

**(2022) 08 GAU CK 0030**

**In the Gauhati High Court**

**Case No : Writ Petition (Civil) No. 2131 Of 2018**

Monir Uddin Ahmed

APPELLANT

Vs

Union Of India

RESPONDENT

**Date of Decision : 18-08-2022**

**Acts Referred:**

Evidence Act, 1872 — Section 4, 35, 74, 79, 90, 90A(1), 90A(2), 106  
Census Act, 1948 — Section 15  
Foreigners? Act, 1946 — Section 9  
Citizenship Act, 1955 — Section 6A(1)(d)  
Assam Land and Revenue Regulation, 1886 — Section 9, 17, 31, 40, 41  
Punjab Land Revenue Act, 1887 — Section 44

**Citation : (2022) 08 GAU CK 0030**

**Hon'ble Judges : N. Kotiswar Singh, J; Lanusungkum Jamir, J**

**Bench : Division Bench**

**Advocate : R. Choudhury, P. Sarmah, G. Sarma, A.I. Ali, A. Bhuyan, K. Phukan, L. Devi**

**Final Decision : Allowed**

## **Judgement**

N. Kotiswar Singh, J

1. Heard Ms. R. Choudhury, learned counsel for the petitioners. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K.D. Choudhury, learned ASGI for respondent No.1; Mr. G. Sarma, learned Standing Counsel, Foreigners Tribunal appearing for respondent Nos.2 & 4; Ms. K. Phukan, learned Govt. Advocate, Assam appearing for respondent No.3; Mr. A.I. Ali, learned Standing Counsel, ECI appearing for respondent No.5 and Ms. L. Devi also appears for respondent No.6 as the learned Standing Counsel, NRC.

2. The present petition was filed by Abbas Ali @ Abbas Ali Talukdar, son of late Eusub Ali @ Eusub Ali Talukdar who was the original proceedee in Case No.BNGN/FT-2/APR/546/2016 before the Foreigners Tribunal, Bongaigaon No.2, Abhayapuri, challenging the impugned opinion dated 06.03.2018 rendered by the

learned Tribunal in the aforesaid case declaring him to be a foreigner/illegal immigrant of post 25.03.1971 from Bangladesh. However, the aforesaid proceedee Abbas Ali Talukdar died during the pendency of this petition on 25.03.2019. Thereafter, in view of the order dated 06.12.2019 passed by this Court in I.A.(Civil) No.3956/2016, the legal heirs of the aforesaid proceedee Abbas Ali, namely, (Monir Uddin Ahmed, (2) Mujjamil Hoque, (3) Nurul Hoque and (4) Ajmina Parbin were substituted in place of Abbas Ali @ Abbas Ali Talukdar who was earlier shown as the writ petitioner in this petition, to pursue the claim of the proceedee.

3. Before we examine the contentions and the response of the State, we would like to examine the findings arrived at by the learned Tribunal.

4. From the impugned order dated 06.03.2018 passed by the learned Tribunal, it appears that the proceedee, after receiving notice from the Tribunal, had filed as many as 15 documents, as follows:

i. Photocopy of NRC of 1951 : Annexure-1

ii. Voter list of 1966 : Exhibit-1

iii. Voter List of 1970 : Exhibit-2

iv. Voter List of 1985 : Exhibit-3

v. Voter List of 1989 : Exhibit-4

vi. Voter List of 1997 : Exhibit-5

vii. Voter List of 2005 : Exhibit-6

viii. Voter List of 2014 : Exhibit-7

ix. Voter List of 2008 : Exhibit-8

x. Voter List of 2011 : Exhibit-9

xi. Voter List of 2017 : Exhibit-10

xii. Bank Pass book : Annexure-2

xiii. Kabinnama : Exhibit-11

xiv. Jamabandi : Exhibit-12

xv. Affidavit : Exhibit-13

5. Learned Tribunal on consideration of the aforesaid two annexures, (Annexure-1 and Annexure-2) and thirteen exhibits (Exhibit 1 to Exhibit 13) submitted by the aforesaid proceedee, Abbas Ali Talukdar made the following observations:

(a) Referring to photocopy of the NRC 1951 (Annexure-1), it was held that it is not legally admissible and acceptable in the eyes of law.

(b) As regards Exhibit Nos. 1, 2 & 3, which are the voters lists of 1966, 1970 and 1985, the learned Tribunal held that persons whose names were recorded in the Exhibit 1 and Exhibit 2 with the proceedee's projected father and mother did not appear in the Exhibit 3, i.e. the voter list of 1985.

(c) Further, the learned Tribunal observed that there have been certain discrepancies in the age of the persons whose names were recorded in aforesaid voters lists. It was observed that in the voters list of 1970 (Exhibit 2), Eusub Ali was shown as 39 years old and as such, he would be 54 years old in 1985. However, in Exhibit-3 (voters list of 1985), Eusub Ali Talukdar has been shown to be 61 years old.

(d) The learned Tribunal observed that the name and age of the projected father of the proceedee mentioned in Exhibits 2 & 3 do not match. Accordingly, the learned Tribunal held that the proceedee had not been able to prove that Eusub Ali and Eusub Ali Talukdar refer to the one and the same person.

(e) Further, the learned Tribunal observed that in the voters list of 1989 (Exhibit-4) the proceedee is shown to be 36 years old. If that is so, his name ought to have appeared in the earlier voters list of 1985, but his name does not find place in the voters list of 1985 and the proceedee has not stated the reasons for the same in his written statement filed and also in the evidence on affidavit.

(f) Coming to the other voters lists of 1997, 2005, 2008, 2011, 2014, & 2017, the learned Tribunal observed that in the aforesaid voters lists, the proceedee's name appeared as the son of Eusub Ali Talukdar along with his family members.

(g) As regards Exhibit No.11, Kabinnama of the proceedee's father, the learned Tribunal observed that the proceedee has not examined the issuing authority of the said document and as such, the same is not admissible.

(h) As regards Exhibit – 12 which is the certified copy of Jamabandi in respect of land under Patta No. 68 of Dumaria Part III village under Srijangram Revenue Circle, the learned Tribunal observed that though it is recorded that vide order dated 15.12.2016 the Circle Officer of Srijangram Revenue Circle granted mutation vide Mutation Case No. No 1925/2016-17/F/Mut in favour of Abbas Ali Talukdar, Safiar Rahman, Jamal Uddin Talukdar, Tarabhanu Nessa, Kamal Uddin Talukdar, Saif Uddin Talukdar and Chaina Khatun, by way of inheritance as legal heirs of Eusub Ali Talukdar, and in the said document, the original Pattadar has been shown as Isob Ali Talu, son of Nosimuddin Sheikh, but the proceedee has not submitted the land purchase document of the said land in question or the mutation order of the original Pattadar.

(i) Learned Tribunal also observed that proceedee has not stated in his written statement and evidence on affidavit as to when his projected father had purchased the said land.

Accordingly, learned Tribunal held that the said document is doubtful.

6. Coming to the affidavit filed by the proceedee which was exhibited as Exhibit-13 where he had declared that Abbas Ali Talukdar and Abbas Ali are one and the same person and also that Eusub Ali Talukdar and Eusub Ali are one and the same person, the learned Tribunal held that the said affidavit has no evidentiary value, as it is merely a self-declaration.

7. Thus, the learned Tribunal held that the proceedee has not been able to establish the linkage with his projected father, whose name appears in the voters list of 1966 (Exhibit-1) and the voters list of 1970 (Exhibit-2).

Accordingly, the learned Tribunal held that the aforesaid evidences and documents are not sufficient and trustworthy to prove that the proceedee is a citizen of India.

#### SUBMISSION BY THE LEARNED COUNSEL FOR THE PETITIONERS :

8. Ms. R. Choudhury, learned counsel for the petitioners submits that the certified copy of the Jamabandi was exhibited which was duly proved and would clearly show the name of the proceedee, Abbas Ali Talukdar as the son of Eusub Ali Talukdar along with his brothers and sisters who are shown as pattadars/land owners in the Jamabandi in respect of the land located in Dumaria Part III Lat No.9, under Srijan Gram Revenue Circle, North Salmara in Bongaigaon District. It has been recorded that as per the order of Circle Officer dated 15.12.2016 in the Mutation Case No.1925/2016-17/FMut relating to land under Dag No.345, which was in the name of Late Eusub Ali Talukdar, the legal heirs, namely, Abbas Ali Talukdar, son of Eusub Ali Talukdar, Safiar Rahman, son of Eusub Ali Talukdar, Jamal Uddin Talukdar, son of Eusub Ali Talukdar, Tara Bhanu Nessa, daughter of Eusub Ali Talukdar, Kamal Uddin Talukdar, son of Eusub Ali Talukdar, Saif Uddin Talukdar, son of Eusub Ali Talukdar and Sayna Khatun, daughter of Eusub Ali Talukdar, have been recorded in respect of the land under Dag No.345.

9. According to the learned counsel for the petitioners, the aforesaid certified copy of the Jamabandi would conclusively prove that the proceedee Abbas Ali Talukdar was the son of Eusub Ali Talukdar. According to the learned counsel for the petitioners, the certified copy of the Jamabandi is a public document inasmuch as it was issued by a public authority and it is admissible in evidence without examining the revenue authority.

10. Ms. Choudhury, learned counsel submits that as provided under Section 74 of the Indian Evidence Act, 1872, Jamabandi is a public document and as such, if a certified copy of the Jamabandi is produced, it can be acted upon by the learned Tribunal. She further submits that if the contents of the Jamabandi and the genuineness thereof have also not been disputed, there can be a presumption of the genuineness and correctness of the same.

11. Ms. Choudhury submits that Allahabad High Court in Ram Jas and Others Vs. Surendra Nath and Another, 1980 AIR(ALD) 385, held under Section 4 of the Indian Evidence Act, 1872 that whenever it is provided by the Evidence Act that

the Court may presume a fact, it may either regard such fact as proved unless and until it is disproved, or may call for proof of it.

Para 12 of Ram Jas (supra) reads as follows,

"12. Section 4 of the Evidence Act deals with presumption.

" Section 4- Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved unless and until it is disproved, or may call for proof of it.

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved. When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved and shall not allow evidence to be given for the purpose of disproving it."

12. Ms. Choudhury has also relied on para Nos.11, 13 and 14 of the aforesaid decision in Ram Jas (supra) which are reproduced hereinbelow.

"11. The interpretation of law has to take into consideration the purpose of law, and if it is a law relating to procedure then also the impact it is calculated to have on the course of litigation and decision making.

"Law is commonly divided into substantive law, which defines rights, duties and liabilities; and adjective law, which defines the procedure, pleading and proof by which the substantive law is applied in practice.

The rules of procedure regulate the general conduct of litigation; the object of pleading is to ascertain for the guidance of the parties and the court the material facts in issue in each particular case; proof is the establishment of such facts by proper legal means to the satisfaction of the court, and in this sense includes disproof. The first mentioned term is, however, often used to include the other two.

"The province of law of evidence is therefore twofold, viz. to lay down rules as to what matter is or is not admissible for the purpose of establishing facts in dispute and as to the manner in which such matter may be placed before the court. Whether any proof is required or not is a question of law, (Phipson of Evidence, Twelfth Edn. Para 1)"

The law of evidence does not affect substantive rights of parties, but only lays down the law for facilitating the course of justice. The Evidence Act lays down the rules of evidence for purposes of the guidance of the Court. It is procedural law which provides, inter alia, how a fact is to be proved.

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13. part I of the Evidence Act deals with relevancy of facts and Part II deals with proof. Chapter V of Part II deals with documentary evidence and one of its sub-chapters concerns presumptions as to documents. It contains Sections 79 to 90-

A. Sections 79-90-A deal with different conditions and circumstances in which a particular type of presumption can be raised. If the circumstances exist for the raising of a presumption under any of the provisions of the Evidence Act the Court becomes entitled or bound to raise that presumption.

"Presumptions are either of law or fact. Presumptions of law are arbitrary consequences expressly annexed by law to particular facts; and may be either conclusive, as that a child under a certain age is incapable of committing any crime; or rebuttable, as that a person not heard of for seven years is dead or that a bill of exchange has been given for value.

"Presumptions of fact are inferences which the mind naturally and logically draws from given facts, irrespective of their legal effect. Not only are they always rebuttable, but the trier of fact may refuse to make the usual or natural inference notwithstanding that there is no rebutting evidence." (Phipson on Evidence, Twelfth Edition Para 9)

14. The presumptions under the Evidence Act are only the interferences which a logical and reasonable mind normally draws. Facts and circumstances (from) which certain interferences follow are indicated in various provisions of Evidence Act running from Sections 79 to 90-A. As already seen the Sections of the Evidence Act lay down different circumstances in which a presumption is to be raised. Whenever the law permits the raising of a presumption the Court can by reason of Section 4 of the Evidence Act raise the presumption for purpose of proof of a fact. If the presumption is available in one Section it can raise it under that Section. If it is not available in one Section and is available in another Section, then the Court can raise presumption under that Section. It all depends upon the circumstances available in the case as applicable to a particular document. Hence, even if the case falls under Section 90-A and Sub-Section (2) thereof is applicable and no presumption can be drawn under Section 90-A(1) it will not exclude the Court from drawing the presumption, if the circumstances permit it to be drawn, under any other provision of the Evidence Act including Section 90 of the Act. The presumption, if available under Section 90, can therefore, be raised by the Court even after coming to the conclusion that a presumption under Section 90-A is not available."

13. Ms. Choudhury submits that since Section 79 of the Indian Evidence Act, 1872 provides that there will be a presumption as to genuineness of the certified copies, the contents of the certified copy of the aforesaid Jamabandi shall be presumed to be correct unless disputed or disproved by the State. Ms. Choudhury submits that in the present case, since the contents of the aforesaid Jamabandi have not been disputed by the State, the contents can be presumed to be correct, in which event, it would clearly show that the proceedee is the son of Eusub Ali Talukdar whose name appears in the voters lists of 1966 and 1970 as also in the 1951 NRC certificate and in the voters lists and the name of the proceedee has been shown in respect of the same location i.e. Dumuria Pt.III, Police Station Uttarsalmara/Abhayapuri, Circle-Srijangram under North Salmara

in the then Goalpara District, now Bongaigaon District and as such, there cannot be any doubt that Abbas Ali Talukdar, the proceedee was an Indian by birth to Indian parents.

14. Ms. Choudhury, learned counsel for the petitioners has also referred to Regulation 41(2) of the Assam Land and Revenue Regulation, 1886 which provides that every entry in the record-of-rights made under this Section shall, until the contrary is proved, be presumed to be correct.

15. Accordingly, it has been submitted that the aforesaid certified copy of the Jamabandi along with the evidences on record especially, the voters lists which are also certified copies, which have not been denied, the proceedee can be declared to be an Indian.

#### SUBMISSION BY THE COUNSEL FOR THE STATE :-

16. Per contra, Mr. G. Sarma, learned Standing Counsel, Foreigners Tribunal has submitted that merely because a person's name is included in the Jamabandi is not sufficient to prove that he is a citizen of the country and the Jamabandi record cannot be the basis for proving citizenship.

17. Mr. Sarma, in this regard, relying on the decision of Hon'ble Supreme Court in *Guru Amarjit Singh Vs. Rattan Chand and Others*, AIR 1994 SC 227 submits that entries in the Jamabandi is not a proof of title. It is recorded for mere fiscal properties and as such, the petitioners cannot derive any benefit out of the entry of name mentioned in the Jamabandi.

Relying on para 2 of the aforesaid decision in *Guru Amarjit Singh (supra)*, Mr. Sarma has submitted that it has been further held that the party has to prove his title over the land not through the Jamabandi.

Mr. Sarma has also relied on the decision of this Court in *Dukhu Miah @ Dukhi Ali Vs. Union of India and Ors.*, [WP(C) No.3805/2016, disposed of on 08.03.2018].

18. Mr. Sarma, learned Standing Counsel, Foreigners Tribunal, referring to the decision of this Court in *Abdul Mojid @ Mojid Ali Vs. Union of India and Ors.*, [WP(C) No.6090/2016, disposed of on 15.03.2018] submits that reliance on the NRC document is not permissible nor shall be of any legal assistance to the proceedee.

It has been submitted by Mr. Sarma that in para 11 of the aforesaid decision in *Abdul Mojid (Supra)*, this Court after discussing the relevant law in this regard has categorically held that NRC document is not admissible in law.

Para No.11 of the aforesaid decision in *Abdul Mojid (supra)* reads as follows,

"11. Ext.1 is stated to be a true copy of National Register of Citizens (NRC), 1951 issued by the Deputy Superintendent of Police (Border), Dhubri on 17.10.1985 containing the names of Haru Dewani, Belaton Nessa, Madan Sheikh (Matin) and Hanif Shekih. NRC, 1951 was prepared on the basis of the Census Act, 1948. As

per Section 15 of the Census Act, 1948, record of census are not open to inspection and thus not admissible in evidence. Therefore, in *Bhanbhasa Sheikh Vs. Union of India*, 1970 Assam LR 206, a Single Bench of this Court categorically held that NRC extracts produced to prove domicile in India is not admissible in evidence for any purpose. We are in complete agreement with the views expressed by the learned Single Judge in *Bhanbhasa Sheikh* (supra). Therefore, Ext.1 is no evidence in the eye of law.”

19. Mr. Sarma further relied on the decision of this Court in *Nur Begum Vs. Union of India and Ors.*, [WP(C) No.1900/2019, decided on 18.02.2020] wherein it was observed that Jamabandi document brought on record for the purpose of establishing linkage of the proceedee did not stand proved by means of any related sale deed. Further, it was also observed that there is no order of mutation showing the name of the petitioner having inherited the land and as such, the Jamabandi document has no relevance as it does not serve to link the petitioner with the projected father. It was also observed that the Electoral Photo Identity Card also remained as a document inadmissible in evidence as it is too well settled and such a document is not a proof of citizenship.

Accordingly, Mr. Sarma submits that the Jamabandi relied upon will not help the proceedee to establish that he is a citizen of this country.

20. Mr. Sarma further submits that merely because the evidence adduced has not been rebutted will not give any sanctity to an inadmissible evidence relied upon by the petitioner.

In this regard, Mr. Sarma has relied on para 16 of the decision of this Court in the *State of Assam and Anr. Vs. Ohab Ali*, [WP(C) No.2641/2017, decided on 29.05.2018].

Para 16 of the aforesaid case in *Ohab Ali* (supra) reads as follows.

“16. On the other hand, from the impugned order, we find that after narrating the case as projected by the respondent, Tribunal observed that State did not examine any witness and failed to adduce any rebuttable evidence. Therefore, Tribunal answered the reference against the State. We are afraid the approach taken by the Tribunal is contrary to the law laid down by the Full Bench of this Court in *State of Assam-Vs- Moslem Mondal*, reported in 2013(1)GLT 809. Under Section 9 of the *Foreigners’ Act, 1946*, burden is on the proceedee to prove that she is not a foreigner, but a citizen of India and this burden never shifts. This burden has to be discharged by the proceedee by adducing evidence which are admissible; which must be proved; and which must have relevance to the facts in issue. By mere filing of documents without examining its admissibility and without the documents being proved or without examining its relevance, it cannot be said that the proceedee had discharged his burden. Question of rebuttal evidence by the State will arise only if the proceedee adduces evidence which are admissible, proved and which have relevance.”

