GAHC010101592019

2026:GAU-AS:9045

THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

WP(C) No. 3005/2019

1. **RELIANCE JIO INFRATEL PVT LIMITED**
A company duly incorporated under the provisions of Indian Companies Act, 2013 and having its registered office at Office-101, Saffron, Nr. Centre Point, Panchwati 5 Rasta, Ambawadi, Ahmedabad, Gujarat 380 006, and Circle Office at Bijay Crescent Building, above Reliance Trends, First Floor, Rukminigaon, G.S. Road, Guwahati-781022, Assam.

.....*Petitioner*

-Versus-

1. **THE STATE OF ASSAM**, 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 SONER**, 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

.....*Respondents*.

For the Petitioner(s) : Mr. J. Roy, Sr. Adv.
Mr. B. Saha, Adv.
.....Advocate(s)

For the Respondent(s) : Mr. N. Goswami, Adv.
Mr. S. Bora, Adv.
Mr. S. Chakraborty, Adv.

.....Advocate(s)

BEFORE
HON'BLE MR. JUSTICE ANJAN MONI KALITA

Date(s) of Hearing	:-	01.04.2026
Date on which judgment is reserved	:-	01.04.2026
Date of pronouncement of judgment	:-	23.06.2026
Whether the pronouncement is of the operative part of the judgment?	:-	N/A
Whether the full judgment has been pronounced?	:-	Yes

JUDGMENT AND ORDER (CAV)

(A.M. Kalita, J)

Heard Mr. J. Roy, learned Senior Counsel, assisted by Mr. B. Saha, learned counsel appearing on behalf of the petitioner. Also heard Mr. N. Goswami, learned counsel for the respondent nos. 2, 3 & 4 and Mr. S.

Bora, learned counsel for the respondent nos. 5 & 6 as well as Mr. S. Chakraborty, learned counsel for the respondent nos. 7 to 13.

2. The instant writ petition has been filed by the petitioner under Article 226 of the Constitution of India, praying for review of the order dated 11.03.2019 passed by Hon'ble Gauhati High Court in WP(C) No. 76/2018, whereby the writ petition of the petitioners therein was allowed with a direction to the Gauhati Municipal Corporation (GMC) to take such steps to pull down the mobile tower and other ancillary constructions so far as it encumbers and encroaches upon the public road at Kalyan Nagar (Hill Side). It has also challenged the impugned order No. GLG/34/2018/42/111-115, dated 05.04.2019, issued by the Commissioner, Guwahati Municipal Corporation, Guwahati under the provisions of Section 337(3) of the Gauhati Municipal Corporation Act, 1971 for demolishing the Mobile Tower, in terms of the aforesaid Judgment & Order dated 11.03.2019.

3. It is the case of the petitioner that in the aforesaid writ petition, i.e., WP(C) No. 76/2018, though the petitioner being a necessary party, has not been made a party and therefore, the petitioner was deprived of placing the true and correct facts and thereby, finally led to passing of the adverse order dated 11.03.2019 by this Hon'ble Gauhati High Court whereby the petitioner's rights have been infringed with, which is in violation of the principles of natural justice and administrative fair play.

4. The petitioner's case is that that the RELIANCE JIO INFOCOMM LIMITED, a company subsisting under the provisions of Indian Companies Act, 2013 and holding the Unified Licenses (UL) under Section 4 of the Indian Telegraph Act, 1885, by the Department of Telecommunications, Government of India for all service areas in India and is engaged in business of providing broadband internet services

and other allied services on a pan-India basis. The petitioner entered into a leave and license agreement with one Mr. Gajen Kalita (respondent no. 15 herein) on 08.01.2014 for installation of ground-based mobile telecommunication tower. It may be important to mention herein that as per Composite Scheme of Arrangement and approval by the Hon'ble National Company Law Tribunal (NCLT) Ahmedabad in CP (CAA) No. 13/NCLT/AHM/2019 in CP (CAA) No. 10/NCLT/AHM/2019 by its order dated 20th March, 2019, the entire Tower Infrastructure Undertaking is transferred and vested into the petitioner company, RELIANCE JIO INFRATEL PRIVATE LIMITED and therefore, the instant writ petition is being filed by RELIANCE JIO INFRATEL PRIVATE LIMITED.

5. It is contended by the petitioner that tower bearing SITE ID-GWHT-RIL-0261 has been installed as per the NOC, vide Memo No. KMJ.100/2015/6616, dated 23.12.2016, issued by the Deputy Commissioner, Kamrup (M), after verification of all necessary documents. The aforesaid NOC dated 23.12.2016 was also marked to the Guwahati Municipal Corporation (GMC). Accordingly, the petitioner company has submitted the one-time prescribed fee of Rs. 40,000/-, vide HDFC DD number 969555 dated 29.12.2006 to GMC for 10 years as per the provisions of the Guidelines No. IT.76/210/375 dated 11.08.2015, issued by the Government of Assam, Information Technology Department. The petitioner company being a service provider used the aforesaid tower for installation of its telecommunication equipments to provide uninterrupted telecommunication and internet services to the large public of the locality.

6. It is contended by the petitioner that on 06.05.2019, the site was down due to non-availability of electricity and when it was enquired,

they were then informed by the land owner, namely, Mr. Gajen Kalita (respondent no. 15) about the Order No. GLG/34/2018/42/111-115 dated 05.04.2019, issued by the Commissioner, Guwahati Municipal Corporation, Guwahati, under the provisions of Section 337(3) of the Guwahati Municipal Corporation Act, 1971. It was found out that the power was disconnected by Assam Power Distribution Company Limited (APDCL) on 06.05.2019 itself. It is contended by the petitioner that on further enquiry, the petitioner was surprised to learn that the aforesaid order was passed by the GMC in pursuance to the order dated 11.03.2019 passed by the Hon'ble Gauhati High Court in WP(C) No. 76/2018. On enquiry, the petitioner company came to know that the petitioner has not been made a party in the aforesaid writ petition and as such, the petitioner was not aware of the proceedings before the Hon'ble Gauhati High Court and therefore, it did not get any opportunity to represent and defend the proceedings. On perusal of the order dated 11.03.2019, it was found out that the respondent no. 15 appeared in the case through his counsel but was not represented at the time of hearing of the matter. It was also contended by the petitioner that at no point of time, the respondent no. 15, i.e., the owner of the land, informed the petitioner about the proceedings pending before the Hon'ble Gauhati High Court. It is contended by the petitioner that the aforesaid tower has been installed and operated by the petitioner company. However, the Order No. GLG/34/2018/42/111-115 dated 05.04.2019, issued by the Commissioner, Guwahati Municipal Corporation, Guwahati, under the provisions of 337(3) of the Gauhati Municipal Corporation Act, 1971 has been addressed to the General Manager, Reliance Telecom Limited, Ground Floor, Radhika Bhawan, 6 Mile, Guwahati. It is contended by the petitioner that the Reliance Telecom Limited is a different company

and is no way connected with the tower installed by the petitioner company. It is contended by the petitioner that by filing the WP(C) No. 76/2018, the petitioners therein had misrepresented the Hon'ble Gauhati High Court by making Reliance Telecom Limited a party respondent in the case, instead of the present instant writ petitioner. It is contended that in view of the aforesaid, the petitioner could not be present in the aforesaid proceeding and thereby, without making the petitioner a party, an order has been passed which is against the interest of the petitioner. In view of the aforesaid, it is contended by the petitioner that the petitioner company being the main contesting respondent directly involved with the dispute, as the petitioner company is the licensee of the concerned tower in view of the Leave and License Agreement dated 08.01.2014, not arraying the petitioner as respondent in WP(C) No. 76/2018 (Mr. Pradip Sarma & Ors. Vs The State of Assam & Ors.), great prejudice has been caused to the present writ petitioner. Therefore, the impugned order dated 11.03.2019 is liable to be interfered with. It is further contended that as the petitioner was not a party respondent, the petitioner could not participate in the said proceedings, resultantly, an adverse order was passed and therefore, under these circumstances, the petitioner may be impleaded as a party respondent and may be allowed to file their affidavit-in-opposition in WP(C) No. 76/2018 and thereafter, the writ petition may be heard on merit. It is also contended that till the matter is heard and the order is reviewed, the order dated 11.03.2019 passed by the Hon'ble Gauhati High Court in WP(C) No. 76/2018 may be stayed.

7. The instant writ petition was posted for Motion on 11.05.2019, where on this Court, after hearing the petitioner, issued notice and after hearing on the interim prayer, stayed the order dated 05.04.2019,

passed by the Commissioner, Guwahati Municipal Corporation, Guwahati, until the returnable date. The Hon'ble Gauhati High Court further directed the APDCL to restore the electricity supply to the mobile tower of the petitioner after payment of necessary costs to the respondent no. 18, i.e., the APDCL.

8. After issuance of the notice, while the matter was taken up on 05.05.2025, the private respondents argued that the present writ petition is not maintainable as the remedy lies either to file a review or an appeal, if the petitioner is aggrieved by the order dated 11.03.2019, passed in WP(C) No. 76/2018. However, this Court, while relying on the case of **Shivdev Singh & Ors. Vs. State of Punjab & Ors.**, reported in **AIR 1963 SC 1909** as well as the case of **Pohla Singh Alias Pohla Ram (D) and Ors.**, Vs. **State of Punjab and Ors.**, reported in **(2004) 6 SCC 126**, whereby, it was held that the present writ petition cannot be said to be not maintainable as the petitioner was not made a party to the writ petition, i.e., WP(C) No. 76/2018 and was not heard and without hearing, a direction was issued by this Court to the respondent authorities to pull down the mobile tower and ancillary constructions erected by the petitioner, which affects the right of the petitioner and violates the principle of natural justice. Therefore, vide order dated 05.05.2025, this Court has in categorical terms held that the instant writ petition is maintainable.

