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

Case No. : WP(C)/3626/2018

NORTH EASTERN TRANSMISSION COMPANY LTD.
HAVING ITS REGISTERED OFFICE AT HOUSE NO.051358, ROAD NO. 3,
DHALESWAR, P.O. DHALESWAR, AGARTALA
WEST RIPURA- 799007
AND ITS SITE OFFICE AT
HOUSE NO. 112,
GF, BIRUBARI BAZAR, ROAD,
GUWAHATI, ASSAM- 781016.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE CHIEF SECRETARY, GOVT. OF ASSAM,
DISPUR, GUWAHATI- -781006, ASSAM

2:HUSSAIN AHMED BARBHUIYA
S/O LT. MONIR ALI BARBHUIYA
R/O NISCHINTAPUR PART-II

P.O.MONACHERRA
P.S. HAILAKANDI
PIN - 788155.

3:THE DEPUTY COMMISSIONER

DISTRICT- HAILAKANDI
ASSAM
PIN - 788155

For the Petitioner(s)

: Ms. M. Hazarika, Sr. Advocate

: Ms. S. Khound, Advocate

For the Respondent(s)

: Ms. S. Baruah, Government Advocate

Date of Hearing : **11.11.2024**

Date of Judgment : **11.11.2024**

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Heard Ms. M. Hazarika, the learned Senior Counsel assisted by S. Khound, the learned counsel appearing on behalf of the Petitioner and Ms. S. Baruah, the learned Government Advocate appearing on behalf of the Respondent State.

2. It further appears from the order passed by the Lawazima Court dated 05.09.2024 that the service upon the Respondent No. 2 is complete.

3. The present writ petition has been filed challenging the judgment dated 22.11.2017 passed in Misc. (P.G.) Case No. 46/2015 by the District Judge, Hailakandi, whereby it was held that the petitioner was paid adequate compensation for the damage of trees mentioned and there was no need for enhancement. However, as regards the diminution of land value, the Court below awarded an amount of Rs.15,000/- as compensation for diminution of the land value and directed that the petitioner to pay the enhanced compensation of Rs.32,700/- to the Respondent No.2 within a period of 6 (six) months, failing which interest @ 8% per annum would be accrued on the same from the date of the said judgment till full payment.

4. This Court vide an order dated 11.06.2018 had issued notice and had stayed the impugned judgment and order dated 22.11.2017 passed in Misc.

(P.G.) Case No. 46/2015 by the District Judge, Hailakandi.

5. Ms. M. Hazarika, learned Senior Counsel for the petitioner submits that the issue stands settled by a judgment of the Coordinate Bench of this Court dated 10.02.2020 passed In W.P.(C) No.668/2019 **(North Eastern Transmission Company Limited Vs. The State of Assam & Ors.)** and she draws the attention of this Court to the findings arrived therein that diminution of the land value is not a relevant factor to be taken into consideration as compensation. On the basis thereof, the learned Senior Counsel submitted that in a similarly situated case, this Court vide the said judgment and order dated 10/02/2020 had set aside similar order where compensation on the basis of diminution of land value was awarded. The relevant portion of the judgment and order dated 10/02/2020 passed by the Coordinate Bench of this Court to which the learned Senior Counsel refers to is quoted herein below :-

“I have given due consideration to the submissions of the learned counsel. As per the Central Government direction issued by the Ministry of Power in the year 2015 any persons affected by such erection of tower and drawal of transmission line are entitled for the surface damage in respect of the land for the Right of Way(RoW) permitted under the Indian Telegraph Act, 1885 to the licensee and also in respect of the land covered by the tower base. While assessing the surface damage, the value of the land is not considered rather the produce thereof are normally considered. Accordingly, as the licensee is entitled for the right of way (RoW), the owner of any land over which the said transmission line passed, permitting the Right of Way (RoW) to licensee is entitlement for the surface damages caused at the time of erection of the transmission line and for the routine maintenance of the transmission line, But, the learned Court below considered the diminution of land value which is not a relevant factor.

In my considered opinion keeping in view the ambit of scope of Telegraph Act, 1885, and the provisions therein interference of the said impugned order dated 26/09/2018 of the Court below is required which accordingly, I do thereby setting aside the same."

6. A perusal of the above quoted portion of the judgment of this Court would show that this Court had taken into consideration the Central Government's circular issued by the Ministry of Power in the year 2015 whereby any person affected by such erection of tower and drawal of transmission line was held to be entitled for surface damage in respect of the land for the Right of way (RoW) permitted under the Indian Telegraph Act, 1885 to the licensee and also in respect to the land covered by the tower base. It was further noted that while assessing the surface damage, the value of the land is not considered, rather the produce thereof are normally considered and accordingly the licensees is entitled for Right of Way (RoW) and the owner of any land over which the said transmission line pass permitting the Right of Way (RoW) to the licensee is entitled for surface damages caused at the time of erection of transmission land and for the routine maintenance of the transmission line. However this Court with due respect to the Honourable Judge came to a finding that diminution of land value is not a relevant factor and consequently interfered with the order dated 26/09/2018 on the ground of granting compensation for diminution of land value.

7. At this stage, it may be relevant to take note of a judgment of the Supreme Court rendered in the case of ***Kerala State Electricity Board Vs. Livisha & Ors.*** reported in **(2007) 6 SCC 792**. In paragraph 9 of the said judgment, the Supreme Court had held that telegraph lines and electrical

lines are required to be drawn over the agricultural lands and/or other properties belonging to third parties. In drawing such lines, the entire land cannot be acquired but the effect thereof would be diminution of the value of the property over which line is drawn. It is further observed that the Telegraph Act, 1885 provides the manner in which the amount of compensation is to be computed therefor. Section 10 of the said Act empowers the authority to place and maintain a telegraph line under, over, along or across or posts in or upon any immovable property. Section 11 of the said Act empowers the officers to enter on property in order to repair or remove telegraph lines or posts. Section 12 empowers the authority to grant permission for laying down such lines to a local authority in terms with Clause (c) and (d) of the proviso to Section 10 of the Act of 1885 subject to a reasonable condition as it may think fit.

8. Thereafter referring to Section 16 of the Telegraph Act, 1885, the Supreme Court at paragraph No. 10 of the said judgment in the case of ***Kerala State Electricity Board (supra)*** held as follows:-

“10. The situs of the land, the distance between the high voltage electricity line laid thereover, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small tract of land or through the middle of the land and other similar relevant factor in our opinion would be determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same is meant to be used.”

9. Thus it would be seen that the situs of the land, the distance between the high voltage electricity line laid there over, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small tract

of land or through the middle of the land and other similar relevant factors in my opinion are determinative in fixing the compensation. The value of the land would also be a relevant factor. Another important factor which has also been mentioned by the Supreme Court in the above quoted paragraph is that the owner of the land in a given situation may lose his substantive right to use the property for the purpose for which the same is meant to be used.

10. The Coordinate Bench of this Court with due respect though had taken into consideration the guidelines for payment of compensation towards damage in regard to right of way (RoW) to transmission line dated 15th of October, 2015 in the portion of the order as quoted hereinabove but failed to take into consideration Clause 2(ii) of the said guidelines which stipulates that compensation towards diminution of land value in regard to right of way (Row) corridor due to laying of transmission line and imposing certain restrictions would be decided by the States as per the categorization/type of land in different places of States subject to maximum 15% of the land value as determined based on circular rate /Guideline value/ Stamp Act rates. The said Clause 2 (ii) is quoted herein below :-

“2(ii) Compensation towards diminution of land value in the width of Right of Way(RoW) Corridor due to laying of transmission line and imposing certain restriction would be decided by the States as per categorization/type of land in different places of States, subject to a maximum of 15% of land value as determined based on Circle rate/Guideline value/Stamp Act rates.”

11. It is noteworthy to mention that the Government of Assam, Power (Electricity) had issued an Assam Gazette Notification dated 10/03/2017 notifying the rate for payment of compensation towards damage in regard to Right of Way (RoW) for transmission lines basing on the guidelines of the

Ministry of Power, Government of India dated 15/10/2015 circular for maintaining uniformity in payment of compensation to affected land owners during construction of transmission lines. The relevant portion is quoted herein below :-

“Compensation towards diminution of land value in the width of Right of Way (RoW) Corridor due to laying of transmission line and imposing certain restriction at a maximum rate of 15% of land value as determined by Deputy Commissioner or any other competent authority based on Circle rate/Guideline value/Stamp Act rates.

For this purpose, the width of TOW corridor shall not be more than that prescribed in table at Annexure-I and shall not be less than the width directly below the conductors.”

12. It may also be relevant herein to mention that though those guidelines issued by the Government of Assam were made effective from the date of issuance of the Government of India Circular dated 15/10/2015 for those new transmission lines/projects which have started after that date but one thing is clear from the judgment of the Supreme Court as well as the Government circular as mentioned hereinabove, that the diminution of land value is a relevant factor in adjudicating the compensation. It further reveals from both the circular issued by the Government of India and the Notification issued by the Government of Assam that a upper limit has been fixed for granting compensation to the extent of 15% of the land value, thereby w.e.f. 15/10/2015, the compensation for diminution of land value has been fixed with the upper limit of 15% of the land values which was not the case earlier. With due respect as the Coordinate Bench of this Court did not take into consideration the said aspect of the matter by not taking into

account the judgment of the Supreme Court in the case of **Kerala State Electricity Board (supra)** and also not taking into consideration Clause 2 (ii) of the Circular dated 15/10/2015 although reference to the same was made by the Coordinate Bench.

