

GAHC010169222023



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

Case No. : I.A.(Civil)/2208/2023

AJIMA BIBI @ AJIMA KHATUN @ AJIMA KHATUN
D/O. AJIJ SHEIKH @ ABDUL AJIJ SHEIKH, W/O. AFSAR ALI SARKAR, VILL.
BIDYARDABRI PT. V, P.O. MAHAMAYA HAT, P.S. GOLAKKGANJ, DIST.
DHUBRI, ASSAM, PIN 783335.

VERSUS

THE UNION OF INDIA AND 8 ORS.
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
NEW DELHI

2:THE CHIEF ELECTION COMMISSIONER OF INDIA

NEW DELHI

3:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY.

4:THE DIRECTOR GENERAL POLICE

ASSAM
ULUBARI
GHY.

5:THE DEPUTY COMMISSIONER

DHUBRI
P.O.
P.S. AND DIST. DHUBRI

ASSAM

6:THE STATE CO-ORDINATOR

NRC
ASSAM
BHANGAGARH
GHY.

7:THE SUPDT. OF POLICE (B)

DHUBRI
DIST. DHUBRI
ASSAM

8:THE OFFICER IN CHARGE

GOLAKGANJ POLICE STATION
P.O. AND P.S. GOLAKGANJ
DIST. DHUBRI
ASSAM.

9:THE ELECTORAL REGISTRATION OFFICER

NO. 25 GOLAKGANJ (GENERAL) LAC
DIST. DHUBRI
ASSA

Advocate for the Petitioner : MR. M U MONDAL

Advocate for the Respondent : ASSTT.S.G.I.

Linked Case : WP(C)/2434/2018

ARJIMA BIBI @ AJIMA BIBI @ AJIMA KHATUN
D/O AJIJ SHEIKH @ ABDUL AJIJ SHEIKH
W/O AFSAR ALI SARKAR
R/O VILL- BIDYARDABRI PT.V

P.O. MAHAMAYA HAT
P.S. GOLAKKGANJ

DIST. DHUBRI

ASSAM
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REP. BY THE SECRETARY MINISTRY OF HOME AFFAIRS
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TO THE GOVT. OF ASSAM
HOME DEPTT. DISPUR
GUWAHATI-06.

4:THE DIRECTOR GENERAL OF POLICE

ASSAM
ULUBARI
GUWAHATI-07.
5:THE DEPUTY COMMISSIONER

P.O.
P.S. AND DIST. DHUBRI
ASSAM
PIN - 783305.
6:THE STATE CO-ORDINATOR

NRC
ASSAM
BHANGAGARH
GUWAHATI -05.
7:THE SUPUERINTENDENT OF POLICE (B)

DHUBRI
DIST. DHUBRI
ASSAM

PIN - 783301.
8:THE OFFICER-IN-CHARGE

GOLOKGANJ POLICE STATION
P.O. AND P.S. GOLOKGANJ
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PIN -783335.
9:THE ELECTORAL REGISTRATION OFFICER

NO. 25 GOLAKGANJ (GENERAL) LAC
DIST. DHUBRI
ASSAM
PIN - 783335.

Advocate for : MR. M U MONDAL
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 8 ORS.

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE NELSON SAILO

O R D E R

20/03/2024

(M. R. Pathak, J)

Heard Mr. M U Mondal, learned counsel for the applicant and Mr. H Kuli, learned counsel appearing on behalf of Mr. A I Ali, learned Standing counsel, Election Commission of India for the respondent Nos. 2 & 9. Also heard Ms. A Verma, learned Standing counsel, Home Department, Assam for the respondent Nos. 3, 4, 7 & 8 and Mr. P Sharma, learned Additional Senior Government Advocate, Assam for the respondent No. 5.

2. In a reference being made by the Superintendent of Police (Border), Dhubri vide Police Reference Case No. 9690/GKJ/11, Foreigners Tribunal Case No. FT-9/150/GKJ/2016 was registered before the Foreigners Tribunal 9th Dhubri against Azima Bibi, wife of Afsar Ali of Village-Bidyadabri Pt-V, P.S.-Golakganj, District-Dhubri, Assam, wherein notice under the provisions of the Foreigners Act, 1946 was issued to her. Said Azima Bibi on receipt of such notice contested the said F.T. Case No. FT-9/150/GKJ/2016 by filing her written reply, adducing evidence, exhibiting nine documents in support of her claim of Indian Citizenship.

3. After hearing the said proceedee, Azima Bibi and the other parties and considering the evidences adduced by her, the learned Foreigners' Tribunal 9th Dhubri by order dated 10.10.2017

passed in said F.T. Case No. FT-9/150/ GKJ/2016 opined the petitioner to be a foreigner/illegal migrant under the Foreigners Act, 1946, who had illegally entered into the territory of India (Assam) on or after 25.03.1971.

4. Dissatisfied with the said order/opinion dated 10.10.2017 passed by the learned Foreigners' Tribunal 9th Dhubri in F.T. Case No. FT-9/150/GKJ/2016, said Ajima Bibi @ Ajima Khatun as petitioner filed a writ petition on 04.04.2018 being WP(C) No. 2101/2018, wherein the Court on 09.04.2018 issued Notice to the respondents therein, called for the records and passed interim order, thereby protected the said petitioner.

5. In an another reference relating to Doubtful Voters case being Ref. 'D' Voter Case No. 1303/D/07 made by the Superintendent of Police (Border), Dhubri, Foreigners Tribunal Case being F.T. Case No. FT-9/72/GKJ/2017 was registered before the Foreigners' Tribunal 9th Dhubri against one Arjima Bibi, i.e., the applicant herein.

6. The learned Foreigners' Tribunal 9th Dhubri in said F.T. Case No. FT-9/72/GKJ/2017 under the provisions of the Foreigners Act, 1946 issued notice to the applicant and in spite of receipt of the same, the applicant did not appear before the said Tribunal on the dates fixed for her appearance and filing of written reply/statement. After many such dates, though the applicant through her engaged counsel appeared in said F.T. Case No. FT-9/72/GKJ/2017 on 05.07.2017 but thereafter she again took time for her appearance and for filing her reply. As the applicant remained absent in the matter without taking steps, the said Tribunal on 30.10.2017 passed an ex-parte order giving its opinion that the applicant/petitioner, Arjima Bibi, wife of Afsar Ali Sarkar of Village- Bidyardabri Pt-V, P.S. Golakganj, District-Dhubri, Assam is a foreigner under the Foreigners Act, 1946, who had entered into the territory of India (Assam) on or after 25.03.1971.

7. Challenging the said ex-parte order dated 30.10.2017 passed by the learned Member, Foreigners' Tribunal 9th Dhubri in F.T. Case No. FT-9/72/GKJ/2017, the applicant Arjima Bibi @ Ajima Bibi @ Ajima Khatun filed a writ petition on 12.04.2018 being WP(C) No. 2434/2018.

8. Said Arjima Bibi @ Ajima Bibi @ Ajima Khatun, i.e. the applicant in her said WP(C) No. 2434/2018 stated that earlier on 10.10.2017 she was declared to be a foreigner by the learned Foreigners' Tribunal 9th Dhubri in F.T. Case No. FT-9/150/GKJ/2016 and challenging the same she

had filed another writ petition being WP(C) No. 2101/2018, wherein the Court granted her interim protection. The Court in said WP(C) No. 2434/2018 while issuing notice to the respondents therein on 20.04.2018 also extended the interim protection to its petitioner/applicant herein as given in said WP(C) No. 2101/2018 and directed to list the case along with WP(C) No. 2101/2018.

9. A Co-ordinate Bench of this Court by an order dated 12.06.2023 disposed of the said WP(C) No. 2101/2018 that was preferred by one Ajima Bibi challenging the order dated 10.10.2017 passed by the learned Foreigners' Tribunal 9th Dhubri allowing Arjima Bibi @ Ajima Bibi @ Ajima Khatun, wife of Afsar Ali Sarkar of Village-Bidyadabri Part-V, P.S. Golakganj, District-Dhubri, Assam (petitioner of WP(C) No. 2434/2018) to appear before the Foreigners' Tribunal No. 9th Dhubri on 15.07.2023 after depositing a cost of Rs.5000/- before the District Legal Services Authority, Dhubri and set aside the ex-parte order dated 30.10.2017 passed by the Foreigners' Tribunal No. 9th Dhubri in F.T. Case No. FT-9/72/GKJ/2017 that was registered on a reference made by the Superintendent of Police (Border), Dhubri vice Reference 'D' Voter Case No. 1303/D/07 with further observations at its Para 7. Para -7 of the order dated 12.06.2023 passed in said WP(C) No. 2101/2018 is quoted below:-

