

GAHC010132762019



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

Case No. : WP(C)/5008/2018

SOBURJAN KHATOON
D/O- LATE NUR MOHAMMAD
W/O- TAHEJ UDDIN
R/O- VILL- BHITORDUAR
P.O- TAPAR PATHAR
P.S- CHHAYGAON
DIST- KAMRUP(R)
ASSAM
PIN- 781137

VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE SECRETARY
MIN OF HOME AFFAIRS
GOVT OF INDIA
NORTH BLOCK
NEW DELHI- 110001

2:THE STATE OF ASSAM
THROUGH THE SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GUWAHATI- 781006

3:THE SUPERINTENDENT OF POLICE(B)
KAMRUP(R)
AMINGAON
ASSAM
PIN- 781031
4:THE OFFICER IN CHARGE
CHHAYGAON POLICE STATION
CHHAYGAON
KAMRUP(R)

ASSAM
PIN- 781124
5:THE DEPUTY COMMISSIONER
KAMRUP(R)
OFFICE OF THE DEPUTY COMMISSIONER
INDOOR STADIUM ROAD
AMINGAON
GUWAHATI
ASSAM
PIN- 781039
6:THE STATE COORDINATOR
OFFICE OF THE STATE COORDINATOR
NRC
ASSAM
1ST FLOOR
ACHYUT PLAZA
G S ROAD
BHANGAGARH
GUWAHATI
ASSAM
PIN- 781005
7:THE ELECTION COMMISSIONER OF INDIA
ASHOKA ROAD
NEW DELHI- 110001
8:THE MEMBER FOREIGNERS TRIUNAL NO. 1
KAMRUP(R)
GUWAHATI
ASSAM
PIN- 781007

Advocate for : MS. D GHOSH
Advocate for : MS. N DEKA appearing for THE UNION OF INDIA AND 7 ORS

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

ORDER

27.03.2023

[A.M.Bujor Barua, J.]

Heard Ms. D. Ghosh, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel for the authorities under the Union of India and NRC respectively; Mr. G. Sarma, learned counsel for the respondents in the Home Department; Ms. K. Phukan, learned

counsel for the Deputy Commissioner; Kamrup(R) and Mr. T. Pegu, learned counsel for the Election Commission of India.

2. The petitioner Soburjan Khatoon had been referred to the Foreigners' Tribunal, Kamrup (R) No. 1, Guwahati for rendering an opinion as to whether she is a person who entered the State of Assam from the specified territory on or after 25.03.1971 resulting in registration of GFT(R) Case No. 1514/2017. An opinion dated 26.06.2018 had been rendered declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. The petitioner, Soburjan Khatoon wife of Tahejuddin and daughter of Late Nur Mohammad who is a resident of village Bhitorduar was subjected to a proceeding before the Foreigners' Tribunal No. II, Kamrup [R] in B.F.T. Case No. 51/2017, wherein she was declared to be an Indian Citizen. In respect of F.T. Case No. 1514/2017 in the Court of the Foreigners' Tribunal No. I, Kamrup [R], notice was addressed to Shaburi Khatoon wife of Tohejuddin of village Chowtara, Chaygaon, but the notice was served on Soburjan Khatoon wife of Tahejuddin and daughter of Late Nur Mohammad resident of village Bhitorduar. The petitioner accordingly brought the aforesaid discrepancy before the Tribunal and the Tribunal passed that order dated 26.06.2018. The Tribunal rejected the aforesaid discrepancy indicated by the petitioner by providing in its order dated 26.06.2018 that as per the judgment rendered in *Amina Khatoon Vs. Union of India in W.P.(C) No. 7339/2015* the principles of res-judicata are not applicable for a proceeding under the Foreigners' Tribunal. Accordingly, the claim of the petitioner was rejected.

5. We take note that in *Abdul Kuddus vs. Union of India reported in (2019) 6 SCC 69* the Hon'ble Supreme Court held that the principles of res-judicata are also applicable in respect of a proceedee in the Foreigners' Tribunal and from such point of view that the Tribunal in its order dated 26.06.2018 was not correct in holding that the principles of res-judicata are not applicable.

6. Accordingly, the order dated 26.06.2018 is set aside. Matter is remanded back to the Foreigners' Tribunal No. I, Kamrup [R] for a fresh adjudication in F.T. Case No. 1514/2017.

7. In doing so the Tribunal to also pass a reasoned order as to whether the person to whom the notice was addressed and the person to whom it was served are one and the same person.

8. The petitioner to appear before the Tribunal on 04.05.2023.
9. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant