

GAHC010046222020



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

**Case No. : WP(C)/1525/2020**

1. MIYA HUSSAIN  
S/O- NAJIMUDDIN, REPRESENTING FATEMA KHATUN, DIED ON 02.03.2019,  
D/O- JABED ALI, R/O- VILL. KHUSRABARI, P.S. GOBARDHANA, DIST.-  
BAKSA, ASSAM, PIN- 781315.

VERSUS

1. THE UNION OF INDIA AND 7 ORS.  
REP. BY THE SECY., MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,  
SHASTRI BHAWAN, NEW DELHI- 110001.

2:THE STATE OF ASSAM  
REP. BY THE SECY. TO THE GOVT. OF ASSAM  
HOME DEPTT.  
DISPUR  
GHY.-06.

3:THE ELECTION COMMISSION OF INDIA  
REP. BY THE CHIEF ELECTION COMMISSION  
NIRVACHAN SADAN  
ASHOKA ROAD  
NEW DELHI- 110001.

4:THE STATE COORDINATOR  
NATIONAL REGISTRATION OF CITIZENS  
ASSAM  
1ST FLOOR  
ACHYUT PLAZA  
G.S. ROAD  
BHANGAGARH  
GUWAHATI  
ASSAM

PIN- 781005.

5:THE DY. COMMISSIONER  
BARPETA  
P.O. AND P.S. BARPETA  
DIST. BARPETA  
ASSAM  
PIN- 781301.

6:THE FOREIGNERS TRIBUNAL NO. III  
BARPETA  
ASSAM  
DIST.- BARPETA  
ASSAM  
PIN- 781301.

7:THE SUPDT. OF POLICE (B)  
BARPETA  
P.O. AND P.S. BARPETA  
DIST. BARPETA  
ASSAM  
PIN- 781301.

8:THE OFFICER-IN-CHARGE OF GOBARDHANA POLICE STATION  
P.O. GOBARDHANA  
DIST.- BAKSA  
ASSAM  
PIN- 781315

**Advocate for the Petitioner : MS. D GHOSH**

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

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

**ORDER**

**Date : 07-08-2023**

**(A.M. Bujor Barua, J)**

Heard Ms. D. Ghosh, learned counsel for the petitioner. Also heard Mr. K.K. Parasara, learned counsel for the respondent No.1 & 4 being the Union of India, Mr. G. Sarma, learned

Counsel appearing for the Home Department, Government of Assam being the respondent No.2, 6, 7 & 8, Mr. T. Pegu, learned counsel for the respondent No.3 being the Election Commission of India and Mr. P. Sarma, learned Advocate for the respondent No.5 being the Deputy Commissioner, Morigaon.

2. The wife of the petitioner Fatema Khatun was referred to the Foreigners' Tribunal-III, Barpeta for rendering an opinion as to whether she is a foreigner under the Foreigners Act, 1946, resulting in registration of F.T. Case No.2115(III) of 2016. The Tribunal rendered an opinion dated 15.11.2018, declaring the Fatema Khatun to be a foreigner.

3. But before the opinion dated 15.11.2018 could be assailed by Fatema Khatun, she died on 02.03.2019. After her death, her husband Miya Hussain had instituted the present WP(C) No.1525/2020, assailing the opinion dated 15.11.2018.

4. In the writ proceeding, reliance is placed in the Voters List of 1966 of Village Gandharipara in the Barpeta District which contains the name of Javed Ali son of Jahur at Sl. No.305. It is claimed that Javed Ali is the father of Fatema Khatun. Javed Ali as DW.2 rendered evidence before the Tribunal wherein he identified himself as Javed Ali aged about 80 years son of Late Jahur Uddin of village Gandharipara and deposed that Fatema Khatun is his daughter and both he and his daughter were born and brought up in village Gandharipara.

5. At page 33 of the Writ Petition, the proceeding in respect of the DW.2 that had taken place on 26.06.2018 is available, which upon enquiry as to whether it is the cross-examination by the State authorities or it is in response to the questions by the Tribunal, it is stated that it is the deposition of DW.2 in cross-examination. But on either circumstance, it is not discernible that the evidence of DW.2 to the extent that Fatema Khatun is his daughter of Javed Ali, had not been rebutted in any manner.

6. A Will dated 16.12.2017 is also available at page 50 of the Writ Petition which is a Will of Javed Ali aged 75 years son of Late Jahur Uddin of village Gandharipara in the Barpeta District, whereby certain property had been bequeathed in the name of his daughter Fatema Khatun wife of Mia Hussain of village Khusrabari.

7. From the evidence of the DW.2 as well as the Will available at page 50 of the Writ

Petition it can also be concluded that Fatema Khatun was the daughter of Javed Ali of the 1966 Voters List of village Gandharipara. As the citizenship of Javed Ali can be established from the Voters List of 1966 of village Gandharipara and as it can also be established that Fatema Khatun was the daughter of Javed Ali of the 1966 Voters List of village Gandharipara and further taking note of the aspect that Fatema Khatun is no more having died on 02.03.2019 and further that no person can take benefit out of a declaration of the citizenship of Fatema Khatun including her children and siblings etc., we accordingly tentatively declare Fatema Khatun to be a citizen.

8. But however it is clarified that the declaration of Fatema Khatun to be a citizen shall not accrue any benefit or right of any kind to any other person, including the legal heirs of Fatema Khatun, and if such rights are claimed, such other persons would have to prove the citizenship of Fatema Khatun independently of the tentative declaration in this Writ Petition. It is so provided as otherwise it could have been a matter to be remanded back to the Tribunal for further evidence and deliberation, but not done so in as much as Fatema Khatun is no more and neither her legal heirs are parties before the Court to carry forward the claim. The writ petition by the husband of Fatema Khatun namely Miya Hussain, it is noticed that Miya Hussain is not a legal heir of deceased Fatema Khatun towards the determination of her citizenship.

9. The Writ Petition is accordingly allowed.

10. Send back the LCR forthwith.

JUDGE

JUDGE

**Comparing Assistant**