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2026:GAU-AS:16621-DB

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

Case No. : WP(C)/3526/2026

SMTI HAMIDA BEGUM
D/O RAMJAN ALI AND ANUWARA BEGUM, W/O MD JAAN ALI, R/O VILL MORAN CHANGMARI GAON, P.O. AND P.S. MORANHAT, DIST- CHARAIDEO, ASSAM

VERSUS

THE UNION OF INDIA AND 3 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, GOVT OF INDIA, NORTH BLOCK, NEW DELHI 110001

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY
HOME AND POLITICAL DEPARTMENT
GOVT OF ASSAM
DISPUR
GHY 781006

3:THE SUPERINTENDENT OF POLICE (BORDER)
CHARAIDEO DISTRICT
ASSAM

4:THE SUPERINTENDENT
DETENTION CENTRE
GOALPARA
ASSA

Advocate for the Petitioner : A SAHARIA, MS B SARMA

Advocate for the Respondent : DY.S.G.I., MR. G PEGU(C.G.C.),GA, ASSAM,SC, F.T

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT & ORDER
(ORAL)

Date : 10.11.2026
(K.R. Surana, J)

Heard Mr. A. Saharia, learned counsel for the petitioner. Also heard Mr. G. Pegu, learned CGC; Mr. G. Sharma, learned standing counsel for the FT and Border matters; Ms. S. Kataky, learned standing counsel for the ECI; and Mr. P. Sarmah, learned Addl. Senior Govt. Advocate for the State respondent.

2. In brief, the case of the petitioner is that suspecting the petitioner, namely, Hamida Begum to be a illegal foreigner, a reference was made by the jurisdictional Superintendent of Police (Border) before the Foreigners Tribunal, Jorhat. The said reference was registered before the learned Foreigners Tribunal, Jorhat as Case No. FT/CRD/3/2018, corresponding to S.P's Enquiry No. 13/2018- *State Vs. Musstt. Hamida Begum*. The said learned Tribunal, by its opinion dated 04.12.2018, took note of the fact that despite giving several opportunity, the written statement was not filed and in view of mandate of Paragraph 3(14) of the Foreigners (Tribunals) Order, 1964 requiring a reference to be answered to within a period of 60 days, also took note of the fact that under Section 9 of the Foreigners Act, 1946, burden of proof that the proceedee is a citizen of India and not a foreigner lies on the proceedee. Accordingly, on failure of the petitioner to discharge her mandatory burden to prove that she is a citizen of India and not a foreigner, the petitioner was held to be a foreigner who had illegally entered into the territory of India (Assam) after 25.03.1971.

3. The said opinion dated 04.12.2018, was unsuccessfully challenged by the petitioner before this Court by filing W.P.(C)/8179/2019 and the Division Bench of this Court by an order dated 01.10.2020, dismissed the said writ petition and thus, the impugned opinion dated 04.12.2018, stood affirmed.

4. The judgment and order dated 01.10.2020, passed by this Court in WP(C)/8179/2019 was assailed before the Supreme Court of India, which was registered as Special Leave Petition (Civil) Diary No(s). 60991/2025, which was dismissed by an order dated 07.11.2025. Paragraph nos. 7, 8 and 9 of the said order dated 07.11.2025, is extracted hereinunder:-

> "*7. Some of the salient features of this case are that: (i) the petitioner's father has also been declared as a foreigner; (ii) she relies upon the citizenship of her alleged mother Anuwara Begum, whose name figures in the final NRC list published in the year 2019; (iii) the petitioner, however, has not been able to produce even an iota of evidence to show that she is the daughter of Anuwara Begam and (iv) before this Court also, she is relying upon a birth certificate issued on 29.11.2024.*
>
> *8. In the absence of any cogent evidence, we are not inclined to interefere with the impugned order of the High Court. The Special Leave Petition is accordingly, dismissed.*
>
> *9. All pending applications, if any, also stand disposed of."*

5. In respect of the order dated 07.11.2025 by which Special Leave Petition (C) No. 32173 of 2025, corresponding to SLP (C) Diary No(s). 60991/2025, the petitioner had preferred a review petition which was registered as Review Petition (C) Diary No. 75430 of 2025 and the said review petition was dismissed by order dated 10.03.2026 by the Supreme Court of India.

6. The learned counsel for the petitioner has submitted that pursuant to order dated 10.05.2019, passed by the Supreme Court of India in W.P.(C) No. 1045/2018, the declared foreign nationals who had served long period of detention in detention centres awaiting deportation and who had completed more than 3 (three) years was order to be released on terms as indicated in the

said order. It is submitted that thereafter in view of the COVID-19 pandemic in the Country, pursuant to orders passed by the Supreme Court of India from time to time in the matter of Re: Contagion of COVID-19 Virus in prisons, Suo Motu W.P.(Civil) No. 1/2020, those persons who had completed 2 (two) years of detention were ordered to be released on terms as indicated in the said order. It is submitted by the learned counsel for the petitioner that the said order was subsequently revisited by the Supreme Court of India, and as per the law laid down by the Supreme Court of India on being detained for 3 (three) years in a row upon declaration of being a foreign national, the petitioner was entitled to be released on bail. It is submitted that after the petitioner was released on bail, she was regularly appearing before the concerned police station and it is in course of such appearance before the police station, that the petitioner was again taken into custody. Accordingly, the learned counsel petitioner prays for releasing the petitioner from detention by granting her bail.

7. The learned counsel for the petitioner has produced a photocopy of Title Suit No. 30/2026 which was registered before the learned Civil Judge, (Senior Division), Sibasagar. As per the copy of plaint produced, the petitioner along with 2 (two) others had filed a suit for declaration and mandatory injunction under Section 34 of the Specific Relief Act, amongst others, praying that the plaintiff no.1 is the biological mother of plaintiff no.3 and that plaintiff no.3 was born to plaintiff no.1 as her daughter; declaration that plaintiff no.3 was born on 31.12.1989 to plaintiff no.1; declaration that the plaintiff no.3 was born on 31.12.1989 to plaintiff no.1 at her residence as stated in the prayer; to declare that the plaintiff no.3 was born on 31.12.1989 out of wedlock of plaintiff no.1 and plaintiff no.2; and for passing a decree of mandatory injunction under Section 39 of the Specific Relief Act in favour of the plaintiffs and against the

defendants, directing them recognise and record the parentage and legacy matters of plaintiff no.3 as the daughter of plaintiff no.1 and plaintiff no.2 in all official records including NRC, birth records, electoral records and any other records maintained by them.

8. Per contra, the learned standing counsel for the FT and Border matters has submitted that as per paragraph 73 of the case of *Sarbananda Sonowal Vs. Union of India (2005) 5 SCC 665,* the Supreme Court of India has held that the Foreigners Act and the Foreigners (Tribunals) Order, 1964, are applicable to the whole of India and in the State of Assam for identification of foreigners and it has been also held that the procedure under the said Foreigners Act and the Foreigners (Tribunals) Order, 1964, is just fair and reasonable and does not offend any constitutional provision.

9. It is further submitted that the petitioner is a declared foreign national and has exhausted her available remedy by challenging the said learned Tribunal's opinion before this Court as well as before the Supreme Court of India, unsuccessfully. Therefore, the State is now contemplating expulsion of the petitioner. It was submitted that as per the affidavit-in-opposition filed on behalf of the respondent no.2, there are about 1,16,946 numbers of absconding illegal "Declared Foreign Nationals" who are yet to be apprehended since inception as on 30.06.2026. Accordingly, it is submitted that as per information received by him, the State has taken all necessary steps for expulsion of petitioner and therefore, the present writ petition not maintainable nor the petitioner is entitled for bail.

10. Considered the submissions and also considered the materials available on record. Also perused the photocopy of the plaint of Title Suit No.30/2026, which is has been produced by the learned counsel for the petitioner, and the

same has been retained and made a part of the record by marking it with letter 'X'.

11. In so far as the issue of citizenship is concerned, the same is contained in Part-II of the Constitution of India as laid down under Articles 5 to 11 of the Constitution of India. As per Article 11 of the Constitution of India, the Parliament has powers to regulate the right of citizenship by law. Article 11 of the Constitution of India is extracted herein below:-

> "*11. Parliament to regulate the right of citizenship by law- Nothing in the foregoing provisions of this part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.*"

12. The Foreigners Act, 1946 is an act to confer upon the Central Government certain powers in respect of foreigners and the Central Government has the powers to make orders as per Section 3 of the Foreigners Act, 1946. The provision of Section 3 of the Foreigners Act of 1946 is quoted below:-

> "*3. Power to make orders.—(1) The Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence therein.*
>
> *(2) In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner-*
>
> *(a) shall not enter India, or shall enter India only at such times and by such route and at such port or place and subject to the observation of such conditions on arrival as may be prescribed;*
>
> *(b) shall not depart from India, or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;*
>
> *(c) shall not remain in India or in any prescribed area therein; 11*
>
> *(cc) shall, if he has been required by order under this action not to remain in India, meet from any resources at his disposal the cost of his disposal the cost*

of his removal from India and of his maintenance therein pending such removal;

(d) shall remove himself to, and remain in, such area in India a may be prescribed;

(e) shall comply with such conditions as may be prescribed or specified-

(i) requiring him to reside in a particular place;

(ii) imposing any restrictions on his movements;

(iii) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;

(iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified;

(v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;

(vi) prohibiting him from association with persons of a prescribed or specified description;

(vii) prohibiting him from engaging in activities of a prescribed or specified description;

(viii) prohibiting him from using or possessing prescribed articles;

(ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;

(f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions;

(g) Shall be arrested and detained or confined;

and make provision 2[for any matter which is to be or may be prescribed and] for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.

(3) Any authority prescribed in this behalf may with respect to any particular foreigner make orders under clause (e), or clause (f) of sub-section (2).

13. From the above it is noted that as per Section 3 (2) (g) of the Foreigners Act, 1946 the Central Government has the right to have a declared of foreign national arrested and detained or confined. The said provision is

supplemented by the provision of Section 4 of the Foreigners Act, 1946 which provides for "internees" and relates to detaining or confinement of persons who are foreigners. Section 4 of the Foreigners Act of 1946 is quoted below:-

> "*4. Internees.- (1) Any foreigner (hereinafter referred to as an internee) in respect of whom there is in force any order made under clause (g) of sub-section (2) of Section 3, directing that he be detained or confined, shall be detained or confined in such place and manner and subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time by order determine.*
>
> *(2) Any foreigner (hereinafter referred to as a person on parole) in respect of whom there is in force an order under clause (e) of sub-section (2) of Section 3 requiring him to reside at a place set apart for the residence under supervision of a number of foreigners, shall while residing therein be subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time by order determine.*
>
> *(3) No person shall-*
>
> *(a) knowingly assist an internee or a person on parole to escape from custody or the place set apart for his residence, or knowingly harbour an escaped internee or person on parole, or*
>
> *(b) give an escaped internee or person on parole any assistance with intent thereby to prevent, hinder or interfere with the apprehension of the internee or the person on parole.*
>
> *(4) The Central Government may, by order, provide for regulating access to, and the conduct of persons in, places in India where internees or persons on parole are detained or restricted, as the case may be, and for prohibiting or regulating the despatch or conveyance from outside such places to or for internees or persons on parole therein of such articles as may be prescribed."*

14. Thus, when there is a specific law relating to foreigners, namely the Foreigners Act, 1946 and the Foreigners (Tribunals), Order, 1964, it is required to be seen as to whether the opinion of the learned Tribunal which has attained finality by dismissal of the writ petition, dismissal of the Special Leave to Appeal Petition before the Supreme Court of India and dismissal of the Review Petition

by the Supreme Court of India, whether a pendency of a civil suit, would be a sufficient ground for the court to release the petitioner on bail pursuant to the orders passed by the Supreme Court of India in W.P.(C)/1045/2018, read with orders passed from time to time in Suo Motu Writ Petition No.1/2020.

15. It may also be mentioned that pursuant to a large scale of influx of foreigners from the specified territory which was then East Pakistan before 24.03.1971 and Bangladesh after 25.03.1971, that the State of Assam had witnessed a long drawn agitation by the people of Assam so as to protect the State from large scale influx of foreigners which ultimately led to drawing up an Assam Accord which led to the introduction of section 6-A of the Citizenship Act, 1955, which provides the condition as to when a person shall be deemed to be a person of Indian origin.

16. It would be appropriate to quote paragraph 73 of the case of *Sarbananda Sonowal-(I) (supra)* which is reproduced hereinbelow:-

> "***73.*** *It is not possible to accept the submission made. The view taken by this Court is that in a criminal trial where a person is prosecuted and punished for commission of a crime and may thus be deprived of his life or liberty, it is not enough that he is prosecuted in accordance with the procedure prescribed by law but the procedure should be such which is just, fair and reasonable. This principle can have no application here for the obvious reason that in the matter of identification of a foreigner and his deportation, he is not being deprived of his life or personal liberty. The deportation proceedings are not proceedings for prosecution where a man may be convicted or sentenced. The Foreigners Act and the Foreigners (Tribunals) Order, 1964 are applicable to whole of India and even to the State of Assam for identification of foreigners who have entered Assam between 1-1-1966 and 24-3-1971 in view of the language used in Section 6-A of the Citizenship Act. It is, therefore, not open to the Union of India or the State of Assam or for that matter anyone to contend that the procedure prescribed in the aforesaid enactment is not just, fair and reasonable and thus violative of Article 21 of the Constitution. In our opinion, the procedure under the Foreigners Act and the Foreigners (Tribunals) Order, 1964 is just, fair and reasonable and does not offend any constitutional provision."*

17. The paragraph no.48 to 51 of the case of *Sarbananda Sonowal Vs. Union of India, (2007) 1 SCC 174* [hereinafter referred to as "*Sarbananda Sonowal (II)*"], are quoted below:-

> "***48.*** *We may notice that this Court categorically opined that the procedure under the 1946 Act and the rules was just and fair and did not offend any constitutional provision, while issuing a direction that the Tribunals under the IMDT Act would not function and the matter should be adjudicated upon in terms of the provisions of the 1946 Act and the Rules thereunder. By reason of the impugned Order the Central Government has created tribunals only for Assam and for no other part of the country.*
>
> ***49.*** *It may be true that different procedure has to be applied in regard to a person who is still in the foreign soil and those who are in the Indian territory as has been held in Shaughnessy, District Director of Immigration and Naturalization v. United States ex rel Mezei [345 US 206 : 97 L Ed 956 (1953)] and Zadvydas v. Davis [533 US 678 (2001)] whereupon Mr Venugopal placed strong reliance, but the said question does not arise in the instant case.*
>
> ***50.*** *Principle of natural justice, indisputably is required to be complied with before a tribunal passes an order of deportation. The 1946 Act and the Orders framed thereunder contain inbuilt procedure. The procedures laid down therein are fair and reasonable. Only because the burden of proof is on the proceedee, the same by itself would not mean that the procedure is ultra vires the provisions of Article 21 of the Constitution of India. Article 21 would not be offended if the procedure is fair and reasonable.*
>
> ***51.*** *In Sonowal I [(2005) 5 SCC 665] a singular contention based on applicability of Article 21 of the Constitution of India has been negatived by this Court stating: (SCC pp. 719-20, para 73)*
>
> > "*73. It is not possible to accept the submission made. The view taken by this Court is that in a criminal trial where a person is prosecuted and punished for commission of a crime and may thus be deprived of his life or liberty, it is not enough that he is prosecuted in accordance with the procedure prescribed by law but the procedure should be such which is just, fair and reasonable. This principle can have no application here for the obvious reason that in the matter of identification of a foreigner and his deportation, he is not being deprived of his life or personal liberty. The deportation proceedings are not proceedings for prosecution where a man may be convicted or sentenced. The Foreigners Act and the Foreigners (Tribunals) Order, 1964 are applicable to whole of India and even to the State of Assam for identification of foreigners who have entered*

> *Assam between 1-1-1966 and 24-3-1971 in view of the language used in Section 6-A of the Citizenship Act. It is, therefore, not open to the Union of India or the State of Assam or for that matter anyone to contend that the procedure prescribed in the aforesaid enactment is not just, fair and reasonable and thus violative of Article 21 of the Constitution. In our opinion, the procedure under the Foreigners Act and the Foreigners (Tribunals) Order, 1964 is just, fair and reasonable and does not offend any constitutional provision."*

18. Thus, in the case of *Sarbananda Sonowal-(I) (supra) and Sarbananda Sonowal-(II) (supra)*, the Supreme Court of India has described the procedure followed before the Foreigners Tribunals is fair and in accordance with law.

19. In the order dated 21.08.2025, passed by this Court in the case of *Malek Ostar Vs. Union of India and Ors., W.P(Crl.)/37/2025*, decided on 21.08.2025, extensive reference was made to the judgment in the case of *Sarbananda Sonowal-(I) (supra),* decided by the Full Bench of the Supreme Court of India specifically dealing with the case of migration into Assam, the contributory factors and consequences. Therefore, the Court is not inclined to burden the order with repetitive extraction of the relevant paragraphs of the case of *Sarbananda Sonowal-I (supra)* as elaborately quoted in the case *of Malek Ostar (supra)*. It would suffice to mention that the Supreme Court of India, in the case of *Sarbananda Sonowal-(I) (supra)* had equated the influx of illegal migrants into the State of Assam as an external aggression. Thus, with the said factual background and law laid down by the Supreme Court of India, the Court is of the opinion that the Central Government as well as the State Government has a duty to preserve the unity and integrity of the Country and as unabated influx from the Specified territory of Bangladesh has been equated to act of aggression, the preventive detention of the petitioner is justified so as to enable the authorities to make arrangement for her expulsion from the Country,

which appears to be reasonable. It would be relevant to refer to the decision of the Supreme Court of India in the case of *Hans Muller of Nuremberg Vs. Superintendent, Presidency Jail, Calcutta and Ors., (1995) 1 SCC 167*. The said case was one under Section 3 (1) (b) of the Preventive Detention Act, 1950 where the said German national was taken into preventive detention in order to make arrangement of his expulsion from the Country, which required satisfaction to be recorded by the competent authority under the said Act. Paragraph no. 34 to 37 and 40 and 41 thereof is quoted herein below:-

> "***34.*** *Article 19 of the Constitution confers certain fundamental rights of freedom on the citizens of India, among them, the right "to move freely throughout the territory of India" and "to reside and settle in any part of India," subject only to laws that impose reasonable restrictions on the exercise of those rights in the interests of the general public or for the protection of the interests of any Scheduled Tribe. No corresponding rights are given to foreigners. All that is guaranteed to them is protection to life and liberty in accordance with the laws of the land. This is conferred by Article 21 which is in the following terms:*
>
> > "*No person shall be deprived of his life or personal liberty except according to procedure established by law."*
>
> ***35.*** *Entries 9, 10, 17, 18 and 19 in the Union List confer wide powers on the Centre to make laws about, among other things, admission into and expulsion from India, about extradition and aliens and about preventive detention connected with foreign affairs. Therefore, the right to make laws about the extradition or aliens and about their expulsion from the land is expressly conferred; also, it is to be observed that extradition and expulsion are contained in separate entries indicating that though they may overlap in certain aspects, they are different and distinct subjects. And that brings us to the Foreigners Act which deals, among other things, with expulsion, and the Extradition Act which regulates extradition.*
>
> ***36.*** *The Foreigners Act confers the power to expel foreigners from India. It vests the Central Government with absolute and unfettered discretion and, as there is no provision fettering this discretion in the Constitution, an unrestricted right to expel remains.*
>
> ***37.*** *The law of extradition is quite different. Because of treaty obligations it confers a right on certain countries (not all) to ask that persons who are alleged to have committed certain specified offences on their territories, or who have*

already been convicted of those offences by their courts, be handed over to them in custody for prosecution or punishment. But despite that the Government of India is not bound to comply with the request and has an absolute and unfettered discretion to refuse.

40. *In the case of expulsion, no idea of punishment is involved, at any rate, in theory, and if a man is prepared to leave voluntarily he can ordinarily go as and when he pleases. But the right is not his. Under the Indian law, the matter is left to the unfettered discretion of the Union Government and that Government can prescribe the route and the port or place of departure and can place him on a particular ship or plane. [See Sections 3(2)(b) and 6 of the Foreigners Act.] Whether the Captain of a foreign ship or plane can be compelled to take a passenger he does not want or to follow a particular route is a matter that does not arise and we express no opinion on it. But assuming that he is willing to do so, the right of the Government to make the order vis-à-vis the man expelled is absolute.*

41. *This may not be the law in all countries. Oppenheim, for example, says that in England, until December 1919, the British Government had "no power to expel even the most dangerous alien without the recommendation of a court, or without an Act of Parliament making provision for such expulsion, except during war or on an occasion of imminent national danger or great emergency". (Oppenheim's International Law, Vol. I, 7th Edn., p. 631)*

