

ASKM010023522026



CNR: ASKM01-002352-2026

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE NO. 1,
KAMRUP(M), GUWAHATI**

Present: S. K. Kabra, AJS

Misc. (J) Case No. 99 of 2026
IN
Misc. Appeal No. 08/2026

In the matter of:

Musstt. Ashma BegumAppellant

Versus

1. Union of India
2. The Divisional Engineer
N. F. Railway, Maligaon, Guwahati
3. The Estate Officer
N. F. Railway, Maligaon, Guwahati
4. Shri Anurag Agarwal
Dy. General Manager/Estate Officer,
N.F. Railway, Maligaon,
GuwahatiRespondents

ORDER
29.07.2026

1. This is an application under Order 1 Rule 10(2) of CPC filed by the respondent no.2 (petitioner herein) seeking to struck off the name of respondent no. 3 and 4 from the Cause Title of the Memo of Appeal.

2. It is stated in the application that as per Section 4(2) of the Railways Act, 1989, General Superintendence and Control of Zonal Railway is vested in the General Manager; and since General Manager, N.F. Railway, Maligaon has already been made a party in the appeal filed under Section 9 of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971, (in short "the Act"), arraying respondent nos. 3 and 4 in the appeal is redundant. It is further stated that respondent no.3 and 4 are not necessary party.

3. Appellant (opposite party herein) opposed the prayer of respondent no.4 by filing written objection to said application. The application is opposed mainly on the following grounds:

That the application is filed without any reference or heed to scope of paragraphs 2(c) and 3, and grounds VI, IX and X of appeal memo. In said paragraphs, the appellant has specifically alleged *mala fides*, malice, and/or bias against

respondent no.4, who was holding the post of respondent no.3 as *persona designata* on the date of impugned order. That the allegation of mala fide and bias cannot be sustained if the person concerned is not *eo nomine* made a party in the proceedings. It is stated that the eviction proceedings, in Eviction Case No. EO/MLG/Ors./11/2025, were intentionally and willfully conducted in ignorance of, and deviation from, the provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971, by respondent no.4 and as a consequence of which the impugned order was passed. It is stated that the primary reasons necessitating arraignment of respondent nos. 3 and 4 in the instant appeal is the gross violation and departure from Section 8 of the 1971 Act, considering the manner of issuance of the 2nd notice.

4. I have already heard the argument on behalf of the parties. Today the matter is fixed for orders.

5. Learned counsel for the respondent no.2/petitioner has relied upon the contents of the application and has also emphasized on the point that Estate Officer is like judicial officer while adjudicating the eviction cases under the Act and as such, cannot be impleaded as party in the appeal while his orders are challenged.

6. On the other hand, learned senior counsel for the appellant (opposite party herein) has relied on Rule 9 of Public Premises Eviction of Unauthorised Occupants Rules, 1971, and has submitted that Estate Officer, respondent no.3, is a necessary party. So far as respondent no.4 is concerned, it is submitted that respondent no.3 has conducted the proceedings in gross violation of the provisions of the Act and Rules made thereunder, which shows that he has conducted the proceedings in *mala fide* manner and with malice and bias, and as such, he has been impleaded in his personal capacity, being respondent no.4.

7. I have perused the case record including judgments relied upon by the learned senior counsel for the appellant.

8. Rule 9 of the Public Premises Eviction of Unauthorised Occupants Rules, 1971, reads as under:

Procedure in Appeals.—(1) *An appeal preferred under section 9 of the Act shall be in writing, shall set forth concisely the grounds of objection to the order appealed against, and shall be accompanied by a copy of such order.*

(2) *On receipt of the appeal and after calling for and perusing the record of the proceedings before the estate officer, the appellate officer shall appoint a time and place for the hearing of the appeal and shall give notice thereof to the estate officer against whose order the appeal is preferred, to the appellant and to the head of the department or authority in administrative control of the premises.*

.....***emphasis supplied***

From the above rule, more particularly, the underlined portion, it is crystal clear that Estate Officer, i.e. Respondent No.3, is a necessary party in the appeal filed under Section 9 of the Act. **Hence the prayer for striking out the name of respondent no.3 is hereby rejected.**

9. Now coming to the impleadment of respondent no.4. There is no doubt in the proposition of law that whenever *mala fide* or malice or biasness is alleged, the person concern must be made party.

However, I do not concur with the submissions of learned senior counsel for the appellant that respondent no.4 is necessary party in the instant appeal for following reasons.

10. Firstly, the only relief sought by the appellant, in the appeal, is to set-aside and quash the impugned orders and no direction has been sought against respondent no.4 for the alleged *mala fide*, malice or biasness.

Secondly, from a bare perusal of the written objection and relevant paragraphs of memo of appeal it is crystal clear that the allegation of appellant is that the entire eviction proceedings have been conducted without following, and in violation of, the provisions of the Act and Rules framed thereunder and also the procedure laid down by Superior Courts. However, there is no material on record, and even

there is no allegation, to show that the conduct of respondent no.3 was willful to do some undue favour to the respondent for some illegal gains or for some ulterior motives. There can be error in passing an order or judgment due to ignorance of provisions of law or ignorance of precedence. However, same cannot be ground to allege *mala fide* or malice or biasness and to seek impleadment of the adjudicating authority in personal capacity, as has been done in the instant case, more particularly, when no direction is sought against respondent no.4. I am of the view that provisions for appeal, revision, etc. are meant to correct such errors by the Superior Courts, which are committed by the Trial Courts or other adjudicatory authorities.

In view of above discussion, I am of the view that respondent no.4 is not a necessary party to the instant appeal. **Hence the name of respondent no.4 is hereby struck out from the array of respondents.**

Appellant is directed to file Amended Memo of Parties (i.e. amended Cause Title).

11. The observations made in the instant order are made only for disposal of the instant application and has no bearing on merit of the allegation made in memo of appeal. Observations made herein should not be construed, as if, that the eviction proceeding has been conducted without following, or in violation, of the provisions of Act or Rule

made thereunder, or precedence laid down by Superior Courts; same shall be determined at the time of final hearing of the appeal.

12. The application under Order 1 Rule 10(2) of CPC is partly allowed.

The instant Misc. (J) Case stands disposed.

Addl. District Judge No.1
Kamrup (M), Guwahati