



GAHC010007352014

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

**Case No. : WP(C)/1542/2014**

SMTI NILIMA KALITA  
W/O- LT. KRISHNA KANTA KALITA, R/O- S.B. HOUSING SOCIETY, TRIPURA  
ROAD, BELTOLA, GUWAHATI, DIST.- KAMRUP M, ASSAM.

VERSUS

THE HOUSING and URBAN DEVELOPMENT CORPORATION LIMITED and 2  
ORS  
A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956 HAVING  
REGISTERED OFFICE HUDCO BHAWAN, INDIA HABITAT CENTRE, CORE- 7  
-A, LODHI ROAD, NEW DELHI 110003 DELHI, INDIA, REP. BY ITS  
CHAIRMAN CUM MANAGING DIRECTOR.

2:HOUSING and URBAN DEVELOPMENT CORPN. LTD.  
REGIONAL OFFICE  
OPP. PUNJAB NATIONAL BANK  
ZOO ROAD  
GANESHGURI  
GHY- 5  
REP. BY ITS REGIONAL MANAGER.

3:S.B. HOUSING CO-OPERATIVE SOCIETY LTD.  
TRIPURA ROAD  
KHANAPARA  
GHY- 22  
REP. BY ITS SECY

**Advocate for the Petitioner : MR.D CHOUDHURY**

**Advocate for the Respondent : MR.A KHANIKAR**



**BEFORE  
HONOURABLE MR. JUSTICE SUMAN SHYAM**

**Date of hearing : 05.10.2023.**

**Date of judgment : 05.10.2023.**

**JUDGMENT & ORDER (Oral)**

Heard Mr. D. Choudhury learned counsel appearing for the writ petitioner. Also heard Mr. A. Khanikar, learned counsel appearing on behalf of the respondents, who submits that since the brief was originally entrusted to his senior Late B. Kalita and since the HUDCO has not responded to the request made by him seeking instruction in the matter, he does not have any submission to make in this case.

2. The writ petitioner herein is the widow of Late Krishna Kanta Kalita, who had availed a loan of Rs.1,46,500/- from the respondent No.3 Society for purchase of a flat. Late Krishna Kanta Kalita was a shareholder in the respondent No.3 Housing Society and therefore, had availed financial assistance from the respondent No.3 to the extent indicated above for purchasing a flat. The respondent No.3 had obtained financial loan from the respondent No.2 for onward disbursement to its shareholders for the purpose of purchase of residential flats by the members of the Society. The grievance of the petitioner is that although her husband had repaid the entire loan amount with interest way back in the year 1994 and the "no dues certificate" was also issued by the respondent No.3 in favour of her deceased husband on 28.10.1994, the respondent Nos.1 and 2 are yet to issue the "no dues certificate" to her although



the aforesaid fact has been duly intimated to the said authorities.

3. In support of the contentions made in the writ petition, Mr. Choudhury has invited the attention of this Court to the "no dues certificate" issued by the respondent No.3 in favour of the deceased husband of the petitioner on 28.10.1994 wherein, it has been categorically mentioned that Late Krishna Kanta Kalita i.e. the husband of the writ petitioner had made full and final payment of his outstanding HUDCO loan amount to the Society. The receipt of the said information was acknowledged by the Assistant Finance Officer of HUDCO by the letter dated 12.06.1995 addressed to the Secretary of the respondent No.3 Society wherein, certain additional information, regarding the Scheme number under which the flat was allotted to Late Krishna Kanta Kalita and the loan amount sanctioned to him including the date of final repayment, had been sought. On receipt of the aforesaid communication dated 12.06.1995 the Secretary of the respondent No.3 Society had duly furnished the requisite information on 25.07.1995 wherein it has been categorically mentioned that the sum of Rs.1,46,500/-, including the balance dues of Rs.40,195/- was realized from the shareholder, viz., Krishna Kanta Kalita vide Cheque dated 03.11.1994. The Secretary of the respondent No.3 Society had also issued a separate communication dated 26.07.1995 addressed to the Regional Chief of the respondent No.2 intimating that the respondent No.3 would have no objection if "no dues certificate" is issued to Krishna Kanta Kalita from their end. Notwithstanding the same and despite having received all the communications from the respondent No.3, no action was initiated by the respondent Nos.1 and 2 to issue the "no dues certificate" to the petitioner or her deceased husband. Under the circumstances, the

writ petitioner seeks a writ of mandamus directing the respondents to do the needful.

4. It appears from the materials on record that some of the shareholders of the respondent No.3 Society had defaulted in repayment of the loan as a result of which, the respondent No.2 had instituted a proceeding numbered and registered as O.A. No.182/1997 before the Debts Recovery Tribunal, Guwahati at Ulubari praying for issuance of a Certificate of Recovery against the respondent No.3 and its Chairman and Secretary. By the judgment dated 08.05.2003 the aforesaid Original Application was allowed whereby, Certificate of Recovery was issued in connection with O.A. No.182/1997 for an amount of Rs.1,40,14,309/- to be jointly recovered from all the three defendant in the O.A. In the aforesaid order it was further clarified that the Certificate of Recovery would exclude those flat owners in respect of whom the Housing Society had already issued "no dues certificate".

5. By filing a joint counter-affidavit the respondent Nos.1 and 2 have admitted that the respondent No.3 had recommended issuance of "no dues certificate" in favour of the deceased husband of the petitioner. However, since the husband of the petitioner had not made direct repayment of loan to the HUDCO, "no dues certificate" could not be issued.

6. It is to be noted herein that it is the admitted position of fact that the deceased husband of the petitioner had taken the loan from the respondent No.3 and not from the respondent Nos.1 and 2. Therefore, if the reason furnished by the respondent Nos.1 and 2 in the counter-affidavit is to be accepted, then what would logically follow is that since the petitioner's husband did not avail any loan directly

from the respondent Nos.1 and 2 hence, the said respondents also cannot have any claim against the petitioner or her deceased husband pertaining to the loan amount or the flat purchased by availing the loan. It is not the stand of the respondents that any amount is individually due either from the writ petitioner or on account of her deceased husband. If that be so, considering the fact that the respondent No.3 Society has already issued a "no dues certificate" to the petitioner and had also intimated the said fact to the respondent Nos.1 and 2, there can be no doubt about the fact that the petitioner would not have any liability at this point of time pertaining to the loan availed by her deceased husband. In other words, regardless of whether "no dues certificate" is issued by the respondent Nos.1 and 2 or not, in view of the certificate issued by the respondent No.3 Society and considering the stand taken by the respondent Nos.1 and 2 in the counter-affidavit, the question of respondent Nos.1 and 2 having any future claim against the petitioner in respect of the loan amount of Rs.1,46,500/- would not arise in the eyes of law. The said position stands further fortified in view of the specific observations made by the learned Debts Recovery Tribunal in the Judgment and Order dated 08.05.2003 passed in O.A. No.182/1997.

7. For the reasons stated herein above, this writ petition succeeds and is hereby allowed. The writ petition is disposed of by clarifying that pursuant to the repayment of the loan amount to the respondent No.3, no future claim by the respondent Nos.1, 2 and 3 against the petitioner pertaining to the aforesaid loan amount would be maintainable under the law, regardless of whether the "no dues certificate" is issued by the respondent Nos.1 and 2 or not. In other words, the liability of the writ petitioner pertaining to the loan in question shall be deemed to have been fully discharged



upon repayment of the loan by her husband to the respondent No.3.

The writ petition stands closed.

**JUDGE**

*T U Choudhury/Sr.PS*

**Comparing Assistant**