

(2021) 08 GAU CK 0077

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3958 Of 2021

Soneka Khatun

APPELLANT

Vs

Union Of India And 9 Ors

RESPONDENT

Date of Decision : 20-08-2021

Acts Referred:

Citation : (2021) 08 GAU CK 0077

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

Bench : Division Bench

Advocate : D Ghosh

Final Decision : Disposed Of

Judgement

1. Heard Ms. H. Betala, 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 Nos. 1 & 4; Mr. J. Payeng, learned Special Counsel, FT appearing for respondent Nos. 2, 5 to 10 and Ms. B Das, learned Standing Counsel, ECI appearing for respondent No. 3.
3. This writ petition has been filed by the petitioner, namely Smti. Soneka Khatun, assailing the ex-parte order dated 21.09.2016 passed by the learned Member, Foreignersâ?? Tribunal-I, Barpeta, Assam in F.T Case No. 111/13 [Ref. No. 4365(A)/98]
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. The grievance of the petitioner is that the petitioner was never served with the summon issued by the Foreignersâ?? Tribunal because of which the petitioner could not attend the proceeding before the Foreignersâ?? Tribunal.

However, petitioner came to know that ex-parte order/opinion has been given by the Foreignersâ?? Tribunal that she is a foreigner when she registered herself in the National Register of Citizens (NRC). Thereupon, when the petitioner enquired into the matter, she came to know from the report of the process server that whereabouts of the proceedee could not be found and to that effect a certificate was received from the Gaonburah and accordingly, the matter was proceeded.

6. From a perusal of the opinion, we find that the learned Foreignersâ?? Tribunal has recorded that process server was examined who had affixed a copy of notice in a conspicuous place where the opposite party/petitioner resided upon finding that the proceedee was not available. However, no such mention found in the process report, a copy of which is annexed in Annexure-4, about the pasting of the notice on a conspicuous part of the residence where the proceedee had last resided.

7. The learned counsel for the petitioner submits that petitioner otherwise has sufficient documents to prove herself that she is an Indian. In this regard, the learned counsel for the petitioner has drawn attention of this Court to NRC document of 1951 showing the name of her father, Voter list of 1966 where the fatherâ??s name was also included in the 52 No. Baghbor LAC under village: Rampara Nonoke, Voter list of 1970 where the fatherâ??s name was included in the same village, Voters lists of 1989, 1993 and 2010 where the names of her mother and brother were also included and other certificates issued by the Competent Authority in this regard.

8. Under such circumstances, the learned counsel for the State also has fairly submitted that, perhaps, this would require to be remanded.

9. Accordingly, we are of the view that the petitioner may be afforded another opportunity to approach the Foreignersâ?? Tribunal to prove her case that she is an Indian Citizen, not a foreigner.

10. Accordingly, the impugned ex-parte order dated 21.09.2016 passed by the learned Member, Foreignersâ?? Tribunal-I, Barpeta, Assam in F.T Case No. 111/13 [Ref. No. 4365(A)/98] is set aside. The matter is remanded to the learned Foreigners Tribunal-I, Barpeta, Assam for fresh

consideration. The petitioner will appear before the aforesaid Foreignersâ?? Tribunal on or before 20.09.2021 and file her written statement and

adduce evidences before the Tribunal to prove her case that she is an Indian

citizen, not a foreigner.

11. 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), Barpeta 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), Barpeta 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.

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