

(2018) 04 GAU CK 0098
In the Gauhati High Court
Case No : WP(C) 6290 of 2016

MULCHAND MANDAL

APPELLANT

Vs

THE UNION OF INDIA and 7 ORS

RESPONDENT

Date of Decision : 27-04-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 04 GAU CK 0098

Hon'ble Judges : UJJAL BHUYAN, NELSON SAILO

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Ujjal Bhuyan, J.

Heard Mr. M Das, learned counsel for the petitioner and Mr. J Payeng, learned Special Counsel, Foreignersâ?? Tribunal (FT). By filing this petition

under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 29.07.2016 passed by the Foreignerâ??s Tribunal No.1,

Dhubri in FT Case No.1228/D/2010 (Union of India â?"vs- Mulchand Mandal), declaring the petitioner to be a foreigner who had illegally entered into

India (Assam) from Bangladesh after 25.03.1971.

This Court by order dated 06.10.2016 had issued notice while requisitioning the case record and passed an interim order to the effect that petitioner

should be allowed to remain on bail subject to his appearance before the Superintendent of Police (Border), Dhubri and furnishing of adequate surety.

A perusal of the order dated 29.07.2016 and the case record would disclose that though the reference is a long pending one, notice was issued only in

the year 2011 pursuant to

which the petitioner had entered appearance along with his counsel and filed written statement on 15.07.2011. After taking considerable number of adjournments, evidence-in-chief by way of affidavit was subsequently filed on 10.05.2016. On going through the order sheet, we find that as the petitioner was absent on subsequent dates, Tribunal had issued fresh notice to the petitioner. This Court has already held that once notice issued by the Tribunal is served upon the proceedee, for the subsequent default of the proceedee, fresh notice need not be issued by the Tribunal. But unfortunately in this case, notices after notices were issued by the Tribunal to the petitioner despite his initial appearance and filing of written statement. It appears that after filing evidence-in-chief by way of affidavit on 10.05.2016, petitioner again defaulted. In such circumstances, Tribunal finally decided to proceed with the reference whereafter the impugned order dated 29.07.2016 was passed terming it to be an exparte one.

Application filed for vacation of the aforesaid order was rejected by the Tribunal on 28.09.2016. Though in the context of the present case, it cannot be said that due opportunity was not granted to the petitioner as more than reasonable opportunity was granted, yet we feel that the way Tribunal had conducted the reference added to the delay in disposal of the reference. From 15.07.2011 when the petitioner filed his written statement till 10.05.2016 when he filed his evidence in-chief by way of affidavit, Tribunal continued to issue notice after notice and granted adjournment after adjournment to the petitioner to file his evidence-in-chief. After 10.05.2016, Tribunal granted three dates to the petitioner but since he failed to appear, Tribunal decided the reference vide order dated 29.07.2016 terming it to be an exparte order.

While it is true that mere filing of written statement or evidence-in-chief by way of affidavit is not enough as the pleaded facts have to be proved by documentary evidence, since the petitioner had filed both, we are inclined to grant one more opportunity, in the interest of justice, to the petitioner to prove whatever documents he has filed.

In such circumstances, we set aside the order dated 29.07.2016 and direct the petitioner to appear before the Foreigner's Tribunal No.1, Dhubri in connection with FT Case No.1228/D/2010 on 16.05.2018 at 10.30 am whereafter the Tribunal shall proceed with the reference on the basis of the

materials already on record after hearing the parties and conclude the same within 6(six) weeks from the date of appearance.

Needless to say, if there is any default on the part of the petitioner henceforth, Tribunal would be at liberty to pass such order as may be deemed fit

and proper. Writ petition is accordingly disposed of. Registry to send down the LCR forthwith and inform the concerned Foreignersâ?? Tribunal,

Deputy Commissioner and the Superintendent of Police (Border) for doing the needful. A copy of this order may be furnished to the learned Standing

Counsel, Election Commission of India and the State Coordinator, NRC.