

GAHC010013972026



2026:GAU-AS:2321-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/678/2026

FULCHAN ALI @ PHULCHAN ALI
SON OF LATE SHAHEB ALI, RESIDENT OF VILLAGE- GAGALMARI, P.O.-
KADONG, P.S. AND DISTRICT- BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF HOME
AFFAIRS, GOVT. OF INDIA, SHASTRI BHAWAN, TILAK MARG, NEW DELHI-
1.

2:THE ELECTION COMMISSION OOF INDIA
NEW DELHI-1

3:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPPARTMENT
DISPUR
GUWAHATI- 781006

4:THE DISTRICT COMMISSIONER OF BARPETA
P.O. AND DIST.- BARPETA
ASSAM
PIN- 781301

5:THHE DEPUTY COMMISSIONER OF POLICE (BORDER)
BARPETA
ASSAM
PIN- 781301

6:THE STATE COORDINATOR OF NRC

ASSAM
HOUSEFED COMPLEX
2ND FLOOR
BANPHOOL NAGAR
BHANGAGARH
GUWAHATI- 78100

Advocate for the Petitioner : MR N AHMED, MR. N J DUTTA,M RAHMAN,MR. M M ZAMAN

Advocate for the Respondent : DY.S.G.I., SC, NRC,SC, F.T,SC, ECI,GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 17.02.2026
(K.R. Surana, J)

Heard Mr. N. Ahmed, learned counsel for the petitioner. Also heard Mr. P.S. Lahkar, learned CGC; Mr. A.I. Ali, learned standing counsel for the ECI; Mr. G. Sarma, learned standing counsel for the FT and Border matters; and Mr. P. Sarmah, learned Additional Senior Govt. Advocate for the State respondent.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned opinion dated 24.12.2018, passed by the learned Member, Foreigners Tribunal No.1st, Barpeta, in F.T. Case No. 333/16, arising out of F.T. Ref. Case No. 76/16, thereby declaring the petitioner, namely, Fulchan Ali @ Phulchan Ali to be a foreigner of post 25.03.1971 stream.

3. After appearance, the petitioner had filed his written statement and thereafter, filed his evidence-on-affidavit as DW-1.

4. In his evidence-on-affidavit, the petitioner had reiterated the statements made in the written statement. He had stated that he was born and brought up at Vill. Gagalmari, Mouza- Jania, P.S. and Dist. Barpeta, Assam. The correct name of the father of the petitioner was Shahab Ali and the name of the grandfather was Parbat Ali, which was wrongly written in various documents as Shaheb Ali and Parbat Ali and his name appears as voter in the year 1966, 1970 and 1997. His wife Rahima Khatun was born and brought up at Vill. Lurfuria, Mouza- Jania, P.S. and Dist. Barpeta, Assam. The name of his grandfather-in-law, Taro Miya, was a voter in 1966 and 1970 in Vill. Sitoli, under Jania LAC and his father-in-law, Ali Hussain, was a voter in 1997 and 2013 in Vill. Lorfuria, under Jania LAC. His parents-in-law had purchased a plot of land at Lorfuria and they shifted from Sitoli to Lorfuria. They have 3 (three) children out of their wedlock, namely, Rabiul Hoque, Rahul Amin and Fulmala Khatun. In support of his statements, DW-1 had exhibited the following documents, viz., (i) certified copy of voters list of 1966 (Ext.A); (ii) certified copy of voters list of 1970 (Ext.B); certified copy of voters list of 1997 (Ext.C); (iii) Birth Certificate of 3 (three) children (Ext.G series), (iv) A certificate from the Gaonburah (Ext.F). Moreover, the petitioner had submitted the voters list of 1966, 1970 and 1997 from the side of his father-in-law, which were marked as Ext. D, Ext.E and Ext.F respectively. In his cross-examination, DW-1 has stated his father had expired in the year 2001. His mother is alive and he had not mentioned about his brothers in the evidence-on-affidavit. It may be mentioned that in the evidence-on-affidavit, the petitioner has spelt the village as Lurfuria and also as Lorfuria.