21. Mr. Sarma has also relied on para 26 of the decision of Hon'ble Supreme Court in of Sarbananda Sonowal (I) Vs. Union of India and Anr., (2005) 5 SCC 665 which reads as follows,

"26. There is good and sound reason for placing the burden of proof upon the person concerned who asserts to be a citizen of a particular country. In order to establish one's citizenship, normally he may be required to give evidence of (i) his date of birth (ii) place of birth (iii) name of his parents (iv) their place of birth and citizenship. Some times the place of birth of his grandparents may also be relevant like under Section 6-A(1)(d) of the Citizenship Act. All these facts would necessarily be within the personal knowledge of the person concerned and not of the authorities of the State. After he has given evidence on these points, the State authorities can verify the facts and can then lead evidence in rebuttal, if necessary. If the State authorities dispute the claim of citizenship by a person and assert that he is a foreigner, it will not only be difficult but almost impossible for them to first lead evidence on the aforesaid points. This is in accordance with the underlying policy of Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

22. Mr. Sarma has also referred to the decision of this Court in Rukia Begum Vs. Union of India and Others, [WP(C) No.6344/2016, decided on 29.05.2018].

Relevant portion of the order dated 29.05.2018 reads as follows,

"Having said that, we may advert to the case in hand. In view of what we have discussed above, we are of the firm view that since petitioner had placed reliance on Ext.1 certificate, burden was on the petitioner to prove the said certificate as well as the contents thereof irrespective of whether objection was raised by the State or not."

23. Mr. Sarma further submits that it is important to refer to the written statement of any proceedee inasmuch as the proceedee is expected to disclose the relevant facts to establish his citizenship and if the same is not disclosed, legitimate inference can be drawn that the proceedee is not able to show his linkage.

24. In this connection, Mr. Sarma, learned counsel for the State has relied on para 12 of the decision of this Court in Ayesha Khatun Vs. Union of India and Ors., 2017 3 GLR 820 and Jehirul Islam Vs. Union of India and Ors., 2017 5 GLR 670.

25. It has been submitted by Mr. Sarma that Eusub Ali mentioned in the voters lists of 1966 and 1970 is not the same person as mentioned in the voters list of 1985 relied by the petitioners as the existence of Eusub Ali of the earlier time had not been properly brought on record even by the proceedee himself in the evidence led.

It has been submitted that apart from the discrepancy in the name, there is

discrepancy in the age which would make the claim of the petitioners doubtful, as also observed by the learned Tribunal in its opinion.

In this regard, the learned counsel for the State has relied on para 20 of the decision of this Court in Abdul Kuddus Vs. Union of India and Ors., [WP(C) No.1073/2016, disposed of on 07.05.2018].

Para 20 of Abdul Kuddus (supra) reads as follows,

"20. A contention was raised during the hearing that discrepancies in the name and age in the voters list should not be given undue weightage as because the entries were made by the electoral authorities and not by the proceedee. However, this aspect of the matter was gone into by this Court in the case of Basiron Bibi –vs- Union of India, 2018 (1) GLT 372 wherein it was held as under:

"Reliance placed in the case of Abdul Matali @ Mataleb (Md.) (supra), can be of no assistance to the petitioner inasmuch, as it has already been clarified by this Court in previous decisions that the said decision did not lay down any law and was a decision confined to the facts and circumstances of that case. Regarding discrepancies in the voters' lists which the petitioner contended were not her creation being entered into by officials of Election Commission and therefore should not be used adversely against the petitioner, such contention is without any substance. The voters' lists were adduced as evidence by the petitioner herself to prove her case that she was not a foreigner but a citizen of India. Petitioner cannot insist that only that portions of the voters' lists which are in her favour should be accepted and those portions going against her should be overlooked. This is not how a document put forward as a piece of evidence should be examined. The document has to be appreciated as a whole."

26. Mr. Sarma, learned counsel for the State has also relied on the decision of this Court in Romila Khatun Vs. Union of India and Ors., [WP(C) No.3807/2016, disposed of on 08.06.2018].

The relevant portion of the order dated 08.06.2018 relied on by the learned State counsel reads as follows,

"It is trite that documentary evidence would have to be proved on the basis of the record and the contemporaneous record must substantiate and prove the contents of the document. Proof of document is one thing and proof of contents is another. Not only the document would have to be proved but its contents would also have to be proved. That apart, the truthfulness of the contents of the document would also have to be established from the record. A document or the contents of the document cannot be proved on the basis of personal knowledge. In so far Ext-F document vis-a-vis the petitioner is concerned, Nimai Miah was a resident of Kukarpar village. Petitioner after her marriage with Saijuddin had left the said village and started residing at village Hirajani under Hajo Police Station. When the petitioner got married and since when she had been residing at village – Hirajani has not come on evidence. When the petitioner was not a resident of

village – Kukarpar on the date when the Gaonburah had issued the certificate, Gaonburah could have issued the certificate only on the basis of the record maintained in his office. We also do not know what happened to Nimai Miah after his name appeared in one of the documents i.e., voters list of 1965 (ExtC). Nimai Miah was 30 years of age in 1965 and in the ordinary course, he would have been around much beyond 25.03.1971. From the voters list of 1997 (Ext-A), we find that Ramila Bibi was 20 years of age. This is the first time the age of the petitioner has come on record. If Ramila Bibi was 20 years of age in 1997, she would have born in the year 1977, which means that her father ought to have been alive at least till 1976. Therefore, on the basis of the testimony of Md. Ramesh Ali, as discussed above, it cannot be said that Ext-F was proved. Besides, there is unauthorised use of the State Emblem of India by the Gaoburah which has rendered Ext-F inadmissible in evidence. Under the State Emblem of India (Regulation of Use) Rules, 2007, Gaonburah is not authorized to use the State Emblem of India in any manner. If Ext-F is excluded from consideration, there is nothing on record to establish that Ramila Bibi or Ramila Khatun was the daughter of Nimai Miah of Ext-C (1965)."

#### DECISION OF THE COURT :

27. Having heard the learned counsel for the parties and on perusal of the materials on record as well as the finding arrived at by the learned Tribunal, we would like to give our opinion as follows.

28. As regards rejection by the learned Tribunal that NRC document is not legally permissible/acceptable document in the eyes of law and also the statement made by the learned counsel for the State that it is not admissible document and NRC document cannot establish the citizenship of a person, we are of the view that while it cannot be relied upon as the basis for claim of citizenship, it may have some relevance to establish the fact that the certain person named in the NRC document did live in the State of Assam at the relevant time as otherwise, how the name of a non-existent person can be included in the NRC, unless it has been fraudulently inserted.

