
(2019) 11 GAU CK 0003

In the Gauhati High Court

Case No : Writ Petition (C) No. 3249, 3468 Of 2019

Birendra Kumar Deorah

APPELLANT

Vs

Assam Electricity Grid Corporation Ltd. And 4 Ors

RESPONDENT

Date of Decision : 01-11-2019

Acts Referred:

Electricity Act, 2003 — Section 2(39), 14, 68, 68(2), 68(5), 164
Indian Telegraph Act, 1885 — Section 10, 10(d), 16(3)
Constitution Of India, 1950 — Article 226

Citation : (2019) 11 GAU CK 0003

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : S K Kejriwal, H K Sharma, J I Borbhuiya, H K Sharma

Final Decision : Disposed Off

Judgement

1. Heard Mr. D. K. Mishra, learned senior counsel assisted by Mr. S. K. Kejriwal, learned counsel appearing for the writ petitioner in WP(C)

No.3249/2019 and Mr. J. I. Barbhuiya, learned counsel appearing for the writ petitioner in WP(C) No.3468/2019. I have also heard Mr. B. D. Das,

learned senior counsel assisted by Mr. H. K. Sharma, learned Standing Counsel, appearing for the APDCL authorities as well as Mr. K. D. Sharma,

learned Standing Counsel appearing for the AEGCL authorities. Ms. R. B. Borah, learned Govt. Advocate, Assam, has appeared for the State

respondents.

2. Common questions of law and facts are involved in both these writ petitions and therefore, I propose to dispose of the same by this common

judgment and order.

3. The writ petitioners are aggrieved by the choice of location of Tower No.19 set

up by the respondent authorities for construction and installation of the high voltage overhead transmission line sought to be erected by the respondent authorities. The Tower No.19 has been located over the private patta land of the writ petitioner in WP(C) No.3249/2019 whereas, the petitioner in WP(C) No.3468/2019 is aggrieved by the fact that the overhead transmission line is being constructed over the land of the petitioner without obtaining his prior consent. For the purpose of appreciating the contentious issues involved in these proceedings, the facts involved in WP(C) No.3249/2019 are briefly referred to herein below for ready reference.

4. The writ petitioner in WP(C) No.3249/2019 had purchased a plot of land measuring 3 bighas covered by Dag No.352 of K.P. Patta No.113 situated at revenue village- Santala under Chayani Mouza at Guwahati in the district of Kamrup, Assam. The aforesaid plot of land was purchased by the writ petitioner in the year 2006 for undertaking industrial activities. The Assam Electricity Grid Corporation Limited (for short "AEGCL") is a transmission licensee within the meaning of Section 14 of the Electricity Act, 2003. The AEGCL had prepared a Detailed Project Report (DPR) for construction of a 132 KV Single Circuit Transmission Line on double circuit tower from the proposed 400 KV Kukurmara (Mirza Maliata) Sub-Station to 132 KV Azara Sub-Station, Borjhar. As per Section 68 of the Electricity Act, 2003, construction of overhead lines exceeding 11 KVs has to be carried out with the prior approval of the appropriate Government. Accordingly, the District Magistrate, Kamrup, Amingaon had issued order dated 28.06.2013 granting "right of way" for construction of the aforesaid overhead line based on an application made by the respondents. Thereafter, the construction work had started and the respondents had chosen the land of the writ petitioner for erecting Tower No.19. Aggrieved by the said decision of the respondents, the writ petitioner had earlier approached this Court by filing writ petition bearing WP(C) No.8773/2018 seeking a direction from this Court restraining the respondents from erecting the transmission tower over his patta land. The plea of the writ petitioner was that location of Tower No.19 fell in between Tower Nos.18 and 20 in an angular fashion and if the said three towers were aligned in a straight line, then Tower No.19 would fall in the adjacent Government land instead of the land belonging to the writ petitioner. Alleging that the decision to erect Tower

No.19 upon the land of the petitioner was not only in deviation of the original DPR but the decision had been taken only to accommodate persons

having vested interest in the matter, the writ petitioner had approached this Court by filing the aforementioned writ petition seeking a writ of

mandamus for shifting the Tower No.19.

5. Taking note of the grievance expressed by the petitioner, this Court had passed order dated 20.02.2019 in I.A.(Civil) No.123/2019 arising out of

WP(C) No.8773/2018 appointing a three member Technical Committee consisting of the Chief Electrical Inspector, Assam, Sub-Divisional Officer,

Boko Grid Sub-Station and Mr. Kaushik Goswami, an Advocate of this Court, so as to examine the alignment of the transmission line as well as the

feasibility of re-alignment of Tower No.19 in a straight line and thereafter, submit a report. Accordingly, the committee had visited the site and

submitted a report on 15.03.2019. In the report dated 15.03.2019, the two technical members have opined that re-alignment of Tower No.19 would not

be feasible for the reasons stated therein, whereas the third member, who is an Advocate of this Court, had given his opinion that since the Tower

No.19 is yet to be fully constructed and there exists a vacant plot of land adjacent to the land of the petitioner, it would be possible to shift Tower

No.19 and re-locate the same.

6. Although the members of the Technical Committee had recorded divergent views on the core question as to whether re-aligning the Tower No.19

was feasible, yet, taking note of the findings recorded in the report dated 15.03.2019, by the order dated 26.03.2019, the learned Single Judge had

disposed of the writ petition being WP(C) No.8773/2018 with a direction upon the Chief General Manager, T & T, Assam Electricity Grid Corporation

Limited, i.e. the respondent No.2 herein to take a decision in the matter, if necessary, by giving an opportunity of hearing to the writ petitioner. In

terms of the directions passed by this Court on 26.03.2019, the writ petitioner as well as the SDO, Boko Grid Sub-Station were heard whereafter, the

impugned order dated 08.05.2019 was issued rejecting the prayer of the petitioner for shifting the Tower No.19. Similar prayer for shifting of Tower

No.19 made by the writ petitioner in WP(C) No.3468/2019 also stood rejected by the impugned order. Aggrieved thereby, the present writ petitions

have been filed.

7. Mr. D. K. Mishra, learned senior counsel leading the arguments on behalf of the writ petitioners has submitted that the expression appropriate

government within the meaning of the Act of 2003 would refer to the State Government of Assam and therefore, the District Magistrate cannot be

construed to be the "appropriate Government" within the meaning of Section 68 of the Electricity Act, 2003. Referring to the letter dated

28.06.2013 granting "right of way" permission for construction of the 132 KV Single Circuit Transmission Line Mr. Mishra submits that the same

cannot be treated to be an approval in compliance with Section 68. The learned senior counsel submits that since no construction of such overhead line

can be carried out without obtaining prior permission of the appropriate Government as per the requirement of Section 68 of the Act of 2003 the action

taken by the respondent authorities is dehors the law and hence, liable to be declared as null and void.

8. By referring to the materials available on record including the pleadings of both the parties, Mr. Mishra has further argued that the sketches,

diagrams and the maps submitted by the parties would clearly establish that Tower Nos.18, 19 and 20 do not fall in a straight line but the deviation has

been subsequently introduced only to cause loss and injury to the writ petitioner by deliberately positioning the Tower No.19 upon his land. To buttress

his aforesaid argument, Mr. Mishra has placed heavy reliance on the letter dated 08.11.2018 issued by the Deputy General Manager, Lower Assam,

T & T Circle, AEGCL, Narengi addressed to the Chief General Manager, T & T, AEGCL, Bijuli Bhawan, which indicates that the Tower No.19 had

been shifted from its original location. The learned senior counsel has, however, submitted in all fairness that subsequently, by the order dated

01.08.2019, the Government of Assam had conveyed "ex post facto" approval of the proposal for construction of 132 KV Single Circuit

Transmission Line from Kukurmara to Azara under Section 68 of the Electricity Act, 2003 but according to Mr. Mishra, there is no scope for granting

"ex post facto" approval in such a matter in view of the language employed in Section 68 of the Act of 2003. Mr. Mishra has also argued that the

expression "ex post facto" would mean a retrospective action and since section 68 of the Act of 2003 contemplates prior approval, the defect

cannot be cured subsequently by granting ex post facto approval. In support of his aforesaid argument Mr. Mishra has relied upon a decision of the

Supreme Court of India in the case of Union of India and others vs. Vinod Kumar and others reported in (1996) 10 SCC 78 to contend that if the

statute provides for a particular procedure, there is no scope for deviation therefrom by the respondents.

9. By relying upon the decision of the Supreme Court in the case of A. Chowgule and Co. Ltd. vs. Goa Foundation and others reported in (2008)12

SCC 646 Mr. Mishra has argued that when the expression "except with prior approval" is used in the statute no action could have been taken for

construction of the overhead line without obtaining such prior approval. On the basis of such argument, the learned senior counsel has prayed for a

direction upon the respondents to shift the Tower No.19 from the land of the writ petitioner and to re-locate it in the adjacent Government land so as

to bring it in alignment with Tower Nos.18 and 20.

10. Mr. J. I. Barbhuiya, learned counsel for the writ petitioner in WP(C) No.3468/2019 has adopted the arguments of Mr. Mishra and submits that

although no tower has been constructed over the land of his client, yet, the petitioner is aggrieved by the fact that the overhead line would pass over

his land thereby diminishing the value of the land.

11. Mr. B. D. Das, learned senior counsel appearing for the respondent authorities, on the other hand, has argued that based on the order dated

20.02.2019 passed by this Court in the earlier round of litigation, the Technical Committee had inspected the site and thereafter submitted a report

before this Court. As per the report dated 15.03.2019 the majority view was against the feasibility of shifting the towers out of the petitioner's

land. Mr. Das submits that construction of high tension overhead line involves various technical issues which require elaborate planning and the

construction work in this case had also commenced based on an approved DPR which was prepared after examining the overall feasibility of the

project. Since such construction activities require technical expertise and considering the fact that the technical experts, being the members of the

committee constituted by this Court, have opined against the feasibility of shifting the Tower No.19, this Court, in exercise of powers of judicial review

under Article 226 of the Constitution of India, may not sit in appeal over such decision of the experts.

12. By referring to the photographs brought on record, Mr. Das has argued that

construction of Tower No.19 has already been completed and therefore, shifting the Tower would not be feasible at this stage. Considering the fact that proper compensation, as per the provisions of the Indian Telegraph Act, 1885, has already been paid to the writ petitioner, it is the submission of Mr. Das that there is no scope for this Court to interfere in this matter. In support of his aforesaid argument Mr. Das has placed reliance on the decisions of the Supreme Court of India rendered in the case of *Vasavi Engineering College Parents Association vs. State of Telangana and others* reported in (1919) 7 SCC 172 and in the case of *Power Grid Corporation of India Ltd. vs. Century Textiles & Industries Ltd. & others* reported in (2017) 5 SCC 143 to argue that as per the provisions of the Indian Telegraph Act, 1885 read with Electricity Act, 2003 and the Rules framed thereunder, the respondents had the right to construct high voltage overhead lines and since the approval of the appropriate Government has been obtained in this case as per the requirement of Section 68 of the Electricity Act, 2003, there is no scope for interference in the matter by this Court.

13. Ms. R. B. Borah, learned Government Advocate, Assam, has produced the records. I have perused the same.

14. A perusal of the records goes to show that although the construction work of the overhead transmission line was initially commenced without obtaining the approval of the Government, yet, subsequently, a note was put up before the Hon'ble Chief Minister, Assam, who is the Minister in-charge of the Power sector, seeking 'ex post facto' approval under Section 68 of the Electricity Act, 2003 and the same was granted on 01.08.2019. Accordingly, by the order dated 01.08.2019 issued by the Secretary to the Government of Assam, Power (Elect) Department, the 'ex post facto' approval of the Government was conveyed to the Managing Director of the AEGCL. Therefore, there is no doubt about the fact that as on date, the approval of the Government, as necessary under Section 68 of the Act of 2003, is available. The question that would, therefore, arise for consideration of this Court is as to whether, granting of such 'ex-post facto' approval has vitiated the construction process in its entirety.

15. Mr. Mishra has forcefully argued that Section 68 of the Act of 2003 warrants prior approval and therefore, ex post facto approval would not be of any value in the present proceeding. To examine the said submission it would be

necessary to reproduce Section 68 of the Act of 2003 which is
quoted herein below :-

68. Overhead lines: ---- (1) An overhead line shall, with prior approval of the
Appropriate Government, be installed or kept installed

above ground in accordance with the provisions of sub-section (2).

