

GAHC010267352023



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

Case No. : I.A.(Civil)/3511/2023
in WP(C) No. 5853/2023

THE MANAGER, RELIANCE JIO INFOCOM LTD.
2ND FLOOR, BIJAY CRISCENT BUILDING, RUKMINIGAON, G.S. ROAD,
DIST- KAMRUP (M), ASSAM, GUWAHATI-781022

VERSUS

KEDAR NATH PATHAK AND 32 ORS
S/O LATE M.C. PATHAK, R/O C.R.B. PATH, PHUKAN NAGAR, WARD NO. 10,
P.O. AND P.S.-SIVASAGAR, DIST-SIVASAGAR, ASSAM, PIN-785640

2:SATYAJIT BHUYAN
S/O LATE B.N. BHUYAN
R/O ANKUR PATH
PHUKAN NAGAR
WARD NO. 10
P.O. AND P.S.-SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-785640

3:MRS. GARIKA DEVI
W/O PRAKHANTA BHATTACHARYYA
R/O PRAFULLA PHUKAN PATH
PHUKAN NAGAR
WARD NO. 10
P.O. AND P.S.-SIVASAGAR
DIST-SIVASAGAR
ASSAM
PIN-785640

4:PRADIP KR. SARMAH

S/O LATE GHANA KANTA SARMAH
R/O ANKUR PATH
PHUKAN NAGAR
WARD NO. 10
P.O. AND P.S.-SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-785640

5:SMT. MEERA MOHAN
W/O SRI GODESWAR MOHAN
R/O C.R.B. PATH
PHUKAN NAGAR
WARD NO. 10
P.O. AND P.S.-SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-785640

6:SMT. MRIDUPORNA GOSWAMI
W/O PRITOM RANJAN BARUAH
R/O ANKUR PATH
PHUKAN NAGAR
WARD NO. 10
P.O. AND P.S.-SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-785640

7:BIPUL SHARMA
S/O LATE C.D. SHARMA
R/O C.R.B. PATH
PHUKAN NAGAR
WARD NO. 10
P.O. AND P.S.-SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-785640

8:KAMLESHWAR SINGH
S/O LATE RAGHUNATH SINGH
R/O ANKUR PATH
PHUKAN NAGAR
WARD NO. 10
P.O. AND P.S.-SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-785640

9:MRS. ALI SHARMAH
W/O LATE K.K. SHARMAH
R/O ANKUR PATH
PHUKAN NAGAR
WARD NO. 10
P.O. AND P.S.-SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-785640

10:MRS. RUNUMI HAZARIKA
W/O LATE SUCHIL CH. HAZARIKA
R/O ANKUR PATH
PHUKAN NAGAR
WARD NO. 10
P.O. AND P.S.-SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-785640

11:JAYANTA BEZ
S/O LATE MADAN CH. BEZ
R/O ANKUR PATH
PHUKAN NAGAR
WARD NO. 10
P.O. AND P.S.-SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-785640

12:RAJIB GOSWAMI
R/O PHUKAN NAGAR
WARD NO. 10
P.O. AND P.S.-SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-785640

13:NABA JYOTI SARMAH
S/O LATE MUNIN SARMAH
R/O ANKUR PATH
PHUKAN NAGAR
WARD NO. 10
P.O. AND P.S.-SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-785640

14:MRS. PRITY RANI SARMAH
W/O JOGANANDA SARMAH
R/O C.R.B. PATH
PHUKAN NAGAR
WARD NO. 10
P.O. AND P.S.-SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-785640

15:NIRANJAN BORGOHAIN
R/O PHUKAN NAGAR
WARD NO. 10
P.O. AND P.S.-SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-785640

16:DURGA NATH BORTHAKUR
R/O PRAFULLA PHUKAN PATH
PHUKAN NAGAR
WARD NO. 10
P.O. AND P.S.-SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-785640

17:GANESH DUTTA
R/O PHUKAN NAGAR
WARD NO. 10
P.O. AND P.S.-SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-785640

18:TRILOCHAN BORTHAKUR
S/O SRI DURGA NATH BORTHAKUR
R/O PRAFULLA PHUKAN PATH
PHUKAN NAGAR
WARD NO. 10
P.O. AND P.S.-SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-785640

19:THE STATE OF ASSAM

TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
DEPARTMENT OF INFORMATION AND TECHNOLOGY
DISPUR
GUWAHATI-6

20:THE UNION OF INDIA
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF
COMMUNICATION
DEPARTMENT OF TELECOMMUNICATION
SANCHAR BHAWAN
20 ASHOKA ROAD
NEW DELHI
PIN-110001

21:THE CHAIRPERSON
TELECOM REGULATORY AUTHORITY OF INDIA
MAHANAGAR DUR SANCHAR BHAWAN
JAWAHARLAL NEHRU MARG (OLD MINTU ROAD)
NEW DELHI
PIN-110001

22:THE DIRECTOR (COMPLIANCE-II)
DEPARTMENT OF TELECOMMUNICATION
O/O THE SR. DDG
ASSAM
LSA
7TH FLOOR
BSNL BHAWAN
PAN BAZAR
DIST- KAMRUP (M)
ASSAM
GUWAHATI-781001

