

GAHC010006772018



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

Case No. : WP(C)/304/2018

NUR NEHAR BEGAM @ MUSSTT. NUR NEHAR BEGUM
W/O- SOHIDUR RAHMAN, VILL- MAMUDPUR PART-I, P.S- MATIA, DIST-
GOALPARA, ASSAM

VERSUS

THE UNION OF INDIA
REP. BY THE MIN OF HOME AFFAIRS, GOVT OF INDIA, SHASTRI BHAWAN,
NEW DELHI- 110001

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

3:THE SUPERINTENDENT OF POLICE(B)
GOALPARA
P.S AND DIST- GOALPARA
ASSAM
PIN- 783101

4:THE OFFICER-IN-CHARGE
MATIA POLICE STATION
DIST- GOALPARA
ASSAM
PIN- 783101

5:THE DEPUTY COMMISSIONER
GOALPARA
P.S AND DIST- GOALPARA
ASSAM

PIN- 78310

Advocate for the Petitioner : MR. M A SHEIKH

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

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

ORDER

22.05.2023

[A.M.Bujor Barua, J.]

Heard Mr. M.A. Sheikh, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel for the respondent no. 1; Mr. G. Sarma, learned counsel for the respondent nos. 2, 3 and 4; and Ms. U. Das, learned counsel for the respondent no. 5.

2. The petitioner Nur Nehar Begum @ Musstt. Nur had been referred to the Foreigners' Tribunal, No. 5, Goalpara 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 FT Case No. F.T./5/230/MA/16 F.T., wherein an opinion dated 14.12.2017 had been rendered declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies on the Voters' List of 1966 of village Mamudpur Part-II, which contains the name of Showhan Ali, son of Didar Ali at serial no. 100. The petitioner also relies upon the Voters' List of 1985 of village Mamudpur Part-II, which contains the name of Sobahan Ali son of Didar at serial no. 6 and that of Nur Islam, son of Sobhan at serial no. 9 and both are shown to be residing in the same house no. 3. The petitioner also relies upon the land document pertaining to a plot of land of village Mahmudpur

Part-I. It is claimed that Sobahan Ali son of Didar of the Voters' List of 1985 is the grandfather and Nur Islam, son of Sobhan is the father. It is also claimed that Sobahan Ali of the Voters' List of 1985 and Showhan Ali of the Voters' List of 1966 both of village Mamudpur Part-II are one and the same person. Nur Islam, son of Sobhan rendered evidence before the Tribunal as DW2 stating that the petitioner Nur Nehar Begum is his daughter and that his wife is Ahela Begum @ Ahela Khatun.

4. It is noticed that the respondents in the Home Department of the Government of Assam had not adequately cross-examined the DW2 where Nur Islam, son of Subhan had clearly stated that Nur Nehar Begum is his daughter. If the contents of the Voters' List of 1966 and 1985 of village Mamudpur Part-II is accepted and the evidence of DW2 remains un-rebutted, the petitioner may discharge the burden under section 9 of the Foreigners' Act, 1946 that she is a citizen.

5. In the circumstance, the matter is remanded back to the Foreigners' Tribunal, No. 5, Goalpara to examine the Voters' Lists of 1966 and 1985 of village Mamudpur Part-II and also the respondents in the Home Department of the Government of Assam to cross-examine the DW2 and to make their own verification and submit the report before the Tribunal. The petitioner to produce the complete Voters' List of 1966 - 1985 of village Mamudpur Part-II.

6. Upon undertaking the exercise, the Tribunal may pass a reasoned order and if the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 14.12.2017 passed in FT Case No. F.T./5/230/MA/16 F.T., and if against, consequence under the law is applicable to the petitioner.

7. The petitioner to appear before the Tribunal on 06.07.2023.

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

Writ petition stands disposed of in the above terms.

Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant