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2026:GAU-AS:15223-DB

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

Case No. : WP(C)/7625/2023

MD AFAZUDDIN
S/O MD. SUKOOR ALI, R/O VILL-GERUAGAON, P.S.-KHATOWAL, DIST-NAGAON (ASSAM), PIN-782140

VERSUS

THE UNION OF INDIA AND 5 ORS
TO BE REPRESENTED BY THE MINISTRY OF HOME AFFAIRS, NEW DELHI-1

2:THE STATE OF ASSAM
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY OF HOME DEPARTMENT
DISPUR
GUWAHATI
ASSAM

3:THE SUPERINTENDENT OF POLICE (BORDER)
NAGAON
ASSAM
PIN-782001

4:THE DEPUTY COMMISSIONER
NAGAON
DIST-NAGAON
ASSAM
PIN-782001

5:THE ASSAM STATE CO-ORDINATOR OF NRC
BHANGAGARH
GUWAHATI-5

6:THE ELECTION COMMISSIONER OF INDIA
NEW DELH

Advocate for the Petitioner : S AHMED, MS A HUSSAIN

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

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE PRANJAL DAS

ORDER

07.10.2026

(K.R. Surana, J)

Heard Mr. S. Ahmed, learned counsel for the petitioner. Also heard Mr. Ashim Kr. Choudhury, learned CGC, Mr. G. Sarma, learned Standing Counsel, FT and Border matters, Mr. N. Kalita, learned counsel appearing on behalf of Mr. A. I. Ali, learned Standing Counsel, ECI and Mr. P. Sarmah, learned Additional Senior Govt. Advocate for the State.

2. In brief, the case of the petitioner is that by an opinion dated 07.12.2016, passed by the learned Member, Foreigners Tribunal, 3rd, Nagaon, in F.T. Case No. NFT.(No.3) 36/2016, arising out of (Police Case No. F.T. 520/05), the petitioner, namely, Md. Afazuddin was declared to be not a foreigner in between 01.01.1966 to 25.03.1971 stream. Accordingly, the reference being answered, the same was disposed of.

3. The petitioner on appearing before the learned Tribunal in connection with notice received in NFT (No.3) Case No. 517/2016 filed petition no. 613/2023 dated 08.05.2023, *inter alia* stating that in another proceeding vide NFT (No.3) 36/16 (Police Case No. FT Case No. 520/05), the petitioner was declared to be

not a foreigner by an opinion dated 07.12.2016. Accordingly, it was prayed that the petition be admitted and the petitioner be released from the present proceedings.

4. On the said petition, the learned Tribunal had summoned one Pradip Kakati as CW-1, the statement was recorded on 11.07.2023 and accordingly on the basis of the said statement, the learned Tribunal by placing reliance on paragraph-26 of the case of *Sarbananda Sonowal Vs. Union of India & Anr. Reported in (2005) 5 SCC 665* was of the view that the Gaon Pradhan could not state anything regarding the identity of the petitioner as the proceedee in the earlier proceeding and accordingly, by invoking the principle of *per incuriam* the learned Tribunal disagreed with the earlier opinion and directed the present proceedings to continue.

5. Accordingly, the learned counsel for the petitioner by referring to the case of *Sital Mandal Vs. Union of India & Ors. WP(C) 2099/2018, decided on 28.04.2022 as well as Abdul Kuddus vs. Union of India & Ors. (2019) 6 SCC 604* was submitted that it is well settled that the principle of *res judicata* applies in the proceedings before the learned Tribunal.

6. It is also submitted that the impugned order dated 29.08.2023 passed by the learned Member, Foreigners Tribunal 3rd, Nagaon, Assam, in No. NFT (No.3) FT 517/16 (Police Case No. 125/15) be set aside and subsequent proceedings be quashed.

7. Per contra, the learned Standing Counsel for the FT and Border matters has submitted that the Tribunal was required to first satisfy itself with regard to the identity of the petitioner to be the proceedee in the earlier proceeding. Accordingly, he opposes the prayer made in this writ petition. In support of his

submission he has placed reliance in the decision of *Jamiruddin Mollah Vs. The Union of India & 5 Ors.* in WP(C) No. 4801/2025, decided on 31.10.2026 the relevant paragraphs are extracted below:-

"5. Examined the materials available on record. Also considered the submissions made by the learned counsel at the Bar and also considered the cited cases.

