

(2021) 08 GAU CK 0076

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3963 Of 2021

Hanufa Khatun

APPELLANT

Vs

Union Of India And 3 Ors

RESPONDENT

Date of Decision : 20-08-2021

Acts Referred:

Citation : (2021) 08 GAU CK 0076

Hon'ble Judges : N. Kotiswar Singh, J;Soumitra Saikia, J

Bench : Division Bench

Advocate : U Dutta

Final Decision : Disposed Of

Judgement

1. Heard Mr. U. Dutta, learned counsel for the petitioner.

2. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K.D Choudhury, learned Standing counsel, CGC, for the respondent No. 1;

Mr. J. Payeng, learned Special Counsel, FT appearing for respondent Nos. 2 & 3 and Ms. B Das, learned Standing Counsel, ECI appearing for respondent No. 4.

3. This writ petition has been filed by the petitioner, namely Musstt. Hanufa Khatun, assailing the ex-parte order dated 19.12.2012 passed by the learned Member, Foreignersâ?? Tribunal (2nd), Morigaon, Assam in F.T(D) Case No. 207/11 (Police Reference D/N case No. 44/97).

4. Considering the nature of the case and also as agreed to by the learned counsel of the parties, the matter is disposed of at this stage.

5. According to the petitioner, the petitioner did not receive any summon issued by the Foreignersâ?? Tribunal and accordingly, was unaware of the proceeding before the Foreignersâ?? Tribunal which led into the passing of the ex-

parte order. Subsequently, petitioner came to know about passing of the ex-parte order only when petitioner approached the NRC Authorities for registration of her name in the NRC. Thereafter, the petitioner made enquiries and came to know that a copy of the summon was served upon the husband of the petitioner. Unfortunately, by that time the petitioner was not living with her husband and she was staying separately in her parental house and her husband didn't bother to inform about the notice being issued by the Foreigners' Tribunal. Under such circumstances, it has been submitted that if an opportunity be given to the petitioner to prove her case that she is an Indian and she would suffer irreparable loss of injury.

6. The learned counsel for the petitioner submits that petitioner has otherwise sufficient documents in her favour to show that she is an Indian Citizen.

In this regard, the learned counsel for the petitioner has drawn attention of this Court to Annual Khiraj Patta for Colonisation Scheme showing that

petitioner is the Granddaughter of one Sayed Ali, who had possessed a piece of land in Village No. 2 Langia, Mouza: Alitangani of district Nagaon,

Voter list of 1965 where name of father was also included in the Rupahihat LAC under Village: Langia (Part-2), District: Nagaon, Voters list of 1970,

where the father's name was included and the petitioner herself was also included in the Voters list of 1989.

7. Having heard the learned counsel for the parties and also having perused the records, we are of the view that the petitioner may be given an

opportunity to appear before the Foreigners' Tribunal to prove her case that she is an Indian Citizen, not a foreigner.

8. Citizenship, being an important right of a person, we are of the view, ordinarily, should be decided on the basis of merit by considering the material

evidence that may be adduced by the person concerned. In the present case, we are of opinion that there are sufficient reasons for the petitioner for

not be able to appear before the Foreigners' Tribunal to enable the Tribunal to consider her claim on merit.

9. Accordingly, the impugned ex-parte order dated 19.12.2012 passed by the learned Member, Foreigners' Tribunal (2nd), Morigaon, Assam in

F.T(D) Case No. 207/11 (Police Reference D/N case No. 44/97) is set aside. The matter is remanded to the learned Foreigners Tribunal (2nd),

Morigaon, Assam for fresh consideration. The petitioner will appear before the

aforesaid Foreignersâ?? Tribunal on or before 21.09.2021 and file her written statement and adduce evidences before the Tribunal to prove her case that she is an Indian citizen, not a foreigner.

10. However, since the citizenship of the petitioner is under the cloud, the petitioner will remain on bail subject to the conditions that the petitioner shall

appear before the Superintendent of Police (B), Morigaon within 15 (fifteen) days from today and furnish a bail bond of Rs. 5000/- (Rupees five

thousand) only with one local surety of the like amount to the satisfaction of the said authority. A direction is also made to the Superintendent of Police

(Border), Morigaon that as and when the petitioner appears within the period indicated above, the biometrics of the iris of both eyes, the fingerprints of

both hands and photograph of the petitioner shall be obtained.

11. With the above observations and directions, the present petition is disposed of.