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**(2015) 10 GAU CK 0009**  
**In the Gauhati High Court**  
**Case No : W.P. (C) No. 4009 of 2012**

Mohammad Ali and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 01-10-2015

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Foreigners Act, 1946 — Section 9

**Citation :** (2015) 4 GLT 980

**Hon'ble Judges :** Biplab Kumar Sharma, J.

**Bench :** Single Bench

**Advocate :** H.R.A. Choudhury, Sr. Advocate, A. Matin, R. Choudhury, F.U. Borbhuya, A.B. Siddique and M. Bora, Advocates, for the Appellant; S.C. Keyal, Asstt. Solicitor General of India and M. Khataniar, G.A., for the Respondent

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## Judgement

Biplab Kumar Sharma, J.—This writ petition is directed against the judgment and order dated 25th April, 2012 of the Foreigners Tribunal (2nd), Morigaon, Assam passed in Case No. F.T.(C) 61/2009 [IM(D)T Case No. 812/2002 dated 23rd August, 2002] (State of Assam Vs. Md. Mahammad Ali & Ors.). By the said judgment and order, the petitioners have been declared to be foreigners of post 25th March, 1971. I have heard Mr. H.R.A. Choudhury, learned senior counsel assisted by Mr. A. Matin, learned counsel for the petitioners. Also heard Mr. S.C. Keyal, learned Assistant Solicitor General of India and so also Mr. M. Khataniar, learned State counsel.

2. I have considered the submissions advanced by the learned counsel appearing for the parties and have also perused the entire materials on record including the LCR received from the Tribunal.

3. On receipt of the notice from the Tribunal, the petitioners appeared and filed their written statement on 10th December, 2010, in which it was stated that the father's name of the petitioner No. 1 (Iman Ali) appeared in the voter list of 1966 and that the names of the petitioner Nos. 1 and 2 appeared in the voter

lists of 1993 and 2008. The petitioner No. 1 also stated about the certificate issued by the Government Gaonburah certifying him to be the son of Iman Ali. He also claimed that he is an Indian citizen by birth. In support of his above claim, he produced photocopies of the following documents:

- (i) Photocopy of voter list of 1966;
- (ii) Photocopy of voter list of 1993;
- (iii) Photocopy of voter list of 2008;
- (iv) One Panchayat certificate; and
- (v) Certificate of the Gaonburah.

4. In the voter list of 1966 (extract only), name of one Iman Ali appears. In the voter list of 2008, the names of the petitioners appeared and so also in the voter list of 1993. In the certificates issued by the Panchayat and the Gaonburah, the petitioner No. 1 is referred to as the son of Late Iman Ali with the statement that he is a resident of the particular locality.

5. Above are the documents on the basis of which the petitioners wanted to discharge their burden of proof as envisaged under Section 9 of the Foreigners Act, 1946, about which detail discussions have been made in *Sarbananda Sonowal Vs. Union of India (UOI)* and *Another*, .

6. The petitioners also adduced oral evidence by examining 3(three) witnesses as OPW-1 (Md. Mohammad Ali); OPW-2 (Daya Ram Bordoloi) and DW-3, Md. Samsul Ahmed. The State also examined 3(three) witnesses as PW-1, PW-2 and PW-3. PW-1 and PW-3 stated in their deposition about the enquiry that was conducted against the petitioners. According to PW-1, during enquiry, the petitioners admitted that they had come from Bangladesh and also failed to show any Passport, Visa etc. to the Police Officer, i.e. PW-3. PW-3 in his deposition stated his visit to the petitioners' place. He further stated that inspite of granting opportunities, the petitioners failed to produce any documents. PW-2 in his deposition stated that the petitioners reside in their village but they had no landed property and had been staying in Government land. PW-3 proved the enquiry reports (Exhibits-1 and 2).

7. OPW-1 admitted in his cross-examination that he had not filed any land document and that his father also had no land. OPW-2 is the Sarkari Gaonburah, who had issued the Exhibit-Kha certificate in favour of the petitioner No. 1 certifying him to be the son of Iman Ali. However, in the cross-examination, he admitted that he is not in a position to say as to whether the petitioner No. 1 is the son of Iman Ali. On the other hand, he issued the certificate certifying that the petitioner No. 1 is the son of Iman Ali. DW-3 in his deposition admitted that no document could be produced pertaining to pre 25th March, 1971 period. He only proved the voter lists of 1993 and 2008. The Panchayat Secretary, who had issued the residential certificate to the petitioners, was not examined to prove

the contents. Needless to say that mere filing of some documents and exhibiting them does not lead to the discharge of burden of proof as envisaged under Section 9 of the Foreigners Act, 1946.

8. As has been held by the Apex Court in L.I.C. of India and Another Vs. Ram Pal Singh Bisen, that mere filing or accepting a document in Court does not amount to proof of its contents. Admission of documents in Court may amount to admission of its contents but not the truth. For a ready reference, paragraph 31 of the said judgment is quoted below:-

"31. Under the Law of Evidence also, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. At the most, admission of documents may amount to admission of contents but not its truth. Documents having not been produced and marked as required under the Evidence Act cannot be relied upon by the Court. Contents of the document cannot be proved by merely filing in a court."

9. All the above aspects of the matter have been discussed by the learned Tribunal in reference to the evidence on record, relevant portion of which are quoted below:-

"15. The D.W. 3, Samsul Ahmed exhibited Ext. "Ga" copy of voter list 1993 and Ext. "Gha" copy of voter list 2008. It appears from these documents that nowhere mentioned in folios the date fixed for notifying the requisite number of stamps and folios, date of delivery of the requisite stamps and folios, date on which the copy was ready for delivery. It is revealed from Ext. "Ga" that date of application for the copy and date of making over the copy to the applicant was shown same date on 13.08.2008, as like Ext. "Gha" date of application for the copy and date of making over the copy of the applicant was shown on 12.05.2010. The Ext. "Unga" is chitha copy. It appears from remarks column that as order of Circle Officer dated 07.08.2001 name were recorded on the basis of purchase deed but nowhere mentioned deed number and date of purchase. Moreover, chitha copy is not treated as final copy. These exhibited documents are after cut off date 25.03.1971. These copies are not duly proved as required under relevant provision of law.

16. The Ext. "Cha" certificate given by President of Jaluguti Gaon Panchayat, dated 23.04.2010, but the issuing authority was not called for as witness to prove the same. The Ext. "Chha" is copy of Job Card, registered on 30.06.2007 after the cut off date 25.03.1971. In Ext. "Ja" copy of Family Identity nowhere mentioned the date of issue. The issuing authority was not called for as witness. Though these papers are exhibited not duly proved and inadmissible.

17. From the evidence of record it appears that the O.Ps failed to prove any genuine land document in this proceeding. The P.W. 1 Dina Kanta Das village Headman of Jaluguti, clearly stated that O.Ps have got no landed property of their own and they are residing in a Govt. land.

18. The P.W. 2 stated that the O.P. came from Bangladesh and stayed in a Sarkari land.

19. The O.P. Md. Mahammad Ali examined as D.W. 1. He also admitted this fact that he has no landed property nor in his father's name. Moreover failed to furnish birth certificate. Though stated that some documents were stolen but failed to prove copy of ezahar regarding theft.

20. The D.W. 2, Daya Ram Bordoloi is village Headman admitted this fact that the O.P. and his father Iman Ali have no landed property of their own. They are staying in other's land. He D.W. 2 admitted that he is not sure whether Iman Ali is father of O.P.

21. The D.W. 3, Samsul Ahmed though stated that O.Ps are residing in their own land. But nowhere from the record found that the O.P. proved land document showing their house in own land. On the other hand the witnesses and O.P. Md. Mahammad Ali have clearly stated that he or his father has got no landed property.

22. The general principle is that, when a person claims to be a citizen of a particular country, the burden lies upon him to prove that he is a citizen of that country.

23. Under Section 9 of the Foreigners Act 1946 (as amended up-to-date) burden of proof lies upon the O.P. that he or she is a citizen of India. In the instant case the O.Ps have failed to discharge its burden. Citizenship cannot be established by exhibiting of extract copy of voter list and other documents without proving the originals. As held by the Hon'ble Gauhati High Court reported in case law Md. Rustom Ali Vs. The State of Assam and The Union of India (UOI), ."

10. Above being the position, this Court exercising writ jurisdiction cannot re-appreciate the evidence like an appellate authority to arrive at a different finding. The scope, ambit and jurisdiction of the writ Court is well settled about which discussions have been made by a Full Bench of this Court in State of Assam & Anr. Vs. Moslem Mondal & Ors. reported in 2013 (1) GLT (FB) 809. For a ready reference, paragraphs 112 and 113 of the said judgment are quoted below:-

"112. Article 226 of the Constitution confers on the High Court power to issue appropriate writ to any person or authority within its territorial jurisdiction. The Tribunal constituted under the 1946 Act read with the 1964 Order, as noticed above, is required to discharge the quasi-judicial function. The High Court, therefore, has the power under Article 226 of the Constitution to issue writ of certiorari quashing the decision of the Tribunal in an appropriate case. The scope of interference with the Tribunal's order, in exercise of the jurisdiction under Article 226 , however, is limited. The writ of certiorari can be issued for correcting errors of jurisdiction, as and when the inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it or if such Court or Tribunal acts illegally in exercise of its undoubted jurisdiction, or when it decides without

giving an opportunity to the parties to be heard or violates the principles of natural justice. The certiorari jurisdiction of the writ Court being supervisory and not appellate jurisdiction, the Court cannot review the findings of facts reached by the inferior Court or Tribunal. There is, however, an exception to the said general proposition, in as much as, the writ of certiorari can be issued and the decision of a Tribunal on a finding of fact can be interfered with if in recording such a finding the Tribunal has acted on evidence which is legally inadmissible or has refused to admit admissible evidence or if the finding is not supported by any evidence at all, because in such cases such error would amount to an error of law apparent on the face of the record. The other errors of fact, however grave it may be, cannot be corrected by a writ court. As noticed above, the judicial review of the order passed by the inferior Court or the Tribunal, in exercise of the jurisdiction under Article 226 of the Constitution, is limited to correction of errors apparent on the face of the record, which also takes within its fold a case where a statutory authority exercising its discretionary jurisdiction did not take into consideration a relevant fact or renders its decision on wholly irrelevant factors. Hence, the failure of taking into account the relevant facts or consideration of irrelevant factors, which has a bearing on the decision of the inferior court or the Tribunal, can be a ground for interference of the Court or Tribunal's decision in exercise of the writ jurisdiction by the High Court.

113. The Apex Court in *Sant Lal Gupta and Others Vs. Modern Co-operative Group Housing Society Ltd. and Others*, , reiterating the grounds on which a writ of certiorari can be issued, has opined that such a writ can be issued only when there is a failure of justice and cannot be issued merely because it may be legally permissible to do so. It is obligatory on the part of the petitioners to show that a jurisdictional error has been committed by the statutory authority. There must be an error apparent on the face of the record, as the High Court acts merely in a supervisory capacity and not as the appellate authority. An error apparent on the face of the records means an error which strikes one on mere looking and does not need long drawn out process of reasoning on points where there may conceivably be two opinions. Such error should not require any extraneous matters to show its incorrectness. Such error may include giving reasons that are bad in law or inconsistent, unintelligible or inadequate. It may also include the application of a wrong legal test to the facts found, taking irrelevant consideration into account and failing to take relevant consideration into account, and wrongful admission or exclusion of evidence as well as arriving at a conclusion without any supporting evidence. Such a writ can also be issued when there is an error in jurisdiction or authority whose order is to be reviewed has acted without jurisdiction or in excess of its jurisdiction or has failed to exercise the jurisdiction vested in him by law."

11. Above being the position, I see no reason to interfere with the impugned judgment and order dated 25th April, 2012 of the Foreigners Tribunal (2nd), Morigaon, Assam passed in Case No. F.T.(C) 61/2009 [IM(D)T Case No. 812/2002 dated 23rd August, 2002] and accordingly, the writ petition is dismissed.

Consequently, the Superintendent of Police (B), Morigaon shall take the petitioners into custody and detain them in the detention camp forthwith till such time they are deported to their country of origin, i.e. Bangladesh. Simultaneously, the Deputy Commissioner, Morigaon shall ensure deletion of their names from the voter list, if found.

12. The Registry shall transmit the case records to the Foreigners Tribunal (2nd), Morigaon, Assam alongwith a copy of this order.

13. Copies of this order shall also be sent to the Superintendent of Police (B), Morigaon and the Deputy Commissioner, Morigaon. Another copy of this order shall also be furnished to Mr. M Khataniar, learned State counsel, for his necessary follow up action. List the matter after 1(one) month for submission of report by the Superintendent of Police (B) and the Deputy Commissioner, Morigaon.