

REPORTABLE

GAHC010238232022



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

WP(C)/638/2018

KUDDUS ALI
S/O. LT. FAZIR UDDIN @ FARIZ UDDIN @ FARIZ ALI @ SURAZ ALI @ FARUZ
UDDIN
VILL. NICHUKA
P.S. BARPETA ROAD
DIST. BARPETA
ASSAM

VERSUS

THE UNION OF INDIA AND ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF HOME AFFAIRS
SHASTRI BHAWAN
NEW DELHI.

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY.
3:THE DY. COMMISSIONER

BARPETA
P.O. AND DIST. BARPETA
ASSAM

4:THE SUPDT. OF POLICE (B)

BARPETA

P.O. AND DIST. BARPETA

ASSAM

5:THE ELECTION COMMISSION OF INDIA

NEW DELHI

TO BE REP. BY CHIEF ELECTION COMMISSIONER OF INDIA.

6:THE STATE COORDINATOR OF NATIONAL REGISTRATION

ASSAM

BHANGAGARH

LACHIT NAGAR

GUWAHATI

Advocate for : DR. B AHMED

Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND ORS.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT & ORDER (CAV)

13.12.2023

(AM Bujor Barua, J)

Heard Mr. N Haque, learned counsel for the petitioner in WP(C)No.638/2018. Also heard Mr. D Mazumdar, learned Additional Advocate General assisted by Mr. D Nath, learned Senior Government Advocate for the State of Assam, Ms. A Verma, learned counsel for the authorities in the Home and Border Areas Department, Mr. RKD Choudhury, learned DSGI for the Ministry of Home Affairs Government of India, Mr. AI Ali, learned counsel for the Election Commission of India and Ms. U Das, learned Government Advocate for the respective Deputy Commissioners.

2. While hearing the learned counsel for the writ petitioner on its own merit, a probable situation had arisen that there is a possibility that on the merits of the individual writ petitions, where the writ petition is against the opinion rendered by the Foreigners' Tribunals concerned on the matters as to whether the writ petitioner is Indian citizens under the law or they are foreigners who entered the State of Assam from the specified territory on or after 25.03.1971, the petitioners may be declared to be foreigners.

In such situation, a further question for determination has also arisen that if a given person is declared to be a foreigner who had entered the State of Assam from the specified territory on or after 25.03.1971, what would be his rights and entitlements for the period for which he will remain in India, more particularly, in the State of Assam, as well as, what rights and entitlements which otherwise are available to a citizen of the country would not be available to such declared foreigner.

3. As the determination of the rights and entitlements as may be applicable to a declared foreigner, *vis a vis* such rights and entitlements which otherwise are available to a citizen of a country, but not to a declared foreigner, may have a far reaching consequence in many such pending proceedings where a petitioner-proceedee would be required to be declared to be a foreigner, we also gave liberty to any such learned counsel who may have appeared in such pending proceedings to also make their submissions on the issue so that a more comprehensive determination can be made. In such circumstance, Mr. HRA Choudhury learned Senior Advocate, Ms. D Ghosh learned counsel and Mr. AW Aman, learned counsel who appears for the litigants in such proceedings came forward to make their respective submissions.

4. In WP(C)No.638/2018 the petitioner-proceedee Kuddus Ali was referred to

the Foreigners Tribunal No.2 Barpeta for rendering an opinion as to whether the petitioner entered the State of Assam on or after 25.03.1971, resulting in the registration of F.T.(2nd Tribunal) Case No.1057/2017. The Tribunal rendered an opinion dated 19.12.2017, declaring the petitioner to be a foreigner who entered the State of Assam from the specified territory.

5. In the writ proceeding, the petitioner relies upon the voters list of 1985, Annexure-3(a) of village Nichuka, P.S. Sarbhog, Mouza Damaka Chakabousi, in the present Barpeta district, which contains the name of Soroj Uddin, son of Abed at Sl.No.600, Rahiman Nessa wife of Soroj at Sl.No.601, Mamud Ali son of Soroj at Sl.No.602, Halima Khatun wife of Mamud at Sl.No.603 and all are shown to be residing in the same House No.192. As per the Annexure 3(b) at page 29 of the writ petition, the petitioner relies upon the voters list of 1989 of village Nichuka, P.S. Sarbhog, Mouza Damaka Chakabousi in the present Barpeta district, which contains the name of Aakash Ali son of Samsher at Sl.No.709 and that of Jahura Khatun wife of Aakash at Sl.710 and both are shown to be residing in the same House No. 232. But the voters list available on the case record, at page 17, which is a voters list of 1989 of village Nichuka, P.S. Sarbhog, Mouza Damaka Chakabousi in the present Barpeta district contains the name of Faruj Uddin, son of Abed at Sl.No.711, Rahima Khatun wife of Faruj at Sl.No.712 and that of Kuddus Ali son of Faruj at Sl.713 and Jamila, wife of Kuddus Ali 714, and all of them are shown to be residing in the same House No.233. It appears that perhaps due to inadvertence the petitioner had annexed the voters list of 1989 of village Nichuka containing the name of Aakash Ali and Jahura Khatun in place of the voters list of 1989 also of village Nichuka which contain the names of Faruz Uddin, Rahima Khatun and Kuddus Ali. Accordingly, we accept the voters list of 1989 of village Nichuka containing the names of

Faruz Uddin, Rahima Khatun and Kuddus Ali to be the one relevant for the petitioner for this writ petition.

6. The petitioner further relies upon certain revenue paying receipts of 06.05.1969, 19.04.1972, 26.11.1965, where in respect of some land at Nichuka, land revenue was paid by Fariz Uddin. The petitioner claims that Furuz Uddin, son of Abed of the 1989 voters list of village Nichuka and Fariz Uddin, from whom the land revenue was received, as per the aforesaid revenue paying receipts, are one and the same person and therefore, when the existence of Fariz Uddin in the State of Assam, as on 06.05.1969, can be established, it can also be established that Furuz Uddin, son of Abed of the 1989 voters list of village Nichuka, is also an Indian citizen and, therefore, Kuddus Ali, being the son of Furuz Uddin as per the voters list of 1989 of village Nichuka, the burden under Section 9 of the Foreigners Act 1946, has been discharged that he is a citizen of India.

7. We have examined the voters list of village Nichuka of the years 1985 and 1989 as well as the revenue paying receipts of 06.05.1969, and some other subsequent dates of a land at village Nichuka.

8. The voters list of 1985 contains the name of Soroj Uddin, son of Abed with Rahimun Nessa as his wife and Mamud Ali as his son, whereas, the voters list of 1989 contains the name of Faruz Uddin, son of Abed with Rahima Khatun as his wife and Kuddus Ali as his son. No material is available to arrive at any conclusion that Soroj Uddin son of Abed of the 1985 voters list of village Nichuka and Faruz Uddin, son of Abed of the 1989 voters list also of village Nichuka are one and the same person. Although it can be explained that Soroj Uddin and Faruz Uddin are actually the same person with an incorrect depiction

of the spelling of the name, where, either Soroj Uddin would be correct or Faruz Uddin will be correct, but the name of the wives also happens to be different inasmuch as, the wife of Soroj Uddin is Rahimun Nessa, whereas, wife of Furuz Uddin is Rahima Khatun. But, more importantly, as per the voters list of 1985 of village Nichuka, the son of Soroj Uddin is Mamud Ali, whereas as per the voters list of 1989 of the same village, the son of Furuz Uddin is Kuddus Ali. In view of the persistent variations and inconsistencies in the names of the person itself, in the names of their respective wives as well as in the names of their respective sons and in the absence of any further material, a mere oral explanation would be unacceptable. Further, if the explanation would have to be accepted, a further question would remain as to which between the two names of Soroj Uddin and Furuz Uddin will be the actual name.

9. In the absence of any material, it would be unsafe to accept that Fariz Uddin, without any further description like the name of his father etc., of Nichuka, of the revenue receipt dated 06.05.1969, and Furuz Uddin son of Abed of the voters list of 1989 of village Nichuka are one and the same person. If Fariz Uddin of the revenue receipt dated 06.05.1969 of Nichuka and Furuz Uddin, son of Abed of village Nichuka, cannot be said with certainty that they are one and the same person, even if the name of Kuddus Ali son of Furuz Uddin and that of Furuz Uddin son of Abed appears in the same voters list of 1989 of village Nichuka, but as Furuz Uddin son of Abed himself had not established his citizenship, therefore, Kuddus Ali son of Furuz Uddin also cannot be declared to be an Indian citizen.

10. The Tribunal in its opinion dated 19.12.2017, had also gone into the aspect that if Furuz Uddin, son of Abed of the 1989 voters list of village Nichuka is Fariz Uddin of the revenue paying receipt dated 06.05.1969, are one and the

same person, there cannot be any reason as to why his name did not appear in any of the voters list of village Nichuka prior to 1989, more particularly, in the years 1970, 1977 etc. We do not notice any illegality or unreasonableness in the aforesaid view of the Tribunal.

11. WP(C)No.638/2018 is accordingly dismissed. The writ petitioner proceedee Kuddus Ali would have to be declared a foreigner who entered the State of Assam from the specified territory after 25.03.1971.

12. Upon declaring the petitioner proceedee Kuddus Ali to be a foreigner who entered the State of Assam from the specified territory after 25.03.1971, a question would remain, as to what would be his rights and entitlements as long as he remains in the territory of India. In other words, whether the declared foreigner would be entitled to all such rights and entitlements as may be available to a citizen of India or the rights and entitlements that may be available to him would be restricted, curtailed or circumscribed in any manner.

13. The course of action undertaken by the respondent authorities in respect of a declared foreigner is to keep the person under detention in an interment or detention centre by referring to the provisions of Clause 3 (13) of the Foreigners (Tribunals) Order 1964 (for short, the Order of 1964). Clause 3 (13) of the Order of 1964 is as extracted:

“3(13). Where the proceedee fails to produce any proof in support of his or her claim that he or she is not a foreigner and also not able to arrange for bail in respect of his or her claim, the proceedee shall be detained and kept in internment or detention centre.”

14. Clause 3 (13) of the Order of 1964, *inter alia*, provides that where the proceedee fails to produce any proof in support of his or her claim that he or

she is not a foreigner and also not able to arrange for bail in respect of his or her claim, the proceedee shall be detained and kept in interment or detention centre. Clause 3(13) is circumscribed to the extent that the declared foreigner would be detained or kept in interment or detention centre, upon a failure to arrange for bail. In other words, we have to understand that if a foreigner can arrange for bail, the jurisdiction conferred under Clause 3(13) to keep him or her in detention would not be available.

15. Even if a declared foreigner is kept under detention in an interment or detention centre, irrespective of whether bail could be arranged or not, but the same is also not a permanent action to be taken in respect of the rights and entitlements of a declared foreigner. More so, in view of the orders passed by the Hon'ble Supreme Court dated 13.04.2020 all such declared foreigners detainees who are kept in the detention centers are required to be released, if necessary, even on personal bonds.

16. In the circumstance, whether or not a declared foreigner is kept in detention upon being so declared to be a foreigner the ultimate situation would be that he would be released on bail or personal recognizance bond. Upon being so released, there is hardly any control of the State authorities as regards the whereabouts of such declared foreigners, their activities, and the kinds of rights and entitlements they continue to enjoy in the State.

17. Such situation where even if a person who is declared to be a foreigner ultimately is given the opportunity to again go back to remain unidentifiable, mingle amongst the public and continue to enjoy all such rights, privileges and

entitlements, the same would render the entire procedure and process of making a reference to the Tribunals and have a person to be declared to be a foreigner to become fruitless, in vain and without any purpose.

18. The provisions of law provides for deportation of a foreigner to the country of the origin, which perhaps, would be a permanent solution as to what is to be done to a person who is declared to be a foreigner. But we have been told by the learned counsel appearing for the respondents that the process of deporting a declared foreigner in respect of illegal migrants from the specified territory has its own inhibitions for making it implementable. Lack of appropriate agreement between the Government of India and the Government of Bangladesh, which is the specified territory, is stated to be one of the major reasons as to why the process of deportation is not successful and secondly, it is also stated that the Government of Bangladesh is unwilling to accept that the declared foreigner is a person originally from Bangladesh.

19. In the above circumstance, even if a person is declared to be a foreigner upon being subjected to a reference to the Foreigners Tribunal, the person continues to remain in the State of Assam or in any other part of the country. Had it been a case where such declared foreigners are one among few, the matter may not have assumed a serious proportion, but when the numbers of such persons either declared or suspected to be foreigners being illegal migrants from the specified territory are unaccountable, we cannot remain silent and be complacent as regards the security of the nation, the adverse impact on the demographic pattern in the State in relation to the ethnicity and the rights of the indigenous persons who are citizens of the country.

20. In this respect, we take note of certain provisions, propositions, and existence of facts as taken note of by the Hon'ble Supreme Court in the judicial pronouncement on the issue of illegal migrants entering the State of Assam and their impact and implications.

21. In the judgment of the Supreme Court rendered in *Assam Sanmilita Mahasangha & Ors Vs. Union of India & Ors* reported in (2015) 3 SCC 1, it has been provided as under:

“2. It all began when the Burmese ceded Assam to the British on 24-2-1826 as per the Treaty of Yandabo, thus bringing to an end Ahom rule in Assam which had begun sometime in the 13th century. The British annexed Assam and placed it as an administrative unit of the Bengal Province. As early as 1931, C.S. Mullan, the Census Superintendent in his census report stated:

“Probably the most important event in the province during the last 25 years—an event, moreover, which seems likely to alter permanently the whole feature of Assam and to destroy the whole structure of Assamese culture and civilization has been the invasion of a vast horde of land-hungry immigrants mostly Muslims, from the districts of East Bengal. ... wheresoever the carcass, there the vultures will gather together” (Politics of Migration by Dr Manju Singh, Anita Publications, Jaipur, 1990, Page 59)

5. At this stage, the Immigrants (Expulsion from Assam) Act, 1950 was enacted to protect the indigenous inhabitants of Assam. The Statement of Objects and Reasons of this Act says—

“During the last few months a serious situation had arisen from the immigration of a very large number of East Bengal residents into Assam. Such large migration is disturbing the economy of the Province, besides giving rise to a serious law and order problem. The Bill seeks to confer necessary powers on the Central Government to deal with the situation.”