9. Mr. J. Roy, the learned Senior Counsel appearing for the petitioner, submits that, in fact, in the writ petition, i.e., WP(C) No. 76/2018, an affidavit-in-opposition has been filed by the Deputy Commissioner, Kamrup (Metro), respondent No. 2, wherein it had been clearly mentioned about the permission through No Objection Certificate (NOC), dated 23.12.2016, given to Reliance Jio Infocomm Limited for installation of the aforesaid tower. He submits that,

however, the said fact was not properly pointed out to the Hon'ble High Court while hearing of the aforesaid petition, and therefore, the same remained unconsidered while disposing of the aforesaid writ petition. He further submits that in the aforesaid affidavit-in-opposition filed by the Deputy Commissioner, Kamrup (Metro), there was a mention of a physical inquiry of Circle Officer, Guwahati Revenue Circle, upon the land of the tower site, wherein it had been stated that Mr. Gajen Kalita (respondent No. 15) had encroached about 200 mtrs of land along the roadside on the basis of testimony of the President of Kalyan Nagar Unnayan Samiti, who is actually one of the petitioners in the aforesaid WP(C) No. 76/2018. He submits that the aforesaid inquiry and the report are completely incorrect and baseless, as there is no adjacent road on the mobile tower site. In the aforesaid connection, he has referred to certain photographs which have been annexed with the instant writ petition.

10. The learned Senior Counsel further submits that if there is any encroachment at all, the same is completely a civil dispute which cannot be solved or adjudicated upon in a writ petition. He further submits, while filing the instant writ petition, the petitioner has prayed for reviewing of the order dated 11.03.2019 passed by the Hon'ble Guahati High Court in WP(C) No. 76/2018, and thereby allowing the present petitioner company to be impleaded as a party respondent in WP(C) No. 76/2018 and allow them to file their affidavit-in-opposition and thereafter to re-hear all the parties on merit, the prayer can be moulded as there is an alternative remedy available to any person who is aggrieved by installation of such mobile tower. He submits that since the petitioner in WP(C) No. 76/2018 is primarily aggrieved by the installation of the mobile tower and ancillary facilities on the land of the respondent No. 15, his grievances can be properly adjudicated

upon before an alternative statutory forum as available under the guidelines for granting Right of Way (ROW) to Telegraph Infrastructure in Assam, 2018 (hereinafter referred to as Guidelines 2018). He submits that the aforesaid guidelines have been framed by the State of Assam in terms of the provisions of Indian Telegraph Right of Way Rules, 2016, which has brought in uniformity, clarity, and simplification in the process of giving permission to install Telegraph Infrastructure in urban and rural areas of Assam and the same has come into effect by way of a notification on 13th February, 2018. He submits that in terms of the aforesaid Guidelines of 2018, under Clause 18, State Level and District Level Telecom Committees are to be constituted, wherein the State Telecom Committee in the State shall act as an apex committee for overall guidance and monitoring of the implementation of these guidelines under the chairmanship of the Commissioner and Secretary, IT Department, with members as detailed therein.

11. As per sub-clause (2) of Clause 18, there shall be a District Telecom Committee in each district to implement these guidelines under the overall supervision of STC. The DTC shall comprise of members as mentioned in the aforesaid guidelines, wherein the Deputy Commissioner shall act as the Chairman of the DTC.

12. In terms of sub-clause (3) of Clause 18, the STC/DTC shall deal with issues related to installation of telecom infrastructure including the public grievances which may arise in case of installation of mobile towers, laying of underground or overhead OFC, etc., in the State, as well as grievances for seizure/removal of unauthorized mobile towers, underground and overground of etc.

13. The Senior Counsel further submits that a detailed procedure has been laid down under Section 19 of the aforesaid Guidelines, 2018

about the appeals/dispute resolution/public grievance. Therefore, he submits that since there is an alternate remedy available to any person who has any grievance due to installation of any telecommunication tower, the same can be addressed before the committees as constituted under the aforesaid guidelines of 2018. Therefore, the learned Senior Counsel submits that the instant writ petition can be disposed of by directing the private respondents who are aggrieved by installation of the telecommunication tower on the land of the respondent no. 15 by the petitioner company, to approach the authority, i.e., the District Level Committee as provided under the guidelines of 2018.

14. The learned Senior Counsel further submits that as far as encroachment of 200 meters of land is concerned, the same is a disputed fact and that cannot be resolved by a writ court and therefore, the same should be rejected at once and the private respondents can very well approach the appropriate authority for any grievances that they may have about the disputed land.

