

GAHC010291292019



2026:GAU-AS:3620

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

Case No. : WP(C)/8824/2019

MD. ALI HUSSAIN @ MD. ALI HUSSAIN
S/O- LT ABDUL JABBAR, VILL- THANAGORA, P.S. MORIGAON, DIST-
MORIGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI, 110001

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-06

3:THE ELECTION COMMISSION OF INDIA
NEW DELHI- 110001

4:THE STATE COORDINATOR
NRC ASSAM
ACHYUT PLAZA
BHANGAGARH
GHY-05

5:THE STANDING COUNSEL
SPECIAL FT AND BOARDER
ASSAM

6:THE DY. COMMISSIONER
MORIGAON
ASSAM- 782105

7:THE SUPERINTENDENT OF POLICE (B)
MORIGAON ASSAM- 782105

8:THE O/C
MORIGAON P.S.
MORIGAON- 78210

Advocate for the Petitioner : MR. J AHMED, MS A HUSSAIN,J N KHANDAKAR,MS A HUSSAIN,MS G PARMAWI,MR. Z RAHMAN,MRS R BEGUM

Advocate for the Respondent : ASSTT.S.G.I., SC, ELECTION COMMISSION.,SC, NRC,SC, F.T

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

Date on which judgment is reserved: 18.02.2026

Date of pronouncement of judgment: 12.03.2026

Whether the pronouncement is of
the operative part of the judgment : N/A

Whether the full judgment has been
pronounced : Yes

JUDGMENT AND ORDER (CAV)

(S.P. Khaund, J)

The petitioner in this case is Md. Ali Hussain @ Md. Ali Hussain, who is aggrieved by the opinion dated 29.04.2019 passed by the learned Member, Foreigners' Tribunal Morigaon 3rd in Case No. F.T. (C) 259/2015 and Reference I.M. (D) T. Case No. 90/2002, declaring the petitioner to be a foreigner, who entered into India (Assam) after 25.03.1971.

2. It is contended that the petitioner is an Indian citizen and his father Abdul Jabbar @ Jabbar was a permanent resident of Village - Goroimari, P.S. – Laharighat, Laharighat LAC, District – Nagaon.

3. After 1984, the petitioner's father shifted base to Thanagara Revenue village – Charabari, Mouza – Dhadua, P.S. – Morigaon, which is a village adjacent to Khatarbari and both the villages Charabari and Khatarbari, after demarcation falls under Charabari village.

4. It is submitted that the petitioner was born at village – Thanagara (Charabari) under Morigaon Police Station. From the Voter ID issued by the Election Commission of India, the petitioner's address is recorded as Khatarbari Charabari, Morigaon.

5. It is submitted that the petitioner's name figures in the voters' list of 1997, 2005, 2010 and 2019 in the village – Khatarbari, P.S. – Morigaon in the district of Morigaon. The petitioner's mother's name figures in the voters' list of 1997 along with the petitioner. It is submitted that after shifting, the petitioner's father's name appeared in the voters' list of 1985 at village – Khatarbari. The petitioner's father's name was also enrolled in the voters' list of 1966 and 1970 but the petitioner could not exhibit the voters' lists of 1985, 1993, 2005, 2010, 2019 and the elector photo identity card (EPIC for short)

6. The petitioner is highly aggrieved by the opinion of the learned Tribunal as, the learned Tribunal held the petitioner to be a foreigner, despite the pleadings and evidence that he is an Indian. It is contended that the learned Tribunal overlooked the fact that special provision has been brought under Section 6 A of the Citizenship Act, 1955. As per the said provision, if a person comes to Assam after 01.01.1966 but before 25.03.1971, he shall have to register himself in accordance with the rule and if such person is registered from the date on which he has been detected to be a foreigner and till the expiry period of 10 (ten) years from the date, he shall have the same rights and obligation as a citizen of India except inclusion of his name in the electoral roll. It is further submitted that the learned Member has thus committed a serious error in declaring the petitioner to be a foreigner.

7. *Per contra*, the learned Standing Counsel Mr. G. Sarma for the FT, Border and NRC matters, laid stress in his argument that the petitioner produced voters' lists of different

villages. The petitioner never disclosed his mother's case in the written statement and now, through an additional affidavit the petitioner has introduced his mother's case as his projected mother Musstt. Hajera Khatun @ Hazara Khatun, whose case was pending since 2016 and whose case was referred in the year 2002, has been declared to be an Indian citizen.

8. Heard Mr. J. Ahmed, learned counsel for the petitioner. Also heard Ms. A. Gayan, learned CGC; Mr. A.I. Ali, learned Standing Counsel for the ECI; Mr. G. Sarma, learned Standing Counsel for the FT, Border and NRC matters and Mr. P. Sarmah, learned Additional Senior Government Advocate for State respondents.

9. The petitioner examined the following witnesses and exhibited the following documents.

DW-1 Ali Hussain (petitioner).

DW-2 Nur Jahan, wife.

DW-3 Ahsan Ullah (teacher).

Exhibits

Exhibit-A Gaonburah Certificate in the name of OP1 (petitioner).

Exhibit-B Gaonburah Certificate in the name of OP2 (petitioner's wife).

Exhibit-C Gaonburah Certificate in the name of OP2 (wife) for Manipur top.

Exhibit-D Voters' list of 1966 in the name of father and grandfather of OP1.

Exhibit-E Voters' list of 1970 with the name of father and grandfather of OP1.

Exhibit-F Voters' List of 1997 in the name of OP1.

Exhibit-G Voters' List of 1965 in the name of father of OP2 (Bhengu Sk).

Exhibit-H Jamabandi copy in the name of Bhengu Sk for the year 1967-68.

Exhibit-I Registered Sale Deed in the name of father of OP1.

Exhibit-J Annual Kheraj Patta of grandfather of OP1.

10. It is pertinent to mention at this juncture that DW-3 exhibited the documents as the petitioner had stated in his evidence that he would not exhibit the documents as he did not attend school.

11. I find force in the argument of the Learned Standing Counsel, Mr. G. Sharma, that the written statement of the petitioner is vague. Through the written statement, the petitioner stated that the Verification Report was not filled up on the spot by the L.V.O. The petitioner denied that he is not an Indian citizen. The petitioner stated through the written statement that the voter's list of 1965 and 1970 reflects his father's name and the petitioner's name. Another voter's list of 1965 and 1970 reflects the name of his wife's father. He however, did not mention his father's or his grandfather's name but, he stated that the land records reveal the names of his father and grandfather, and another land record reveals the name of his wife's father and grandfather.

12. Through his written statement, the petitioner had referred to the Gaonburha's certificate reflecting his and his wife's names, as well as the voter's list reflecting his and his wife's names, but a person cannot establish his citizenship by trying to link any document with his wife. The petitioner's evidence also does not reveal the names of his siblings or his parents or grandparents. Only by exhibiting the documents, the petitioner had tried to project that he is an Indian citizen. His evidence is a complete departure from his pleadings. He indeed stated as DW1 that he was born and brought up at Thanagara and his father's name is Abdul Jabbar @Jabbar, whereas his wife's name is Nurjahan Begum, who was arraigned as OP No. 2 in the instant F.T. case No. 256/2012. Through his evidence, he further stated that his father-in-law's residence is at Manipurtup under Roha P.S. His father-in-law is Dengu Sk, but in the document he is referred to as Bhengu Sk. He casted his vote in the year 1997, and since then he has been casting his vote, as he is an Indian citizen. He further stated that he would not exhibit theses documents as he never attended school.

