

GAHC010197892025



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

Case No. : WP(C)/5212/2025

SHAJIDA KHATUN
W/O HABIBAR RAHMAN, R/O VILL- BARANGA BARI, P.O.- JANGALPARA,
P.S.- KHARUPETIA, DIST- DARRANG, ASSAM, PIN-784116

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE MINISTRY OF HOME AFFAIRS, GOVERNMENT OF
INDIA, NEW DELHI-01

2:THE ELECTION COMMISSION OF INDIA
NEW DELHI-01

3:THE STATE OF ASSAM
REPRESENTED BY THE GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-06

4:THE ASSAM STATE CO-ORDINATOR OF NRC
BHANGAGARH
GUWAHATI-05

5:THE DISTRICT COMMISSIONER
DARRANG
DIST- DARRANG
ASSAM
PIN-784125

6:THE SUPERINTENDENT OF POLICE (B)
DARRANG

DIST- DARRANG
ASSAM
PIN-78412

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the petitioner : Shri S.A. Ahmed,
Advocates for the respondents : Shri J. Payeng, SC, Home
Department,
Ms. S. Kataki, SC, ECI,
Ms. R.B. Bora, GA, Assam
Shri. S. Kakati, CGC

Date on which judgment is reserved : NA

Date of pronouncement of judgment : 04.05.2026

Whether the pronouncement is of the operative part of the
judgment? : NA

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER

(S.K. Medhi, J)

Considering the facts and circumstances and as agreed to by the learned counsel for the parties, the instant petition is taken up for disposal at the admission stage.

2. The instant petition under Article 226 of the Constitution of India has been

filed putting to challenge an order dated 29.02.2024 passed by the learned Foreigners Tribunal No.3, Darrang in FT Case No. 3325/2012 arising out of Ref-IM(D)T Case No. 5933/98 whereby the petitioner has been declared a foreigner post 1971. The primary ground of challenge is that the order in question has been passed *ex-parte*.

3. Notice was issued in this case on 08.09.2025 and records were called for pursuant to which, the records have been received.

4. We have heard Shri S.A. Ahmed, learned counsel for the petitioner. We have also heard Shri J. Payeng, learned Standing Counsel, Home Department, Ms. S. Katakai, learned Standing Counsel, Election Commission of India, Ms. R.B. Bora, learned State Counsel and Shri S. Kakati, learned CGC.

5. Shri Ahmed, the learned counsel for the petitioner has submitted that the impugned order has been passed in her absence and the petitioner was not aware of the proceeding. By drawing the attention of this Court to the impugned order, the learned counsel has submitted that though there has been certain observation that the petitioner did not appear in spite of service of notice, he has questioned the very fact that the notice was received by her. He has also submitted that though there is a report of the Process Server that the notice was affixed in the conspicuous part of the last known residence, the petitioner claims to have been residing all along in that place and had never shifted anywhere. The learned counsel accordingly questions the endorsement of the Process Server. The learned counsel has submitted that the impugned order be interfered with and the petitioner be given a fair opportunity to defend herself.

6. Shri Payeng, the learned Standing Counsel, Home Department has however justified the impugned opinion dated 29.02.2024 and has submitted

that from a reading of the said order, it would be apparent that sufficient time was granted to the petitioner to appear and defend herself. In this connection, he has referred to the observations made by the learned Tribunal in paragraph 3 of the impugned order wherein all the dates have been referred which were fixed and in those dates, the petitioner did not appear and file her written statement and only thereafter the impugned order has been passed. He has submitted that the requirements of Order 3 (5) (f) have been fulfilled.

7. The learned counsel for the rest of the respondents have also supported the submissions of Shri Payeng, the learned Standing Counsel and has prayed for dismissal of the writ petition.

8. The primary contention advanced on behalf of the petitioner is that the summons was not received by her. On the other hand, the report of the Process Server reflects that the petitioner was not found available at her last known place on a number of dates and accordingly, the notice was affixed in presence of the Gaon Burah as witness.

9. While the aforesaid aspect would be a contentious issue involving the factual dispute, we are of the considered opinion that instead of going to the said aspect, interest of justice would be served if an opportunity is granted to the petitioner to defend herself in the proceeding initiated against her.

10. In view of the above, without expressing any opinion on the correctness or otherwise of the impugned order dated 29.02.2024, by exercising the powers under Article 226 of the Constitution of India and as an exceptional case, we allow the petitioner to appear before the Tribunal and file her written statement on or before 25.05.2026. On such filing of written statement, the learned Tribunal is directed to accept the same and take charge of the proceedings.

11. We have noted that the aforesaid Order of 1964 also envisages a particular time for completion of the proceeding which is 60 days. In this connection, Order 3 (14) may be referred to. We accordingly observe that the learned Tribunal would make an endeavour to abide by the aforesaid provisions of law and complete the proceeding expeditiously.

12. If the petitioner however fails to abide by the direction of this Court to file the written statement on or before the stipulated date i.e., 25.05.2026, the impugned order dated 29.02.2024 would be deemed to have attained finality.

13. The writ petition accordingly stands disposed of in the manner indicated above.

JUDGE

JUDGE

Comparing Assistant