GAHC010216242026

2026:GAU-AS:15457

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

Case No. : Crl.Pet./1457/2026

SMT JANTI GUHAI ALIAS DULU MEDHI
DAUGHTER OF SUBAL DAS, VILL BAGHARA, PO BAGHARAGAON,
PSBAGHARA, DIST MORIGAON, ASSAM. PIN782105
PH. NO. 9859043615

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP, ASSAM.

2:MISS BEAUTY SAIKIA
W/O SRI DHANTI BORA
VILL BAGHARA
PO BAGHARAGAON
PSBAGHARA
DIST MORIGAON
ASSAM. PIN78210

Advocate for the Petitioner : MR. A ALI, S AHMED

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

13.10.2026

Heard Mr. A. Ali, learned counsel for the petitioner and Mr. P. Borthakur, learned Additional Public Prosecutor for the State.

2. In this petition, under Section 528 of the BNSS, read with Article 227 of the Constitution of India, the petitioner, namely, Smti. Janti Guhai @ Dulu Medhi, has prayed for quashing and setting aside the order dated 10.02.2026, passed by the Child Welfare Committee (CWC hereinafter), Morigaon, in CWC Case No. 258/2025.

3. It is to be noted here that vide impugned order, dated 10.02.2026, the CWC, Morigaon, had rejected the prayer of the petitioner seeking custody and guardianship of a minor child, namely, Prince Borah, aged about 5 years.

4. Mr. Ali, learned counsel for the petitioner, submits that the present petitioner has adopted a minor child, namely, Prince Borah, aged about 5 years, on the strength of one agreement, dated 21.02.2022, between her and the respondent No. 2 herein and thereafter, she was nurturing the said child with all motherly love and affection. Thereafter, the petitioner has approached the CWC, Morigaon, seeking assistance as to how she could obtain the requisite documents of the child, such as, Aadhar Card, Pan Card, etc. Then, having found the adoption not in consonance with the existing rules and regulations, the CWC, Morigaon, took the child from the petitioner as a surrendered child and placed him under the custody of Specialized Adoption Agency, on 07.07.2025, on the pretext that the present petitioner is not registered as a

prospective Adoptive Parent and the adoption proceeding was not in terms of Section 38 of the Juvenile Justice (Care and Protection of Children) Act (JJ Act hereinafter).

4.1. Mr. Ali further submits that, thereafter, on 29.01.2026, the CWC, Morigaon, asked the petitioner to appear before the Commission on 09.02.2026, for recording her statement and accordingly, she had appeared and got her statement recorded by the CWC, Morigaon, on 09.02.2026. During recording her statement, she had produced one copy of Notary Agreement, dated 21.02.2022, executed between her and the biological mother of the child. After recording her statement, the CWC, Morigaon, inquired about the financial capacity of the petitioner and then, the petitioner had produced her Salary Statement and Experience Certificate, e-Pehchan Card issued by the Employees State Insurance Corporation and also the agreement of employment, so as to justify that she is financially capable of adopting a child. She also produced one registered sale deed to show that she is financially well to do for ensuring a secured future and overall welfare of the child.

4.2. Mr. Ali further submits that the CWC, Morigaon, did not consider those aspects and rejected the prayer of the petitioner and being aggrieved, the petitioner has approached this Court by filing this present petition.

5. To a pointed query of this Court that as to whether the petitioner adopted the child in accordance with the provision of JJ Act, Mr. Ali, learned counsel for the petitioner, in no uncertain term, submits that she has not adopted the child in accordance with the procedure laid down in the JJ Act.

6. Per-contra, Mr. Borthakur, learned Additional Public Prosecutor, submits that this petition is not maintainable as the petitioner has approached this Court

directly without availing the alternative remedy of appeal challenging the impugned order dated 10.02.2026, passed by the CWC, Morigaon, under the JJ Act.

7. Having heard the submissions of learned counsel for both the parties, this Court has carefully gone through the petition as well as the documents placed on record and also perused the impugned order dated 10.02.2026, passed by the CWC, Morigaon.

8. It appears from the impugned order, dated 10.02.2026, that the petitioner herein lacks balance parenting capacity and her existing marital status as well as lack of legal dissolution, makes her incompetent to adopt a child under Hindu Adoptions and Maintenance Act, 1956 and Section 56 of the JJ Act and CARA Adoption Regulations, 2022.

9. Further, it appears that an order of the CWC rejecting an adoption application is generally not the appropriate subject for a challenge, under Section 528 of the BNS, which preserves the High Court's inherent powers corresponding to the former Section 482 of the CrPC. The proper statutory remedies under the JJ Act must ordinarily be exhausted first.

9.1. It is to be noted here that Section 101 of the JJ Act provides for an appeal. It states that any person aggrieved by an order of the CWC (or Juvenile Justice Board) may prefer an appeal to the Children's Court within 30 days. The only exceptions are decisions relating to foster care or sponsorship after care, which go to the District Magistrate.

9.2. The adoption-related orders of the CWC (including declarations that a child is legally free for adoption, placement for adoption, or related rejections) fall within the general category of CWC orders, appealable to the Children's

Court. They are not excluded like pure foster-care decisions.

9.3. Section 101(5) of the said Act provides that an appeal from the Children's Court lies to the High Court in accordance with the procedure in the BNSS. Section 528 of the BNSS saves the High Court's inherent power to make orders necessary to give effect to any order under the Sanhita, prevent abuse of the process of any court, or secure the ends of justice. It is an extraordinary residual power, not a substitute for available statutory remedies.

9.4. It is also well settled proposition of law that inherent powers should not be invoked when a specific statutory appeal or revision is available and has not been exhausted, unless there are exceptional circumstances, such as complete lack of jurisdiction, patent illegality amounting to abuse of process, or where the statutory remedy is inadequate or illusory. A routine rejection of an adoption application by the CWC does not ordinarily meet this threshold.

9.5. Thus, a petition under Section 528 BNSS may be maintainable in rare cases involving jurisdictional excess, violation of natural justice, or other grounds that make the statutory route ineffective, but it is not the primary or preferred remedy.

10. It is also to be noted here that in the case of **State of Punjab vs. Davinder Pal Singh Bhullar & Others,** reported in **(2011) 14 SCC 770** and also in the case of **Madhu Limaye vs. State of Maharashtra,** reported in **(1977) 4 SCC 551,** Hon'ble Supreme Court laid down following guiding principles for the exercise of inherent powers under Section 482 CrPC (corresponding to the older Section 561-A):-

(i) The power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party.

(ii) It should be exercised very sparingly to prevent abuse of the process of any court or otherwise to secure the ends of justice.

(iii) It should not be exercised against an express bar of law engrafted in any other provision of the Code.

10.1. This proposition was reiterated and applied more explicitly with reference to alternative remedies in **State of Punjab vs. Davinder Pal Singh Bhullar**, reported in **(2011) 14 SCC 770**, wherein Hon'ble Supreme Court has held as under:-

> "**The power under Section 482 Cr.P.C. cannot be resorted to if there is a specific provision in the Cr.P.C. for the redressal of the grievance of the aggrieved party or where alternative remedy is available. Such powers cannot be exercised as against the express bar of the law and engrafted in any other provision of the Cr.P.C.**"

10.2. However, in later decisions such as **Prabhu Chawla vs. State of Rajasthan,** reported in **(2016) 16 SCC 30** and also in the case of **Dhariwal Tobacco Products Limited vs. State of Maharashtra**, reported in **1994 SCC (SUPP) 3 44,** it has been clarified that the mere availability of an alternative remedy (such as revision under Section 397) is not an absolute bar and does not oust the High Court's inherent jurisdiction, the consistent principle remains that Section 482 should not ordinarily be invoked as a matter of course without first exhausting or at least considering the specific/alternative statutory remedies provided in the Code. The inherent power is extraordinary and residual, to be used sparingly only when necessary to prevent abuse of process or secure the ends of justice.

11. Thus, having examined the impugned order in the light of the facts and

circumstances on the record and also in the light of the proposition laid down in the cases discussed herein above, and also in the light of submissions of learned counsel for both the parties, this Court finds that the present petition is not at all maintainable on account of the same being filed without exhausting the available remedy under the statute itself, i.e. Section 101 of the JJ Act.

12. In the result, this petition stands dismissed at this motion stage itself.

JUDGE

Comparing Assistant