

GAHC010011102019



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

Case No. : WP(C)/333/2019

NAZRUL HOQUE @ NAZRUL HUSSAIN
S/O- LT MOFIZ UDDIN, PERMANENT R/O- VILL- SAGUNBAHI BAGAN, P.S.
KAMPUR, DIST- NAGAON, ASSAM, PIN- 782426

VERSUS

THE UNION OF INDIA AND 8 ORS.
REP. BY THE SECY., MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
SHASTRI BHAWAN, NEW DELHI- 110001

2:THE STATE OF ASSAM
REP. BY THE SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

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
GHY
ASSAM
PIN- 781005

5:THE FOREIGNERS TRIBUNAL KAMRUP (M) NO. 2
AT GHY
HEDAYATPUR
GHY- 3
DIST- KAMRUP (M)
ASSAM

6:THE DY. COMMISSIONER
NAGAON
DIST- NAGAON
ASSAM
PIN- 782001

7:THE DY. COMMISSIONER OF POLICE (B)
CITY GHY
KAMRUP (M)
ASSAM
PIN- 781001

8:THE SR. SUPERINTENDENT OF POLICE (B)
CITY GHY
KAMRUP (M)
ASSAM
PIN- 781001

9:THE OFFICER-IN-CHARGE
OF KAMPUR P.S.
P.O. KAMPUR
DIST- NAGAON
ASSAM
PIN- 78242

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

Date : 04-04-2023

JUDGMENT & ORDER (ORAL)

(AM Bujor Barua, J)

Heard Ms. D Ghosh, 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. AI Ali, learned counsel for the authorities under the Election Commission of India, Ms. A Verma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam, the Deputy Commissioner of Police (B) City Guwahati Kamrup(M), Sr. Superintendent of Police (B) City Guwahati Kamrup(M) as well as the Officer-in-Charge of Kampur Police Station and Ms. U Das, learned Government Advocate for the Deputy Commissioner, Kamrup (M).

2. The petitioner Nazrul Hoque @ Nazrul Hussain was referred to the Foreigners Tribunal No.2 Kamrup(M) at Guwahati 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 registration of FT Case No. 344/17 wherein the opinion dated 26.11.2018 has been rendered by the Foreigners Tribunal No.2 Kamrup(M) at Guwahati that the petitioner is 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 Tribunal by its opinion dated 26.11.2018 has arrived at its conclusion as extracted:

“From the above document, it is not possible to ascertain that person named as Mafizuddin S/o Kadar Kha in the Kheraj Periodic Patta of Land issued on 1st April 1967 is the same person named as Mafizuddin S/o Kadar Kha in the voter list of 1975 of Barhampur LAC.

Further it cannot be ascertain that Mafizuddin S/o Kadar Kha named in the voter list of 1975 is the same person named as Mafizuddin father of Nazrul Hoque named in the voter list of 1997, 2010, 2013, 2016 (photocopy) and 2018 (photocopy).

The Opposite party has failed to link his legacy with the person whom he has stated to be his father and grandfather with documents from 24.03.1971.

To prove citizenship of a person continuous existence is an essential ingredient. In this case the Opposite party has failed to establish his or his ancestor's legacy from 24th March 1971.”

5. A reading of the afore-extracted portion of the opinion of the Tribunal makes it discernible that the petitioner had discharged the burden under Section 9 of the Foreigners Act 1946 to the extent that he had placed material in the form of kheraj periodic patta which contains the name of Mafizuddin son of Kadar Kha, where the patta was issued on 01.04.1967, meaning thereby, that Mafizuddin son of Khadar Kha was a person who had existed in the State of Assam as on the said date.

6. The petitioner also relied upon the voters list of 1975 of Barhampur LAC which contains the name of Mafizuddin son of Kadar Kha. But the Tribunal for some reasons could not ascertain that Mafizuddin of the periodic patta and the Mafizuddin of the 1975 voters list are one and the same person.

7. The Tribunal thereafter proceeds to hold that to prove citizenship of a person, continuous existence is an essential ingredient. If the petitioner had discharged the burden of producing materials in the form of periodic patta of the year 1967 and also voters list of the year 1975 containing both the names

i.e. Mafizuddin son of Kadar Kha, *prima facie*, it cannot be said that the petitioner had not discharged the burden under Section 9 of the Foreigners Act 1946. If the Tribunal had any doubt, it is for the Tribunal to call for the materials from the State authorities to ascertain if the two persons both Mafizuddin son of Kadar Kha appearing in the periodic patta of the year 1967 and the voters list of the year 1975 are not the same person.

8. Be that as it may, the petitioner was also earlier referred to the Foreigners Tribunal No.9th Nagaon in F.T.Case No.08/2016 for rendering an opinion as to whether he is a person who had entered the State of Assam on or after 25.03.1971. An opinion dated 10.04.2017 was rendered declaring the petitioner to be a citizen. The Tribunal in its opinion dated 10.04.2017 arrived at its conclusion as extracted:

“From the evidence available on the record, it is seen that the proceedee is the son of Mofizuddin and his name is appeared in the voters list of 1975 of 87 No.Barhampur LAC and his grandmother’s name is appeared in the voter list of 1965 & 1970 of the 90 No.Kaliabor LAC.”

9. From the afore-extracted conclusion arrived at by the Tribunal, it is seen that the Tribunal had decided the issue that the petitioner is a citizen of India by accepting the voters list of 1975 of 87 No.Barhampur LAC which contained the name of Mofizuddin and further that the name of the grandmother appeared in the voters list of 1965 and 1970 of 90 No.Kaliabor LAC and further that the name of the father of the petitioner appeared in the sale deed which was executed in the year 1975.

10. From a reading of the aforesaid extracted conclusion arrived at by the Tribunal in its earlier opinion dated 10.04.2017 it cannot be said that no decision was rendered, although for the respondent authorities there may remain a scope to argue that the decision was incorrect.

11. The principle of *res judicata* requires two pre-conditions to be satisfied i.e. there must be a prior proceeding between the same parties and that the said proceeding must be decided. No objection has been raised that the proceedee in the earlier proceeding in F.T.Case No.08/2016 before the Foreigners Tribunal No.9th Nagaon and in the present proceeding in FT Case No. 344/17 Foreigners Tribunal No.2 Kamrup(M) at Guwahati are two different persons. As both the pre-conditions are satisfied and as held by the Supreme Court in its judgment in *Abdul Kuddus Vs. Union of India and Others* reported in (2019) 6 SCC 604 that the principles of *res judicata* are also applicable in cases of Foreigners Tribunal, we accordingly hold that the second proceeding in FT Case No. 344/17 in Foreigners Tribunal No.2 Kamrup(M) at Guwahati would not be maintainable under the law. Accordingly the same stands set aside.

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

13. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant