

GAHC010173102020



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

Case No. : WP(C)/5183/2020

MUSTT. JARINA BEGUM @ JARINA KHATUN
W/O- MD. ABDUL HASIM, VILL- BHERBHERI, P.S. RUPAHIHAT, DIST.-
NAGAON, ASSAM, PIN- 782125

VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE SECY. TO THE GOVT. OF INDIA, DEPTT. OF HOME AFFAIRS,
NEW DELHI

2:ELECTION COMMISSION OF INDIA
NEW DELHI- 110011

3:COORDINATOR
N.R.C.
ASSAM
GHY-05

4:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY.
HOME AND POLITICAL (B) DEPT.
DISPUR- 781006

5:THE FOREIGNERS TRIBUNAL
3RD NAGAON
NAGAON
ASSAM
PIN- 782003

6:THE SUPERINTENDENT OF POLICE (B)
NAGAON
ASSAM
PIN- 782001

7:THE DY. COMMISSIONER
NAGAON
ASSAM
PIN- 782001

8:THE OFFICER-IN-CHARGE
P.S. RUPAHHAT
DIST.- NAGAON
ASSAM
PIN- 78212

Advocate for the Petitioner : MR. B C DAS

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

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

13-02-2024
(M.R.Pathak, J)

Heard Ms. M. D. Medhi, learned counsel for the petitioner and Ms. A. Verma, learned Standing Counsel, Home Department, Assam for the respondent Nos. 4, 6 and 8. Also heard Mr. H. Kuli, learned counsel appearing on behalf of Mr. A. I. Ali, learned Standing Counsel, Election Commission of India for the respondent No.2 as well as Mr. P. Sharma, learned Additional Senior Government Advocate, Assam for the respondent No.7.

2) By an *ex-parte* order dated 25.06.2018, the learned Member, Foreigners' Tribunal, 3rd, Nagaon in F.T. Case No.NFT(No.3)(D) 787/16 arising out of D Voter Case No.2422/98, on being referred by the Superintendent of Police (Border), Nagaon opined the petitioner, namely, Musstt. Jarina Begum, wife of Hashim Ali of village - Bherbheri Laogaon, Police Station - Rupohihat, District - Nagaon, Assam to be a foreign national under the Foreigners Act, 1946, who

had illegally entered into the territory of India on or after 25.03.1971.

3) The petitioner on coming to know about the said *ex-parte* order dated 25.06.2018, declaring her to be a foreigner, on 23.07.2018 filed an application under Order 9, Rule 3 read with Section 151 of the Code of Civil Procedure (CPC) before the said Tribunal, praying amongst others, to recall/vacate the said *ex-parte* order dated 25.06.2018 passed in said F.T. Case No.NFT(No.3)(D) 787/16 on the ground that the notice of said F.T. Case was not properly served upon her for which the *ex-parte* order was passed by the said Tribunal.

4) The contention of the petitioner is that she is a resident of village - Bherbheri Laogaon and the person concerned, Monsur Ali, who received the notice of the said F.T. Case is not her brother and hence she was not aware of serving of notice of said F.T. Case in her name.

5) The said application of the petitioner filed under Order 9, Rule 3 read with Section 151 of the CPC before the said Tribunal was registered as Petition No.1886/18 of NFT (No.3) Misc. Case No. (M) 8/18. The said Tribunal after considering the evidence adduced by the petitioner as well as Court witnesses and the records made available before it, by order dated 20.11.2019 rejected the said Petition No.1886/18 of NFT (No.3) Misc. Case No. (M) 8/18 of the petitioner with the observation that the *ex-parte* order dated 25.06.2018 passed in said F.T. Case No.NFT(No.3)(D) 787/16 declaring the petitioner to be a foreigner does not call for any interference.

6) We have perused the record in original of F.T. Case No.NFT(No.3)(D) 787/16 that was called for on 10.12.2020.

7) On perusal of the record, we found that during the verification, the petitioner specifically mentioned her name as Jarina Begum, wife of Hashim Ali,

resident of Laogaon and that she was born at village - Bherbheri, Mouza - Khatowal. But the notice issued by the Foreigners' Tribunal under the Foreigners' Act, 1946 on 13.03.2018 was in the address of Bherbheri under Rupohihat Police Station of Nagaon District that was received by one Monsur Ali, who during his evidence before the Tribunal concerned, specifically took the plea that Musstt. Jarina Begum, i.e., the petitioner herein is not his sister and had wrongly accepted the notice of the Tribunal dated 13.03.2018 with the impression that the notice came in the name of his sister Safikun Nehar, wife of Abdul Hasim Ali.

8) From the records we have also seen that one of the Court witness, Rafiquil Islam admitted before the Tribunal that he had served the notice to said Monsur Ali for said Musstt. Jarina Khatun, in the house that was shown by the concerned Village Defence Party (VDP) Secretary.

9) Order 3(5) of the Foreigners (Tribunals) Orders, 1964 relates to service of notice to a proceedee in a case relating to the Foreigners' Act, 1946. The Full Bench of this Court in the case of *State of Assam and others Vs. Moslem Mondal and others*, reported in *2013 (1) GLT 809*, decided on 03.01.2023, at para 102 also laid down the procedure regarding service of notice on a proceedee/opposite party in a Foreigners' Tribunal Case applicable to all the proceedings pending before such Tribunal, where notices are either yet to be issued or issued but not yet served.

10) On perusal of the record, we found that the notice of the said F.T. Case No.NFT(No.3)(D) 787/16 issued by Foreigners' Tribunal, 3rd, Nagaon, was not duly served on its/opposite party proceedee, i.e., the petitioner herein in terms of the provisions as specified under Order 3(5) of the Foreigners (Tribunals)

Orders, 1964 as well as the decision of the Full Bench of this Court in the case of *Moslem Mondal* (supra).

11) Accordingly, the impugned *ex-parte* order dated 25.06.2018, passed by the learned Member, Foreigners' Tribunal, 3rd, Nagaon in said F.T. Case No.NFT(No.3)(D) 787/16 is hereby set aside and quashed. Consequently, the order dated 20.11.2019 rejecting the Petition No.1886/18 of NFT (No.3) Misc. Case No. (M) 8/18 filed by the petitioner under Order 9, Rule 3 read with Section 151 of the CPC is also set aside and quashed.

12) Since the petitioner has now come to know about the proceeding of said F.T. Case No.NFT(No.3)(D) 787/16 pending against her, she shall appear before the learned Member, Foreigners' Tribunal, 3rd, Nagaon in said F.T. Case No.NFT(No.3)(D) 787/16 **on or before 04.03.2024** along with a certified copy of this order. On her such appearance, as directed above, the petitioner shall file her Written Statement along with the Evidence-in-Affidavit in said FT Case on the said date i.e., on 04.03.2024. Thereafter, the petitioner shall regularly appear in the said F.T. Case No.NFT(No.3)(D) 787/16 on the dates so fixed by the learned Member, Foreigners' Tribunal, 3rd, Nagaon till its disposal.

13) On such appearance of the petitioner, as directed above, the Foreigners' Tribunal, 3rd, Nagaon shall dispose of the said F.T. Case No.NFT(No.3)(D) 787/16 in accordance with law and under the provisions of the Foreigners' (Tribunals) Orders, 1964 within the time as prescribed under the Foreigners' Act, 1946 as well as under the Foreigners' (Tribunals) Orders, 1964.

14) However, we make it clear that failure on the part of the petitioner to file her Written Statement as well as Evidence-in-Affidavit on or before 04.03.2024,

before the Foreigners' Tribunal, 3rd, Nagaon in said FT Case as directed above, the said Foreigners' Tribunal concerned shall be at liberty to dispose of the said F.T. Case No.NFT(No.3)(D) 787/16 in accordance with law.

15) With the above observations and directions, this writ petition stands disposed of.

16) Registry shall send back the record of said F.T. Case No.NFT(No.3)(D) 787/16 forthwith to the Foreigners' Tribunal, 3rd, Nagaon, along with a copy of this order.

JUDGE

JUDGE

Comparing Assistant