

GAHC010222882019



2026:GAU-AS:8091

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

Case No. : WP(C)/6885/2019

USHA RANI DAS
D/O- SRI NARESH CH. DAS, W/O- SRI SUSANTA DAS, R/O- VILL-
DHEKIAPELOA, P.O. GARUBANDHA, P.S. MISSAMARI, DIST- SONITPUR,
ASSAM, PIN- 784506

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECY., HOME AFFAIRS, NEW DELHI, DELHI-01

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

3:THE ELECTION COMMISSION OF INDIA
NEW DELHI-01

4:THE SPECIAL COUNSEL FOR NRC
GOVT. OF ASSAM
GHY-01

5:THE SPECIAL COUNSEL OF FOREIGNERS TRIBUNAL
GOVT. OF ASSAM
GHY-01

6:THE SUPERINTENDENT OF POLICE (B)
SONITPUR
ASSAM
PIN- 784001

7:THE DY. COMMISSIONER
DIST- SONITPUR
ASSAM
PIN- 78400

-BEFORE-
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
HON'BLE MR. JUSTICE PRANJAL DAS

Advocated for petitioners:

Mr. S. C. Das

Advocate for Respondents:

Mr. G. Sarma, SC, Home Deptt. & NRC

Mr. P. Sarma, GA, Assam,

Mr. A.I. Ali, SC, ECI

Mr. S.S. Roy, CGC.

Date on which judgment is reserved : 27.05.2026

Date of pronouncement of judgment : 09.06.2026

Whether the pronouncement is of

the operative part of the judgment? : No

Whether the full judgment has been Pronounced? : Yes

JUDGMENT & ORDER (CAV)

(Pranjal Das, J)

1. Heard Shri S.C. Das, learned counsel for the petitioner. Also heard Shri G. Sarma, learned Standing Counsel, Home Department and N.R.C.; Shri P. Sarma, learned State Counsel, Assam; Shri S.S. Roy, learned C.G.C and Shri A.I. Ali, learned Standing Counsel, E.C.I.
2. The petitioner, namely, *Usha Rani Das* has filed the instant writ

petition under Article 226 of the Constitution of India against the judgment and opinion dated 25.06.2019 passed by the learned Member, Foreigners Tribunal No. 8, Sonitpur, Tezpur in F.T.(8) Case No. 3644 of 2018 arising out of Reference No.{TZP(B) Case No.332/07}, whereby, she has been declared a foreigner post 1971.

3. The facts in briefs may be narrated as follows:-

4. The Superintendent of Police Border, Sonitpur, vide Reference No. TZP(B) Case No.332/07 referred the case of the petitioner expressing doubts over her nationality and prayed before the Tribunal to determine whether she is a foreigner or an Indian national. The said reference was registered into F.T.(8) Case No. 3644 of 2018 and notice was issued whereupon, the petitioner as proceedee appeared and filed her written statement. She also adduced evidence during the proceeding of herself as DW-1 and that of her younger brother as DW-2. She also exhibited certain documents in favour of her contention that she is an Indian citizen.

5. However, after completion of the proceeding, the learned Tribunal vide order dated 25.06.2019 returned the opinion that the petitioner proceedee is a foreigner, who has entered India/Assam on or after 25.03.1971 and liable to be deported to her original territory. It was directed that till then the proceedee was to be kept as an internee at the detention centre in accordance with law.

6. In the written statement, the petitioner contended that she is an Indian citizen by birth, having been born and brought up at village-

Betagaon under the jurisdiction of Paneri P.S. in the district of Sonitpur, Assam. It was stated that the parents of the petitioner were also Indian citizens. She stated about her marriage with Susanta Das in 1982, whereupon she shifted to village- Dhekiapelua under Missamari Police Station in the district of Sonitpur. She mentioned about her brothers Lakhan Das @ Laxan, Nayan Das, Ujjal Das and two sisters Joysundari Das and Jyoshna Das. She stated that she herself has three sons and two daughters. She stated that on 17.06.1969, Naresh Chandra Das, father of the petitioner, purchased a plot of land through registered sale deed from one Jugesh Chandra Das. She also stated that her father also registered his name before the Registering Authority, pursuant to which a certificate was issued by the SDO, Mangaldoi, Darrang, Assam. She mentioned about the figuring of the name of her father in the electoral roll of 1971 at serial No. 77. She further stated that her name along with that of her husband appeared in the electoral roll in 1997 against serial Nos. 5 and 4 respectively. She has mentioned about the certificate given by the Gaonbura and summing up her pleadings, she contends that the reference was not justified and that she is a citizen of India.

