

GAHC010203272024



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

**Case No. : WP(C)/5108/2024**

JAMIR CHAN @ MD. JAMIR ALI  
S/O- LATE HATEM ALI,  
PERMANENT RESIDENT OF  
VILLAGE- ROUMARI PATHAR,  
P.O.- ROUMARI PATHAR,  
P.S.- TARABARI,  
DISTRICT- BARPETA, ASSAM,  
PIN- 781312.

VERSUS

THE UNION OF INDIA AND 5 ORS  
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,  
MINISTRY OF HOME AFFAIRS, SHASTRI BHAWAN,  
TILAK MARG, NEW DELHI- 110001.

2:THE STATE OF ASSAM  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM  
HOME DEPARTMENT  
DISPUR  
GUWAHATI- 781006.

3:THE ELECTION COMMISSION OF INDIA  
NIRVACHAN SADAN  
ASHOKA ROAD  
NEW DELHI- 110001.

4:THE DEPUTY COMMISSIONER  
BARPETA DISTRICT  
BARPETA  
ASSAM  
PIN- 781301.

5:THE SUPERINTENDENT OF POLICE(BORDER)  
BARPETA DISTRICT  
BARPETA  
PIN- 781301.

6:THE NODAL OFFICER OF THE NRC  
ASSAM  
BHANGAGARH  
GUWAHATI- 781005

**Advocate for the Petitioner** : MR. A R SIKDAR, MR S A REEYAZ,MR. S I TALUKDAR,J U AHMED

**Advocate for the Respondent** : DY.S.G.I., SC, ECI,SC, F.T,GA, ASSAM

**BEFORE**  
**HONOURABLE MR. JUSTICE KALYAN RAI SURANA**  
**HONOURABLE MR. JUSTICE KARDAK ETE**

**ORDER**

Date : 11.11.2024.

*(K.R. Surana, J.)*

Heard Mr. A.R. Sikdar, learned counsel for the petitioner. Also heard Mr. M. Adhikari, learned CGC appearing for the respondent No.1; Mr. G. Sharma, learned standing counsel for Home Department, Assam appearing for the respondent Nos.2 & 5; Mr. H. Kuli, learned counsel appearing on behalf of Mr. A.I. Talukdar, learned standing counsel for the Election Commission of India representing respondent No.3 and Mr. R. Talukdar, learned Government Advocate appearing for the respondent No.4. Although, the respondent No.6 is under the Home Department, neither the Government Advocate nor the standing counsel for Home Department, Assam has instruction to appear for them. Therefore, none appears on call for the respondent No.6.

2. The *ex-parte* opinion dated 09.05.2022, passed by the learned Member, Foreigner's Tribunal No.7<sup>th</sup>, Barpeta in F.T. Case No.451/2019, arising out of Reference Case No.655/04, is assailed in this writ petition filed under Article 226 of the Constitution of India, whereby the petitioner was declared as a foreigner entered Assam illegally on or after 25.03.1971, inter alia, on the ground that the notice was not served on the petitioner in accordance with Para 3(5)(f) of the Foreigners (Tribunals) Order, 1964. By the said opinion, the petitioner was declared to be a foreigner of post 25.03.1971.

3. The learned counsel for the petitioner has submitted that the requirement of Para 3(5)(f) of the Foreigners (Tribunals) Order, 1964, where the proceedee has changed his place of residence without intimation to the Investigation Agency, process should be affixed on the outer door or some other conspicuous part of the house, where the proceedee last resided. It is submitted that the Voters List, appended to this Writ Petition discloses that the petitioner has not changed his and is still available in the village Roumari Pathar, Police Station Tarabari in the District of Barpeta. It is submitted that the petitioner has sufficient documents to prove that he is not a foreigner.

4. The learned standing counsel for Home Department, Assam has made his submission to support the *ex-parte* opinion dated 09.05.2022. It is submitted that as the petitioner was found absent, notice was affixed in the office of the Gaonburha, in the presence of the witnesses.

5. We have considered the submissions of both sides and also perused the provisions of Para 3(5)(f) of the Foreigners (Tribunals) Order, 1964. The said order is quoted below:

*“3(5)(f) if the proceedee has changed the place of residence or place of work, without intimation to the investigating agency, the process server shall affix a*

*copy of the notice on the outer door or some other conspicuous part of the house in which the proceedee ordinarily resides or last resided or reportedly resided or personally worked for gain or carries on business, and shall return the original to the Foreigners Tribunal from which it was issued with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did do, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed;”*

6. Accordingly, we note that the requirement of law for service of process under Para 3(5)(f) of the Foreigners (Tribunals) Order, 1964, is to affix the process on the outer door or some other conspicuous part of the house, where the proceedee last resided, which was not followed. Therefore, we find that the continuation of the proceeding against the petitioner on the strength of the Process Server's report, as referred to in para 2 of the impugned opinion cannot be sustained.

7. Accordingly, the ex-parte opinion dated 09.05.2022 is found to be vitiated on account of service of notice, in a manner which is not envisaged under the Foreigners (Tribunals) Order, 1964, specifically para 3(5)(f) thereof.

8. Therefore, there is no hesitation to set aside the *ex-parte* opinion dated 09.05.2022, passed by the learned Member, Foreigner's Tribunal No.7<sup>th</sup>, Barpeta in F.T. Case No.451/2019, arising out of Reference Case No.655/04.

9. The said opinion is conditionally set aside with a direction to the petitioner to appear before the learned Member, Foreigner's Tribunal No.7<sup>th</sup>, Barpeta within 29.11.2024, furnishing the certified copy of this order, seek further instructions from the said learned Tribunal. On appearance of the petitioner, the learned Tribunal shall afford sufficient opportunity to the petitioner to file his written statement and documents in terms of the said 1964 Order.

10. In the meantime, the petitioner is also directed appear before the Superintendent of Police (Border), Barpeta within 10 (ten) days from today during the office hours and shall furnish a bail bond of Rs.5,000/- (Rupees five thousand only), with one surety of the like amount to the satisfaction of the said authority. Further, the Superintendent of Police (Border), Barpeta is directed that on appearance of the petitioner within the period indicated above, the biometrics of the iris of both eyes, the fingerprints of both hands and the photographs of the petitioner shall be obtained, whereafter, he shall be allowed to remain on bail.

11. On his appearance before the Superintendent of Police (Border), Barpeta, as directed above, the said authority shall obtain necessary information and documentation as required under the Rules from the petitioner for securing his presence.

12. It is made clear that if the petitioner does not appear before the said authority within the time allowed, this order of granting bail shall stand revoked, without any reference to the Court.

13. The learned standing counsel for Home Department, Assam shall transmit a copy of this order the Superintendent of Police (Border), Barpeta.

14. The writ petition stands allowed in the "motion stage", without issuance of notice on the respondents.

JUDGE

JUDGE

**Comparing Assistant**