

GAHC010007782017



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

Case No. : WP(C)/40/2018

SAMSER ALI @ SANGSER ALI
S/O. HASMAT ALI, VILL. SAGUNBAHI, P.S. MOIRABARI, DIST. MORIGAON,
ASSAM

VERSUS

THE UNION OF INDIA AND 3 ORS
REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS GOVT. OF
INDIA, NEW DELHI

6:THE STATE OF ASSAM
REP. BY ITS COMMISSIONER AND SECY.
TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI

7:THE SUPDT. OF POLICE (B)
MORIGAON
P.O. AND DIST. MORIGAON
ASSAM

8:THE DY. COMMISSIONER
MORIGAON
P.O. AND DIST. MORIGAON
ASSA

Advocate for the Petitioner : MR. A R SIKDAR

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

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

ORDER

08.05.2023

(AM Bujor Barua, J)

Heard Mr. AR Sikdar, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as for the authorities under the NRC, Mr. G Sharma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam, as well as the Superintendent of Police(B) Morigaon and Ms. U Das, learned Government Advocate for the Deputy Commissioner, Morigaon.

2. The petitioner, Samser Ali @ Sangser Ali, was referred to the Foreigners Tribunal -5th Morigaon, for rendering an opinion as to whether he is a person who had entered the State of Assam on or after 25.03.1971 resulting in the registration of Case No.F.T.(D) 246/2015 (New Number) corresponding to FT.(D) 1079/2012 (Old Number) wherein an opinion dated 28.02.2017 was rendered declaring the petitioner to be a person who had entered the State of Assam from the specified territory on or after 25.03.1971.

3. Being aggrieved this writ petition is instituted.

4. The petitioner relies upon the voters list of 1965 of village Sagunbahi, P.S.

Laharighat in the Nagaon district which contains the name of Hasmat son of Sabu at Sl.No.140 and claims that Hasmat of the voters list of 1965 is his father. The petitioner also relies upon the voters list of 1985 of village Sagunbahi, P.S. Moirabari in the Nagaon district which contains the name of Hasmat Ali son of Sadhu Bhuyan at Sl.No.650 and that of Samser son of Hasmat Ali at Sl.No.655. Accordingly, the petitioner claims that the burden under Section 9 of the Foreigners Act 1946 has been discharged to prove that he is a citizen of India.

5. In the circumstance, the matter stands remanded back to the Tribunal to examine the voters list of 1965 of village Sagunbahi, P.S. Laharighat in the Nagaon district which contains the name of Hasmat son of Sabu at Sl.No.140 as well as the voters list of 1985 of village Sagunbahi, P.S. Moirabari in the Nagaon district which contains the name of Hasmat Ali son of Sadhu Bhuyan at Sl.No.650 along with Samser son of Hasmat Ali at Sl.No.655.

6. Accordingly, the petitioner shall appear before the Tribunal on 16.06.2023.

7. The respondents in the Home Department to make an enquiry as to whether Hasmat, son of Sabu of 1965 voters list of village Sagunbahi, P.S. Laharighat in the Nagaon district and Hasmat Ali, son of Sadhu Bhuyan of the 1985 voters list are one and the same person and also as to whether Samser, son of Hasmat Ali of 1985 voters list of village Sagunbahi and the present writ petitioner/proceedee are one and the same person.

8. The petitioner would be at liberty to produce any material to establish his

case and the Home Department to the Government of Assam shall be at liberty to make their own verification.

9. The Tribunal upon doing the needful and after examining the evidences and materials shall pass a reasoned order. In the event, the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 28.02.2017 of the Foreigners Tribunal -5th Morigaon in Case No.F.T.(D) 246/2015 (New Number) corresponding to FT.(D) 1079/2012 (Old Number) and if it is against the petitioner, consequential action under the law shall follow.

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

11. Writ petition stands disposed of in the above terms.

12. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant