GAHC010249482018

2026:GAU-AS:17066

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

Case No. : WP(C)/8006/2018

ANA HUSSAIN @ ANA HOSEN
S/O. LT. JASUDDIN SHEIKH @ JASU SHEIKH, R/O. VILL. BEGUNTALI, P.S. GAURIPUR, DIST. DHUBRI, ASSAM.

VERSUS

UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, NEW DELHI-110001.

2:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT. DISPUR
GUWAHATI-06
ASSAM.

3:THE DY. COMMISSIONER

DHUBRI.

4:SUPDT. OF POLICE

DHUBRI
ASSAM-783301.

5:THE ELECTION COMMISSION OF INDIA

NEW DELHI-110001.

6:THE OFFICE OF THE STATE COORDINATOR OF NRC

ASSAM
GUWAHATI-781005.

7:THE SPECIAL COUNSEL OF FOREIGNERS TRIBUNAL

GOVT. OF ASSAM

Advocate for the Petitioner : MS J A AHMED, MR. RASHIDUL ISLAM,MS B B AHMED,MR Z HUSSAIN,MS. R DEKA

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

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

ORDER

Date : 17.11.2026
(K.R. Surana, J)

Heard Mr. Z. Hussain, learned counsel for the petitioner. Also heard Ms. K. Deka, learned CGC; Mr. G. Sarma, learned standing counsel for the FT and Border matters; Mr. A.I. Ali, learned standing counsel for the ECI; and Mr. P. Sarmah, learned Additional 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 26.07.2018, passed by the learned Member, Foreigners' Tribunal 4th, Dhubri, in Case No. F.T-4/293/GPR/2017, arising out of Reference IM(D)T Case No. 1704/98, by which the petitioner was declared to be a foreigner of post 25.03.1971 stream.

3. This is yet another case where the Court is of the view that the

learned Members of Foreigners Tribunals are required to have training to understand the nature of documents produced before it as evidence, which is otherwise elementary for any judicial quasi-judicial proceeding.

4. In this case, the petitioner had exhibited five documents, i.e. (1) the certified copy of E/Roll of 1966 (Ext-1); (2) the certified copy of E/Roll of 1970 (Ext-2); (3) the Regd. Sale Deed dated 02/03/1978 (Ext-3); (4) the certified copy of E/Roll 1997 (Ext-4); and (5) the Regd. Sale Deed dated 21/06/2013 (Ext-5).

5. On perusal of the Tribunal's records, it appears that while the Ext.3 is the certified copy of the sale deed, but the learned Tribunal in paragraph-5 of the impugned opinion has referred it as the registered sale deed dated 02.03.1978.

6. The learned counsel for the petitioner has produced the certified copies of electoral roll of 1966 (Ext.1), electoral roll of 1970 (Ext.2), and electoral roll of 1997 (Ext.4). The records do not contain any original exhibits, and in the back page of the last order sheet, someone has recorded that the original sale deeds have been returned to Mr. H.N. Bhowmik, learned counsel, who has put his signature with the date of 25.09.2018. The certified copies of the electoral rolls were discarded on the ground that the petitioner did not prove the relevant entry of those voters lists, whereas in the case of *Borhan Ali @ Barhan Ali v. Union of India & Ors., 2018 (4) GLT 392,* this Court had referred to the provision of Section 79 of the Evidence Act holding that there is presumption as to genuineness of the certified copies of the document. However, it was observed that notwithstanding the presumption of genuineness

under Section 79 of the Evidence Act, it would be safe for the Tribunals and the Courts to insist on proof of the contents of such certified copies by comparing with primary evidence, i.e., electoral roll in original produced and testified before the Tribunal or the Court by the lawful custodian of such primary evidence, i.e., by the concerned Electoral Registration Officer or by his authorized officer or personnel.

7. This Court in the case of *Isiran Nessa v. Union of India & Ors., 2020 (3) GLT 531*, has also clarified that certified copies of documents, not coming within the ambit of clauses (a) or (e) of Section 65 of the Evidence Act, 1872 would not be admissible in evidence. Thus, the law is well settled that documents coming within the ambit of clauses (a) and/or (e) of Section 65 of the Evidence Act, 1872 would be admissible.

8. The learned Tribunal had discarded the certified copies of the exhibited voters lists (Ext. Nos. 1, 2 and 4) on the ground that the petitioner had not proved the relevant entries by comparing with the primary evidence. In the said regard, reliance was placed on the decision of this Court in the case of *Nasimuddin v. Union of India & Ors., W.P.(C) No. 3728/2016*. The Court *prima facie* finds that there was total non-application of mind by the learned Tribunal while referring to the said case of *Nasimuddin (supra)* because the proceeding of W.P.(C) No. 3728/2016 is not *Nasimuddin*, but the case is *Nasir Uddin v. The Union of India & Ors., decided on 05.04.2018*. Moreover, in respect of the point of discarding of voter lists, it would be appropriate to quote para 21 thereof hereinbelow:—

