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2026:GAU-AS:16137-DB

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

Case No. : WP(C)/2875/2017

NIKHIL BISWAS
S/O LATE KANDU CHARAN BISWAS, R/O VILLAGE-BANGALMORA GRAZING, PS. BIHPURIA, DIST. NORTH LAKHIMPUR ASSAM

VERSUS

THE UNION OF INDIA and 3 ORS.
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, NEW DELHI-01

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-06

3:THE SUPERINTENDENT OF POLICE BORDER
NORTH LAKHIMPUR
PO and PS NORTH LAKHIMPUR
ASSAM
PIN-787001

4:THE OFFICER IN CHARGE
BIHPURIA POLICE STATION
PO-BIHPURIA
DIST. NORTH LAKHIMPUR
ASSAM
PIN-787001

5:THE DEPUTY COMMISSIONER

LAKHIMPUR
ASSAM
PIN-78700

Advocate for the Petitioner : MR. S DEKA, MR.P K DAS

Advocate for the Respondent : GA, ASSAM, ASSTT.S.G.I.

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

ORDER

Date : 03-11-2026
(Rajesh Mazumdar, J)

None appears for the petitioner on call.

Mr. J. Payeng, learned Standing counsel, FT and Border Matters is present.

2. The petitioner in this writ petition has assailed the order dated 12.04.2017 passed by Foreigners'Tribunal, 1st Lakhimpur at North Lakhimpur, in FT Case No. 3523 of 2011,whereby the petitioner had been declared to be a Foreigners' within the meaning of the Foreigners' Act, 1946 who came to Assam on or before 25thof March, 1971from the specified territory andhas beensince the date of entry into Assam an illegally residing in Assam.

3. A perusal of the records, which have been received as called for, reveals that prior to the petitioner facing the proceedings in Lakhimpur FT Case No. 3253 of 2011, the petitioner had earlier faced proceedings in FT Lakhimpur Case No. 2493 of 2011.

4. In the aforesaid proceedings in FT Lakhimpur Case No. 2493 of 2011, the Foreigners Tribunal 1st, Lakhimpur at North Lakhimpur had considered the

documents submitted by the petitioner and found that the petitioner was not a foreigner as provided under Section 2 (a) of the Foreigners Act,1946. The relevant portion of the order dated 11.08.2015 is reproduced herein below for ease of reference:

"*This reference is taken up today for passing final order.*

This reference has been received under Order 2 of the Foreigners (Tribunals) Order 1964 against opposite party Sri Nikhil Biswas son of Lt. Kandu Charan Biswas of Bangalmora Grazing, P.S.Bihpuria, Dist. Lakhimpur, Assam from the Superin-tendent of Police (Border), Hakhimpur to decide as to whether the aforesaid opposite party is or is not foreigner under Section 2(a) of the Foreigners Act 1946.

The averment made in the reference is that the opposite party entered to Assam after 25.3.1971 through unauthorised route and has been residing since there.

The case has been registered under Section 2(a) of the Foreigners Act, 1946 and issued notice to the opposite party containing the ground on which he is alleged tobe a foreigner and calling upon him to submit representation against the reference along with the evidence. In response to the notice the opposite party submitted representation along with Bond identified by learned Sonset Counsel Nitul Roy and documents stating interalia that he is a citizen of India by birth. He is the son of Lt. Kandu Charan Biswas, S/O Lt. Suresh Biswas who had been living at Bongalmora Grazing gaon of Laluk Mauza under LalukP.S.. Dint. Lakhimpur permanently. Late Kandu Charan Biswas the father of opposite party was the holder of Certificate of Registration bearing No.74064/456, atd. 5th February 1956 and the opposite party has been living there since hep date of birth. In proving the said fact the opposite party submitted Family Identity Card, Residential Certificate issued by Lat Gaonburah and voter identity card.

The documents are verified with the original as produces by the opposite party.)

Heard Learned Counsel on behalf of the opposite party.

The point for decision is as to whether the opposite party is or is not foreigner

as provide under Section 2(a) of the Foreigners Act.1946.

The opposite party in support of his case submitted his voter identity card issued by Electoral Registration Officer on 1.10.2013 stating there in that opposite party Nikhil Biswas, relation frame Kandu Charan Biswas and his present address at BongalmoraGrasing, P.S.Bihpuria, Sub-divison North Lakhimpur, Dist. Lakhimpur, Assam. The family identity card submitted by him recording that the name of his father is Kandu Charan Biswas. Kandu Charan Biswas was the holder of certificate of registration bearing No.74064/456, dtd. 5th Feb.1956. It is found from the said Certificate of Registration of his father that his father was a citizen of India. The opposite party has been living at Pongalmora Grazing under Bihpuria Police Station of District Lakhimpur permanently and the Government issued a family identity card. The local gaonburahak has also issued certificate in the name of kis the opposite party that he has been living there permanently."

5. In the impugned order dated 12.04.2017 passed in FT Case No. 3523 of 2011, the very same learned Tribunal has recorded as follows:

"*After hearing from both sides this Tribunal has held that the case is not maintainable and the proceedee has already declared as not foreigner. Subsequently, after perusal of the case record of 2493/11 it is found that without recording of the evidence of the proceedee the said case was disposed of after declaring the proceedee as not foreigner. Therefore, the proceedce is asked to produce the evidence to prove the fact that he is not a foreigner.*"

6. Having recorded thus, the learned Tribunal took into account the submission of the learned counsel on behalf of the proceedee that the proceedee could not produce any document to prove the fact that either his parents or the proceedee himself were living in Assam prior to 25.08.1971.

Taking such a view, in the impugned opinion, the learned Tribunal has

held as follows:

> "*OPINION:- In view of the above finding this tribunal is of opinion that the proceedee Sri Nikhil Biswas, S/O Lt.Kandu Charan Biswas, R/O Vill, Bongalmara Grazing, P.S.Bihpuria, Dist. Lakhimpur, Assam is a foreigner within the meaning of Foreigners Act.1946 who came to Assam on or after 25th March 1971 from the specified territory and has since the date of entry into illegally residing in Assam."*

7. The present case appears to be one, where in one proceeding, namely FTLakhimpurCase No.2493 of 2011, the learned Tribunal on appreciation of evidence, has come to a finding that the petitioner was not a foreigner and subsequently, after a span of about one and a half years, the same learned Tribunal, headed by the same learned Member, reviewed the order passed earlier in FTCase No.2493 of 2011 while considering the case of the same petitioner in FT case No.3523 of 2011 and overturned its earlier opinion. In the considered opinion of this Court, once an opinion has been rendered regarding the issue of citizenship of a proceedee, in view of the principle of res judicata, the learned Tribunal is no longer empowered to review the order so passed, more so when the identity of the proceedee in both the cases is not in dispute.

8. A useful reference can be drawn to the judgment of the Supreme Court of India, followedin ***Abdul Kuddusvs. Union of India*** reported in (***2019) 6 SCC 604***and ***Md. Karim Alivs. Union of India***in WP (C) 4646/2020 decided by in 28.07.2021, which relied upon Abdul Kuddus (supra). The decision of the Court in ***Jahir Ali vs. Union of India*** reported in ***(2021) 3 GLR 105***also held that the principle of res judicata would be applicable to opinion of the learned Foreigners Tribunal.

9. In view of the above findings, having noted the observation of theCourts

that the principle of res judicata operates to Foreigners Tribunal also, and also in view of the fact that there is no dispute raised in the second proceeding regarding the identity of the proceedee, we find that the order dated 12.04.2017 is not sustainable in law and, therefore, requires the interference of this Court. Accordingly, the orderdated 12.04.2018 passed by Foreigners Tribunal 1st Lakhimpur, at North Lakhimpur in Lakhimpur FTCase No.3253 of 2011 is set aside and quashed.

10. The petitioner shall be entitled to maintain the status awarded by the order dated 11.03.2015 in FT (Lakhimpur Case No. 2493 of 2011), unless the same is interfered in accordance with law by appropriate forum.

11. The writ petition is accordingly disposed of.

12. TCR be returned with a copy of the order.

JUDGE **JUDGE**

Comparing Assistant