29. As regards the observation made by the learned Tribunal relating to Exhibits 1, 2 and 3 which are voters lists of 1966, 1970 and 1985 that the persons whose names appeared in Exhibit 1 (voters list of 1966), Exhibit 2(voters list of 1970) along with the proceedee's father and mother, did not appear in the Exhibit 3(voters list of 1985), it cannot be a ground to ignore the relevancy of the said Exhibits inasmuch as the said voters lists are in respect of the same village, Police Station, Sub-Division and District respectively.

It may be noted that certified copies of the electoral rolls exhibited are not the complete lists. They are merely the extracts of the relevant parts of the voters lists showing the names of persons who the proceedee considers relevant. Typically, in a proceeding before the Foreigners Tribunal, the proceedee seeks to refer to the names of persons who the proceedee claims to be parents. It also

cannot be denied that the State has an easy access to the voters lists and once the proceedee discloses the particular voters lists as the basis of his claim, nothing prevents the State from verifying the same. Thus, merely because, the names of other relatives are not shown in subsequent voters lists will not render such subsequent voters lists suspect or irrelevant so long as the names of the projected parents are shown in the same village as in the present cases. The name "Eusub Ali" as son of "Late Nosim Uddin" appears in the voters lists of 1966 and 1970 and in the voters list of 1985, "Eusob Ali Talukdar" as the son of "Lt. Nosim". In the present case, though there appears to be slight difference in the name of the projected father as mentioned above, in our view, the same is insignificant as the said names appear in the same village of Dumuria Part III. Similarly, the proceedee stated that his name has been shown as "Abbas Ali" as son of "Eusub Ali" in the voters list of 1989 in respect of same village Dumuria Part III and the name of the proceedee is again shown as son of "Abbas Ali Talukdar" as son of "Iusab Ali Talukdar" in the voters list of 1997 in the same village of Dumuria Part III. So are the said names recorded in the voters lists of 2005, 2008 and 2014 in the same village of Dumuria Part III. The variance is because of the addition in the surname "Talukdar", the remaining names being same but it is also noted that, the names of the village and sub-division, district etc. remain the same.

30. The fact that the name of the proceedee's projected father was shown consistently in the aforesaid voters lists in respect of same village would lend credence to the claim of the proceedee that his father was indeed a voter in 1966, 1970 and 1985 which would substantiate his claim that his father was an Indian.

31. The learned Tribunal appears to have laid great emphasis on the discrepancy in the age of the projected father of the proceedee.

32. Such discrepancy in reflecting the age in voters list is not uncommon and cannot be said to be significant in nature and perhaps can be ignored inasmuch as, in the present case, the name of the voter who the proceedee claims to be his father along with the name of the grandfather consistently appears in the same village and constituency.

33. The learned Tribunal did not appear to have considered at all this aspect that the proceedee is also a resident of the same village Dumuria, Part III and his projected father along with the name of the father (grandfather of the proceedee) was also shown a resident of the same village of Dumuria Part III as reflected in the voters lists of 1966, 1970, 1985 and 1989.

According to us, the aforesaid discrepancies in the voters lists and age as discussed above, cannot be a ground to disbelieve the claim of the proceedee when the voters lists refer to the same village of Dumuria Part III.

34. In the subsequent voters lists of 1997, 2005, 2008, 2011, 2014 and 2017, we have also noticed that the proceedee continued to be a voter as enlisted in

the voters lists as a resident of 94 Dumuria Part III under the same village and Police Station as his projected father was. Though in the subsequent voters lists, the District has been shown as Bongaigaon, it is a fact that Bongaigaon District was carved out of the then Goalpara District and as such, the aforesaid evidences could not have been ignored by the learned Tribunal as has been done.

35. Coming to the Exhibit 11 which is a Kabinnama of the proceedee wherein the name of his father has been shown, as the issuing authority was not examined, we are also of the view that there was no illegality in ignoring the said document by the learned Tribunal as the same had not been proved by examining the issuing authority.

36. As regards Exhibit 12 which is a certified copy of Jamabandi, it has been ignored by the learned Tribunal primarily only the ground that the proceedee had not submitted the land purchase document of the said land or the mutation order for transfer of ownership from the original pattadar and also that he had not stated in his written statement when he filed on receipt of the summons. The Tribunal also observed that the proceedee did not mention in his affidavit as to when his projected father had purchased the land. However, we are of the view that aforesaid reasons cannot be good grounds to ignore the said document for reason which are discussed hereinafter.

37. Certified copy of a Jamabandi being a public document is admissible under the Indian Evidence Act, 1872. In this regard, we will briefly refer to some of the judgments, as also relied upon by the learned counsel for the petitioners.

37.1 In *Abinash Chunder Dutt Vs. Taru Patur*, 1878 Legal Eagle (Cal) 50, the Calcutta High Court held that for the purpose of the Evidence Act, Jamabandi is a public document. It was observed as under:-

".....To that the defendant objects, in the first place, that the jamabandi, which is the principal document referred to, has not been proved; and secondly, that it is of no effect unless the assent of the ryots to it is proved. The Judge held, and I think quite correctly, that, for the purposes of the Evidence Act, this jamabandi was a public document. I think there can be no doubt whatever that the act of a Deputy Collector, in making a settlement or even an enquiry under the provisions of Reg. VII of 1822, is that of a public officer, whether it be judicial or executive; probably it partakes of both characters, and that the record of such acts is a public document. I also agree with the Judge in the opinion that there is no authority for holding, as the Munsif appears to have held, that such jamabandi was dependant for its validity on its being assented to by the ryots. We have, therefore, a record of the tenants' holdings and the rates of rent payable in 1843, and in that jamabandi the defendant's holding is described. The defendant seeks to avoid that by declaring that he is entitled to hold, and has always held, at half rates. On that the Judge observes that the defendant has given no documentary evidence whatever. He, therefore, considers that the defendant has failed to prove that which he set up. In these circumstances, the

plaintiff's case being supported by the public act and record of a Deputy Collector, and the defendant's plea being wholly unproved, it appears to me that the judgment of the lower Appellate Court is quite correct, and this appeal must be dismissed with costs. This judgment will apply to the other appeals."

37.2 Our own High Court in *Amiya Bala Dutta and others Vs. Mukul Adhikari and others*, 1998 (4) GLT 137, while dealing with title over the land on the basis of sale deed or other documents, after considering the relevant law in that regard, made the following observations:-

"7. Regarding first contention of Mr. Sarma, learned counsel, it can be said that it is always not necessary to produce the sale deed to establish the title of a person. Title of a person can be established by adducing other evidence and it was the other evidence which was taken into consideration by the lower appellate Court and came to the finding that the plaintiff has established his title.

8. Regarding entry in the revenue record, Mr. Sarma, learned counsel relies on the following:

1. (1997) 1SCC 734 (*State of UP vs. Amar Singh & others*). That was a case from Allahabad High Court. There the Supreme Court pointed out that the mutation entries usually do not confer title to the land. Title is derived from the sale deed properly stamped and registered. That was a case with regard to the acquisition of ceiling surplus land and the land holder claimed exemption on the basis of mutation entries and that was not accepted by the Supreme Court holding that the mutation entries cannot create title. That case does not help the appellant. Further under the Assam Land and Revenue Regulation, there is provision how mutation entries are to be made, how Jamabandi are to be granted and how chithas are to be corrected and prepared. These provisions have been there. If these records of right are prepared and maintained in accordance with law or in consonance with the provisions of the said Regulation, they have certainly evidentiary value to establish the title of a person, otherwise the whole Assam Land and Revenue Regulation and the provisions of issue of Patta and also the Jamabandi shall be otiose and irrelevant. That cannot be the purpose of the Assam Land and Revenue Regulation.

2. AIR 1995 SC 2185 (*Major Pakhar Singh Atwal & others vs. State of Punjab & others*). That was a case from Punjab & Haryana. That was a case regarding enhancement of compensation under the Land Acquisition Act and in that case the Collector relied on the mutation entries to declare the compensation and the Supreme Court pointed out that no witness having been examined in proof of the prevailing market value of the lands or in the neighbourhood, only the mutation entries cannot be relied upon.

3. AIR 1994 SC 227 (*Guru Amarjit Singh vs. Ratan Chand*). That also is a case from Punjab. In para 2, the Supreme Court pointed out that entries in the Jamabandis are not proof of title. There the Supreme Court was considering a different Land Revenue Regulation and not the Assam Land and Revenue

Regulation.

4. AIR 1997 SC 2181 (State of Himachal Pradesh vs. Keshav Ram & others). This was a case from State of Himachal Pradesh and the Supreme Court pointed out in connection with that case that an entry in the revenue by no stretch of imagination can form the basis for declaration of title in favour of the plaintiffs. But as indicated above, the position under the Assam Land and Revenue Regulation is absolutely different. Chithas and Jamabandis are considered to be the documents of title under the Assam Land and Revenue Regulation.

5. (1995) 3 SCC 426 (Nagar Palika, Jind vs. Jagat Singh, Advocate). That also was a case from Punjab and Haryana High Court and there the Supreme Court was considering the Punjab Land and Revenue Regulation.

9. Under the Assam Land and Revenue Regulation a person who is a patta holder is deemed to be a land holder and he has permanent, heritable and transferable right of use and occupancy in his land subject to section 9 of the Assam Land and Revenue Regulation and if a persons in order to establish his title produces a patta that must be given due weightage inasmuch as a patta is issued in accordance with the provisions of section 17 read with the Rules and that must be considered to be a document of title and this is always considered to be a document of title. Further the record of rights as provided under section 40 and 41 of the Assam Land and Revenue Regulation shall always be deemed to be the correct unless the contrary is proved and that presumption which is attached to the record of rights under section 40 and 41 must be given due weightage and that is what was done by the learned lower appellate Court. Regarding mutation entries it can be said that though the mutation entries may not be the basis of title yet that mutation entries cannot be brushed aside and it must receive due consideration at the hand of the Court. Of course, it must be ascertained that the mutation entries were done properly. If it is found that the mutation entries was not done properly and/ or if it is collusive and fraudulent, that mutation entries will not create any right."

Thus, it was held by the learned Single Judge that if the entries are done properly and not in collusive or fraudulent manner, there will be presumption on the claim for title, but is rebuttable. Thus, mutation entries as mentioned in the Jamabandi cannot be ignored.

37.3 The Hon'ble Supreme Court in Karewwa and others Vs. Hussensab Khansaheb Wajantri and others, (2002) 10 SCC 315, observed that presumption of correctness of an entry in the revenue record cannot be rebutted by a statement in the written statement. It was observed as under:-

"3. Learned counsel then urged that presumption of the correctness of an entry in the revenue record is a rebuttable presumption. The appellant rebutted the presumption by stating in his written statement that respondent No. 1 came into possession of the land on the basis of agreement for sale executed in the year

1972 and, therefore, the entry in the revenue record that the respondent was a tenant of the land in the year 1973 is incorrect. We do not dispute the legal position as stated by the learned counsel for the appellant, but the presumption of correctness of an entry in revenue record cannot be rebutted by a statement in the written statement. Mere statement of fact in the written statement is not a rebuttal of presumption of correctness of an entry in the revenue record. The respondent was recorded as a tenant in the revenue record in the year 1973 and under law the presumption is that the entry is correct. It was for the appellant to rebut the presumption by leading evidence. The appellant has not led any evidence to show that entry in the revenue record is Incorrect. We, therefore, do not find any merit in the contention.”

Thus, if a proceedee relies on certain entry in the revenue record as in the present case, is a certified copy of the Jamabandi, a presumption can be drawn about the correctness of the same. It is also to be noted that in the present case, genuineness of the Jamabandi has not been questioned at all by the State nor the correctness of the contents thereof. Therefore, merely arguing that Jamabandi cannot be relied on by the proceedee does not hold water in view of the above decision in Karewwa (supra).

37.4 To the same effect, one may also refer to the decision of the Hon’ble Supreme Court in Harish Chander and others Vs. Ghisa Ram and another, (1981) 1 SCC 431, wherein it was observed in paragraph-6 as under:-

“6. No suspicion can attach to the entries in the jamabandi for the year 1959-60, nor have the contents of that document been assailed before us. A presumption of truth attaches to those entries in view of the provisions of s. 44 of the Punjab Land Revenue Act. That presumption is no doubt rebuttable but no attempt has been made to displace it. Further, once that presumption is raised, still another comes to the aid of respondent No. 1 by reason of the rule contained in S.109 of the Indian Evidence Act, namely, that when two persons have been shown to stand to each other in the relationship of landlord and tenant, the burden of proving that such relationship has ceased, is on the party who so asserts. It may therefore be legitimately presumed that the plaintiff continued to possess the land as a tenant till the institution of the suit.”

37.5 To the same effect is the decision of the Hon’ble Supreme Court in Chote Khan, deceased, represented by his son, Harmat Vs. Mal Khan and others, (1955) 1 SCR 60 : AIR 1954 SC 575, wherein the Hon’ble Supreme Court made the following observation:-

“22. By section 44 of the Punjab Land Revenue Act an entry made in the record of rights or in an annual record shall be presumed to be, true until the contrary is proved. That entries in the Jamabandies fall within the purview of the record of rights under section 31 of the Act admits of no doubt. Section, 16 of the old Act (XXIII of 1871) laid down that entries in the record of rights made or authenticated at a regular Settlement shall be presumed to be true. We are

satisfied that the materials on the record taken as a whole justify the view which has been taken by the High Court that the contesting defendants are joint owners and not mere cultivators who are not entitled to claim partition of the property. The judgment of the Chief Court also recognized the proprietary right of the defendants but qualified it by the declaration that so long as the Settlement was in force, they were not entitled to partition by reason of their agreement recorded in the Settlement papers. The Settlements of 1877 and 1908-09 have ceased to operate and the entry in the current Settlement of 1938-39 having been made under the orders of the Collector has no value when the contesting defendants did not agree to its being incorporated. The previous agreement was not one for perpetuity but for a limited period only and there is no reason in law why the prohibition against partition should be now enforced against the contesting defendants. It has been held in a number of cases that the entry regarding agreement in a Wajib-ul-arz holds good during the period of the Settlement in which it is made and becomes inoperative when the Settlement has come to an end: *Hira and others v. Muhamadi*[16 PR 1945 (p.89)]; *Allah Bakhsh V. Mirza Bashir-ud-din*[1932 LTR 56] and *Lieut. Chaudhri Chattar Singh v. Mt. Shugni*[(28) AIR 1941 Lah 239]."

37.6 In a recent judgment of the Hon'ble Supreme Court in *Sri Pratap Singh (Dead) through LRS vs. Shiv Ram (Dead) through Lrs*, decided on 20.02.2020, the Hon'ble Supreme Court while dealing with the relevancy of entry in public record under Section 35 of the Indian Evidence Act, 1872, relying on the earlier decision in *Vishwa Vijai Bharti Vs. Fakhrul Hassan and others*, (1976) 3 SCC 642, observed that entries in the revenue record ought to be generally accepted at their face value and courts should not embark upon an appellate inquiry into their correctness. But the presumption of correctness can apply only on genuine entries and not on forged or fraudulent entries. It was held thus :-

"19. This Court in *Vishwa Vijai Bharti V. Fakhrul Hasan & ors*, (1976) 3 SCC 642, held that the entries in the revenue record ought to be generally accepted at their face value and courts should not embark upon an appellate inquiry into their correctness. But the presumption of correctness can apply to genuine, not forged or fraudulent entries. This Court held as under:-

14. It is true that the entries in the revenue record ought, generally, to be accepted at their face value and courts should not embark upon an appellate inquiry in to their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent, entries. The distinction may be fine but it is real. The distinction is that one cannot challenge the correctness of what the entry is the revenue record states but the entry is open to the attack that it was Made fraudulently or surreptitiously. Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title."

37.7 As mentioned above, in the present case, genuineness of the aforesaid certified copy of the Jamabandi was not questioned by the State except by submitting that Jamabandi is not relevant or cannot be the basis for establishing

citizenship. While agreeing with the submission advanced by the State that Jamabandi cannot be the basis for establishing citizenship, yet, it has relevancy in establishing other relevant facts about relationship which would support the plea of a proceedee that he is an Indian.

37.8 We are in agreement with the Learned counsel for the State that the certified copy of a Jamabandi cannot be the sole basis for claiming citizenship. However, it cannot be divested of any evidentiary value. It can show that the person named in the Jamabandi possessed the land in the locality/ area mentioned and if the said Jamabandi reflected the name of "Eusub Ali Talukdar" as the father of the proceedee, it can be a corroborating evidence as regards the claim of the proceedee that he is the son of the projected father, "Eusub Ali Talukdar". For this, there is no need to produce the documents showing the name of the original pattadar. In our view, non-mentioning of the name of the original pattadar or the sale deed cannot divest the evidentiary value of the said Jamabandi in view of the decisions referred to above.

Those evidences as mentioned by the learned Tribunal would be necessary to establish ownership or title over the said land if there is any dispute about the title. However, in the present proceeding, we are not really concerned about the ownership or title of the said land. What is relevant is that the name of the "Eusub Ali Talukdar" is found along with other legal heirs of the said "Eusub Ali Talukdar" which includes the proceedee. Thus, this Jamabandi can be used for the limited purpose establishing that the persons named therein possessed certain land and about the relationship of the persons whose names are recorded in the Jamabandi as well as the fact that they resided in the place recorded in the Jamabandi, which of course, are all rebuttable. But as mentioned above, there are no rebuttal by the State on any of these aspects.

38. We are thus not in agreement with the finding of the learned Tribunal that the said Jamabandi could not have been relied on, merely because the proceedee has not mentioned in the written statement as to when his projected father had purchased the said land or the sale deed has not been mentioned, for the reasons discussed above.

39. In our view, normally, citizenship cannot be established on the basis of a single document inasmuch as there is no specific single certificate of citizenship issued by any competent authority as of now, to conclusively prove that the person is a citizen of this country. The issue of citizenship is a status of a person which is to be ascertained on the basis of the cumulative effect of various documents, materials and oral and documentary evidences taken together, if a doubt in the citizenship has been raised.

In the present case, what we have noted is that the proceedee claimed to be the son of one "Eusub Ali @ Eusub Ali Talukdar" based on various voters lists and a certified copy of a Jamabandi referred to above. The genuineness of the certified copies of the voters lists and Jamabandi has not been questioned and what we

have also noted that the name of the projected father of the proceedee consistently appears in the same village of Dumaria Part III. Similarly, the name of the proceedee also appears in the same village as the son of the projected father. In our view, the discrepancies in the age of the proceedee or his projected father would not be of much significance in view of the similarity of the place of residence as reflected in the voters lists, that is, Dumaria Part III.

40. An observation was made by the learned Tribunal about Exhibit 13, the affidavit filed by the proceedee in which he declared that "Abbas Ali Talukdar" and "Abbas Ali" are one and the same person and "Eusub Ali" and "Eusub Ali Talukdar" are one and the same person, by holding that it is a self-certifying document and cannot be relied upon.

As regards this observation, while it is correct that an affidavit is a self-certifying document, yet, it can be also treated as an oral evidence reduced to written form. We have also noted from the original records that the State never questioned the authenticity of the claim or deposition of the proceedee that "Abbas Ali" and "Abbas Ali Talukdar" and "Eusub Ali" and "Eusub Ali Talukdar" are one and the same persons, by subjecting him to any cross-examination to show that they are indeed different persons.