15. It is seen that though time was given to the private respondents to file an affidavit-in-opposition in the instant case, no affidavit has been filed on their behalf.

16. Mr. S. Chakraborty, the learned counsel appearing for the private respondents, submits that in the affidavit filed by the Deputy Commissioner in the WP(C) No. 76/2018, it has been specifically stated that as per the physical inquiry report of the Circle Officer, Guwahati Revenue Circle, Guwahati, vide letter No. GC-16/2018/1469 dated 03.05.2018, the plot of land occupied by Shri Gajen Kalita (respondent No. 15) has encroached about 200 metres along the roadside and the plot is encircled by Shri Gajen Kalita within the boundaries of their house. He submits that in view of such, the

residents, especially the private respondents in the instant case, are having difficulties in their daily movement. He submits that the Kalyan Nagar Unnayan Samiti, which has been formed to take care of the basic necessities of the residents of that locality, has also testified the same. He submits that the grievance of the private respondents is not only regarding the installation of the telecommunication tower but also the encroachment of 200 metres of public land by the respondent No. 15.

17. In view of the aforesaid inquiry report, he submits that it is a clear case that respondent No. 15, namely Shri Gajen Kalita, has encroached on public land and on the aforesaid land, he has allowed the installation of the telecommunication tower of the petitioner company as well as he has established certain ancillary facilities on the aforesaid land. And therefore, the order passed on 11.03.2019 passed by this Court in WP(C) No. 76/2018 does not suffer from any infirmities and accordingly, the order passed by the Commissioner, Guwahati Municipal Corporation, dated 05.04.2019 is correct in view of the facts and circumstances in the instant case. However, he admits to the fact that the instant writ petitioner was not a party in WP(C) No. 76/2018. He submits that, therefore, the instant writ petition is liable to be dismissed and no interference is required in the instant case, in view of the encroachment by Shri Gajen Kalita, whereon the tower is located.

18. Now, coming back to the facts of the instant case, it is already mentioned that by order dated 05.05.2025, this court, after relying on the cases of **Shiv Dev Singh (supra)** and **Pohla Singh (supra)** has decided that the present writ petition is maintainable as the petitioner was not made a party to the writ petition, i.e., WP(C) No. 76/2018 and the petitioner was not heard while passing the impugned order dated

11.03.2019. Therefore, this court does not find any necessity to delve into the aforesaid issue anymore.

19. The instant writ petition has been filed by the petitioner being aggrieved by the Judgment & Order dated 11.03.2019 as though the petitioner was a necessary party, the petitioner was not made a party in the writ petition No. WP(C) No. 76/2018 and instead, the General Manager, Reliance Telecom Limited has been made a party which is not connected to the dispute assailed in the aforesaid writ petition.

20. From the submissions made on behalf of the parties as well as materials brought on record, it is apparent that the instant petitioner was not made a party, though the Judgment & Order dated 11.03.2019 has affected the rights and liabilities of the petitioner. In fact, in terms of the aforesaid Judgment & Order dated 11.03.2019, passed by the Hon'ble Gauhati High Court, the Commissioner, Guwahati Municipal Corporation had issued the impugned order No. GLG/34/2018/42/111-115 dated 05.04.2019 for demolishing the Mobile Tower belonging to the instant writ petitioner.

21. From the aforesaid facts, it is clear and not in dispute that the instant writ petitioner was though not a party to the aforesaid writ petition filed by the private respondents herein, i.e., WP(C) No. 76/2018, it is affected by the aforesaid Judgment & Order dated 11.03.2019. Therefore, this Court is of the considered view that the instant writ petition deserves to be allowed for the limited prayer of impleading the instant writ petitioner in WP(C) No. 76/2018.

22. Accordingly, the instant writ petition is allowed by recalling the Judgment & Order dated 11.03.2019 passed in WP(C) No. 76/2018 and consequently, the writ petition, i.e., WP(C) No. 76/2018 is restored by setting aside the Judgment & Order dated 11.03.2019 and the

consequent order No. GLG/34/2018/42/111-115 dated 05.04.2019, passed by the Commissioner, Guwahati Municipal Corporation.

23. Upon such restoration of the aforesaid writ petition, the instant writ petitioner is allowed to implead itself by filing necessary application and thereafter, the writ petition, i.e., WP(C) No. 76/2018 can be heard on merits accordingly.

24. Though the learned Senior Counsel for the instant writ petitioner has argued that there is an alternative remedy available to the private respondents, the same being matters of merit and the instant writ petition has been filed for limited purpose of reviewing of the order dated 11.03.2019, the same can be raised by the learned Senior Counsel in the restored writ petition, i.e., WP(C) No. 76/2018.

25. In the above terms, the instant writ petition is allowed and disposed of.

JUDGE

Comparing Assistant