

GAHC010216022025



2026:GAU-AS:2835-DB

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

Case No. : WP(C)/616/2026

DALIMA KHATUN
W/O- SAIDUR RAHMAN, (D/O- LT. BARKAT ALI), R/O- VILL- BALIGAON,
P.S. ORANG, DISTRICT- UDALGURI, 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 STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

3:THE DISTRICT COMMISSIONER OF ODALGURI
P.O. AND DIST. UDALGURI (BTR)
ASSAM
PIN- 784509

4:THE SUPERINTENDENT OF POLICE (BORDER)
UDALGURI
P.O. AND DIST. UDALGURI
ASSAM
PIN- 784509

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI-1

6:THE STATE CO-ORDINATOR OF NRC
ASSAM
HOUSEFED COMPLEX
2ND FLOOR
BANPHOOL NAGAR
DISPUR
GUWAHATI-

Advocate for the Petitioner : MR. M AHMED, MR. M M ZAMAN

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

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

ORDER

Date : 25.02.2026
(K.R. Surana, J)

Heard Mr. M. Ahmed, learned counsel for the petitioner. Also heard Ms. A. Gayan, learned CGC for respondent no.1; Mr. G. Sarma, learned standing counsel for the respondent nos. 2, 4 and 6; Mr. A.I. Ali, learned standing counsel for respondent no.5; Mr. P. Sarmah, learned Addl. Senior Govt. Advocate for respondent no.3.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Dalima Khatun, has assailed the impugned opinion dated 06.07.2021, passed by the learned Member, Foreigners Tribunal-2ND, Darrang, Mangaldai, in F.T. 2ND Case No. 1039/2011, arising out of Ref. F.T. Case No. 48/2011, by which she was declared to be a foreigner or illegal migrant of stream of post 25.03.1971.

3. This writ petition was filed on 18.09.2025, to assail the opinion dated 06.07.2021, i.e. after there has been an extraordinary delay of 4 years, 2

months, 13 days (or 1535 days). Moreover, at the time of filing the writ petition, certain defects were noted, which were belatedly rectified only on 04.02.2026, i.e. after 4 months, 14 days. Hence, the matter was heard on delay and laches on part of the petitioner to assail the impugned opinion.

4. The learned counsel had submitted that in paragraph 18 of the writ petition, the petitioner has taken a stand that due to extreme financial hardship, she could not file the writ petition on time.

5. Per contra, the learned standing counsel for the FT, Border matters and NRC had submitted that the explanation given for the inordinate delay is vague and insufficient and not supported by any documents or any other cogent and reliable material.

6. The learned CGC and the learned Addl. Senior Govt. Advocate for the other appearing respondents have adopted the submissions made by the learned standing counsel for the FT, Border matters and NRC.

7. The petitioner, on receipt of notice, has appeared and filed her written statement, wherein it has been stated that she was born on 20.07.1985 and born and brought up at village Singimari, in Bongaigaon District. Later, after she got married with Sahidul Rahman, she is now residing at village- Baligaon in Udalguri District with her husband and two children. The name of her father appeared in the voters list of 1966 and 1970 of 71 No. Rangamati LAC of village- Kharpari Chapari, as Barkat Ali, son of Abdul Hoque. In the year 1963/1964, one annual *khiraj patta* no. 38 was issued in the name of her father, Barkat Ali, son of Abdul Hoque. One voters identity card and PAN card has been issued in her name. The name of her father appeared in the voters list of 1997 of 72 No. Barsala LAC of village- Singimari Bangaligaon, as Barkat Ali, son of

Abdul Hoque. Therefore, it was prayed that the petitioner be declared as an Indian.

8. The petitioner had examined herself as DW-1 and in her evidence-on-affidavit, the petitioner had reiterated the statements made in her written statement and in support of her statement, the petitioner had exhibited the following documents, viz., (i) certificate issued by the *Gaonburah* of Village- Singimari Bangaligaon (Ext.1); (ii) certificate issued by the *Gaonburah* of Village- Baligaon (Ext.2); (iii) photocopy of voters list of 1966 (Ext.3); (iv) annual *khiraj patta* no. 38 of the year 1963/64 (Ext.4); (v) copy of her PAN card (Ext.5). It may be stated that without exhibiting the voters list of 1970 and 1997, copied the said documents were annexed as Annexure-A and Annexure-B respectively. In her cross-examination, she had stated that they were 12 brothers and sisters and she was the 11th girl. Her denial of the suggestion that voters list of 1966 was a photocopy and not admissible was recorded under objection. She had stated that the annual *khiraj patta* (Ext.4) was in the name of Barkat Sheikh and she had denied that Barkat Sheikh was not related to her. She had also denied that she was not an Indian citizen.

