

GAHC010004142018



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

Case No. : WP(C)/137/2018

FOSIRUN NESSA @ MUST. FATIMA BEGUM
D/O. KARIM ALI ALIAS MD. ABDUL KARIM, W/O. MD. MOJIBUR RAHMAN,
R/O. VILL. MODERTOLI, P.S. DOBOKA, DIST. HOJAI, ASSAM, PIN-782440

VERSUS

THE UNION OF INDIA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
THE MINISTRY OF HOME AFFAIRS, SHASTRI BHAWAN, TILOK MARG,
NEW DELHI-1.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-781006.

3:THE DEPUTY COMMISSIONER
SIVASAGAR
DIST. SIVASAGAR
ASSAM.

4:THE SUPERINTENDENT OF POLICE (BORDER)
SIVASAGAR
DIST. SIVASAGAR
ASSA

Advocate for the Petitioner : MR. S C BISWAS

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

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

ORDER

Date : 29.05.2023
(AM Bujor Barua, J)

Heard Mr. FA Hassan, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondent no. 1 being the authorities under the Union of India, Ms. A Verma, learned counsel for the respondents no. 2 and 4 being the authorities under the Home Department of Government of Assam and Ms. U Das, learned counsel for the respondent no. 3 being the Deputy Commissioner, Sivsagar.

2. The petitioner Fosirun Nessa @ Fatima Begum had been referred to the Foreigner's Tribunal, Jorhat for rendering an opinion as to whether she is a person who entered the State of Assam from the specified territory on or after 25.03.1971, resulting in registration of Case No. FT/SVR/203/14. The Tribunal rendered an opinion dated 07.09.2017 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding the petitioner relies upon the voters' list of 1966 of village Modertoli Mikir Gaon which contains the name of Arman Ali, S/O Latai Mia and it is claimed that Arman Ali is the grandfather of the petitioner. Further reference is made upon the voters list of 1989 of village Modertoli Mikir Gaon which contains the name of Karim, S/O Arman at Sl. No. 131 and it is claimed that Karim is the father of the petitioner. To substantiate that Karim is the father of the petitioner reliance is placed on the birth certificate of the petitioner which

contains the information that Fosirun Nessa is the daughter of Karim Ali of village Modertoli Mikir Gaon as well as a certificate dated 21.01.1993 of the Circle Officer, Hojai Revenue Circle which contains the information that Karim Ali, S/O Lt. Arman Ali, R/O Modertoli Mikir Gaon was a victim of a communal violence on 08.12.1992. By relying on the aforesaid material, the petitioner claims that the burden under Section 9 of the Foreigners' Act, 1946 had been discharged.

5. In view of the above, the matter stands remanded back to the Tribunal to examine the voters' list of 1966 of village Modertoli Mikir Gaon containing the name of Arman Ali, S/O Latai Mia as well as the voters' list of 1989 of village Modertoli Mikir Gaon which contains the name of Karim, S/O Arman. If Karim is the son of Arman Ali of the voters' list of 1966 of village Modertoli Mikir Gaon prima facie he had discharged the burden under Section 9 of the Foreigners' Act, 1946 and if by virtue of the birth certificate the petitioner Fosirun Nessa is the daughter of Karim, S/O Arman of the 1989 voters' list of village Modertoli Mikir Gaon, the petitioner may have again discharged the burden under Section 9 of the Foreigners' Act, 1946. But however, we have noticed that a copy of the jambandi available as Annexure-4, page-19 to the writ petition which shows that in place of Arman Ali the land was mutated in the name of Sarafat Ali and not Karim.

6. The petitioner would also explain the aforesaid situation before the Tribunal and the Tribunal shall examine the same. Upon doing the needful, a reasoned order be passed by the Tribunal.

7. The petitioner to appear before the Tribunal on 01.07.2023.

8. If the reasoned order is in favour of the petitioner, the same shall prevail

over the opinion dated 07.09.2017 passed in Case No. FT/SVR/203/14 and if against, consequence under the law is applicable to the petitioner.

9. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant