

ITEM NO.18

COURT NO.8

SECTION XI

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S). 16076/2012  
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 15/03/2012  
IN WRIT PETITION NO.50273 OF 2004 PASSED BY THE HIGH COURT OF  
JUDICATURE AT ALLAHABAD)

U.P.POWER CORP.LTD.&amp; ORS.

PETITIONER(S)

VERSUS

SAVITA SRIVASTAVA & ANR.  
(WITH INTERIM RELIEF AND OFFICE REPORT)  
(FOR FINAL DISPOSAL)

RESPONDENT(S)

Date : 12/05/2015 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE RANJAN GOGOI  
HON'BLE MR. JUSTICE N.V. RAMANA

For Petitioner(s) Mr. Rakesh Uttamchandra Upadhyay, Adv.

For Respondent(s) Mr. H.C. Kharbanda, Adv.  
Mr. T. M. Saxena, Adv.  
Mr. Vipin K. Saxena, Adv.  
Mr. Yash Pal Dhingra, Adv.  
  
Mr. Tanmaya Agarwal, Adv.  
Mr. Vinay Garg, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed  
order.

[VINOD LAKHINA]  
COURT MASTER

[ASHA SONI]  
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO.4403 OF 2015  
[ARISING OUT OF SPECIAL LEAVE PETITION  
(CIVIL) NO.16076 OF 2012]

U.P.POWER CORPORATION  
LIMITED & ORS. . . . APPELLANTS

VERSUS

SAVITA SRIVASTAVA & ANR. . . . RESPONDENTS

**ORDER**

1. Leave granted.
2. The challenge in this appeal is against the order dated 15<sup>th</sup> March, 2012 passed by the High Court of Judicature at Allahabad in Writ Petition No.50273 of 2004. The operative directions in respect of which the order of the High court has been challenged are to the following effect:

"We are therefore left with no other option but to set aside the order dated 5.8.2004 passed by the Managing Director, respondent No.4, filed as annexure-12 to the writ petition and direct the Managing Director to shift the High Tension Line in such a manner, so that it does not run over the roof of the petitioner's residential house."

3. The facts in the present appeal lie in a short compass.

There was a high-tension line earlier in the close vicinity of the property of the respondent No.1-writ petitioner. At some point of time, the supporting poles had to be erected and there occurred a slight realignment of the High Tension Wire resulting a situation where the said High Tension Wires got displaced by 3-4ft. towards the right and resultantly placed over the corner of the property of the respondent No.1- writ

petitioner consisting of single storeyed house. As the same possibly had the effect of affecting the potential of the property of the respondent No.1- writ petitioner, an approach was made to the High Court in the Writ Petition in which the impugned order has been passed. Aggrieved, the U.P. Power Corporation Limited which is the distributing Company has approached this Court by means of the present appeal.

4. We have heard Mr. Rakesh Uttamchandra Upadhyay, learned counsel for the appellants and Mr. H.C. Kharbanda, learned counsel appearing for the respondent No.1-writ petitioner.

5. At the very outset, we wish to put on record that the High court of Judicature at Allahabad was wholly unjustified to entertain the writ petition

filed by the respondent No.1-writ petitioner on the facts that we have noticed and which have also been recorded in the impugned order. There was a serious dispute between the parties on the core facts essentially for determination of the issues raised before the High Court. That, by itself, should have prompted the High Court to refer the parties to a competent court of law for resolution of the disputed questions of fact. Instead, the High Court had entered into the area of disputed issues and had eventually passed the order under appeal containing the directions extracted above.

6. There may be some justification in the grievances raised by the respondent No. 1-writ petitioner and, in fact, an amicable solution to the dispute was explored by the High Court. An Expert

Committee was constituted by the Superintending Engineer, Electricity Urban Distribution Division-1, Sagra Varanasi in compliance to the orders passed by the High Court, the report of which is on record. The said report indicates that shifting of the High Tension Line is neither possible nor feasible as with the passage of time several double storeyed buildings as well as high-rise apartments have come up in the neighbourhood. The possibility/ feasibility of having an underground line was also found not to be a viable option.

7. In fact, in the said report as well as in the order of the Managing Director dated 5<sup>th</sup> August, 2014 impugned in the writ petition it appears that the only feasible solution to the problem would be to construct additional poles and raise

the height of the High-Tension Line. Though the aforesaid suggestion has been made by the appellant - Corporation through the Managing Director, purely from the standpoint of the standards prescribed under the relevant Statutes and the Rules, we are of the view that the possibility of raising the level of the High-Tension Lines even beyond the statutory requirements upto the maximum possible height should be considered so as to enable further development of the property of the respondent No.1- writ petitioner in accordance with law.

8. In the present appeal apart from the solution indicated above which we direct to be implemented forthwith, there appears to be no other viable alternative to resolve the impasse. The respondent No.1- writ petitioner, we have noticed, is

the owner of a substantial property including a double storeyed building and the property which is being affected (single storey) is only a small parcel of the property located in the one corner of the plot belonging to the writ petitioner.

9. It is keeping in mind the aforesaid that we have thought it proper to interfere with the order of the High Court and dispose of the appeal in terms of the directions contained herein above. We also make it clear that all costs, expenses, etc. to be incurred in raising the High-Tension Line will be borne by the appellant-Corporation. To balance the equities, we direct the appellant- U.P. Power Corporation Ltd. to pay to the respondent No.1 -writ petitioner a sum of Rs.1,00,000/- (Rupees One lakh) on account of compensatory costs.

10. The appeal is disposed of in the above terms.

.....,J.  
(RANJAN GOGOI)

.....,J.  
(N.V. RAMANA)

NEW DELHI  
MAY 12, 2015