9. The learned Tribunal, vide impugned opinion, by referring to the exhibited documents, had held that mere filing of documents and picking some similar names from such documents so as to establish her link with the said person as father does not amount to proof. Accordingly, it was held that the petitioner had failed to discharge her burden of proof under Section 9 of the Foreigners Act, 1946 that she is not a foreigner but an Indian. Resultantly, the opinion was passed against the petitioner, thereby declaring her to be a foreigner or an illegal migrant of stream of post 25.03.1971.

10. The learned counsel for the petitioner had submitted that the evidence of the petitioner was discarded because of some discrepancies in the name of her projected father in those documents. It was further submitted that the petitioner has more documents to show that she was an Indian. Hence, it was submitted that the matter be remanded back for a fresh adjudication after giving the petitioner one more opportunity to prove other documents so as to establish her Indian citizenship.

11. It *ex facie* appears that the statement made by the petitioner in her written statement, in so far as it concerns the name of the person in whose name annual *khiraj patta* was issued is not true. In the written statement it has been stated in paragraph 7 that in the year 1963/1964, one annual patta no. 38 was issued in the name of Barkat Ali, whereas, as per the photocopy of the document annexed at Annexure 7, the name of the person in whose name the *patta* was issued is Abdul Seikh, father- Abdul. It is not the pleaded case of the petitioner in her written statement that Barkat Seikh, in whose name the annual patta (Ext.4) was issued in 1963/1964 and Barkat Ali, the person whose name appears in the purported voters list of 1966, 1970 and 1997 and projected as father of the petitioner in the PAN card (Ext.5) are the same persons. Moreover, the petitioner has not exhibited the voter lists of 1970 and 1997.

12. It may be stated that the photocopy of the said annual *khiraj patta*, which is annexed as Annexure-7 to the writ petition does not contain the description and other particulars of the land for which the said *patta* was issued. The person whose name appears in the voter list of 1966 (Ext.3) is a voter of village- Kharpari Chapari. As per *Gaonburah's* certificate (Ext.1), the petitioner is a resident of Singimari Bangali. As per *Gaonburah's* certificate (Ext.2), the petitioner is a resident of Baligaon. In the PAN card, the date of birth of the

petitioner is 20.07.1985, but the petitioner has not mentioned the date of birth in her written statement or in her evidence-on-affidavit. She had stated in her cross-examination that they are 12 brothers and sisters, but such disclosure has not been made in her written statement and evidence-on-affidavit. The entire family is not there in the exhibited voters lists. Thus, except for a mere statement in the written statement and evidence-on-affidavit filed by the petitioner, there is no cogent, admissible and reliable document to establish the link of the petitioner with her projected father, whose existence in India must be established prior to the cut-off date of 25.03.1971, but except for the annual *khiraj patta* (Ext.4), no other document is prior to the said cut-off date of 25.03.1971.

13. Therefore, on examination of the pleadings and evidence, as discussed hereinbefore, the Court is of the considered view that the petitioner has failed to demonstrate that she has discharged her burden of proof, as required under Section 9 of the Foreigners Act, 1946 that she is not a foreigner but an Indian citizen. Thus, the impugned opinion expressed by the learned Foreigners Tribunal is not found to be perverse or untenable on any count.

14. The petitioner, in order to explain the inordinate delay in assailing the impugned opinion, has projected that she is extremely poor. The said statement cannot be *ex facie* believed because unless the petitioner has a taxable income, she has no requirement of a PAN card. Moreover, a PAN Card does not contain the address and therefore, it does not serve the purpose of being carried as an identity card.

15. In respect of inordinate delay and laches in assailing the impugned opinion after a lapse of 4 years, 2 months, 13 days (or 1535 days), it may be stated that there is no period of limitation prescribed for filing a writ

petition, but unless the petitioner demonstrates good and cogent reason, delay and laches would disentitle the petitioner to equitable relief on the principle that delay defeats equity. If one needs any authority on the point, the decision of the Supreme Court of India in the case of *Mrinmoy Maity v. Chhanda Koley*, 2024 INSC 314: (2024) 0 Supreme(SC) 351, and *Chairman/Managing Director, U.P. Power Corporation Ltd. V. Ram Gopal*, (2020) 13 SCC 225: (2020) 0 Supreme(SC) 93 (Full Bench). In the later case, while approving the decision of the Supreme Court of India in the case of *P.S. Sadasivaswamy v. State of Tamil Nadu*, (1975) 1 SCC 152 and *S.S. Balu v. State of Kerala*, (2009) 2 SCC 479, it was held to the effect that limitation does not strictly apply to a proceeding under Articles 32 and 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time and the High Courts were cautioned by observing that prolonged delay of many years ought not to have been overlooked or condoned. Paragraph 16 thereof [as extracted from (2020) 0 Supreme(SC) 93] is quoted below:-

16. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In SS Balu vs. State of Kerala, (2009) 2 SCC 479 this Court observed thus:

"17. It is also well-settled principle of law that "delay defeats equity". ...It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment."

16. Thus, except for an absolute vague statement that the petitioner is poor, no reason has been assigned for the petitioner's failure approach this Court within a reasonable time of passing of the impugned opinion. The opinion was passed on 06.07.2021, but the petitioner had applied for and received the certified copy on 17.05.2023. However, she has filed this writ petition on 18.09.2025. The Filing Section had notified 5 (five) defects, which was rectified only after 4 months, 14 days. Thus, the petitioner, despite full knowledge of the consequences of being declared as a foreigner, has allowed the said opinion to attain finality for over four years. Thus, the delay is found to be not properly explained.

17. The Supreme Court of India, in paragraph 46 of the case of *Urban Improvement Trust v. Vidhya Devi, 2024 INSC 980: (2024) 0 Supreme(SC) 1189*, has reiterated the law that undue delay in approaching the Court can be a ground for refusing relief and it has been expressed that only in exceptional cases, delay can be condoned. The said paragraph 46 [extracted from *(2024) 0 Supreme(SC) 1189*] 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."

18. In respect of the legal proposition that delay and laches is 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."

19. 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.

20. Moreover, this Court, in the case of *Ajbahar Ali v. Union of India, (2025) 0 Supreme (Gau) 763*, had held to the effect that the plea of compliance with 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. A similar opinion has also been expressed by this

Court in the case of *Abu Bokkor Siddique v. Union of India*, 2019 (1) GLT 813.

21. It must be taken note of the fact that the Supreme Court of India, in the case of *Sarbananda Sonowal (supra)*, in paragraph 73, has held to the effect that the procedure under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964 is just, fair and reasonable and does not offend any constitutional provision. In paragraph 63, the Supreme Court of India had observed that there can be no manner of doubt that the State of Assam is facing external aggression and internal disturbance on account of large-scale illegal migration of Bangladeshi nationals and that it, therefore, becomes the duty of the Union of India to take all measures for protection of the State of Assam from such external aggression and internal disturbance as enjoined in Article 355 of the Constitution of India. In paragraph 70, it was observed that the influx of Bangladeshi nationals who have illegally migrated into Assam pose a threat to the integrity and security of the North Eastern region and that their presence has changed the demographic character of that region and the local people of Assam have been reduced to a status of minority in certain districts.

22. Be that as it may, as the issue of citizenship has been raised, notwithstanding the delay and laches, the Court has carefully examined the materials available in the writ petition and on merit, the opinion expressed by the learned Tribunal cannot be faulted with on any count. Thus, the challenge to the impugned dated 06.07.2021, passed by the learned Member, Foreigners Tribunal- 2nd, Darrang, Mangaldai, in F.T. 2ND Case No. 1039/2011, arising out of Ref. F.T. Case No. 48/2011, by which she was declared to be a foreigner or illegal migrant of stream of post 25.03.1971, fails.

23. Resultantly, this writ petition is dismissed on merit as well as on

account of delay and laches at the “motion stage” without issuing notice upon the respondents. The consequences of the said opinion shall follow.

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 Foreigners Tribunal for future reference.

JUDGE

JUDGE

Comparing Assistant