GAHC010221422023

2026:GAU-AS:16790-DB

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

Case No : WP(C)/5851/2023

HASINA KHAN KHATUN @ HASINA BEGUM
D/O- LATE AKHTAR HUSSAIN @ BABUA W/O- KARIM @ LATE ABDUL KARIM KHAN @ KARIM KHAN
R/O- VILLAGE- MAGONI HATIBONDHA
P.S. GOHPUR
DISTRICT- BISWANATH
ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
THROUGH- THE SECRETARY
TO THE GOVERNMENT OF INDIA
THE MINISTRY OF HOME AFFAIRS GRIHA MANTRALAYA
NEW DELHI

2:THE STATE OF ASSAM
THROUGH THE SECRETARY
TO THE GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI- 781006

3:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN ASHOKA ROAD
NEW DELHI- 110001

4:THE STATE CO-ORDINATOR
NATIONAL REGISTRATION OF CITIZEN
ASSAM

BHANGAGARH
GUWAHATI- 781005

5:THE DEPUTY COMMISSIONER
BISWANATH
P.O. BISWANATH
DISTRICT- BISWANATH
ASSAM
PIN CODE- 784176

6:THE SUPERINTENDENT OF POLICE (BORDER)
BISWANATH
P.O. BISWANATH
DISTRICT- BISWANATH
ASSAM
PIN CODE- 784176

Advocate for : MR. RAJARSHEE DE
Advocate for : DY.S.G.I. appearing for THE UNION OF INDIA AND 5 ORS

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

ORDER

Date : 12.11.2026
(K.R. Surana, J)

Heard Mr. R. De, learned counsel for the petitioner. Also heard Ms. M.M. Kataky, learned CGC; Ms. A. Verma, learned standing counsel for the FT and Border matters; Mr. A.I. Ali, learned standing counsel for the ECI; and Ms. P. Sarmah, learned Addl. Senior Govt. Advocate for the State respondent.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned opinion dated 30.08.2022, passed by the learned Member, Foreigners Tribunal-2nd Biswanath, at Gohpur, in F.T.(B-2/GPR, Case No-1963/2017, arising out of S.P. Ref. Case No-

Tzp(B)/98//1037 dated 18.08.1998 and ERO Ref. No. BNE.25/97/299 and D.C. Case No.4141/2013, by which the petitioner was declared as an illegal migrant.

3. It may be stated that the learned standing counsel for the Border and FT matters has made her submissions in support of the impugned opinion.

4. However, in view of the number of discrepancies which has been noted in the record keeping of the proceedings before the learned Tribunal and apparent dereliction of the duty on the part of the learned Tribunal to conduct the proceedings, it is deemed appropriate not to burden this opinion with discussion on the written statement and evidence tendered by the petitioner.

5. It would suffice to mention that the petitioner examined herself as DW-1. She had also examined one Taymul Bibi, the projected mother of the petitioner as DW-2, one Mrs. Runu Hazarika i.e. DW-3, who is the Copyist in the Office of the Deputy Commissioner, Biswanath Chariali, Sri Rohin Ch. Mahanta, the Lat Mandal of Helem Revenue Circle as DW-4, and Sri Dipankar Kalita, Junior Assistant, Election Branch as DW-5.

6. The Tribunal's records reveals that the DW-5 had brought with her the certified copy of jambandi in the name of Fateh Alam Shah which was occupied from 1932 in the name of Fateh Alam Shah in respect of land covered by Dag no. 81 and Patta no. 31, which in course of cross-examination was marked as Ext.5 and DW-3 had also exhibited his signature thereon being Ext.5(1). The DW-4, in course of his examination-in-chief has stated that he has brought the records of Kolongpar Mouza, Hatibandha Pam which was originally allotted in the name of Aktar Hussain Shah, son of Kota and after his death the land was mutated in the name of Taimur Bibi wife of Aktar, Md. Anowar Hussain and Md. Alam Hussain and Kudrat Hussain. The land was mutated in the year 1988 and

in his cross-examination he had stated that Ext.5 is the said jamabandi. However, the said exhibited document in original is not available in the Tribunal's record.

7. As per the evidence-on-affidavit filed by the petitioner, she had exhibited 8 (eight) documents as Ext.1 to Ext. 8 and also exhibited 16 (sixteen) numbers of land revenue paid receipts, which were exhibited as Ext.9(1) to Ext.9(16). As per the said evidence-on-affidavit, the exhibited documents matches with the reference to exhibited documents referred to in the impugned opinion. The exhibited documents are as follows:-

a) Voter certified copy of 1985 as "Exhibit-1".

b) Voter certified copy of 1989 as "Exhibit-2".

c) Voter list of 1985 as "Exhibit-3".

d) Land document of 1970 as "Exhibit-4".

e) Land document of 1988 as "Exhibit-5".

f) Gaon-Burha Certificate as "Exhibit-6"

g) NRC details of Proceedee's grandfather of 1951 as "Exhibit-7".

h) Marriage certificate as "Exhibit-8".

i) Land Revenue paying receipt (16 Nos.) 1932, 1939, 1953, 1959, 1963, 1965, 1966, 1967, 1969, 1970, 1975, 1977, 1978, 1981 and 1986.

8. On a comparative reading of the impugned opinion, the evidence-on-affidavit as well as the Tribunal's record which were called for, it is noticed from page-103 of the records that one Kaushik Gohain, Advocate for the petitioner had withdraw 3 (three) original documents from the learned Tribunal, being revenue receipt, jamabandi and information letter by DW-5. As per page-96 of the Tribunal's records, the Election Officer had produced certified copies of voters list of 1985 and 1989. The petitioner had also exhibited the said two voter's list as Ext. 1, Ext. 2 and Ext. 3. is the voters list of 1985 is marked as

Ext.3, but the document marked as Ext. 3 is not found on record. Insofar as Ext.1 is concerned, in the certified copy exhibited by the petitioner and duly signed by the learned Member. It contains the name of elector as Aktar Hu: Sahu, female, name of relation Fateh Alam, Male, 40 years. There is no order on record about returning of the 2 (two) voters list produced by the Election Officer (DW-5), being the voter's certified copy of 1985 and 1989. However, the learned counsel for the petitioner has produced the said 2 (two) copies from his custody and it was submitted that the learned Tribunal had returned the said documents to the petitioner.

9. The Court also surprised to note the fact that DW-5 had produced 2 (two) documentary exhibits, but how could the same not available in the Tribunal's records when there is no order by the learned Tribunal of not retuning those documents in the order sheet.

10. The Court find discrepancies in both the sets of certified copies. While the certified copies which is available on record at page-57 of the Tribunals record contains only name of 1 (one) voter as indicated above whereas the copy produced by the DW-5, issued on 19.08.2023 contains names of 2 (two) voters at serial No. 742 and 743. The name of the electors are Aktar Hussain Sahu and Taimur Bibi. Thus, while issuing the certified copy which is marked as Ext.1, the middle name of the first voter has been shortened or abbreviated to read only as "Hu:" whereas the certified copy issued on 19.08.2023, the name of the voter is Aktar Hussain Sahu.

11. In respect of the voter's list of 1989 (Ext.2), the certified copy issued on 26.12.2017, which is available at page-58 of the Tribunals records, the serial number of voter is 59, house no. 70 in the name of Hasina Khatoon, husband's name Abdul Karim, female, 27 years whereas the copy produced by the learned

counsel for the petitioner which is issued 19.08.2023, the serial number of voter is 259 with other description remaining same. Therefore, it appears from the appreciation of two certified copies of Ext. 1 and Ext. 2 that the sanctity of the certified copy of the voter's list becomes questionable.

12. Further discrepancies which is noticed from the exhibited documents is that a document marked as Ext.1 and Ext. 2 in the Tribunal's records, which are is at page-57 and 58 are both signed by the learned Member. As per the opinion, Ext.3 is the voter's list of 1985 which could not be found in the records. The learned Member has noted in the impugned opinion that Ext.4 is the land document of 1970 and Ext.5 is the land document of 1988. The said documents are available in the Tribunal's records at page-59 and 65 are both jamabandi of the year 1932. The document at page-59 contains the name of Fateh Alam Shah which was struck of pursuant to mutation order 17.05.39. The name of Fateh Alam Shah was entered in the land revenue records and by subsequent mutation order dated 22.03.56, on death of Fateh Alam Shah, the name of Motilal Sharma, his father Khurdan was mutated in respect of 3/6 lecha and by subsequent mutation order dated 11.08.1966 in place of Motilal Sagar Nayak was mutated. Moreover, in the copy of jamabandi available at page-65 which is of the year 1932. The same contains the name of Fateh Alam Shah whose name was mutated pursuant to order dated 17.06.1932. However, as against Ext.4 and Ext.5, the learned Tribunal has recorded the said document as land record of 1970 and another being land record of 1988. Thus, it appears that the learned Tribunal has appreciated and recorded in the impugned opinion about documents which are not available on record. While there is reference of Gaonburah certificate as Ext.6, the said exhibited document is not found on record. The NRC, which is marked as Ext.7, is available at page-67 of the

records. The learned Tribunal records and marked as Ext.8 the marriage certificate as Ext.8, the documents which is available at page-68 of the Tribunals records is a certificate issued by the Secretary, Krishnapur Gaon Panchayat, which is dated 02.07.2015. Moreover, the photocopies of a few land revenue paying receipts are available in the record which contain impression of the signature of the learned Member.