13. In her evidence-in-chief, DW2 deposed that her parental home is at Manipurtup, and her father's actual name is Dengu Sk but in some documents his name appears as Bhengu

Sk. She further stated that her marriage was solemnized with the petitioner about 10 to 15 years ago and after her marriage she has been residing at Thanagara. She further stated that she is an Indian national and not a foreigner. In her cross-examination the petitioner's wife deposed that she is the OP No. 2 in the instant FT Case No. 259/2015. Her father, Dengu Sk expired around 12 years ago and her mother, Hazera Khatun is alive. She has four brothers, Nur Hussain, Nur Islam, Saham Uddin and Akbar Ali, and all are residents of Manipurtup. Her father did not have any brothers, and her grandfather's name was Habab Ali Akond.

14. A neighbour, Asanullah, who also works as a teacher in a private school deposed as DW3 that the petitioner and his wife are known to them as they are his neighbours. He proved some documents as Exhibit-A, Exhibit-B, Exhibit-C, Exhibit-D, Exhibit-E, Exhibit-F, Exhibit-G, Exhibit-H, Exhibit-I and Exhibit-J (which are also clearly described in the foregoing discussions). In his cross-examination, he further stated that the petitioner and his wife are not foreigners and they are Indian citizens.

15. It is apt to mention at this juncture that earlier this case against the petitioner was registered as FT Case No. 256/2012 and this case was transferred from Foreigners Tribunal 2nd, Morigaon, to Foreigners Tribunal 3rd, and it was re-numbered as FT Case No. 259/2015. Although notices were issued to two family members of the petitioner's family, but in compliance to the decision of this Court in ***Sudhir Kumar Roy and Ors vs. The State of Assam, reported in 2019 (1) GLT 353***, the matter was adjudicated only against the present petitioner, against whom the reference was initiated after preliminary investigation by the Investigating Officer. To refute the charges that the petitioner is an illegal immigrant, he exhibited two voters' lists and the linking document was the Gaonburha's certificate marked as Exhibit A.

16. It was correctly held by the Tribunal that the certificate was only a supplement to the documentary evidence and not a base document to determine the citizenship of the petitioner, more so when the petitioner failed to produce the Gaonburha as a witness to prove the certificate issued by him on the basis of contemporaneous records.

17. It has been held by this Court in ***Romila Khatun v. Union of India, reported in***

2018 (4) GLT 373, that:-

“It is trite that documentary evidence would have to be proved on the basis of the record and the contemporaneous record must substantiate and prove the contents of the document. Proof of document is one thing and proof of contents is another. Not only the document would have to be proved but its contents would also have to be proved. That apart, the truthfulness of the contents of the document would also have to be established from the record. A document or the contents of the document cannot be proved on the basis of personal knowledge. In so far Ext-F document vis-a-vis the petitioner is concerned. Nimai Miah was a resident of Kukarpar village Petitioner after her marriage with Saijuddin had left the said village and started residing at village Hirajani under Hajo Police Station. When the petitioner got married and since when she had been residing at village Hirajani has not come on evidence. When the petitioner was not a resident of village Kukarpar on the date when the Gaonburah had issued the certificate, Gaonburah could have issued the certificate only on the basis of the record maintained in his office. We also do not know what happened to Nimai Miah after his name appeared in one of the documents i.e., voters list of 1965 (Ext-C). Nimai Miah was 30 years of age in 1965 and in the ordinary course. he would have been around much beyond 25.03.1971. From the voters list of 1997 (Ext-A), we find that Ramila Bibi was 20 years of age. This is the first time the age of the petitioner has come on record. If Ramila Bibi was 20 years of age in 1997, she would have born in the year 1977, which means that her father ought to have been alive atleast till 1976. Therefore, on the basis of the testimony of Md. Ramesh Ali, as discussed above, it cannot be said that Ext-F was proved. Besides, there is unauthorised use of the State Emblem of India by the Gaoburah which has rendered Ext-F inadmissible in evidence. Under the State Emblem of India (Regulation of Use) Rules, 2007, Gaonburah is not authorised to use the State Emblem of India in any manner If Ext-F is excluded from consideration, there is nothing on record to establish that Ramila Bibi or Ramila Khatun was the daughter of Nimai Miah of Ext-C (1965).

