GAHC010015392022

2024:GAU-AS:8194

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

Case No. : Review.Pet./8/2022

KAHINUR BEGUM
W/O OSMAN GONI
RESIDENT OF VILAGE GHUGUBARI, PO GHUGUBARI, PS SORBHOG, DIST BARPETA, ASSAM 781319

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, NEW DELHI 01

2:THE ELECTION COMMISSION OF INDIA
NEW DELHI 01

3:THE STATE OF ASSAM

REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR GUWAHATI 06

4:THE STATE CO ORDINATOR OF NRC
BHANGAGARH
ASSAM GHY 05

5:THE DEPUTY COMMISSIONER

BARPETA
ASSAM
781301

6:THE SUPERINTENDENT OF POLICE (B)

BARPETA
ASSAM 781301

7:THE OFFICER IN CHARGE
KALGACHIA POLICE STATION
DIST BARPETA
ASSAM 78131

Advocate for the Petitioner : MR. M U MAHMUD, MS. M BARMAN,MS. M BEGUM,MR S H MAHMUD

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

– B E F O R E –

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing **:** 19.03.2024

Date of Order **:** **20.08.2024**

JUDGMENT & ORDER (CAV)

(NELSON SAILO, J)

This is an application filed by the review petitioner (petitioner) under Chapter-X of the Gauhati High Court Rules read with Order 47, Rule 1 and 2 of the Civil Procerdure Code,1908 (CPC) seeking review of the Order dated 24.01.2018 passed by this Court in WP(C) No. 7412/2016.

[2.] The petitioner aggrieved with the Order dated 20.06.2016 passed by the Foreigners Tribunal No.8th, Barpeta in FT Case No. 159/2015 (*Union of India Vs. Kahinur Nessa @ Kahinur Begum*) declaring her to be a foreigner within the meaning of Section 2(a) of the

Foreigners Act, 1946, filed WP(C) No. 7412/2016 before this Court. This Court, after hearing the parties and perusing the records, dismissed the writ petition vide Order dated 24.01.2018. The petitioner thereafter on 25.01.2022, after a period of four (4) years, filed the instant review petition.

[3.] According to the petitioner, review of the Order dated 24.01.2018 is being sought because the writ petition was decided without considering some vital facts which ought to have been considered by this Court and moreover, some new and important discoveries have happened, which needs adjudication.

[4.] The petitioner also contends that she was suffering from various ailments because of her old age in addition to Covid-19 and her poor financial condition and therefore, there is delay in filing the review petition. As such, she prays the delay be condoned.

[5.] The petitioner contends that she was born and brought up at village Kokila Moulovi Para of erstwhile Goalpara district. Her father's name is Abdul Kudduch and her mother's name is Nur Khatun. The name of the grandfather is Akalat Miya. The name of the father and mother of the petitioner was included in the voter list of 1966, 1970, 1985, 1997 and 2010 for the erstwhile Abhayapuri, North LAC because of bifurcation.

[6.] In the Electoral Roll of 1966, the name of the father of the petitioner was included as Kuduj and her grandfather's name as Akash Miya against House No.11, in the said list. In 1970 his name was included as Kudduj Khatun against House No.11 and grandfather's name as Akkash Miah. In the year 1985, her father's name was included as Kuddush Miah and grandfather's name as Akalu against house No.60. In 1997, her father's name was included as

Kuddush Miah, but her grandfather's name was included as Akalu Miah against house No.78 in the said voter list. Then a prayer for correction of his name including his father was made only in 2010 and their names were then included properly. As for the name of the mother of the petitioner, there was no mistake.

[7.] The name of the petitioner's father has been recorded in the Jamabandi of village-Chakla part-1, Mouza - Srijangram, as per the order of the Circle Officer dated 21.04.2021 alongwith the petitioner and her brothers and sisters establishing linkage with her father whose name appeared in the voter list of the year 1966.

[8.] That after attaining majority, the marriage of the petitioner was solemnized with one Osman Goni of village Gugubari of Sorbhog, Barpeta in the year 1993. Thereafter, the petitioner by virtue of her marriage migrated to the aforesaid place which falls under 44 Jonai LAC. After such migration, the name of the petitioner was included in the Electoral Roll in the year 2005 and 2010 prepared for the 44-Jonia LAC.

