

GAHC010032722019



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

Case No. : WP(C)/1392/2019

ON THE DEATH OF BABUR ALI, HIS LEGAL HEIR 1.1 JOYEN ALI
S/O. LT. BABUR ALI , R/O- VILL. RUPAKUCHI, P.S.AND P.S BARPETA, DIST.
BARPETA, ASSAM.

1.2: JAYEDA KHATUN
D/O. LT. BABUR ALI
W/O- LATE INAM ALI
R/O- VILL. RUPAKUCHI
P.S.AND P.S BARPETA
DIST. BARPETA
ASSAM.

1.3: SAMSUL HOQUE
S/O. LT. BABUR ALI
R/O- VILL. RUPAKUCHI
P.S.AND P.S BARPETA
DIST. BARPETA
ASSAM.

1.4: ASHRAB ALI
S/O. LT. BABUR ALI
R/O- VILL. RUPAKUCHI
P.S.AND P.S BARPETA
DIST. BARPETA
ASSAM.

1.5: ATOWAR RAHMAN
S/O. LT. BABUR ALI
R/O- VILL. RUPAKUCHI
P.S.AND P.S BARPETA
DIST. BARPETA
ASSAM.

1.6: SANDESH ALI

S/O. LT. BABUR ALI
R/O- VILL. RUPAKUCHI
P.S.AND P.S BARPETA
DIST. BARPETA
ASSAM.

1.7: KUJRAT ALI
S/O. LT. BABUR ALI
R/O- VILL. RUPAKUCHI
P.S.AND P.S BARPETA
DIST. BARPETA
ASSAM.

1.8: PIARJAN AKHTARA
D/O. LT. BABUR ALI
W/O MUZAMMEL HAQUE
R/O- VILL. RUPAKUCHI
P.S.AND P.S BARPETA
DIST. BARPETA
ASSAM.

1.9: ROFIQUL ISLAM
S/O. LT. BABUR ALI
R/O- VILL. RUPAKUCHI
P.S.AND P.S BARPETA
DIST. BARPETA
ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, TILOK MARG, NEW DELHI-01.

2:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-06.

3:THE DY. COMMISSIONER

BARPETA
P.O. AND DIST. BARPETA
ASSAM-781301.

4:THE SUPDT. OF POLICE (B)

BARPETA
P.O. AND DIST. BARPETA
ASSAM-781301.

5:THE ELECTION COMMISSION OF INDIA

NEW DELHI-01.

6:THE STATE CO-ORDINATOR OF NATIONAL REGISTRATION OF CITIZEN
(NRC)

BHANGAGARH
GUWAHATI-05

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 NELSON SAILO

ORDER

Date : 14.06.2023
(A.M. Bujor Barua, J)

Heard Mr. A.R. Sikdar, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 6, 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 4, being the authorities in the Home Department; Ms. K. Phukan, learned counsel for the respondent No. 3, being the Deputy Commissioner, Barpeta and Mr. A.I. Ali, learned counsel for the respondent No. 5, being the Election Commission of India.

2. The father of the present petitioners Babur Ali, who has been substituted by his legal heirs was served with a notice by the Foreigners' Tribunal No. 1, Barpeta for rendering an opinion as to whether he is a foreigner within its

meaning as per the provisions of the Foreigners Act, 1946 and accordingly F.T. Case No. 357/16 was registered. The Tribunal had rendered its opinion dated 20.12.2018 by arriving at its conclusion that the father of the present petitioners is a foreigner as per the provisions of the Foreigners Act, 1946. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioners rely upon the voters' list of 1970 of village Rupakuchi, PS Barpeta in the Kamrup district which contains the name of Babur Ali son of Rahmatali at Sl. No. 279. It is claimed that the original writ petitioner Babur Ali against whom the proceedings were initiated is in fact the Babur Ali of the voters' list of 1970 of village Rupakuchi.

4. We have also verified the notice that was issued by the Tribunal which again is in the name of Babur Ali son of Rahmat Ali of village Rupakuchi, whereas the voters' list of 1970 of village Rupakuchi is also in respect of Babur Ali son of Rahmatali.

5. Two questions would remain firstly, whether the writ petitioner Babur Ali and the Babur Ali of the voters' list of 1970 of village Rupakuchi are one and the same person and secondly, if the writ petitioner Babur Ali is in fact the Babur Ali of the voters' list of 1970 of village Rupakuchi, whether it can also be construed that Babur Ail was a person who had entered the State of Assam from the specified territory on or before 01.01.1966. It is noticed that Rahmatali is the father of Babur Ali as per the voters' list of 1970 of village Rupakuchi.

6. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 1, Barpeta to examine the aforesaid voters' list of 1970 of village Rupakuchi containing the name of Babur Ali son of Rahmatali at Sl. No. 279. The petitioners may produce any voters' lists prior to 1966 of village Rupakuchi which may contain the name of Rahmatali for examination of the Tribunal. The

respondents in the Home Department through the Superintendent of Police(B), Barpeta may also make their own verification and thereafter submit a report before the Tribunal.

7. Upon doing the needful, the Tribunal to pass a reasoned order. If the reasoned order to be passed is in favour of the writ petitioner Babur Ali, the same shall prevail over the earlier opinion dated 20.12.2018 in F.T. Case No. 357/16 and if it is against the writ petitioner, consequences under law shall follow. The present petitioners to appear before the Tribunal on 18.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioners.

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