

GAHC010015772017



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

Case No. : WP(C) No.1535/2017

MUSTT. JABEDA KHATUN
D/O. LT. NIMAR ALI, W/O. LT. SIRAJ UDDIN,
A RESIDENT OF VILL. BORDOLONG, P.O. KHARIKHANA,
P.S. LANKA, DIST. HOJAI, ASSAM, PIN.- 782446, PHONE NO. 9957350297

VERSUS

1: THE UNION OF INDIA and 5 ORS.
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, NEW DELHI.

2: THE STATE OF ASSAM REP. BY THE COMMISSIONER and SECRETARY
HOME DEPTT. DISPUR GHY.-06 ASSAM.

3: THE DY. COMMISSIONER HOJAI,
DIST. HOJAI ASSAM PIN.- 782435.

4: THE FOREIGNERS' REGISTRATION OFFICER
IN THE DIST. OF HOJAI DIST. HOJAI NAGAON ASSAM PIN.- 782001.

5: THE SUPERINTENDENT OF POLICE
IN THE DIST. OF HOJAI DIST. HOJAI NAGAON ASSAM PIN.- 782001.

6: THE OFFICER-IN-CHARGE
LANKA POLICE STATION DIST. HOJAI ASSAM PIN.- 78246

- B E F O R E -

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Petitioner : Mr. A.I Uddin, Advocate.

For the Respondents : Mr. K.K. Parasar, Central Government Counsel
for the respondent No. 1.

: Mr. J. Payeng, Standing Counsel, Home Department, Assam
for respondent Nos. 2, 4, 5 & 6.

: Mr. P. Sarmah, Additional Senior Government Advocate, Assam
for respondent No. 3.

Date of Judgment & Order : 10.11.2023.

JUDGMENT & ORDER

[N. Unni Krishnan Nair, J.]

Heard Mr. A.I. Uddin, learned counsel for the petitioner and Mr. K.K. Parasar, learned Central Government Counsel for the respondent No. 1. Also heard Mr. J. Payeng, learned Standing Counsel, Home Department, Assam for respondent Nos. 2, 4, 5 & 6 and Mr. P. Sarmah, learned Additional Senior Government Advocate, Assam for respondent No. 3.

2. The petitioner, by instituting the present proceeding, has assailed the order/opinion dated 27.01.2017 passed by the learned Member, Foreigners' Tribunal No. 7, Nagaon at Lanka (Hojai) in F.T./L Case No. 287/2015 arising out of the reference made by the Superintendent of Police (Border) of erstwhile district Nagaon in SPs Case No. 480/2013 declaring the petitioner to be a foreigner of post 1971 stream.

3. The basic facts requisite for adjudication of the issue(s) arising in the present proceedings are narrated herein below:

The Superintendent of Police (Border), Nagaon, Assam had submitted a reference against the petitioner suspecting her to be a foreigner having entered into Assam post 25.03.1971. The learned Foreigners' Tribunal, Hojai at Sankardev Nagar, on receipt of the reference, registered a Case being F.T./H

Case No. 35/2014 and issued notice to the petitioner. However, on creation of the Foreigners Tribunal No. 7, Nagaon at Lanka (Hojai), the said case was transferred and renumbered as F.T./L Case No. 287/2015.

4. The petitioner, on receipt of notice, entered appearance and filed her written statement on 28.07.2015. The petitioner deposed in the proceeding as DW-1 and exhibited certain documents in support of her case. In her written statement, the petitioner denied the allegation levelled against her and contended to be an Indian citizen. The petitioner contended that she was born at Dakhin Laskarpathar and that after her marriage she was residing at Bordolong, Nagaon. The petitioner in her written statement has referred to the voter list of 1966 and contended that the name of her projected father is recorded therein, however, the name of her father or her mother was not disclosed. The petitioner also referred to a voter list of 1970 to contend that the names of her mother and her elder brother were recorded therein as voters. However, the names of her mother or her elder brother were not disclosed. The petitioner contended that her name as a voter along with the name of her husband is recorded in the voter list of 1989.

5. The petitioner examined herself as DW-1 and exhibited as many as 8 (eight) documents. The learned Tribunal, upon consideration of the materials available before it, including the documents exhibited, vide order/opinion dated 27.01.2017, declared the petitioner to be a foreigner, who had illegally entered into the territory of India (Assam) after 25.03.1971 without proper authorization.

6. Being aggrieved with the impugned order/ opinion dated 27.01.2022

passed by learned Member, Foreigners' Tribunal No. 7, Nagaon at Lanka in F.T./L Case No. 287/2015, the petitioner has filed this writ petition on 09.03.2017.

7. The primary issue for determination in the present proceeding is as to whether the petitioner could establish her linkage with her projected father/mother in order to establish her status of citizenship under the provisions of Section 6(A) of the Citizenship Act, 1955.

8. In the backdrop of the aforesaid factual position, the learned counsel appearing for the petitioner has submitted that there being documents establishing the presence of the father/mother of the petitioner on Indian soil prior to the cut off date, i.e. 25.03.1971, the petitioner cannot be denoted as a foreigner and she is an Indian national for all intent and purpose. It was further contended that the documents exhibited by the petitioner establishes the citizenship status of the petitioner and the same is undisputable.

