GAHC010019532026

2026:GAU-AS:16239-DB

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

Case No. : WP(C)/850/2026

BEGUM ALIAS BEGUM NESSA
W/O-JOMER ALI, D/O-FOTIK MOLLAH, R/O-VILL-NALONGA PAHARTOLI,
P.S.-BAGUAN, DIST-GOALPARA, ASSAM

VERSUS

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

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

3:THAT ELECTION COMMISSION OF INDIA

NEW DELHI-110001.

4:THE OFFICE OF THE STATE CO ORDINATOR OF NATIONAL REGISTRATION OF CITIZENS (NRC)

ASSAM
BHANGAGARH
DIST-KAMRUP (M)
ASSAM
GUWAHATI781005.

5:THE DISTRICT COMMISSIONER

DIST-GOALPARA
ASSAM
PIN-783101.

6:THE SUPERINTENDENT OF POLICE (B)

GOALPARA
ASSAM
PIN783101.

7:THE OFFICER IN CHARGE

BAGUAN
DIST-GOALPARA
ASSAM
PIN783129

Advocate for the Petitioner : MR. J AHMED, MS M DAS,MR. S MOLLAH

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

Linked Case : WP(C)/2125/2026

BEGUM ALIAS BEGUM NESSA ALIAS BEGUM KHATUN
W/O JOMER ALI ALIAS JOMUN ALI
D/O FOTIK MOLLAH
R/O VILL. NALONGA PAHARTOLI
P.S. BAGUAN
PIN 783129
DIST. GOLAPARA
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BAGUAN
DIST. GOALPARA
ASSAM
PIN- 783129.

Advocate for : MR. J AHMED
Advocate for : DY.S.G.I. appearing for THE UNION OF INDIA AND 6 ORS

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

Advocate for the petitioner	: Mr. J. Ahmed.
Advocate for the respondents	: Mr. N. Upadhay, CGC,
	: Ms. S. Katakey, SC, ECI
	: Ms. A. Verma, SC, FT, Border matters and NRC.
	: Mr. P. Sarmah, Addl. Sr. G.A.

Date on which judgment is reserved : 06.08.2026

Date of pronouncement of judgment : 05.11.2026

Whether the pronouncement is of the operative part of the judgment? : No.

Whether the full judgment has been Pronounced? : Yes.

JUDGMENT AND ORDER

(*CAV*)

(K.R. Surana, J)

Heard Mr. J. Ahmed, learned counsel for the petitioner. Also heard Mr. N. Upadhay, learned CGC; Ms. S. Katakey, learned standing counsel for the ECI; Ms. A. Verma, learned standing counsel for the Border and FT matters; and Mr. P. Sarmah, learned Additional Sr. Govt. Advocate.

2. As the learned counsel for the petitioner has submitted that the petitioner has suffered 2 (two) opinions, i.e. *ex parte* opinion dated 07.09.2017, passed by the learned Member, Foreigners Tribunal No. 8th at Goalpara, in Case No. F.T.(8th)-GLP/571/16, arising out of Ref:- E.R.O. Case No. 57 $^{15}/_{38}$,; and the opinion dated 31.10.2023, passed by the learned Member, Foreigners Tribunal-4th, Goalpara, in F.T. Case No. FT(G-4)339/16, arising out of Ref. E.R.O. Case no. 773 $^{93}/_{38}$, both the writ petitions are taken up together.

WP(C) 850/2026

3. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned *ex parte* opinion dated 07.09.2017, passed by the learned Member, Foreigners Tribunal No. 8th at Goalpara, in Case No. F.T.(8th)-GLP/571/16, arising out of Ref:- E.R.O. Case No. 57 $^{15}/_{38}$, thereby declaring the petitioner to be a foreigner of post 25.03.1971 stream.

4. The learned counsel for the petitioner submitted that on 02.11.2025, the petitioner was arrested by the police in connection with PRC Case No. 1532/2022, under Section 3 of the Passport Act, 1920, read with Section 14(A)(b) of the Foreigners Act, 1946, and since her arrest, she has been kept in detention and is presently lodged at District Jail, Goalpara.