"*21. If this exhibit is excluded from consideration, there are only two documents which*

are indicative of a semblance of relationship between Nasir Uddin and Jalal Uddin Sk or Jalal. These two documents are Ext-3 and Ext. 4. Ext. 3 is a photostat copy of an extract of voters list of 2015, in respect of Gauripur Constituency. Here Nasir Uddin was shown as son

of Jalal Sk and aged 59 years but interestingly, he was shown as a resident of village No. 104 Fulkumari which is contradictory to his residence as per Ext-1 (Maspara). Again, if Nasir Uddin was 59 years of age in 2015, it would mean that he was born sometime in the year 1956 which is contradictory to his own declaration of age in the evidence before the Tribunal (1968) and in the affidavit before this Court (1955). The same position is reiterated in Ext-4 which is an extract of voters list of 1993. But here Nasir Uddin was 20 years of age which would mean that he was born sometime in the year 1973, again a different year of birth. A discrepancy here and there is understandable but a person cannot have so many years of birth. That apart, Ext.3 was a voters list of Gauripur Constituency whereas Ext. 4 was of Bilasipara West Constituency with Nasiruddin shown as a resident of village No. 261 Mirarkuti, a different village altogether. But most importantly both exhibits 3 & 4 are photo copies (Ext.4 is photocopy of certified copy). Therefore, admissibility of such documents is questionable. In so far Ext.4 is concerned, no doubt certified copy is secondary evidence but contents of such secondary evidence would have to be proved by comparing with the primary evidence and on the basis of testimony of the lawful custodian of the primary evidence. Viewed in the above context, both Exts. 3 & 4 cannot be said to have been proved. Moreover, material inconsistencies as noticed above have marred whatever little credibility these two documents had."

9. Thus, in the case of *Nasir Uddin (supra)*, the exhibited documents marked as Ext. 3 was photocopy of an extract of voter list of 2015, and voter list of 1993 was photocopy of certified copy of extract of voter list. Thus, the questionability of such documents was doubted. In this case, all the three exhibited voter lists are certified copies only. Therefore, the ratio of the case of *Nasir Uddin (supra)* (wrongly spelt by the learned Tribunal as Nasimuddin) could not have been applied in this case. Hence, such erroneous appreciation of evidence and ratio of the case law has exposed the total non-application of judicial mind by the learned Tribunal, exposing that the learned Tribunal has

acted mechanically and perfunctorily or with a pre-determined mind to reject the defence of the petitioner.

10. The sale deed (Ext.3) was discarded as it was a post-1971 document. However, the learned Tribunal had failed to take notice of the fact that Md. Jasu Sk. had purchased a plot of land. The learned Tribunal had failed to take note of the fact that the petitioner was seeking to prove that Md. Josu Sk was the son of Sadu and that in the voters list of 1997 (Ext.4), the father's name of the voter Jasu Sk. is Sadu.

11. The certified copy of sale deed registered on 21.06.2013 was discarded because there appears to be an insertion of the alias of Anna Hussain. The learned Tribunal doubted the said insertion because pattern of letters was different. However, the learned Tribunal had failed to take notice of two things. Firstly, the said Ext.5 was the original sale deed. Secondly, at the page-76 of the Tribunal’s record, which is the back page of the first page of sale deed is the endorsement by the Sub-Registrar that “Execution is admitted by Saidur Rahman- seller and purchaser Anowar Hussain alias Anna Hussain”, and has affixed his signature and date thereunder. This would be a conclusive proof that the “alias” of Anna Hussain was entered in Ext. On the date it was registered. Thus, the learned Tribunal is found to have perused the Ext.5 perfunctorily.

12. In view of above, as the learned Tribunal had discarded the certified copies of the voters lists referred above and had incorrectly referred to the certified copy of sale deed (Ext.3) as a registered sale deed, and discarded the exhibit, the Court is of the considered opinion that the matter be remanded back to the said learned Tribunal for a correct appreciation of the exhibited

documents.

13. In order to facilitate a fresh appreciation of the documents, the Court is inclined to set aside the impugned opinion dated 26.07.2018, passed by the learned Member, Foreigners' Tribunal 4th, Dhubri, in Case No. F.T-4/293/GPR/2017, arising out of Reference IM(D)T Case No. 1704/98.

14. The matter is remanded back to the said learned Tribunal for passing a fresh opinion in accordance with law by reading and referring to the exhibits correctly, without being influenced by any observations made in this order.

15. The petitioner, who is duly represented by his learned counsel, is directed to appear before the said learned Tribunal on or before the outer time limit of 18.12.2026. On the said date, the petitioner shall produce a certified copy of this order before the said learned Tribunal and await for further orders to be passed by the said learned Tribunal.

16. It is provided that in the event the petitioner defaults in making an appearance within the time allowed, it would be open to the learned Tribunal to treat the petitioner as being in default in compliance with the order of the Court and pass such appropriate orders as it deems fit and proper.

17. It is provided that on the date of appearance of the petitioner, he shall be ready and willing to take bail of a sum of Rs.5,000/- (Rupees five thousand only) on such consideration that may be deemed fit and proper by the learned Tribunal. It is provided that the bail so granted by the learned Tribunal shall be ordered to remain valid for a period of 30 (thirty) days from the date of the fresh opinion that may be passed by the said learned Tribunal.

18. The Registry shall send back the records along with a copy of this order to be made part of the record by the said learned Tribunal.

19. The learned standing counsel for the FT and Border matters shall also send a copy of this order to the concerned authorities for their record.

20. The writ petition stands allowed with the order of remand as indicated above.

JUDGE **JUDGE**

Comparing Assistant