13. Thus, only explanation that can be gathered from non- signing of the any exhibit other than Ext.1 and Ext.2 by the learned Tribunal is that the learned Member has committed dereliction of duty by not signing the exhibits as and when presented or at least on the date when the witnesses were present for their cross-examination. This is evident from the observation made by the learned Tribunal at internal page-3 of the impugned opinion which is the running page-95 of the writ petition, which is extracted below:-

"*I have gone through the record and find that the proceedee has exhibited only two documents. Exhibit-5, is a jamabandi copy, while again Exhbit-5 is a land document of Kolng Mouza, Hatibandha Pam. However, the Exhibit numbers are not correctly placed.*"

14. Had the learned Member, taken pain to look at the documents when the documents were exhibited, this would not have happened. The only impression we gather from the manner in which the impugned opinion was rendered is that the learned Tribunal had pre-concieved mind to declare the petitioner as a foreigner and thereafter, proceeded to examine the records and whimsically signed the exhibited documents as per her whims and fancies or *ipse dixit* of the learned Tribunal which is not the manner in which the proceedings of citizenship should be conducted.

15. Thus, the Court find that the proceedings of the Tribunal was taken up in a manner which is totally irregular which has vitiated the impugned opinion.

Hence, the Court has no hezitation to set aside the impugned opinion dated opinion dated 30.08.2022, passed by the learned Member, Foreigners Tribunal-2nd Biswanath, at Gohpur, in F.T.(B-2/GPR, Case No-1963/2017, arising out of S.P. Ref. Case No-Tzp(B)/98//1037 dated 18.08.1998 and ERO Ref. No. BNE.25/97/299 and D.C. Case No.4141/2013.

16. The Court is conscious of the fact that the Full Bench of this Court in the case of *Mokibur Rahman Vs. Union of India, 2024 (3) GLT 7*, it has been held that the proceedings could not be transferred from one Tribunal to the other. However, in this case an exception has to be carved because of the fact that with the observations which has been made by the Court in this order, if the same learned Tribunal takes up the matter, there is every likelihood that the Tribunal may not judiciously examine the matter. Accordingly, having noticed the manner in which the Tribunal proceeded in the manner specifically the return of the documents which are not produced by the petitioner but was produced by the DW-5, the non-signing of exhibited documents, wrong reference to exhibited docuemnts the Court expresses dissatisfaction in the manner in which the records were kept by the learned Tribunal. Therefore, the Court directs as follows:-

i) That the Court Master shall hand over the records of the learned Tribunal to Ms. A. Verma, learned standing counsel for the FT and Border matters to hand it over to the Home and Political Department, Govt. of Assam, so as to have the records examined through any Officer appointed by the said authority.

ii) In the event satisfaction is recorded that the records were not properly kept, the said authority shall thereafter, transfer the

matter to the Foreigners Tribunal, 1st, Biswanath Chariali for taking up the matter from the stage of evidence of DW-1, DW-3, DW-4 and DW-5, if necessary by re-examining the said witnesses and by calling for the fresh certified copies of the electoral roll of 1985 and 1989 to be provided and to accept them on record after being marked as exhibits.

iii) The Court Master shall keep a photocopy of the certified copies of the electoral rolls produced by the learned counsel for the petitioner in the record, which were issued on the basis of application no. 221 and 223 dated 19.08.2023, by the Sub-Divisional Officer (Civil) and District Election Officer, Gohpur Sub-Division, Gohpur, Sonitpur, as it then was. In view of the discrepancies, the Court Master shall also provide a copy of the said 2 (two) voter's list to Mr. A.I. Ali, learned standing counsel for the ECI as well as to the learned standing counsel for the FT and Border matters.

17. The petitioner, who is duly represented by her learned counsel, shall appear before the Foreigners Tribunal, 1st, Biswanath Chariali on or before 16.12.2026 without requirement of nay notice of appearance to be served. However, if by then the records are not received, the said learned Tribunal shall notify the next date of appearance by the petitioner.

18. It is provided that in the event the petitioner fails to appear before the said learned Tribunal within the time allowed, it would be permissible for the learned Tribunal to treat the petitioner as absent on call and pass orders as deemed appropriate.

19. On appearance, the petitioner shall produce certified copy of the order and wait for further orders to be passed by the said learned Tribunal. The petitioner shall also take bail before the learned Tribunal. The Court directs that the bail so granted by the learned Tribunal on satisfaction shall be valid for a period of 30 (thirty) days from the passing of the fresh opinion.

20. The learned standing counsel for the Border and FT matters is also permitted to send downloaded copy of the order to the concerned authorities for their information.

21. The writ petition stands allowed to the extent as indicated above.

22. It is noted that in the writ petition, the petitioner has annexed the copy of the Gaonburha's certificate which is shown to be marked as Exhibit 5, at page-49 of the writ petition. However, the English translation at page-48 is not true translation of the document at page-49. In this regard, the learned counsel for the petitioner had admitted his mistake. The explanation tendered is accepted. However, the learned counsel for the petitioner shall be careful in future.

23. Before parting with the records, the Court is of the view that it is high time that the Govt. of Assam, Home and Political Department should create a mechanism to monitor the functioning of the learned Members.

JUDGE **JUDGE**

Comparing Assistant