

GAHC010101592019



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

**Case No. : WP(C)/3005/2019**

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

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, MR. C CHAKRAVARTY,MR. R HAZARIKA

**Advocate for the Respondent** : GA, ASSAM, MR S CHAKRABORTY (R-7,8,9,10,12),SC, APDCL,SC, GMC,SC, G M D A,MS G BORA (R7-R13),MR. M BHAGABATI (R7-R13),MS. M HAZARIKA (R7-R13),MS. B TALUKDAR (R7-R13),MS NILAM DEVI (R15,R16),MR. P TALUKDAR (R15,R16),MR. P PATHAK (R15,R16)

**BEFORE**  
**HONOURABLE MR. JUSTICE KARDAK ETE**

**ORDER**

**Date : 05.05.2025**

Heard Mr. J. Roy, learned senior counsel assisted by Ms. B. Saha, learned counsel for the petitioner. Also heard Mr. B.J. Talukdar, learned Additional Senior Government Advocate for the respondents No.2, 3 and 4; Mr. S. Chakraborty, learned counsel for the respondents No.7 to 13 as well as Mr. S. Baruah learned counsel for the respondents No.1, 5 and 6 as well as Ms. D. Angana, learned counsel for the respondents No.15 and 16.

2. The petitioner, being aggrieved by the order dated 05.04.2019, passed by the Commissioner, GMC, whereby, pursuant to the order dated 11.03.2019, passed in WP(C) 76/2018 an order has been issued for demolition of the mobile tower and ancillary constructions by the petitioner, has challenged, essentially, on the ground that the petitioner was not made a party respondent in WP(C) 76/2018 and the order of this Court dated 11.03.2019 has been passed without hearing the petitioner.

3. The petitioner prays for recalling of the order dated 11.03.2019 passed in WP(C) 76/2018 by relying on the judgment of the *Shivdev Singh & Others –vs- State of Punjab & Others* reported in *AIR 1963 SC 1909* and further relied and referred the case of *Pohla Singh Alias Pohla Ram(D) and others –vs- State of Punjab and others* reported in *(2004) 6 SCC 126*, whereby, it is observed that there is nothing in Article 226 of the Constitution of India to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave or palpable errors committed by it.
4. The petitioner admittedly was not made party in WP(C) 76/2018, although the General Manager Reliance Telecom Limited was arrayed as party respondent No.10.
5. Mr. S. Chakraborty, learned counsel for the private respondents strenuously argued that the present writ petition is not maintainable as the remedy lies either to file a review or appeal, if the petitioner is aggrieved by the order dated 11.03.2019 passed in WP(C) 76/2018 by stating incorrectly that the petitioner has made a categorical statement that there is no other adequate and efficacious alternative remedy available.
6. This Court having considered the stand of the Administration as well as Guwahati Municipal Corporation and Guwahati Metropolitan Development Authority and having found that the installation of the mobile tower has been without any permission from the competent authority, vide order dated 11.03.2019 has directed the respondent authorities to pull down the mobile tower and ancillary construction erected by the petitioner without hearing the petitioner in the said writ petition.
7. **Having** considered the observation of the Hon'ble Supreme Court in *Shivdev Singh* (supra), I am of the prima facie view that the present writ petition cannot be said to be not maintainable as the petitioner was not made party to the writ petition being WP(C) 76/2018 and was not heard, but a direction was issued by this Court to the respondent authorities to pull down the mobile tower and ancillary construction erected by the petitioner, which effects the right of the petitioner and violates the principle of natural justice.

8. Having considered the submission of the learned counsel for the parties and also the observation made by the Hon'ble Supreme Court Shivdev Singh (supra), this Court is of the prima facie view that the writ petition would be maintainable in the facts and circumstance of the present case.

9. However, as prayed for by Mr. S. Chakraborty, learned counsel for the respondents No. 7 to 13, further 2 (two) weeks time is granted to file response.

10. Further in view of the prima facie view of this Court with regard to the maintainability of the present writ petition, B.J. Talukdar, learned Additional Senior Government Advocate for the respondents No.2, 3 and 4 and Mr. S. Baruah learned counsel for the respondents No.1, 5 and 6 as well as Ms. D. Angana, learned counsel for the respondents No.15 and 16 are directed to file their response as to whether the mobile tower and other ancilliary construction erected by the petitioner is as per the Rules/Regulation/Guidelines and as to whether the construction/erection are on the government land or the private land of the respondents No. 15.

11. List this matter after 2 (two) weeks.

**JUDGE**

**Comparing Assistant**