> *But that is immaterial, for the law in each country is different and we are concerned with the law it obtains in our land. Here the matter of expulsion has to be viewed from three points of view : (1) does the Constitution permit the making of such a law? (2) does it place any limits on such laws? and (3) is there in fact any law on this topic in India and if so, what does it enact? We have already examined the law-making power in this behalf and its scope, and as to the third question the law on this matter in India is embodied in the Foreigners Act which gives an unfettered right to the Union Government to expel. But there is this distinction. If the order is one of expulsion, as opposed to extradition, then the person expelled leaves India a free man.*
>
> *It is true he may be apprehended the moment he leaves, by some other power and consequently, in some cases, this would be small consolation to him, but in most cases the distinction is substantial, for the right of a foreign power to arrest except in its own territory and on its own boats is not unlimited. But however that may be, so far as India is concerned, there must be an order of release if he is in preventive custody and though he may be conducted to the frontier under detention he must be*

permitted to leave a free man and cannot be handed over under arrest."

20. Thus, the said decision of the Constitution Bench of the Supreme Court of India in the case of *Hans Muller of Nuremberg (supra)* confirms and re-affirms the absolute and unfettered powers of the Government to order expulsion of a foreigner. In the present case in hand, the petitioner is admittedly a declared foreign national.

21. It would be appropriate to also mention that in the rest of the Country i.e except for the State of Assam, it is the Executive who can order the expulsion of a foreigner. However, foreigners entering into Assam from the specified territory are subjected to proceeding before the jurisdictional Foreigners Tribunal and thereafter, they are subjected to deportation and/ or expulsion. Section 4 of the Foreigners Act, 1946 which provides for internees and restriction on their free movement and Section 3 (2) (g) of the Foreigners Act, 1946 which provides for arrest. The State as filed an affidavit-in-opposition stating that arrangement has been made for expulsion of the petitioner, hence the Court is of the considered opinion that no case has been made out by the petitioner for releasing the petitioner on bail after the opinion dated 04.12.2018, passed by the learned Member, Foreigners Tribunal, Jorhat, Assam in Case No. FT/CRD/3/2018, corresponding to S.P.'s Enquiry No. 13/2018 *State Vs. Musstt. Hamida Begum* has attained finality by dismissal of W.P.(C) 8179/2019 by order dated 01.10.2020 and dismissal of SLP (C) No(s). 32173/2025 by order dated 07.11.2025 and further dismissal of Review of Petition (C) Diary No. 75430/2025, arising out of SLP (C) No. 32173/2025.

22. There is one facet which will be appropriate to be referred herein. It appears that from the provisions of the Foreigners Act, 1946 and the Foreigners

(Tribunals) Order, 1964, that a declared foreign national, on being apprehended, is neither required to be produced before the Magistrate nor is entitled to any other rights. The status of the petitioner remains as the declared foreign national. In the considered opinion of the Court, detection and declaration of a foreigner under the Foreigners (Tribunals) Order, 1964, has civil consequences as it is not an adjudication under any criminal law in force in the Country.

23. The same can be also seen from paragraph no. 4 of the Foreigners (Tribunals) Order, 1964, which grants power to the Foreigners Tribunal to have powers of the Civil Court while trying a suit under the Code of Civil Procedure. However, if someone is arrested for offence under the Passports Act or any other criminal offence by which person entering into India without a passport or a valid document is apprehended, it carries with it the prison sentence.

24. However, when a person is declared to be a foreigner under the Foreigners Act, 1946, read with Foreigners (Tribunals) Order, 1964, it carries with it civil consequences.

25. As the Supreme Court of India, in the case of *Sarbananda Sonowal-(I) (supra)* had compared the issue of influx in Assam as a external aggression, then such illegal foreigner would be a person who can be said to be an "alien". Therefore, such illegal migrant would be excluded from protection under Article 22 of the Constitution of India by virtue of exclusion clause under clause 3 of the Article 22 of the Constitution of India. In the case of *Pankaj kumar Chakraborty Vs. State of West Bengal and Ors., AIR 1970 SC 97 : (1969) 0 Supreme SC 225,* had made the following observations were made by the Constitution Bench of the Supreme Court of India in paragraph no. 9 thereof. The relevant said paragraph no. 9 is quoted hereinbelow:-

> ***9.*** *Clause 1 of Article 22 guarantees to a detenu the right to be informed as soon as possible of the grounds for his detention and the right to consult and of being defended by a legal practitioner of his choice. Clause 2 imposes the obligation of his having to be produced before a Magistrate within 24 hours of his detention and of not being detained beyond that period without the authority of such Magistrate. Clause 3, however, withdraws these safeguards in the case of two categories of persons, namely, enemy alien and persons detained under a law providing for preventive detention.*

26. It may be mentioned that this Court, by judgment and order dated 11.04.2013, passed in the case of *Bahaluddin Sheikh Vs. Union of India and Ors., (2013) 0 AIR (Gau) 181: (2013) 5 GLR 325: 2013 (3) GLT 264: (2013) 2 NEJ 713: (2013) 0 Supreme (Gau) 214*, has held that ouster of jurisdiction of Civil Courts in the matter of determination of citizenship and declaration as to whether the person is foreigner or not. Accordingly, the said judgment was ordered to be circulated by the Registry to all the District Courts for appraisal in the matter of determination of citizenship and or as to whether the person is a foreigner or not. Paragraphs no. 9, 23, 34, 45, 46, 47, 55, 56, 58, 60 and 63 are quoted hereinbelow:-

> *9. Referring to Articles 5 to 11 of the Constitution of India under Part-II (Citizenship), he submitted that the Parliament having enacted the Citizenship Act, 1955 for acquisition and termination of Indian citizenship, as provided for under Article 11 of the Constitution of India, there is automatic ouster of jurisdiction of civil Court in the matter of determination of citizenship. Referring to the provisions of Foreigners Act, 1946, he also submitted that the said act having specifically been enacted towards exercising certain powers in respect of foreigners, there is no question of entitlement to initiate simultaneous proceeding by way of filing a suit for determination of the same issue. As regards the power of the Foreigners tribunal by way of rendering 'Opinion" as to whether a person is not a foreigner within the meaning of Foreigners Act, 1946, referring to the dictionary meaning, he submitted that "Opinion" being a statement by a Judge or Court of the decision reached in regard to a case tried or argued before them, expounding the law as applied to the case, and detailing the reasons upon which the judgement is based, it cannot be argued that such opinion is inferior than the declaration made by the Civil Court. In this connection, he has specifically referred to the observations made in Moslem Mandal (Supra) in which the expression "Opinion" in reference to Civil Court jurisdiction was held thus:--*

37. We deem it necessary to point out that under the scheme of the Foreigners Act, 1946, read with Foreigners (Tribunal) Order, 1964 (in short 1964 order'), the Tribunal, constituted under the 1964 Order, is required to give, on the 'reference' made to it, only an 'opinion' whether the person, proceeded against, is or is not a 'foreigner'. For the purpose of rendering such an opinion, the Tribunal has to necessarily determine the question as to whether the person, against whom a 'reference' is made, is or is not an Indian citizen. The question as to whether a person is or is not an Indian citizen can also be decided by a civil Court at the option of the person, who is alleged to be a foreigner or held to be a foreigner by the Tribunal constituted under the 1964 Order, inasmuch as a civil court is entitled to pass a decree declaring the status of a person as an Indian citizen. By enacting the Foreigners Act and/or the 1964 Order, the power of the civil courts, to determine the status of a person as an Indian citizen, has not been taken away.

39. It is, thus, clear that on the basis of the pleadings of the parties in a writ proceeding and/or, on the basis of the documents placed on record in a writ proceeding, a Court cannot determine the question as to whether a person is or is not a foreigner. The determination of the question, as to whether a person is or is not a foreigner, falls, when a 'reference' is made to a Tribunal under the provisions of the Foreigners Act read with the 1964 Order, within the ambit of the powers of the Tribunal and, in other cases, by a civil court of competent jurisdiction. We may hasten to point out that so far as the Tribunal is concerned, it only renders an 'opinion' with regard to the question as to whether the person alleged to be a foreigner is or is not a foreigner and, then, it is for the Central Government or the authorities, otherwise empowered, to decide as to whether such a foreigner needs to be deported from the territory of India or not. Thus, the procedure, adopted, in the writ proceeding, in the present case of determining, on the basis of the pleadings made in the writ proceeding and the documents annexed thereto, whether the writ petitioners were or were not foreigners, cannot be said to be a legally permissible procedure.

106. There is yet another reason, which leads us to hold that the standard of proof in a proceeding before the Tribunal, constituted under the 1964 Order, is same as that of the civil court and the reason is that a civil court is entitled, under Section 9 of the Code of Civil Procedure, to declare the status of a person as an Indian citizen. This position is recognized even in Union of India Vs. Gaus Mohammed; AIR 1961 SC 1526, which the respondents have relied upon. When the civil court's declaration, made under Section 9, is binding on the Government, it logically follows that the Tribunal cannot adopt a higher

standard than the one, which is applied by the ordinary civil courts for the purpose of making a declaratory decree of the fact as to whether a suitor is or is not a foreigner.

23. In Delhi Airtech Services Pvt. Ltd. Vs. State of U.P. reported in (2011) 9 SCC 354 dealing with the concept of sub-silentio, the Apex Court held that when a point does not fall for decision of a Court, it incidentally arises for its consideration and is not necessary to be decided for the ultimate decision of the case, such a decision does not form a part of the ration of the case but the same is treated as a decision passed sub-silentio.

43. The concept of 'sub silentio' has been explained by Salmond on Jurisprudence "12th Edition" as follows:

A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the Court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the Court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

44. The aforesaid passage has been quoted with approval by the three Judge Bench in Gurnam Kaur (supra). This Court in Gurnam Kaur (supra), in order to illustrate the aforesaid proposition further relied on the decision of the English Court in Gerard v. Worth of Paris Ltd., reported in 1936 (2) AER 905. In Gerard, the only point argued was on the question of priority of the claimant's debt. The Court found that no consideration was given to the question whether a garnishee order could be passed. Therefore, a point in respect of which no argument was advanced and no citation of authority was made is not binding and would not be followed. This Court held that such decisions, which are treated having been passed sub silentio and without argument, are of no moment. The Court further explained the position by saying that one of the chief reasons behind the doctrine of precedent is that once a matter is fully argued and decided the same should not be reopened and mere casual expression carry no weight.

45. In Gurnam Kaur (supra) this Court conclusively held that:

12. ...Not every passing expression of a Judge, however eminent, can be

treated as "ex cathedra statement, having the weight of authority".