9. Mr. A.I. Uddin, learned counsel appearing for the petitioner, by drawing attention of this Court to the additional affidavit filed, has contended that the competent authority had permitted correction of the land records and the names of the petitioner along with her other siblings came to be included along with the name of her elder brother Intaz Ali Laskar. Basing on the same, it was contended that the petitioner's name in the land records having been incorporated against the name of the original Pattadar, i.e. her late father, the linkage stood established with her projected father, namely, Late Nimar Ali and accordingly, the order/opinion rendered by the learned Tribunal is required to be interfered with and the petitioner be declared as an Indian citizen.

10. Per contra, Mr. J. Payeng, learned standing counsel, Home Department, by referring to the pleadings in the writ petition, has submitted that the petitioner has only made general and vague statements towards challenging the order/opinion of the learned Tribunal. It was the contention of Mr. Payeng that no specific averments have been made toward assailing the conclusion reached in the order/opinion by the learned Tribunal. Mr. Payeng, by referring to the written statement filed on behalf of the petitioner before the learned Tribunal, has contended that the petitioner therein also had made only vague averments and even the names of her parents, siblings, etc., have not been disclosed. It is the contention of Mr. Payeng that the relevant particulars, within the knowledge of the petitioner, having not been disclosed in the written statement, the petitioner could not be said to have discharged the burden placed upon her. Mr. Payeng, dealing with the contention of the petitioner with reference to the copy of the *Jamabandi* annexed as Annexure-J to the additional affidavit filed in the present proceedings, has contended that the same is of no consequence inasmuch as the purported insertion in the land records were made only on 09.11.2022, i.e. after the proceedings before this Court were instituted on 09.03.2017. Mr. Payeng further contends that there is no material to establish the linkage between the petitioner and her projected father Late Nimar Ali. Accordingly, it is submitted that the order/opinion, under challenge, does not warrant any interference from this Court in exercise of its certiorari jurisdiction.

11. Mr. K.K. Parasar, learned Central Government Counsel representing the respondent No. 1 and Mr. P. Sarmah, learned Additional Senior Government Advocate, Assam representing the respondent No. 3 submit that they adopt the submissions advanced by Mr. J. Payeng, learned standing counsel, Home

Department.

12. The submissions advanced by the learned counsel for the petitioner as well as those advanced by the learned counsel for the respondents have been duly considered along with the materials available on record, including the original records of F.T./L. Case No. 287/2015.

13. At the outset, it is to be noticed that the manner and method in which a proceedee, whose citizenship status is questioned, is to establish his/her citizenship, has been laid down by the Hon'ble Supreme Court in the case of ***Sarbananda Sonowal -Vs- Union of India & Anr.***, reported in ***(2005) 5 SCC 665***, wherein it was indicated that such proceedee has to adduce evidence of **(i)** her date of birth; **(ii)** place of birth; **(iii)** name of her parents; and **(iv)** their place of birth and citizenship. In a proceeding under the Foreigners Act, 1946 read with Foreigners (Tribunals) Order, 1964, the issue is whether the proceedee is a foreigner or not and Section 9 of the Foreigners Act, 1946 casts the burden of proof on the proceedee to prove that he/she is not a foreigner. The same is based on the legal principle that the facts which are within the personal knowledge of a person should be proved by him/her and not the party who avers the negative because those facts are within the personal knowledge of the person concerned and not of the authorities of the State. After such proceedee has given evidence on the above points, the State authorities can verify the facts and can, thereafter, lead evidence in rebuttal, if necessary.

14. Taking the aforesaid principle as laid down in the case of ***Sarbananda Sonowal*** (supra), the contentions raised by the petitioner are to

be considered and evaluated.

The petitioner in her written statement filed before the learned Tribunal had not disclosed the names of her parents and siblings. The petitioner had exhibited voter lists of 1966 and 1970 (Exhibits-1 & 2, respectively) to contend that the name of her brother, i.e. Intaz Ali Laskar, was recorded therein as a voter. The petitioner has also exhibited a voter list of 1960 as Exhibit-9 to contend that name of her father Nimar Ali was recorded as a voter therein. The petitioner, by exhibiting the voter list of 1989, contended that her name has been recorded as a voter for 91 Hojai LAC along with her husband and her mother-in-law. The age of the petitioner in the voter list of 1989 (Exhibit-4) has been declared to be of 30 years. No voter list prior to the said voter list of 1989 containing the name of the petitioner has been brought on record as an exhibit. The petitioner for the purpose of establishing the linkage between herself and her parents has relied upon the Exhibit-5 certificate issued by the Head Teacher, Laskarpathar Muktab Bidyalaya on 25.02.2008, wherein the name of the petitioner's father has been recorded as Late Nimar Ali Laskar. It is relevant to note that the name of the father of the petitioner "Nimar Ali Laskar" as recorded in the school certificate dated 25.02.2008 (Exhibit-5) is not found to be so recorded in any other document. The petitioner refers to the Exhibit-6 certificate dated 25.07.2015 issued by the Gaonbuhra of Dakhin Laskarpathar Gaon, who certifies that the petitioner is a resident of Dakhin Laskarpathar Gaon. The petitioner also refers to Exhibit-7 certificate dated 21.07.2015 issued by the Secretary, Laskarpathar Gaon Panchayat to contend that she was married to Late Siraj Uddin of Bordolong, Lanka, Nagaon. The Exhibits-5, 6 & 7 being exhibited as linkage documents, ought to have been proved in the manner required but the petitioner failed to adduce evidence of

