GAHC010221422023

2026:GAU-AS:16790-DB

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

Case No. : WP(C)/6014/2023

SMTI HASBUN BIBI KHATUN @ BEGUM @ HUSBUN BEGUM
D/O LATE AKHTAR HUSSAIN @ BABUA, W/O GOLAP KHAN @ GULAP KHAN HUSSAIN, R/O VILL- MAGONI, HATIBONDHA, P.S.-GOHPUR, DIST-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
DIST-BISWANATH

ASSAM
PIN CODE-784176

6:THE SUPERINTENDENT OF POLICE (BORDER)
BISWANATH
P.O.-BISWANATH
DIST- BISWANATH
ASSAM
PIN CODE-78417

Advocate for the Petitioner : MR. RAJARSHEE DE, MR. F A HASSAN

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

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 appearing for the Union of India; Ms. A. Verma, learned Standing Counsel for the Home and Political Department, Mr. M. Islam, learned counsel appearing on behalf of Mr. A.I. Ali, learned Standing Counsel for the ECI; and Mr. P. Sharma, learned Govt. Advocate appearing for the State.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner namely, Smti Hasbun Bibi Khatun @ Begum @ Husbun Begum has assailed the opinion dated 30.08.2022, passed by the learned Member, Foreigners Tribunal 2nd, Biswanath at Gohpur, in F.T.(B-2)/GPR Case No.1966/2017, arising out of S.P. Ref. Case No. TZP(B)/98//1053/LAC 78 dated 18.08.1998; ERO Ref No.- BNE.25/97/298; D.C. Case No. 4111/2013, whereby

the learned Tribunal declared the petitioner as a foreign national having entered India post 1971 stream.

3. In view of the order of remand which this Court proposes to pass, it is not necessary to bring the pleadings and evidence on record.

4. It would suffice to mention that the petitioner in this writ petition claims to be the sister of one Hasina Khan Khatun @ Hasina Begum. The said Hasina Begum is the proceedee in the FT Case No.1963/2017 and the opinion passed in the said proceeding on 30.08.2022 is the subject matter of challenge in the W.P.(C) No.5851/2023, which has also been disposed of by a separate order passed today.

5. In the proceedings before the learned Member, Foreigners' Tribunal 2nd Biswanath at Gohpur, the petitioner herein had taken a plea that she is relying on the same set of documents, which were exhibited by Hasina Khan Khatun @ Hasina Begum, in the proceedings of F.T.(B-2/GPR), Case No.1963/2017, had exhibited certain documents on which she places reliance on. Accordingly, the following order was passed on 12.02.2018 :-

> "*Proceedee is present with her advocate and filed her W/S and evidence in chief along with a set of document. Proceedee submitted that proceedee is the sister of Hasina Begum and a case is running against her sister and original parental side documents was enclosed with the case of her sister and proceedee has filed the photocopy set of documents with her case and prayed to rely the original documents with her case at the time of trying her case and taken up both the cases together for trial as an analogous case.*
>
> *Fixed on 13.03.18 for cross and DW."*

6. Subsequently, the case was fixed for cross-examination of DWs on 03.04.2018. The following order was passed on 03.04.2018 :-

> "*Proceedee is present with her advocate, who is duly cross-examined and exhibited the document during evidence. Proceedee wants to adduce further*

DW.

Fixed on 20.04.18 for DW."

7. Therefore, on a conjoint reading of the orders of the learned Tribunal dated 12.02.2018 and 03.04.2018, it is evident that the learned Tribunal took note of the fact that the same set of documents were exhibited in another proceeding and passed an order to the effect that the documents were exhibited in this case. However, the record of the Tribunal does not contain the seal and signature of the learned Tribunal on the documents being marked as exhibits in the instant proceeding.