[9.] While the petitioner was leading a happy married life, suddenly a reference was made by the Superintendent of Police (B), Barpeta on 02.01.2003 against her under the Illegal Migrants (Determination by Tribunals) Act,1983 (IMDT Act). The Act was however declared to be unconstitutional by the Apex Court in *Sarbananda Sonowal Vs. Union of India,* reported in *(2005) 5 SCC 665.* The pending reference was thereafter transferred to the Foreigners Tribunal No.8th to be decided as per the provisions of the Foreigners Act, 1946 read with the Foreigners (Tribunal) Order, 1964. The case of the petitioner was registered as FT Case No.159/2015 and subsequently, the Tribunal rendered its opinion against the petitioner vide

its Order dated 20.06.2016. On a challenge made by the petitioner before this Court, the same was upheld vide Order dated 24.01.2018 passed in WP(C) No.7412/2016.

[10.] The grounds taken by the petitioner for seeking review are abstracted below for ready perusal:–

(a) For that this Hon'ble Court in the Order dated 24/1/2018 passed in the connected Writ Petition viewed that the Writ Court would not interfere with the findings of fact, unless it is a case of violation of the principle of natural justice or non-conformity with the procedure prescribed under the Foreigners (Tribunal) Order, 1964 or if it is a case of admissible evidence being not taken into consideration or if the finding recorded by the Tribunal is based on no evidence at all. Inspite of such observation, this Hon'ble Court in the order dated 24/1/2018 did not appreciate the plea of the petitioner that the whole proceeding was initiated by violating the provision of the Foreigner's Tribunal Order 1964 and the guidelines framed by this Hon'ble Court in Moslem Mondal case regarding inquiry, accepting inquiry report by the concerned S.P.(B).

(b) For that the view of this Hon'ble Court as expressed through the Order dated 24/1/2018, passed in the connected Writ Petition regarding the documents exhibited by the Review petitioner, which this Hon'ble Court held to be not proved by the Review Petitioner in accordance with law is also jeopardize the Review Petitioner. The said view is harsh towards the Review Petitioner as because most of the documents are land records and Voter list which are prepared by the Government Employees of respective department and not by any private Person or by the Review Petitioner herself, the Review Petitioner being a private

Person cannot ensure the presence of those officials responsible for preparation of those documents to prove their authenticity, only the Court or Tribunal can ensure their presence and can call for the records as per provision of section 30 of C.P.C. if the Court/Tribunal have any doubt on those documents and such power is also available to the Foreigners Tribunal as reflected under Order 4 (b) of the Foreigners Tribunal Order, 1964. That apart from the cross examination of the Review Petitioner by the learned Tribunal below there was no such suggestion put doubting the authenticity of those documents only at the end of the Trial. If the learned Tribunal below at that time had any doubt on the authenticity of the documents exhibited by the Review petitioner either ought to have put suggestion in this effect during the cross of the Review Petitioner or call for the records by exercising the power conferred under section 30 of C.P.C., but none of those option had been adopted by the learned Tribunal below, rather came to an conclusion which is irrational and violated the principle of natural justice. And this Hon'ble Court also hold the same view without appreciating the aforesaid facts which prejudice for the Review petitioner.

(c) For that, this Hon'ble Court also in the Order, dated 24/1/2018 given negative emphasized on the variation of name of the father of the petitioner in the electoral Rolls of 1966 and 1970, but in doing so this Hon'ble Court did not appreciate the facts in both the Electoral Roll, the House No. and the age match with each other which indicated that both the person are same and one.

(d) For that, this Hon'ble Court in the Order dated 24/1/2018 held a view that the Review Petitioner failed to prove her linkage with Kuduj Miya @ Abdul Kuduj @ Kuduj @ Kuduj khatun by proving the Certificate issued by the Kokila Gaon. Panchayat. when this Hon'ble

Court holding the said view did not appreciate the provision laid down under section…… of the Indian Evidence Act which speaks that admitted facts need not be proved and in the present case the referral authority and /or enquiry officer admitted the facts that Kuduj Mia @ Abdul Kuduj @ Kuduj @ Kuduj khatun is the father of the Review Petitioner which reveals from the reference itself.

(e) For that this Hon'ble Court in the Order dated 24/1/2018 passed in the connected Writ Petition discarded the affidavit submitted by the Review Petitioner which she herself executed to solve ambiguity regarding variation of name of her father on the grounds that her father is still alive and he did not adduce the said certificate and had not turn down to deposed his evidence in the learned Tribunal below. This Hon'ble Court while holding the said view totally ignored theexplanation given by the petitioner in this regard.

(f) For that this Hon'ble Court on hand had a view that the Petitioner was born on 1983 and it is revealed from all aspect that she born at village Kokila Maulovipara under Abhayapur Police Station if it is so then the Review petitioner is an Indian national by birth as per section 3(1)(a) of the Citizenship Act, 1955.

(g) For that the Hon'ble High Court did not consider the public documents exhibited in support of her nationality nor believe the evidence of her brother namely Golam Mostafa as DW2 though their father's name are same. This clearly established the linkage of the petitioner with her father.

(h) For that there was no reviewtal against the evidence of the petitioner as well as her brother on any vital point and as such in view of division Bench Judgment as reported in

2013 1 GLT 941 para 9 &10 ,those evidences should have been believed and the petitioner should have been declared as not to be a foreigner."

[11.] The following authorities are relied upon by the learned counsel for the petitioner:-

(i) State of Assam & Ors. Vs. Moslem Mondal & Ors. 2013 (1) GLT 809

(ii) MM Thomas Vs. State of Kerala & Anr. (2000) 1 SCC 666

(iii) Board of Control for Cricket in India & Anr. Vs. Netaji Cricket Club & Ors. (2005) 4 SCC 741

(iv) Sirajul Haque Vs. State of Assam & Ors. (2019) 5 SCC 534

(v) Abdul Matali @ Md. Mataleb @ Abdul Mutaleb @ Mutaleb @ Md. Abdul Matleb Vs. Union of India & 2 Ors. (2015) 2 GLT 617

(vi) Jaswant Singh Vs. Gurdev Singh & Ors. (2012) 1 SCC 425

(vii) Ravinder Singh Gorkhi Vs. State of UP (2006) 5 SCC 584

(viii) Harpal Singh & Anr. Vs. State of Himachal Pradesh (1981) 1 SCC 560

(ix) Puthiavinayagam Pillai Vs. Sivasankaran Pillai –I-L.W. 482

(x) Suganthi Suresh Kumar Vs. Jagdeeshan (2002) 2 SCC 420

(xi) UP State Brassware Corpn. Ltd. & Ors. Udaynarain Pandey (2006) 1 SCC 479

(xii) Maharuddin Ali Vs. Union of India & Ors. 2021 (2) GLT 1021

[12.] Mr. J Payeng, learned counsel for the Home Department, submits that the

petitioner has invoked Order 47 Rule 1 & 2 of the CPC to file the instant review petition. He submits that the review petition has to be filed within a period of 30 days from the date of the order sought to be reviewed. However, in the instant case, it has taken the petitioner about 4 years to file the instant review petition. The learned counsel submits that despite the inordinate delay in filing the instant review petition, the petitioner has not filed a separate application seeking condonation of delay and that he has only made some statements in paragraph Nos. 13 and 16 of the review petition which cannot by any means be construed as sufficient cause and therefore, the review petition should be dismissed on grounds of inordinate delay and laches.

[13.] Mr. J Payeng, learned counsel further submits that even on merit, the petitioner has to show that there is an error apparent on the face of the record or the petitioner despite due care and diligence could not bring certain relevant materials to the notice of the Court at the relevant time or the petitioner has to show that there are other sufficient reasons for reviewing of the Order dated 24.01.2018 which has close nexus with the first two principles governing review. The learned counsel submits that from a perusal of the review petition, the petitioner has failed to show that any of the three grounds exist for reviewing the Order dated 24.01.2018. The learned counsel submits that it is a settled position in law that the grounds of review are very limited and that the review petition cannot be filed in the guise of an appeal. He submits that all the points raised by the petitioner in his review petition has already been argued before this Court by the petitioner through his counsel at the relevant time and therefore, the review petition should be rejected and dismissed. In support of his submission, Mr. J Payeng relies upon the following authorities:-

(1) Vedanta Limited vs. Goa Foundation & Ors., (2021) 7 SCC 206.

(2) Kamlesh Verma vs. Mayawati & Ors., (2013) 8 SCC 320

(3) Central Council for Research in Ayurvedic Sciences vs. Bikartan Das & Ors., 2023 SCC Online SC 996.

(4) S Madhusudhan Reddy vs. V Narayana Reddy & Ors., 2022 SCC Online SC 1034.

[14.] Mr. A I Ali and Mr. P Sarma, learned counsels for respondent Nos. 5 and 3 respectively adopt the argument of Mr. J Payeng, learned counsel and they submit that the review petition is without any merit and the same should be dismissed.

[15.] We have heard the submissions made by the learned counsels for the rival parties and we have perused the materials available on record. The writ petition was disposed of vide Order dated 24.01.2018 and the petitioner, thereafter, approached this Court for review of the said Order only on 25.01.2022 i.e., after about four (4) years. Stand taken is that the delay was due to the petitioner having suffered from various ailments because of her old age in addition to financial crisis and COVID-19. However, the illness of the petitioner has neither been substantiated nor supporting documents produced. The Court was also not completely closed at all times due to COVID-19. Considering the delay, the explanation given by the petitioner for filing the review petition only on 25.01.2022 is found to be very casual, cryptic and inadequate. As rightly pointed out by Mr. J. Payeng, the same cannot be accepted as sufficient cause to persuade us to condone the delay. However, notwithstanding our finding that there is inordinate delay in filing the instant review petition, we deem it proper to examine the review petition on merit as well. Therefore, the authorities relied by the

petitioner on delay are not being discussed._

[16.] The review petitioner has taken as many as eight (8) grounds i.e., (a) to (h) as already abstracted in the preceding paragraphs to seek review of the Order dated 24.01.2018. We shall consider the same as follows :–

(i) The petitioner has taken the ground that a Writ Court would not interfere with the findings of facts unless it is case of violation of principles of natural justice or non-conformity with the procedure prescribed under the Foreigners (Tribunal) Order, 1964 or if it is case of admissible evidence being not taken into consideration or if the finding recorded by the Tribunal is based on no evidence at all. According to the petitioner, despite such observation, this Court did not appreciate the plea that the whole proceeding was initiated by violating the provisions of Foreigners (Tribunal) Order, 1964 and the guidelines framed by this Court in *Moslem Mondal* case regarding enquiry and accepting the enquiry report by the concerned S.P order. Although such ground has been taken but the petitioner has nowhere substantiated as to how the whole proceeding was vitiated for violation of the provisions of the Foreigners (Tribunal) Order, 1964. The case of *Moslem Mondal* (supra) will be referred to at a subsequent stage of this order. Since the petitioner has raised the question of violation of principles of natural justice or non-conformity with the procedure prescribed, it may be apt to refer to the decision of the Apex Court in the case of *Central Council for Research in Ayurvedic Sciences* (supra). Although the case was as to whether the respondents therein were entitled to enhancement of their retirement age from 60 to 65 years as applicable to the AYUSH doctor working under the Ministry of AYUSH, the Apex Court formulated and laid down two cardinal principles of law governing exercise of extraordinary jurisdiction

under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari. Paragraph Nos. 51 & 52 which is relevant to the subject may be gainfully abstracted hereunder.

> "*51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.*
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> *52. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not."*

From the above abstract, it may be seen that the Apex Court has held that a Writ of Certiorari being a high prerogative writ should not be issued on mere asking. The High Court when it comes to issuance of writ of certiorari does not exercise the powers of appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior Tribunal purports to be based. Only when the order is passed without jurisdiction or is

culpably erroneous the High Court can exercise its powers but does not substitute its own views with those of the Tribunal.

Coming to the present case, it may be seen that this Court in examining the information rendered by the inferior Tribunal had only observed the principles of law laid down by the Apex Court as abstracted above. In other words, this Court did not find any error committed by the Tribunal in rendering its opinion dated 20.06.2016 in FT Case No. 159/2015.

(ii) We have noticed that ground Nos. (b) and (d) appears to be grounds as if the petitioner is seeking a review of the order passed by the Tribunal. Since the review sought by the petitioner is of the Order dated 24.01.2018 passed by this Court, there is no question of travelling back to the Order dated 20.06.2016 passed by the Tribunal in FT Case No. 159/2015. The view of the Court not being accepted also cannot be a ground that can be taken in review. The petitioner has also stated that the view taken by this Court is harsh towards the review petitioner since most of the documents are prepared by Government employees and not by the petitioner. We are afraid the same cannot be a ground for seeking review of the Court's order as well. It is a settled law that mere marking and exhibiting documents is not enough. The exhibited documents are required to be proved in accordance with law which the petitioner has failed to do so in the instant case.

(iii) In respect of ground No. (c), it says that Court did not appreciate that the Electoral Roll and House No. and the age matched in the Electoral Roll of 1966 and 1970. The fact is this Court in exercise of its powers under Article 226 of the Constitution will not re-appreciate

evidence. In fact, the voter list of 1966 and 1970 were discussed in the Order dated 24.01.2018. This Court took into consideration the claim of the petitioner that her Indian citizenship is through Abdul Koddus whom she claim to be her father. But in the voters list of 1966, the name which appears is Kuduj S/o Akash Miah, aged 36 years and in the voters list of 1970, the name which appears is Kudduj Khatun S/o Akkash Miah, aged 40 years. Even if one is to ignore the discrepancy in the name, whether it is Abdul Kuddus or Kuduj or Kudduj Khatun, what was required of the petitioner was to prove her linkage as daughter of Abdul Koddus. Exhibit-A is a certificate dated 17.11.2015, issued by the President and Secretary of 1 No. Kokila Gaon Panchayat, District Bongaigaon, certifying that the petitioner was the daughter of Adbul Koddus. This certificate cannot be of any significance since the author of the certificate did not testify before the Tribunal to not only prove the contents of the certificate but also the truthfulness thereof. In absence of such deposition, no reliance can be placed on Exhibit-A. Besides, Abdul Koddus did not appear before the Tribunal to establish that Kahinur Begum (the petitioner) was his daughter.

(iv) In respect of ground (e), the petitioner has stated that this Court had ignored the affidavit sworn by the petitioner to establish her citizenship. At the cost of repetition, we may reiterate that Exhibit – L is only a self serving affidavit sworn by the petitioner stating that she is the daughter of Abdul Koddus, whose name was wrongly recorded in various electoral rolls as Kuduj, Kudduh Khatun, Kuddush etc. If Abdul Koddus is still alive as claimed by the petitioner as well as the witness No. 2, he himself could have sworn an affidavit clarifying the discrepancy in his name. However, no such affidavit has been sworn by him and that he also did not appear before the Tribunal to say that Kahinur Begum was his daughter. Under the

circumstance, the petitioner was rightly found to have failed to discharge her burden under Section 9 of the Foreigners Act, 1946 that she is not a foreigner but a citizen of India by adducing admissible, cogent and reliable evidence.