“7. Another stand is taken by Mr. MU Mondal, learned counsel for the petitioner that the writ petitioner Ajima Bibi wife of Afsar Ali of village Bidyardabri Part V has also been proceeded by the Foreigners Tribunal No.9th Dhubri in F.T. Case No.FT-9/150/GKJ/2016 corresponding to Ref F.T. Case No.9690/GKJ/11 wherein there is an order declaring her to be a foreigner and against the said order WP(C)No.2101/2018 is pending before the Court. If the petitioner had been proceeded against by the Tribunal in an earlier proceeding, under the law the second proceeding would be unsustainable. But, however, before any such conclusion can be arrived at, it also has to be ascertained as to whether the proceedee Ajima Bibi wife of Afsar Ali of village Bidyardabri Part V in F.T. Case No.FT-9/150/GKJ/2016 corresponding to Ref F.T. Case No.9690/GKJ/11 and the present petitioner-proceedee namely, Arjima Bibi @ Ajima Bibi @ Ajima Khatun wife of Afsar Ali Sarkar of village Bidyardabri Part V are one and the same person. We have noticed that the proceedee in F.T. Case No.FT-9/150/GKJ/2016 corresponding to Ref F.T. Case No.9690/GKJ/11 is Ajima Bibi wife of Afsar Ali of village Bidyardarbi Pt.V, whereas the proceedee in F. T. Case No.FT-9/72/GKJ/2017 corresponding to Ref. D Voter Case No.1303/D/07 is Arjima Bibi wife of Afsar Ali Sarkar of village Bidyardabri Part V. If such stand is taken by the petitioner before the Tribunal, the Tribunal would verify and arrive at a factual

determination as to whether Arjima Bibi wife of Afsar Ali Sarkar of village Bidyardabri Part V of the Dhubri district and Ajima Bibi wife of Afsar Ali of village Bidyardabri Part V in the Dhubri district are one and the same person. If the conclusion is that they are one and the same person, the subsequent proceeding in F. T. Case No.FT-9/72/GKJ/2017 corresponding to Ref. D Voter Case No.1303/D/07 be closed and if the conclusion is that they are two different persons the matter would proceed as per law."

10. By this application, the applicant/petitioner of WP(C) No. 2434/2018 submitted that the said order dated 12.06.2023 passed in WP(C) No. 2101/2018 should have been passed in WP(C) No. 2434/2018, but it was wrongly typed in WP(C) No. 2101/2018.

11. It is also pointed out by the applicant that in WP(C) No. 2434/2018, wherein the ex-parte order dated 30.10.2017 was under challenge; the applicant categorically stated that in another proceeding being F.T. Case No. FT-9/150/GKJ/2016 arising out of Police Reference F.T. Case No. 9690/GKJ/11, the learned Foreigners Tribunal 9th Dhubri passed an order on 10.10.2017 declaring her to be a foreigner under the Foreigners Act, 1946.

12. We have perused both the writ petitions being WP(C) No. 2434/2018 filed by one Arjima Bibi @ Ajima Bibi @ Ajima Khatun on 12.04.2018 as well as WP(C) No. 2101/2018 filed by Ajima Bibi @ Ajima Khatun on 04.04.2018.

13. From the reading of the order dated 12.06.2023 passed in WP(C) No. 2101/2018, it can be seen that the Court was dealing with ex-parte order dated 30.10.2017 that was passed by the Foreigners Tribunal 9th Dhubri in F.T. Case No. FT-9/72/GKJ/2017. We have also noticed that on 12.06.2023 said WP(C) No. 2434/2018 was listed with WP(C) No. 2101/2018 as item Nos. 20 and 21, respectively.

14. After hearing the learned counsels for the parties and considering the entire aspects of the matter, we found that the order dated 12.06.2023 passed earlier in WP(C) No. 2101/2018 was wrongly recorded/typed in the said writ petition instead of WP(C) No. 2434/2018 wherein the applicant Arjima Bibi @ Ajima Bibi @ Ajima Khatun as petitioner challenged the ex-parte order dated 30.10.2017 passed in F.T. Case No. FT-9/72/GKJ/2017.

15. Accordingly, we hereby order that the order dated 12.06.2023 passed earlier in WP(C)

No. 2101/2018 that was wrongly recorded/typed in the said writ petition now should be considered to have been passed in WP(C) No. 2434/2018 and not in WP(C) No. 2101/2018 and further the order dated 12.06.2023 that was passed in WP(C) No. 2101/2018, should be deleted/removed from the said WP(C) No. 2101/2018.

16. In view of the above, said WP(C) No. 2101/2018 be restored to the file which was mistakenly disposed of as the said order dated 12.06.2023 was wrongly recorded in the said writ petition instead of in WP(C) No. 2434/2018.

17. As the order dated 12.06.2023 should have been recorded in WP(C) No. 2434/2018, the said writ petition now stands disposed of in view of said order dated 12.06.2023, noted above.

18. As said WP(C) No. 2101/2018 is now restored to the file, Registry shall call for the records of F.T. Case No. FT-9/150/GKJ/2016 from the office of the Foreigners' Tribunal 9th Dhubri.

19. As a result, this Interlocutory Application stands allowed to the extent above.

JUDGE

JUDGE

Comparing Assistant