6. In pursuance of this object, Sections 2 and 4 of this Act which also have a bearing on some of the issues raised in these petitions state as follows:

“2. Power to order expulsion of certain immigrants.—If the Central Government is of opinion that any person or class of persons, having been ordinarily resident in any place outside India, has or have, whether before or after the commencement of this Act, come into Assam and that the stay of such person or class of persons in Assam is detrimental to the interests of the general public of India or of any Section thereof or of

any Scheduled Tribe in Assam, the Central Government may by order—

(a) direct such person or class of persons to remove himself or themselves from India or Assam within such time and by such route as may be specified in the order; and

(b) give such further directions in regard to his or their removal from India or Assam as it may consider necessary or expedient:

Provided that nothing in this Section shall apply to any person who on account of civil disturbances or the fear of such disturbances in any area now forming part of Pakistan has been displaced from or has left his place of residence in such area and who has been subsequently residing in Assam.

4. Power to give effect orders, etc.—Any authority empowered by or in pursuance of the provisions of this Act to exercise any power may, in addition to any other action expressly provided for in this Act, take or cause to be taken such steps, and use or cause to be used such force, as may in its opinion be reasonably necessary for the effective exercise of such power.”

7. It was during the census of 1951 that a National Register of Citizens was prepared under a directive of the Ministry of Home Affairs containing information village-wise of each and every person enumerated therein. Details such as the number and names of persons, the houses or holdings belonging to them, father's name or husband's name, nationality, age, the means of livelihood were all indicated therein.

8. Between 1948 and 1971, there were large scale migrations from East Pakistan to Assam. As is well known, West Pakistan commenced hostilities against East Pakistan on 25-3-1971 culminating in the war which dismembered the two parts of Pakistan and in which a new nation, Bangladesh, was born. It is interesting to note that immediately after the successful culmination of the war in Bangladesh, on 19-3-1972, a treaty for friendship, co-operation and peace was signed between India and Bangladesh. Article 8 of the said Treaty is in the following terms:

“In accordance with the ties of friendship existing between the two countries each of the High Contracting Parties solemnly declares that it shall not enter into or participate in any military alliance directed against the other party. Each of the High Contracting Parties shall refrain from any aggression against the other party and shall not allow the use of its territory for committing any act that may cause military damage to or constitute a threat to the security of the other High Contracting Party”

12. It will be seen that as part of the Assam Accord, a huge number of illegal migrants were made deemed citizens of India. It is interesting to note that Parliament has not enacted any law pertaining to refugees from other countries. Refugee status can be granted and has been granted in India through executive orders passed by the Central Government. In any case, Section 6-A did not merely rest content with granting refugee status to those who were illegal migrants from East Pakistan but went on to grant them the benefit of citizenship of India so that all persons who had migrated before 1966 and all persons who migrated before 25-3-1971 respectively were to become citizens of India either immediately or as is mentioned by the Act after a period of 10 years once

there has been a determination that they have in fact settled in India between 1966 and 1971.

13. On 8-11-1998, Lieutenant General S.K. Sinha, the then Governor of Assam, submitted an extensive report to the then President of India on the grave threat posed by the influx of people from Bangladesh to Assam. He said:

“The dangerous consequences of large scale illegal migration from Bangladesh, both for the people of Assam and more for the Nation as a whole, need to be empathetically stressed. No misconceived and mistaken notions of secularism should be allowed to come in the way of doing so.

As a result of population movement from Bangladesh, the spectre looms large of the indigenous people of Assam being reduced to a minority in their home State. Their cultural survival will be in jeopardy, their political control will be weakened and their employment opportunities will be undermined.

The silent and invidious demographic invasion of Assam may result in the loss of the geo-strategically vital districts of lower Assam. The influx of illegal migrants is turning these districts into a Muslim majority region. It will then only be a matter of time when a demand for their merger with Bangladesh may be made. The rapid growth of international Islamic fundamentalism may provide the driving force for this demand. In this context, it is pertinent that Bangladesh has long discarded secularism and has chosen to become an Islamic State. Loss of lower Assam will sever the entire land mass of the North East, from the rest of India and the rich natural resources of that region will be lost to the Nation.”

16. On 14-7-2004, in response to an unstarred question pertaining to deportation of illegal Bangladeshi migrants, the Minister of State, Home Affairs, submitted a statement to Parliament indicating therein that the estimated number of illegal Bangladeshi immigrants into India as on 31-12-2001 was 1.20 crores, out of which 50 lakhs were in Assam.”

22. In the judgment of the Hon’ble Supreme Court rendered in *Sarbananda Sonowal Vs. Union Of India* reported in (2005) 5 SCC 665, it has been provided as under:

“17. A copy of the report dated 8-11-1998 sent by Governor of Assam, Lt. Gen. S.K. Sinha (Retired), former Deputy Chief of Army Staff, has also been filed along with this application. The report is a long and comprehensive one which was prepared after thorough inspection of border areas and districts, discussion with Indian Ambassador in Bangladesh and talks with political leaders. Some portions of the report are being reproduced below:

“1. The unabated influx of illegal migrants from Bangladesh into Assam

and the consequent perceptible change in the demographic pattern of the State has been a matter of grave concern. It threatens to reduce the Assamese people to a minority in their own State, as happened in Tripura and Sikkim.

2. Illegal migration into Assam was the core issue behind the Assam student movement. It was also the prime contributory factor behind the outbreak of insurgency in the State. Yet we have not made much tangible progress in dealing with this all important issue.

3. There is a tendency to view illegal migration into Assam as a regional matter affecting only the people of Assam. Its more dangerous dimensions of greatly undermining our national security, is ignored. The long cherished design of Greater East Pakistan/Bangladesh, making inroads into strategic land link of Assam with the rest of the country, can lead to severing the entire land mass of the North-East, with all its rich resources from the rest of the country. They will have disastrous strategic and economic consequences.

MIGRATION INTO ASSAM

HISTORICAL BACKGROUND

7. Failure to get Assam included in East Pakistan in 1947 remained a source of abiding resentment in that country. Zulfikar Ali Bhutto in his book 'Myths of Independence' wrote — 'It would be wrong that Kashmir is the only dispute that divides India and Pakistan, though undoubtedly the most significant. One at least is nearly as important as the Kashmir dispute, that of Assam and some districts of India adjacent to East Pakistan. To these Pakistan has very good claims.' Even a pro-India leader like Sheikh Mujibur Rahman in his book 'Eastern Pakistan: Its Population and Economics' observed, 'Because Eastern Pakistan must have sufficient land for its expansion and because Assam has abundant forests and mineral resources, coal, petroleum, etc. Eastern Pakistan must include Assam to be financially and economically strong.'

CONTRIBUTORY FACTORS

10. Besides the above considerations, there are other contributory factors facilitating infiltration from Bangladesh. Ethnic, linguistic and religious commonality between the illegal migrants and many people on our side of the border enables them to find shelter. It makes their detection difficult. Some political parties have been encouraging and even helping illegal migration with a view to building vote banks. These immigrants are hardworking and are prepared to work as cheap labour and domestic help for lower remuneration than the local people. This makes them acceptable. Moreover, with corruption being all pervasive, corrupt officials are bribed to provide help. Recently, a racket has been busted in Lakhimpur. Four individuals were found to have been providing

forged citizenship certificates and other documents to illegal migrants for the last 14 years.

ILLEGAL MIGRANTS

15. ... Mr Mulan described this as invasion using military terminology which in present geostrategic context, underscores the strategic aspect of the problem. It is unfortunate that to this day, after half a century of independence, we have chosen to remain virtually oblivious to the grave danger to our national security arising from this unabated influx of illegal migrants. Third, the prophecy that except the Sibsagar district, the Assamese people will not find themselves at home in Assam, is well on its way to becoming true as reflected by the present demographic pattern of Assam.

16. Mr Inderjit Gupta, the then Home Minister of India stated in Parliament on 6-5-1997 that there were 10 million illegal migrants residing in India. Quoting Home Ministry/Intelligence Bureau sources, the 10-8-1998 issue of India Today has given the breakdown of these illegal migrants by the States:

<i>West Bengal</i>	<i>5.4 million</i>
<i>Assam</i>	<i>4 million</i>
<i>Tripura</i>	<i>0.8 million</i>
<i>Bihar</i>	<i>0.5 million</i>
<i>Maharashtra</i>	<i>0.5 million</i>
<i>Rajasthan</i>	<i>0.5 million</i>
<i>Delhi</i>	<i>0.3 million</i>
<i>Making a total of</i>	<i>10.83 millions</i>

Community wise growth Assam

India

	<i>Hindus</i>	<i>Muslims</i>	<i>Hindus</i>	<i>Muslims</i>
<i>(1) 1951-1961</i>	<i>33.71</i>	<i>38.35</i>	<i>20.29</i>	<i>25.61</i>
<i>(2) 1961-1971</i>	<i>37.17</i>	<i>30.99</i>	<i>23.72</i>	<i>30.85</i>
<i>(3) 1971-1991</i>	<i>41.89</i>	<i>77.42</i>	<i>48.38</i>	<i>55.04</i>

EXPLANATORY NOTE

... In the case of Muslims the Assam growth rate was much higher than the All India rate. This suggests continued large-scale Muslim illegal migration into Assam.

(d) Muslim population in Assam has shown a rise of 77.42 per cent in 1991 from what it was in 1971. Hindu population has risen by nearly 41.89 per cent in this period.

(e) Muslim population in Assam has risen from 24.68 per cent in 1951 to 28.42 per cent in 1991. As per 1991 census four districts (Dhubri, Goalpara, Barpeta and Hailakandi) have become Muslim majority districts. Two more districts (Nagaon and Karimganj) should have become so by 1998 and one district Morigaon is fast approaching this position.

20. The growth of Muslim population has been emphasised in the previous paragraph to indicate the extent of illegal migration from Bangladesh to Assam because as stated earlier, the illegal migrants coming into India after 1971 have been almost exclusively Muslims.

21. Pakistan's ISI has been active in Bangladesh supporting militant movement in Assam. Muslim militant organisations have mushroomed in Assam and there are reports of some 50 Assamese Muslim youths having gone for training to Afghanistan and Kashmir.

CONSEQUENCES

22. The dangerous consequences of large-scale illegal migration from Bangladesh, both for the people of Assam and more for the nation as a whole, need to be emphatically stressed. No misconceived and mistaken notions of secularism should be allowed to come in the way of doing so.

23. As a result of population movement from Bangladesh, the spectre looms large of the indigenous people of Assam being reduced to a minority in their home State. Their cultural survival will be in jeopardy, their political control will be weakened and their employment opportunities will be undermined.

24. The silent and invidious demographic invasion of Assam may result in the loss of the geostrategically vital districts of lower Assam. The influx of these illegal migrants is turning these districts into a Muslim majority region. It will then only be a matter of time when a demand for their merger with Bangladesh may be made. The rapid growth of international Islamic fundamentalism may provide for driving force for this demand. In this context, it is pertinent that Bangladesh has long discarded secularism and has chosen to become an Islamic State. Loss of lower Assam will sever the entire land mass of the North-East, from the rest of India and the rich natural resources of that region will be lost to the Nation."

51. *The foremost duty of the Central Government is to defend the borders of the country, prevent any trespass and make the life of the citizens safe and secure. The Government has also a duty to prevent any internal disturbance and maintain law and order. Kautilya in his masterly work 'The Arthashastra' has said that a king had two responsibilities to his State, one internal and one external, for which he needed an army. One of the main responsibilities was raksha or protection of the State from external aggression. The defence of the realm, a constant preoccupation for the king, consisted not only of the physical defence of the kingdom but also the prevention of treachery, revolts and rebellion. The physical defensive measures were the frontier posts to prevent the entry of undesirable aliens and forts in various parts of the country. (Arthashastra by Kautilya — translated by Shri L.N. Rangarajan, who was in Indian Foreign Service and ambassador of India in several countries — published by Penguin Books, 1992 Edn., p. 676.) The very first entry, namely, Entry 1 of List I of the Seventh Schedule is:*

“1. Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation.”

In fact Entries 1 to 4 of List I of Seventh Schedule mainly deal with armed forces. Article 355 of the Constitution of India reads as under:

“355. Duty of the Union to protect States against external aggression and internal disturbance.—It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution.”

52. *The word “aggression” is a word of very wide import. Various meanings to the word have been given in the dictionaries, like, “an assault, an inroad, the practice of setting upon anyone; an offensive action or procedure; the practice of making attacks or encroachments; the action of a nation in violating the rights especially the territorial rights of another nation; overt destruction; covert hostile attitudes”.*

53. *The word “aggression” is not to be confused only with “war”. Though war would be included within the ambit and scope of the word “aggression” but it comprises many other acts which cannot be termed as war. In Kawasaki v. Bantham S.S. Co. [(1938) 3 All ER 80 (KBD)] the following definition of “war” as given in Hall on International Law has been quoted (All ER p. 82 D) with approval:*

“When differences between States reach a point at which both parties resort to force, or one of them does acts of violence, which the other chooses to look upon as a breach of the peace, the relation of war is set up, in which the combatants may use regulated violence against each other, until one of the two has been brought to accept such terms as his enemy is willing to grant.”

54. *In Introduction to International Law by J.G. Starke (Chapter 18) it is said that war in its most generally understood sense is a contest between two or more States primarily through their armed forces, the ultimate purpose of each contestant or each contestant group being to vanquish the other or others and impose its own conditions of peace. With the passage of time, the nature of war itself has become more distinctly clarified as a formal status of armed hostility, in which the intention of the parties, the so-called animus belligerendi may be a decisive factor. The modern war may involve not merely the armed forces of belligerent States but their entire population. In Essays on Modern Law of War by L.C. Green, the author has said that in accordance with traditional international law, "war is a contention between two or more States through their armed forces, for the purpose of overpowering each other and imposing such conditions of peace as the victor pleases". The framers of the Constitution have consciously used the word "aggression" and not "war" in Article 355.*

55. *Article 1 of Chapter 1 of the Charter of the United Nations gives the purposes of the United Nations and the first is to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustments or settlement of international disputes or situations which might lead to a breach of peace. On account of use of expression "acts of aggression" it was thought necessary to define "aggression" and explain what it exactly means. The International Law Commission defined the term "aggression" as any act of aggression including the employment of armed forces by a State against another State for any purpose other than national or collective self-defence or any decision by a competent organ of the United Nations. But in the 1954 Assembly, there was opposition to this definition. In his book Conflict through Consensus, Julius Stone (1977 Edn.), the author, has described in great detail how after twenty years of discussion by a Special Committee on "aggression" a consensus was arrived at and an agreed definition was approved by the United Nations Assembly on 12-4-1974 vide Resolution No. 3314 (XXIX). The Soviet Union pressed for inclusion of "ideological aggression" and also "the promotion of the propaganda of fascist-Nazi views, racial and national exclusiveness, hatred and contempt for other peoples". Iran pressed for inclusion of "indirect aggression, of intervention in another State's internal or foreign affairs", including "direct or indirect incitement to civil war, threats to internal security, and incitement to revolt by the supply of arms or by other means". Many States wanted the definition to include "economic aggression". Shri M. Jaipal of India advocated that in view of "modern techniques of coercion" the definition of aggression should have included "economic pressures" and "interventionary and subversive operations". (See p. 97 of the book.) Julius Stone has quoted*

the following comments of Charles de Visscher, on the notion of aggression: "aggression, in the present state of international relations, is not a concept that can be enclosed in any definition whatsoever: the finding that it has occurred in any concrete case involves political and military judgments and a subjective weighing of motives that make this in each instance a strictly individual matter". Rapporteur Spiropoulos explained to the International Law Commission that a determination of aggression "can only be given in each concrete case in conjunction with all constitutive elements of the concept of the definition". According to the author what needs also to be kept in mind is that this is precisely because the "aggression" notion is a fact value complex of such vast range. (See pp. 108-09 of the book.) Therefore, "aggression" is a word of very wide import having complex dimensions and would to a large extent depend upon fact situation and its impact.

56. *There was a large-scale influx of persons from the then East Pakistan into India before the commencement of December 1971 Indo-Pak War. On 3-11-1971, one month before the actual commencement of the war, Dr. Nagendra Singh, India's representative in the Sixth Committee of the General Assembly on the Definition of Aggression, made a statement, wherein he said:*

"... The first consideration, in the view of the Indian Delegation, is that aggression must be comprehensively defined. Though precision may be the first virtue of a good definition, we would not like to sacrifice the requirement of a comprehensive definition of aggression at any cost. There are many reasons for holding this view. Aggression can be of several kinds such as direct or indirect, armed in nature or even without the use of any arms whatsoever. There can be even direct aggression without arms. ...

We would accordingly support the categorical view expressed by the distinguished delegate of Burma, the UK and others that a definition of aggression excluding indirect methods would be incomplete and therefore dangerous.

For example, there could be a unique type of bloodless aggression from a vast and incessant flow of millions of human beings forced to flee into another State. If this invasion of unarmed men in totally unmanageable proportion were to not only impair the economic and political well-being of the receiving victim State but to threaten its very existence, I am afraid, Mr Chairman, it would have to be categorised as aggression. In such a case, there may not be use of armed force across the frontier since the use of force may be totally confined within one's territorial boundary, but if this results in inundating the neighbouring State by millions of fleeing citizens of the offending State, there could be an aggression of a worst order. ...

What I wish to convey, Mr Chairman, is the complexity of the problem

which does not permit of a four-line definition of aggression much less an ad interim declaration on it."

[See Vol. 11 (1971) Indian Journal of International Law, p. 724.]

This shows that the stand of our country before the UNO was that influx of large number of persons from across the border into India would be an act of aggression.

59. Lord Denning in his book *The Due Process of Law* has written an "Introduction" to Part Five — "Entrances and Exits" (p. 155) and the opening paragraph thereof reads as under:

"In recent times England has been invaded — not by enemies — nor by friends — but by those who seek England as a haven. In their own countries there are poverty, disease and no homes. In England there is social security — a national health service and guaranteed housing — all to be had for the asking without payment and without working for it. Once here, each seeks to bring his relatives to join him. So they multiply exceedingly."

60. Thus, one of the most respected and learned Judges of the recent times has termed the influx of persons from erstwhile colonies of Britain into Britain as "invasion". The word "aggression" is, therefore, an all-comprehensive word having very wide meaning. Its meaning cannot be explained by a straitjacket formula but will depend on the fact situation of every case.

61. The definition of "aggression" as adopted by UN General Assembly Resolution No. 3314 (XXIX) was, however, for a limited purpose, namely, where the Security Council or the United Nations Organisation could interfere and adopt measures in the event of an aggression by one nation against another and the acts enumerated therein which may amount to aggression cannot restrict or curtail the meaning or the sense in which the word "aggression" has been used in Article 355 of the Constitution.

62. The very first sentence of the Statement of Objects and Reasons of the IMDT Act says:

"The influx of foreigners who illegally migrated into India across the borders of the sensitive Eastern and North-Eastern regions of the country and remained in the country poses a threat to the integrity and security of the said regions."

It further says that "continuance of these persons in India has given rise to serious problems". The preamble of the Act says that "the continuance of such foreigners in India is detrimental to the interests of the public of India". The Governor of Assam in his report dated 8-11-1998 sent to the President of India has clearly said that unabated influx of illegal migrants of Bangladesh into Assam has led to a perceptible change in the demographic pattern of the State and has reduced the Assamese people to a minority in their own State. It is a contributory factor behind the outbreak of insurgency in the State and illegal migration not only affects the people of Assam but

has more dangerous dimensions of greatly undermining our national security. Pakistan's ISI is very active in Bangladesh supporting militants in Assam. Muslim militant organisations have mushroomed in Assam. The report also says that this can lead to the severing of the entire landmass of the North-East with all its resources from the rest of the country which will have disastrous strategic and economic consequences. The report is by a person who has held the high and responsible position of the Deputy Chief of the Army Staff and is very well equipped to recognise the potential danger or threat to the security of the nation by the unabated influx and continued presence of Bangladeshi nationals in India. Bangladesh is one of the world's most populous countries having very few industries. The economic prospects of the people in that country being extremely grim, they are too keen to cross over the border and occupy the land wherever it is possible to do so. The report of the Governor, the affidavits and other material on record show that millions of Bangladeshi nationals have illegally crossed the international border and have occupied vast tracts of land like "Char land" barren or cultivable land, forest area and have taken possession of the same in the State of Assam. Their willingness to work at low wages has deprived Indian citizens and specially people of Assam of employment opportunities. This, as stated in the Governor's report, has led to insurgency in Assam. Insurgency is undoubtedly a serious form of internal disturbance which causes grave threat to the life of people, creates panic situation and also hampers the growth and economic prosperity of the State of Assam though it possesses vast natural resources.

63. *This being the situation there can be no manner of doubt that the State of Assam is facing "external aggression and internal disturbance" on account of large-scale illegal migration of Bangladeshi nationals. It, therefore, becomes the duty of the Union of India to take all measures for protection of the State of Assam from such external aggression and internal disturbance as enjoined in Article 355 of the Constitution. Having regard to this constitutional mandate, the question arises whether the Union of India has taken any measures for that purpose.*

23. From the judgments of the Hon'ble Supreme Court in *Sanmilita Mahasangha (supra)*, and *Sarbananda Sonowal (supra)*, the following situations of existence of facts noted by the Supreme Court can be culled out.

(a) From paragraph 2 of *Sanmilita Mahasangha (supra)*:

C.S. Mulan, the Census Superintendent under the British Government in 1931 submitted report that during the last twenty five years, i.e. from

around the year 1906 an event had been taking place which would alter permanently the whole feature of Assam and to destroy the whole structure of the Assamese culture and civilization in the form of an invasion of a vast whole of land-hungry immigrants from the district of then East Bengal, which is the present Bangladesh.

(b) From paragraph 5 of *Sanmilita Mahasangha (supra)*:

The Immigrants (Expulsion from Assam) Act, 1950 was enacted with the statement of objects and reasons which provided that during the last few months prior to the enactment, a serious situation had arisen from the migration of a very large number of East Bengal residents into Assam and such large migration is disturbing the economy of the Province of Assam besides giving rise to a serious law and order problem.

(c) From paragraph 6 of *Sanmilita Mahasangha (supra)*:

Section 2 of the Immigrants (Expulsion from Assam) Act, 1950 provides that if in the opinion of the Central Government entry and stay of such large number of people from East Bengal (to be now read as Bangladesh) is detrimental to the interest of general public of India or any of the Scheduled Tribes in Assam, the Central Government by order to direct such person to remove himself or themselves from Assam within such time and by such route, which in other words is to deport such person, by providing the Central Government with the powers to issue any such further direction as may be necessary for such removal or deportation. Section 4 of the Immigrants (Expulsion from Assam) Act, 1950 further empowers the

Central Government to take or cause to be taken any such steps and use or cause to be used any such force as may be required for the purpose of giving effect to the deportation.

(d) From paragraph 8 of *Sanmilita Mahasangha (supra)*:

There was a treaty between India and Bangladesh on 19.03.1972 for friendship, cooperation and peace which provided that the high contracting parties shall refrain from any aggression against each other and shall not allow the use of its territory to constitute a threat to the security of the other high contracting party.

(e) From paragraph 12 of *Sanmilita Mahasangha (supra)*:

Section 6A of the Citizenship Act, 1955 (as amended after Assam Accord) had given citizenship rights to the immigrants from then East Bengal, presently Bangladesh rather than keeping it confined to a refugee status, in respect of such immigrants who entered the State of Assam before 1966 and a citizenship right to be subsequently acquired after ten years in respect of those immigrants who entered between 1966 and 25.03.1971.

(f) From paragraphs 13 of *Sanmilita Mahasangha (supra)*:

Lt. General S.K. Sinha, the then Governor of Assam submitted an extensive report on 08.11.1998 to the then President of India on the grave threat posed by the influx of people from Bangladesh to Assam which recognized the dangerous consequence of the large scale illegal immigration from Bangladesh both for the people of Assam and for the nation as a whole and a misconceived and a mistaken notion of secularism should not be allowed to come in the

way of allowing such illegal immigration. As a result the indigenous people of Assam being reduced to a minority in their home state is real and their cultural survival would be in jeopardy, their political control will be weakened. Most importantly the silent and invidious demographic invasion of Assam may result in the loss of the vital districts of lower Assam and convert them into a Muslim majority region resulting in a demand for a merger with Bangladesh.

(g) From paragraph 16 of *Sanmilita Mahasangha (supra)*:

On 14.07.2004 the Minister of State for Home Affairs, Government of India in response to an un-starred question in the Parliament made a statement that the estimated number of illegal migrants from Bangladesh into India as on 31.12.2001 was 1.20 crores, out of which 50 lakhs were in Assam.

(h) From paragraph 51 of *Sarbananda Sonowal (supra)*:

It is the foremost duty of the Central Government to defend the borders of the country, prevent any trespass and make the life of the citizens safe and secure.

(i) From paragraphs 52 and 53 of *Sarbananda Sonowal (supra)*:

The word 'aggression' is a word of very wide import which also includes the practice of making attacks or encroachments and violating the territorial rights of another nation. The word 'aggression' is not to be confused with 'war' although war may also be included within the ambit and scope of aggression.

(j) From paragraph 54 of *Sarbananda Sonowal (supra)*:

The modern war may involve not merely the armed forces of belligerent states but it may also involve the entire population.

(k) From paragraph 55 of *Sarbananda Sonowal (supra)*:

The conclusion is that 'aggression' is a word of very wide import having complex dimensions and would to a large extent depend on the fact situation and its impact.

(l) From paragraph 56 of *Sarbananda Sonowal (supra)*:

In the background the large scale influx of persons from then East Pakistan before the commencement of the Indo-Pak war in December, 1971, India's representative in the 6th committee of the General Assembly of the United Nations on the definition of 'aggression' made a statement that aggression can be of several kinds such as direct or indirect, armed in nature or even without use of any arms, where there can even be direct aggression without arms. Even a unique type of bloodless aggression of millions of human beings fleeing from one state to another state would be an aggression if the invasion of unarmed men in totally unmanageable proportion were not only to impair the economic and political well being of the victim state but also to threaten its very existence. If it results in inundating the neighboring state with millions of fleeing citizens, it could be aggression of a worst order.

(m) From paragraphs 59 and 60 of *Sarbananda Sonowal (supra)*:

Lord Denning in his book 'Due Process of Law' was also of the view that England had been invaded – not by the enemies – nor by friends – but by those who seek England as a haven by also seeking

to bring relatives to join him so that they multiply exceedingly. Therefore the word 'aggression' is an all comprehensive word having a very wide meaning.

(n) From paragraph 62 of *Sarbananda Sonowal (supra)*:

Reference to Lt. General S.K. Sinha, the then Governor of Assam in paragraph 13 of *Sanmilita Mahasangha (supra)* would have to be viewed that he was very high constitutional functionary and also held the responsible position Deputy Chief of Staff of the Indian Army and therefore well equipped to recognize the potential danger or threat to the security of the nation by the unabated influx and continued presence of Bangladeshi nationals in India. Due to economic reasons millions of Bangladeshi nationals have illegally crossed the international border and have occupied vast tracts of land like 'char land' which is a barren land, cultivable land, forest land and that the unabated influx of illegal migrants from Bangladesh into Assam had led to a perceptible change in the demographic pattern.

(o) From paragraph 63 of *Sarbananda Sonowal (supra)*:

In the background of the circumstances narrated, which also had been culled out to a limited extent as above, the Hon'ble Supreme Court expresses a view in the nature of a conclusion that it being the situation there can be no manner of doubt that the State of Assam is facing 'external aggression' and 'internal disturbance' on account of large scale illegal migration of Bangladeshi nationals.

Therefore it becomes the duty of the Union of India to take all

measures for protection of the State of Assam from such external aggression and internal disturbance as enjoined under Article 355 of the Constitution of India.

24. Mr. R.K.D. Choudhury, learned Dy.S.G.I. in his argument on behalf of the authorities under the Union of India refers to a passage of the book 'Nice Guys Finish Second' by Shri B.K. Nehru, who was also a former Governor of the State of Assam which pertains to the issue of illegal migration from Bangladesh which is extracted as below:

“Then there was a large and increasing number of Bengali Muslims who had been encouraged to migrate from the areas now in Bangladesh to Assam since the 1930's by a Muslim League ministry headed by Sir Mohammed Saadulla. The import of these farmers was at first welcomed by the Assamese. There was plenty of land, the Assamese was by nature easy-going and lazy and, therefore, not a good cultivator. (The Assamese, having a good sense of humour, themselves tell many jokes about their own laziness!) He was delighted that there was someone else to do the work and give him part of the fruits of his labour which was indeed more than he had ever got themselves. The land had soon run short, but the influx continued. Lord Wavell notes in his diary in 1945 that while the reason for the encouragement of this migration was officially justified as being to grow more food, the real object was to grow more Mohammadans. (That influx still continues; the political frontier between the two countries means nothing”.

25. We are not giving much credence to the aforesaid paragraph and also take note that the passage is from a book which is an autobiography of the author Shri. B.K. Nehru and accordingly, may be a personal view of the author. But what is noticeable is that the tone and texture of the passage conforms to what had been noted by the Supreme Court in the paragraphs of its judgments in *Sanmilita Mahasangha (supra)* and *Sarbananda Sonowal (supra)*, as referred above.

26. But what can be taken a judicial notice from the existence of facts culled

out from the relevant paragraphs of the two judgments of the Hon'ble Supreme Court referred above is that there was a conscious effort to effect a large scale immigration from the province of East Bengal prior to the partition, East Pakistan from the stage of partition to the Indo-Pak War of 1971 and Bangladesh from thereafter into the State of Assam, the process and effort of which started from sometime in the year 1906 and is possibly still continuing with an enhanced migration which was more profound during the period of partition and in and around the war of liberation of Bangladesh, but nevertheless unabated all throughout. Notice has also been taken of the provisions in paragraph 13 of the judgment *Sanmilita Mahasangha (supra)* with reference to the report of Lt. General S.K. Sinha and paragraph 56 of *Sarbananda Sonowal (supra)* with reference to the statement of India's representative in the sixth committee of the General Assembly of the United Nations on the definition of aggression and also paragraph 62 of *Sarbananda Sonowal (supra)* which again speaks of the Bangladeshi nationals occupying vast tracks of barren land, cultivable land and forest areas in the State of Assam, and also of the political control being taken over the State of Assam by the illegal immigrants through means of unabated migration and aggression.

27. India is a democratic country where the political power is by the people for the people and of the people, which again is exercised through the means of adult suffrage i.e. by means of voting in the elections. The voting in the elections is carried forward to enable the citizens to vote by having the names included in the voters' lists or electoral rolls. In such circumstance if the illegal migrants referred above do manage and are allowed to have their names included in the voters' lists or the electoral rolls the political power of the

country would also be decided and controlled by them and the degree of control would depend on the magnitude of the inclusion of the illegal migrants in the voters' lists or the electoral rolls. A significant presence of the names of the illegal migrants in the voters' lists or the electoral rolls would make the process of invasion and aggression, which had been initiated sometime in the year 1906 itself with reference to paragraph 2 of the judgment of the Hon'ble Supreme Court in *Sanmilita Mahasangha (supra)*, complete or purposeful.

28. When a person is declared to be a foreigner by subjecting him to a reference to a Foreigners' Tribunal and to the procedural law thereafter, and when the reference is made for a determination as to whether the person so referred is or is not a foreigner within the meaning of the Foreigners' Act, 1946 where, as per Section 2(a) foreigner means a person who is not an Indian citizen, it has to be understood that a declared foreigner is not an Indian citizen under any of the provisions of the Citizenship Act 1955 as amended. In respect of a person who is suspected to be an illegal migrant from the specified territory who entered the State of Assam after 25.03.1971 and a reference is made as to whether he is a foreigner, and upon there being a determination by the Foreigners' Tribunal that the person referred is a foreigner, the said person necessarily would also have to be understood to be a person who had entered India more specifically the State of Assam from the specified territory i.e. the presently Bangladesh, which was East Pakistan from the time of partition up to the liberation of Bangladesh in the Indo-Pak war of 1971 or the province of East Bengal prior to the partition.

29. In other words a declared foreigner is, who is referred to a Foreigners' Tribunal on a suspicion of being an illegal migrant from the specified territory, would belong to the category of persons referred and discussed by the Hon'ble

Supreme Court in the afore-stated paragraphs in the judgments rendered in *Sanmilita Mahasangha (supra)* and *Sarbananda Sonowal (supra)*, i.e. a part of the migrants referred therein.

30. In the backdrop as the right to be included in the voters' lists and the electoral rolls and the right to exercise the adult suffrage in an election is vested only upon a citizens of India, we have to arrive at a conclusion that a declared foreigner by a Foreigners' Tribunal and a process thereafter shall not be entitled to retain under any circumstance the inclusion of their names in any voters' lists or electoral rolls in respect of any constituency, city or town, village or any other place within the territory of India. The expression within the territory of India for the purpose of not including the names in the voters' lists necessarily would also have to the State of Assam, where also a declared foreigner would not be entitled to include or retain his name in any of the voters' lists or the electoral rolls and the provisions regarding citizenship which may be at the slight variance in the State of Assam with regard to the law of citizenship prevailing in the other parts of the country, shall not also in any manner confer any right to have the names included in any voters' lists or electoral rolls of any year of any place. Even if on an earlier occasion the name of the declared foreigner may have been included in any of the voters' lists of any place of any year the same also upon being declared to be a foreigner stands *void-ab-initio*.

31. The further implication of the inclusion of the name of any declared foreigner to have been included in any voters' lists of any place of any year on being declared void-ab-initio would also mean that no descendant of the declared foreigner can also claim any right of citizenship or the right of being included in the voters' lists or electoral rolls based upon such earlier inclusion of the declared foreigner which had been declared void-ab-initio.

32. Mr. D. Mazumdar, learned Additional Advocate General of the State of Assam along with Mr. D. Nath, learned Senior Government Advocate, Mr. R.K.D. Choudhury, learned Dy S.G.I. as well as Ms. Anita Verma, learned counsel appearing of the Home Department of Government of Assam under whom the Foreigners' Tribunals are functioning and dealing with the issue of detection of illegal migrants/foreigners, have all advanced their submissions that upon an illegal migrant being declared a foreigner, the declared foreigner would no longer have the legal right to purchase or to continue to remain to be the owner of any land.

33. As regards ownership and right, title and interest over a land of a declared foreigner reliance is placed on the Assam Alienation of Land (Regulation) Act, 1980 (for short, the Alienation Act of 1980) which had received the assent of the President on 19.07.1980. The long title of the Alienation Act of 1980 provides for it to be an Act to provide in the public interest for the regulation of alienation of lands in certain cases. By referring to Section 4 of the Alienation Act of 1980 a submission is made that there is a statutory bar upon any person who is not a citizen of India to have any alienation of land in his favour without the previous sanction of the Collector. Further reference is made to Section 5 of the Alienation Act of 1980 which provides that the sanction by the Collector may be withheld if in the opinion of the Collector the transferee is unsuitable for such alienation or the proposed alienation is in the opinion of the collector pre judicial to the public interest. Reference is also made to Section 6 of the Alienation Act of 1980 which provides that any alienation of land made in contravention of the provisions of Section 4 shall be void and the land that may have been alienated shall vest in the State Government from the date of alienation free from all encumbrances, with further provision that the Collector after giving the parties

an opportunity of being heard, by directing any person in whose possession or control the land or any part thereof which is vested in the State Government to deliver possession to the State Government. Section 7 of the Alienation Act of 1980 provides that those persons who are subjected to the provisions of Section 6(2) A shall forthwith deliver the possession of land to the State Government and in the event of the person refusing or failing to deliver the possession the Collector shall enforce the delivery through the State Government and whosoever refuses or unlawfully obstruct the delivery shall be subjected to a proceeding for conviction. Section 10 further provides that no suit or any other legal proceeding shall lie against the State Government or any other subordinate to it in respect of any damage or injury suffered while implementing the provisions of the Alienation Act of 1980.

34. By referring to the aforementioned provisions of the Alienation Act of 1980 it is the submission of learned counsel referred above that the ownership or title over any land of any declared foreigner even if otherwise purchased by following the due procedure of law would become void and shall not bestow any legal right. The provisions of the long title along with Sections 4, 5, 6, 7 and 10 of the Alienation Act of 1980 are extracted as below:

“4. Restrictions on alienation- No person shall without the previous sanction of the Collector obtained in such manner as may be prescribed, make any alienation of any land in favour of any person when such person is-

(a) an individual who is not a citizen of India; or

(b) a body corporate or firm of which the majority of the directors, shareholders or partners as the case may be, are not citizens of India, or which is incorporated, formed or registered outside India.

5. Withholding of sanction- (1) The sanction referred to in Section 4 may

be withheld if-

(a) the transferee is, in the opinion of the Collector unsuitable, or

(b) the proposed alienation is in the opinion of the Collector, prejudicial to the public interest.

(2) Where the Collector withholds any sanction under this Section, he shall record his reasons for doing so

(3) An appeal shall lie from the order of the Collector withholding sanction under sub-Section (1) within sixty days from the date of such order to the State Government:

Provided that the State Government may entertain an appeal after the expiry of the period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing it in time.

(4) On receipt of any such appeal, the State Government shall after giving the appellant a reasonable opportunity of being heard and after making such inquiry as it deems proper, decide the appeal.

(5) The decision of the State Government on such appeal and where no such appeal is preferred, the decision of the Collector under sub-Section (1) shall be final.

6. Consequences of alienation in contravention of Section 4- (1) Any alienation of any land made in contravention of the provisions of Section 4 shall be void and of no effect and the land alienated shall vest in the State Government from the date of alienation free from all encumbrances.

(2) The Collector may, after giving the parties an opportunity of being heard, by order-

(a) direct any person in whose possession or control any land or part of land vested in the State Government under sub-Section (1) may be to deliver possession thereof to the State Government.

(b) impose on the transferor a penalty which may amount to double the

consideration for which such land was alienated; and

(c) if in the opinion of the Collector there are circumstances justifying a refund of the consideration, if any, paid by the transferee in respect of such land, allow the transferee such refund.

(3) The penalty imposed under clause (b) or sub-Section(2) shall be recoverable as an arrear of land revenue.

7. Delivery of possession of land to State Government and penalty- (1) On the issue by the Collector of an order under clause (a) of sub-Section (2) of Section 6 directing the delivery of possession of any land or part of land to the State Government any person whose possession or control such land or part of land may be, shall forthwith deliver possession thereof to the State Government.

(2) If any person refuses or fails to comply with the provisions of sub-Section (1) the Collector shall-

(a) if he is a Magistrate enforce the delivery to the State Government of the possession of the land or part of land in respect of which such refusal has been made or failure has been committed; or

(b) if he is not a Magistrate apply to a Magistrate and such Magistrate shall enforce the delivery to the State Government of the possession of such land or part of land.

(3) Whoever refuses or unlawfully obstructs the delivery to the State Government of the possession of any land or part of land delivery of possession whereof to the State Government has been directed by the Collector by an order under clause (a) of sub-Section (2) of Section 6 shall on conviction by a Magistrate be punishable without prejudice to any other penalty to which he may be liable under any other law for the time being in force with fine which may extend to two thousand rupees.

10. Indemnity- No suit or other legal proceeding shall lie against the State

Government any officer subordinate to it or any other person for any damage caused or likely to be caused or any injury suffered or likely to be suffered by virtue of any provision of this Act or for anything in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.”

35. The settlement of land in the State of Assam is governed by the Assam Land Revenue Regulations, 1886 (for short, the Land Regulations of 1886). Chapter II of the Land Regulations of 1886 provides for rights over land where Section 6 provides that no right of any description shall be deemed to have been made, or shall be acquired by any person over any land, over which Chapter II of the Land Regulations of 1886 would be applicable, except, in respect of the rights specifically provided therein. Section 6 of the Land Regulations of 1886 provides that the right over land may be conferred to ‘any person’. As the right over land under Chapter II of the Land Regulations of 1886 can be conferred to any person without it being circumscribed in any manner, we are also required to give a meaning to the expression ‘any person’ as to whether it would include citizens as well as non citizens or any other person. A plain reading of the expression ‘any person’ in Section 6 of the Land Regulations of 1886 can also give a meaning that even a foreigner or a declared foreigner is not prohibited from acquiring any right over any land, except for, the restrictions available in Section 4 which prohibits acquisition of rights over land included in any reserved forest or any land which the State Government by a notification stands exempted.

36. Materials are also placed before the Court that as per certain guidelines issued by the Reserve Bank of India (for short, RBI), restrictions have been placed on a foreigner from acquiring any right over any land in the country.

37. A conjoint reading of the provisions of the Alienation Act of 1980 and the guidelines issued by the RBI along with the provisions of Chapter II of the Land Regulations of 1886, more particularly, Section 6 thereof, the expression 'any person' appearing in Section 6 of the Land Regulations of 1886 would have to be given a restricted meaning that the expression 'any person' shall not include a declared foreigner. Section 6 of the Alienation Act of 1980 provides that no person without the previous sanction of Collector shall make alienation of any land in favour of any person when such person is not a citizen or comprises of a body corporate or a firm where the majority thereof are not citizens of India. When the Alienation Act of 1980 expressly bars 'any person', who is not a citizen of India from being the beneficiary of alienation of any land, where upon acquiring the benefit of alienation the person concerned would acquire a right over land, the expression 'any person' in Section 6 of the Land Regulations of 1886 would also have to be given the same meaning as the expression 'any person' in Section 6 of the Alienation Act of 1980 and, therefore, even under Section 6 of the Land Regulations of 1886, a person who is not a citizen would not be entitled to acquire any right over any land.

38. The word 'alienate' as per the Oxford English Dictionary means transfer ownership of property to another person. Therefore, the expression 'alienation' appearing in Section 6 of the Alienation Act of 1980 would mean transfer ownership of any land. When under Section 6 of the Land Regulations of 1886 provides for conferring of right over land to any person it is understood that the State authorities who are the owner of the land in the State of Assam as per the scheme of the Land Regulations of 1886, in exercise of power under Section 6

of the Regulation of 1886 confers the right of land to any person by following the due procedure of law. In other words, by conferring the right over any land, some kind of transfer of ownership of the land, although such transfer of ownership under the scheme of the Land Regulations of 1886 may not be an absolute transfer of ownership but a right conferred under a settlement, the same would also have to be construed to be an alienation of land within the meaning of the expression 'alienation'.

39. From such point of view, a conjoint reading of Section 6 of the Land Regulations of 1886 and Section 6 of the Alienation Act of 1980 lead to a conclusion that in respect of a person who is not a citizen, or who may be a declared foreigner even the State authorities under Section 6 of the Land Regulations of 1886 are not empowered to confer any right over land to a declared foreigner. In other words, even the right over any land that may have earlier been conferred to a declared foreigner by means of issuing patta or settlement would also be null and void under Section 6 of the Alienation Act of 1980 as it is also a form of alienation of land.

40. Accordingly, a conclusion can be arrived that a person who is not a citizen of India will neither acquire any right over any land under the Land Regulations of 1886 nor under the Alienation Act of 1980. If any land is alienated in favour of a person, who is not a citizen, or is a declared foreigner, either by means of a settlement or issuance of patta, Section 6 of the Land Regulations of 1886, or such alienation that may be procured through transfer of ownership of land from any other person, and all such alienation would be void in terms of Section 6 of the Alienation Act of 1980.

41. In the circumstance, there is a requirement to examine as to what would happen to the right that a person may acquire over any land in the State of Assam, but was later declared to be a foreigner. An argument can be raised that a person who is subsequently declared to be a foreigner had his name included in the voters list or electoral roll in any place in Assam and at the relevant point of time when the land was alienated in his favour he was a citizen, and, therefore, as the right over the land was acquired in a valid and acceptable manner at the time when the land was alienated, such right cannot be subsequently nullified as because the person was later declared to be a foreigner.

42. True, the person concerned who may have acquired the right over the land, while his name was included in any of the voters list or electoral roll in the State and, therefore, at the time of acquiring the right over the land he may have been considered to be a citizen. But we have already held that in respect of the person who may be declared to be a foreigner by following the due procedure of law, the inclusion of his name in any voters list of any year in any place would become *void-ab-initio*. Further such person who would be declared to be a foreigner is not a foreigner from the date of the declaration, but under the law would also be a foreigner even earlier to the declaration and has to be construed that he was never a citizen although false and incorrect claims may have been made that he was a citizen.

43. Therefore, upon being declared to be a foreigner, any such inclusion in any voters list or electoral roll of any year in any place will become null and void

and any such acquiring of right over land, by claiming to be an Indian citizen based upon such voters list or electoral roll, would also render such acquiring of right over land to be void. A person who is declared to be a foreigner at a subsequent point of time can never have the status of a citizen prior to being declared a foreigner and under the law it has to be construed that he was never a citizen and was all along a foreigner. It is only that the detection and declaration as a citizen had been made subsequently. A subsequent detection and declaration cannot mean that for the period prior to detection and declaration a person would be a citizen and subsequent thereto he would be a foreigner. The claim to be a citizen that was made based upon the inclusion of his name in any of the voters list or electoral roll would also have to be accepted to be a fraudulent claim as the inclusion of a foreigner in the voters list itself would be a fraudulent act, which was achieved by fraudulent means. The law of fraud provides that any act or any right or claim made or acquired by means of fraud is itself *void-ab-initio*, and, therefore, even the claim of being a citizen earlier when the right over the land was acquired would also have to be void.

44. From such point of view, as the right over the land was acquired by fraudulently claiming to be a citizen and as fraud vitiates everything, even the right that may have been acquired over the land would be vitiated and unacceptable under the law.

45. With regard to the right that a declared foreigner may have or had, we have also heard the learned counsel Mr. HRA Choudhury, learned senior counsel, Ms. D Ghosh, learned counsel, Mr. AW Aman, learned counsel, who on a regular basis appear for the proceedees against whom references that have been made

to the Foreigners Tribunal for an opinion as to whether they are foreigners. None of the learned counsel have raised any submission or produced any material which requires an examination to arrive at any contrary conclusion, other than making a general submission that as they were considered to be citizens under the law, prior to being declared a foreigner therefore, the rights and entitlements that they acquired while they were considered as citizens should be preserved. But no substantial material or any proposition of law applicable to substantiate the general submission has been placed before the Court nor any principle of law that may support such submission have been put forward for examination of the Court.

46. But in the written submission submitted by Ms. D Ghosh and Ms. AW Aman, a stand is taken that the Alienation Act of 1980 declaring the property alienated in favour of the foreigner to be void would have its prospective effect, meaning thereby that all such properties that may have been alienated in favour of a foreigner prior to the coming of the effect of the Alienation Act of 1980 are saved and the declaration of it being void under Section 6 of the Act would be applicable only in respect of such properties which were alienated in favour of the foreigner after the Alienation Act of 1980 came into effect.

47. In this respect, it is noticed that Section 3 of the Alienation Act of 1980 provides that the provisions of the Act shall have effect notwithstanding anything to the contrary contained in any other law or in any contract, expressed or implied or in any instrument. In other words, we have to understand that the provisions of the Alienation Act of 1980 is with a non obstante clause that notwithstanding anything to the contrary contained in any other law and more importantly in any contract or in any instrument, the

provisions of the Alienation Act of 1980 would prevail. Further Section 4 of the Alienation Act of 1980 provides that no person without the previous sanction of the Collector make any alienation of any land in favour of any person who is not a citizen of India. The provisions of Section 4 would also have to be understood in the background of Section 3 that notwithstanding with anything contrary contained in any other law or in any contract or in any instrument, which may include the instrument of alienation of the land in favour of the person who is not a citizen, no person shall without previous sanction of the Collector make any alienation.

48. A conjoint reading of Section 3 and Section 4 leads to a conclusion that notwithstanding the instrument of alienation, if such alienation was made without a sanction from the Collector, the same would have no force in law. Section 6 of the Act further provides that any alienation of any land made in contravention of Section 4 i.e. alienation made without sanction of the Collector shall be void and have no effect and the land alienated shall vest in the State Government from the date of alienation free of all encumbrances.

49. A reading of the provision of Section 6 shows that the legislature contemplates a situation where any alienation of any land may have been made in contravention of Section 4 i.e. without sanction of the Collector. There is nothing to read in Section 6 that the referred situation of any alienation of any land made in contravention of Section 4 is in respect of only such alienations which may be made after coming into effect of the Alienation Act of 1980 and it does not include the alienation of any land made prior to the coming into effect of the Alienation Act 1980. Further, as already noticed, Section 3 is a non obstante provision that notwithstanding containing anything contrary not only to

any other law, but also contrary to any contract or instrument, which may also include the instrument of alienation, the provisions of the Alienation Act of 1980 shall prevail, which means that even the provisions of Section 6 of the Act would prevail notwithstanding anything contained in any instrument of alienation. As Section 6 of the Alienation Act of 1980 declares that any alienation of any land made in contravention of Section 4 shall be void and have no effect and the land so alienated shall vest in the State Government from the date of alienation, we have to understand that the Alienation Act of 1980 is a declaratory Act as regards the status and provisions of any act that may subsequently take place after the Act comes into effect as well as the status and provision of any act that may have taken place prior to the Act coming into effect.

50. As the Alienation Act of 1980 from the contents thereof leads to a conclusion that it is a declaratory statute, the provisions thereof would also have to be retrospective effect. As such, the contention of the petitioners that any alienation of any land in favour of a declared foreigner which took place prior to the Alienation Act of 1980 having come to its effect would be saved is accordingly unacceptable.

51. In the foregoing circumstance, and also taking note of the submissions made by the learned counsel who generally appear for the proceedees in the Foreigner Tribunal, a further determination would be required as to what right or entitlement a declared foreigner may have as long as such declared foreigner is staying in the State of Assam or in the territory of India.

52. Mr. HRA Choudhury, learned Senior counsel for the proceedees submits

that the right to life guaranteed under Article 21 of the Constitution of India would continue to be available to a person who is declared to be a foreigner even after such person is so declared. To substantiate his submission, Mr. HRA Choudhury, learned Senior counsel relies upon the proposition laid down by the Hon'ble Supreme Court in paragraph 33 of its pronouncement in *Railway Board Vs. Chandrima Das* reported in (2000) 2 SCC 465, wherein by referring to its earlier pronouncement in *Kharak Singh Vs. State of UP* reported in AIR 1963 SC 125 and the *State of Maharastra Vs. Chandrabhan Tale* reported in (1983) 3 SCC 387 and *Bandhua Mukti Morcha Vs. Union of India* reported in (1984) 3 SCC 161, the meaning of the word 'life' had been given an interpretation to mean that 'life' indicates something more than mere animal existence, and that a right to life under Article 21 means the right to live with dignity, and free from exploitation.

53. Mr. HRA Choudhury, learned Senior counsel further refers to the proposition laid down in paragraphs 5 and 6 of its judgment rendered in *Bhim Singh Vs. Union of India*, reported (2012) 13 SCC 741, wherein in respect of certain Pakistani nationals who had completed their sentence it was held that if they cannot be repatriated and have to be kept in India, until then, they cannot be confined to prison and deprived of basic human rights and human dignity. Reference is also made to a communication dated 15.02.2012/16.02.2012 of the Ministry of Home Affairs, advising the State Governments/Union Territory Administrations to release such foreign nationals from jails and to restrict their movement in detention centers in terms of the powers delegated under Section 3 (2) (e) of the Foreigners Act 1946 and paragraph 11 of the Foreigners Order 1948, pending their deportation and repatriation.

54. Having gone through the proposition of the Hon'ble Supreme Court laid down in paragraph 33 of *Chandrima Das (supra)* and paragraphs 5 and 6 in *Bhim Singh (supra)*, the submission of Mr. HRA Choudhury, learned Senior counsel for the proceedees would have to be understood that a person having been declared to be a foreigner, as long as he remains in the State of Assam or in the territory of India would have the rights under Article 21 of the Constitution of India to live a life of dignity and not subjected to any exploitation and further he would have a right to remain not in jails, but may be kept in a detention center under the delegated power under Section 3(2)(e) of the Foreigners Act of 1946.

55. Mr. AW Aman, learned counsel appearing for the proceedees submits that under Article 21 of the Constitution of India a declared foreigner as long as he remains in the State of Assam or in the territory of India would have a fundamental right under Article 21 of the Constitution of India to have the right to food and as a corollary to the right to food, he would also have the right to work. Mr. Aman, learned counsel has raised a further submission that as a sequel to the right to food, a declared foreigner would also be entitled to the benefits under the National Food Security Act, 2013 (for short, the NFSA Act of 2013).

56. Ms. D Ghosh, learned counsel appearing for the proceedees in agreement to the submission of Mr. AW Aman, learned counsel and also in furtherance thereof submits that the rights conferred under the NFSA Act of 2013 are applicable to all such persons in the rural and urban areas covered under the

Antyodaya Anna Yojana (AAY) households and priority households. It is stated that even the persons who are declared as foreigners are also included under such schemes and, therefore, they should continue to receive the food security benefits under the NFSA Act of 2013.

57. Both Ms. D Ghosh, as well as Mr. AW Aman, learned counsel, have submitted a common written submission as regards the fundamental rights that may be available to a declared foreigner. According to the learned counsel the following fundamental rights are available to a declared foreigner:

- i. *Article 14: Right to Equality*
- ii. *Article 17: Abolition of Untouchability*
- iii. *Article 18: Abolition of Titles*
- iv. *Article 20: Protection in respect of conviction for offences*
- v. *Article 21: Right to Life and Personal Liberty*
- vi. *Article 21-A: Right to Education*
- vii. *Article 22: Protection against Arrest and Detention in certain cases*
- viii. *Article 23: Prohibition of Traffic in Human Beings and Forced Labour*
- ix. *Article 24: Prohibition of employment of children in factories, etc.*
- x. *Article 25: Freedom of conscience and free profession, practice and propagation of religion*
- xi. *Article 27: Freedom as to payment of taxes for promotion of any particular religion*
- xii. *Article 28: Freedom as to attendance at religious instruction or religious worship in certain educational institutions*

58. As regards the rights under Article 14 of the Constitution, submission is as follows;

- (a) Reliance is placed by the learned counsel upon the proposition

laid down in paragraph 287 of the judgment rendered in *T.M.A. Pai Foundation Vs. State of Karnataka and others* reported in (2022) 8 SCC 481 wherein it had been provided that equality of treatment is required to be given to persons who are equally circumstanced and that the classifications of such persons for differential treatment should be based upon intelligible and reasonable differentia with reference to the object for which the action is taken.

(b) Reasonable classification permissible in respect of one set of laws may not applicable in respect of another set of laws and the reasonableness of the classification has to be assessed depending upon the object of the law and in this respect reference is made to the proposition laid down in *State of Gujarat and another vs. Sri Ambika Mills* reported in (1974) 4 SCC 656.

(c) A classification between a citizen and a foreigner for the purpose of Article 14 depends upon the purpose of the specific law in question and the fundamental rights under Article 15 may not be available to a foreigner to claim violation of rights under Article 14.

(d) By referring to the pronouncement in paragraph 25 in *Basheshar Nath Vs. Commissioner of Income Tax Delhi and Rajasthan* reported in AIR 1959 SC 149 that Article 14 of the Constitution is available to all persons that is both citizens or non-citizens the equality of status and opportunity referred in the preamble of our Constitution and there can be no doubt that the Article is founded on a sound public policy recognized and valued in all civilized states, which would be in contra distinction to Article 19, all of which may not be available to a non-citizen.

59. As regards Article 21 of the Constitution, the submission is as follows;

(a) By referring to paragraph 55 of the judgment of the Hon'ble Supreme Court in *Menaka Gandhi Vs. Union of India* reported in (1978) 1 SCC 248 the attempt of the Court should be to expand the

reach and ambit of the fundamental rights rather than attenuate their meaning and content by process of judicial construction.

(b) By referring to the pronouncement rendered in *Chandrima Das (supra)*, the meaning of the right to life are in consonance with the rights contained in the Universal Declaration of Human Rights and also the Covenants of Civil and Political Rights and the Covenants of Economic, Social and Cultural Rights to which India is a party having ratified them.

(c) The right to life under Article 21 has been interpreted to include a life lived with dignity includes the following rights:

- i. *The Right to Food*
- ii. *The Right to Shelter*
- iii. *The Right to Education*
- iv. *The Right to Health*
- v. *The Right of victims of crimes to receive compensation*
- vi. *The Right to Legal Aid*

(d) By referring to the pronouncement in *Anusha Renguthwar Vs. Union of India [WP (Civil) No. 891/2021]* the declared foreigners are similarly situated with that of the overseas citizens of India as they are demonstratively long term residents of India with no ties to any other country.

