

GAHC010193892017



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

**Case No. : WP(C)/1466/2017**

SUKUR ALI and ANR.  
S/O LT. KAFILATDDIN @ KAFILDIN @KOPIL UDDIN

2: REJIA BEGUM  
D/O SUKUR ALI BOTH ARE RESIDENTS OF - VILL- JANPAR MIKIRGAON  
P.O. and P.S. DHARMTUL  
DIST. MORIGAON  
ASSA

VERSUS

THE UNION OF INDIA and 4 ORS.  
REP. BY THE SECRETARY OF THE MINISTRY OF HOME AFFAIRS, GOVT. OF  
INDIA, NEW DELHI-1.

2:THE STATE OF ASSAM  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
HOME DEPARTMENT  
DISPUR  
GUWAHATI-06.

3:THE DEPUTY COMMISSIONER

MORIGAON  
ASSAM

4:THE SUPERINTENDENT OF POLICE B  
MORIGAON  
DIST. MORIGAON  
ASSAM

5:THE OFFICER-IN-CHARGE

DHARAMTUL POLICE STATION

DIST. MORIGAON  
ASSA

**Advocate for the Petitioner : MD.S ISLAM**

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

**BEFORE**  
**HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**  
**HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

**ORDER**

**06-05-2024**

(M.R.Pathak, J)

Heard Md. S Islam, learned counsel for the petitioner and Mr. P K Medhi, learned CGC for the respondent No. 1. Also heard Mr. G Sharma, learned Standing counsel, Home Department, Assam for the respondent Nos. 2, 4 & 5 as well as Mr. R Talukdar, learned Government Advocate, Assam for the respondent No. 3.

- 2.** Notice in this case was issued on 05.05.2017.
- 3.** Registry has already received the relevant records of F.T. Case No. 350/2007 from the Foreigners Tribunal (1<sup>st</sup>), Morigaon that was called for by the Court earlier on 05.05.2017.
- 4.** The petitioners, namely, Sukur Ali and Rejia Begum filed this writ petition on 07.03.2017, praying amongst others, to set aside the impugned ex-parte order dated 20.05.2011 passed by the learned Foreigners Tribunal (1<sup>st</sup>), Morigaon in F.T. Case No. 350/2007, whereby both the petitioners and Musstt. Lalbanu Begum as well as Md. Latif Ali were declared as foreigners under the Foreigners Act, 1946 who had illegally entered into India (Assam) on or after 25.03.1971. The petitioners have further prayed to set aside and quash the order dated 17.01.2017 passed by the said Tribunal rejecting the Misc Case No. 49/2016 preferred by the petitioners in said F.T. Case No. 350/2007.

**5.** From the records we have seen that a proceeding under the Foreigners Act, 1946 and Foreigners (Tribunals) Order, 1964 was initiated by the Superintendent of Police (Border), Morigaon against one, Musstt. Lalbanu Begum, wife of petitioner No. 1 Sukur Ali and mother of petitioner No. 2 Rejia Begum. After the police enquiry, nationality of said Musstt. Lalbanu Begum was found to be suspected as she failed to place any documentary evidence in that regard during such enquiry. Considering such report of the enquiry officer, the Superintendent of Police (Border), Morigaon, Assam referred the matter to the Foreigners Tribunal (1<sup>st</sup>), Morigaon under the Foreigners Act, 1946 and Foreigners (Tribunals) Order, 1964 for its opinion as to whether said Musstt. Lalbanu Begum is or is not a foreigner.

**6.** Accordingly, said reference of the Superintendent of Police (Border), Morigaon was registered as F.T.C. (Foreigners Tribunals Case) No. 350/2007 before the Foreigners Tribunal (1<sup>st</sup>), Morigaon, wherein the said Tribunal on 29.10.2008 issued notice under said 1964 Order not only to Musstt. Lalbanu Begum, but also to Md. Sukur Ali (husband of said Musstt. Lalbanu Begum), Md. Latif Ali (son of Md. Sukur Ali) as well as Rejia Begum (daughter of Md. Sukur Ali), informing them that they have been suspected to be foreigners on or from 25.03.1971 and illegally residing at Village-Janpar, Police Station-Dharanpur, District-Morigaon, Assam; asking them to appear before the said Tribunal on 06.02.2009 and to submit their written statement/reply in that regard in connection with said F.T.C. Case No. 350/2007.

**7.** In spite of receipt of notice in said F.T.C. Case No. 350/2007, as the proceedees did not appear before the Tribunal, after granting several adjournments, the said Foreigners Tribunal (1<sup>st</sup>), Morigaon by the impugned ex-parte order dated 20.05.2011 opined all the four proceedees of said F.T.C. Case No. 350/2007, including the two petitioners herein to be foreigners under the Foreigners Act, 1946 holding that they have illegally entered into the territory of India (Assam) on or after 25.03.1971.

**8.** Petitioners stated that they are living separately from said Musstt. Lalbanu Begum, Md. Latif Ali for last more than 20 years and that they were not aware about the said F.T. Case No. 350/2007, for which they could not take any steps in the said case. Petitioners also stated

that said Musstt. Lalbanu Begum, Md. Latif Ali did not inform them about the said F.T. Case No. 350/2007.

**9.** Against said ex-parte order dated 20.05.2011, noted above, the present petitioners on 08.11.2016 filed a petition under Order 9 Rule 13 read with Section 151 of the CPC along with certain documents being Misc Case No. 49/2016 before the Foreigners Tribunal (1<sup>st</sup>), Morigaon praying for setting aside and quash the said ex-parte order dated 20.05.2011 passed in F.T. Case No. 350/2007. Along with the said Misc Case No. 49/2016, the petitioners also filed an application under Section 5 of the Limitation Act to condone the delay in preferring the said application under Order 9 Rule 13 read with Section 151 of the CPC.

**10.** However, the said Tribunal by order dated 17.01.2017 rejected said Misc Case No. 49/2016 preferred by the petitioners.

**11.** Aggrieved by the said ex-parte order dated 20.05.2011 passed in F.T. Case No. 350/2007 and the order dated 17.01.2017 rejecting the said Misc Case No. 49/2016, the petitioners have preferred this writ petition.

**12.** It is a settled position of law, as been held in the case of *Aktara Khatun and Others -Vs- State of Assam and Others*, reported in 2017 (2) GLT 974 as well as in the case of *Sudhir Roy and Others -Vs- Union of India and Others*, reported in 2019 (1) GLT 353 that — Presumption by itself would not lead to a conclusion that the family members of a proceedee, who has been declared to be a foreigner, are also foreigners; though the same may be a good cause for initiating an enquiry and make a reference against the family members of such a proceedee. Without following the due procedure of law by conducting an enquiry and without making a reference that being adjudicated by the Tribunal, the family members of a proceedee cannot be declared to be foreigners.

**13.** On perusal of the records of said F.T. Case No. 350/2007 we have seen that there was neither any enquiry with regard to the nationality of the petitioners nor there was any reference under the Foreigners Act, 1946 and Foreigners (Tribunals) Order, 1964 by the

competent authority, i.e., the Superintendent of Police (Border), Morigaon to the Foreigners Tribunal (1<sup>st</sup>), Morigaon against the present petitioners suspecting their nationality.

**14.** As such, the proceeding initiated by the Foreigners Tribunal No. 1<sup>st</sup>, Morigaon against the present petitioners in F.T. Case No. 350/2007 and the findings made therein is illegal with respect to them.

**15.** For the reasons above, the impugned ex-parte order dated 20.05.2011 passed by the learned Foreigners Tribunal No. 1<sup>st</sup>, Morigaon in said F.T. Case No. 350/2007 being not sustainable in law, is hereby stands set aside and quashed. Consequently, the order dated 17.01.2017 passed by the said Tribunal rejecting the Misc Case No. 49/2016, preferred by the petitioners under Order 9 Rule 13 read with Section 151 of the CPC is also set aside and quashed.

**16.** The interim order dated 05.05.2017 passed earlier in this proceeding, in favour of the petitioners, stands merged with this order.

**17.** It is made clear that the present order is applicable with regard to the petitioners Md. Sukur Ali and Rejia Begum only.

**18.** Mr. S Islam, learned counsel appearing on behalf of the petitioners has submitted that the petitioner No. 1, namely, Sukur Ali, son of Kafilatddin @ Kafildin @ Kapiluddin, resident of village - Mazgaon, Bangaldhara, District-Morigaon, i.e., one of the proceedee of said F.T. Case No. 350/2007 expired on 10.02.2023 and in that regard he has submitted a copy of the Death Certificate of the petitioner No. 1 that was issued by the Registrar (Death & Birth), Office of the Joint Director of Health Services, Morigaon vide Registration No. D-2023.18-90248-001130 dated 13.12.2023.

**19.** Copy of the Death Certificate dated 13.12.2023 of the petitioner No. 1, Sukur Ali, placed before the Court today by Mr. S Islam, learned counsel, be kept as part of this record.

**20.** Registry shall return the records of F.T. Case No. 350/2007 to the Foreigners Tribunal (1<sup>st</sup>), Morigaon, along with a copy of this order as well as a copy of the Death Certificate of

the petitioner No. 1, Sukur Ali, noted above.

**21.** With the above observation and direction, this writ petition stands allowed.

**JUDGE**

**JUDGE**

**Comparing Assistant**