6. At the outset, it is well settled position that the principles of *res judicata* in the proceedings before the Foreigners Tribunal, as held by the Supreme Court of India in the case of Abdul Kuddus (supra). The relevant observations of the Supreme Court of India is quoted below:-

> *"24. The opinion/order of the Tribunal, or the order passed by the Registering Authority based upon the opinion of the Foreigners Tribunal, as the case may be, can be challenged by way of writ proceedings. Thus, it would be incorrect to hold that the opinion of the Foreigners Tribunal and/or the consequential order passed by the Registering Authority would not operate as res judicata. Both the opinion of the Tribunal and the Order of the Registering Authority result in determination of rights/status under the statute and by an authority after a contest on the merits which would necessarily operate as a bar to subsequent proceedings before the same authority for re-determination of the same issue/question. This court in Shrimati Ujjambai v. State of Uttar Pradesh & Anr., AIR 1962 SC 1621 has held that the principles of res judicata equally apply to quasi-judicial bodies. Whenever a judicial or quasi-judicial Tribunal gives a finding on law or fact, its findings cannot be impeached collaterally or in a second round and are binding until reversed in appeal or by way of writ proceedings. The characteristic attribute of a judicial act or decision is that it binds, whether right or wrong. Thus, any error, either of fact or law, committed by such bodies cannot be controverted otherwise by way of an appeal or a writ unless the erroneous determination relates to the jurisdictional matter of that body."*

7. The decision of Abdul Kuddus (supra) has been followed in the case of Tarabanu Begum (supra). The decision of Tarabanu Begum (supra) has been followed in the case of Swapan Dutta (supra). The application of the principles of res judicata is reiterated in the case of Rejia Khatun @ Rezia Khatun (supra) and Sital Mandal (supra).

8. However, in the case of Jahir Ali (supra), this Court, by following the decision of

the Supreme Court of India in the case of Abdul Kuddus (supra), had reiterated that principles of res judicata will apply in the proceedings before the Foreigners Tribunals. Nonetheless, the matter was remanded back to the Foreigners Tribunal with the following observations, that is quoted herein below:-

> "*16. Accordingly, for the reasons recorded above, we allow this petition by remanding the matter to the concerned learned Tribunal to consider the case of the petitioner afresh by giving him an opportunity to prove that the present petitioner, namely, Jahir Ali, aged about 52 years, S/O Nesar Ali @ Mesar Ali, R/O Ward No.6, PO & PS-Mangaldai, District-Darrang, Assam, is one and the same person in whose favour an opinion was earlier given by the same Tribunal on 15.07.2015 in F.T. Case No.771/2012 that he was not a foreigner. Accordingly, the opinion rendered on 22.11.2018 passed by the learned Foreigners' Tribunal(1st), Mangaldai, Darrang, in F.T. Case No.860/2007 is set aside."*

8. In the present case, apart from the notice which has been served on the petitioner in the purported second proceeding of NFT(No.3) FT 517/2016, arising out of (Police Case No. 125/15), there is no material to show as to enable the Court to satisfy itself with the identity of the petitioner to be the one who has been a proceedee in the previous proceeding of FT Case no. NFT(No.3) 36/2016 arising out of Police Case No. FT 520/05.

9. In the considered opinion of the Court, in order to apply the principles of *res judicata*, it is the first and foremost requirement of the learned Foreigners Tribunal to determine whether the proceedee in the previous proceeding of F.T. Case No. NFT.(No.3) 36/2016, arising out of (Police Case No. F.T. 520/05) is the same person who is arrayed as the proceedee in Petition No. 613/2023 in No. NFT (No.3) FT 517/16, arising out of (Police Case No. 125/15).

10. In further considered opinion of the Court, such a determination cannot be made unless the petitioner files his written statement and produces his documents on which he intends to rely upon. Only thereafter, the learned

Tribunal will be able to arrive at a satisfaction that both the proceedees are same and one person. The State respondents, if so advised, may also produce evidence before the learned Tribunal to show that the proceedees in both the cases are two different persons.

11. In the event, the learned Tribunal arrives at a satisfaction that the proceedee in both cases is the same, then the learned Foreigners Tribunal shall be bound to apply the principles of *res judicata* in light of the law well settled on the point.

12. In this regard, the Court is inclined to refer to the decision of the Supreme Court of India in the case of *Abdul Kuddus (supra) Tarabanu Begum (supra), Swapan Dutta(supra), Rejia Khatun @ Rezia Khatun (supra) and Sital Mandal (supra).*

13. The Court would also like to deal with the issue as to whether it would be appropriate for this Court to examine the documents annexed to this writ petition so as to record its satisfaction that the proceedees in both the cases are same and one person.

14. It is in the said context that it would be appropriate to mention that while exercising a challenge to the orders or opinion passed by the learned Foreigners Tribunal , this Court exercises *certiorari* jurisdiction and not appellate or revisional jurisdiction. Therefore, there are inherent limitations in the power of the Court while exercising *certiorari* jurisdiction to examine documents as is required to be done by the Tribunal as the Court of first instance, and thus, transforms itself from a writ court to Court exercising original jurisdiction. The limitations on the power of the Court while exercising *certiorari* jurisdiction have been settled by the Supreme Court of India in the case of *Central Council for*

Research in Ayurvedic Sciences vs. Bikartan Das, 2023 INSC 733: (2023) 0 Supreme (SC) 763, the paragraph 77 thereof is quoted below:

> "*77. The purpose of certiorari, as we understand, is only to confine the inferior tribunals within their jurisdiction, so as to avoid the irregular exercise, or the non-exercise or the illegal assumption of it and not to correct errors of finding of fact or interpretation of law committed by them in the exercise of powers vested in them under the statute. The accepted rule is that where a Court has jurisdiction it has a right to decide every question which crops up in the case and whether its decision is correct or otherwise, it is bound to stand until reversed by a competent Court. This Court in G. Veerappa Pillai v. Messrs Raman and Raman Ltd. Kumbakonam, Tanjore District and Others, (1952) 1 SCC 334 observed:*
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> > *"26. Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made."*

15. This Court under a similar context had passed an order *dated 31.10.2025* in the case of *Jamiruddin Mollah vs. Union of India and Ors. WP(C) No. 4801/25* wherein by referring to paragraph nos. 20 to 23 of the case of *Hari Vishnu Kamath vs. Ahmad Ishaque, AIR 1955 SC 233:* which is quoted from *(1954) 0 Supreme (SC) 175* and held that in the absence of any determination by the learned Tribunal as to whether or not the proceedees in both cases are same person or not, if this Court ventures to examine the documents of the petitioner, then this Court will be exercising original jurisdiction not vested in this Court while deciding a writ petition under *certiorari* jurisdiction.

16. Accordingly, the Court is of the considered opinion that ends of justice would be met by directing the petitioner to file his written statement as well as

his evidence and documents in support of his defence, thereupon, the learned Member, Foreigners Tribunal 3rd, Nagaon shall give an opportunity to the petitioner, namely, Md. Afazuddin to prove that he as well as the proceedee in the proceedings of FT Case No. NFT (No.3) 36/2016 is one and the same person in whose favour the opinion dated 07.12.2026 was rendered by the said learned Tribunal, declaring that he is not a foreigner.

17. It would be open to the learned Tribunal to examine the documents appended to the reference and it would also open to the State to establish that the petitioner is not the proceedee in the previous proceedings of FT Case No. NFT (No.3) 36/2016.

18. However, if it is found that the present petitioner is the same person who was the proceedee in the proceedings of FT Case No. NFT (No.3) 36/2016, the subsequent proceeding of NFT (No.3) FT 517/16 arising out of (Police Case No. 125/15) shall be dropped.

19. Subject to the observations and directions contained in this order, without interfering with the said order dated 29.08.2023, under challenge, the matter is remanded back to the said learned Tribunal to decide the matter in accordance with the directions contained in the order.

20. The petitioner who is duly represented by his learned counsel shall enter appearance before the said learned Tribunal on or before 11.11.2026 by producing a certified copy of the order and also file his written statement along with all the documents on which he intends to rely upon.

21. The learned Tribunal shall give reasonable opportunity to the petitioner to file his evidence and produce witnesses and effort should be made by the learned Tribunal to dispose of the proceedings within the time prescribed under

Paragraph 3(14) of the Foreigners (Tribunals) Order, 1964, and/or Paragraph-17(14) of the Immigration and Foreigners Order, 2025 as applicable.

22. The Registry shall return back the Tribunal Records expeditiously.

23. The writ petition stands disposed of.

24. There shall be no order as to costs.

JUDGE **JUDGE**

Comparing Assistant