

GAHC010037432017



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

Case No. : WP(C)/5311/2017

KHAYBAR ALI
S/O. LT. BAIDAR ALI SK @ BAIDAR ALI, VILL. SINDURAI PT-II, P.S.
AGOMANI, DIST. DHUBRI, ASSAM.

VERSUS

THE UNION OF INDIA and 3 ORS.
REP. BY THE MINISTRY OF HOME AFFAIRS, NEW DELHI.

2:THE STATE OF ASSAM
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-781006.

3:THE DY. COMMISSIONER
DHUBRI

DIST. DHUBRI
ASSAM.

4:THE SUPERINTENDENT OF POLICE B

DHUBRI
ASSAM

Advocate for the Petitioner : MRS. H AHMED

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

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

ORDER

Date : 29.03.2023
(AM Bujor Barua, J)

Heard Mr. A Ahmed, learned counsel for the petitioner. Also heard Mr. PK Medhi, learned counsel for the respondent No. 1 being the authorities under the Union of India, Mr. G Sarma, learned counsel for the respondents No. 2 and 4 being the authorities under the Home Department of the Government of Assam and Mr. TR Gogoi, learned counsel for the respondent no. 3 being the Deputy Commissioner, Dhubri.

2. The petitioner Khaybar Ali had been referred to the Foreigners' Tribunal No. 10, Dhubri for rendering an opinion as to whether he is a person who entered the State of Assam from the specified territory on or after 25.03.1971 resulting in registration of FT (10)/AGM/358/2016. The Tribunal rendered an opinion dated 16.06.2017 declaring the petitioner to be a foreigner.

3. Being aggrieved this writ petition is instituted.

4. In the writ proceeding the petitioner refers to a registered Sale Deed which is exhibited as Exhibit 3 dated 12.01.1963 wherein Boidor Ali, S/O Late Della Sk. of village Sindurai in the Dhubri district had sold a plot of land. The petitioner also refers to the voters' list of 1985 of village Sindurai Part 2 under PS Golakganj of district Dhubri which contains the name of Boidor Ali, S/O Della Sk at Sl. No. 728 and that of Khoybar Ali, S/O Boidor Ali at Sl. No. 730 where both of them are shown to be residing at the same house no. 154.

5. If Boidor Ali, S/O Della Sk. of the voters' list of 1985 of village Sindurai

Part 2 and Boidor Ali who had sold the land as per Exhibit 3, the Sale Deed dated 12.01.1963 are one and the same person, perhaps a prima facie case that the petitioner is a citizen may has been made out. In the circumstance, the matter stands remanded back to the Tribunal to examine the authenticity of the Sale Deed dated 12.01.1963 as well as to examine as to whether Boidor Ali who had sold the land and Boidor Ali of the voters' list of 1985 of village Sindurai Part 2 are the one and same person. Upon examining the same, the Tribunal to pass a reasoned order.

6. The petitioner may rely on any further material as may be advisable under the law. The State respondents may also make a verification as to whether Boidor Ali of the Sale Deed dated 12.01.1963 and Boidor Ali of the voters' list of 1985 of village Sindurari Part 2 are one and the same person.

7. The petitioner to appear before the Tribunal on 06.05.2023.

8. If the reasoned order is in favour of the petitioner, the same may prevail over the opinion/order dated 16.06.2017 passed in FT (10)/AGM/358/2016 and if against, consequence under the law is applicable to the petitioner.

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

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE