- West Corridor. It is further submitted that there are 34 towers of the 132 KV, S/C Haflong –Jiribam Transmission of the Power Grid Corporation of India. Since the towers were on the way and situated at hillocks, it was necessary for paving of the way for the construction of the National Highway in question. It is submitted that due to the interim order, even the works connected with the transmission line has also been stopped. Supporting the prayer made on behalf of the NHIDCL, Shri D. Gogoi, learned counsel for the Forest Department has submitted that the rights of the petitioners to continue to possess the land is itself disputed and therefore they cannot cause any obstruction to a process of development. He further submits that there is a pertinent issue that the land in question is a part of the Borail Wildlife Sanctuary and necessary permission under the Forest Conservation Act, 1980 has also been taken before initiation of the work in question.

Shri R.K. Talukdar, learned counsel appearing for Power Grid Corporation of India has submitted that due to the interim order in question, even the works connected with the transmission work has also been put to a hold. He submits that 34 towers have already been constructed and out of those, 11 towers are under the Forest land which is the subject matter of the writ petition.

Shri Mazumdar, the learned counsel for the opposite party / writ petitioners has however submitted that the land in question is under the possession of the petitioners since the time of their forefathers and disputes that the same is a forest land. He has further placed on record certain documents issued by the NHIDCL as well as Hill Mouzadar, Cachar which as per him would show that the land in question is unsurveyed land.

The rival submission made by the learned counsel for the respective parties have been duly considered.

The writ petition is filed by three petitioners only. While the learned counsel for the writ petitioners have submitted that they are the village headwomen and represent four villages, the prayer in the writ petition reads as follows:

“Under the above circumstances, it is therefore prayed that Your Lordships would graciously be pleased to admit this petition, call for the records, and issue a Rule, calling upon the Respondents to show cause as to why a Writ in the nature of Mandamus/Certiorari and/or any other appropriate Writ, order or direction of like nature should not be issued, setting aside and quashing the impugned Notices dated 21.07.2023 (Annexure No. 10) issued by the Respondent No.9 and all its consequential action and after perusal of the of records, cause or cause shown if any and upon hearing the parties, Your Lordships may be pleased to make the Rule absolute and/or pass such

appropriate Order/ Orders or direction as Your Lordships may deem fit and proper in the interest of justice.

Further, it is also prayed that pending disposal of the Rule, Your Lordships would be pleased to stay/suspend the operation of the impugned Notices (Annexure No.10) may kindly be stopped/suspended, in the interest of justice.”

A perusal of the prayer would show that it is the notice dated 21.07.2023 which has been put to challenge.

This Court has been apprised that the notices were issued much after the work in question had started and the principal grievance of the writ petitioners is with regard to adequate / fair compensation. Shri Mazumdar, the learned counsel has fairly submitted that though the concern of the petitioners is to ensure that fair compensation is paid to them, he submits that till date, no recognized process of acquisition has also been initiated and the land in question are under their possession since the days of their forefathers. After considering the rival submission, this Court is of the opinion that though certain rights of the three petitioners may be involved, there is an overwhelming public interest with the project in question which not only encompasses the issue of the National Highway but also the 132 KV transmission line which has come to a hold because of the interim order. It is a settled law that rights if any of certain individuals has to give way to overwhelming public interest and in this case, it is not in dispute that the project in question concerned is a National Highway as well as a 132 KV line of the Power Grid Corporation of India.

In view of the above, this Court is of the opinion that there should be no restrictions on the work of construction of the project of the National Highway in question as well as the transmission line of the Power Grid Corporation of India and the interim order dated 25.08.2023 stands modified accordingly.

It is however made clear that vacation of the interim order as directed today shall not affect the rights of the petitioners if any, to claim fair compensation in accordance with law.

JUDGE

Comparing Assistant