

GAHC010101592019



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

Case No. : WP(C) 3005/2019

1:RELIANCE JIO INFRATEL PVT. LTD.
A COMPANY DULY INCORPORATED UNDER THE PROVISIONS OF INDIAN COMPANIES ACT, 2013 AND HAVING ITS REGD. OFFICE AT OFFICE-101, SAFFRON, NR. CENTRE POINT, PANCHWATI 5 RASTA, AHBAWADI, AHMEDABAD, GUJARAT 380006, AND CIRCLE OFFICE AT BIJAY CRESCENT BUILDING, ABOVE RELIANCE TRENDS, FIRST FLOOR, RUKMINIGAON, G.S. ROAD, GUWAHATI-781022, ASSAM.

VERSUS

1:THE STATE OF ASSAM AND 17 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, GUWAHATI DEVELOPMENT DEPTT.

2:THE DY. COMMISSIONER
KAMRUP (M)
GUWAHATI-781001.

3:THE CIRCLE OFFICER
GUWAHATI REVENUE CIRCLE KAMRU(M)
GUWAHATI-781001.

4:THE OFFICER IN CHARGE
MALIGAON POLICE STATION GUWAHATI-781011.

5:THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY
BHANGAGARH

KAMRUP (M)
GUWAHATI-781006.

6:THE GUWAHATI MUNICIPAL CORPORATION (GMC)
KAMRUP (M)
GUWAHATI-781001.

7:PRADIP SARMA
S/O. LT. CHANDRAN NATH SARMA
R/O. KALYAN NAGAR
P.O. DEVKOTA NAGAR
P.S. MALIGAON OUTPOST
DIST. KAMRUP (M)
ASSAM.

8:UMESH CHANDRA KAR
S/O. LT. ASHOK NANDA KAR
R/O. KALYAN NAGAR
P.O. DEVKOTA NAGAR
P.S. MALIGAON OP
DIST. KAMRUP (M)
ASSAM
GHY.-781011.

9:NABIN KALITA
S/O. LT. ANNA RAM KALITA
R/O. KALYAN NAGAR
P.O. DEVKOTA NAGAR
P.S. MALIGAON OP
DIST. KAMRUP (M)
ASSAM
GHY.-781011.

10:RAJEN SONNER
S/O. SRI KALA SONAR
R/O. KALYAN NAGAR
P.O. DEVKOTA NAGAR
P.S. MALIGAON OP
DIST. KAMRUP (M)
ASSAM
GHY.-781011.

11:MRS REKHA SONER
W/O. SRI OM PRAKASH SONAR
R/O. KALYAN NAGAR
P.O. DEVKOTA NAGAR
P.S. MALIGAON OP
DIST. KAMRUP (M)
ASSAM
GHY.-781011.

12:OM PRAKASH SONER
S/O. LT. SHIB LAL SONER
R/O. KALYAN NAGAR

P.O. DEVKOTA NAGAR
P.S. MALIGAON OP
DIST. KAMRUP (M)
ASSAM
GHY.-781011.

13:CHTTARANJAN DEKA
S/O. SRI BHUMIDHAR DEKA
R/O. KALYAN NAGAR
P.O. DEVKOTA NAGAR
P.S. MALIGAON OP
DIST. KAMRUP (M)
ASSAM
GHY.-781011.

14:PARESH THAKURIA
S/O. BANSHIDHAR THAKURIA
R/O. KALYAN NAGAR
P.O. DEVKOTA NAGAR
P.S. MALIGAON OP
DIST. KAMRUP (M)
ASSAM
GHY.-781011.

15:GAJEN KALITA
S/O. LT. KARUN KALITA
R/O. KALYAN NAGAR
P.O. DEVKOTA NAGAR
P.S. MALIGAON OP
DIST. KAMRUP (M)
ASSAM
GHY.-781011.

16:MRS MAMONI KALITA
W/O. SRI GAJEN KALITA
R/O. KALYAN NAGAR
P.O. DEVKOTA NAGAR
P.S. MALIGAON OP
DIST. KAMRUP (M)
ASSAM
GHY.-781011.

17:RAMAKANTA CHOUDHURY
R/O. KALYAN NAGAR
P.O. DEVKOTA NAGAR
P.S. MALIGAON OP
DIST. KAMRUP (M)
ASSAM

GHY.-781011.

18:ASSAM POWER DISTRIBUTION CO. LTD.
HAVING ITS OFFICE AT 4TH FLOOR
BIJULEE BHAWAN PALTANBAZAR
GUWAHATI-781001

Advocate for the Petitioner : MR. J ROY

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE MANOJIT BHUYAN

ORDER

Date : 10-05-2019

Heard Mr. J. Roy, learned counsel for the petitioner as well as Mr. S. Borah, learned counsel representing respondent nos. 1 and 6. None to represent respondent nos. 2, 3 and 4. Ms. S. Khound, learned counsel appears on behalf of the respondent no. 5 whereas Mr. M. Bhagabati, learned counsel appears for private respondent nos. 7 to 13. Mr. H. K. Sarma, learned counsel represents respondent no. 18 and Mr. P. Talukdar, learned counsel appears for respondent nos. 15, 16 and 17.

Prayer made in the writ petition is primarily for review of the order dated 11.03.2019 passed in WP(C) 76/2018. It is submitted that in view of the ratio laid down in the case of *Shivdeo Singh and Others v. State of Punjab and Others*, reported in *AIR (1963) 1909* the present writ petition is maintainable for seeking review of an earlier order.

Grievance raised is that although the mobile tower installed on the hillside of Kalyan Nagar was under the aegis of the petitioner Reliance Jio Infratel Private Limited, the said entity was not impleaded as a party respondent in WP(C) 76/2018. As a result, the order disposing of WP(C) 76/2018 with directions for pulling down the mobile tower and ancillary constructions caused great prejudice to the petitioner. It is further stated that installation of the mobile tower came about following permission granted by the Deputy Commissioner, Kamrup (Metro) District, Guwahati vide letter dated 23.12.2016. Mr. Roy makes categorical reference to ID No. GWHT-RIL-0261, which, according to him, corresponds to the mobile tower installed at Kalyan Nagar. Reference is also made to page 39 of the writ petition to

show that the mobile tower was installed in the premises of one Mr. Gajen Kalita, who is respondent no. 15 in the present writ petition.

A perusal of the documents, *prima-facie*, show that the installation of the mobile tower was done after obtaining the required permission from the competent authority. The available records also indicates that the petitioner, being the licensee authorised to make installation of the tower, was not impleaded as a party respondent in WP(C) 76/2018.

In the above view of the matter, let Notice be issued returnable by 4 (four) weeks.

Extra copies of the writ petition be furnished to the counsels representing the respondents who have appeared today.

Petitioner to take steps for service of notice on the remaining respondent nos. 2, 3, 4 and 14 by registered post, acknowledgement due within 7 (seven) days.

Heard on the interim prayer. It is brought to the notice of this Court that following the order passed by this Court in WP(C) 76/2018, a letter has been issued under the hand of the Commissioner, Guwahati Municipal Corporation, Guwahti dated 05.04.2019 ordering demolition of the constructions as indicated in Schedule-A thereof. It is ordered that there shall be a stay of the said order dated 05.04.2019 until the returnable date.

Mr. Roy also submits that electricity supply to the tower has been disconnected, thus, causing impedance to the functioning of the tower. In this regard, an order is passed to the effect that on making necessary representation and payment of necessary cost, the respondent no. 18 i.e. the Assam Power Distribution Company Limited shall restore electricity supply to the mobile tower.

JUDGE

Comparing Assistant