(v) In ground (f), the petitioner has stated that the Court took a view that the petitioner was born on 1983 and therefore, she is an Indian national by birth as per Section 3(1)(a) of the Citizenship Act, 1955. We may however state herein that this Court did not come to any finding that the petitioner was born in the year 1983. In fact, it is the petitioner who stated in her written statement that she was born and brought up at village Kokila Moulovi Para under Abhayapuri Police Station in the district of Bongaigaon. Abddus Miah was her father and Nur Khatun was her mother. Both of them were still alive and residing in the aforesaid address. Her parents were enlisted in the voters list of 1966, 1970, 1985, 1997 and 2010. After attaining the age of majority, the petitioner married one Osman Goni S/o late Samed Ali of Ghugubari village under Sorbhog Police Station in the district of Barpeta. The petitioner's name was recorded in the voters list of 2010 in respect of Jania constituency and in support thereof, she sworn an affidavit on 05.12.2015 disclosing her age as 32 years. Therefore, if the petitioner was 32 years of age in the year 2015, it would mean that she was born sometime in the year 1983. Therefore, it can be seen that the year of birth of the petitioner has been worked out solely on the basis of her own affidavit sworn on 15.12.2015 stating that she was 32 years of age. The petitioner besides claiming to be a voter in the year 2010 otherwise did not prove her linkage with her projected parents or her projected brother i.e., Golam Mostafa (witness No. 2). In fact, the petitioner neither in her deposition nor in her written statement stated that she has a brother whose name is Golam Mostafa (witness No. 2). We therefore do

not find any merit in the ground taken by the petitioner.

(vi) In respect of ground (g), the same has already been discussed in the preceding paragraph and therefore, requires no further examination.

(vii) In respect of ground (h), the petitioner has relied upon the case of *Abdul Khalique (Md.) –Vs- Union of India and Ors. 2013 (1) GLT 941*. However, the said case is clearly distinguishable to the present case. As already stated in the preceding paragraph, the petitioner neither in her written statement nor in her evidence stated that she had a brother by the name of Golam Mostafa (witness No. 2). Further, the said witness No. 2 while stating that he was the younger brother of the petitioner and was working as a Teacher in Osma Memorial High School, though claimed to be a voter, he failed to produce any voters list and he also did not know anything about their land. In the case of *Abdul Khalique (Md.)* (supra), the petitioner therein had examined himself as witness No. 1 and his statements were found to be supported by the evidence of witness No. 2 and witness No. 3, who were the Gaonburah and a villager of the village concerned respectively. It was under such circumstance that the Court opined that the evidence of witness No. 1 neither challenged by the State nor demolished, the petitioner was found to have discharged the burden under Section 9 of the Foreigners Act, 1946. Whereras, in the present case, in view of what has already been stated above, the petitioner has only failed to discharge her burden as per the aforesaid provisions of law. Therefore, we find no merit on this ground as well.

[17.] In the case of *Board of Control for Cricket in India & Anr.* (supra), the Apex Court in the given facts of that case opined that the entertaining of the review application by the

High Court cannot be said to be *ex facie* bad in law. Section 114 of the CPC empowers a court to review its order if the conditions precedent laid down therein are satisfied. Order 47, Rule 1 of the CPC provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason. Sufficient reason is wide enough to include a misconception of fact or law by a Court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "*actus curiae neminem gravabit*", which means that the act of the Court shall prejudice no-one. However, in the present case, as already noticed in the preceding paragraphs, the petitioner in the review petition has failed to show that any of the three conditions set out in Order 47 Rule 1 are attracted. In other words, the petitioner apart from reiterating the stand taken by her in the earlier proceeding has failed to point out any error or mistake which is apparent on the face of the record. Having failed to show that any of the pre-condition set out in Order 47 Rule 1 CPC exist, the authority relied upon cannot render any assistance to her case.

[18.] In the case of *M.M. Thomas* (supra), the Apex Court has held that the High Court as a Court of record has the power and duty to review its own judgment and the same is inherent in every High Court. However, the question of making such correction would arise subject to a finding that there is an error apparent on the face of the record which otherwise is not found in the instant case. In the case of *Sirajul Haque* (supra), the Apex Court in the given facts of that case found the discrepancy in the name of the grandfather of the appellant to be non fatal and detrimental to the case of the appellant. Also the mere fact that the

father may later have gone to another village was no reason to doubt the document concerned. In the present case, despite the inconsistencies in the name of the father of the petitioner, this Court had ignored the same and proceeded to examine the petitioner's claim. However, the fact remains that the petitioner failed to prove her linkage with her projected father.