8. In the impugned opinion, reference is made to eight (8) exhibited documents. Those documents were marked as Ext. Nos.1 to Ext.8. The petitioner has also exhibited sixteen (16) numbers of land revenue paying receipts, which were marked as Exhibit Ext.9(1) to Ext.9(16) in the proceedings of FT Case No.1963/2017. However, in the impugned opinion, no reference has been made by the learned Tribunal as to the exhibit marking of the said sixteen (16) land revenue paying receipts.

9. Therefore, as the records of the learned Tribunal does not have any marking of the learned Member or the Tribunal with regard to the exhibited documents, the Court is constrained to observe that the learned Tribunal had proceeded in the matter casually and failed to sign the exhibited documents either when the exhibits were admitted in evidence i.e. On 03.04.2018 or when the witnesses had appeared for their respective cross-examination. The manner in which the records were maintained apparently discloses utter carelessness while in maintaining the Tribunal's records.

10. At this stage, when the Tribunal's record does not contain the exhibit

marking on the exhibited documents, this Court while exercising certiorari jurisdiction would not venture to presume as to which documents were exhibited.

11. This Court is inclined to send this particular record to the Home and Political Department, Govt. of Assam so that the concerned authorities can examine the records and after their examination of the records, specially the orders dated 12.02.2018 and 03.04.2018, the records be sent to, the learned Member of the Foreigners Tribunal 2nd, Biswanath, Gohpur to give the exhibit markings on the exhibited documents.

12. As the markings of the exhibited documents will be subsequent to the rendition of the opinion, the Court is inclined to set aside the opinion dated 30.08.2022, passed by the learned Foreigners Tribunal 2nd, Biswanath at Gohpur in F.T.(B-2)/GPR, Case No.1966/2017.

13. The Court being conscious of the Full Bench decision of this Court in the case of *Makibur Rahman vs. Union of India and others*, reported in *2024 (3) GLT 7*, where it is laid that the proceedings in the Foreigners' Tribunal should not be transferred. However, in this case, the exception has to be carved out. In the connected proceedings of FT Case No.1963/2017, the records were not properly kept, for which the matter has been transferred to another learned Tribunal.

14. Accordingly, this matter being connected with the FT Case No.1963/2017, wherein the same set of documents were exhibited, this matter is also transferred from the learned Foreigners' Tribunal 2nd, Biswanath at Gohpur to the learned Foreigners' Tribunal 1st, Biswanath at Biswanath Chariali, for taking up the matter from the stage of evidence. However, such transfer

shall not be treated as a precedent in any other case.

15. The petitioner, who is duly represented by the learned engaged counsel is directed to appear before the learned Member, Foreigners' Tribunal 1st, Biswanath at Biswanath Chariali within thirty (30) days from the date of this order, and by producing a certified copy of this order, shall wait for further orders to be passed by the said learned Tribunal.

16. On the date of appearance, the petitioner shall also take bail to the satisfaction of the said learned Tribunal. This Court is inclined to direct that the bail so granted shall remain in force for a period of 30 (thirty) days from the date of passing of the fresh opinion.

17. The learned Tribunal shall take note of the provision of paragraph 17(14) of the Immigration and Foreigners Order, 2025 regarding the timeline within which the matter is to be disposed of, as far as practicable.

18. The Registry shall hand over the records received from the learned Tribunal to Ms. A. Verma, learned Standing Counsel for the Home and Political Department for onward transmission to the Home and Political Department, Govt. of Assam, so as to enable the Head of the said department to depute to an Officer to examine and send the record to the learned transferee Tribunal.

19. The Home and Political (B) Department of Assam shall also send a downloaded copy of this order to the learned Foreigners Tribunal, 2nd, Biswanath at Gohpur for record.

20. The Home and Political (B) Department shall also take a call as to whether the Govt. is interested to send the learned Members and the staff of

the Foreigners Tribunals in the State for training on record keeping.

21. The petition is allowed to the extent indicated above.

22. The parties are to bear their own cost.

JUDGE JUDGE

Comparing Assistant