



GAHC010206002022

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

Case No. : WP(C)/6720/2022

SIDDIQUE ABDUL RAHIM
S/O- LT. SAUKAT ALI, R/O- JOGIGHOPA BHATIPARA, P.O. AND P.S.
JOGIGHOPA, DIST.- BONGAIGAON, ASSAM, PIN- 783382

VERSUS

THE ASSAM ELECTRICITY GRID CORPORATION LTD AND 7 ORS
(AEGCL), REP. BY THE CHAIRMAN BIJULEE BHAWAN, PALTAN BAZAR,
GHY-1

2:THE MANAGING DIRECTOR
AEGCL
BIJULEE BHAWAN
PALTAN BAZAR
GHY-1

3:THE CHIEF GENERAL MANAGER (F AND A)
AEGCL
BIJULEE BHAWAN
PALTAN BAZAR
GHY-1

4:THE ASSTT. GENERAL MANAGER
132 KV GRADE SUB-STATION DIVISION
AEGCL
DHALIGAON
DIST. BONGAIGAON
ASSAM
PIN- 783385

5:THE DY. COMMISSIONER
BONGAIGAON



DIST.- BONGAIGAON
ASSAM
PIN- 783380

6:THE ASSTT. EXECUTIVE ENGINEER (PWD)
ABHAYAPURI BUILDING SUB-DIVISION
ABHAYAPURI
BONGAIGAON
ASSAM
PIN- 783348

7:THE DISTRICT AGRICULTURAL OFFICER
BONGAIGAON
ASSAM
PIN- 783380

8:THE FOREST RANGE OFFICE
ABHAYAPURI RANGE
ABHAYAPURI
BONGAIGAON
ASSAM
PIN- 78338

Advocate for the Petitioner : MR. M U MONDAL

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

JUDGMENT & ORDER (ORAL)

Date : 02-11-2022

Heard Mr. MU Mondal, learned counsel for the petitioner. Also heard Mr. S Katak, learned counsel for the respondents No.1, 2, 3 and 4 being the authorities under the AEGCL, Ms. M Barman, learned Junior Government Advocate for respondent No.5 being the Deputy Commissioner, Bongaigaon, Ms.

S Sarma, learned counsel for the respondent No.6 being the authorities under the PWD and Mr. SN Hasan, learned counsel for the respondent No.8 being the Forest Department, Government of Assam. None appears for the respondent No.7 being the District Agriculture Officer, Bongaigaon.

2. The petitioner claims that a high tension electric line was constructed over the residential campus of the petitioner and other persons and the high tension wire fell over the properties of the petitioners in the year 1996 and 2010 causing damages to the residential houses, valuable properties and other agricultural products and that the high tension line was constructed in the year 1992. The petitioner along with some similarly situated persons instituted WP(C)No.1981/2011 which was given a consideration by the order dated 22.03.2012 in which the case presented by the petitioners was recorded to the extent that the writ petitioners were aggrieved that the Assam State Electricity Board (ASEB) had constructed a transmission tower over their lands without paying any compensation. The petitioners in the said writ petition also took a stand that the overhead lines which were installed over the lands of the petitioners had collapsed twice, once in the year 1996 and the second time in November, 2010 and accordingly the relief sought for was for a direction to the respondents to pay compensation to the writ petitioners therein and also to ensure the protection of their lands from the overhead lines.

3. In the order dated 22.03.2012, the Court took note of the following facts:

“(1) The transmission tower as referred to, in the writ petition was constructed in the year 1987;

(2) For the aforesaid construction, land measuring 1 Bigha 3 Kathas 5 lessas was acquired by the authorities for which compensation of Rs. 36,630.00 at the rate of Rs. 22,000/- per bigha was assessed and paid. The payment was received by one Abu Hanif Haidary, the petitioner No. 5 on behalf of his father, who was the recorded pattadar of the land. The petitioner Nos. 1 to 6 are all brothers and petitioner Nos. 7 and 8 are their cousins. The receipt of the aforesaid amount has not been disclosed in the writ petition.

(3) The claim of the petitioners for compensation on account of damage of their lands because of the high tension over head lines traversing their land would require factual determination."

4. Accordingly taking note of the aforesaid facts, a conclusion was arrived that the said writ petition deserved to be dismissed. But, however, it was also provided that notwithstanding the dismissal of the writ petition, if the petitioners have any grievance over the high tension overhead lines, it would be open for them to take recourse to the provisions of Section 68 of the Electricity Act, 2003. Pursuant thereto, a survey report dated 04.01.2021 was prepared by the Assistant Executive Engineer PWD Abhyapuri Building Sub-Division providing for the properties of the various persons that were located below overhead lines and accordingly the valuation thereof was also made. By referring to the aforesaid survey report of the Assistant Executive Engineer of the PWD, the Additional Deputy Commissioner(Rev) Bongaigaon had made a communication dated 23.02.2021 to the Assistant General Manager, AEGCL at Dhaligaon requiring the AEGCL to take necessary steps for payment of compensation to the affected beneficiaries as per the survey and assessment report with a



further request to the AEGCL to protect the properties of the petitioners under Section 68 of the Electricity Act.

