

GAHC010069412023



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

Case No. : WP(C)/1853/2023

MUHIRAM BASUMATARY
S/O- LATE SONESWAR BASUMATARY, R/O- NO. 2, DIKRONG CHAPORI,
BANDERDEWA, P.O. PATHALI PAHAR, P.S. BIHPURIA, DIST. LAKHIMPUR,
ASSAM, PIN- 784163.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, ENVIRONMENT AND FOREST DEPARTMENT,
ASSAM SACHIVALAYA, DISPUR, GUWAHATI-6.

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST
GOVERNMENT OF ASSAM
PANJABARI
GUWAHATI
ASSAM

3:THE DIVISIONAL FOREST OFFICER
LAKHIMPUR FOREST DIVISION
DIST. NORTH LAKHIMPUR
ASSAM

4:THE CERTIFICATE OFFICER
OFFICE OF THE DEPUTY COMMISSIONER
NORTH LAKHIMPUR
LAKHIMPUR
ASSA

Advocate for the Petitioner : MR. S K DEORI

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

03.04.2023

1. Heard Mr. M.H. Laskar, learned counsel for the petitioner, who submits that the Bakijai Case No.DCNLP/FOR/4/2021 initiated against the petitioner should be set aside. He also prays for setting aside the warrant of arrest dated 09.03.2023.

2. The petitioner's counsel submits that the Certificate issued by the respondent no.4 under Section 7 of the Bengal Public Demands Recovery Act, 1913, hereinafter referred to as the "1913 Act" has been made for recovery of Rs.20,70,143/-. Though the petitioner submitted his reply dated 22.11.2021 to the notice dated 21.09.2021, issued by the Certificate Officer, North Lakhimpur under 1913 Act, the same has not been considered by the respondent no.4.

3. The petitioner's counsel submits that the reply submitted by the petitioner had been made within 30 (thirty) days from the date of receipt of the notice. He submits that no hearing had taken place or evidence recorded by the respondents, in compliance with Section 9 & 10 of the 1913 Act. He thus submits that the warrant of arrest dated 09.03.2023, issued by the Certificate Officer, Deputy Commissioner's Office, North Lakhimpur on 09.03.2023, to be executed by the Officer-in-Charge, Banderdewa Outpost/Police Station is unwarranted.

4. Mr. K. Gogoi, learned Government Advocate appears for the respondent no.4. He submits that as the petitioner has made a challenge to the proceedings before the Certificate Officer, which is still pending, the petitioner should approach the Certificate Officer with his grievance.

5. On considering the above facts and submissions made by the counsels for the parties, this Court is of the view that the petition can be disposed off at the Motion stage itself.

6. As can be seen from the pleadings, the Bakijai case is before the respondent no.4 and as such, the petitioner can always approach the Collector against the warrant of arrest under Section 30 of the 1913 Act, for release from arrest. Further, under Section 34 of the 1913 Act, a suit can be filed against the service of notice, under Section 7. Also an appeal from any original order can be made under Section 51.

6. In view of there being an alternative remedy available, the petitioner is given the liberty to approach the Collector within a period of 2 (two) weeks from today against the warrant of arrest. The warrant of arrest issued by the Deputy Commissioner's Office, North Lakhimpur shall not be acted upon for two weeks. It is needless to add that the petitioner has the liberty to approach the office of the Collector/Deputy Commissioner for release from arrest within two weeks. Till a decision is taken on the prayer for release from arrest, if any, to be filed within two weeks from today, the warrant of arrest shall not be acted upon.

7. The writ petition stands disposed off.

JUDGE

Comparing Assistant