5. The learned counsel for the petitioner has submitted that after the arrest of the petitioner on 02.11.2025, the petitioner and her family members came to know about the passing of the *ex parte* opinion dated 07.09.2017, passed in Case No. F.T.(8th)-GLP/571/16. Thereafter, the family members of the petitioner applied for a certified copy on 04.11.2025, which was obtained on 10.11.2025. It is submitted that the process server initially could not find the petitioner for service of process, and thereafter, the process issued to the petitioner was hung at a conspicuous place, which is stated to be a shop. The matter was adjourned on 6 (six) occasions, i.e. 05.09.2016, 26.09.2016, 08.11.2016, 12.12.2016, 25.07.2017 and 17.08.2017. As the petitioner did not appear, the learned Tribunal passed the *ex parte* opinion against the petitioner, declaring her to be a foreigner. Accordingly, it is submitted that the petitioner

was never served with notice and, therefore, the proceeding is required to be interfered with.

6. The learned counsel for the petitioner submitted that the petitioner has sufficient documents to prove her Indian citizenship. The learned counsel for the petitioner has relied on the statements made in paragraphs 13 to 29 of the writ petition. It is submitted that the petitioner is a citizen of India and her parents and grandparents were all citizens of India and in this regard, the petitioner had given a description of her parental family and the family tree of her projected grandfather. It is submitted that, if given an opportunity, the petitioner would be able to demonstrate that the names of her grandparents appeared in the voter list of 1966 and the names of her parents appeared along with those of her grandmother, uncle and aunt in the voter list of 1970. It is submitted that the father of the petitioner had shifted his residence on 2 (two) occasions and the names of her brothers appeared along with that of her father, who had died in the year 2016, and thereafter their names appeared along with her mother. The petitioner’s own name appeared in the voters list of 2005 along with her husband's family. It is submitted that, notwithstanding a slight discrepancy in age and the spelling of the name, the said documents are sufficient to prove that the petitioner is a citizen of India.

7. Per contra, the learned standing counsel for the FT and Border matters has submitted that the notice of the proceeding was duly served upon the petitioner's husband, namely, Jaman Ali, son of Abdul Sattar, resident of Kaladanga and in acknowledgement thereof, the husband of the petitioner had put his signature on the back page of the notice. The same was returned to the learned Tribunal by the Officer-in-Charge of Goalpara River Police Station.

8. After carefully perusing the records of the Tribunal, the notice issued to the petitioner, which is available at page 16 of the Tribunal's records, reveals that the notice was issued on 08.11.2016 and was received by the concerned police authorities on 19.11.2016. The notice was endorsed to the Officer-in-Charge of River Police Station, Pancharatna, for service on 19.11.2016. The round seal of the said police station contains Serial No. 312/16, dated 21.11.2016. The Inspector, Officer-in-Charge of River Police Station, Pancharatna, endorsed the notice to the concerned police personnel on 05.12.2016. Though the notice is stated to have been served upon Jaman Ali, son of Abdul Sattar of Kaladanga, the service report does not contain any date. However, below the endorsement by the Officer-in-Charge of River Police Station, Goalpara, for return of the notice after service, the date 13.12.2016 is written over an illegible date, and the date of service is overwritten. However, the returnable date of the notice was 12.12.2016, and on the said date, i.e. 12.12.2016, the learned Member passed an order recording that the notice had been returned as served in the manner provided under the Foreigners (Tribunals) Order, 1964 and no next date was fixed for necessary order, and the date portion was left blank.

9. The record was next put up on 25.07.2017, and according to the said order, the learned Tribunal, having seen the report of the process server wherein it was recorded that the notice had not been served, issued fresh notice to the proceedee, and the next date of the proceeding was fixed on 17.08.2017 for service report. On 17.08.2017, the order reflects that the "proceedee absent, next date fixed on 07.09.2017 for necessary orders", and on 07.09.2017, the *ex parte* opinion was passed.

10. Thus, though the process/notice issued on 08.11.2016, which

appears to have been served upon the husband of the petitioner, but the service report was returned only on 13.12.2016 (the date 13 is overwritten over an illegible date). Therefore, notwithstanding the order dated 12.12.2016 recording that the notice had been duly served, in the opinion of the Court, when the notice was returned on 13.12.2016, the learned Tribunal could not have recorded the return of the notice on a prior date, i.e. 12.12.2016. It is reiterated that, as per the order dated 12.12.2016, no next date was fixed for necessary order, and the date portion was left blank.

11. Further, fresh summons was issued to the petitioner on 28.07.2017, and as per the service report, which is available at page 22 of the Tribunal's record, the notice was served by hanging it on the wall of a school at of Kaladanga Char. The manner of service is not in accordance with the provisions of paragraph 3(5)(f) of the Foreigners (Tribunals) Order, 1964, which requires the notice to be served at the place of last residence of the petitioner. Therefore, the manner in which the *ex parte* opinion was passed is not found to be sustainable in facts and in law, as the notice was not duly served in accordance with law. Therefore, the impugned *ex parte* opinion dated 07.09.2017, passed by the learned Member, Foreigners Tribunal 8th at Goalpara, in Case No. F.T.(8th)-GLP/571/16, arising out of Ref:- E.R.O. Case No. 57 $^{15}/_{38}$, is hereby set aside and quashed.

12. Under the facts and circumstances of the case, the matter is remanded to the Foreigners Tribunal No.8th, Goalpara, for granting an opportunity to the petitioner to file written statement and to adduce evidence in the matter.

13. The petitioner, who is stated to be in custody and is presently lodged at District Jail, Goalpara, would be entitled to apply for bail in connection with the PRC Case No. 1532/2022.

14. In view of the fact that the *ex parte* opinion against the petitioner has been set aside, she cannot be termed to be an illegal foreigner until a fresh opinion is passed by the learned Tribunal.

15. Accordingly, it is provided that the family member of the petitioner shall appear before the SP (Border), and furnish a certified copy of this order. Thereafter, the SP (Border), Goalpara shall take steps to have the petitioner released from the jail within 3 (three) days from the date of receipt of certified copy of this order.

16. The petitioner, namely, Begum @ Begum Nessa @ Begum Khatun, who is duly represented by her learned counsel, is directed to appear before the said learned Tribunal within the outer time limit of 04.12.2026 and by producing a certified copy of the order, await for any further order that may be passed by the said learned Tribunal and thereafter, the petitioner shall be given an opportunity to lead evidence.

17. It is further provided that on the date of appearance of the petitioner, she shall be ready and willing to take bail of such sum as may be deemed fit and proper by the learned Tribunal. It is provided that the bail so granted by the learned Tribunal shall be valid for a period of 30 (thirty) days from the date of the opinion that may be passed by the said learned Tribunal.

WP(C) 2125/2026

18. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned opinion dated 31.10.2023, passed by the learned Member, Foreigners Tribunal-4th, Goalpara, in F.T. Case No. FT(G-4)339/16, arising out of Ref. E.R.O. Case no. 773 $^{93}/_{38}$, thereby declaring the petitioner to be a foreigner of post 25.03.1971 stream.

19. As the opinion dated 31.10.2023 was challenged by filing this writ petition only on 09.03.2026, keeping the issue of maintainability open, notice was issued by order dated 24.04.2026, and the Tribunal's records were called for.

20. The learned counsel for the petitioner has submitted that the petitioner has suffered 2 (two) adverse opinions from two different Foreigners Tribunals, first opinion being *ex parte* opinion dated 07.09.2017, passed by the learned Member, Foreigners Tribunal No. 8th at Goalpara, in Case No. F.T.(8th)-GLP/571/16, arising out of Ref:- E.R.O. Case No. 57 $^{15}/_{38}$; and the second opinion being the opinion dated 31.10.2023, passed by the learned Member, Foreigners Tribunal-4th, Goalpara, in F.T. Case No. FT(G-4)339/16, arising out of Ref. E.R.O. Case No. 773 $^{93}/_{38}$.

21. It is submitted that the petitioner had contested the second proceeding without being aware of the *ex parte* opinion passed in the first proceeding. It is submitted that on the basis of the previous *ex parte* opinion dated 07.09.2017, the petitioner was taken into custody on 02.11.2025 and she is currently lodged at District Jail, Goalpara, pursuant to the said impugned *ex*

parte opinion as well as PRC Case No. 1532/2022, which was registered on the basis of the FIR dated 09.05.2019, registered as River Police Station, Goalpara Case No. 09/2019 under Section 3 of the Passport Act, 1920, read with Section 14(A)(b) of the Foreigners Act, 1946.

22. Accordingly, it is submitted that the second proceeding is hit by the principles of *res judicata*.

23. Per contra, the learned standing counsel for the FT and Border matters has submitted that the petitioner had not contested the first proceeding but had contested the subsequent proceeding, wherein she was declared to be a foreigner of the post -25.03.1971 stream. It is submitted that, on merits, the petitioner has not been able to make out a case for interference with the opinion dated 31.10.2023.

24. On examination of the entire materials on record, including the Tribunal's records, there is no room for doubt that the opinion dated 31.10.2023 was passed against the petitioner subsequent in point of time after the *ex parte* opinion passed on 07.09.2017.

25. The Supreme Court of India in the case of *Abdul Kuddus v. Union of India and Others, (2019) 6 SCC 604*, has held that the opinion passed by the Foreigners Tribunal is a *quasi judicial* order and that the principles of *res judicata* applies. The said law has consistently been followed by this Court. In this regard, reference may be made to the decisions of this Court in the cases of *Musstt. Amina Khatun v. Union of India, (2018) 4 GLR 643; 2018 (3) GLT 1*; and *Jahir Ali v. Union of India & Ors., (2021) 3 GLR 105 : (2021) (2) GLT 596*.

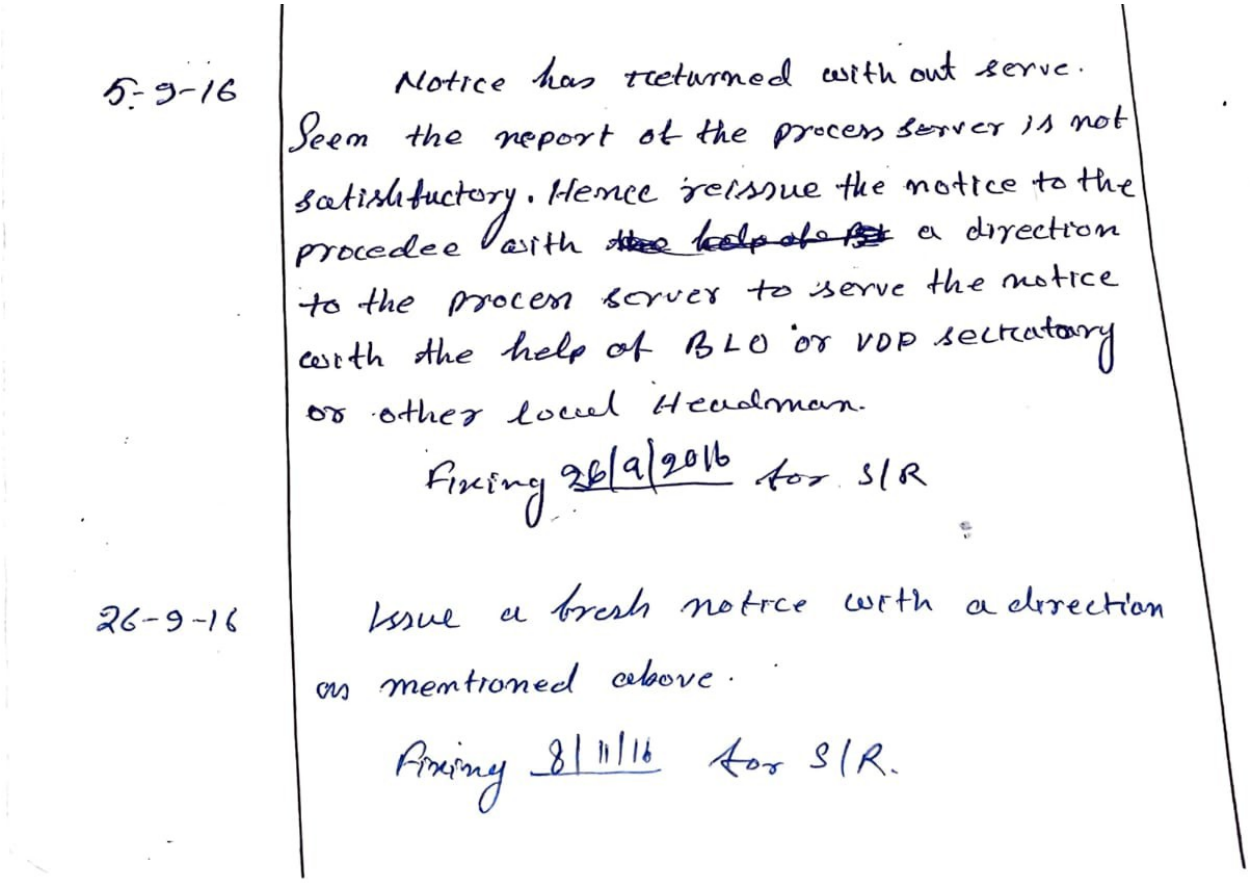
26. Therefore, the only fact which requires to be decided by the learned Tribunal is as to whether the proceedee in both the cases, i.e., Case No.