(e) The proposition laid down in *National Human Rights Commission Vs. State of Arunachal Pradesh reported in (1996)1 SCC 742*, Article 14 and 21 applies to every human being whether citizen or not and every person is entitled to equality before the law and

equal protection of the law and that Article 21 does not permit classification between persons, except to the extent that it is constitutionally permissible.

60. Per contra Mr. D. Mazumdar, learned Additional Advocate General appearing for the State of Assam has raised the contention that the fundamental rights claimed under Article 21 of the Constitution of India in respect of a declared foreigner would have to be looked from the provisions of Section 3 of the Foreigners Act, 1946. Mr. Mazumdar in order to substantiate his submission refers to the proposition laid down in the judgment rendered in *Hans Mullar of Nurenburg Vs. Superintendent Presidency Jail Calcutta and others reported in AIR 1965 SC 367*.

61. Mr. Mazumdar further relies upon the proposition in paragraph 13 of the judgment in *Mr. Louis De Raedt & Ors Vs. Union Of India And Ors reported in (1991) 3 SCC 554* wherein it is provided that the fundamental right of a foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in the country under Article 19 (1) (e) which is applicable only to the citizens and the Executive Government has unrestricted right to expel a foreigner.

62. By referring to paragraphs 78, 79 and 80 of the pronouncement of the Hon'ble Supreme Court in State of *Arunachal Pradesh Vs. Khudiram Chakma reported in (1994) Supp. (1) SCC 615*, Mr. Mazumdar, learned Additional Advocate General submits that it is an accepted position under the international law that the aliens should not be discriminated in their enjoyment of property rights once they have been acquired and in the event of such property being expropriated or nationalized, non discrimination between persons of other

nationalities with persons of local nationalities is the rule of international law and any breach thereof gives a right to a valid claim on the part of the Foreign Government, the property of whose national is involved. Accordingly, it is the submission that even if the property of a declared foreigner is expropriated by the State by following the due procedure of law, the remedy under the international law would be available to the Government of the original Country of the foreign national who is so declared to make a valid claim as regards the value of the property that may be expropriated and it cannot be a situation that the declared foreign national would have to be allowed by the local Government to continue with the ownership of the property.

63. It is the submission of Mr. D. Mazumdar, learned Additional Advocate General that the provisions of the NFSA of 2013 is applicable only for the citizens of the country and not for any declared foreigner. Mr. Mazumdar submits that the provisions of the NFSA of 2013 had been enacted with reference to the directive principles enshrined in Article 47 of the Constitution providing for the duty of the State towards raising the level of nutrition and the standard of living of its people and the improvement of public health among its primary duties. Article 47 of the Constitution provides for the duty of the State towards raising the level of nutrition and standards of living of 'its people' and the expression 'its people' does not include the declared foreigners. It is the further submission that the said provision is a socially beneficial legislation towards providing food security for its citizens by requiring the public exchequer to bear the burden and the State is under no obligation under any law to bear the burden and provide food security to nationals of other countries, unless it is a policy of the External Affairs Ministry of the country to do so in respect of any particular class of people who are citizens of other country.

64. Accordingly it is the submission of Mr. D. Mazumdar, learned Additional Advocate General that the provisions of NFSA of 2013 would not be applicable to the declared foreigners although the right to food in respect of such class of people would have to be determined and provided in some other manner which may be in conformity to the laws applicable.

65. In the conspectus of the rival submissions as indicated above, we take note of the submission of Mr. HRA Choudhury, learned Senior Counsel for the proceedees whose submissions with reference to the pronouncement of the Hon'ble Supreme Court in paragraph 33 in *Chandrima Das (supra)* and paragraphs 5 and 6 in *Bhim Singh (supra)* that even a declared foreigner as long as he remains in the State of Assam or within the territory of India would have the fundamental right of a life which would be more than a mere animal existence or a life under imprisonment in jail. We are in agreement with Mr. HRA Choudhury, learned Senior Counsel as regards the aforesaid submission and accept that even a declared foreigner as long as he remains in the State of Assam or within the territory of India would be entitled to a life which should address the basic requirements of a human life.

66. As regards the submissions of Ms. D Ghosh and Mr. AW Aman, learned counsel for the proceedees that the rights conferred under NFSA of 2013 are applicable to even to the persons who are declared as foreigners and they should continue to receive the food security benefits under the NFSA of 2013, we examine the same from the point of view of the contrary submission of Mr. D. Mazumdar, learned Additional Advocate General for the State.

67. The NFSA of 2013 is an Act to provide for food and nutritional security in human life cycle approach by entering access to adequate quantity of food at

affordable prices to people to live a life with dignity. As to whether the provisions thereof would also be applicable to the declared foreigners, we take note of the propositions laid down in paragraph 20 of the Hon'ble Supreme Court in *National Human Rights Commission Vs. State of Arunachal Pradesh reported in (1996) 1 SCC 742* wherein it is provided that our Constitution confers certain rights on every human being and certain other rights on citizens and every persons is entitled to equality before the law and equal protection before the law and thus the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise and cannot permit anybody or a group of persons to treat or subject to the non-citizens to any other coercive state.

68. Paragraph 20 of the judgment rendered in *National Human Rights Commission Vs. State of Arunachal Pradesh* is extracted as below:

20. *We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit any body or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so. No State Government worth the name can tolerate such threats by one group of persons to another group of persons; it is duty-bound to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its constitutional as well as statutory obligations. Those giving such threats would be liable to be dealt with in accordance with law. The State Government must act impartially and carry out its legal obligations to*

safeguard the life, health and well-being of Chakmas residing in the State without being inhibited by local politics. Besides, by refusing to forward their applications, the Chakmas are denied rights, constitutional and statutory, to be considered for being registered as citizens of India.

69. The judgment rendered by the Hon'ble Supreme Court in *National Human Rights Commission (supra)* is one of the leading judgments as regards the right to life in respect of an even a foreigner. The said judgment was rendered in a circumstance when the Chakma people who are considered to be non citizens were threatened by local people of the places where they are residing and it is in such circumstance that the Hon'ble Supreme Court had provided that be he a citizen or otherwise the State cannot permit anybody or group of persons to threaten a non citizen. In other words external coercive measures should not be imposed upon a person who is a non citizen and should be allowed to live a life with the basic human requirements.

70. It is noticed that the proposition that the State is bound to protect the life or liberty of every human being be he a citizen or otherwise is again circumscribed to the provisions of Article 14 that every person is entitled to equality before the law or equal protection of the law.

71. It is a misconception that Article 14 provides for right to equality which has to be understood that every person be a citizen or not would be entitled to equal treatment in respect of every aspect or provision that may be available in the country, if such provisions are made available to the citizens. All that Article 14 enshrines is that the State shall not deny to any person equality before the law or equal protection of law within the territory of India.

72. It is no longer *res integra* as decided by the Hon'ble Supreme Court in a

plethora of its judgments, commonly among them being *K.R. Lakshman Vs. Karnataka State Electricity Board reported in (2001) 1 SCC 442* paragraph 4, *T.M.A. Pai Foundation (supra)* in paragraphs 345 and 347 etc., that *the concept of equality before law means that among equals the law should be equal and should be equally administered and the likes should be treated alike. All that Article 14 guarantees is a similarity of treatment and not identical treatment and the guarantee of equal protection of law and equality before the law does not prohibit reasonable classifications. But such permissible classifications must satisfy two conditions namely the classification to be founded on intelligible differentia which distinguishes persons or things that are grouped from others who are left out of the group and the differentia must have a rational relation to the object sought to be achieved by the Legislation* (reference to page-70 of the book *Shorter Constitution of India* by Durga Das Basu 15th Edition). Similarly equal protection of the laws had also been given the same meaning as per the judgment of the Hon'ble Supreme Court in *T.M.A. Pai Foundation (supra)* as well as *Amita Vs. Union of India reported in (2005) 13 SCC 271* in paragraph 11 and *N. Nagaraj Vs. Union of India and others reported in (2006) 8 SCC 212* in paragraph 106 that *equal protection means right to equal treatment in similar circumstance both in privileges conferred and liabilities imposed and the persons who are in fact unequally circumstanced cannot be treated on par and must operate equally on all persons under liked circumstances* (reference to pages 70-71 of the book *Shorter Constitution of India* by Durga Das Basu 15th Edition).

73. When we examine the proposition that the State is bound to protect the life and liberty of every person be he a citizen or otherwise in the backdrop of Article 14 that every person is entitled to equality before the law and equal

protection of law, we are also required to examine as to whether there is an intelligible differentia which distinguishes the persons who are grouped as citizens and the persons who are grouped as declared foreigners and whether such distinction has any rational relation with the object at hand and also whether both the group of persons are similarly circumstanced and whether they are at par with each other. In the absence of such examination, it cannot be a situation where by referring to Article 14 of the Constitution it has to be accepted that all the persons living in the State or in the country are entitled to the same treatment under the State without any distinction merely on the premises that they are all residing in the State.

74. Upon examination of the aspect whether the group of persons who are citizens and the group of persons who are declared as foreigners are similarly circumstanced we cannot lose the sight that the Preamble of the Constitution begins with the expression '*We the People of India having solemnly resolved to constitute India into a sovereign socialist secular democratic republic and to secure all its citizens justice social, economic and political liberty of thought expression belief faith and worship; equality of status and of opportunity...*'. When the Constitution of India itself distinguishes the citizens and the non citizens inasmuch as the Constitution is a solemn resolution of the people of India to secure all its citizens the equality of status and opportunity, and an intelligible differentia in relation to the object to be achieved is discernible between the citizens and non citizens, which also includes the declared foreigners, it would have to be accepted that there is a reasonable classification as regards the provision of the Constitution between the citizens and the non citizens and the declared foreigners. If the Constitutional provisions itself, including the fundamental rights provided therein, provide for anything which

may also be applicable to a non citizen, the same would have to be understood to be also available to the non citizens. But in the absence of any specific or discernible provision both explicit and implied, it cannot be understood that all the provisions in every law of the country are also equally applicable to the non citizens and declared foreigners. Accordingly the interpretation of the expression 'equality before the law' and 'equal protection of law' enshrined under Article 14 would have to be understood to mean only such protections or provisions of law which are also made available to the non citizens would alone be available to such class or group of people and not the provisions of each and every law in the country under the Constitution.

75. From such point of view, in respect of the provisions of the NFSA of 2013 we accept the submission of Mr. D. Mazumdar, learned Additional Advocate General that the benefits thereof are limited to the citizens of the country be the people of the country and not to the non citizens or the declared foreigners.

76. But at the same time in the absence of the application of the provision of the NFSA of 2013, it also cannot be said that the declared foreigners have no right to food as long as they are living in the State of Assam or within the territory of India. In this respect we take note of the provisions of Section 3(2) (cc) of the Foreigners Act, 1946 which inter alia provide that if a foreigner is required to remain in the State of Assam or in the territory of India as because the circumstances do not allow him to be deported immediately and there is a requirement to allow him to remain in the State or in the Country, he shall meet from any resources at his disposal, the cost of his maintenance pending the removal from the Country. In other words if a declared foreigner is circumstanced to remain in the country for any such period till his removal from

the country, the cost of his maintenance would be borne from any resource at his own disposal. The said provision would mean that for the purpose of exercising his right to food a declared foreigner shall not be deprived by the State of any other authority from procuring his food but in doing so he may not be entitled to the socially beneficial provisions in the country borne from the public exchequer but would have to meet the cost of the food from his own resources.

77. A corollary thereof would be if a declared foreigner is required to meet the cost to maintain himself in the State of Assam or in the country from his own resources, he should also be provided with the opportunity to create his own resources, meaning thereby that he should be granted the permission to work which may entail him to a gainful benefit. But again if we go by the law laid down by the Hon'ble Supreme Court that the non citizens shall not be subjected to any exploitation or forced labour which would be available under Article 23 of the Constitution, in the guise of allowing the non citizens, to earn their own living by allowing them to work, the State of the other authorities shall not be allowed to exploit the situation and extract the labour at a cost which may indicate an exploitation. In other words, for a protection under Article 23 as well as a protection against exploitation a declared foreigner would be entitled to the protection of law against exploitation. Such principle would take care of the proposition of law laid down by the Hon'ble Supreme Court that in the guise of taking a view that the non citizens are not entitled to certain rights if they continue to reside in the country, it by itself cannot be construed that they are also open to any exploitation. Such view would also take care of maintaining the basic human rights of the non citizens.

78. In view of the above we examine the rights claimed by the learned counsel for the proceedees to be a part of the right to life under Article 21 as follows:

(i) Right to Food: As regards right to food, we have already taken a view that although the provisions of the NFSA of 2013 would not be applicable to the declared foreigners but they have a right to food and read conjointly of the provisions of the Section 3(2)(cc) of the Foreigners Act 1946 the declared foreigners would have to bear the cost of procuring the food and in doing so the State or any other authority through any proactive measure shall not deny or obstruct the declared foreigners from procuring the food. As regards the applicability of the NFSA of 2013 as it is a socially beneficial piece of legislation to ensure food security to the people of the country, we leave it to the discretion of the State authorities to exercise their discretion as to whether the benefits or any part thereof are also to be made available to the declared foreigners. We have taken note that the NFSA of 2013 apart from providing the food at a subsidized rate also provides for the availability of food items to the people and the State may take a conscious decision if they intend to extend the benefit of availability of food items under NFSA of 2013 to the declared foreigners and if yes, in what restricted and circumscribed manner and also whether to extend the benefits of availability of food at a subsidized rate or manner. We also take note that the availability of food at a subsidized rate is also restricted under the NFSA of 2013 amongst the citizens and only a particular category of citizens are made available the benefit of the good at a subsidized

rate. In taking any such decision, the State shall take note of the fact that food at subsidized rate is even not available for all the citizens.

