

GAHC010179632025



2026:GAU-AS:4188-DB

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

Case No. : WP(C)/4781/2025

RIAJUL SHEIKH @ RIAZUL
S/O SAHAZAMAL SEIKH, R/O VILL- FEKAMARI PART-II, P.O.- FEKAMARI,
P.S.- SOUTH SALMARA, DIST- SOUTH SALMARA MANKACHAR, ASSAM,
PIN-783135

VERSUS

THE UNION OF INDIA AND 7 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF HOME AFFAIRS, SHASTRI BHAWAN, TILOK MARG, NEW DELHI-1

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

3:THE DISTRICT COMMISSIONER
SOUTH SALMARA MANKACHAR
P.O.- FEKAMARI
DIST- SOUTH SALMARA MANKACHAR
ASSAM
PIN-783135

4:THE DEPUTY COMMISSIONER OF POLICE (B)
CITY
GUWAHATI
DIST- KAMRUP (M)
ASSAM
PIN-781005

5:THE SUPERINTENDENT OF POLICE (B)
SOUTH SALMARA
DIST- SOUTH SALMARA MANKACHAR
ASSAM
PIN-781005

6:THE STATE CO-ORDINATOR
NATIONAL REGISTRATION (NRC)
ASSAM
BHANGAGARH
GUWAHATI-07

7:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-1

8:THE ELECTORAL REGISTRATION OFFICER
SOUTH SALMARA MANKACHAR
DIST- SOUTH SALMARA MANKACHAR
ASSAM
PIN-78313

Advocate for the Petitioner : MR. P K DEKA, MS. N M LONGKENG,R BORAH,J MEDHI,MR.
R. KARIM,MR. P DAIMARY

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

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN

| | |
|---------------------------|---------------------------------------|
| For the petitioner | : Mr. P.K. Deka, Advocate. |
| For Union of India | : Mr. H. Gupta, CGC. |
| For FT and Border matters | : Mr. J. Payeng, standing counsel. |
| For State respondent | : Mr. H.K. Hazarika, Govt. Advocate. |
| For ECI | : Mr. Mr. A.I. Ali, standing counsel. |

Date on which judgment is reserved : 18.12.2025

Date of pronouncement of judgment : 24.03.2026

Whether the pronouncement is of the operative part of the judgment? : No

Whether the full judgment has been Pronounced? : Yes

JUDGMENT AND ORDER

(CAV)

(K.R. Surana, J)

Heard Mr. P.K. Deka, learned counsel for the petitioner. Also heard Mr. H. Gupta, learned CGC for respondent no.1; Mr. J. Payeng, learned standing counsel for FT and Border matters, representing respondent nos. 2, 5, 6 and 8; Mr. H.K. Hazarika, learned Govt. Advocate for respondent nos. 3 and 4; and Mr. A.I. Ali, learned standing counsel for respondent no.7.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Riajul Sheikh @ Riazul, has assailed the impugned opinion dated 28.08.2019, passed by the learned Member, Foreigners Tribunal, Kamrup (M) 2nd, Guwahati, in F.T. Case No. 114/2017. By the said order, the petitioner was declared to be a foreigner from Bangladesh, who had entered into Assam, India, after 24.03.1971.

3) On receipt of notice, the petitioner had appeared and filed his written statement on 29.04.2019, wherein he had annexed 19 documents. The petitioner had denied the allegation that he was a foreigner. He had projected that his great grand father was Bhikhu Sheikh; his grandfather was Taripullah Sheikh, and his parents were Sahajamal Sheikh and Oheja Khatun. It was stated that his great grandfather along with Bonjomu Sheikh had purchased a plot of

land on 11.02.1915; his grandfather was a recorded *pattadar* in respect of a plot of land situated in revenue village- Kathalbari, in the *jamabandi* for the period 1961, dated 05.12.1961 vide *Khatian* no. 381, *Touzi* no. 12. It was also stated that the name of his great grandmother, grandfather and uncle appeared in the voters list of 1966, as resident of Village- Kathalbari No.2. Moreover, the petitioner had referred to the names of the persons appearing in other voters lists.

4) In support of his defence, the petitioner had examined himself as DW-1. He had also examined his projected father, Sahajamal Sheikh as DW-2, Moktar Ali, Bench Assistant of Settlement Office as DW-3, and Nurul Islam Jodder in Assistant Settlement Office, Mankachar, as DW-4 and he had exhibited 19 (nineteen) documentary exhibits. The said witnesses were examined by the learned Tribunal and then discharged.

5) The learned Tribunal, after appreciating the evidence, discarded the evidence on the ground that it could not be ascertained that the person named in the voters list as Taripullah Sheikh was the same person named as Taripullah Sheikh in the land documents and it was observed that two different persons may have the same name and this case being for deciding citizenship of a person, the petitioner had to establish his legacy with concrete evidence with his parents and/or grandparents from 24.03.1971. Thus, it was held that the petitioner was a foreigner who had illegally entered into India after 24.03.1971.

6) As the impugned opinion dated 28.08.2019, was assailed after 5 years, 11 months, 15 days, by filing this writ petition on 12.08.2025, the learned counsel for the petitioner was asked to address the Court on delay and laches apart from making his submissions on merit.

7) The learned counsel for the petitioner has stated that the petitioner is a mason (*raj mistry*), he belongs to the marginalized class. Moreover, he was not given proper legal advice. Accordingly, it was submitted that the merit of the case be also examined. On merit, it has been submitted that the evidence of the petitioner was discarded on presumption and not on the strength of lack of evidence.

8) Per contra, the learned standing counsel for the FT and Border matters has questioned the maintainability of this writ petition on the ground of delay and laches. He has also made his submissions

9) On examination of the Tribunal's records, it is seen that in support of his defence, the petitioner had submitted his written statement, wherein, he had annexed 19 documents. As the statements made in the written statement were replicated in the evidence-on-affidavit of the petitioner, who had had examined himself as DW-1, the same is not referred here.

10) In his evidence-on-affidavit, the petitioner had reiterated the statements made in his written statement. He had stated that he was neither interrogated by the Enquiry Officer nor asked to produce any document. Thus, it was stated that the enquiry was conducted without giving him a reasonable opportunity. He had also stated that he is a citizen of India in terms of Section 5 of the Citizenship Act, 1955 and was born to his parents, namely, Sahajamal Sheikh and Oheja Khatun of village- Fekamari under South Salmara Police Station, in the district of South Salmara Mankachar. On 20.06.1984 and has been brought up in the said locality, where he is residing with other family members. His great grandfather, namely, Bhikhu Sheikh and Bonjomu Seikh had purchased a plot of land on 11.02.1915. The name of his grandfather Taripullah

Sheikh, son of Bhikhu Sheikh was recorded in *Khatian* no. 381, *Touji* no. 12, in respect of a plot of land situated in village- Kathalbari. The name of his father is recorded in respect of a plot of land covered by *dag* no. 27(old)/243(new), of *patta* no. 381 (Old)/404(new). He had also stated that his name is also recorded alongwith other family members in respect of land covered by *dag* no. 384 of *patta* no. 108 of village- Kathalbari, Circle- Mankachar, under Dist. Dhubri (now South Salmara Mankachar).

11) He had further stated that the name of his grandfather and great grandmother appeared in the voters list of 1960 of village- Bekar Dhoba, P.O. Puran Diara, P.S. Mankachar, in the district of Goalpara. The names of his grandfather, great grandmother and uncle appeared in the voters list of 1966 of village- No.2 Kathalbari, P.O. Puran Diara, P.S. Mankachar, under 31 No. Mankachar LAC in the then district of Goalpara. The name of his grandfather and uncle appeared in the voters list of 1970 of the same village- No.2 Kathalbari, under 31 No. Mankachar LAC. He had stated that the name of his grandparents appeared in subsequent voters lists. The name of his parents appeared in the voters list of 1979 in 21 No. Mankachar LAC, when they were 24 and 21 years respectively. After 1979, his parents migrated to Fekamari from Kathalbari and enrolled their names in the voters list of the said village and voters list of 1979, 1985, 1989, 1994, 2005 were referred to. On attaining majority, his name appeared in the voters list of 2010 and 2018. His parents and he have voter ID. He was a student of Fekamari M.E. School and in the year 1993, he had passed Class-I and was promoted to Class-II.

12) The petitioner had exhibited the following 19 (nineteen) documents, viz., registered sale deed (Ext.1); certified copy of *khatian* of 1961

(Ext.2); certified copy of draft *jamabandi* (Ext.3); certified copy of draft chitha (Ext.4); certified copy of voters list of 1960 (Ext.5); certified copy of voters list of 1966 (Ext.6); certified copy of voters list of 1970 (Ext.7); certified copy of voters list of 1979 (Ext.8); certified copy of voters list of 1985 (Ext.9); certified copy of voters list of 1989 (Ext.10); certified copy of voters list of 1994 (Ext.11); certified copy of voters list of 2005 (Ext.12); certified copy of voters list of 2010 (Ext.13); certified copy of voters list of 2018 (Ext.14); EPIC of his parents (Ext.15 and Ext.16); his EPIC (Ext.17); School Transfer Certificate (Ext.18); and Panchayat Certificate (Ext.19).

13) In response to the questions put by the learned Tribunal, DW-1 had stated his name and stated that he is a mason (*raj-mistry*). His father is Sahajamal Sheikh and mother's name is Oheja Bibi and the name of his paternal grandfather is Late Taripullah Sk and the name of his grandmother is Late Basiran. He is divorced and has a daughter, namely, Baby. They are nine siblings, 5 brothers and 4 sisters and their names are Nursanu Sk, Rofiqul Sk, Sahena Khatun, Riazul Sk, Moklesur Sk, Shaheda Khatun, Sajeda Khatun, Saddam Sk, Masuda Khatun and he was 4th amongst siblings. His father had 11 siblings, 6 brothers and 5 sisters, namely, Mohammad Ali Sk, Sobijan, Akkar Sk, Alema Bibi, Abul Hussain, Kasem Ali Sk, Sahajamal Seikh and he could not remember names of other siblings of his father. He could not remember how many siblings his great grandfather had. He was born in Fekamari and he and his parents reside in the same locality of Fekamari village under South Salmara P.S. He cast his vote in Fekamari and he had cast his first vote in 2005. He had stated that except him, no case has been registered against any of his family member in any Foreigners Tribunal. He had stated that he had exhibited 19

documents in support of his claim as an Indian citizen.

14) The petitioner had examined his projected father, namely, Sahajamal Sheikh as DW-2. In his evidence-on-affidavit, DW-2 had reiterated the statements made by the petitioner in his evidence-on-affidavit and stated that he was the son of Taripullah Sheikh @ Taripullah Dewani and Basiran Nessa and also stated that the petitioner was his son. In response to Tribunal's queries, he had stated that his father's name is Taripullah Sk, his mother's name is Late Basiran. The petitioner is his 4th son. His wife's name is Aheja Khatun and he had 9 (nine) children, 5 sons and 4 daughters, namely, Nursanu Sk, Rofiqul Sk, Sahena Khatun, Riazul Seikh, Moklesur Sk, Shaheda Khatun, Sajeda Khatun, Saddam Sk, Masuda Khatun. He had stated that they were 11 siblings, 6 brothers and 5 sisters, namely, Mohammad Ali Sk, Sobijan, Akkar Sk, Alema Bewa, Abul Hussain Sk, Kasem Ali Sk, Sahajamal Seikh, Ali Azad, Toimon Bewa, Late Ombhan Bibi, Sobijan Bewa. His father had 9 (nine) siblings, 6 sisters and 3 brothers, namely, Nipusha Sk, Taripullah Sk, Kobad Ali Sk, Fuljan Bibi, Niljan Bibi, Noyani Bewa, Peto Bewa, Kajal Bewa, Kanchan Bewa. He had stated that he and his family members and his sons reside in the same locality of village-Fekamari under South Salmara P.S. He had stated that he was born in Kathalbari under Mankachar P.S. They shifted to Fekamari from Kathalbari in around 1980. He had stated that he cast his vote in Fekamari and first time he had cast his vote in 1979. He had come to the Tribunal to adduce evidence on behalf of his son Riazul Sheikh.

15) The petitioner had also examined Moktar Ali, Bench Assistant in Settlement Office, Dhubri and Kokrajhar District at Dhubri as DW-3. In his examination-in-chief, DW-3 had stated that his father's name is Late Monser Ali.

He had come to adduce evidence in connection with F.T. Case No. 114/2017 (Union of India v. Riazul Seikh). He had exhibited the final *khatian* of land covered by *Khatian* no. 381, Touzi no. 12 of village- Kathalbari, Pargana- Karaibari, P.S. Mankachar, Dist. Goalpara, which is in the name of Taripullah Sk, son of Bhikhu Dewani and 2 (two) others. He had stated that they issue Final *Khatian* on the basis of application accompanied with the revenue receipt of that land. On questions by the learned Tribunal, DW-3 had stated that as per order dated 04.04.1973 of SDC, land covered by *Khatian* no. 381, Dag no. 27, area measuring 2 katha- 9 lecha is mutated in the name of Taripullah on the basis of registered sale deed. He had come to adduce evidence as authorized by Nayan Jyoti Bhagawati, Settlement Officer, Dhubri and Kokrajhar District at Dhubri. He had stated that he has produced original *khatian* register.

16) The petitioner had also examined Nurul Islam Jodder as DW-4. He was the *Lot* Mandal in Assistant Settlement Office Mankachar. In his examination-in-chief, he had stated that the name of his father is Montaz Ali Jodder. He had come to adduce evidence in connection with F.T. Case No. 114/2017 (Union of India v. Riazul Seikh). He had exhibited as Ext.3, the Draft *Jamabandi* copy of surveyed village Kathalbari, Circle- Mankachar for land covered by Patta No. 381 (Old)/404 (new), Dag no. 27 (old)/243 (new). He had stated that vide mutation order dated 05.01.2005 of the Assistant Settlement Officer, the Draft chitha record was corrected in the name of Sabijan Bewa and Shahajamal Sheikh, son of Taripullah Sheikh at serial nos. 2 and 3 on inheritance. He had exhibited as Ext.4, the certified copy of Draft chitha of village- Kathalbari, dist. Dhubri for land covered by Dag No. 384 (new)/ 276(old) and K.P. Patta no. 82 (old)/339 (new), measuring 2 bigha, 2 katha, 16 lecha,

mutated by order dated 17.08.2018, in the name of Riazul Sheikh and others, son of Sahajamal Sheikh in place of Taripullah Sheikh. On the query of the learned Tribunal, DW-4 had stated that he had come to produce documents in connection with F.T. Case No. 114/2017 as authorized by Assistant Settlement Officer, Mankachar Revenue Circle, Sri Bikram Aditya Bora, ACS. He had produced Draft Chitha Register covering period from 1980 till date and Draft *Jamabandi* Register covering period from 1980 till date for village- Kathalbari.

17) It is seen that the learned Tribunal, after extensively quoting the pleadings and evidence of the witnesses, held that it is not confirmed that the person named Taripullah Sheikh, son of Bhikhu Sheikh/ Dewani in the voter list of 1960, 1966 and 1970 is the same person named as Taripullah Sheikh, father of Sahajamal in the voter lists of 1979, 1985, 1989, 1994, 2005, 2010 and 2018. From the land documents, Ext.2 and Ext.3, it is established that the person named in Ext.2, Taripullah Sheikh, son of Bhikhu Dewani, is the father of Sahajamal Sheikh as the land mentioned in Ext.2 was mutated on inheritance in 2005 in the name of Sahajamal Sheikh, son of Taripullah Sheikh. However, the said Ext.2 and Ext.3 were discarded as they were post 24.03.1971 documents. It was held that from the voters list and land documents, it cannot be ascertained that the person named in the voters list as Taripullah Sheikh is the same person named as Taripullah Sheikh in the land documents and it was observed that two different persons may have the same name and this case being for deciding citizenship of a person, the petitioner has to establish his legacy with concrete evidence with his parents and/or grandparents from 24.03.1971. Thus, it was held that the petitioner is a foreigner who has illegally entered into India after 24.03.1971.

18) In this case, the petitioner, in his written statement, has pleaded about the voters lists of 1966, 1970, 1979, 1985, 1989, 1994, 2005, 2010 and 2018 (Ext.5 to Ext.14). The names contained in the exhibited voter lists are referred to in paragraph 11 above. The learned Tribunal has taken note of the names contained in the exhibited voters lists, as stated by the petitioner as DW-1 in his evidence-on-affidavit. The learned Tribunal has also taken note of the land documents and the names referred to in the land revenue records.

19) The learned Tribunal had held that from Ext.2 and Ext.3, it is established that the person named in Ext.2, Taripullah Sheikh, son of Bhikhu Dewani, is the father of Sahajamal Sheikh and that the land mentioned in Ext.2 was mutated in the name of Sahajamal Sheikh by way of inheritance in the year 2005. Thus, the learned Tribunal had discarded the exhibited land documents, i.e. Ext.2 and Ext.3, as those were post 24.03.1971 documents.

