IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 559 of 2023
(Arising out of SLP(Civil) No 23608 of 2022)

Rashida Begum @ Rashida Khatun .... Appellant(s)

Versus

Union of India & Ors ....Respondent(s)

O R D E R

1 Leave granted.

2 The Foreigners' Tribunal, Kamrup[1] issued a notice on 28 December 2007 to the appellant alleging that she had entered Assam from East Pakistan after 1 January 1966 and before 25 February 1971 and directed her to appear on 7 February 2008. The appellant did not appear before the Tribunal and was proceeded against *ex parte*.

3 By an order dated 10 July 2008, the Tribunal relied upon the report of the Enquiry Officer who stated that in pursuance of the order of the Superintendent of Police he visited the house of the appellant, but on being asked to produce documents, she was unable to do so. Hence, the appellant was held to be a foreigner who had entered India after 25 March 1971.

1 "Tribunal"

4 The appellant moved the High Court in a writ petition under Article 226 of the Constitution. The petition was dismissed by the Single Judge on 3 November 2015. The High Court held that though the appellant had placed reliance on certain documents, it was not open to the court exercising writ jurisdiction to sit in appeal over findings of fact recorded by the Tribunal. The writ appeal has been dismissed by the impugned order dated 7 August 2017 passed by the Division Bench. The High Court has noted that the appellant failed to appear in the enquiry and that since her citizenship status was enquired into on the orders of the Superintendent of Police, the ultimate conclusion which was arrived at by the Tribunal could not be faulted.

5 We have heard Mr Prateek Dhankhar, counsel appearing on behalf of the appellant and Mr Shuvodeep Roy, counsel appearing on behalf of the State of Assam.

6 During the course of the hearing, counsel appearing on behalf of the appellant has relied upon certain medical certificates issued by H R Memorial Hospital and Research Centre, Hajo, Bishnupur. The photo copies of the documents were rejected in the proceedings below on the ground that the originals were not produced.

7 On merits, the appellant has sought to place reliance on:

(i) An extract from the Voters' List of 1971 in respect of Abdul Rashid s/o Sonaullah, who the appellant claims to be her father;

(ii) A copy of a registered sale deed executed by Abdul Rashid on 27 May 1976; and

(iii) A copy of the school leaving certificate dated 3 July 1997 describing the appellant as a daughter of 'Abdur' Rashid.

8 The above documents were not considered by the Tribunal, which proceeded *ex parte* against the appellant. Though the High Court noted that certain documentary material was produced by the appellant, it did not scrutinize them on the ground that it was not open to the writ court to sit in appeal over the findings of the Tribunal.

9 In the backdrop of the circumstances which have been set out above, we are of the view that it would be in the interests of justice to remand the proceedings back to the Tribunal so that the material which has been relied upon by the appellant in support of her plea of citizenship can be duly evaluated in accordance with law. The appellant has furnished cogent material in support of her absence during the proceedings before the Tribunal. Serious consequences will follow if the finding that the appellant entered into India after 25 March 1971 is sustained without considering the defence on merits.

10 We pass the following order:

(i) The order passed by the Tribunal on 10 July 2008 is set aside and the proceedings in GFT(R) Case No 185/2007 (Police Case No 2075/03) shall stand restored to the Tribunal;

(ii) In order to facilitate a fresh determination by the Tribunal, the impugned orders of the Single Judge of the High Court dated 3 November 2015 and of the Division Bench dated 7 August 2017 shall stand set aside, without expressing any final opinion on the merits of the claim of the appellant;

and

(iii) On remand, it would be open to the appellant to file a reply before the Tribunal on or before 31 March 2023 placing all relevant documentary material on the record of the Tribunal. The Tribunal shall thereafter proceed in accordance with law after furnishing the appellant an opportunity of being heard.

11 The appeal is accordingly disposed of in the above terms.

12 Pending application, if any, stands disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Dipankar Datta]

New Delhi;
January 27, 2023
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ITEM NO.29 COURT NO.1 SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).23608/2022

(Arising out of impugned final judgment and order dated 07-08-2017 in WA No. 32/2016 passed by the Gauhati High Court)

RASHIDA BEGUM @ RASHIDA KHATUN Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

Date : 27-01-2023 This petition was called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DIPANKAR DATTA

For Petitioner(s) **Mr. Prateek Dhankhar, Adv.**
Mr. Rahul Pratap, AOR

For Respondent(s) **Mrs. Aishwarya Bhati, A.S.G.**
Mrs. Ruchi Kohli, Adv.
Mr. Bhuvan Kapoor, Adv.
Mrs. Swarupama Chaturvedi, Adv.
Mr. Rajesh Kumar Singh, Adv.
Mr. Rajan Kumar Chourasia, Adv.
Mr. Sanjay Kumar Tyagi, Adv.
Mrs. Archana Pathak Dave, Adv.
Mr. Arvind Kumar Sharma, AOR
Mr. Aman Sharma, Adv.

Mr. Shuvodeep Roy, AOR
Mr. Deepayan Dutta, Adv.
Mr. Sai Sashank, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1 Leave granted.

2 The appeal is disposed of in terms of the signed order.

3 Pending application, if any, stands disposed of.

(SANJAY KUMAR-I) **(SAROJ KUMARI GAUR)**
DEPUTY REGISTRAR **ASSISTANT REGISTRAR**
(Signed order is placed on the file)