7. During the proceedings, the petitioner adduced evidence as DW-1 where she reiterated that she was a citizen of India by birth, born and brought up at village-Betagaon in Sonitpur district and that her parents were also Indian citizens. She stated about the sale deed of 17.06.1969 with regard to land purchased by her father and exhibited the same as *Exhibit-A*. She also stated about registering of the name of her father before the Registering Authority, pursuant to

which a certificate of registration was issued, which she exhibited at *Exhibit-B*. She exhibited the electoral roll of 1971 as *Exhibit-C*, where her father Naresh Chandra Das was enlisted at serial No. 77. She also exhibited the electoral roll of 1997 as *Exhibit-D*, where her name and that of her husband appeared at serial Nos. 4 and 5 respectively. She exhibited a marriage certificate as *Exhibit-E* regarding her marriage with the said Susanta Das. She also exhibited as *Exhibit-F* a certificate given by Lat Gaonburah stating that she was the daughter of late Naresh Chandra Das.

8. Laxan Chandra Das, claiming to be the brother of the petitioner, adduced evidence as DW-2. He has stated that the petitioner is his sister and that both he and his sister are citizens of India by birth. He has also stated about *Exhibit-A*, the Registered Sale Deed of 1969, dated 17.06-1969, executed by his father Naresh Chandra Das, whereby his father bought land from one Jugesh Chandra Das. He also mentioned about Exhibit-B, the Registration Certificate before the Authority. DW-2 testified about his father figuring in the electoral roll of 1971 and also about the petitioner's name appearing in the 1997 electoral roll. He also stated about marriage of his sister with Susanta Das and the certificate in this regard issued by Circle Officer, Khoirabari Revenue Circle, being *Exhibit-E*. He mentioned about the certificate issued by the Gaonbura being *Exhibit-F*.

9. In his cross-examination, DW-2 reiterated that the proceedee was his sister, born in Betagaon in 1964. He stated that no foreigner's case is pending against any of his family members. In her cross-

examination, DW-1 stated that she was born in 1964 at Betagaon, Darrang district and got married in 1983. She stated that her father is *Naresh Chandra Das* and mother was *Renu Bala Das*. Her father was born in Betagaon and that she came to Dhekiapelua Garubandha along with her husband 18 years back. She stated that a foreigner's case is also pending against her husband.

10. Mr. Das, the learned counsel for the petitioner, submits that the father of the petitioner got himself registered under the provisions of law for which he was issued a certificate of registration and his name duly appeared in the 1971 voters list. The petitioner contends that the petitioner is a citizen of India by birth having been born in 1964 and her name appeared in the voters list in 1997.

11. The learned counsel submits that the certificate regarding her marriage issued by the Circle Officer, being exhibited as *Exhibit-E* indicates that her father's name is Naresh Chandra Das and thereby constitutes a link documentary evidence. He also submits that the Gaonbura has also issued a certificate indicating her linkage with her father Naresh Chandra Das and also about her residence. However, the learned counsel fairly submits that the Gaonbura was not examined during the proceeding.

12. He also refers to the testimony of the petitioner herself and that of her brother in support of his contention that the petitioner is not a foreign national and a citizen of India by birth. Lastly, the learned counsel for the petitioner submits that if his contest against the impugned opinion fails, he may also be given the option of availing the

benefit under the CAA and the relevant rules there under.

13. On the other hand, Mr. G. Sarma, the learned counsel for respondent nos. 2 and 4 submits that having been born in 1964, the petitioner became eligible as a voter in 1985 but her name appeared for the first time in the electoral roll only in 1997 and that this long gap constitutes a discrepancy in her case. He also submitted that there is no link documentary evidence between her brother and father Naresh Chandra Das. It is submitted that the Circle Officer was not authorized to issue the marriage link certificate and that as the Gaonbura was also not examined – the learned Tribunal rightly rejected both these documents.

14. In support of his contentions, Mr. Sharma relies on the decision of this Court in ***Khudeja Khatoon vs. Union of India (2018) 3 GLT 347.***

15. We have perused the relevant materials and considered the rival submissions including the case law submitted at the Bar.

16. In the electoral roll of 1971, a digital certified copy, the name of Naresh is mentioned against serial no. 77 being *Exhibit-C*. In the electoral roll of 1997, a digital certified copy exhibited as *Exhibit-D*, the name of *Usha Rani* appears against serial No. 5 along with *Susanta Das* stated to be her husband. Now, the said Naresh having figured in the electoral roll of 1971 would be a citizen of India. In any case, as per the Registration Certificate issued under Section 5(I)(a)/(d) of the Citizenship Act, 1955, the projected father of the petitioner having migrated from East Pakistan before the specified date registered

himself before the authority and accordingly, this certificate was issued which was exhibited as *Exhibit-B*. Thus, on the basis of these materials, Naresh Chandra Das mentioned as Naresh in the electoral roll of 1971 can be accepted to be citizen of India. The said person is projected to be the father of the petitioner.