(2) The provisions contained in sub-section (1) shall not apply-

(a) in relation to an electric line which has a nominal voltage not exceeding 11
kilovolts and is used or intended to be used for supplying to

a single consumer;

(b) in relation to so much of an electric line as is or will be within premises in the
occupation or control of the person responsible for its

installation; or

(c) in such other cases, as may be prescribed.

(3) The Appropriate Government shall, while granting approval under sub-section
(1), impose such conditions (including conditions as to

the ownership and operation of the line) as appear to it to be necessary.

(4) The Appropriate Government may vary or revoke the approval at any time
after the end of such period as may be stipulated in the

approval granted by it.

(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) When disposing of an application under sub-section (5), an Executive
Magistrate or authority specified under that sub-section shall, in

the case of any tree in existence before the placing of the overhead line, award
to the person interested in the tree such compensation as he

thinks reasonable, and such person may recover the same from the licensee.â??

16. By enacting the Electricity Act, 2003 the Parliament has repealed three Acts viz., Indian Electricity Act, 1910, Electricity (Supply) Act, 1948 and Electricity Regulatory Commission Act, 1998. As per section 14 of the Act of 2003, the appropriate Commission on an appropriate application has been conferred with the power to grant licence to any person -- (a) to transmit electricity as a transmission licensee; or (b) to distribute electricity as a distribution licensee; or (c) to undertake trading in electricity as an electricity trader. Section 2(39) of the Act of 2003 defines "licensee" which means a "person" who has been granted a licence under Section 14. In this case, there is no dispute about the fact that the AEGCL is a licensee under Section 14 of the Act of 2003 and therefore, would be authorised to undertake all such activities as may be permissible under the Act including establishing overhead lines.

17. A plain reading of Section 68 of the Act further goes to show that the AEGCL, as a licensee, shall have to obtain prior approval from the appropriate Government, which in this case, is the State Government of Assam, before installing an overhead line for flow of electricity with a voltage exceeding 11 KV. In other words, the licensee cannot install or keep installed any overhead lines without obtaining the prior approval of the appropriate Government. What needs to be noted herein is that the approval is with regard to installation of an overhead line and not for commencement of construction. There is no controversy about the fact that the high voltage overhead line is yet to be installed and/or operationalised in this case. Moreover, the licensee i.e. the AEGCL is a Government of Assam undertaking. That apart, the Government has already granted approval to the licensee for installation of the overhead line. If there is any omission on the part of the licensee in obtaining prior approval, it would be for the "appropriate government" to take action against the licensee. Therefore, no prejudice can be said to have been caused to the writ petitioner merely because the approval was granted "ex-post facto". Under the circumstances, I am unable to accept the contention of Mr. Mishra that there was no scope for the Government to grant "ex-post facto" approval in the present case.

18. Coming to the next issue raised by the learned counsel for the petitioners pertaining to the prayer for shifting the Tower No.19, it is to be noted

herein that in terms of the order dated 20.02.2019, the technical committee had submitted its report expressing divergent views. The two technical

members, being the Chief Electrical Inspector, Assam, and the Sub-Divisional Officer, Boko Grid Sub-Station, have jointly opined as follows :-

â??Regarding the alignment of the transmission line, particularly covering Tower Location No.19, the committee felt that as per present

condition of site the alignment of the transmission line will be allowable as per requirement of Right of Way (RoW).

Also, regarding feasibility of re-alignment in a straight line covering the Tower Location No.19 of the aforesaid transmission line, the

committee observed that as per present condition of the site there is no scope of re-alignment in a straight line covering the Tower Location

No.19. But, the Tower Location No.19 may be shifted to the eastern side of the Tower Location No.19 for being in straight line to the extent

possible which will affect the other adjacent tower locations. To shift the Tower Location No.19, the foundation of Tower Location No.19

and other adjacent tower locations will be required to be re-constructed or remade depending on the type of towers to be used after re-

alignment of the line due to change in technical parameters. Moreover, the site conditions such as adjacent buildings/permanent structure

etc. soil conditions such as wet, partially submerged and submerged soil etc. and the requirement of Right of Way (RoW) have to be

considered for re-alignment of the said transmission line in safe and secure manner.â??