[19.] The case of *Abdul Matali @ Md. Mataleb* (supra) has been relied upon by the counsel for the petitioner to contend that a writ court cannot review findings of fact but can correct error of jurisdiction or failure to exercise jurisdiction when inferior court/tribunal decides the case in violation of principles of natural justice or without affording an opportunity of hearing to party. In the instant case, the petitioner was indeed given the opportunity of establishing that she was not a foreigner but a citizen of India by the Tribunal. She had led her own evidence and had also exhibited documents in support of her claim. After examining her claim, projection and evidence, the Tribunal decided the reference in favor of the State. The opinion of the Tribunal was thereafter challenged before this Court and this Court vide the order dated 24.01.2018 did not find any error of jurisdiction or failure on part of the Tribunal to exercise jurisdiction. Therefore, the authority relied upon by the petitioner is found to be not applicable to the instant case. In the case of *Jaswant Singh* (supra), the Apex Court held that the compromise reached between the parties and becoming the basis of the decree passed by the Sub-Judge, First Class as per the terms and conditions of the compromise merged into a decree and therefore, a public document in terms of Section 74 of the Evidence Act, 1872. A certified copy of the public document under Section 76 of the Act is admissible in evidence under Section 7 of the said Act, it is admissible in

evidence without being proved by calling witness. In the present case, none of the documents produced by the petitioner were in the form of a decree or a certified copy of a decree. The documents exhibited were therefore required to be proved in accordance with law to have any evidentiary value. The petitioner having failed to do so, the documents exhibited were rightly not accepted.

[20.] The case of *Harpal Singh & Anr.* (supra) and *Ravinder Singh Gorkhi* (supra) are regarding entry of the date of birth in the School records being an entry in public record, the same would be admissible in evidence. In the present case, the petitioner is not required to prove her date of birth or age but rather is required to prove that she is not a foreigner but a citizen of India. As already stated herein above, the petitioner is required to prove her linkage with her projected parents which otherwise she has failed to do. Therefore, the case relied upon is found to be not applicable to her case. The case of *Puthiavinayagam Pillai* (supra) decided by the Madras High Court has also been relied upon to show that the importance of documentary evidence over oral evidence when both are available. In the present case, even if the same is to be accepted, there is no corroboration between the evidence led by the petitioner and her witness. The petitioner did not mention in her pleadings and oral evidence that she has a brother i.e., witness No.2. Therefore, the authority relied upon cannot be applied to the case of the petitioner. In the case of *Suganthi Suresh Kumar* (supra), the Apex Court held that it is not only a matter of discipline for the High Courts but a mandate under Article 141 of the Constitution of India that the law declared by the Supreme Court is binding on all Courts within the territory of India. There cannot be any argument about the same and that there appears to be no basis for relying upon the said decision in the present case. The

case of *U.P State Brassware Corpn. Ltd*. (supra) is found to be not applicable in the instant case since there is no occasion for exercising the discretionary power of this Court in molding the relief as the petitioner has to discharge her burden under Section 9 of the Foreigners Act, 1946 after a reference is made to the concerned foreigners tribunal. Therefore, this case also does not apply to the case of the petitioner. The case of *Mahar Uddin Ali* (supra) has also been relied upon by the counsel for the petitioner to contend that the burden of proof in a FT case is preponderance of probabilities. However, the fact remains that the burden for establishing that one is not a foreigner but an India citizen is in fact on the procedee and not upon the State as per Section 9 of the Foreigners Act, 1946. The petitioner in the instant case although claiming that her parents are alive, they did not come and depose before the Tribunal that the petitioner is their daughter. The projected brother of the petitioner who was examined as witness No. 2 also did not produce any cogent and admissible evidence as to how he was related to the petitioner. He also did not produce any voters list which contained his name and/or with other family members. Therefore, the case under reference also does not assist the petitioner in any manner.