the authors of the said certificates before the learned Tribunal and as such, the contents of the said certificates cannot be held to have been proved and as such, they are of no consequence for establishing the linkage of the petitioner with her projected father. The documents so exhibited only establishes the presence of the petitioner on Indian soil round about the year 1989 which is much after the cut off date of 25.03.1971.

15. The contentions raised in the additional affidavit filed in the present proceedings by the petitioner relating to a copy of the *Jamabandi* pertaining to Dag Nos. 252 and 253, wherein along with her projected elder brother, the name of the petitioner has been included as a Pattadar, is to be considered. As per the projections made by the petitioner, the petitioner's father had expired in the year 1964. The projected brother of the petitioner was not presented as a witness before the learned Tribunal in the connected proceedings. There is no material available on record establishing a connection between the petitioner and her projected brother Intaz Ali. The *Jamabandi* (Annexure-J to the additional affidavit) reflects that the incorporation of the name of the petitioner along with her purported siblings was made recently, i.e. in the year 2022, vide an order dated 09.11.2022 of the competent authority. The application for such mutation was also made recently sometime in the month of January, 2022. The steps so taken for mutation of the name of the petitioner in the said *Jamabandi* was so done after passing of the impugned order/opinion dated 27.01.2017 and after lapse of a considerable period of time so also after institution of the present proceedings before this Court on 09.03.2017.

16. Law is well settled by the Hon'ble Apex Court that – *Mutation of a*

property in the Revenue Record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. [(1996) 6 SCC 223 :: Smti. Sawarni -Vs- Smti. Inder Kaur & Ors.].

17. It is also well settled that an entry in Revenue Records does not confer title on a person whose name appears-of-rights. The entries in the Revenue Records or *Jamabandi* have only fiscal purpose, i.e. payment of revenue, and no ownership is conferred on the basis of such entries. **[(2007) 6 SCC 186 :: Suraj Bhan & Ors. -Vs- Financial Commissioner & Ors.]**

18. Co-ordinate Bench of this Court in **WP(C) No. 2634/2016** disposed of on 28.02.2017 (**Monowara Bewa @ Manora Bewa -Vs- Union of India & Ors.**) have held that – *under the law of evidence entries in the copy of the Jamabandi are prepared on fiscal entries and the entry in the copy of the Jamabandi has to be examined on the probative value on the contents of the documents which required corroboration with other documentary evidence. There is a requirement to produce the up to date land revenue receipts and other documents subsequent to such entries made on fiscal inquiries and without proving the same in accordance with law, without providing any explanation, failing to produce up to date land revenue receipt the entry in the copy of the Jamabandi is inadmissible in evidence in the absence of other substantial documentary evidence.*

19. Further, the Annexure-J *Jamabandi* being a document not forming part of the records of the learned Tribunal and the same being a recent document, in absence of a cogent explanation being available on record for the

delay in carrying out the mutation in question, a doubt naturally is created on the *bonafide* of the said mutation so done and as such, the said document cannot be taken into consideration for the purpose of establishing the linkage between the petitioner and her projected father Late Nimar Ali. Accordingly, the petitioner has failed to establish linkage with her projected father Nimar Ali @ Nimar Ali Laskar. The decision on conferment of citizenship on a proceedee cannot be decided in the affirmative unless the proceedee discharges the burden of proof that lies on him/her under the law.

20. A perusal of the order/opinion dated 27.01.2017 passed by the Tribunal shows that the Tribunal had carefully appreciated whatever evidence was led by the petitioner before it and, thereafter, had rendered the finding that the petitioner had failed to establish her claim to be a citizen of India by reliable and cogent documentary evidence. Such a finding being a finding of fact, a writ Court exercising jurisdiction of certiorari under Article 226 of the Constitution of India does not, ordinarily, interfere with such finding of fact unless there is perversity because the jurisdiction so exercised is supervisory and not appellate.

21. In view of the point raised on behalf of the petitioner, the evidence led before the Tribunal by the petitioner is once again revisited only to reassure as to whether there was any perversity in the impugned order/opinion of the Tribunal dated 27.01.2017, noted above. There being none, this writ petition is, resultantly, found to be bereft of merit and the same stands accordingly dismissed. There shall be no order as to costs.

22. *Interim* order passed on 20.03.2017 stands recalled. Concerned State

authorities to take action accordingly.

23. Registry shall send back the case records to the concerned Tribunal forthwith along with a copy of this judgment & order.

JUDGE

JUDGE

Comparing Assistant