46. Similarly, it has also been held by the majority opinion in Constitution Bench of this Court in the case of Madhav Rao Jivaji Rao Scindia v. Union of India, reported in AIR 1971 SC 530 that:

> *it is difficult to regard a word, a clause or a sentence occurring in a judgment of this Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment.*

47. In another Constitution Bench decision of this court in Padma Sundara Rao (Dead) & Ors., v. State of Tamil Nadu & others reported in (2002) 3 SCC 533, similar views have been expressed by this Court in para 9, at page 540 of the report wherein the unanimous Constitution Bench of this Court opined:

> *9. Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington V. British Railways Board - (1972) AC 877. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.*

34. Citizenship Act, 1955 deals with citizenship by birth, by decent, by registration, by naturalization. By Amendment act 65 of 1985, Section 6(A) has been inserted as special provisions as to citizenship of persons covered by the Assam Accord. The Act also deals with the situations arising out of renunciation of citizenship, termination of citizenship, deprivation of citizenship, etc. Section 18 of the Act makes provisions for making rules by the Central Government.

45. In AIR 1969 SC 78: Dhulabhai & Ors. Vs. State of Madhya Pradesh & Ors., dealing with the principles regard exclusion of jurisdiction of civil court, the Apex Court held thus:--

> *Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that*

all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

46. In State of U.P. Vs. Shah Mohammad reported in AIR 1969 SC 1234, the Apex Court dealing with the provision of Section 9 of the Citizenship Act read with Rule 30 of the Citizenship Rules, 1956, held that pending suit involving questions falling within the said Sections and Rules was not maintainable and that civil court jurisdictions stood ousted by the provisions of the said Section and Rules. In that case, the plaintiff had gone to Pakistan after 26.1.1950 and before commencement of the Citizenship Act, 1955, returned to India on a Visa issued by the Indian High Commission in Pakistan. He instituted a suit before the commencement of the Act for a declaration that in the circumstances of the case his nationality never changed even though he had gone to Pakistan and that he continued to remain citizen of India. It was contended by the Govt. that a civil Court had no jurisdiction to decide the question arising in the suit in view of Section 9 of the Citizenship Act. The High Court rejected the objection and framed issue on the question whether the plaintiff had or had not acquired the citizenship of Pakistan during his stay there and remitted the case to the lower appellate court for a finding on that basis. Allowing the appeal, it was held that under Article 11 of the Constitution of India, the Parliament has the power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship. The Parliament could thus regulate the right of citizenship by law. It was held that if a question arises as to whether, when or how an Indian citizen has acquired the citizenship of another country, that has to determined by the Central Government by virtue of provision of Sub-Section 2 of Section 9 read with Rule 30 of the Citizenship Rules. In paragraph 7 and 8 of the judgement, it has been observed thus:--

7. It has next been contended that retrospective operation should not be given to Sec. 9 of the Act because loss of Citizenship is a serious and grave matter and it involves loss of personal liberty. Under Article 21 no person can be deprived of his life or personal liberty except according to procedure established by law. The procedure established by law before the commencement of the Act was the ordinary procedure of determination by civil courts whenever a question arose about loss of Indian citizenship by acquisition of citizenship of a foreign country or State. It is suggested by learned counsel for respondent No. 1 that by giving retrospective operation to Sec. 9 so as to make it applicable to pending proceedings the provisions of Article 21 will be contravened or violated. This would render Sec. 9 of the Act unconstitutional. It is somewhat difficult to appreciate the argument, much less to accede to it. If the Parliament was competent under Article 11, which is a constitutional provision read with the relevant Entry in List 1, to legislate about cases of persons belonging to categories 2 and 3 referred to at a previous stage it could certainly enact a legislation in exercise of its sovereign power which laid down procedure

different from the one which obtained before. The new procedure would itself become the "procedure established by law" within the meaning of Article 21 of the Constitution. Therefore even on the assumption that loss of Indian citizenship with consequent deportation may involve loss of personal liberty within the meaning of Article 21, it is not possible to hold that by applying Sec. 9 of the Act and Rule 30 of the Rules to a case in which a suit had been instituted prior to the commencement of the Act there would be any contravention or violation of that Article.

8. In conclusion it may be mentioned that this Court, in several cases, has consistently held that questions falling within Sec. 9(2) have to be determined to the extent indicated therein by the Central Government and not by the Courts. Such matters as are not covered by that provision have, however, to be determined by the courts; (see Akbar Khan Alam Khan Vs. Union of India reported in 1962 (1) SCR 779 and The Government of Andhra Pradesh Vs. Syed Mohd. Khan reported in (1962) Supp (3) SCR 288.

47. In the said case, the particular determination fell on the Central Government ousting the jurisdiction of the civil Court. In the instant case and for that matter in all cases pertaining to citizenship and as to whether a person is a foreigner or not fall within the jurisdiction of the Foreigners tribunal as per the provisions of the Citizenship Act and the Foreigners Act aided by the Foreigners (Tribunal) Order, 1964 and cannot be determined by the civil Court.

55. The principle expressed in the Maxim generalia specialibus non derogant means that if a special provision has been made on a certain matter, that matter is excluded from the general provision. Following my above discussions there is ouster of jurisdiction of civil Courts in the matter of determination of Indian citizenship in view of the special Laws/provisions noted and discussed above.