(ii) Right to Shelter: The right to shelter would also have to be read along with Section 3(2)(cc) of the Foreigners Act, 1946 that a declared foreigner would have to bear the cost of availing a shelter, as availing a shelter is also a part of a declared foreigner maintaining himself. If the State on their discretion intends to operate any shelter for the declared foreigners, it would be open for the State authorities to do so but such shelters as may be provided shall not be or equated with a detention centre where the movement of a declared foreigner are put under restriction. The movement of a declared foreigner shall be regulated in any manner as may be provided by the Central Government under Orders that may be made as per Section 3(2)(e) which may provide for such conditions requiring the declared foreigners to reside in a particular place or imposing any restrictions on his movement. The provisions of Section 3(2)(e) empowers the Central Government to provide any restriction on the movement of a declared foreigner but such restriction should not be equated with the complete restriction like that of a detention centre whereas restrictions from freely moving across certain places which in the view of the Central Government may be detrimental to the interest and security of the country can be imposed.

(iii) Right to Education: The Right of Children to Free and

Compulsory Education Act, 2009 provides for free and compulsory education to all children of the age 6 to 14 years and in furtherance thereof Government funded and operated schools are available to provide free and compulsory education. As such systems are already in place, the children of the declared foreigner may be given the benefit of free and compulsory education but at the same time no independent legal right would remain with the declared foreigner to demand for creation of Government funded and operated schools in any given locations exclusively for the benefit of free and compulsory education to the children of the declared foreigners and the opportunity to avail the same should be restricted to the existing Government funded and operated schools. As regards availing education in any private educational institution which any way operates upon the appropriate charges being paid, the children of the declared foreigners can also avail the benefits of such education upon payment of the required cost and in respect of those non Government entities who provide for educational facility at a subsidized rate benefiting a particular class of people it shall remain at the discretion of such non Government entities to take their own decision as regards inclusion of the children of the declared foreigners to the class of people for whose benefit they operate. But no vested right shall remain with the declared foreigners to claim a right over such institutions under a misconception of the concept of equality.

(iv) Right to Health: Right to health is one of the core requirements of right to life enshrined under Article 21 and wherever

the facilities or infrastructure for health are available, the declared foreigners or their family members may also avail the benefit of such facilities. It would be cruel on part of any authorities to deny any attention to the health problems of the declared foreigners merely because they are not citizens. But again the health facilities which are otherwise available on a payment of cost even for the citizens or any other class of people the same would also be available to the declared foreigners, but they cannot claim right of any special privilege over and above what is available to the others.

(v) Right of victims of crime to receive Compensation: Victim is a clearly defined concept under Section 2(wa) under the Code of Criminal Procedure, 1973 (in short, Cr.P.C.) and under Section 357A certain compensation are payable to the victims. The criminal law system providing for security to the public should not be distinguished between a citizen or a non citizen and in the circumstance if a given person although may be a declared foreigner is a victim within the concept of Section 2(wa) of the Cr.P.C. no reason can be discerned as to why they should not be entitled to a payment of compensation.

(vi) Right to legal aid: Providing of legal aid is governed by the Legal Services Authority Act, 1987 and the authorities who regulate the grant of legal aid to decide as to whether in a given case a declared foreigner requires any legal aid to be provided and if yes, in what manner.

(vii) Right to work: As already discussed a declared foreigner

would have to meet the expenses of maintaining himself in the State of Assam or within the territory of the country from his own resources and from such point of view a duty would also be cast on the authorities to allow him to meet the expenses of maintaining himself, which again can be achieved only if the declared foreigner is allowed to work. In this respect we take note of the declaration of the Hon'ble Prime Minister of India on 06.05.2011. While addressing a meeting the then Prime Minister said that the Central was considering a proposal to give work permits to migrants from Bangladesh who could not be evicted due to host of legal and constitutional problems and the said statement was made at an election rally at Police Parade Ground at Silchar. As the concept of issuing work permits to the migrants from Bangladesh has already been referred, we see no reason as to why while allowing the declared foreigners to work, a system of work permit cannot be put in place. While adopting the process of issuing work permits, the identity and the location of the declared foreigner can also be tracked and the whereabouts be known to the authorities. In this respect we note that in some of the earlier pronouncements of this Court while dealing with the matters related to the Foreigners' Tribunals, it was noticed that upon a person being declared to be foreigner by the Tribunal the person disappears from the eyes of the authorities and mingles among the large number of other similar people making it difficult for the authorities to identify and locate them, for which the Court had coined the term that the person who declared performs the 'vanishing act'.

79. Mr. RKD Choudhury, learned Dy. S.G.I. for the Union of India has raised a contention that if the declared foreigners would be bestowed with the right to work to earn for their maintenance, such person upon performing the work may also earn certain income and if under the law the income so earned would attract them the liability of payment of income tax and other applicable taxes, it cannot be a case that merely because they are declared foreigners who are allowed to work they would not be liable to pay income tax or any tax. From the point of view of a declared foreigner who would be allowed to work and earn his income, no intelligible differentia is noticed between a citizen and a declared foreigner as regards the liability to pay taxes. From such point of view, any declared foreigner if while exercising his right to work earns an income which may be subjected to income tax or any other tax, they would be bound under the law to pay the taxes and the Income Tax Department authorities and the others would be empowered under the law to proceed against them if the taxes are not duly paid. The declared foreigners to also be subjected to such procedure as may be required in respect of filing of returns of taxes and others.

80. It has been submitted by Ms. A. Verma, learned counsel for the respondents in the Home Department and the Foreigners' Tribunals that the declared foreigners when earlier they were claiming to be Indian citizens have been issued a number of documents pertaining to citizens of India like voter identity cards, aadhaar cards, PAN cards, ration cards etc. It is the submission of the learned counsel that upon been declared to be a foreigner, a declared foreigner shall not be entitled to retain any such documents which are issued specifically to Indian citizens and therefore there would be a requirement of the declared foreigner to surrender and return back the documents to the authorities. Conceptually we are in agreement with Ms. A. Verma that a person

who is declared to be a foreigner would no longer be entitled to retain such documents which were issued to him while he was claiming to be an Indian citizen.

81. Not only the declared foreigner would have to return back the documents which were issued to him as an Indian citizen, certain other formalities would also have to be complied with the authorities like deleting the name from the voters' lists forthwith, taking over the land which were alienated to the declared foreigner under the Alienation Act of 1980 as well as taking necessary steps from removing the declared foreigner and prohibiting him to continue with any post, position, status which he may have incorrectly acquired while claiming to be an Indian citizen.

82. In order to coordinate all such requirements, we are of the view that it would be appropriate for the Chief Secretary to the Government of Assam to appoint a nodal authority who may exercise inter-departmental jurisdiction for doing the needful as well as coordinate with the other departments for foreclosing the declared foreigners from retaining any such documents he is no longer entitled to as well as remove him from all such post, position or status which he would be not entitled any further. The appointment and the location where the nodal authorities would be available should be given a wide publicity so that a declared foreigner knows where exactly he will have to go to complete the process. If the declared foreigners do not cooperate for such requirement, or merely disappears, appropriate action under the law should be forthwith taken, including taking him to custody for completing the process.

83. In respect of the aadhaar cards which may have been issued to the declared foreigners it is stated that the aadhaar cards are merely a compilation

of the personal information pertaining to the person and on its own does not bestow any citizenship. It is stated that if the declared foreigner is required to stay in the State of Assam or in the territory of India, the aadhaar card being a document of identity would have to be retained. It is also stated that if the declared foreigners would have to be subjected to the income tax, and other taxes as well as opening bank accounts etc., the PAN card would be a necessity. In the circumstance, we provide if certain cards like aadhaar card, PAN card are a necessity for operating within the country, appropriately modified cards may be issued to the declared foreigners containing the information and the purpose for which they are issued, but such cards shall not under any circumstance be construed to have granted any further rights to the declared foreigner, which may otherwise be available to the citizens, except for the rights and entitlements recognized under the law to be available to a declared foreigner. All such coordination be also undertaken by the nodal authority as may be appointed.

84. In course of our hearing, certain records have been produced by the Revenue Department of the Government of Assam pertaining to creation and existence of revenue villages in the State of Assam, as it existed in the 1960s and as it exists as of now in the 2020s i.e. after almost 60 years. An examination of the records reveal that the number of revenue villages as it exists as on today is more than the number of revenue villages which existed in the 1960s.

85. Although records in more detail were examined to arrive at a conclusion that the number of revenue villages which exists in the 2010s is more than the number of revenue villages which existed in the 1960s, but for brevity and as a

sample basis, we refer to the revenue villages as it existed under the Barpeta Police Station in the 1961 and as it exists in the year 2011, the records of which as provided by the Revenue Department of the Government of Assam, are extracted as below:

Revenue villages as it existed under Barpeta Police Station in 1961:

NUMBER OF VILLAGES OF KAMRUP DISTRICT IN 1961			
SLNO.	Name of district	Name of PS	YEAR
	KAMRUP	BARPETA PS	1961
			NUNMATI
			GHILAJARI
			JOYPUR
			NAGARJAR
			KATHLUHAR
			DEULIPARA
			HAZIPARA
			FULKIPARA
			AMBARI
			ITARBHATHA
			MAIRAMARA
			BAGAUAN
			HATHIJANA
			KHANDAKARPARA
			AICHARAPARA
			KUMULLIPARA
			JAISIHATI
			DHAKAYAPARA

			DABALIAPARA
			KADAMGURI
			DAITAKUCHI
			JUGIRPAM
			GAREMARA PATHAR
			GAREMARA GAON
			BANIARAPARA
			B MIJRA
			DANAKUCHI
			DEURIKUCHI
			JAHORPAM
			DHANBANDHA
			SONKUCHI
			DANGARKUCHI
			SATBAINIRTUP
			SIMLAGURI
			JAKHLIRPAR
			LUASUR
			BAHBARI
			GANDHIPARA
			MAIRAJAR
			MECHPARA

			GUAGACHA
			BELGURI
			MACHUA
			GOBINDAPUR
			DHUPGURI
			SIMLAJAR
			GANAKPARA
			BUMAJARPAM
			RANGDIA
			KAHDOBA
			KHATALPARA
			BENNIBARI
			MAUTURPI
			BARBARIJAR
			HALAPAKRI
			JALJALI
			GAHEKHANDA
			KAURPARA

			HELANARPAM
			HOWLI
			POTA
			RAUMARI
			DHULPALPARA
			MAJ GAON
			ANANDAPUR
			PUB-LUASUR
			HARIPUR
			KALBARI
			BANGLIPARA
			KOHORA
			KUROBAHA
			RAJAKHAT
			TANGALA
			KATOLA
			KUROSAHA PATHAR
			KOHORA PATHAR

			MABHA'PUR
			NIJBHABANIPUR
			PUB HATI
			DAKSHINHATI
			NAMATI
			PARABHARAL
			SUK MANAH
			GALIA
			GATHIAPARA
			NAKUCHI
			KATOLA PATHAR
			DATIR BARI
			NAKUCHI PATHAR
			DAIRABARI
			TAPA
			KARAGARIGAON
			KARAGARI PATHAR
			KAHARAPARA
			AMDAH
			AMDAH PATHAR

			DEBRA
			BAGANA
			CHAGALCHARI
			SATRA BARALA
			BHAREGAON
			CHAPARBARI
			FINGUA
			NIJ SALDAH
			BARALA
			NIJ SALDAH
			HATHINAPUR
			KACHKURI GAON
			KACHKURI PATHAR
			RAMPUR
			KAYEMARI
			BARSIMLA
			BALAPARA
			GOLIBANDHA
			KIRKIRA

			FINGUA PATHAR
			HATIRTARI
			KAYAKUCHIPAM
			KAYAKUCHI GAON
			NALIGAON
			NALI N.C.
			KARABARI N.C.
			MAURIPUR
			KACHKURIPAM
			PARAKUCHI
			BATLA
			PARAKUCHI N.C.
			KHARIA N.C.
			ERA
			NALIR PATHAR
			HELOCHARPAM
			NALIRPAM
			TELERIA
			KAYAKUCHI PATHAR
			GUMIR PATHAR

			PANIMARICHA N.C.
			KAPAHARTARI
			THEKA GAON
			JALKARA
			PITHADIPAM
			PITHADI GAON
			ERA KACHARIPARA
			ERARTARI
			NEULAR BHITHA
			JABRIKUCHI
			CHATRA PAKA
			PAKADALANI
			KALTALI PATHAR
			BAMUN PAKA
			NASATRA
			FULBARI
			KURIHARPAM
			BAMUNDI

			THEKA PATHAR
			PANIMARICHA
			MARICHA PATHAR
			BHERA GAON
			KALJAR
			KHANDARPAR
			KUJARPIT
			KATHALBARI
			BAMUNBARI
			RANGIALARTARI
			FULARGURI
			SUAGPUR
			ATA
			BHAKUAMARI
			KURIHA
			BUNBAHA
			MARALARTARI
			KAMALPUR

			BETBARI PATHAR
			BETBARI
			KAMALPUR PAM
			BARBALA
			BALARBHITHA
			BHALUKBRI
			JARABARI
			PUTLAR TARI
			KHABLAR BHITHA
			CHIKAR BHITHA
			MARICHAR
			BARIA PATHAR
			BANTIPUR
			PAKABETBARI
			KHANDARKUR
			KEOT PARA
			PAKABETBARI PATHAR
			PAKABETBARI N.C.

			JATI
			METUAKUCHI
			BUDARURTUP
			SUNDARDIA
			BAMUNA
			TEPARBARI
			BHERALDI
			BARADI
			BAMUN BARADI
			SATRA BARADI
			GANAK KUCHI
			NASATRA
			KEOYKUCHI
			FATIGRAH
			BHELLA
			MOUSARI
			MAJKUCHI
			PATBAUSHI
			MAJAR GAON

			LANGARKUR
			GANDHI
			KAHIBARI
			DHAKUA
			GAHERPAM
			MAILKUCHI
			CHAKDA
			CHARAGPARA
			TEMURA
			PAHUMARA
			TEKLARBARA
			DANGARA
			GAREMARA GAON
			RAHAMPUR
			GAREMARA PATHAR
			PALHAJI
			BELARTARI
			GAREMARA HABI
			GHAKABAUSHI GAON

			CHAKABAUSHI PATHAR
			BHERA GAON
			KHARDHARA
			BHAIRAGURI PAM
			BAGOSI
			HAHCHARA
			DEBRADI
			DOKANIA
			KAHIKUCHI
			PANISILA
			RADHAKUCHI
			KHARUAPARA
			TATIKUCHI
			JABRIKUCHI
			BANBARA
			BARBILA
			RADHAKUCHI HABI
			NAGAON
			BARAMARA

			BAR AGDIA
			BAMUNKUCHI
			DAMBRABOWA
			BATIKURIHA
			KALJAH
			BARA
			KHANKARPARA
			PAKDAAHBILAR PATHAR
			SILA
			OMURA
			DAMALJAR
			SUHABIL DALANI
			BARSUHA
			BAR BARADI
			PAJARBHANGA
			DAKRESWAR
			KHAPANBARIA BHITHA
			BARGHOLA

			KHUDRA GOMURA
			BAR GOMURA
			HARIADI
			KARAKUCHI
			NAMSALA
			PALIA
			DEWANKHETRI
			HARI GHATA
			BALIPARA PATHAR
			KHUDRA AMRIKHOWA
			BAR AMRIKHOWA
			BARSALABILAR PATHAR
			LACHIMA
			KAMARPARA

Revenue villages as it exists in 2011, but did not exist in 1961:

NUMBER OF VILLAGES OF 1961 DO NOT MATCH WITH 2011			
SLNO.	Name of district	Name of PS	YEAR
	KAMRUP	BARPETA PS	1961
			KATHLIJHAR
			DEULIPARA
			HAZIPARA
			FULKIPARA
			ITARBHATHA
			MAIRAMARA
			BAGAUAN
			HATHIJANA
			KHANDAKARPARA
			AICHARAPARA
			KUMULLIPARA
			DHAKAYAPARA
			DABAUAPARA
			KADAMGURI
			DATTAKUCHI
			JUGIRPAM
			BANIARAPARA
			DANAKUCHI
			DEURIKUCHI

			JAHORPAM
			DHANBANDHA
			SONKUCHI
			SATBAINIRTUP
			JAKHURPAR
			LUASUR
			GANDHIPARA
			MAIRAJAR
			MECHPARA
			MACHUA
			SIMLAJAR
			GANAKPARA
			BUMAJARPAM
			MAUTUPRI
			HALAPAKRI
			HELANARPAM
			HOWL!
			POTA
			RAUMARI
			DHUPALIPARA
			PUB-LUASUR

			BANGLIPARA
			KOHORA
			KOHORA PATHAR
			PUB HATI
			OAKSHINHATI
			PARABHARAL
			SUKMANAH
			GATHIAPARA
			DATIR BARI
			NAKUCHI PATHAR
			DAIRABARI
			KARAGARIGAON
			KAHARAPARA
			AMDAH
			AMDAH PATHAR
			DEBRA
			CHAGALCHARI
			BHAREGAON
			CHAPARBARI
			FINGUA
			BARALA
			NIJ SALDAH

			HATHINAPUR
			KACHKURI GAON
			KACHKURIPATHAR
			KAYEMARI
			GOLIBANDHA
			FINGUA PATHAR
			KAYAKUCHIPAM
			NAUGAON
			NAUN.C.
			KARAGARI N.C.
			MAURIPUR
			KACHKURIPAM
			BATLA
			PARAKUCHI N.C.
			KHARIAN.C.
			ERA
			HELOCHARPAM
			NAURPAM
			PANIMARICHA N.C.
			KAPAHARTARI
			PITHADIPAM
			ERA KACHARIPARA

			ERARTARI
			NEULAR BHITHA
			CHATRAPAKA
			KURIHARPAM
			THEKA PATHAR
			PANIMARICHA
			KHANOARPAR
			KATHALARTARI
			RANGIALARTARI
			FULARGURI
			ATA
			MARALARTARI
			KAMALPURAR PAM
			BHALUKBRI
			JARABARI
			CHIKAR BHITHA
			BARIA PATHAR
			BANTIPUR
			PAKABETBARI
			PAKABETBARIPATHAR
			PAKABETBARIN.C.

			JATI
			METUAKUCHI
			BUDARURTUP
			SUNDARDIA
			TEPARBARI
			GANAK KUCHI
			FATIGRAH
			MOUSARI
			MAJARGAON
			LANGARKUR
			MAILKUCHI
			CHARAGPARA
			TEMURA
			TEKLARBALA
			DANGARA
			BELARTARI
			GAREMARA HABI
			GHAKABAUSHI GAON
			CHAKABAUSHIPATHAR
			KHARDHARA
			BHAIRAGURI PAM
			BAGOOI

			PANISILA
			DAMBRABOWA
			PAKDAHBILAR PATHAR
			DAMAUAR
			SUHABIL DALANI
			BARSUHA
			PAJARBHANGA
			NAMSALA
			PALIA
			DEWANKHETRI
			BARSALABILAR PATHAR
			KAMARPARA
			BELBARI GAON
			RAULI
			JASODAR PAM
			RANGIANADIRPAM
			RANGIA
			BECHIMARAPAM
			BURI KHAMAR

			BHAKUATEPA
			BARKAPLA
			HALDHI BARI
			KHAPNIKUCHI
			PUTLARKUR
			CHENGU
			KAMLABAR
			BAISA
			SARIHAKUCHI
			BAGURIRTARI
			GADESAUPAM
			BARBILAR PATHAR
			BALARBARI
			KATHALGURI
			BAR FALADI
			KUKARPAR
			KHUDRA BAMUN BARI
			BANGUPARA

			RANGAPANI
			MUHAMMADPUR
			TETURTAL
			BHATKUCHIPATHAR
			KAPOHA
			KANDAPARA
			KAKLABARI N.C.
			DAODHARA
			THABARMUR
			KAMARDAISA
			GARUMARA
			KAHIBARIN.C.
			BORGHOGRA
			KARANKHATA
			UDALGURI
			HAJUAGAON
			SARUGHOGRA N.C.
			SARUGHOGRA

			KALEGAON
			TAKURAKUCHI
			CHAHO GURI
			KHUNTABARI
			BAGHJAN
			CHARNA
			CHEPENA N.C.
			GATIGAON N.C.
			DAUGRIGAON N.C.
			GALAGAON N.C.
			BHUMUKIRPAR
			TEKUBHANGA
			DANGRIGAON
			BHALMANUHARBHITA
			SARUCHAKADAL
			BACHAKADAL
			BOKUA
			BHALUKAMARI
			DANGPAR
			PACHIM REHABARI

			PUB REHABARI
			BARMANIKPUR
			SARUMANIKPUR
			PUB KATHALMURI
			DAISINGRI
			BAMAUNKUTUNI
			LAOGAON
			HAKARTUP
			BAGULAPARA
			BAGURIRTARI
			DAUMARBHITHA
			SIALMARI
			MEDHIKUCHI
			HATHENAPUR
			CHEKI
			PUB KARDAIGURI
			MADHYAM KARDAIGURI
			PACHIM KARDAIGURI
			GOMURA
			GORMURA PATHAR

			KIYADABA
			NAOSANKAR PATHAR
			CHANUBARI
			DALOR PATHAR
			BARKUR
			CHARALPARA
			BAGEMARI
			GARAPIT
			LUASUEGAON
			MATABARI
			MUSSALMAN PARA
			BECHIMARA
			KHAMGRA
			CHATA
			RAUMARIPATHAR
			RAUMARIGAON
			BATARTARI
			BAHARI
			DIGI
			PARUA PATHAR
			PARUAGAON
			NIJ PARUA

			TANOAUAPARA
			BANSKATA N,C
			SURANDHAR N.C
			DHUBURJRCHAR
			ATJA
			KHUTABARI N.C.
			BAUDHARI N.C.
			ARIMARACHAR
			HEPCHARCHAR
			RAM PARA N.C.
			CHANARDIA N.C.
			CHANDAN PUR N.C.
			BHELENGJMARI N.C.
			KHAGRAKATI N.C.
			CHANGBJNDHA N.C
			KAREKHAJTI N.C.
			KAMARPARA N.C.
			PURANPARA N.C.

			PUBPARA N.C.
			PUTHIMARI N.C.
			MAISKHUTJ N.C.
			MAJARCHAR N.C
			CHENJMARJ (NEW)
			CHENGELIDIA (NEW)
			DAMDAMA (NEW)
			DHAMAPARA N.C.
			LAKHJPUR N.C.
			MARJCHAKANDJ N.C.
			PAHUMARA N.C.
			MAHCHARA N.C.
			MAHCHARA
			KASIMPUR
			BIDESHJRCHAR N.C.
			DAKSHIN GODHANJ N.C
			BARBARODE

Revenue villages under Barpeta Taluka which exists in 2011, but not in 1961:

NUMBER OF VILLAGES IN 2011BUT NOT IN 1961			
Name of District	Name of Taluka	SLNO.	YEAR
BARPETA	BARPETA		2011
			Alehara Para
			Ata
			Bagaljan Para
			Bagudl (Bagadi)
			Bamun Bari
			Bamun Kuchi
			Banlara Para
			Banti Pur
			Bar Ghol
			Bar Suha (Barsoha)
			Barlar Pathar
			Belortari
			Betbari Gaon
			Bhalukabari Gaon
			Bhayraguri Pam

			Chaka Bausi Gaon
			Chaka Bausi Pathar
			Chakir Bhitha
			Charag Para
			Dabalia Para
			Damal Jar
			Dambra Bawa (Damradoa)
			Datta Kuchi
			Deuri Kuchi
			Dewlipara
			Dhakalia Para (Dhakia Para)
			Dhan Bandha
			Dona Kuchi
			Dongra
			Fatig Grah
			Fulor Guri
			Ganak Kuchi Gaon
			Garemari Gaon

			Garemari Habi
			Garemari Pathar
			Ghilajari
			Hajipara
			Hatijana
			Itarbheta
			Jaher Pam (Johar Pam)
			Jochihati
			Jogir Pam
			Joti Gaon
			Kachari Para
			Kadam Guri
			Kamalgur Pam
			Kathalor Tari
			Kathlijar
			Khangakar Para
			Khandar Par
			Kharadhara Pathar (Kharadhara)
			Kumulli Para (Kumulia Para)

			Major Gaon
			Marolor Tari
			Milekuchi (Mail Kuchi)
			Moiramara
			Moukbari (Manikhari)
			Nangalkur
			Pajar Bhanga
			Paka Betbari Pathar
			PakabetbariGaon
			Pakabetbarigam N.C.
			Pakda Bilor Pathar (Pakdahabila)
			Panichilla
			Phulkipara
			Rangialor Tari
			Suha Bil Daloni (Sohabil Doloni)
			Sundaridia
			Taparbori
			Teklabala (Tekelabala)

An increase in the existence of the number of revenue village in the 2020s from what is existed in the 1960s would lead to an intriguing question as to who are the occupants of these revenue villages which exists in the 2020s but did not exist in the 1960s. The question would be intriguing inasmuch as, people whose names existed in any of the voters' lists on or prior to 1966 in any revenue village are deemed to be Indian citizen under Section 6A of the Citizenship Act, 1955, but such migrants who entered the State of Assam from the specified territory on or after 25.03.1971 are not conferred with any citizenship benefit and they are what is supposed to be declared foreigners. Considering the aspect as culled out from the provisions of the judgment of the Hon'ble Supreme Court in *Sanmilita Mahasangha (supra)* and *Sarbananda Sonowal (supra)* that it had been a purposeful and well coordinated migration from Bangladesh/East Bengal/East Pakistan to the State of Assam with the object of taking over the land in Assam, the existence of a revenue village after 1971, which did not exist in the 1960s would be a matter of concern as there is a possibility that such newly created villages which came into existence at a later date may be inhabited by any such illegal migrants from Bangladesh where the migration is with a purpose and object.

86. It is in this context that it is vital for the Election Commission to conduct a survey as to since when voters' lists are available in the newly created villages which did not exist in the 1960s and the identity of the people whose names are included in the newly created revenue villages.

87. It would be a travesty if the villages came into existence after 1971 or at any time thereafter, but the voters list of a village would exist which would be of 1966 or prior. If any such circumstance, exists in any of the newly created

villages the only conclusion that can be arrived would be that the voters list which may exist to be of a year prior to its existence are all fraudulent and manipulated documents which were created with a purpose in furtherance of the purposeful and well coordinated migration into the State of Assam. It is for such purpose that an well coordinated approach of the various departments of the Home Department, the Revenue Department and the Election Commission is a necessity and if any such voters list is detected to be existing even prior to the concerned revenue village having come to its existence, the security of the nation requires an immediate action to be taken.

88. The newly created revenue villages may either have been created when people from certain existing villages en mass migrated and created new villages either due to erosion or any other reason or the newly created villages may be inhabited by people whose antecedence are not traceable. In case of the later, it is a serious concern from the point of view of public interest and the interest of security of the State. But to take any effective measure, a perfect coordination of the relevant departments being the Home Department to the Government of Assam, the Revenue Department to the Government of Assam and the Election Commission of India is a necessity of the hour.

89. The rights and entitlements to which a declared foreigner will not be entitled if they stayed in the State of Assam or any part of the territory of India and the restricted rights and entitlements to which they may be entitled are answered accordingly.

90. The writ petitioner, Kuddus Ali, who is declared to be a foreigner, shall now be subjected to the procedure indicated above and he should immediately report to the Nodal Authority as indicated above. Accordingly, the Chief

Secretary to the Government of Assam is directed to forthwith constitute the Nodal Authority having inter-departmental jurisdiction, including an arrangement with the Election Commission and the other Departments of the Government of India, before which the declared foreigner would report to or would be produced.

91. The provisions of this order recognizing the right to work, right to education, right to shelter, right to food, right to health and right to education will be applicable to only those declared foreigners who had earlier incorrectly claimed to be an Indian citizens were declared to be foreigners and shall not be applicable to persons involved in any further migration that may take place, or had already taken place, in the State of Assam or in the territory of India. Any such other migrants would be subjected to the law dealing with the illegal migrants, which may also include the deportation.

92. It is stated that in respect of some of the persons who are declared foreigners even passports have been issued where in respect of some others, passports have been issued subsequent of being declared foreigner and these people by referring of their passport, claim citizenship in spite of being declared to be a foreigner. Accordingly it is provided that in the event a person is declared to be a foreigner, the passport issued would also be void and there would be a requirement of a declared foreigner to return and surrender the passport. The nodal authority shall do the needful to implement the same.

93. Writ petition, accordingly, stands disposed of in the above terms.

94. Send back the LCR forthwith.

JUDGE

JUDGE

Comparing Assistant