

GAHC010037962021



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

Case No. : WP(C)/1439/2021

1. HASMAT ALI
S/O LATE KITAB ALI
VILLAGE LAOGAON, PO SOLMARI, 782002,
PS SADAR,
DIST NAGAON, ASSAM,

VERSUS

1. THE UNION OF INDIA
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA,
DEPARTMENT OF HOME AFFAIRS, NEW DELHI

2:ELECTION COMMISSION OF INDIA
NEW DELHI

3:CO ORDINATOR
NRC
ASSAM
GUWAHATI 781005

4:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY HOME AND
POLITICAL (B) DEPARTMENT
DISPUR GUWAHATI 781006

5:THE FOREIGNERS TRIBUNAL (1ST) NAGAON
ASSAM
782003

6:THE SUPERINTENDENT OF POLICE (B)
NAGAON
ASSAM
782001

7:THE DEPUTY COMMISSIONER
NAGAON
NAGAON
ASSAM
782001

8:THE OFFICER IN CHARGE
PS SADAR DIST NAGAON
ASSAM
78200

Advocate for the Petitioner : MS M D MEDHI

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

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

ORDER

01.06.2023.

(A.M. Bujor Barua, J)

Heard Mr. A.M. Ahmed, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel for the respondent No.1 & 3 being the Union of India, Mr. G. Sarma, learned Counsel appearing for the Home Department of Government Assam for the respondent No.4, 5, 6 & 8, Mr. T. Pegu, learned counsel for the respondent No.2 being the Election Commission of India and Ms. U. Das, learned Advocate for the respondent No.7 being the Deputy Commissioner, Nagaon.

2. The petitioner, namely, Hasmat Ali has been referred to the Foreigners' Tribunal No.1 in Nagaon District for rendering an opinion as to whether he is a person who had entered the State of Assam from the specified territory on or after 25.03.1971, resulting in registration of F.T. Case No.528/2009. The Tribunal rendered an opinion dated 30.12.2020 declaring the petitioner to be a foreigner. Being aggrieved this Writ Petition is instituted.

3. In the writ proceeding, the petitioner relies upon the Voters' List of 1965 of Village Lalipthar, Police Station Dhing in the Nagaon District, which contains the name of Kitab Ali son of Iman at Sl. No.82, which information is also contained in the Voters' List of 1970 of Village Lalipthar. Petitioner also relies upon the Voters' List of 1977 of Village Lalipthar which contains the name of Ukiljan wife of Kitab Ali at Sl. No.670. It is stated that Kitab Ali is the father of the petitioner and Ukiljan is the mother. The complete Voters' List of 1977 of Village Lalipthar contains the name of Iman son of Alim at Sl. No.653, Kitab Ali son of Iman at Sl. No.655, Ukiljan wife of Kitab Ali at Sl. No.670 and Jamsed Ali son of Kitab at Sl. No.677. It is stated that Iman is the grandfather, Kitab Ali is the father, Ukiljan is the mother and Jamsed Ali is the elder brother of the petitioner Hasmat Ali.

4. To substantiate that Jamsed Ali is the elder brother, reliance is also placed in the Voters' List of 1989 of Village Lalipthar which contains the name of Jamsed Ali son of Kitab Ali at Sl. No.701 and Hasmat Ali son of Kitab Ali at Sl. No.708 and both are shown to be residing in the same House No.160 (ka).

5. Reliance is also placed on a jamabandi in respect of a plot of land at village Lalipthar, as per the order of the Circle Officer dated 31.03.1989 in Mutation Case No.1337/2016-17/FMUT, the names made of, amongst others, Hasmat Ali son of Kitab has been mutated and referring to the order of mutation, it is stated that the petitioner could establish that he is the son of Kitab Ali of village Lalipthar. In the column for pattadars also, in place of the name of Kitab Ali name of Hasmat Ali along with others have also been included and the petitioner claims that the burden under Section 9 of the Foreigners Act has been discharged.

6. Accordingly the matter is remanded back to the Tribunal to examine the Voters' Lists of 1965, 1970, 1977 and 1989 of village Lalipthar as well as the jamabandi in respect of a plot of land at village Lalipthar and thereafter pass a reasoned order.

7. The respondents in the Home Department to make a verification as to whether Hasmat Ali son of Kitab Ali of village Lalipthar and the writ petitioner Hasmat Ali of Laogaon are one and the same person. The Tribunal too also examine and to pass a reasoned order as to whether Hasmat Ali of Laogaon and Hasmat Ali of village Lalipthar are one and the same person.

8. The petitioner to appear before the Tribunal on 07.07.2023. In the event, the reasoned order is in favour of the petitioner, the same would prevail over the order dated 30.12.2020, passed in F.T. Case No.528/2009 and if it is against him, the consequence under the law may follow.
9. Till the reasoned order is passed, no coercive action be taken against the petitioner.
10. The petition stands allowed as indicated above. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant