GAHC010146602026

2026:GAU-AS:9826

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

Case No. : WP(C)/3716/2026

SRI SIPOK DEY
S/O LATE SATISH DEY, RESIDENT OF WARD NO.4, BOKAJAN, KARBI-ANGLONG

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE GENERAL MANAGER, N.F. RAILWAY, MALIGAON, GUWAHATI- 781011.

2:THE DIVISIONAL RAILWAY MANAGER
N.F. RAILWAY
LUMDING
ASSAM.

3:THE ESTATE OFFICER
N.F. RAILWAY
LUMDING
ASSAM

4:THE STATE OF ASSAM
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-6.

5:THE KARBI ANGLONG AUTONOMOUS COUNCIL
REPRESENTED BY THE SECRETARY
EXECUTIVE COMMITTEE
KARBI ANLONG AUTONOMOUS COUNCIL
DIPHU
ASSA

Advocate for the Petitioner : MR. M K SARMA, MR. S B PRASAD

Advocate for the Respondent : DY.S.G.I., GA, ASSAM,SC, K A A C

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 17-07-2026

Heard Mr. M.K. Sarma, learned counsel for the petitioner; Mr. K. Gogoi, learned Central Government Counsel for the respondent nos. 1 – 3; Ms. M. Barman, learned Junior Government Advocate, Assam for the respondent nos. 4; and Ms. S. Kemprai, learned Standing Counsel, KAAC for the respondent no. 5.

2. The instant writ petition under Article 226 of the Constitution of India is preferred to assail a Judgment dated 19.06.2026 passed by the learned District Judge, Karbi Anglong, Diphu in Title Appeal no. 60/2025.

3. The aforesaid Judgment has been passed by the learned District Judge, Karbi Anglong, Diphu in an appeal preferred under Section 9 of the Public Premises [Eviction of Unauthorised Occupants] Act, 1971 ['the 1971 Act', for short] challenging an Order passed by the Estate Officer, N.F. Railway, Lumding under Section 5 of the 1971 Act in Eviction Case no. W/212/LM/4/W-4 dated 19.08.2025, whereby the learned District Judge, while dismissing the appeal directed the appellant therein, who is the petitioner herein, to vacate and hand over possession of the premises in question to the Railway Administration within a period of 30 days from the date of the Judgment, failing which the Railway shall be at liberty to take steps for eviction in accordance with law and in terms

of the Order of eviction which has been affirmed.

4. A Three-Judge Bench of the Hon'ble Supreme Court of India in **Life Insurance Corporation of India vs. Nandini J. Shah and others, [2018] 15 SCC 356,** has held that while exercising power under Section 9 of the 1971 Act, the Appellate Officer does not act as a persona designata but in his capacity as a pre-existing judicial authority in the district. Being part of the District Judiciary, the District Judge acts as a Court and the Order passed by him is an Order of the subordinate Court against which remedy under Article 227 of the Constitution of India can be availed on the matters delineated for exercise of such jurisdiction. It has been categorically held that an Order passed under Section 9 of the 1971 Act as an Appellate Order can be challenged only under Article 227 of the Constitution of India, and not under Article 226 of the Constitution of India.

5. In a subsequent Judgment of the Hon'ble Supreme Court in **Municipal Corporation of Greater Mumbai v. Vivek V. Gawde**, **2024 SCC OnLine 3722**, which has been passed in reference to the Judgment in **Nandini J. Shah** [supra] and another Three-Judges Bench decision in **Radhe Shyam and another vs. Chhabi Nath and others, [2015] 5 SCC 423**, it has been held that a writ petition under Article 226 of the Constitution of India seeking quashing of the decision of a civil court by issuing a writ of certiorari is not maintainable and is to be dismissed at the threshold with respect to its primary relief.

6. In view of such settled position of law, the writ petition is one which is not to be entertained under Article 226 of the Constitution of India.

7. Mr. Sarma, learned Counsel appearing for the petitioner has submitted that the petitioner may be permitted to withdraw the writ petition with liberty to avail appropriate remedy under Article 227 of the Constitution of India.

8. In view of the above submission made by Mr. Sarma, the writ petition is allowed to be withdrawn, with the liberty to avail appropriate remedy permissible under the law.

9. At this stage, Mr. Sarma, learned counsel for the petitioner has submitted that a certified copy of the Judgment dated 19.06.2026 has been annexed to the writ petition. He has submitted that the impugned Judgment was passed on 19.06.2026 granting a period of 30 days to the petitioner to vacate the premises in question. He has further submitted that as the petitioner is from Karbi Anglong district, obtaining a certified copy of the impugned Judgment again for filing the petition under Article 227 of the Constitution of India would involve a time period as well as expenditure. He has submitted that in such view of the matte, the petitioner may be allowed to file an application before the Registry to return the certified copy of the Judgment dated 19.06.2026 to the petitioner in order to avail the remedy under Article 227 of the Constitution of India.

10. The leave so sought for is allowed.

11. The petitioner is permitted to file an application before the Registry seeking return of the certified copy of the Judgment dated 19.06.2026, annexed to the instant writ petition, to the petitioner in order to take recourse to appropriate remedy permissible under the law. It is further observed that in the event such an application is filed through the learned engaged counsel for the petitioner, the Registrar [Judicial] shall take an appropriate decision in the

matter in an expeditious manner.

JUDGE

Comparing Assistant