23:THE DISTRICT COMMISSIONER
SIVASAGAR DISTRICT
ASSAM
PIN-785640

24:THE SIVASAGAR DEVELOPMENT AUTHORITY
TO BE REPRESENTED BY ITS CHAIRMAN
SIVASAGAR
DIST- SIVASAAGR
ASSAM
PIN-785640

25:THE SIVASAGAR MUNICIPAL BOARD
TO BE REPRESENTED BY ITS CHAIRMAN

SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-785640

26:THE NODAL OFFICER
RIGHT OF WAY
SIVASAGAR
OFFICE OF THE DISTRICT COMMISSIONER
SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-785640

27:THE DEPUTY COMMISSIONER
DISTRICT DISASTER MANAGEMENT AUTHORITY
SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-785640

28:THE CIRCLE OFFICER
SIVASAGAR REVENUE CIRCLE
DIST- SIVASAGAR
ASSAM
PIN-785640

29:THE EXECUTIVE ENGINEER
PUBLIC WORKS DEPARTMENT
SIVASAGAR DISTRICT TERRITORIAL BUILDING DIVISION
DIST-SIVASAGAR
ASSAM
PIN-785640

30:THE EXECUTIVE ENGINEER
POLLUTION CONTROL BOARD
REGIONAL OFFICE
SIVASAGAR
MELACHAKAR
DIST-SIVASAGAR
ASSAM
PIN-785640

31:JIO SERVICE CENTRE
TO BE REPRESENTED BY ITS THE MANAGER
HAVING ITS REGISTERED OFFICE AT A.T. ROAD
KANAK NAGAR
NEAR SAMPRITEE HOSPITAL

SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-785640

32:RANJAN RASHMI BHATTACHARYYA
S/O LATE AMBIKA BHATTACHARYYA
R/O BYE LANE OF CHITTARANJAN PATH
P.O. AND P.S.-SIVASAGAR
WARD NO. 10
DIST- SIVASAGAR
ASSAM
PIN-785640

33:DIBYA RASHMI BHATTACHARYYA
S/O LATE AMBIKA BHATTACHARYYA
R/O BYE LANE OF CHITTARANJAN PATH
P.O. AND P.S.-SIVASAGAR
WARD NO. 10
DIST- SIVASAGAR
ASSAM
PIN-78564

Advocate for the Petitioner : MR. S SARMA

Advocate for the Respondent : MR. M K SARMA

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

06-12-2023

Heard Shri J. Roy, learned Senior Counsel for the applicants/respondent nos. 13 & 14, who by means of this application has prayed for cancellation/alteration/vacation of the interim order dated 16.10.2023 passed in the connected WP(C) No. 5853/2023. It is submitted that the interim order was *ex-parte qua* the present applicants.

2. The subject matter of the writ petition is the installation of a mobile phone

tower by the present applicants. In support of the challenge, various grounds have been cited in the writ petition.

3. This Court while issuing notice vide the order dated 16.10.2023 had passed an interim order that till the returnable date, the respondents shall not take any further steps to operationalize the said mobile tower. The said interim order was passed taking into consideration the averments made in paragraph 25 of the writ petition whereby it was stated that the tower in question was yet to start functioning.

4. The learned Senior Counsel by referring to the annexures of the Interlocutory Application more specifically Annexure-5 thereof has submitted that the aforesaid averment was incorrect to the knowledge of the writ petitioners as the commissioning was done 12th June 2023. The learned Senior Counsel has pointed out that such fact would also be revealed from the writ petition itself and in this connection has referred to the averments made in paragraph 19 of the writ petition.

5. Shri P. Teli, learned counsel appearing for the writ petitioners/opposite parties has however submitted that the interim order should be extended and the application should be dismissed as there are grounds for adjudication in the writ petition.

6. Ms. P. Tamuli, learned counsel appearing on instruction of Shri K. Phukan, learned CGC however submits that as per instructions received, the grounds taken in the writ petition are not tenable as the apprehension of any health hazards are not sustainable.

7. To appreciate the rival contentions, it may be necessary to refer to the averments, the consideration on which, the interim order has been passed. For ready reference paragraph-7 of the order dated 16.10.2023 which contain the interim order is reproduced below:-

“7. The petitioners, in paragraph 25 of this writ petition, have averred that the installation work of the said ground based mobile tower is complete, it has not yet started functioning. In view of such specific averments by the petitioners that the said ground based mobile tower has not yet started functioning, it is provided, in the interim, that till the returnable date, the respondents shall not take any further steps to operationalize the said mobile tower.”

8. To appreciate the contentions advanced in support of vacating the interim order which is admittedly *ex-parte qua* the present applicants, the averments made in paragraphs 25 as well as 19 of the writ petition are also examined.

9. On examination of the said averments, it is clear that contradictory statements have been made by the writ petitioners themselves with regard to the commissioning / functioning of the mobile tower in question.

10. The submissions made by Ms. Tamuli, learned counsel has also been taken into consideration, who has refuted the allegations of any probable health hazards by installation / functioning of the tower in question.

11. This Court has noticed that the main premises on which the interim order was passed was the statement that the tower in question has not started functioning and that statement appears to be *prima facie* incorrect from the materials placed on record on behalf of the applicants. The statements made in the writ petition itself would also show that such stand is not consistent.

12. In view of the above, this Court is of the view that there is no reasons for continuing the interim order dated 16.10.2023 and therefore the interim direction stands vacated.

13. IA accordingly stands allowed.

JUDGE

Comparing Assistant