

GAHC010002502022



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

Case No. : WP(C)/189/2022

NURJAHAN NESSA @ NURJAHAN BEGUM
D/O. LT. AKKAS ALI, W/O. ABDUR RAHMAN, VILL. CHASRA, P.S.
BAGHBAR, DIST. BARPETA, ASSAM.

VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
SHASTRI BHAWAN, NEW DELHI-110001.

2:THE STATE OF ASSAM

REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-781006.

3:THE ELECTION COMMISSION OF INDIA

REP. BY THE CHIEF ELECTION COMMISSION
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001.

4:THE STATE COORDINATOR

NATIONAL REGISTRATION OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S. ROAD
BHANGAGARH

GUWAHATI
ASSAM
PIN-781005.

5:THE FOREIGNERS TRIBUNAL NO. 4TH

BARPETA
DIST. BARPETA
ASSAM
PIN-781301.

6:THE DEPUTY COMMISSIONER

BARPETA
P.O. BARPETA
DIST. BARPETA
ASSAM
PIN-781301.

7:THE SUPDT. OF POLICE (B)

BARPETA
P.O. BARPETA
DIST. BARPETA
ASSAM
PIN-781301.

8:THE OFFICER IN CHARGE OF BAGHBAR POLICE STATION

P.O. BAGHBAR
DIST. BARPETA
ASSAM
PIN-781308

Advocate for the Petitioner : MS. D GHOSH

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 06.04.2023

(A.M. Bujor Barua, J)

Heard Ms. H. Betala, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 4, being the Union of India and the State Co-ordinator of NRC, respectively. Also heard Ms. A. Verma, learned counsel for the respondents No. 2, 5, 7 and 8, being the authorities in the Home Department; Mr. T. Pegu, learned counsel for the respondent No. 3, being authorities in the Election Commission of India and Ms. U. Das, learned counsel for the respondent No. 6, being the Deputy Commissioner, Barpeta.

2. The petitioner Nurjahan Nessa @ Nurjahan Begum was referred to the Foreigners' Tribunal No. 4, Barpeta for rendering an opinion as to whether she is a person who had entered the State of Assam from the specified territory on or after 25.03.1971 and accordingly F.T. Case No. 36/2017 was registered. The Tribunal rendered its opinion dated 30.09.2021 arriving at its conclusion that the petitioner is a foreigner who had entered the State of Assam on or after 25.03.1971. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1966 of village Habi Dongra, Mouza Baghbar in the Barpeta district which contains the names of Akkas Ali son of Faju Dewani at Sl. No. 367 and Fulchan Nessa wife of Akkas Ali at Sl. No. 368. The petitioner also relies upon the voters' list of 1997 of village Habi Dongra, Mouza Baghbar in the Barpeta district which contains the names of Akkash Ali son of Kujrat at Sl. No. 1283, Kulshan Nessa wife of Akkash at Sl. No. 1284 and Sajahan Ali son of Akkash at Sl. No. 1285. The petitioner

also brings in the oral evidence of DW2 Sajahan Ali by claiming him to be her brother who had deposed that the petitioner Nurjahan Nessa @ Nurjahan Begum is the daughter of Akkash Ali of village Habi Dongra. The petitioner further refers to a Jamabandi of a plot of land in village Habi Dongra wherein as per the mutation order of the Circle Officer dated 08.08.2018, the names of Sajahan Ali and Nurjahan Begum had been mutated in place of Akkash Ali. Accordingly, the petitioner claims that being the daughter of Akkash Ali she has discharged the burden under Section 9 of the Foreigners Act, 1946 that she is a citizen of India.

4. It is noticed that Akkas Ali of the voters' list of 1966 of village Habi Dongra is the son of Fuju Dewani whereas Akkash Ali of the voters' list of 1997 of village Habi Dongra is the son of Kujrat. If Fuju Dewani and Kujrat are one and the same person, the petitioner may have established that she is a citizen of India and also through the evidence of DW2 Sajahan Ali as well as the Jamabandi which indicates that the land of Akkash Ali was mutated in favour of Sajahan Ali and Nurjahan Begum.

5. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 4, Barpeta to examine as to whether Fuju Dewani and Kujrat are one and the same person and allow the petitioner to adduce any relevant evidence that may be desirable to establish the same. The Tribunal to also examine the authenticity of the aforesaid voters' lists as well as require the petitioner to bring in the complete voters' lists of village Habi Dongra from the year 1966 up to the year 1997. The respondents in the Home Department of the Government of Assam through the Superintendent of Police(B), Barpeta may verify the claim of the petitioner and also the authenticity of the aforesaid voters' lists as well as whether the petitioner Nurjahan Nessa @ Nurjahan

Begum and the Nurjahan Begum referred in the Jamabandi as well as in the evidence of the DW2 are one and the same person. The respondents in the Home Department of the Government of Assam may also cross-examine the DW2 Sajahan Ali to extract the veracity in the evidence of DW2. Upon the doing the needful, the Tribunal to pass a reasoned order. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 30.09.2021 in F.T. Case No. 36/2017 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 24.05.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

J U D G E

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Comparing Assistant