20) The said two exhibit nos. 2 and 3 are analyzed below:-

a. The finding relating to Ext.2 is correct. As per the contents of Ext.2, vide order dated 04.04.1973, passed by the Sub-Deputy Collector, along with the name of the *khatian* holder, the name of Manglu was mutated in respect of 2 katha- 5 lecha land and the name of Taripullah Sheikh was mutated in respect of 2 katha- 9 lecha land, covered by Dag No. 27, *Khatian* no. 381 of village- Kathalbari, by way of purchase and possession. In Ext.2, the name of the father of Taripullah Sheikh is stated as Bhikhu Sheikh.

b. As per the certified copy of the Draft *Jamabandi* of village- Kathalbari (Ext.3), the names of original *pattadars* were (1) Manglu Sheikh, and (2) Taripullah Sheikh, son of Bhikhu Dewani. The names of

Sobijan Bewa and Sahajamal Sheikh were entered at serial nos. 2 and 3 vide order dated A.S.O., vide Chitha mutation order dated 05.01.2005. Therefore, as per Ext.3, there appears to be a link between Taripullah Sheikh, Sobijan Bewa and Sahajamal Sheikh.

c. As per the reply to the query of the learned Tribunal, Riazul Sheikh (DW-1) and Sahajamal Sheikh (DW-2) had both stated that Taripullah Sheikh and Sobijan Nessa and nine others were siblings.

d. Therefore, as the names of Sobijan Bewa and Sahajamal Sheikh were entered by way of inheritance by order dated 05.01.2005, but the name of Taripullah Sheikh appeared along with Manglu Sheikh as the original *patta* holder.

e. Accordingly, though the finding that the name of Sahajamal Sheikh was mutated in Ext.2 by way of inheritance in the year 2005, though correct, but the learned Tribunal had either overlooked or failed to appreciate and consider the entry of the name of Taripullah Sheikh, which pre-existed the mutation order of 05.01.2005.

21) Thus, in the considered opinion of the Court, Ext.2 and Ext.3 ought not to have been discarded on the ground that they were post 24.03.1971 documents.

22) The learned Tribunal has also not considered the reply given by the DWs to the Tribunal's queries. By those queries, the learned Tribunal had asked questions which allowed DW-1 and DW-2 to disclose the names of all members of the family of Taripullah Sheikh, and Sahajamal Sheikh, which were hitherto not pleaded by the petitioner in his written statement. Be it reiterated

that the learned Tribunal had held that the Ext.2 was linked to Ext.3.

23) Moreover, as the learned Tribunal has held that Ext.2 has link with Ext.3, the learned Tribunal would re-appreciate other exhibited documents afresh.

24) Thus, in light of the discussions above, the impugned opinion is found to be vitiated by non-consideration of the Ext.2 and Ext.3 in its correct perspective.

25) Accordingly, the Court is of the considered opinion that as there appears to be incorrect appreciation of the contents of Ext.3, the impugned opinion is liable to be interfered with, subject to the pre-condition of payment of cost for the delay in assailing the impugned opinion after a lapse of 5 years, 11 months, 15 days, which is quantified at Rs.5,000/- (Rupees Five thousand only). The said cost shall be deposited by the petitioner with the Office of the Member Secretary, District Legal Services Authority, Kamrup (Metropolitan), Guwahati, within a period of one month from the date of this order, i.e. by 17.04.2026.

26) It is made clear that as deposit of cost is made condition precedent to the setting aside of the impugned opinion dated 28.08.2019, passed by the learned Member, Foreigners Tribunal, Kamrup (M) 2nd, Guwahati, in F.T. Case No. 114/2017, the failure on the part of the petitioner to deposit such cost within the time allowed, would lead to recalling of this order on 18.04.2026, without any further order of the Court, which in turn would revive the said opinion dated 28.08.2019.

27) On deposit of cost, the petitioner shall produce a certified copy of this order as well as proof of deposit of cost before the learned Member,

Foreigner's Tribunal on or before 30.04.2026 and await for further order that may be passed by the learned Tribunal.

28) Thus, this writ petition is conditionally allowed, which is subject to pre-condition of deposit of cost.

29) The Registry shall return back the Tribunal's records expeditiously along with a copy of this order to be made a part of the record by the said learned Tribunal for future reference.

30) The Registry shall also send a copy of this order to the Member Secretary, District Legal Services Authority, Kamrup (M), Guwahati, for information.

JUDGE

JUDGE

Comparing Assistant

Private Secretary