

GAHC010242472023



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

WP(C)/5800/2023

RAHIJ UDDIN @ ROHIJUDDIN @ ROHIJ ALI
S/O- LATE HUSEN ALI @ HUSSAIN ALI @ HASEN ALI

R/O- BARJULI
PAIKAN PART-I

P.S.- KRISHNAI
DIST.- GOALPARA
(ASSAM).

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA

HOME DEPARTMENT
NEW DELHI-01.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM

HOME DEPARTMENT
DISPUR

GUWAHATI-06.
3:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOK ROAD

NEW DELHI

PIN- 110001.
4:THE DEPUTY COMMISSIONER
GOALPARA
DIST- GOALPARA
ASSAM
PIN- 783121.
5:THE SUPERINTENDENT OF POLICE (BORDER)
GOALPARA
DIST- GOALPARA
ASSAM
PIN- 783121.
6:THE STATE COORDINATOR
NATIONAL REGISTRATION OF CITIZEN
ASSAM
BHANGAGARH
GUWAHATI-05.

Advocate for : MR S HOQUE
Advocate for : DY.S.G.I. appearing for THE UNION OF INDIA AND 5 ORS

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

08.02.2024

(S.K. Medhi, J)

Heard Shri S. Hoque, learned counsel for the petitioner. Also heard Shri J. Payeng, learned Standing Counsel, Home Department, Shri A.I. Ali, learned Standing Counsel for the Election Commission of India and Shri P. Sarma, learned counsel for the State respondents.

2. The instant writ petition has been preferred against an order dated 26.06.2023 passed by the learned Foreigners Tribunal No. 2, Goalpara in Misc. Case No. 02/2023 arising out of G.F.T. (2) 960/2022. The aforesaid G.F.T. proceeding is against the petitioner initiated vide a notice dated 12.02.2022 issued by the said Tribunal.

3. The projected case of the petitioner is that there was an earlier proceeding against the same petitioner which was registered as F.T. Case No. 1133/ K/ 2016 in

which an opinion was rendered on 03.02.2021 by the Foreigners Tribunal, Goalpara holding the petitioner to be a citizen of India. Basing upon the said opinion, the petitioner had filed the aforesaid Misc Case No. 02/2023 on 22.12.2022 with a prayer to drop the proceedings in view of the earlier opinion rendered.

4. The learned Tribunal vide the impugned order dated 26.06.2023 has however rejected the said petition and has fixed the matter for submission of written statement. Being aggrieved by the aforesaid order, the instant petition has been filed.

5. Shri Hoque, the learned counsel for the petitioner has submitted that the applicability of the doctrine of *res judicata* in an F.T. Proceeding is no longer *res integra* in view of the law laid down by the Hon'ble Supreme Court in the case of ***Abdul Kuddus vs. Union of India and Ors.*** reported in **2019 6 SCC 604**. He submits that there are materials to show that it is the same petitioner against whom the F.T. Proceeding was initiated and decided in his favour and therefore the present proceeding was not maintainable at all. The learned counsel has also submitted that certain observations have been made by the learned Tribunal in the impugned order which were not called for.

6. *Per contra*, Shri J. Payeng, learned Standing Counsel, Home Department has submitted that the petitioner has not been precluded in any manner of defending himself and the present order has only rejected the preliminary objection raised by the petitioner for dropping the proceeding by applying the doctrine of *res judicata*. The learned Standing Counsel submits that though there is no dispute to the proposition of applicability of the doctrine of *res judicata* in an F.T. proceedings, the facts and circumstances would have to meet the requirements for such application which necessarily include the name, details of the family members, address etc. He submits that there are *prima facie* materials to show that the proceedee in the earlier F.T. proceeding was a different person and therefore the present order cannot be faulted with. He has also indicated from the impugned order dated 26.06.2023 that though

the present proceeding is pending, the same was registered at an earlier point of time, namely in the year 2008 whereas the F.T. case wherein the opinion was rendered and is relied upon by the petitioner was registered in the year 2016.

7. The records of the F.T. Case which were called for have been perused. After perusal of the records, though there are certain materials which would be relevant to adjudicate the issue, we are of the opinion that the scope and opportunity to defend the case by the petitioner before the Tribunal has not been closed or affected in any manner by the impugned order. We are also of the opinion that since the present point of *res-judicata* would require adducing of evidence, while the petitioner is at liberty to file a written statement, the said issue can be taken up as one of the issues and the petitioner may prove the same by producing cogent evidence in accordance with law. We are also of the view that taking into account the objective of the statute, the present prayer of the petitioner to close the proceeding on the basis of a mere application without adducing any evidence may not be in sync with the said objective.

8. In view of the aforesaid discussion, the present petition is dismissed. However, liberty is granted to the petitioner to file the written statement of defence on or before 29.02.2024. We further make it clear that the petitioner would be at liberty to take up the issue of *res-judicata* and prove the same in accordance with law. While adjudicating the said issue, if taken, the learned Tribunal will not be influenced in any manner by the earlier order of rejection dated 26.06.2023 and would decide the same strictly in accordance with law, as per its own merits.

9. The concerned records of the F.T. Case be returned forthwith.

JUDGE

JUDGE

Comparing Assistant