5. The petitioner has also examined Laljan Nessa, wife of Shaheb Ali, his projected mother, as DW-2. She has reiterated the statements made by the petitioner as DW-1. Moreover, she has also stated that in the voters list of

1966 and 1970, her name was wrongly mentioned as Nuljan Nessa instead of Laljan Nessa. She also stated that the name of her husband appeared in the voters list of 1966, 1970 and 1997, and that her husband had married one Kanchan Nessa, who is the co-wife of the petitioner's father. In her cross-examination, DW-2 has stated that she has 4 (four) sons and has disclosed their names and has submitted that she has 2 (two) stepsons and that she is aware of the discrepancy in the name of her husband and father-in-law.

6. The learned Tribunal, on appreciating the pleadings and evidence, held that though the petitioner had referred to the name of his father in the voters lists of 1965 (Ext.A), 1970 (Ext.B) and 1997 (Ext.C), but he had failed to disclose other entries therein and the petitioner had not enclosed any other voters list of his father after 1997 as he had stated in his cross-examination that his father had died in the year 2001 and his mother was still alive and there were no voters lists in between 1970 and 1997 and there was no explanation why the name of his father was not enlisted in those voters lists. The petitioner has not stated when he was born and he was silent regarding his mother, grandmother, brother and children of his grandfather. Hence, it was observed that the sudden appearance of Laljan Nessa, as projected mother of the petitioner, has to be looked at with suspicion and thus, cannot be relied upon. Accordingly, it was held that the mere filing of some documents and picking up some names from such documents so as to establish relationship is not enough. Accordingly, it was held that the documents filed by the petitioner cannot be taken as legal evidence to confer Indian citizenship. Hence, it was further held that the petitioner had failed to discharge his onus of proving under Section 9 of the Foreigners Act, 1946 that he is a citizen of India and not a foreigner. Thus, it was held that the petitioner was a foreigner who has illegally

entered into India (Assam) after 25.03.1971.

7. On appreciating the evidence on record, it is seen that the learned Tribunal is found to have correctly discarded Ext.D, Ext.E and Ext.F, as those were documents related to his father-in-law and therefore, not relevant for the purpose of deciding the citizenship of the petitioner. The learned Tribunal had considered Ext.A to Ext.C and Ext.G to Ext.I. It may be stated that as per the impugned opinion, Ext.G and Ext.H are copies of two sale deeds. However, the said two sale deeds are not found referred to in the evidence-on-affidavit filed by DW-1 or DW-2 and they are not found to be introduced in the cross-examination of said DW-1 and DW-2. In fact, as per evidence-on-affidavit, Ext.G is referred to as Birth Certificate of three children and marked as Ext.G-1, 2 and 3. However, in the impugned opinion Ext.H is stated to be registered sale deed dated 19.03.1997, but the same was discarded as the document is after the cut-off year of 1991. The second sale deed (Ext.G) is not described in the impugned opinion and neither there is any statement in this writ petition so as to enable the Court to identify the document which was exhibited as Ext.G. If as per evidence-on-affidavit, Ext.G-1, 2 and 3 are Birth Certificates of three children, the petitioner has made no statement in this writ petition as to how the petitioner is prejudiced by the lack of discussion on Ext.G, so also, that if Ext.G was a sale deed, how the petitioner was prejudiced.

8. The fact that the voters list disclosed the name of the projected father of the petitioner in the year 1966, 1970 and 1997, but there is no explanation as to why the name of the father did not appear in any voters list between 1970 and 1997.

9. The petitioner has not disclosed the name of his projected mother in his evidence-on-affidavit and therefore, the learned Tribunal had

viewed with suspicion the evidence of DW-2 and accordingly, her evidence was discarded.

10. The sale deed dated 19.03.1997 (Ext.H) was much after the cut-off year of 1971, for which it does not help the petitioner to lay his claim regarding citizenship. The Gaonburah certificate (Ext.I) was discarded as the *Gaonburah* did not appear as a witness.

11. Accordingly, the Court does not find any reason to differ with the opinion expressed by the learned Tribunal.

12. It may be stated that Ext.H is a sale deed dated 19.03.1997, in the name of the projected father of the petitioner. From the contents of the said Ext.H, it is seen that the land covered by the said sale deed is an agricultural land and as per the contents of the said sale deed, it appears that the seller was only selling his possessory right in respect of a plot of land measuring 2 Katha 10 Lechas. The schedule of the land does not mention that it was a patta land as only Dag No. 300 has been mentioned. Therefore, in all probability, the said land was not a patta land and no title was sold by way of the said sale deed.

13. In this case, the petitioner has not exhibited any document to show his continued possession over the said land or that his grandfather, or father, or he himself had paid any land revenue in respect of the said land.

14. Therefore, the said sale deed, which is stand-alone evidence, does not connect the petitioner with the person in whose name the sale deed (Ext.H) was executed. The petitioner has not shown that any part of the said land has devolved on him as a legal heir of the person in whose favour the land was purchased. Therefore, the said sale deed also does not help the petitioner to establish his claim as a citizen of India.

15. On the other hand, it is seen that the petitioner has filed this writ petition on 27.01.2026 to assail the opinion dated 24.12.2018, i.e. after 7 years, 1 month, 3 days (i.e. 2591 days). The said delay is explained merely by stating that the petitioner is poor and unable to manage the cost and expenditure of approaching this Court. Such a vague statement cannot be accepted as nothing prevented the petitioner from availing free legal aid, which he did not. The petitioner had obtained the certified copy of the impugned opinion on 04.01.2019 and since then, by virtue of the long delay of over seven years, is deemed to have accepted the opinion without any demur, with full knowledge of the fact that he has been declared to be a foreigner, who has illegally entered into India (Assam) from the specified territory. Thus, the writ petition is also not maintainable in view of the delay and laches.

16. The Supreme Court of India, in paragraph 46 of the case of *Urban Improvement Trust (supra)*, has reiterated the law that undue delay in approaching the Court can be a ground for refusing relief and it has been expressed that that only in exceptional cases, delay can be condoned. The said paragraph 46 is quoted below:-

“46. As regards the appellant’s challenge to the inordinate delay of 21 years in filing of the writ petitions by the respondents, we are of the view that the same needs to be considered in the facts and circumstances of the case. While it is true that the courts have consistently held that undue delay in approaching the court can be a ground for refusing relief, the courts have also recognized that in exceptional cases, where the impugned action is patently illegal or affects fundamental rights, the delay must be condoned.”

17. In respect of the well settled legal preposition that delay and laches are fatal to a belated challenge to the opinion of the Foreigners Tribunals, it may be relevant to refer to the decision of this Court in the case of *Jonali Das v. Union of India, 2018 (5) GLT 492: (2018) 0 Supreme (Gau) 1186*. Paragraph 9 thereof is as follows:-

“9. In Azmat Ali @ Amzad Ali Vs. Union of India [W.P.(C) No.4971/2018, disposed

of on 01.08.2018], this Court had observed as follows:-

"It is more than three decades that the issue of influx of foreign nationals has been in public domain in the State of Assam and has engaged the attention of the people. Interest of the State is of paramount importance in that unabated influx has the potential to affect the integrity and sovereignty of the country. Citizenship of a person, no doubt, is a very valuable right and should be zealously guarded. There is no gainsaying the fact that a person who is alleged to be a foreigner must be given due and reasonable opportunity to establish that he is a citizen of India. However, if a person does not take steps for safeguarding his interest, he does so at his own risk and peril as grant of opportunity cannot be an endless exercise. Right to a fair hearing or principles of natural justice cannot be permitted to lead to a farcical situation and to be an engine for defeating the very object of identification and deportation of foreigners."

18. The Supreme Court of India, in the case of *Shivamma (Dead) by LRs v. Karnataka Housing Board & Ors., 2025 INSC 1104: 2025 Supreme(SC) 1679*, while dealing with the provision of Section 5 of the Limitation Act, 1963 has laid down certain guidelines. Though Section 5 of the Limitation Act, 1963 does not apply to a writ petition, but in the considered opinion of the Court, when a writ petition is filed to assail the opinion of the Foreigners Tribunals, under certiorari jurisdiction, the same principles should apply, requiring the petitioner to provide at least some cogent and acceptable explanation for the inordinate delay in assailing the opinion.

19. The learned counsel for the petitioner had stated that the petitioner had all the relevant documents, but due to wrong legal advice, he could not exhibit several documents and thus, submitted that for ends of justice the matter be remanded back to enable the petitioner to prove additional documents. The said submission cannot be accepted as one cannot be relegated back to the Foreigners Tribunal, merely to enable him to fill-up the lacuna. It is not the case of the petitioner that he had made a prayer before the learned

Tribunal to prove further documents, which was refused. In the said context, it would be appropriate to refer to the decision of this Court in the case of *Ajbahar Ali v. Union of India*, (2025) 0 Supreme (Gau) 763, wherein it has been held to the effect that the plea of compliance of the principles of natural justice cannot be permitted to lead to a farcical situation and to be an engine for defeating the very object of identification and deportation of foreigners. Similar opinion has also been expressed by this Court in the case of *Abu Bokkor Siddique v. Union of India*, 2019 (1) GLT 813.

20. In the case of *Rashminara Begum v. Union of India & Ors.*, 2017 (4) GLT 346, this Court has held that material facts pleaded would have to be proved by adducing cogent and admissible evidence. Similarly, in the case of *Ayesha Khatun v. Union of India & Ors.*, (2017) 3 GLR 820, this Court had reiterated that failure to disclose material facts in the written statement would lead to an adverse presumption. Under the scheme of the Foreigners (Tribunals) Order, 1964, the petitioner is required to file his/her written statement and produce all documents. The petitioner, in this case, had obtained the certified copy of the impugned opinion on 04.01.2019 and therefore, on the said date, he was aware of the reasons why he was declared to be a foreigner. The petitioner, for more than 7 years, made no complaint against his engaged counsel for his/her incompetence or for giving him incorrect legal advice or for counsel's omission to exhibit any document provided to his learned counsel. Thus, the allegations made against the learned counsel of the petitioner, who was engaged in the proceedings before the learned Tribunal are an after-thought, craftily made behind the back of the said learned counsel just to make out a case. It is not the case of the petitioner that he had signed and filed his written statement without being informed of its contents or that he was given false

information about its contents. Accordingly, the Court is inclined to hold that no case has been made out by the petitioner for remanding the matter back to the learned Tribunal. The petitioner cannot be permitted to take a plea before this Court that due to the ill-advice of his learned counsel, complete disclosures were not made in the written statement and all documents could not be exhibited. If such a prayer is accepted, then the proceedings before the Foreigners Tribunals would become a farcical exercise and every time the opinion goes against the proceedee, the High Court would have to remand the matter back to enable the proceedee to amend the written statement and then prove additional documents, which would be an endless exercise. Therefore, the plea that the petitioner did not get proper legal advice, which is alleged in this writ petition, has been discussed, only to be rejected.

21. While exercising certiorari jurisdiction, the Court would refrain from undertaking an exercise to find out if the petitioner had left out or omitted to make proper pleadings or to exhibit certain documents unless it can be demonstrated that the petitioner had made an application before the learned Tribunal and the same was incorrectly rejected. This Court has limited jurisdiction to examine if the order passed by the learned Tribunal is vitiated by perversity as this Court is not exercising appellate or revisional jurisdiction while examining the opinion passed by the learned Foreigners' Tribunal.

22. Therefore, in light of the discussions above, this writ petition fails on merit, on the ground of inordinate delay and laches in assailing the impugned opinion, and on the ground that the matter cannot be remanded on the reasons assigned by the petitioner in this writ petition. The opinion is not found to be vitiated for any reason whatsoever and cannot be held to be incorrect or perverse.

23. Thus, no interference is called for in respect of the opinion dated 24.12.2018, passed by the learned Member, Foreigners Tribunal No.1st, Barpeta, in F.T. Case No. 333/16, arising out of F.T. Ref. Case No. 76/16. The consequences of the said opinion shall follow. The writ petition is hereby dismissed at the motion stage without issuance of notice on the respondents.

24. There shall be no order as to cost.

25. The learned standing counsel for the FT, Border matters and NRC shall communicate a downloaded copy of this order to the Home and Political (B) Department, so as to send a copy of this order to be made a part of the record of the learned Tribunal for future reference.

JUDGE

JUDGE

Comparing Assistant