

GAHC010138592021



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

Case No. : WP(C)/4561/2021

MUKUNDA DAS
S/O- LT. PHANINDRALAL DAS, R/O- BARBARI RAILWAY COLONY, DIST.-
DIBRUGARH, PIN- 786002

VERSUS

THE UNION OF INDIA AND 3 ORS
REP. BY THE GENERAL MANAGER, N.F RAILWAY, MALIGAON, GHY-11

2:SENIOR DIVISIONAL ENGINEER
COORDINATION
N.F.RAILWAY
TINSUKIA

3:DIVISIONAL ENGINEER CUM ESTATE OFFICER
NF RAILWAY
TINSUKIA

4:ASSTT. DIVISIONAL ENGINEER
NF RAILWAY DIBRUGAR

Advocate for the Petitioner : MR. K K DEY

Advocate for the Respondent : SC, RAILWAY

Linked Case : WP(C)/4631/2021

NISHU DEB

S/O- SRI PUSHPA CHANDRA DEB
R/O- DURGABARI ROAD
WARD NO.19
DIST.- DIBRUGARH
PIN- 786002

VERSUS

THE UNION OF INDIA AND 3 ORS
REP. BY THE GENERAL MANAGER
N.F.RAILWAY
MALIGAON
GHY-781011

2:SENIOR DIVISIONAL ENGINEER
COORDINATION
N.F.RAILWAY
TINSUKIA
3:DIVISIONAL ENGINEER CUM ESTATE OFFICER
NF RAILWAY
TINSUKIA
4:ASSTT. DIVISIONAL ENGINEER
NF RAILWAY DIBRUGARH

Advocate for : MR. K K DEY
Advocate for : SC
RAILWAY appearing for THE UNION OF INDIA AND 3 ORS

Linked Case : WP(C)/4568/2021

SANJAY DEY
S/O- HARADHAN DEY
R/O- QTR NO.L/342(A) BARBARI RAILWAY COLONY
DURGABARI
DIST.- DIBRUGARH
PIN- 786002

VERSUS

THE UNION OF INDIA AND 3 ORS
REP. BY THE GENERAL MANAGER
N.F RAILWAY
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2:SENIOR DIVISIONAL ENGINEER
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NF RAILWAY DIBRUGARH

Advocate for : MR. K K DEY

Advocate for : SC

RAILWAY appearing for THE UNION OF INDIA AND 3 ORS

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

26.05.2023

Heard Mr. K. K. Dey, the learned counsel for the petitioners and Mr. B. Sarma, the learned Standing Counsel for the Railways.

2. The common adjudication is being made in respect to the instant three writ petitions having regard to the contextual semblance of the facts and the legal issues involved in the instant writ petitions.

3. The petitioners herein have challenged the order dated 24.11.2017 passed by the respondent No.3, i.e. the Divisional Engineer-cum-Estate Officer, NF Railways, Tinsukia in the Eviction Case No.EO/TSK/Land/556/2017; Eviction Case No.EO/TSK/Land/554/2017 and Eviction Case No.EO/TSK/Land/656/2017.

4. The learned counsel for the petitioners submitted that against such an order passed under Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short, 'the Act of 1971'), an appeal lies before the District Judge of the District in which the public premises is situated in terms with Section 9 of the said Act.

5. In that view of the matter, the learned counsel for the petitioners submitted that it was upon mistaken advice that the writ petitions were filed before this Court without resorting to the statutory remedy as available under Section 9 of the Act of 1971. The learned counsel for the petitioners, therefore, submitted that he may be permitted to withdraw the instant writ petitions and be given the liberty to file appeals under Section 9 of the said Act of 1971 and as the instant proceedings were initiated on a mistaken advice, the period of pendency of the instant writ petition be excluded while computing the period of limitation for filing the appeal.

6. Mr. B. Sarma, the learned Standing Counsel for the Railways submitted that the orders under Section 5 of the Act of 1971 impugned to the instant proceedings were passed as far back as on 24.11.2017. The petitioners though have the liberty to file appeals under Section 9 of the Act of 1971, but that would be subject to the limitation as prescribed under Section 9 (2) of the Act of 1971. He, however, does not object as regards excluding the period of limitation during the pendency of the instant proceedings.

7. Taking into account the same, this Court therefore, permits the petitioners to withdraw the instant writ petitions with the liberty to approach the appropriate forum in terms with Section 9 of the Act of 1971.

8. Further to that, this Court observes that the period from 02.09.2021 till the date of passing of the instant order be excluded while computing the period of limitation.

9. With the above observation and direction, the instant writ petitions stand disposed of.

JUDGE

Comparing Assistant