FT(G-4)339/16, is the same as the proceeding in the previous case, i.e., Case No. F.T.(8th)-GLP/571/16. The settled law is that if the proceedee in the two cases are the same and the petitioner is the same and one person in both cases, the Court is of the considered opinion that it would be appropriate to transfer the subsequent proceeding relating to the opinion dated 31.10.2023 to Foreigners Tribunal No.8th, Goalpara, before which the earlier proceedings had been remanded.

27. The same is also required so as to ensure that there should not be any conflicting orders by both the Tribunals, and to avoid the same, it would be appropriate that the proceeding which is the subject matter of WP(C) 2125/2026 be transferred as indicated above.

28. On a perusal of the records of both the Tribunals, it is noticed that in the order sheet, the date on which the first order was passed is not mentioned. Moreover, the date fixed for the service report is also not mentioned. Surprisingly, the initial order of issuing notice and subsequent orders dated 05.09.2016 and 26.09.2016 do not contain the signature of the learned Member. The signature of the learned Member first appears in the order dated 08.11.2016, which indicates the casual manner in which Foreigners Tribunal No.8th, Goalpara, had commenced the proceedings.

29. Just for the record, the scanned copy of the order sheet containing the initial order and orders dated 05.09.2016 and 26.09.2016 is made a part of the record of this order. Moreover, the signatures of the learned Member in the orders dated 08.11.2016, 12.12.2016, 25.07.2017 and 17.08.2017 do not have any rubber stamp affixed below the signatures, which reflects the casual functioning of the Tribunal.



5-9-16 Notice has returned with out serve. Seem the report of the process server is not satisfactory. Hence reissue the notice to the procedee with ~~the help of BLO~~ a direction to the process server to serve the notice with the help of BLO or VDP secretary or other local Headman.

Fixing 26/9/2016 for S/R

26-9-16 Issue a fresh notice with a direction as mentioned above.

Fixing 8/11/16 for S/R.

30. The records of the Foreigners Tribunal reveal that the first order was passed on 18.01.2016 issuing notice, which was first decided by the *ex parte* opinion dated 07.09.2017 was first in point of time. The same are referred to as the "first proceedings", and the proceedings subsequently decided by the opinion dated 31.10.2023 are referred to as the "second proceedings".

31. Accordingly, it is provided that, in the event the petitioner is found to be the same in both proceedings, the principles of *res judicata* would be applicable in respect of the proceedings of FT(G-4)339/16.

32. It is noticed that the original documents exhibited in the subsequent proceedings are available in the TCR. It would be permissible for the

petitioner to apply for the return of the original documents by submitting photocopies thereof to be retained in the records of the learned Tribunal.

33. It is made clear that in the event the proceedee in both cases are found to be different and the petitioner is not the same and one person, it would be permissible for the Foreigners Tribunal to pass appropriate order by virtue of which the impugned opinion dated 31.10.2023 may be rectified so as to enable the petitioner to once again assail the second opinion by filing a fresh writ petition before this Court, if so advised.

34. Accordingly, as the impugned opinion dated 31.10.2023 has not been examined on merit, there would be no necessity for this Court to set aside the opinion as the said opinion is made subject to the fact finding by the learned Tribunal as to whether the proceedee in both the cases are one and the same person.

35. With these observations, both the writ petitions stand disposed of.

36. The Registry shall expeditiously return back both the Tribunal's record to the concerned Tribunals along with a copy of this order to be made a part of the records by the learned Tribunal for future reference.

JUDGE **JUDGE**.

Digitally signed by Champak Rajbongshi
Date: 2026.11.05 13:20:11 +05'30'

Comparing Assistant **Private Secretary**