We notice that at that stage, petitioner had introduced Ext-G, an affidavit sworn by the petitioner on 06.05.2016 stating that her father's actual name was Nimai Chan but in the documents, it was wrongly mentioned as Nimai Miah or Nimai Sheikh. Nimai Chan, Nimai Miah and Nimai Sheikh was one and the same person.”

18. In the instant case, it can be safely held that the petitioner had failed to prove his lineage with his parents and grandparents with the help of the Gaonburha's certificate marked as Exhibit-A. The Exhibit-D and Exhibit-E are the voters' lists of 1966 and 1970 reflecting the names of the petitioner's grandfather and father. As a ready reckoner, both the voters' lists are extracted herein below:-

Voter List- 1966

84 No. Laharighat, Assam Legislative Assembly constituency

Mouza: Laharighat Vill: Garoimari Centre No: 115

P.S:Laharighat

State: Assam, Dist: Nagaon, Part No.:

1	2	3	4	5	6
62	15	Ain Uddin	S/o. Rejat Ali	M	50
63		Aima Khatun	W/o. Ain Uddin	F	38
64		A : Jabbar	S/o -do-	M	21

Voter List- 1970

84 No. Laharighat, Assam Legislative Assembly Constituency

State: Assam, Centre No: 151 Mouza: Laharighat

Dist: Nagaon, Part No.: 40 Vill: Garoimari

P.S: Laharighat

Gaon Panchayat

Center Name: Dakshin Garoimari L.P. School

1	2	3	4	5	6
57	15	Ain Uddin	S/o. Rejat Ali	M	54
58		Aysha Khatun	W/o. Ain Uddin	F	42
59		A : Jabbar	S/o -do-	M	25

19. The voters lists of 1966 and 1970 depicts that Abdul Jabbar is the son of Ain Uddin. He was 21 years old in 1966 and 25 years old in 1970. The voters lists are of Laharighat Mouza, Goroimari village within the district of Nagaon. Both the voters' lists clearly reflect the name of Abdul Jabbar as son of Ain Uddin of village Goroimari. Now the voters' list of 1997 reflects the name of the petitioner as Ali Hussain, son of Jabbar and not Abdul Jabbar, and as a resident of Mouza-Dhadua, Village-Khatarbari, Charabari (North) under the Morigaon district. After a gap of 27 years, a voters list has been produced and the petitioner tried to link this voters' list with the Gaonburha's certificate. Through this writ petition, the petitioner tried to portray his continuous stay by stating that after 1984, the petitioner's father shifted to Thanagara Revenue Circle, Charabari, Mouza- Dhadua, Village- Khatarbari, Charabari (North) under the Morigaon P.S.

20. The voters list of 1997 is re-produced herein below:-

Voter list- 1997

80 No. Morigaon Assam Legislative Assembly Constituency

State: Assam,

Centre No: 28,

Sub-Div: Morigaon

Dist: Morigaon

Part No: 28

Mouza: Dandua,

P.S. Morigaon

Vill: 1) Khatarbori

2) Charbari (North),

Polling Station name: Khatarbori Primary School

1	2	3	4	5	6
924	19	Mosa : Hajera	Lt. Jabbar	M	45
925	“	Ali Hussain	Jabbar	F	19

21. No infirmity is discernible in the decision of the Tribunal that the petitioner failed to prove his lineage with his parents and grandparents. The pleadings and the evidence of the petitioner does not even mention that the petitioner's mother is Mosa Hajera, whose name appears at Serial No. 19 in the voters list of 1997 as wife of late Jabbar Hussain. The petitioner was silent in his written statement as well as in his evidence relating to his date of birth as well as the date when his father passed away. As per Section 6(A) of the Citizenship Act, 1955, the petitioner has failed to prove his continuous stay in Assam as he failed to link any document to his projected father and grandfather, whose name appears in the voters list of 1966 and 1970. As linking documents, the registered sale deeds in the name of the petitioner's father was proved as Exhibit-I, by a third person, DW3, and the annual khiraj patta in the name of the petitioner's grandfather was proved as Exhibit-J.

