

**IN THE GAUHATI HIGH COURT**  
**(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,**  
**MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH)**

**SHILLONG BENCH**

**WP(C)(SH) No. 13 of 2013**

1. Peter H. Rynjah  
Dhankheti, Malki  
Shillong- 793001

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**Petitioner**

**- Versus -**

1. Deputy Commissioner  
Ri Bhoi District  
Nongpoh.
2. North East Transmission Co. Ltd.  
Regd. Office: House No. 051358  
Road No. 3  
P.O. Dhaleswar, Agartala,  
West Tripura- 799007  
Represented by its Managing Director.
3. Shri. L.G.M. Kharmih  
Extra Assistant Commissioner,  
Ri Bhoi District  
Nongpoh.

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**Respondents**

**BEFORE**  
**THE HON'BLE MR JUSTICE S.R. SEN**

For the Petitioner : Mr. S. Jindal, Advocate

For the Respondent : Mr. ND Chullai, Sr. GA  
: Mr. N. Kerha, Advocate

Date of Hearing : 06.02.13

Date of Judgment and Order(Oral): 06.02.13

**JUDGMENT AND ORDER (ORAL)**

Heard Mr. S. Jindal, the learned counsel for the petitioner. Also heard Mr. ND Chullai, the learned senior state counsel as well as Mr. N. Kerha for respondent.

2. Heard Mr. S. Jindal, the learned counsel for the petitioner who submits that this Court vide order dated 29.11.12

stayed the notice dated 23.07.12 which is at Annexure-III to the writ petition. The respondents appealed before the Division Bench of this Court which was dismissed with certain observations. Thereafter, the Deputy Commissioner issued a notice dated 11.01.13 on the basis of application submitted by the respondent No. 2 i.e. North East Transmission Co. Ltd. and fixed the date for hearing on 15.01.13 at 11:00 AM. The petitioner received the notice officially on 19.01.13 at (Annexure-16) though the respondent had served the notice on 13.01.13 upon the petitioner. After receiving of the notice, the petitioner approached the Deputy Commissioner, Ri Bhoi District Nongpoh at (Annexure-17) dated 15.01.13 praying for extension of time on the ground that notice received very lately and as such he could not prepare his case to be placed before the Deputy Commissioner. Consequently, the Deputy Commissioner issued another notice re-fixing 17.01.13. Thereafter, the petitioner made another representation on 17.01.13 praying that sufficient time may be given and prayed for copy of the application dated 11.01.13 submitted by the North East Transmission Co. Ltd. i.e. respondent No. 2 as well as the order of the Division Bench of the Hon'ble Gauhati High Court. The learned counsel further submits that in spite of the representation, the Deputy Commissioner did not furnish the said copy of the application and Judgement order rather passed the order and permitted the respondent No. 2 to go ahead with the construction of the tower situated at Nongrim Village, Byrnihat, Ri Bhoi District. The learned counsel also submits that the petitioner was not allowed to represent himself by any lawyer whereas the respondent No. 2 was represented by a lawyer. The learned counsel for respondent No. 2 submits that they have already completed the work.

3. Mr. ND Chullai, the learned state counsel submits that Deputy Commissioner is granted permission vide order 17.01.13 in accordance with the provision of Rules 2006 and has given sufficient opportunity to the petitioner to appear and there is nothing wrong with the order dated 17.01.13.

4. I have perused the order of Division Bench of the Hon'ble Gauhati High Court dated 10.01.13 which is at Page-62 and the said order is reproduced herein under :

“ This appeal has been preferred against interim order granted by the learned Single Judge restraining

the appellant from erecting transmission tower on the land of the respondent/writ petitioner.

The respondent-writ petitioner approached this court under Article 226 of the constitution with a grievance that his land was sought to be taken for erecting a transmission tower without following the process of law laid down under the Works of Licensees Rules, 2006 framed under the Electricity Act, 2003.

Learned Single Judge found that consent of the owner was necessary and in absence thereof erection of transmission lines could be done only with the permission of the Deputy Commissioner.

Notice was issued to respondent-writ petitioner considering the contention raised on behalf of the appellant that it was willing to pay compensation of Rs. 10 lakhs or such other amount as may be claimed and found due.

Learned counsel for the respondent-writ petitioner submits that under the scheme of the Rules, consent of owner or occupier of land is necessary and in case the owner or occupier object, permission in writing from the District Magistrate/Commissioner of Police/Authorised Officer is necessary. In the present case, neither the respondent-writ petitioner has consented nor permission in writing has been obtained from the District Magistrate/Commissioner of Police or Authorised Officer. This legal position is self evident from the Rules and could not be disputed by learned counsel for the appellant.