17. During the proceeding, it was for the petitioner as proceedee to build a linkage with her projected father through adequate documentary evidence, supplemented by oral evidence, if any. It is well settled that in such proceedings, the linkage evidence has to essentially constitute documentary evidence and mere oral evidence would not suffice. As far as oral evidence is concerned, both the petitioner as DW-1 and her brother as DW-2 have stated about their being Indian citizens and the said Naresh Chandra Das being their father. However, the documentary evidence adduced in this regard is the certificate issued by the Circle Officer and the Gaonbura certificate. Admittedly, both these authorities did not adduce evidence before the Tribunal to prove the veracity of the contents of the documents.

18. Rightly, as contended by the learned counsel for the respondent no.2 and 4, Mr. Sharma, it is also doubtful as to whether the Circle Officer was at all qualified to issue the certificate regarding marriage of the petitioner wherein, Naresh Chandra Das is indicated as her father. As far as the Gaonbura certificate is concerned, from the said certificate (Exhibit-F), it is seen that not only the Gaonbura issuing the certificate has not adduced evidence to prove its contents, but he has also issued the certificate based on his personal knowledge and

information and any reference to contemporary records is missing as is required under the governing law. Therefore, in our considered view there is no material irregularity in the approach of the learned Tribunal in discarding these two pieces of documentary evidence.

19. The decision in **State of Uttar Pradesh v. Krishna Master and Ors. (2010) 12 SCC 324** pertains *inter-alia* to evidentiary value of the solitary witness and that in appropriate circumstances it can be relied upon. However, this decision would not be of assistance to the petitioner side.

20. With regard to the aspect of documentary evidence (being the two certificates) which were rightly discarded by the Tribunal, para 13, 14 and 15.1 of **Khudeja Khatun** (supra) may be reproduced:-

“14. Ext. C is a certificate dated 13.2.2015 of the Gaonburah of Durabandhi village certifying that Khudeja Khatun was the daughter of Lt. Jonab Ali. For the reasons mentioned above, this certificate was also not proved. Mere filing of a document or marking of a document as exhibit is not enough. The certificate as well as the contents thereof would have to be proved, so also the truthfulness thereof, in accordance with law.

15. Ext. D is a certificate dated 15.6.2015 issued by the Secretary, Goriabori Gaon Panchayat certifying that Khudeja Khatun was the daughter of Jonab Ali. At the top of this certificate, "Government of Assam" was prominently printed. It was also mentioned in the certificate that the same was issued on the basis of the evidence placed before the Secretary.

15.1 At this stage, we may mention that learned counsel for the petitioner had argued that petitioner had submitted an application dated 24.08.2016 to the Tribunal to summon the Gaonburah, school authority and the Gaon Panchayat

Secretary to prove the above documents but no summons were issued. We need to clarify that in a proceeding before the Foreigners Tribunal, burden is on the proceedee to prove his documents. This is made clear by Section 9 of the Foreigners Act, 1946 which has got overriding effect over the provisions of the Indian Evidence Act, 1872. Therefore, if the proceedee wishes to rely on certain documents, it is he who has to prove the said documents in accordance with law. In so far the present case is concerned, it was the responsibility of the petitioner to have ensured the presence of the Gaonburah, school Head Master and the Gaon Panchayat Secretary before the Tribunal and to prove the above exhibits. Petitioner ought to have given Page No. 4 of 5 notice to the above persons and if such persons did not respond to such notice, in such a case petitioner would have been justified in filing the above application before the Tribunal to summon the above persons under paragraph-4 of the Foreigners (Tribunals) Order, 1964. This would be in tune with the requirement of Section 66 of the Indian Evidence Act, 1872. However, there was no mention in the application that petitioner had notified the above persons but despite notice they had refused to testify.”

21. Upon perusing the materials and in the backdrop of the above discussion, we come to the considered opinion that the judgment and order dated 25.06.2019 passed by the learned Tribunal F.T(8) Case No.3644/2018 does not require interference and accordingly, the same is **upheld** and **confirmed**.

22. Despite the aforesaid determination, we take note of the fact that one of the alternative submissions of the learned counsel for the petitioner is that in the event of the Court not finding sufficient merits in the petitioner's case for interfering with the impugned order - she may be given the option of seeking the benefit under the **Citizenship Amendment Act, 2019 (CAA)**. The aforesaid submission was also

not seriously objected to by the learned counsels for the respondents.

23. Accordingly, in view of the above the writ petition is **dismissed**; however with liberty to the petitioner to approach the Appropriate Authority under the CAA and if such approach is done in the manner prescribed, the same is to be considered in accordance with law.

24. The writ petition stands **disposed** of on the aforesaid terms. Interim order, if any, stands **vacated**.

25. Send back the TCR.

JUDGE

JUDGE

Comparing Assistant