GAHC010303532019

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

Case No. : WP(C) 9180/2019

1:ASIA BEGUM @ MUSSTT. AIYSA BEGUM @ ASIA KHATUN
D/O- LT. YAKUB HUSSAIN, W/O- HUSSAIN ALI, R/O- VILL. BALIRAM PATHAR, P.S. HOJAI, DIST. HOJAI/ NAGAON, ASSAM, PIN- 782435.

VERSUS

1:THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, NEW DELHI.

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY.-06.

3:THE DY. COMMISSIONER OF HOJAI
DIST.- HOJAI (ASSAM)
PIN- 782435.

4:THE CHIEF ELECTION OFFICER OF THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI
DELHI- 110001.

5:THE OFFICE OF THE STATE COORDINATOR OF NATIONAL REGISTRATION (NRC)
ASSAM
1ST FLOOR
ACHYUT PLAZA

BHANGAGARH
GHY.
ASSAM- 781005.

6:THE SUPDT. OF POLICE (B)
HOJAI
DIST.- HOJAI (ASSAM)
PIN- 782435.

7:THE OFFICER-IN-CHARGE
HOJAI POLICE STATION
DIST.- HOJAI (ASSAM)
PIN- 782435

Advocate for the Petitioner : G UDDIN

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

BEFORE
HONOURABLE MR. JUSTICE MANOJIT BHUYAN
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

29.09.2020

(Manojit Bhuyan, J.)

Heard Mr. G. Uddin, learned counsel for the petitioner as well as Ms. G. Hazarika, learned counsel representing respondent nos. 1 and 5. Mr. J. Payeng, learned counsel appears for respondent nos. 2, 3, 6 and 7. None appears for the respondent no. 4.

The petitioner assails the opinion dated 28.01.2019 passed by the Foreigners Tribunal, Hojai, Sankardev Nagar in FT/H/Case No. 162/2015, declaring her to be a foreigner, having illegally entered into India after 25.03.1971. This opinion was rendered *ex parte* on account of the fact that the petitioner after having appeared before the Tribunal through the counsel on 24.05.2018, continued to file petitions on each date fixed seeking time for filing written statement. On the last three consecutive dates, the petitioner also remained absent without taking any steps. Under such circumstances, an adverse view was taken and the impugned opinion was passed *ex parte.*

It is seen from the records that the petitioner filed a miscellaneous case on 14.02.2019 for setting aside the aforesaid *ex parte* order dated 28.01.2019 and the same was registered and numbered as Miscellaneous Case No. FT/H/02/2019. On 04.04.2019 the said miscellaneous case was rejected primarily on the ground that the petitioner had filed the application under Order 47 Rule 1, read with Section 114 of the *Code of Civil Procedure*, whereas the provisions of the Code of Civil Procedure is not applicable and the Tribunal is only guided by the provisions of the *Foreigners' Act, 1946* and the *Foreigners' (Tribunal) Order, 1964.*

We have perused the materials on record. There is no dispute to the fact that the submissions and averments made in the miscellaneous case did not stand for consideration. The Tribunal, therefore, did not consider as to whether the petitioner was prevented by sufficient cause or not from appearing before the Tribunal on dates fixed. We are also of the opinion that the rejection of the miscellaneous case on ground that the same was filed under Order 47 Rule 1 whereas the provisions of Code of Civil Procedure is applicable to the proceedings under the *Foreigners' Act, 1946,* the said ground cannot find legal justification, inasmuch as Para 3 A of the *Foreigners' (Tribunals) Order, 1964* vests power on the Tribunal to consider application for setting aside *ex parte* order for non-appearance of the proceedee. The caveat in Para 3A is that the said application has to be filed within 30 (thirty) days of the opinion aggrieved of and the applicant being able to demonstrate sufficient cause which prevented making appearance before the Tribunal. As indicated above, the miscellaneous case for setting aside the *ex parte* order was filed on 14.02.2019, which is well within the stipulated period provided under Para 3A. It would not justify the Tribunal to reject an application only going by the nomenclature of the application when otherwise power vests with the Tribunal to consider application for setting aside *ex parte* order under Para 3 A of the *Foreigners' (Tribunals) Order, 1964.*

On the above, we set aside the order dated 04.04.2019 passed in Miscellaneous Case No. FT/H/02/2019 with direction to the petitioner to appear before the Tribunal on 15.10.2020. We also direct the Tribunal to consider the Miscellaneous Case No. FT/H/02/2019 afresh and pass appropriate order thereon after considering the merits of the said application. We make it clear that we are not interfering with the *ex parte* opinion dated 28.01.2019 and

leave it to the Tribunal to pass appropriate order after considering the miscellaneous case.

Office to send back the records to the Tribunal forthwith so that it reaches the Tribunal well before 15.10.2020. The Tribunal shall hear the petitioner and pass appropriate orders on the miscellaneous case within a period of 30 (thirty) days from 15.10.2020.

For the purpose of concluding the reference case within the period specified above, the Tribunal shall act upon the certified copy of this order, which the petitioner is permitted to furnish before the Tribunal on the date of appearance i.e. 15.10.2020.

Writ petition stands accordingly disposed of.

JUDGE **Judge**

Comparing Assistant