[21.] In the case of *Vedanta Limited* (supra), the Apex Court observed that an application for review of a judgment has to be filed within 30 days from the date of judgment or order i.e. sought to be reviewed in accordance with Rule 2 of Order 47 of the Supreme Court Rules, 2013. In the given facts of that case, no cogent grounds were furnished for the delay between 20 and 26 months by the two parties in filing their applications for review. One of the Judge who had passed the order which was sought to be reviewed had already retired when the first four review petitions were filed by one of the party and later, the other Judge

had also retired when the second batch of review petitions were filed by the other party. The Supreme Court observed that such practice must be firmly disapproved to preserve the institutional sanctity of the decision-making of the Court. The review petitions were therefore dismissed both on limitation as well as merit. In the present case, we have also noticed that there is a delay of about four (4) years in filing the instant review petition and the petitioner has not given any explanation with sufficient cause or even any acceptable explanation for the delay. Although we found the case fit to be dismissed on limitation above, but we have examined the same on merit as well as set out in the preceding paragraphs.

[22.] In the case of *Kamlesh Verma* (supra), the Apex Court in deciding the said case held that review will not be maintainable on a repetition of old and overruled argument and review proceedings cannot be equated with original hearing of the case amongst others. Paragraph Nos. 20, 20.1 & 20.2 may be abstracted hereunder:-

> "*20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:*
>
> *20.1. When the review will be maintainable:*
>
> *(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
>
> *(ii) Mistake or error apparent on the face of the record;*
>
> *(iii) Any other sufficient reason.*
>
> *The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius AIR 1954 SC 526 to mean "a reason sufficient on*

grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated."

[23.] From the above abstract, it may be seen that unless any of the three conditions as set out in Order 47 Rule 1 of the CPC are met, review will not be maintainable. Moreover, sufficient reason would mean a reason sufficient on grounds at least analogous or akin to

those specified in the rule. The petitioner in the present case has failed to fulfill any of the conditions in order to persuade us to review the Order dated 24.01.2018.

[24.] The Full Bench decision of this Court in *Moslem Mondal & Ors*. (Supra) has been relied upon by the learned counsel for the petitioner to contend that minor discrepancies cannot be fatal to the case projected by the petitioner and that the same can only be overlooked. However the fact remains that even if one is to overlook the discrepancies, the documents which have been exhibited by the petitioner has not been proved in accordance with law and therefore, not admissible in evidence. This already was the finding of this Court in the writ petition. The Full Bench by referring to a number of Apex Court's decisions observed amongst others that a review bench while hearing the review petition cannot re-appreciate the evidence and reject the findings of the earlier bench, which otherwise is within the domain of the appellate court. In other words, a review petition cannot be allowed to be an appeal in disguise.

[25.] In the case of *S. Madhusudhan Reddy* (supra), the Apex Court by referring to various decisions of the same Court on the subject reiterated the principles governing or the grounds available for filing a review application as set out in Order 47 of the CPC. The Apex Court observed that it was a settled law that in the exercise of review jurisdiction, the Court cannot re-appreciate the evidence to arrive at a different conclusion even if two views are possible in the matter. Further, under the garb of filing a review petition, a party cannot be permitted to repeat old and overruled arguments for reopening the conclusions arrived at in a judgment. The power of review is not to be confused with the appellate power which enables the Superior Court to correct errors committed by a subordinate Court. The principle laid down by the Apex Court squarely applies to the present case. The petitioner in the present review

petition has failed to show any error that is apparent on the face of the record or that some new documents or important matter or evidence which after exercise of due diligence was not within her knowledge could not be produced by her at the time when the order sought to be reviewed was passed. There is also no sufficient reason or reasons shown to compel this Court to review the Order dated 24.01.2018.

[26.] Thus, upon due consideration of the review petition in its entirety, we find that the grounds for review raised by the petitioner has already been duly considered and answered by this Court while passing the Order dated 24.01.2018. Therefore, under the given facts and circumstances, we find no merit in the review petition.

[27.] Accordingly, this review petition is dismissed on limitation as well as on merit.

[28.] Interim order passed earlier on 18.02.2022 accordingly stands vacated/recalled. The Bailor stands discharged.

[29.] Registry shall send back the records to the Foreigners Tribunal 8th, Barpeta forthwith with a copy of this order.

[30.] Copy of this order also be forwarded to the Superintendent of Police (Border), Barpeta for its necessary information.

JUDGE **JUDGE**

Comparing Assistant