

GAHC010175392025



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

Case No. : WP(C)/4534/2025

AFRUJA BEGUM @ AFRUZA BEGUM @ AFRUZA KHATUN
D/O ADADUL HOQUE @ AZADUL HOQUE, W/O NUR ALOM @ NOOR ALOM
@ NUR ALAM ISLAM, VILL- KALOGHAT (THAKURANBARI), P.O. AND P.S.-
MANKACHAR, DIST- SOUTH SALMARA MANKACHAR, ASSAM, PIN-783131

VERSUS

THE UNION OF INDIA AND 6 ORS.
TO BE REPRESENTED BY THE SECRETARY, GOVERNMENT OF INDIA,
DEPARTMENT OF HOME AFFAIRS, NEW DELHI, INDIA

2:THE STATE OF ASSAM
TO BE REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF
ASSAM
DEPARTMENT OF HOME
DISPUR
GUWAHATI-6

3:THE SUPERINTENDENT OF POLICE (B)
SOUTH SALMARA MANKACHAR
ASSAM

4:THE SUPERINTENDENT OF POLICE (B)
DHUBRI
ASSAM

5:THE ELECTION COMMISSION OF INDIA
TO BE REPRESENTED BY THE CHIEF ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI

6:THE NATIONAL REGISTER OF CITIZEN
TO BE REPRESENTED BY THE STATE CO-ORDINATOR
ACHYUT PLAZA
BHANGAGARH
KAMRUP (M)
ASSAM

7:DISTRICT COMMISSIONER
SOUTH SALMARA MANKACHAR
P.O. AND P.S.- HATSINGIMARI
DIST- SOUTH SALMARA MANKACHAR
ASSA

Advocate for the Petitioner : MR. A Z AHMED,

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 MR. JUSTICE ANJAN MONI KALITA

ORDER

Date : 20-01-2026

(K.R. Surana, J)

Heard Mr. A.Z. Ahmed, learned counsel for the petitioner as well as Mr. J. Payeng, learned standing counsel for the FT, Ms. K. Bhattacharyya, learned counsel appearing on behalf of Ms. S. Katakey, learned standing counsel for the ECI, Mr. D.J. Das, learned CGC, Mr. G. Sarma, learned standing counsel for the NRC and Mr. H.K. Hazarika, learned Junior Govt. Advocate.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the opinion dated 16.04.2024 passed by the learned Member, Foreigners Tribunal, South Salmara at Hatsingimari, in F.T. Case No.585/18, arising out of Ref. F.T. Case No.651/MKCR/10 and F.T. Case No. 256/2018, arising out of Ref. F.T. Case No. 372/MKCR/10. By the said opinion,

the petitioner was declared to be a foreigner who had entered illegally into India (Assam) on or after 25.03.1971.

3. From visit of notice of the proceedings, the petitioner had filed her written statement in F.T. Case No.585/2018, amalgamated with F.T. Case No.256/2018, amongst others, claiming that she is the daughter of Adadul Hoque @ Azadul Hoque (father) and Osefa Khatun (mother) and granddaughter of Asmatullah. Her grandfather had 2 (two) sons, namely Adadul Hoque and Giyasul Hoque. Her father had 3 (three) wives, namely Gulesthan Banu, Osefa Khatun and Fatema Khatun. She has 8 (eight) brothers and sisters, namely Gulzar Hussain, Anjura Begum, Aktar Banu Begum, Rubel Miah, Arjuara Begum, Rofik Miah, Alima Begum and Fojlur Rahman. In the year 1995, she was married to Nur Alom and shifted to her matrimonial home at Village 1 No. Sahapara under Mankachar Police Station under the erstwhile Dhubri district and after a year her husband shifted his residence to Kaloghat under Thakuranbari Gaon Panchayat on their inherited land and since then they have been living there. She has been blessed with 5 (five) sons and daughters. The petitioner claims that the name of her father has been recorded in the Electoral Roll of 1960 and in 1966 the name of her father was recorded along with her step mother Gulesthan Banu and her paternal uncle Giyasul Hoque. The name of her father appears in the Electoral Roll of 1977 along with her above named stepmother as well as Osefa Khatun, her own mother. The name of her father also appeared in the Electoral Roll of 1997 and 2017 along with petitioner's other stepmother namely Fatema Khatun. Her father also has an EPIC issued by the Electoral Registration Officer. The petitioner has also referred to a Panchayat Relation Certificate dated 05.07.2015 issued by the Secretary, Jhograrchar Gaon Panchayat. To refer to her inheritance of land, the petitioner has relied on the

