

GAHC010109602023



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

Case No. : WP(C)/2953/2023

JALAN NAGAR TEA ESTATE PVT. LTD.
JALAN NAGAR, DIBRUGARH, P.O. JALAN NAGAR, DIST.
DIBRUGARH, ASSAM, PIN- 786005, REPRESENTED BY THE DIRECTOR,
JALAN NAGAR TEA ESTATE PVT. LTD.

VERSUS

LALMONI GOWAALA AND ANR
W/O- SRI LADO GOWALA, R/O- P.T. LINE, HOUSE NO. 35, JALAN NAGAR
TEA ESTATE, P.O. JALAN NAGAR, DIST, DIBRUGARH, ASSAM, PIN- 786005.

2:THE STATE OF ASSAM
REPRESENTED BY SECRETARY
DEPT. OF LAW AND JUSTICE
GOVT. OF ASSAM
DISPUR
GUWAHATI-

Advocate for the Petitioner : MR. Y S MANNAN

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 07-06-2023

Heard Mr. Y.S. Mannan, learned counsel for the petitioner as well as Mr.

M. Chetia, learned Govt. Advocate appearing for the respondent no.2.

2. In view of the nature of grievance raised in this present writ petition, issuance of notice on the respondent no.1 is dispensed with. Moreso, because of the reason that although the petitioner herein took steps on several occasions before the learned trial Court, the appearance of the respondent no.1 could not be secured.

3. This writ petition was initially filed under Article 227 of the Constitution of India. However, pursuant to order dated 31.05.2023, the learned counsel for the petitioner had amended this writ petition, and this writ petition is now taken up under Article 226 of the Constitution of India. By filing this writ petition, the petitioner is seeking a direction that the learned trial Court would ensure speedy trial of the proceedings of Sessions Special (Companies Act) case no.5/2018 pending before the Court of Addl. Session Judge no.1, Kamrup (Metro), Guwahati.

4. The case of the petitioner in brief is that the respondent no.1 is holding-over a company quarter, and as the service of the respondent no.1 was terminated, a notice was issued to the respondent no.1 to vacate the company quarter and to hand over vacant possession back to the petitioner. As the respondent no.1 did not comply with the notice issued on 13.01.2016, the petitioner had instituted a complaint case before the Court of learned CJM, Dibrugarh which was initially registered as case no.1(c)/2016 initially under section 630(B) of the Companies Act, 1956 which was later on converted to a complaint under section 452 of the Companies Act, 2013.

5. The complaint under section 452 of the Companies Act, 2013 is triable before the Special Court constituted under section 435 of the Companies Act, 2013 and as per notification dated 05.02.2018 published in the Gazette of India under S.O. 528(E), the Court of Addl. District and Sessions Judge, No.1, Kamrup (Metro), Guwahati was designated at the Special Court to try offences under section 452 of the Companies Act, 2013.

6. The learned counsel for the petitioner has submitted that the Companies Act, 2013 has been amended by way of substitution as per the Companies (Amendment) Act, 2020 w.e.f. 22.01.2021 under SO 325(E) dated 22.01.2021 and the effect of such amendment is that the offences under section 452 of the Companies Act would now be triable before the jurisdictional Magistrate. The provision of section 60 of the Amendment Act is quoted below:

60. In section 435 of the principal Act, in sub-section (1), for the words "offences under this Act, by notification", the words and figures "offences under this Act, except under section 452, by notification" shall be substituted.

7. In view of the amendment to provision of section 435 of the Companies Act, 2013 by which the jurisdiction for trial of the cases under section 452 of the Companies Act, 2013 is vested on the jurisdictional Magistrate, the Court is of the considered opinion that this would be a fit and appropriate case for directing transfer of the proceedings of Sessions Special (Companies Act) case no.5/2018 from the Court of learned Addl. Sessions Judge No.1, Kamrup Metro, Guwahati to the Court of learned CJM, Dibrugarh to adjudicate the matter. The said learned Court would have the liberty of

transferring the matter for adjudication before the competent and appropriate Court under its jurisdiction, if desired.

8. The Court of learned Addl. Sessions Judge No.1, Kamrup Metro, Guwahati shall transmit the records of the said Sessions Special (Companies Act) case no.5/2018 to the Court of learned CJM, Dibrugarh.

9. The petitioner shall appear before the transferee Court on 23.06.2023 and await further instructions from the said learned Court by producing a certified copy of the order.

10. The petitioner is at liberty to move the jurisdictional Court for a speedy trial. The petitioner shall also produce a certified copy of this order before the Court of learned Addl. Sessions Judge No.1, Kamrup Metro, Guwahati so as to enable the said learned Court to transfer the records to the transferee Court at the earliest.

11. The application stands disposed of.

JUDGE

Comparing Assistant