Learned senior counsel for the appellant is unable to show prior written consent of the respondent-writ petitioner or permission in writing from the District Magistrate. She only relies upon printed notices issued by the appellant to the owners which have been acknowledged by the said owners by putting their signatures. From mere signatures on the printed notice issued by the appellant, written consent of the respondent/writ petitioner cannot be inferred. When a statutory protection is provided requiring written consent, such consent has to be clear and express.

In view of the above, no ground is made out to interfere with the impugned order.

It is, however, made clear that the appellant will be at liberty to proceed in accordance with law either with the written consent of the respondent-writ petitioner or by taking consent from the District Magistrate in accordance with the statutory requirement. The respondent-writ petitioner will also be at liberty to put forward his view point before the District Magistrate or any other concerned authority considering the prayer of the appellant for such consent in accordance with law.”

5. On perusal of the above observations made by the Hon’ble Gauhati High Court, it is understood clearly that the appellant was given a liberty to approach respondent writ petitioner to obtain a written consent or to take consent of the Deputy Commissioner in accordance with statutory requirements. The respondent-writ petitioner was also given an opportunity to place their views before the District Magistrate or any other concerned authorities and prayer appeal for such consent should be in accordance with law. On perusal of the order given by a Division Bench of this Hon’ble High Court, I do not find that it has given any power to the District Magistrate to decide the matter as he likes or in a whimsical manner.

6. On perusal of the Rule-3 of the work Rules-2006, it is clearly understood that wherever the question comes on lying any electrical transmission lines which cannot be allowed as one desires. Here the question also involves public safety and if any objection has been raised by the land owners or occupant of the land, that needs to be considered on a priority basis and thereafter the Deputy Commissioner or any other authorities concerned may come to a conclusion and allow permission if it is not contrary to public safety. The sub rule also speaks about compensation. Rule-3 does not permit the Deputy Commissioner or any other authorities to decide the matter as he pleases, the Rules also does not permit him not to allow sufficient time to the parties. I find that the District Magistrate had fixed such a short date for hearing which is definitely very un-reasonable and deprived the petitioner to place their objections/views.

7. Hence the order dated 17.01.13 is hereby set aside with a direction to the Deputy Commissioner to fix a date for

hearing and give sufficient time at least 2(two) weeks' time so that the parties can get sufficient time to present their case and also allow them to be represent through a lawyer if they desires to do so, as Rule-3 of Work Licensee Rules, 2006 does not bar the parties to be represented by a lawyer.

8. In the meantime, the Deputy Commissioner is also directed that he will restrain the respondent No. 2 (North East Transmission Co. Ltd.) to use the tower till the matter is settled by the authorities/District Magistrate and till of fix of the compensation. It is made clear that the whole process should start immediately after election process is over and to be completed within 1(one) month. The Deputy Commissioner to furnish a copy of the representation of the respondent dated 11.01.13 as well as the order dated 10.01.13 of the Division Bench of the Hon'ble Gauhati High Court.

9. The learned counsel for the petitioner expresses that petitioner has no confidence on the Deputy Commissioner and feels that the decision whatever he will take in future, it will be bias. Therefore, the Deputy Commissioner is directed to entrust the case with the senior most ADC of the station and the ADC who ever will deal with this matter shall not be influenced by the Deputy Commissioner concerned who had passed the order dated 17.01.13, and shall decide the matter impartially in accordance with law. The Division Bench of Kerala High Court in **Santha vs Vasu, reported in AIR 1996 Kerala 188**, observes as follows :

**" 6. Appellant contends that the said notification cannot have any application as it only says that the Additional District Magistrate has all the powers of the District Magistrate under the Code and not under any other enactment. The argument that the said notification would not be sufficient to hold that Additional District Magistrate has power under S. 16(1) of the Indian Telegraph Act read with S. 51 of the Indian Electricity Act is not tenable as it is not possible to hold that the notification is confined only to the powers of Additional District Magistrate vis-à-vis the Code of Criminal Procedure. There is nothing in the notification to suggest that the power vested in the District Magistrate under enactments other than the Code of Criminal Procedure cannot be exercised by the Additional District Magistrate. On reading of the notification along with s. 20(2) of the Code of Criminal Procedure it cannot be held that the Additional District Magistrate lacks power under S. 16(1) of the Indian Telegraph Act read with S. 51 of the Indian Electricity Act Section 10(2) of the Code postulates that all the powers of a District Magistrate under the Code or under any other law for the time being in force can be exercised by the Additional District Magistrate as**

***directed by the State Government. That being the position we cannot agree with the contention of the appellant that Additional District Magistrate lacked jurisdiction in passing Ext. P4 order.***

10. During argument point raised by respondents counsel that, there is dispute about the title between two parties. If it is so, title too be decided by appropriate court of law.

11. With these observations and directions, this writ petition is allowed and disposed of.

JUDGE

V. Lyndem