56. Finally, in my considered opinion, after the judgement in Sarbananda Sohowal (Supra), there cannot be any manner of doubt in the matter. In the said case, the Illegal Migrant (Determination by Tribunal) Act, 1983 was put to challenge on the ground of negating the constitutional mandate contained in Article 355. Striking down the said Act after holding it to be wholly unconstitutional, the Apex Court issued the following directions:--

(3) All cases pending before the Tribunals under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall stand transferred to the Tribunals constituted under the Foreigners (Tribunals) Order, 1964 and shall be decided in the manner provided in the Foreigners Act, the Rules made thereunder and the procedure prescribed under the Foreigners (Tribunals) Order, 1964.

(4) It will be open to the authorities to initiate fresh proceedings under the Foreigners Act against all such persons whose cases were not referred to the

Tribunals by the competent authority whether on account of the recommendation of the Screening Committee or any other reason whatsoever.

(5) All appeals pending before the Appellate Tribunal shall be deemed to have abated.

(6) The respondents are directed to constitute sufficient number of Tribunals under the Foreigners (Tribunals) Order, 1964 to effectively deal with cases of foreigners, who have illegally come from Bangladesh or are illegally residing in Assam.

58. In terms of the observations and directions, apart from the fact that the Passport (Entry into India) Act, 1920; the Foreigners Act 1946; the Immigrants (Expulsion from Assam) Act, 1950 and the Passport Act, 1957, shall apply to the state of Assam, all cases pending before the Tribunals under the IM(D)T Act, 1983, shall also stand transferred to the Tribunals constituted under the Foreigners (Tribunals) Order, 1964 and shall be decided in a manner provided in the Foreigners Act, the rules made thereunder and the procedure prescribed under the Foreigners (Tribunals) Order, 1964. Had it been a case of jurisdiction being available with the civil court, the whole controversy relating to IM(D)T Act would not have arisen and the Apex Court would have made it explicitly clear in its directions contained in the said judgement. The very fact that all pending cases before the IM(D)T were to be transferred to the Foreigners Tribunals and the central Govt. was directed to constitute sufficient number of Tribunals under the Foreigners (Tribunals) Order, 1964 to effectively deal with the cases of foreigners, who have illegally come from Bangladesh or are illegally residing in Assam, would negate the plea that there is no ouster of jurisdiction of civil court. The directions in Sarbananda Sonowal (supra) are only in the form of consolidating the position to the determination as to whether a person is a foreigner or not, is within the exclusive jurisdiction of the Foreigners Tribunals to be decided as per the provisions of the Citizenship Act, 1955 and the Foreigners Act, 1946 with the aid of the Foreigners (Tribunals) Order, 1964.

60. For all the aforesaid reasons, it is hereby declared that the issue relating to citizenship being exclusively triable by the Foreigners Tribunals cannot be determined in civil suit and for that matter civil court jurisdiction is ousted in such matters. Consequently the civil suit being Title Suit No. 95/2012 filed by the petitioner as plaintiff before the learned Munsiff No. 1, Goalpara shall stand rejected being not maintainable and/or being barred by the provisions of the aforesaid Acts and the Rules. Similarly, all other civil suits raising the issue relating to citizenship being not maintainable, the plaint thereof shall stand rejected as per Order 7 Rule 11 of the CPC.

63. The Registry is directed to circulate this judgement and order to all the district courts for their appraisal about the ouster of jurisdiction of civil courts in the matter of determination of citizenship and the declaration as to whether a person is a foreigner or not."

27. In light of the discussions above, as the jurisdictional Foreigners

Tribunal has already exercised jurisdiction which is conferred to it by law as discussed above, the issue as to whether the Title Suit No. 30/2026 would be maintainable or not is left open to be decided by the concerned Civil Court without being influenced by the observations made in this judgment and order.

28. However, insofar as the point of determination referred above is concerned, the Court is of the concerned opinion that as the State has filed an affidavit-in-opposition annexing thereto the data pertaining to absconding declared foreigners which is compiled and filed by the Senior Superintendent of Police (Border), Assam, which is disclosed that in 36 districts of the State, as on 30.06.2026, 1,16,946 numbers of declared foreign nationals are yet to be apprehended and expelled. It shows a very grim picture when it comes to the expulsion of the foreigners and declared foreign nationals in the State of Assam.

29. In light of the discussions above, the Court is of the considered opinion that as the State has taken a specific stand that all the arrangements have been made for expulsion of the petitioner out of the Country. Therefore, in light of the provisions of Section 3 (2) of the Foreigners Act, 1946 and Section 4 of the Foreigners Act, 1946, the Court is disinclined to direct the authorities to release the petitioner. The said prayer and other prayer ancillary thereto are all rejected.

30. In light of the discussions about how this writ petition fails and the same is dismissed.

31. The learned standing counsel for the Border and FT matters is permitted to send a downloaded copy of the order the competent authorities for their information.

32. The Registry is directed to transmit a downloaded copy of this order to the learned Civil Judge (Senior Division), Sibasagar for information only.

33. Notwithstanding that the previous judgment and order of this Court in the case of *Bahaluddin Sheikh (supra)* was ordered to be circulated, it is felt appropriate that this judgment and order also be circulated to all the respective District Judges under the jurisdiction of this Court, who shall further circulate to all the Judicial Officers posted under his jurisdiction.

34. A copy of the order be also sent to the Judicial Academy, Assam for their record.

JUDGE **JUDGE**

Comparing Assistant

PRATIK GUPTA

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