

GAHC010171132024



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

Case No. : Crl.Pet./1029/2024

ABDUL KHALEQUE AND 4 ORS
S/O LATE MUZAFAR ALI,
RESIDENT OF VILLAGE MULADHARI, MOUZA UTTAR KULA, PS
JAGIROAD, DIST MORIGAON, ASSAM

2: MD. SAHJAHAN ALI

S/O MD. ABDUL KHALEQUE
RESIDENT OF VILLAGE MULADHARI
MOUZA UTTAR KULA
PS JAGIROAD
DIST MORIGAON
ASSAM

3: JULFIKAR ALI
S/O MD. ABDUL KHALEQUE
RESIDENT OF VILLAGE MULADHARI
MOUZA UTTAR KULA
PS JAGIROAD
DIST MORIGAON
ASSAM

4: MAINUL HOQUE
S/O MD. ABDUL KHALEQUE
RESIDENT OF VILLAGE MULADHARI
MOUZA UTTAR KULA
PS JAGIROAD
DIST MORIGAON
ASSA

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY PP ASSAM

2:JOINAL ABDIN
S/O LATE SAHED ALI

RESIDENT OF VILLAGE BASUNDHORI
MOUZA UTTAR KULA
PS JAGIROAD
DIST MORIGAON
ASSAM

3:MONSUR AHMED
S/O LATE SAHED ALI

RESIDENT OF VILLAGE BASUNDHORI
MOUZA UTTAR KULA
PS JAGIROAD
DIST MORIGAON
ASSAM

4:FAKARUDDIN
S/O LATE SAHED ALI

RESIDENT OF VILLAGE BASUNDHORI
MOUZA UTTAR KULA
PS JAGIROAD
DIST MORIGAON
ASSAM

5:KITAPJAN BEGUM
S/O LATE SAHED ALI

RESIDENT OF VILLAGE BASUNDHORI
MOUZA UTTAR KULA
PS JAGIROAD
DIST MORIGAON
ASSAM

6:MAHIBAN NESSA
D/O LATE SAHED ALI

RESIDENT OF VILLAGE BASUNDHORI
MOUZA UTTAR KULA
PS JAGIROAD
DIST MORIGAON
ASSAM

7:TAMIRUN NESSA
D/O LATE SAHED ALI

RESIDENT OF VILLAGE BASUNDHORI
MOUZA UTTAR KULA
PS JAGIROAD
DIST MORIGAON
ASSA

Advocate for the Petitioner : MR. P K ROYCHOUDHURY, MR. B RAHMAN

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

ORDER

Date : 22.08.2024

Heard Mr. P. K. Roychoudhury, learned counsel for the petitioners. Also heard Mr. P. S. Lahakar, learned Additional Public Prosecutor for the State of Assam.

2. This is an application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 challenging the orders dated 15.12.2023, 25.01.2024, 30.03.2024, 15.05.2024 and 03.07.2024 passed by the Special (L.G.) Case No.04/2022 pending in the court of the learned Special Judge. Morigaon.

3. The private respondents filed the Land Grabbing case against the present petitioners in such a case, the Trial Court has to decide the Civil liability first and after that the Criminal liability should be decided.

4. At the time of considering the civil liability, the present petitioners could not file their written objection in time and, therefore, the learned Court below on 28.06.2023 directed that the case shall proceed ex-parte against the present petitioners.

5. The present petitioners submits that they should be given one opportunity to file their written objecting so that the Trial Court be able to effect to decide civil liability of the Case.

6. I have considered the submissions made by the learned counsels of both the sides.

7. This Court is of the opinion that the petitioners deserve to be given an opportunity to contest by filing a written objection.

- 8.** Therefore, the Criminal Petition is allowed.
- 9.** The impugned orders dated 15.12.2023, 25.01.2024, 30.03.2024, 15.05.2024 and 03.07.2024 are set aside, the learned Special Judge, Morigaon is directed to provide one opportunity to the petitioners to file their written objection and, thereafter the Trial Court shall proceed to dispose of the case in accordance with the procedure as laid down by law.
- 10.** With the aforesaid direction the present Criminal Petition stands disposed of.

JUDGE

Comparing Assistant