

GAHC010267972022



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

Case No. : WP(C)/8356/2022

GAGAN DAS AND ANR.
S/O LT. HARENDRA NATH DAS R/O GANDINAGAR WARD NO. 16 OF BMC
P.O. P.S. AND DIST. BARPETA 781301 ASSAM

2: BISWAJIT BANIK
S/O LT. KRIPA NATH DAS R/O GANDINAGAR WARD NO. 16 OF BMC P.O P.S.
AND DIST. BARPETA-7810310 ASSA

VERSUS

THE STATE OF ASSAM AND 9 ORS.
REP. BY THE SECRETARY DEPTT. OF REVENUE AND DISASTER
MANAGEMENT GOVT. OF ASSAM SECRETARIAT DISPUR GUWAHATI-6

2:THE ADDITIONAL CHIEF SECRETARY
TO THE GOVT. OF ASSAM INFORMANTION TECHNOLOGY DEPTT. ASSAM
SECRETARIAT
BLOCL C SECOND BLOCK GUWAHATI-6

3:THE DEPUTY SECRETARY
TO THE GOVT. OF ASSAM INFORMANTION TECHNOLOGY DEPTT. ASSAM
SECRETARIAT
BLOCL C SECOND BLOCK GUWAHATI-6

4:THE DEPUTY COMMISSIONER
BARPETA 7810301 ASSAM

5:THE CIRCLE OFFICER
BARPETA REVENUE CIRCLE BARPETA 781301 ASSAM

6:THE EXECUTIVE OFFICER
BARPETA MUNICIPAL BOARD SATABDI BHAWAN
BARPETA-781301 ASSAM

7:THE MEMBER SECRETARY
POLLUTION CONTROL BOARD OF ASSAM BAMUNIMAIDAM GUWAHATI
21 ASSAM

8:SANDHAYA RANI DAS
W/O SANATAN DAS R/O GANDHINAGAR WARD NO. 16 BARPETA 781301
ASSAM

9:SANATAN DAS
S/O BASANTA DAS R/O GANDHINAGAR WARD NO. 16 BARPETA 781301
ASSAM

10:SUMIT DIGITAL INFRASTRUCTURE PVT. LTD. (SDIPL)
A COMPANY INCORPORATED UNDER THE PROVISIONS COMPANIES ACT
2013 AND HAVING ITS REGISTERED OFFICE AT 101 SAFFRON NEAR
CENTER POINT PANCHWATI 5 RASTA AMBAWADI AHMEDABA GUJRAT
380006 AND HAVING ITS CIRCLE OFFICE AT BIJAY CRESCENT BUILDING
FIRST FLOOR
ABOVE RELIANCE TRENDS RUKMINIGAON G.S. ROAD GUWAHATI-22
ASSAM AND REP. BY ITS AUTHORIZED SIGNATOR

Advocate for the Petitioner : MR. N ALAM

Advocate for the Respondent : SC. REVENUE

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 27-02-2023

Heard Mr. N. Alam, learned counsel for the petitioners; Mr. A. Bhattacharjee, learned Standing Counsel, Revenue and Disaster Management Department For the respondent no. 1; Mr. R. Talukdar, learned Junior Government Advocate, Assam for the respondent nos. 2-5, Mr. S. Baruah, learned Standing Counsel, Pollution Control Board for the respondent no. 7 and Mr. J. Roy, learned Senior Counsel assisted by Ms. P. Nath, learned counsel for the respondent no. 10.

2. Considering the nature of grievances raised in this writ petition instituted under Article 226 of the Constitution of India, the writ petition is taken up for disposal at the admission stage, as sought for by the learned counsel appearing for the parties, noted above. In view of the order passed, there appears to be no necessity to wait for service of notice upon the remaining respondents.

3. The petitioners are residents of Ward no. 16, Gandhi Nagar, Barpeta Municipal Board, Post Office, Police Station and District – Barpeta. According to the petitioners, the respondent no. 8 and the respondent no. 9 are the owners and pattadars of a plot of land, covered by Dag no. 118 and K.P. Patta no. 121, located at Village – Metuwakuchi Town, Mouza – Barpeta, Barpeta Revenue Circle, Barpeta [‘the subject-land’, for short]. The respondent no. 8 has entered into a Leave and License Agreement with the respondent no. 10 of installation of a Mobile Tower of Reliance Jio over a part of the subject-land measuring 1819 Sq. Ft. [13M X 13M]. On the strength of the said Leave and License Agreement, the respondent no. 10 is in the process of installation of a high frequency radiation mobile tower over the said part of the subject-land near the locality of the petitioners. According to the petitioners, Ward no. 16 is a thickly populated residential area of Barpeta town.