19. Taking a somewhat contrary position, the Advocate member had made the following observations :-

â??Notwithstanding the above, few relevant facts observed at the time of inspection are stated as hereunder :

It is observed that Tower No.19 is yet to be fully constructed at the proposed location and only the foundation base has been laid in the

land of Mr. Birendra Kumar Deorah. Similarly, one adjacent Tower No.18 is yet to be fully constructed at the proposed location and only

the foundation base has been laid. Another adjacent Tower No.20 has already been fully constructed.

On the eastern side of the proposed Tower 19 there is a plot of land belonging to one Mrs. K. Das, adjacent to which is a Natural Stream.

Further, across the said stream, there exists a vacant plot of land immediately adjacent to Aakhol Restaurant and Dhaba.

That the concerned Lat Mandal was called for, to verify the status of the said vacant land. The concerned Lat Mandal, after coming to the

site, informed the Committee that the said vacant land is Government land. Furthermore, the said vacant land is more or less falling on a

straight line to the two adjacent tower locations, i.e. Tower Nos.18 and 20.

20. A plain reading of the opinion given by the technical committee leaves no room for doubt that there was no unanimity amongst them on the

question of feasibility of shifting the Tower No.19 to another location. The two Technical Members have, however, given proper justification in

support of the opinion against shifting the Tower No.19. The findings and observations of the two technical experts, as noticed above, has not been

assailed by the writ petitioners. Be that as it may, taking note of the report submitted by the technical committee, this Court had disposed of the writ

petition being WP(C) No.8773/2018 by order dated 26.03.2019 directing the respondent No.2 to take a fresh decision in the matter. Accordingly, the

impugned order dated 08.05.2019 has been issued by the respondent No.2. In the order dated 08.05.2019, it has been observed that the construction of

Tower No.19 is at its completion stage as there was no feasibility for shifting the said tower to a separate location. The relevant part of the impugned

order, as appearing in paragraph 12, is extracted herein below for ready reference :-

12. That in view of the above, the request for shifting the location No.19 of the said line (Projects), by Sri Birendra Kumar Deorah,

which is at its completion stage, may please be rejected in public interest at large as it is not technically feasible.

Further, the project completion time was initially June 2012, which was several time extended due to various complication regarding

construction of the line. Now the Govt of Assam has fixed 30.06.2019 for completion of the project otherwise the fund against this line

(Project) shall be closed and the project shall be liable to be abandoned with will affect the interest of public at large.

The undersigned have heard and considered the aforesaid submission of Sri Birendra Kumar Deorah and Sri Hemjyoti Deka, SDO 220 KV

Boko GSS, AEGCL. The record reveals that due right of way permission has been obtained from District Administration for drawal of

Kukurmara- Azara Transmission Line, which includes location No.19. The Two members of the Technical Committee formed as per order

dated 20.02.2019 passed by Honâ??ble Gauhati High Court have also opined that it would not be technically feasible to shift the tower

No.19.

The another member of the Committee Sri Kaushik Goswami, Advocate has reported that it can be shifted to the eastern side near the stream

and â??Akhol Restaurant and Dhabaâ?. After considering the site map it is found, if the tower No.19 is shifted to the eastern side near the

stream and Dhaba it will affect the public interest at large. Moreover, keeping the tower near the stream is also not safe. Besides this it will

also obstruct the natural flow of stream water and it will affect the public at large.

Therefore, I hold that the Shifting of the tower to the eastern side is not feasible. The record reveals Sri Birendra Kumar Deorahâ??s

neighbour Smti. Kalpana Das has 4 katas of land, whereas Sri Birendra Kumar Deorah has 3 bighas of land. Sri Deorahâ??s contention

that the original plan was made to favour Smti. Kalpana Das does not hold any ground in as much as while drawing the line which is based

on technical survey, least damages to the pattadars/affected persons has been considered and therefore the allegation that Smti Kalpana

Das and Dhabawala (Near the stream) have been favoured does not hold good and same is not acceptable.

The record reveals the base/foundation of tower No.19 and other towers have already been made and there is no other technically feasible

space for shifting of tower No.19 and as it is a Government of India funded project and Government has fixed June 2019 for completion of

the project for public interest, I am of the considered opinion that prayer made by Sri Deorah for shifting of the tower cannot be considered

as the same is not technically feasible and as there is no alternate feasible location for shifting of the same.

