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

Case No. : WP(C)/5773/2023

MUSSTT ROHIMA KHATOON @ ROHIMA KHATUN @ RAHIMA KHATOON
D/O- MD. HAZARAT ALI @ HAZARAT ALI AND
W/O- MD. GAFUR ALI @GAFUR ALI,
R/O- VILLAGE DONGIBIL BANGO GAON,
P.S- BIHPURIA, DIST- LAKHIMPUR, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, NEW DELHI- 110001.

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

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

4:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
BHANGAGARH
GUWAHATI-05

DIST- KAMRUP (M)

5:THE DEPUTY COMMISSIONER
P.O AND P.S- NORTH LAKHIMPUR
DIST- LAKHIMPUR
ASSAM
PIN-787001

6:THE SUPERINTENDENT OF POLICE (B)
P.O AND P.S- NORTH LAKHIMPUR
DIST- LAKHIMPUR
ASSAM
PIN-787001

7:THE OFFICER IN CHARGE
BIHPURIA POLICE STATION

P.O AND P.S- -BIHPURIA

DIST- LAKHIMPUR
ASSAM
PIN-78716

Advocate for the Petitioner : MR. S N TAMULI, MR. A RAHMAN,MS A AHMED

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

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

16.09.2026

(S. K. Medhi, J)

Heard Mr. S.N. Tamuli, learned counsel for the petitioner. Also heard Ms. L. Devi, learned CGC; Mr. N. Kalita representing Mr. A.I. Ali, learned standing counsel for the ECI; Mr. J. Payeng, learned standing counsel for the FT matters and NRC; and Ms. R.B. Bora, learned Jr. Govt. Advocate for respondents.

2. The petitioner by means of this petition filed under Article 226 of the Constitution of India has put to challenge an opinion dated 12.05.2022, passed by the learned Member, Foreigners' Tribunal-1, Lakhimpur, North Lakhimpur in Lakhimpur F.T (1)/Case No. 5161/2012 arising out of District No. 57/2011, declaring the petitioner to be a foreigner/illegal migrant of post 25.03.1971 stream. The said opinion is an ex-parte one.

3. Mr. Tamuli, learned counsel for the petitioner has submitted that the petitioner was earlier proceeded with another L.F.T Case No.660(d)/11 of Dist.No.217 in which there was an opinion dated 29.03.2012 declaring the petitioner to be an Indian citizen. However, another Reference was initiated against the petitioner in which she had initially appeared and contested the same by filing a written statement. Thereafter, due to advent of COVID-19, she could not appear further, leading to the passing of the impugned opinion dated 12.05.2022, which is the subject matter of challenge in the present petition.

4. The learned counsel for the petitioner has relied upon the following decisions of the Hon'ble Supreme Court namely *(i) Abdul Kuddus Vs. Union of India and Others, reported in (2019) 6 SCC 604 (ii) Tara Banu Begum @ Tara Bhanu Khatoon Vs. Union of India [Order dated 22.04.2025 in Special Leave Petition (Civil) No.24703/2023]* and has contended that it is no longer res integra that the doctrine of res judicata would be applicable even in a proceeding before the learned Foreigners Tribunal.

5. Mr. J. Payeng, learned standing counsel for the FT matters and NRC has submitted that though there is no dispute to the proposition laid down by the Hon'ble Supreme Court in the aforesaid two cases, there would still be a requirement to prove that the person against whom the impugned opinion

has been rendered is the same person against whom there is an earlier opinion in her favour. The said burden has to be discharged by the party in accordance with law and only thereafter, the question of applying the doctrine of *res judicata* would come in.

6. In the instant case, we have seen that the impugned opinion dated 12.05.2022 has been passed at a stage when the petitioner, as proceedee had failed to appear after filing her written statement. As noted above, it is the submission of the petitioner that due to the prevailing situation of COVID-19, such appearance and contest could not be made.

7. We are of the considered opinion that in view of the law laid down by the Hon'ble Supreme Court in the decisions mentioned above, the petitioner should be afforded an opportunity to prove that she is the same person against whom there was an earlier proceeding as mentioned above in which she was declared to be an Indian citizen. We have however seen that the aforesaid point was not even raised in the written statement and has only been raised in the writ petition. The learned counsel for the petitioner has clarified that at the time of filing of the written statement, the law was not settled by the Hon'ble Supreme Court.

8. Be that as it may and in the interest of justice, while the impugned opinion dated 12.05.2022 is interfered with and set aside, the petitioner is directed to appear before the concerned learned Tribunal on or before 30.09.2026.

9. We further give liberty to the petitioner to file an additional written statement, specifically pleading that the petitioner was earlier proceeded in a different Reference case, in which there was an opinion in her favour and

thereafter, lead evidence to show that the proceedee in that case is the same person against whom the present Reference has been initiated. If, the petitioner is able to satisfy and prove that she is the same person, the proceedings may be dropped. If, however, the petitioner is not able to prove the same, the learned Tribunal would proceed in accordance with law and pass an opinion after giving the petitioner an opportunity to contest the same by filing the chief examination of her witness(es).

10. LCR be sent back forthwith.

11. We make it clear that the present order shall not be treated as a precedent, as it has been passed only under the exceptional facts and circumstances of the present case.

12. Accordingly, this writ petition stands disposed of.

JUDGE **JUDGE**

Comparing Assistant