copy of Chitha, Electronic as well as Manual and the Land Holding Certificate. The petitioner also claims that the names Afruja Begum, Afruza Begum and Afruza Khatun are her names and that her grandfather used to write his name as Asmat Ullah, but in the Electoral Roll of 1966 and 1977, his name is recorded as Asmatullah. Similarly, her father appears as Adadul Hoque in all the relevant documents and papers such as Electoral Roll of 1960, 1977, 1997, 2008, 2017 and his EPIC but in Electoral Roll of 1966 his name appears as Azadul Hoque. The petitioner also claims that her stepmother, Gulesthan Banu is known by three aliases (i.e. Golesthan Banu, Golisthan Banu and Gulisthan Banu) and her husband is also known by three other aliases (i.e. Nur Alom, Noor Alom, Nur Alam).

4. In support of her defence, the petitioner has examined herself as DW-1 and she has also examined her father as DW-2 and the Lat Mandal of Mankachar Circle was examined as DW-3 and one Abdur Hafizur Rahman, the Secretary of Jograrchar Gaon Panchayat as DW-4.

5. The petitioner, by reiterating the statement made in the written statement has exhibited the following documents (1) Voter List of 1960 (Ext.1), (2) Voter List of 1966 (Ext.2), (3) Voter List of 1977 (Ext.3), (4) Voter List of 1997 (Ext.4), (5) Voter List of 2008 (Ext.5), (6) Voter ID Card (Ext.6), (7) Voter List of 2017 (Ext.7), (8) Panchayat Relation Certificate (Ext.8), (9) Manual Chitha Copy (Ext.9), (10) Computerized Chitha Copy (Ext.9), (11) Land Holding Certificate (Ext.10), (12) Affidavit (Ext.11), (13) Affidavit dated 27.10.2021 to explain discrepancy in the name (Ext.12), (14) Notice to DW-4 (Ext.17), (15) Notice to DW-3 (Ext.13), (16) Authorization letter (Ext.14), (17) Original Chitha Book (Ext.15), (18) Concerned page of Draft Chitha (Ext.16).

6. All the said four witnesses have been cross-examined and discharged.

7. The learned Tribunal, after appreciating the pleadings and evidence found that the main document of the petitioner to connect her to her projected father where the Gaon Panchyat Certificate dated 05.07.2015 (Ext.8), the certified copy of the Manual Chitha (Ext.9) and Computerized Chitha copy (Ext.10) and the Land Holding Certificate dated 10.05.2012 (Ext.11). In so far as Ext.8 is concerned, the said DW-4 stated that he had no personal knowledge about the petitioner as he did not issue the certificate. He further disclosed that he had not found the Certificate Book as well as Registered Book of Ext.8 and that the said Certificate was issued on the basis of application dated 05.07.2015 by Adadul Hoque and that he could not identify the signature of the Block Development Officer appearing in the said certificate. In respect of Ext.9, 10 and 11, DW-3 in his cross-examination has stated that Ext.16 was prepared after 1980 and that the name of Asmatullah, co-pattadar No.4 was recorded in the Chitha, but there was no remarks regarding his entry in the records of rights and no mutation case was registered and it is also not mentioned whether the names of co-pattadar from Sl. No. 8 to 17 had been recorded as per the law of inheritance or other reasons. It may also be stated that mutation of the name of the petitioner was done on 13.08.2019 and it could not be said how the name of the petitioner was recorded as one of the Pattadars and that there is no note in respect of inclusion of their entry. Accordingly, the learned Tribunal did not find the link of the petitioner with her projected father on the basis of Ext.9, Ext.10 and Ext.11. and those documents were held to be untrustworthy and not acceptable. In respect of the Electoral Rolls which were exhibited as Ext.1 to Ext.5 and Ext.7. Ext.4, Ext.5 and Ext.7 disclosed the name of the projected father as well as two projected stepmothers and accordingly the learned

Tribunal arrived at a conclusion that the documents did not show any linkage of the petitioner with her projected father. The EPIC (Ext.6) was discarded for being not proved in accordance with law. The learned Tribunal recorded the disclosures made by DW-2 in his cross-examination and as several contradictions came out of the said cross-examination, including the identity of the mother of the petitioner remaining unsolved, the evidence of the DW-2 was found to be insufficient and not trustworthy to prove that the petitioner was a citizen of India or that she is the daughter of Adadul Hoque.

8. Resultantly, the learned Tribunal held that the petitioner was unable to discharge her burden to prove that she was born out of genuine Indian parents and had acquired citizenship of India. Resultantly, the case was disposed of upon contest by answering the reference in the affirmative on the prayer that the petitioner to be a foreigner of post-stream 25.03.1971.

9. The learned counsel for the petitioner has referred to the documents annexed to the writ petition to project that the evidence of the petitioner was discarded merely because of some discrepancies in the names of the petitioner's projected father, grandfather and mother ignoring the evidence on record. It is submitted that the petitioner and her father are illiterate and that the father of the petitioner, being a senior citizen of more than 83 years had made some inadvertent mistake in answering the queries put to them; yet, the evidence of the petitioner remained unshaken to show that she is the daughter of Adadul Hoque and the granddaughter of Asmatullah.

10. It is stated that after the hearing proceeded for about 35 minutes, the learned counsel for the petitioner had made a submission to fix the matter for a final hearing on another date as he was not fully prepared and he was only

prepared to argue on the prayer for interim bail for the petitioner. However, as the Court had already spent about 35 minutes of time in hearing the learned counsel for the petitioner, the said prayer was rejected and the Court proceeded with the matter, *moreso*, because in the course of his submissions, the learned counsel for the petitioner had entered into the merits and had referred to all the documents exhibited by the petitioner before the learned Tribunal. Therefore, having spent considerable time in hearing the matter, the prayer for adjournment or deferment of the hearing to another date was refused and the Court had proceeded to hear and dispose of the matter on merit.

11. Per contra, the learned standing counsel for the FT matters has opposed any interference with the impugned opinion and has made his submission in the impugned opinion and in connection with the proof of the documents and contents, specifically with regard to the Gaon Pachayat Certificate. The learned standing counsel for the FT matters has referred to the case of *Rupajan Begum v State of Assam and ors., (2018) 1 SCC 579*. It is submitted that in the said case, the Supreme Court of India laid down the law to the effect that the Gaon Panchayat Certificate was only to establish the shifting of a married woman to the place of residence of her husband. However, it was made clear that the said document is not proof of citizenship and that in order to prove the said certificate, it was the onus was on part of the petitioner to prove the authenticity of the said Certificate as well as the authenticity of the evidence of the Certificate. Accordingly, it is submitted that as the Gaon Panchayat Certificate was not proved by bringing the original records and that the gift of land was not proved in accordance with law, there was no merit in

the defence of the petitioner. In the written statement and the evidence-on-affidavit, the petitioner claims Osefa to be her mother. However, in her cross-examination she stated that her mother is Gulisthan Banu. The father of the petitioner, in his cross-examination, stated that Gulesthan Bibi is not her mother but her mother is Osepha.

