

GAHC010011732020



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

Case No. : WP(C)/464/2020

ASIYA KHATUN @ ASHIA KHATUN
W/O- MAIN UDDIN, D/O- LT. ASRAB ALI, VILL- PAKABETBARI PAM, P.S.
BARPETA, DIST.- BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. TO THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, SHASTRI BHAWAN, TILOK MARG, NEW DELHI-1

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

3:THE ELECTION COMMISSIONER OF INDIA
THROUGH ITS SECY.
NIRBACHAN BHAWAN
NEW DELHI-1

4:THE STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
BHANGAGARH
GHY-5

5:THE DY. COMMISSIONER OF BARPETA
DIST.- BARPETA
ASSAM

6:THE SUPERINTENDENT OF POLICE (B)

BARPETA
DIST.- BARPETA
ASSA

Advocate for the Petitioner : MR. R ALI

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

(A.M. Bujor Barua, J)

Heard Mr. R. Ali, 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 Coordinator of NRC, respectively. Also heard Mr. G. Sarma, learned counsel for the respondents No. 2 and 6, being the authorities in the Home Department; and Mr. T. Pegu, learned counsel for the respondent No. 3, being the authorities in the Election Commission of India and Ms. U. Das, learned counsel for the respondent No. 5, being the Deputy Commissioner, Barpeta.

2. The petitioner Asiya Khatun @ Ashia Khatun was referred to the Foreigners' Tribunal No. 1, 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. 142/17 was registered. The Tribunal had rendered its opinion dated 12.07.2019 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 1965 of village Putlartari, P.S. Barpeta in the present Barpeta district which contains the

name of Asrab Ali son of Manur Uddin at Sl. No. 57. It is claimed that Asrab Ali is the father of the petitioner. To substantiate the same, the petitioner relies upon a copy of a Jamabandi in respect of a plot of land at village Putlartari which contains the order of the Circle Officer dated 12.12.2019 in Mutation Case No. BAR/BAR/2019-20/1367/FMUT by which the land of Asrab Ali was mutated, amongst others, in the name of Asiya Khatun daughter of Asrab Ali in place of Asrab Ali. By relying on the order of mutation, a claim is made that the petitioner has discharged the burden under Section 9 of the Foreigners Act, 1946 that she is an Indian citizen.

4. If the information contained in the voters' list of 1965 of village Putlartari and the Jamabandi containing the order of the Circle Officer dated 12.12.2019 are correct, the petitioner may have discharged the burden under Section 9 of the Foreigners Act, 1946.

5. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 1, Barpeta to examine the aforesaid voters' list of 1965 of village Putlartari as well as the order of the Circle Officer dated 12.12.2019. The petitioner to produce the complete order of the Circle Officer, as well as the complete subsequent voters' lists of 1965 of village Putlartari, for examination of the Tribunal. The State respondents in the Home Department through the Superintendent of Police(B), Barpeta may make their own verification as to whether the petitioner proceedee and Asiya Khatun of the Jamabandi are one and the same person and submit a report before the Tribunal. The Tribunal to take note of the evidence of DW2 Anowar Hussain son of Asrab Ali who had also inherited the land of Asrab Ali.

6. Upon 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 12.07.2019 in F.T. Case No. 142/17 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 03.07.2023. 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

J U D G E

Comparing Assistant