GAHC010262172018

2026:GAU-AS:12251

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

Case No. : WP(C)/8209/2018

SULEMA KHATUN @ SALEHA KHATUN
D/O. LT. AMJAT ALI, W/O. MOFIZ UDDIN, VILL. BARPETA, P.S. RUPAHIHAT, P.O. ROUMARI, DIST. NAGAON, ASSAM-782125.

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, NEW DELHI-01.

2:THE ELECTION COMMISSION OF INDIA

NEW DELHI-01.

3:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-06.

4:THE ASSAM CO-ORDINATOR OF NRC

BHANGAGARH
ASSAM
GHY.-05.

5:THE DY. COMMISSIONER

DIST. NAGAON
ASSAM-782001.

6:THE SUPDT. OF POLICE (B)

DIST. NAGAON
ASSAM-782001.

7:THE OFFICER IN CHARGE

RUPAHIHAT POLICE STATION
DIST. NAGAON
ASSAM-782125

Advocate for the Petitioner : MR. M U MAHMUD, MR. M ALI,MR S ISLAM,MR P K DAS

Advocate for the Respondent : ASSTT.S.G.I., SC, NRC,SC, ECI,SC, F.T

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

26.08.2026

(K.R. Surana, J)

Heard Mr. M. U. Mahmud, learned counsel for the petitioner. Also heard Ms. A. Gayan, learned CGC, Mr. J. Payeng, learned Standing Counsel, FT and Border matters, Mr. A. I. Ali, learned Standing Counsel, ECI and Mr. P. Sarmah, learned Additional Senior Govt. Advocate for the State.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned opinion dated 25.06.2018, passed by the learned Member, Foreigner's Tribunal 3rd, Nagaon, in F.T. Case No. NFT. (No.3)(D) 220/2016, corresponding to D/Case No. 2428/98, by which the petitioner was declared to be an Foreigner of post 25.03.1971 stream.

3. Pursuant to the directions issued by the Election Commission of India, the Electoral Registration Officer of 85 No. Rupahihat LAC, on a doubt, directed that

an enquiry to be carried out by the Local Verification Officer about the citizenship documents of the petitioner. Based on the LVO report, the Electoral Registration Officer submitted the reference to the Jurisdictional Superintendent of Police and accordingly, the Superintendent of Police (Border) Nagaon, being the competent authority, had made reference before the then Chairman of Illegal Migrants (Determination) Tribunals, Sankardev Nagar, Hojai, District Nagaon. In course of time, the Illegal Migrants (Determination by Tribunals) Act, 1983 was declared *ultra vires* by the Supreme Court of India in the case of *Sarbananda Sonowal vs. Union of India & Anr. (2005) 5 SCC 665* and accordingly, all the reference was transferred by virtue of the said order of the Supreme Court of India to the jurisdictional Foreigners Tribunals.

4. The proceeding against the petitioner was transferred to the learned Member, Foreigners Tribunal, 3rd, Nagaon.

5. In view of the order of remand, which is proposed to be passed, the pleadings and the evidence have not been referred to in this order.

6. It would suffice to mention that the petitioner had examined 3(three) witnesses, namely herself as OPW-1, Md. Fakrul Islam, Govt. Gaonburah of village Barpeta as OPW-2 and Md. Jamir Ali, the projected brother of the petitioner as OPW-3.

7. While the petitioner did not exhibit any documents, the Govt. Gaonburah (OPW-2) had exhibited 5 (five) documents, being the certified copy of the Voter's List of 1965, (Exhibit-1), a certified copy of the Voter's List of 1970, (Exhibit-2). The sale deed dated 15.03.1955 (Exhibit-3), certified copy of *Jamabandi* (Exhibit-4) and Govt. Gaonburah certificate dated 19.07.2016 (Exhibit-5). Thus, none of the documents were exhibited by the OPW-1, i.e., the

petitioner, or by the OPW-3, the projected brother of the petitioner.

8. The Tribunal records disclose that the presence of the Govt. Pleader is not recorded on any dates, and even in the impugned opinion, the Govt. pleader for the State is shown to be "none". However, the Tribunal records disclose that the OPW-1 was cross-examined and discharged on 21.02.2018, and OPW-2 and OPW-3 were examined, cross-examined and discharged on 15.05.2018.

9. The order sheet does not show as to who was the person who had cross-examined the petitioner (OPW-1) and 2 (two) other witnesses, i.e., OPW-2 and OPW-3. Therefore, the inevitable presumption is that the learned Tribunal, instead of asking questions in exercise of its power under Section 165 of the Evidence Act, 1872 proceeded to cross-examine the 3 (three) OPW's.

10. The learned Standing Counsel for the FT and Border matters has vehemently opposed any adverse inference being drawn from the recording of the cross-examination of the 3 (three) witnesses examined by the petitioner.

11. It has been submitted that as the reference was made long back in the year 1998, this Court may deem it appropriate, to expunge the cross-examination of the 3 (three) OPW's. It is also submitted that as the nature of cross-examination is not found to prejudice the petitioner, the Court may proceed to determine the issues raised in this writ petition, if required, by treating the cross-examination of the 3 (three) OPW's as " examination by the Tribunal".

12. By referring to paragraph-113 of the case of *State of Assam Vs. Moslem Mondal, (2013) 3 GLR 402* : *2013 (1) GLT 809*, it has been submitted that in exercising the power and jurisdiction of certiorari under Article 226 of the Constitution of India, this Court, not being the Court of appeal or revision, is

only required to examine if the impugned opinion was vitiated by any jurisdictional error, or that there was a failure of justice or that the learned Tribunal, while deciding the issue, has taken into consideration extraneous materials for his decision or that long legal precepts are applied under the facts of the case, or it has taken into irrelevant consideration.

13. It is submitted that an examination conducted by the learned Tribunal, merely because it is mentioned as cross-examination, ought to be treated as one and as questions put by the learned Tribunal under Section 165 of the Evidence Act, 1872. Accordingly, it is submitted that there was no jurisdictional error save and except for noting of the questions put by the learned Tribunal was cross-examination, which according to the learned Standing Counsel for the FT and Border matters as a error, which is clerical in nature. It is also submitted that even if the evidence of the petitioner and other 2 (two) witnesses are taken at its face value, no case is made out by the petitioner for interference because the petitioner had not exhibited any documents and that the documents which were exhibited by the Govt. Gaonburah (OPW-2), cannot be said to be produced from lawful custody as the Gaonburah has no duty to keep a certified copy of the Voters list or the original sale deed (Exhibit-3) which does not belong to him. He is not the custodian of the exhibited documents.

14. Considered the submissions made at the Bar as well as perused the records.

15. The considered opinion of the Court, the Tribunal, in the absence of the Govt. Advocate, would not have jurisdiction to cross-examine the witnesses produced by the petitioner. In this regard, it may be mentioned that in the corresponding order dated 21.02.2018 and 15.05.2018, the learned Tribunal has recorded that the witnesses were examined, cross-examined and discharged. In

light of the quasi-judicial order dated 21.02.2018 and 15.05.2018, it would not be possible for the Court to draw a presumption that the learned Tribunal had made clerical mistake in those two orders, and to hold that the learned Tribunal had asked questions to the petitioner in exercise of power under Section 165 of the Evidence Act.

16. Therefore, the act of the learned Tribunal in cross-examining the witnesses has vitiated the opinion. Accordingly, the Court is inclined to set aside the impugned opinion dated 25.06.2018, passed by the learned Member, Foreigner's Tribunal 3rd, Nagaon, in F.T. Case No. NFT.(No.3)(D) 220/2016, corresponding to D/Case No. 2428/98. However, the proceedings of the said FT Case No. NFT.(No.3)(D) 220/2016, corresponding to D/Case No. 2428/98, is remanded back to the learned Member, Foreigners Tribunal 3rd, Nagaon to take up the proceedings from the stage of cross-examination of the witnesses and/or " questions by Tribunal". It is further provided that in the event, the Government Pleader is not present, it would be open to the said learned Tribunal to put questions under Section 165 of the Evidence Act, 1872 corresponding to Section 168 of the Bharatiya Sakshya Adhiniyam, 2023, if so desired or to proceed to consider the submissions made by the appearing parties and decide the reference afresh, as far as practicable, within the time prescribed under paragraph-3(14) of the Foreigners (Tribunals) Order, corresponding to paragraph-17(14) of the Immigration and Foreigners Order, 2025.

17. As a result of the discussions above, the writ petition stands allowed to the extent as indicated above with an order of remand of the matter back for a fresh decision by the said learned Tribunal.

18. The petitioner namely, Sulema Khatun @ Saleha Khatun, who is duly

represented by her learned counsel, is directed to appear before the said learned Tribunal within the outer time limit of 29.09.2026, and by producing a certified copy of the order, await further directions to be passed by the said learned Tribunal.

19. In the event, the petitioner does not appear within the time allowed, it would be open to the said learned Tribunal to treat the petitioner as absent on call and proceed to decide the matter afresh in accordance with law.

20. On appearance of the petitioner, the petitioner shall apply for and would be granted bail of Rs. 5000/- (Rupees five thousand only) to the satisfaction of the said learned Tribunal. It is also provided that the said bail shall remain valid for a period of 30 days from the date of passing of a fresh opinion by the said learned Tribunal.

21. The Registry shall return back the Tribunals records expeditiously along with a copy of the order, to be made a part of record by the said learned Tribunal.

22. The learned standing counsel for the FT and Border matters is provided to send a downloaded copy of this order to the Home and Political (B) Department for their records.

23. No order as to costs.

JUDGE **JUDGE**

Comparing Assistant