12. In the present case in hand, in her cross examination the petitioner has stated that she has not submitted any documents in her own name to defend her case and that she had submitted the land documents and the Panchayat documents in the name of her father. She stated that her father had applied for a Panchayat certificate but she did not know when the same was brought from the office. She had restated that the name of her mother is Gulisthan Banu and that her mother has 7 sons and daughters and that Fatema Khatun is her stepmother who has only one son. In contradiction to the stand taken by the DW-1 in her evidence-on-affidavit, written statement as well as cross-examination, the projected father of the petitioner, appearing as DW-2, made a positive statement that Gulisthan Bibi is not the own mother of the petitioner and that Osepha is the name of the mother of the petitioner. He stated that he did not remember when he gifted his portion of land to his daughter along with the brothers and sisters. If the projected father of the petitioner has gifted his portion of land to the petitioner, in the absence of any entry in the chitha, it cannot be said that the father of the petitioner had title over the land during the time of gift, as the gift is an unregistered gift and in the absence of any entry as to the date of gift, the entries made in the draft chitha, in the opinion of the Court, being only a document in "draft" stage, has not attained finality and thus, would not prove or establish that the petitioner is the daughter of Adadul Hoque, DW-2. DW-2, who is the father of the petitioner,

categorically stated in his cross-examination that Gulisthan Bibi is not the own mother of the petitioner but her mother is Osepha. The evidence of the petitioner to the effect that her mother is Gulesthan Bibi is contrary to that of her projected father. It is hard to believe that a father would forget who had given birth to his daughter. It may be mentioned that in the cross-examination, DW-2 had forgotten who was the mother of the petitioner, but in course of cross-examination he remembered that Osepha is the mother of the petitioner. Therefore, firstly, the land which has been recorded in the name of the petitioner in the "Draft Chitha" was not by way of inheritance and therefore, does not prove that the petitioner is the daughter of the person projected as her father. As far as the evidence of DW-3 is concerned, who is the Lat Mandal, stated that there were no remarks of any entry in the records with regard to the co-pattadar No.4 namely, Asmatullah. Therefore, there is a disruption in the link of the petitioner with her projected grandfather. The said DW-3 had categorically stated that there is no mention as to whether the names of co-pattadar Nos.8 to 17 have been recorded in the law of inheritance. Therefore, on a date when the order of mutation was passed and recorded in the "draft chitha", the father of the petitioner did not have any existing right over the land, but when in the cross-examination DW-2 stated that he had gifted his portion of land to his daughter on the date when the order was passed, the projected father of the petitioner merely had a contingent right over the land. However, the Court hastens to state here that it is not deciding on the issue of right, title and interest of the petitioner over the land in question. The discussion is only limited to finding out as to whether the petitioner has been able to link herself with her projected father and grandfather. It is in this regard that the Court is inclined to hold that the petitioner has failed to establish the same.

13. In so far as the evidence of DW-4 is concerned, in his cross-examination he has categorically stated that he did not find the Certificate Book as well as the Register Book of Ext.8. Therefore, the Gaon Panchayat Certificate (Ext.8) is found to be not in accordance with law, which requires production of the original record. Moreover, the said witness could not identify the signature appearing in the said Certificate.

14. Resultantly, owing to the discrepancy in the name of the mother of the petitioner as well as the lack of direct evidence to show that the petitioner is the daughter of DW-2, the evidence of DW-2 as projected father does not inspire confidence with regard to the proof of relationship between the petitioner and DW-2 as daughter and father respectively.

15. The DW-2 claims Osepha to be the mother of the petitioner, whose name appears in the Voter list of 1977. However, it may be mentioned that only in the cross-examination of the DW-1, the petitioner disclosed her age to be 41 years, which was never disclosed in the written statement or evidence-on-affidavit. The said cross-examination took place on 04.01.2022. Therefore, the petitioner was born between 1980 and 1981. But the existence of her projected mother, as stated by the DW-2, had no existence beyond the Voter list of 1977.

16. Accordingly, the pleadings, evidence and exhibited documents Nos.1 to 17 have failed to establish that the petitioner is a citizen of India and was born out of Indian parents.

17. Resultantly, the challenge to the impugned opinion dated 16.04.2024 passed in F.T. Case No.585/18, arising out of Ref. F.T. Case No.651/MKCR/10 and F.T. Case No. 256/2018, arising out of Ref. F.T. Case

No.372/MKCR/10 fails. The consequences of the said opinion shall follow.

18. The writ petition stands dismissed.

19. The Registry shall send back the records of FT Case No.585/2018 and FT Case No.256/2018 to the learned Tribunal along with a copy of the order to be made a part of the said learned Tribunal.

JUDGE

JUDGE

Comparing Assistant