5. This writ petition is instituted for a direction that the communication of the Additional Deputy Commissioner(Rev) Bongaigaon dated 23.02.2021 be implemented by the authorities of the AEGCL. Firstly, we take note that the claim of the petitioners in WP(C)No.1981/2011 for compensation against construction of the overhead lines over their lands had been rejected by the order dated 22.03.2012. But in the said order, it was also taken note that there was an allegation by the writ petitioners therein that the overhead lines of the AEGCL snapped on two different occasions causing damages to the residential houses, trees and other valuable properties of the petitioners. Although the claim for compensation was rejected, but liberty was given by the Court to the petitioners therein to take recourse to Section 68 of the Electricity Act 2003 and, therefore, the said liberty would have to be understood to be a recourse in respect of the second allegation that as because the overhead lines had snapped, the residential houses, trees and other valuable properties were damaged. Section 68 of the Electricity Act 2003 *inter alia* provides for overhead electricity lines with prior approval of the appropriate Government, wherein Section 68(5) provides that where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the appropriate Government may, on the application of the licensee, which has to be understood in the present case to

be the respondent AEGCL, to cause the trees, structures or objects to be removed or otherwise dealt with as deemed appropriate. Section 68(5) of the Electricity Act, 2003 is extracted as below:

"68(5). Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit."

6. A reading of the provisions of Section 68(5) of the Electricity Act of 2003 makes it discernible that it is not a provision of law enabling any compensation for properties upon the overhead lines being constructed by the electricity authorities, nor it is a provision for payment of damages of any property which may be lying below the overhead lines, in the event, the overhead lines snaps resulting in any damage being caused. In view of the provisions of Section 68(5) of the Electricity Act, we are unable to accept the survey report prepared by the Assistant Executive Engineer of the PWD nor a legitimacy can be given to the communication of the Additional Deputy Commissioner dated 23.02.2021 directing the AEGCL to pay the compensation that has been assessed in the survey report of the Assistant Executive Engineer of the PWD. From such point of view, the prayer made in this writ petition for a direction to implement the communication dated 23.02.2021 is unacceptable.

7. But at the same time, we also take note of the provisions of Section 68(6) of the Electricity Act, 2003 wherein it is provided that while disposing an application under Section 68(5), the Executive Magistrate or any other authority in case of any tree being in existence before the overhead lines were placed, such interested persons be awarded a reasonable compensation which may be recovered from the licensee i.e. the electricity authorities. We also take note that it was also an allegation of the petitioners in WP(C)No.1981/2011 that due to snapping of the overhead lines twice, the residential properties, trees and other valuable belongings of the petitioners therein were damaged, and therefore it would also have to be construed to be a negligence on the part of the AEGCL authorities and the petitioners under the law would be entitled to such compensation confined to the actual damages that may have been caused. We further take note of that it is also an allegation of the petitioners therein that certain residential houses and trees existed prior to the construction of the overhead lines.

8. Accordingly, we require the present petitioner, who was also a petitioner in WP(C)No.1981/2011 to make a fresh application before the Managing Director of AEGCL stating in detail as to when the snapping of the overhead lines had taken place and what were the legitimate properties of the petitioner that were damaged because of such snapping. Upon such application being made, the Managing Director is directed to make a thorough enquiry on such allegation and for the purpose the petitioner shall also make an application before the Senior Chief Electrical Inspector of the Government of Assam, who shall make an enquiry and give its report. If the report of the Senior Electrical Inspector, as

well as the conclusion of the Managing Director, is in favour of the petitioner that his properties were damaged because of negligence on the part of the AEGCL due to the snapping of the overhead lines, appropriate compensation be assessed and paid to the petitioner. In the application, the petitioner may also take his stand that no compensation was earlier paid in respect of the residential houses and trees that stood prior to the construction of the overhead lines. The said aspect of the application claiming compensation for the residential houses and trees that stood prior to the construction of the overhead lines, be referred by the Managing Director, AEGCL to be dealt with by the Executive Magistrate or any other authority specified by the Government for the purpose, under Section 68(6) of the Electricity Act.

9. Mr. MU Mondal, learned counsel for the petitioner makes a statement that the overhead lines had snapped even for the third time. If it is so, the same may also be stated in the application to be made by the petitioner as indicated above.

10. Writ petition stands disposed of in the above terms.

11. A copy of this order be provided to Ms. M Barman, learned Junior Government Advocate to apprise the Senior Chief Electrical Inspector of the Government of Assam of the requirement of this order in the event any application is made by the petitioner as indicated above.



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JUDGE

Comparing Assistant