13. In the backdrop of the above, it would be relevant to take into consideration the binding effect of the Judgment of the Coordinate Bench of this Court in the case of **North Eastern Transmission Company Ltd.(supra)** dated 10/2/2020. The Supreme Court in the case of **Babu Parasu Kaikadi (dead) by LRs. Vs. Babu (dead) through LRs reported in (2004) 1 SCC 681** observed at paragraphs 13 to 18 as herein under :

“13. The learned Judges although touched upon the question as regards obtaining legal possession, they unfortunately failed to notice the mandatory provisions of Sections 15 and 29 of the Act. Once it is held that the provisions of Sections 15 and 29 are mandatory, it goes without saying that possession obtained by the landlord in violation of such mandatory provisions would be illegal. A statute, as is well known, must be read in its entirety. The expression “dispossession” having regard to the text and context of the Act cannot be given its natural meaning. The High Court arrived at a finding of fact that the appellant herein had satisfied all the requirements as contained in Section 32(1-B) of the Act. The High Court, however, relying on or on the basis of the decision of this Court in Dhondiram Tatoba Kadam dismissed the appeal of the appellant. The High Court, as noticed hereinbefore, however, felt that the question raised is of great general importance.

14. Having given our anxious thought, we are of the opinion that for the reasons stated hereinbefore, the decision of this Court in Dhondiram Tatoba Kadam having not noticed the earlier binding precedent of a coordinate Bench and having not considered the mandatory provisions as contained in Sections 15 and 29 of the Act had been rendered per incuriam. It, therefore, does not constitute a binding precedent.

15. In Halsbury's Laws of England, 4th Edn., Vol. 26 it is stated:

“A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force.”

16. In *State of U.P. v. Synthetics and Chemicals Ltd.* this Court observed: (SCC pp. 162-63, para 40)

“40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (Young v. Bristol Aeroplane Co. Ltd.) Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law.”

(emphasis supplied)

17. In *Govt. of A.P. v. B. Satyanarayana Rao* it has been held as follows: (SCC p. 264, para 8)

“The rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue.”

18. Furthermore, this Court, while rendering judgment in *Dhondiram Tatoba Kadam* was bound by its earlier decision of a coordinate Bench in *Ramchandra Keshav Adke*. We are bound to follow the earlier judgment which is precisely on the point in preference to the later judgment which has been rendered without adequate argument at the Bar and also without reference to the mandatory provisions of the Act.”

From the above quoted paragraphs, it is clearly discernible that when judgment is passed not noticing a binding precedent as well as the mandatory provisions, the said judgment would be regarded as to have been rendered per incuriam and therefore does not constitute a binding precedent. In the instant case the judgment of the Supreme Court rendered in the case of ***Kerala State Electricity Board (supra)*** was a binding upon the coordinate Bench but the same was not looked into. Again clause 2(ii) of the Circular dated 15/10/2015 was not noticed though the said circular was referred to. Under such circumstances, this Court with great respect holds the judgment of the Coordinate Bench dated 10/2/2020 as being rendered per incuriam and hence this Court is not bound by the said judgment.

14. Now coming into the facts of the instant case, it appears from a reading of paragraph 9 of the impugned judgment that the Court below did not take into consideration the relevant parameters as laid down by the Supreme Court in the case of ***Kerala State Electricity Board (supra)*** as well as the Circular dated 15/10/2015 issued by the Central Government and had without any basis fixed Rs. 15,000/- as the compensation for diminution of the land value. The conscience of the Court cannot be a guiding factor for fixing compensation. It has to be on the basis of the relevant factors, and more so when the said factors had been duly stipulated in the judgment of the Supreme Court in the case of ***Kerala State Electricity Board (supra)***. Accordingly, this Court sets aside the judgment and order dated 22.11.2017 passed by the District Judge, Hailakandi in Misc. (PG) Case No. 46/2015 in so far as fixation of the diminution of land value @ Rs.15,000/- is concerned and remand the matter back to the learned Court below to decide afresh in terms with paragraph No.10 of the judgment rendered in ***Kerala Electricity***

Board (*supra*) as well as the Government Circular dated 15/10/2015 issued by the Central Government.

15. With the above observations and directions, the petition stands disposed of. The Registry is directed to inform the learned District Judge, Hailakandi about the instant judgment and for due compliance.

JUDGE

Comparing Assistant