

GAHC010266952019



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

Case No. : CRP(IO)/40/2020

THE DISTRICT COLLECTOR
DHUBRI
DIST- DHUBRI
PIN- 783301
ASSAM

VERSUS

JAHURA BEWA AND 5 ORS
W/O- LATE EDAL SOBAHAN
R/O- VILL- SAGOLIA PART-II
P.S- GOLAKGANJ
DIST- DHUBRI
ASSAM

2:JAHANGIR ALAM
S/O- LATE EDAL SOBAHAN
R/O- VILL- SAGOLIA PART-II
P.S- GOLAKGANJ
DIST- DHUBRI
ASSAM

3:JAMIR ALAM
S/O- LATE EDAL SOBAHAN
R/O- VILL- SAGOLIA PART-II
P.S- GOLAKGANJ
DIST- DHUBRI
ASSAM

4:JAHID ALAM
S/O- LATE EDAL SOBAHAN
R/O- VILL- SAGOLIA PART-II
P.S- GOLAKGANJ
DIST- DHUBRI
ASSAM

5: SHAHID ALAM
S/O- LATE EDAL SOBAHAN
R/O- VILL- SAGOLIA PART-II
P.S- GOLAKGANJ
DIST- DHUBRI
ASSAM

6: INAMUL
S/O- LATE EDAL SOBAHAN
R/O- VILL- SAGOLIA PART-II
P.S- GOLAKGANJ
DIST- DHUBRI
ASSAM

7: North East frontier Railway
Represented by General Manager(Construction)
North East Frontier Railway Head Quarter
Maligaon-781011
Kamrup(M)
Assam

Advocate for : MR G BORDOLOI

Advocate for : MS. M CHATTERJEE appearing for JAHURA BEWA AND 5 ORS

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 01.12.2023

Heard Mr. D. Mazumdar, learned Addl. Advocate General assisted by Mr. J. Singh, learned counsel for the petitioner District Collector, Dhubri.

2. This petition under Article 227 of the Constitution of India has been instituted by the District Collector/Deputy Commissioner, Dhubri against the order dated 07.09.2019 of the learned District Judge, Dhubri in LA (Ex.) Case No. 02/2015 and another order also dated 07.09.2019 in LA (Ex.) Case No. 03/2015. LA (Ex.) Case No. 02/2015 and LA (Ex.) Case No. 03/2015 are for execution of the awarded amount as per the judgment and award dated 18.01.2012 passed by the learned District Judge, Dhubri in LA Appeal Case No. 16/2009 [LA Case No. 16/2009 (SIC)] and LA Appeal Case No. 17/2009 [LA

Case No. 17/2009 (SIC)] arising out of LA Case No. 2/2004-05. As the awarded amount had not been paid to the land owners, the land owners instituted LA (Ex.) Case No. 02/2015 and LA (Ex.) Case No. 03/2015. By the two orders impugned in the present petition under Article 227 of the Constitution of India, the learned District Judge, Dhubri in exercise of powers under Order XXI Rule 11 of the CPC had attached the revenue deposit account No. 8443 C/D and 101 R/D in the Dhubri Treasury Office in connection with the aforesaid two LA (Ex.) cases.

3. Order XXI Rule 11 of the CPC is for execution of money decree where Order XXI Rule 11(1) provides for arrest of the judgment-debtor for immediate execution and Order XXI Rule 11(2) provides for a written application for execution of a decree. No power of attachment of a Government revenue account that too in the office of the District Collector/Deputy Commissioner is noticeable under Order XXI Rule 11. The implication of attaching a revenue deposit account in the office of the Deputy Commissioner may have many serious impacts and there is a requirement of an application of mind on the said aspect before passing any order of attaching a revenue deposit account of the office of the District Collector/Deputy Commissioner.

4. The purpose of attachment of immovable or movable property for execution by a decree is to take control of the property and if necessary, use the value of such property to meet requirements of a decree. Simply attaching the revenue deposit account of the office of the District Collector/Deputy Commissioner could not have served the purpose of satisfying the execution of the decree which was a subject matter.

5. In any view of the matter, it is stated by Mr. D. Mazumdar, learned Addl. Advocate General for the petitioner that as per the records the awarded amount

was deposited by the Railway authorities in the office of the District Collector/Deputy Commissioner on 12.08.2017 and 04.08.2021 and by the orders dated 13.10.2017 and 09.08.2021, respectively had been disbursed to the lawful land owners which also includes the respondents herein or in other words, the applicants in the LA (Ex.) Case No. 02/2015 and LA (Ex.) Case No. 03/2015. Even after the amount had been received by the land owners on 13.10.2017 and 09.08.2021, it is rather unfortunate that the land owners had not bothered to inform the learned District Judge, Dhubri for recalling the order of attachment and therefore the conduct of the land owners appears to be that they have simply disappeared from the matter once they have received the money.

6. The entire conduct of the land owners/applicants in the LA (Ex.) Cases/respondents in the present revision petition appears to be not only irresponsible but also abusing the process of law and more so, in view of the serious implication that the revenue deposit account in the office of the Deputy Collector/Deputy Commissioner had been attached. In the present revision petition also, none appears for the respondents although the matter is pending for almost four years. It is only because of the interim order dated 11.03.2020 of this Court that the functioning of the office the Deputy Commissioner would be carried forward whereby the two orders impugned had been stayed.

7. As the amount had already been paid to the land owners and it is the land owners who are evading further appearance in the Court and not being fair to the justice delivery system, the two orders both dated 07.09.2019 of the learned District Judge, Dhubri in LA (Ex.) Case No. 02/2015 and LA (Ex.) Case No. 03/2015 are set aside. The learned District Judge, Dhubri is directed to close the LA (Ex.) Case No. 02/2015 and LA (Ex.) Case No. 03/2015 by following the due

procedure of law. In doing so, notice be also issued to the applicants in the LA (Ex.) cases and the applicants to explain their conduct as to why they have abused the justice delivery system in not informing the Court regarding the payment of the amount and allowing the judicial proceeding to continue unnecessarily and without any purpose and that too with a possible detriment to the public interest inasmuch as, a revenue deposit account in the office of the District Collector/Deputy Commissioner had been attached. Appropriate order be passed under the law as may be advised after giving a complete hearing to the applicants.

Civil Revision petition stands disposed of as indicated above.

JUDGE

Comparing Assistant