

GAHC010114262023



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

Case No. : WP(C)/3017/2023

MONOWAR HUSSAIN
SON OF LATE BAHAT ULLAH,
UNARMED SECURITY GUARD,
ERSTWHILE WIMCO LTD., DHUBRI,
NOW MANAGED BY ITC LTD.,
RESIDENT OF A.M.CO. ROAD,
PS. AND DISTRICT- DHUBRI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
REVENUE AND DISASTER MANAGEMENT DEPARTMENT,
JANATA BHAWAN, DISPUR, GUWAHATI- 781006.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE PRINCIPAL SECRETARY
LABOUR WELFARE DEPARTMENT
DISPUR
JANATA BHAWAN
GUWAHATI- 781006.

4:THE DEPUTY COMMISSIONER
DHUBRI
DHUBRI DISTRICT
PIN- 783301
ASSAM.

5:THE ASSISTANT LABOUR COMMISSIONER CUM AUTHORITY UNDER
THE PAYMENT OF WAGES ACT
1936
DHUBRI
PIN- 783301.

6:THE CERTIFICATE OFFICER
DHUBRI
PIN- 783301.

7:THE SUB-REGISTRAR
DHUBRI REGISTRY
DISTRICT- DHUBRI
PIN- 783301.

8:ITC. LTD.
BEING REPRESENTED BY ITS MANAGING DIRECTOR

HAVING ITS REGISTERED OFFICE AT VIRGINIA HOUSE
37

J.L. NEHRU ROAD
KOLKATA- 700071.

9:AMITENDRA MOHAN DUTTA
MANAGER OF ERSTWHILE WIMCO LTD.

DHUBRI
NOW MANAGED BY ITC LTD.

AM CO. ROAD
DHUBRI

P.O.- ASSAM MATCH CO. ROAD

DHUBRI
ASSAM

Advocate for the Petitioner : MS. U BARUAH

Advocate for the Respondent : GA, ASSAM

BEFORE

HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

25.05.2023

Heard Ms. U. Baruah, learned Senior counsel, assisted by Mr. S. Khound, learned counsel for the petitioner. Also heard Mr. J. Handique, learned Government Advocate appearing for the respondent nos. 3,4,5,6 and 7. Ms. G. Hazarika, learned Government Advocate, Revenue Department appearing for the respondent nos. 1 and 2.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for a direction upon the respondent no. 4, i.e. Deputy Commissioner, Dhubri and respondent no. 7, the Sub Registrar, Dhubri not to allow for the sale of land at WIMCO factory premises, Dhubri by the respondent nos. 8 and 9 to any 3rd party.

3. In brief, the case of the petitioner is that he against the order of retrenchment, the petitioner has approached the labour Court and in course of the proceedings the Asstt. Labour Commissioner, Dhubri had computed the amount payable by respondent no. 8 to the petitioner at Rs. 82,98,330/-. Upon non-payment of the dues, the petitioner has approached for recovery of the said amount and accordingly, a Bakijai Certificate proceedings was initiated under the provisions of Bengal Public Demands Recovery Act, 1913.

4. The learned Senior Counsel for the petitioner has submitted that the petitioner has been agitating for his dues since the year 2016 and if the

property of the respondent nos. 8 and 9 is sold, third party rights would be created, and the petitioner would not be able to recover any amount.

5. Having regard to the grievance raised by the petitioner, the Court is of the considered opinion that in so far as respondent nos. 8 and 9 are concerned, i.e. ITC Ltd., and Sri Amitendra Mohan Dutta, they are not covered within the meaning of Article 12 of the Constitution of India and they are not performing any statutory duties and therefore the writ against them would not be maintainable.

6. In so far as the grievance raised by the petitioner is concerned, the Court does not find that the Recovery Officer, i.e. Bakijai Certificate Officer under the Bengal Public Demands Recovery Act, 1913 had failed to pass an appropriate order.

7. In this regard the Court finds that under Section 8 of the said act laid down the provision regarding the effect of service of notice of certificate and the provision of Section 14, deals with various modes of execution where, the Certificate Officer would have power to attach and sale or to arrest and detain the certificate-debtor in the civil prison. For the aforesaid reasons, the Court is not inclined to pass which would have an effect of retraining the respondent nos. 8 and 9 to have sale of property registered.

8. Under such circumstances, the Court is not inclined to accept that the Deputy Commissioner, Dhubri (respondent no. 4) or the Sub Registrar (respondent no. 7) Dhubri ought to be prevented by this Court from registering such sale, because, the petitioner has an alternate remedy. The petitioner is at liberty to approach the Certificate Officer under the Bengal Public Demands

Recovery Act, 1913 for an appropriate relief.

9. Accordingly, with the observations as made above, this writ petition stands closed.

JUDGE

Comparing Assistant