22. It is also pertinent to mention that if Hajera Khatun was the petitioner's mother, what prevented him from disclosing her name in the written statement as well as in his evidence.

One cannot forget or ignore his mother's name when one has to prove his citizenship when it is claimed by the petitioner that his fundamental right has been violated as he has been declared to be a foreign national.

23. It would be pertinent to reiterate that the written statement was vague. The petitioner failed to mention even his parents' name as well as grandparents' name in his written statement. To prove a case under the Foreigners Act, 1946, the petitioner has to put forward all the evidence which is within his knowledge. The onus is cast upon the petitioner to prove his case with the aid of cogent, reliable and admissible evidence. The petitioner much later, through an additional-affidavit, introduced his mother as Hazera Khatun after his mother Musstt. Hazera Khatun @Hazera Khatun was declared to be an Indian citizen vide order dated 28.03.2025, passed by the Tribunal in FT(C) No. 651/2016 reference IM(D)T Case No. 497/2002. This Court has held in ***Rashminara Begum Vs. The Union Of India, reported in 2017 Supreme (GAU) 411***, that:-

“Written statement is the basic statement of defence of a proceedee before the Foreigners Tribunal. Keeping in mind the mandate of Section 9 of the Foreigners Act, 1946, it is incumbent upon the proceedee to disclose at the first instance itself i.e., in his written statement all relevant facts specially within his knowledge having a material bearing on his claim to citizenship of India. Material facts pleaded in the written statement are thereafter required to be proved by adducing cogent and reliable evidence. It is also trite that a party cannot traverse beyond the pleadings made in the written statement.”

24. In the instant case as the petitioner submitted a very cryptic and vague written statement, he has failed to discharge his onus as mandated under Section 9 of the foreigners Act, 1946.

25. In the annual khiraj patta of 1970, the petitioner's grand father's name is reflected at Sl. No. 7 as Ainat Uddin, son of Rezak. The grand father's name also appears to be different. Be that as it may, the petitioner had failed to produce any document linking him to his father and grandfather, whose names are reflected in the voters list of 1966 and 1970, Exhibit-I, sale deed and Exhibit-J, annual khiraj patta.

26. Exhibit-I reveals the address of the petitioner's father, Abdul Jabbar as a resident of Thanagara, Mouza- Dhadua, under Morigaon subdivision in the district of Nagaon. The sale deed was registered in the year 1984. This sale deed reflects the name of the petitioner's father and grandfather, which was not helpful as a linking document. This sale deed of 1984, the voters list of 1966 and the voters list of 1970 has not been linked by any other document reflecting the petitioner's name or the name of the petitioner's mother or siblings. The petitioner also failed to name his siblings. He produced documents relating to his wife's citizenship but he did not disclose the names of his siblings, mother or grandmother.

27. Apart from the petitioner's failure to produce any linking document, the petitioner exhibited certain documents without even mentioning the names of his mother and siblings as well as the name of his grandmother in his written statement, as well as in his evidence. The petitioner has thus failed to discharge his onus as mandated under Section 9 of the Foreigners Act, 1946. The petitioner has failed to prove his case through cogent, reliable and credible evidence.

28. In view of the foregoing discussions, it is thereby held that no infirmity could be detected in the decision of the learned Tribunal.

29. The challenge to the impugned opinion fails and resultantly, this writ petition is dismissed. Accordingly, the consequences of the impugned order dated 29.04.2019 passed by the learned Member, Foreigners' Tribunal, Morigaon 3rd in Case No. F.T. (C) 259/2015 and Reference I.M.(D)T. Case No. 90/2002, thereby holding the petitioner above-named as a foreigner of post 25.03.1971 stream, shall follow. Bail order dated 11.05.2020 stands vacated.

30. There shall be no order as to costs.

31. The Registry shall send back the Tribunal's record along with a copy of this judgment and order, to be made a part of the record by the learned Tribunal for future reference.

JUDGE

JUDGE

Comparing Assistant