4. The petitioners have raised a grievance to the effect that the installation of a high frequency radiation mobile tower near the vicinity of the petitioners’ residences is likely to cause serious health hazards, not only to human being but also to other living beings. The grievances of the petitioners were brought to the notice of the respondent nos. 8 – 10 but they did not pay any heed and have proceeded with the installation of the mobile tower. The petitioners stated to have submitted a complaint/representation before the Deputy Commissioner,

Barpeta on 17.11.2022 and 21.11.2022 amongst others. The aforesaid representations were preceded by an earlier representation dated 20.09.2022 [Annexure-2] submitted before the Deputy Commissioner, Barpeta. It is projected to the effect that when the aforesaid representations did not result in redressal of the grievances of the petitioners, they are compelled to approach the Court by way of the instant writ petition seeking *inter alia* a direction to the respondent authorities to stop and remove the construction of the high frequency radiation mobile tower from the subject-land. It is further submitted that the necessary permission had not been obtained from the competent authorities in installation of high frequency radiation mobile tower.

5. The Information Technology Department, Government of Assam by a Notification dated 13.02.2018 has notified a set of Guidelines :- 'Guidelines for granting Right of Way [RoW] to Telegraph Infrastructure in Assam, 2018' [the Guidelines', for short] and the said Notification was published in the Assam Gazette on 16.02.2018. The Guidelines have also provided for disposal of public grievances submitted in respect of installation of any mobile tower. As per Clause 3 of the Guidelines, the Deputy Commissioner of the District is the Nodel Officer for the purpose of these guidelines and he is also responsible for granting the permit in his respective district. Clause 18 of the Guidelines has provided for a State Level Committee [SLC] and District Level Committees [DTC] in each of the districts. Clause 18[2], has specifically provided for District Telecom Committee [DTC]. The District Telecom Committee [DTC] is responsible for implementation of the Guidelines under the overall supervision of the State Level Committee [STC]. Clause 18[2] of the Guidelines has also provided for constitution of a District Telecom Committee [DTC] in each district with the Deputy Commissioner of the district as its Chairman. As per Clause 18[3] of the

Guidelines, the District Telecom Committee [DTC] is empowered to deal with the issues related to installation of telecom infrastructure including the following within their respective jurisdiction :-

- [i] Implementation of this guidelines in a smooth manner for development of the telegraph infrastructure in the State
- [ii] Public grievances which may arise in case of installation of mobile towers, laying of underground or overhead OFC etc. in the State
- [iii] Grievances for seizure/removal of unauthorized mobile towers, underground and over ground of etc.

Clause 19 of the Guidelines has provided that the aggrieved party may prefer an appeal to the State Level Committee [STC] within a period of 60 [sixty] days of disposal of the order of the District Telecom Committee [DTC] if it is not satisfied with the decision of the District Telecom Committee [DTC].

6. As the District Telecom Committee [DTC] is empowered to deal with the matters related to public grievances for installation of mobile towers and other issues related to telecom infrastructure in the concerned district and the petitioners have already preferred representations, indicated above, before the Deputy Commissioner, Barpeta, i.e. the Nodel Officer for the district of Barpeta, ventilating their grievances about the installation of the mobile tower in the subject-land, which is in the vicinity of the area of residence of the petitioners, this Court is of the considered view that the District Telecom Committee [DTC] can consider the said representations on its own merits.

7. Taking note of the provisions contained in the aforesaid Guidelines, this Court is of the considered view that the writ petition can be disposed of at this

stage with a direction to the Deputy Commissioner, Barpeta [the respondent no. 4] to place the representations dated 20.09.2022 & 15.11.2022, filed already by the petitioners, before the District Telecom Committee [DTC] and the District Telecom Committee [DTC] shall, in turn, take the same on board for consideration. After due consideration, the District Telecom Committee [DTC] shall dispose of the same by passing a speaking order. It is accordingly directed. It is necessary to mention that at the time of consideration of the said representations, all the stakeholder[s] shall be put on notice and an opportunity of personal hearing be accorded to such interested stakeholder[s], if any such request is made. The entire exercise shall be completed as expeditiously as possible, preferably within a period of 8 [eight] weeks from the date of receipt of a certified copy of this order by the respondent no. 4 from the petitioners.

8. The writ petition stands disposed of in the aforesaid terms. No cost.

JUDGE

Comparing Assistant