Accordingly this matter stands disposed of.â??

21. By filing affidavit-in-opposition, the respondent Nos.1, 2 and 3 have categorically denied that the original site plan was passing through the land

owned by some other private party but was tactfully changed only to pass through the petitioner's land as has been alleged in the writ petition.

Although the writ petitioners have made allegation that the respondents have shifted the alignment of the tower only to serve the vested interest of

some third party, yet, neither those persons have been impleaded in this writ petition nor has the said allegation been substantiated by bringing cogent materials on record.

22. As has been mentioned above, the learned Single Judge, while considering the report of the technical committee dated 15.03.2019, did not reject

the same but had directed the respondent No.2 to examine the grievance of the petitioner afresh in the light of the said report. It is, therefore, obvious

that the respondent No.2 while examining the matter afresh, would be entitled to rely upon the report of the technical committee, which has projected

a view that shifting of the tower would not be possible. The allegation that the alignment of the tower has been shifted with a malafide intent of

extending undue favours to some unknown third party has been strongly denied by the respondents and therefore, it is clear that the said allegation is

founded on disputed questions of fact which cannot be gone into in the present proceeding.

23. The letter dated 08.11.2018 relied upon by Mr. Mishra does mention about shifting of Tower No.19 from the original point but the letter also

indicates that further shifting of the tower was not possible. From the letter dated 08.11.2018 it is not clear as to which was the original point from

which the tower had been shifted nor does it lay down the basis for such opinion. Therefore, the said letter cannot be treated to be an admission of the

fact that the Tower No.19 has been re-located upon the writ petitioners' land in deviation of the DPR and with a malafide intent to cause loss and

injury to the petitioners herein.

24. A perusal of the photographs brought on record by the writ petitioners gives a vivid pictorial representation of the alignment of the towers. There

are documentary evidences available on record to show that the Tower Nos.18, 19 and 20 do not lie in a straight line. However, from the said

materials, it would not be possible for this Court to arrive at a conclusion that the reason for having the angular alignment was only to cause injury to

the interest of the writ petitioner. Moreover, the photographs furnished by the

writ petitioner clearly goes to show that the construction of Tower

No.19 has already been completed and what remains to be done at this stage is to connect the towers by the overhead lines. Such being the position, I

am of the considered opinion that it is too late in the day for this Court to reopen the issue of shifting of the Tower No.19 to a different location as per

the demand made by the writ petitioners.

25. There can hardly be any doubt about the fact that construction of high voltage electrical overhead lines is for the benefit of the public in general.

Therefore, even assuming that the location of the Tower No.19 has resulted in some loss and injury to the interest of the petitioner, when there is a

conflict between public interest at large and the interest of an individual, private interest must give way to the larger public interest. If the writ

petitioners are aggrieved by any action of the respondents or their officials, which are wrongful or are actuated by malice, aimed at causing wrongful

loss and injury to them, then the remedy would lie in bringing in action for damages and compensation for causing wrongful loss and injury.

26. It is settled law that no citizen can claim an indefeasible right to hold any land which is required for public purposes. In the case of Jilubhai

Nanbhai Khachar and Ors. Vs. State of Gujarat and Ors. reported in 1995 Supp(1) SCC 59 6the Honâ??ble Supreme Court has extensively

examined the right of the citizen to hold his property and held that such right of the citizen is always subject to the right of the sovereign to take it for a

public purpose. The observations made by the Supreme Court in paragraphs 33 and 34 of the said decision are relevant in this case and are therefore,

reproduced herein below :-

â??33. It is true as contended by Sri Javery that Clause (2) of Art. 31 was not suitably incorporated in Art. 300A but the obligation to pay

compensation to the deprived owner of his property was enjoined as an inherent incident of acquisition under law is equally untenable for

the following reasons. Ramanatha Aiyar's 'The Law Lexicon' Reprint Edition 1987, p. 385, defined 'eminent domain' thus: ""The right of the

State or the sovereign to its or his own property is absolute while that of the subject or citizen to his property is only paramount. The citizen

holds his property subject always to the right of the sovereign to take it for a public purpose. This right is called ""eminent domain"". At p.

386 it was further stated that the sovereign power vested in the State to take private property for the public use, providing first a just compensation therefore. A superior right to apply private property to public use. A superior right inherent in society, and exercised by the sovereign power, or upon delegation from it, whereby the subject matter of rights of property may be taken from the owner and appropriated for the general welfare. The right belonging to the society or to the sovereign, of disposing in cases of necessity, and for the public safety, of all the wealth contained in the state is called eminent domain. The right of every government to appropriate, otherwise than by taxation and its police authority, private property for public use. The ultimate right of sovereign power to appropriate not only the public property but the private property of all citizens within the territorial sovereignty, to public purpose. Eminent domain is in the nature of a compulsory purchase of the property of the citizen for the purpose of applying to the public use." In 'Black's Law Dictionary' 6th edition, at p. 523 'eminent domain' is defined as 'the power to take private property for public use by the state, municipalities and private persons or corporations authorised to exercise functions of public character. In United States the power of eminent domain is founded in both the Federal (Fifth Amendment) and State Constitutions. The Constitution gives the power to take for public purpose and prohibits the exercise of the power of eminent domain without just compensation to the owners of the property which is taken. The process of exercising the power of eminent domain is commonly referred to as 'condemnation' or 'expropriation'.

34. The right of eminent domain is the right of the sovereign State, through its regular agencies, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the State including private property without its owner's consent on account of public exigency and for the public good. Eminent domain is the highest and most exact idea of property remaining in the government, or in the aggregate body of the people in their sovereign capacity. It gives the right to resume possession of the property in the manner directed by the Constitution and the laws of the State, whenever the public interest requires it. The term 'expropriation' is practically synonymous

with the term ""eminent domain"".

27. From the above observations made by the Apex Court it would be apparent that in exercise of the right of eminent domain, the State would have the authority to use any soil, including private property, for public good. In such cases, all that the land owner can claim is a fair compensation for the land.

28. Coming to the question of compensation payable to the land owner for such usage of the land, it is to be noticed herein that by virtue of section 164 of the Act of 2003 the provisions of the Indian Telegraph Act, 1885 have been made applicable in the matter of construction of overhead line by the licensee. Section 10 of the Act of 1885 deals with power of the telegraph authority to place and maintain telegraph lines and posts. Section 16(3) of the Act of 1885 provides that in case of any dispute arising as to sufficiency of compensation, an application before the District Judge, within whose jurisdiction the property is situated, would be maintainable. In the present case, there is no dispute about the fact that the compensation payable to the writ petitioner under Section 10(d) of the Act of 1885 is for a specific purpose and compensation under the said provision has already been paid to the petitioners. But what needs to be mentioned herein that the compensation payable under Section 10(d) of the Act of 1885 cannot preclude a citizen from claiming adequate compensation, if a proper case is made out on facts. If the petitioners are aggrieved by the quantum of compensation, there is nothing in the Act of 1885 or the Electricity Act, 2003 that would prevent them from approaching the competent forum seeking appropriate compensation so as to make good the losses, if any, suffered by them.

29. Likewise, the right of a citizen to bring any action for loss and injuries suffered due to the wrongful action of the State and its erring officials is well recognised. In the case of *The State of Rajasthan Vs. Vidyawati and Ors.* reported in AIR 1962 SC 933 the Honâ??ble Supreme Court has observed that the State would be liable for tort in respect of tortious acts committed by its servants within the scope of its employment and functioning as such was similar to that of any other employer. Therefore, there is nothing to prevent the petitioners from approaching the civil court seeking damages and compensation by establishing the fact that the Tower No.19 has been deliberately positioned over the land of the petitioner in deviation

of the DPR with the malafide intent of causing wrongful loss and injury to the petitioners. If such an act is established by leading cogent evidence, then the same, in the opinion of this Court, would give rise to a tortious liability on the part of the respondent authorities, thereby making them liable for payment of compensation to the sufferer.

30. For the reasons stated herein above, the writ of mandamus as prayed for by the petitioners, directing shifting of Tower No.19 is found to be

untenable in the facts of these cases and is hereby declined. It is, however, made clear that notwithstanding the order passed by this Court, it will be

open for the writ petitioners to approach the civil court seeking additional compensation for the loss and injury suffered by them, if so advised.

There would be no order as to cost.

Records be sent back.