What we have noted is that the proceedee, "Abbas Ali Talukdar" claims to be the son of "Eusub Ali" alias "Eusub Ali Talukdar". We are of the view that the said claim can be said to be established by the voters lists of 1966, 1970, 1985, 1989, 1997, 2005 etc. where the names of the proceedee's father and the proceedee himself appear consistently in respect of the same village Dumuria Part III. It would be too presumptuous to assume that there could be two different sets of fathers and sons having similar names in the same village. Had these names be reflected in voters lists of different villages, one can presume that there could be different persons with similar names in different villages. But, such a possibility though cannot be totally ruled out in respect of the same village, would be quite unusual. In any event, it could be easily verified at the local level. However, there was no suggestion by the State that the names "Abbas Ali" alias "Abbas Ali Talukdar" shown as the son of "Eusub Ali" alias "Eusub Ali Talukdar", though shown in the same village are different persons. Nothing prevented the State from making an enquiry or asking any village authority to verify this fact and if necessary lead evidence to that effect.

The claim of the proceedee based on the aforesaid certified copies of voters lists stand corroborated by the contents of the certified copy of the Jamabandi which being public documents are admissible in evidence and hence, could be relied upon by the proceedee.

These voters lists and Jamabandi are admissible in evidence, had been proved by the proceedee and are relevant to the key issue involved in the proceedings. Thus, as held by this Court in Ohab Ali (supra), as also relied upon by the learned counsel for the State, the State was required to rebut the genuineness of

these evidences.

41. In this regard, we would also recall the observation made by the Hon'ble Supreme Court in para 26 of *Sarbananda Sonowal (I)* (supra) in which the Hon'ble Supreme Court made an observation that in order to establish citizenship, normally, a person may be required to give evidence of (i) his date of birth, (ii) place of birth, (iii) name of his parents, (iv) their place of birth and citizenship, as these facts would necessarily be within the personal knowledge of the person concerned and not of the authorities of the State.

In the same paragraph, the Hon'ble Supreme Court further went on to observe that if a person has given evidence on these points, the State authorities can verify the facts and can then lead evidence in rebuttal, if necessary. The purpose of the said observation is that while it will not be possible for the State to gather the details of personal information relating to a person at the initial stage, because of which the onus of proof of citizenship has been cast on the proceedee, once the same is disclosed and if the State does not accept or doubts the genuineness of such disclosure, the State can certainly verify and, if necessary, can lead evidence in rebuttal. That is the purport of the observation by the Hon'ble Supreme Court in paragraph-26 of *Sarbananda Sonowal (I)* (supra) that the State can verify the facts and can lead evidence in rebuttal, if necessary.

42. In the present case, what is evident is that though the State would not be expected to know the details of the father of the proceedee as disclosed in the written statement or the response filed by the proceedee, but once these facts have been disclosed in the written statement to the effect that his father is Eusub Ali @ Eusub Ali Talukdar, who in turn was the son of "late Nosim Udddin", who happened to be a resident of Dumaria Part-III under Srijan Gram Revenue Circle, PO. Abhayapuri under Goalpara District as recorded in the voters lists of 1966, 1970 and 1985 and since the name of the proceedee also appears as the son of Eusub Ali @ Iusab Ali Talukdar @ Eusob Ali Talukdar in the subsequent voters lists of 1989, 1997 and 2005 etc. claiming to be resident of the same village of Dumaria under the same Police Station Abhayapuri of the same District of Goalpara/newly carved out Bongaigaon district, these information then became available before the State. Thus, once the disclosure was made, there was no difficulty on the part of the State to verify as to whether any such person, namely, Eusub Ali, son of late Nasim Uddin or Abbas Ali, son of Eusub Ali were/are residents of village Dumaria Part-III inasmuch as it will not be an impossible task on the part of the State to do so. In fact, the task of the State becomes easier when identity and location of the village have been disclosed by the proceedee. Unfortunately, the State did not make any attempt to verify the said claim of the proceedee nor questioned the genuineness of the documents relied upon by the proceedee.

43. The Tribunal, however, took up the exercise of finding out the discrepancies in the name and age about which we have discussed above. Further, the Tribunal

purportedly, on the ground that no sale deed has been disclosed and as to when the said Eusub Ali purchased the land as reflected in the Jamabandi, which does not appear to be in consonance with the law relating to genuineness or correctness of the entry in the revenue record as discussed above, ignored the certified copy of the Jamabandi. In our view, the said Jamabandi could not have been ignored. Rather, it supports the claim of the proceedee that he is the son of Eusub Ali @ Eusub Ali Talukdar as reflected in the Jamabandi. The said Jamabandi also refers to a plot of land which is located in Dumaria Part-III of Srijan Gram Revenue Circle, Uttar Salmara, which corresponds to the particulars mentioned in the voters lists in respect of both the proceedee and his projected father, Eusub Ali @ Eusub Ali Talukdar.

44. We want to reiterate that standard of proof, which is required on the part of a proceedee to establish his claim of citizenship, is preponderance of probability and not proof beyond reasonable doubt, which has been reiterated by the Full Bench of this Court in *State of Assam Vs. Moslem Mondal*, (2013) 1 GLT 809 and other decisions of this Court.

Therefore, under the circumstances, if the genuineness of the certified copies of the voters lists as well as the Jamabandi is not questioned and these are held to be admissible documents, and contents thereof have not been questioned at all by the State, there will be presumption of the truthfulness or correctness of the contents as discussed above. These would then corroborate the evidence of the proceedee that he is, indeed, the son of Eusub Ali @ Eusub Ali Talukdar. Since the genuineness of the certified copies of the voters lists or the Jamabandi have not been questioned by the State, there will be a presumption in favour of the proceedee that he is the son of Eusub Ali @ Eusub Ali Talukdar, who was a resident of Dumaria Part-III, which would indicate that he is the son of an Indian citizen. Accordingly, we are of the view that the proceedee has been able to discharge his burden on the basis of preponderance of probabilities.

45. We are of the view that the proceedee has been able to adduce sufficient and cogent oral and documentary evidences in support of his claim that he is an Indian and not a foreigner on the basis of pre-ponderance of probability. The oral and documentary evidences adduced, do certainly indicate that the proceedee, Abbas Ali Talukdar is in all probability an Indian citizen which has not been shaken by the State in any manner, nor the State has adduced any evidence to suggest the other alternative view that the proceedee is a foreigner.

46. Under the circumstances, we are inclined to allow this petition by setting aside the impugned order dated 06.03.2018 passed by the learned Foreigners Tribunal, Bongaigaon No.2, Abhayapuri in Case No. BNGN/FT-2/APR/546/2016. Consequently, the proceedee, namely, Abbas Ali @ Abbas Ali Talukdar, resident of village Dumuria Part III, Police Station- Abhayapuri, District-Bongaigaon, Assam, now deceased and represented by the present 4(four) petitioners cannot be treated as a foreigner as held by the learned Tribunal.

47. With the above observations and directions, the present petition stands allowed.

48. LCR be remitted forthwith to the concerned Foreigners Tribunal.