GAHC010082972022

2026:GAU-AS:16493-DB

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

Case No. : WP(C)/2905/2022

MOHAR ALI
S/O- LATE MONTAZ ALI @ MONTAZ @ MONTAZ ALI MONDAL @ MOMTAZ ALI
R/O- VILLAGE GOBARDHANA
P.O AND P.S- GOBARDHANA
DIST- BAKSA, ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA ,MINISTRY OF HOME AFFAIRS,
NEW DELHI- 110001.

2:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER OF INDIA
NEW DELHI-110001

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

4:THE DEPUTY COMMISSIONER
BARPETA
ASSAM
PIN-781301

5:THE DEPUTY COMMISSIONER
BAKSA
MUSHALPUR

PIN- 781372

6:THE SUPERINTENDENT OF POLICE (B)
BARPETA
ASSAM
PIN-781301

7:THE SUPERINTENDENT OF POLICE (B)
BAKSA
MUSHALPUR
PIN-781372
ASAM

8:THE COORDINATOR
NATIONAL REGISTER OF CITIZENS
ASSAM
BHANGAGARH
GUWAHATI-05
DIST- KAMRUP (M

Advocate for the Petitioner : MR SARFRAZ NAWAZ, MS. P KHATUN,MR S T ADNAN,MR S A BARBHUYAN,MR. J ABBAS,MS SURAYA RAHMAN,MR. SURAJIT DAS,MR Z HUSSAIN

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

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR

ORDER

Date : 06.11.2026
(K.R. Surana, J)

Heard Mr. J. Abbas, learned counsel for the petitioner. Also heard Mr. I. Barthakur, learned CGC; Mr. G. Sharma, learned standing counsel for the FT and Border matters; Mr. A.I. Ali, learned standing counsel for the ECI; and Ms. R.B. Bora, learned Junior Govt. Advocate for the State respondent.

2. By filing this writ petition under Article 226 of the Constitution of

India, the petitioner, namely, Mohar Ali has assailed the impugned opinion dated 31.05.2018, passed by the learned Member, Foreigner's Tribunal, 9th, Barpeta, Assam, in F.T. 9th (Bar) Case No. 346/15, arising out of S.P. Ref. IM(D)T Case No. 9503/98, by which the petitioner was declared as an illegal migrant.

3. In view of the order of remand, the Court proposes to pass, the Court does not find any reason to burden this order by referring to the contents of the written statement and the evidence of the petitioner as DW-1 and 3 (three) other witnesses examined by petitioner as DW-2, DW-3 and DW-4 respectively.

4. It would suffice to mention that the petitioner had examined himself as DW-1 by filing his amended evidence-on-affidavit wherein he has exhibited 4 (four) documents being (i) land deed of 1954 (Ext.A), (ii) Certified copy of voter list of 1966 (Ext.B), (iii) Certified copy of voter list of 1989 (Ext.C), (iv) Certificate of the Gaonburah (Ext.D). He was also cross-examined and discharged. The petitioner also examined one Abdul Khalek, the projected cousin brother of the petitioner as DW-2, who in his evidence-on-affidavit not only referred to the earlier exhibited documents but he had also exhibited 5 (five) more documents being (i) Land record (Ext.E), (ii) Certified copy of voter list of 1966 (Ext.F), (iii) Certified copy of voter list of 1997 (Ext.G.) (iv) Electoral photo Identity Card (Ext.H) and (v) Certificate of Gaonburah (Ext.I). He was also cross-examined and discharged. The petitioner has examined on Kashem Ali as DW-3 who along with his evidence-on-affidavit exhibited the following documents being (i) Ration card of 1948 to 1950 (Ext.J), (ii) certified copy of voter list of 1966 (Ext.K), (iii) Certified copy of voter list of 1997 (Ext.L), (iv) Elector Photo Identity Card (Ext.M) and (v) Certificate of Gaonburah (Ext.N). He was also cross-examined and discharged. The petitioner had examined one

Paniram Gayari as DW-4, who was the Govt. Gaonburah and he had exhibited his certificate (Ext.D) and his signature thereon [Ext.D(i)].

5. It may be stated that the learned standing counsel for the Border and FT matters has made his submissions in support of the impugned opinion and has submitted that as the petitioner did not introduce DW-2, DW-3 and DW-4 in his written statement, and therefore, the documents exhibited by the said 3 (three) witnesses was insufficient to support the case of the petitioner and therefore, did not warrant any discussion.

6. On a perusal of the impugned opinion dated 31.05.2018, the Court has taken note of the fact that the learned Tribunal had only referred the examination and cross-examination of DW-1 and had referred to Ext.A to Ext.D only. Although a brief reference is made to the examination of 3 (three) other witnesses, but it is only a 3 (three) line discussion on their evidence and the learned Tribunal had recorded that from the evidence of said witnesses cannot be established that the petitioner is citizen of India by birth as he is the son of Montaz Ali and Moiran whose names are enlisted in the voters list of 1966.

7. In the considered opinion of the Court, as the petitioner had examined 4 (four) witnesses including himself and has exhibited several documents referred above, it was incumbent on the part of the learned Tribunal to discuss the complete evidence including the exhibited documents for whatever it is worth. Non-consideration or non-reference to the other exhibited documents renders the impugned opinion as to be vitiated and non-sustainable in facts as well as in law.

8. This Court in the case of *Amrita Barman Vs. Union of India and Ors., 2019 (5) GLT 526*, had deprecated the rejection or overlooking of a document

without discussion. Such an action was held to be mechanical and without proper application of mind. The same decision is squarely applicable under the facts and circumstances of the case. The lack of reference of discussion Ext. E to Ext. N is found to have vitiated the impugned opinion on the ground that it was passed without application of judicial mind.

9. Accordingly, the impugned opinion dated 31.05.2018, passed by the learned Member, Foreigner's Tribunal, 9th, Barpeta, Assam is hereby set aside.

10. The matter is remanded back to the said learned Tribunal for passing a fresh opinion after considering the evidence of all the 4 (four) witnesses and by referring to the documents exhibited by the said witnesses.

11. The petitioner is duly represented by his learned counsel, shall appear before the said learned Tribunal on or before 18.12.2026 and by producing a certified copy of the order await for further orders to be passed by the said learned Tribunal.

12. The Registry shall return back the records of the Tribunal along with copy of the order expeditiously.

13. On appearance of the petitioner he shall take bail of Rs.5000/-(rupees five thousand only) to the satisfaction of the said learned Tribunal. It is directed that the bail so granted by the said learned Tribunal shall be valid for a 30 (thirty) days from the date of fresh opinion to be passed by the said learned Tribunal.

14. The Tribunal shall make an endeavour to decide the matter within the time provided under paragraph 17 (14) of the Immigration and Foreigners Order, 2025, as far as applicable.

15. The writ petition stands allowed with remand as indicated above. There shall be no order as to cost

JUDGE **JUDGE**

Comparing Assistant