

GAHC010046252019



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

Case No. : WP(C)/1703/2019

TARABANU BEGUM @ TARABHANU KHATUN
W/O- MD. SUNU ALI @ MD. SONO ALI, VILL- KHAGRAKATI BELBELL, P.S.
MUKALMUA, DIST- NALBARI, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, TILOK MARG, NEW DELHI-1

2:THE STATE OF ASSAM
REP. BY THHE COMM. AND SECY.
HOME DEPTT.
DISPUR
GHY-6

3:THE SUPERINTENDENT OF POLICE (B)
NALBARI
ASSAM
PIN- 781335

4:THE DY. COMMISSIONER
NALBARI
ASSAM
PIN- 781335

5:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-1

6:THE STATE CO-ORDINATOR
N.R.C.
ASSAM

BHANGAGARH
GHY-

Advocate for the Petitioner : MR. A R SIKDAR

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

31.05.2023

(A.M. Bujor Barua, J)

Heard Mr. AR Sikdar, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of respondents in the Union of India as well as for the authorities in the NRC, Ms. A Verma, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. T Pegu, learned counsel for the Election Commission of India and Ms. K Phukan, learned counsel for the Deputy Commissioner, Nalbari.

2. The petitioner Tarabanu Begum @ Tarabhanu Khatun had been referred to the Foreigners Tribunal No. 3, Nalbari, for rendering an opinion as to whether she is a person who entered the State of Assam from the specified territory on or after 25.03.1971 resulting in registration of F.T. Case No. 730/2018. Before the Tribunal, the petitioner took a stand that on an earlier occasion in FT (Nal)-MMA-3 Case No. 39/2016, by an opinion dated 31.08.2016, the petitioner was declared to be not a foreigner. Accordingly, a stand was taken in FT Case No. 730/2018 that the subsequent proceeding is barred by the principles of resjudicata and therefore, further proceeding in FT Case No. 730/2018 should be dropped against the petitioner by relying in the earlier opinion dated

31.08.2016 in FT (Nal)-MMA-3 Case No. 39/2016.

3. The Hon'ble Supreme Court in Abdul Kuddus –vs- Union Of India reported in (2019) 6 SCC 604 had clearly provided that the principles of resjudicata would also be applicable pertaining to the proceeding in the foreigners tribunals.

4. From such point of view, the question on the applicability of the principles of resjudicata is clearly provided. The principles of resjudicata requires that in the event there was a prior proceeding between the same parties and the earlier proceeding was decided, a subsequent proceeding would not be maintainable in law.

5. As the petitioner has raised a question of resjudicata with reference to the opinion dated 31.08.2016 in FT (Nal)-MMA-3 Case No. 39/2016, we also examined the said opinion dated 31.08.2016. In paragraph 9 of the said opinion, it had been provided as extracted:-

“9. I have perused the Reference, Report of the Inquiry Officer and statements of the proceedee and other witnesses, recorded by the Inquiry Officer. I have also perused the written statement, evidence of witnesses and documents exhibited/ submitted by the proceedee in support of her claim to be a citizen of India by birth and report dated 6/6/16 submitted by the In-charge (Border), Daulasal Out Post forwarded by the Inspector of Police (B), Nalbari. In the Reference case name of the proceedee has been recorded as Tarabhanu Khatuoon daughter of Md. Jahuruddin Ali, wife of Md. Sono Ali of village Khagrakati, P.S. Mukalmuam Dist. Nalbari, Assam. Proceedee in her written statement and evidence inter alia stated that her name is Tarabhanu Khatun @ Tarabhanu Begum daughter of Jahuruddin Sheikh and Kadbhanu Nessa, wife of Chanu Sheikh @ Sonu Sheikh. Report dated 6/6/16 reveals that Tarabhanu Begum and Tarabhanu Bibi is one and same person and Jahuruddin @ Jaharuddin Ali @ Jahuruddin Sheikh is one and the same person i.e. the father of the proceedee. Name of Jahuruddin son of Jayan recorded in the voter's lists of the year 1966 and 1970 (Exhibit 1 and 2) under 54 No. Chenga Legislative Assembly Constituency. Name of Jahuruddin recorded in Periodic Khiraj Patta No. 84 issued by Authority concerned for the period of 1962 to 1992 (Exhibit 11). Exhibit 13 reveals the name of the proceedee daughter of Lt. Jahuruddin wife of Sonu Sheikh. Evidence of O.P.W 1 and O.P.W3 are corroborated in respect of the father's name of the proceedee. State has not rebutted these

part of evidence of O.P.W. 1 and 3 during their cross- examination. Exhibit 3,4,5,6,7,8,9,10 and 13 proves the relationship of the proceedee with Sonu Sheikh/ Chanu as husband and wife. Therefore, evidence of O.P.Ws and documents exhibited by her are trustworthy.

6. In paragraph 10 of the said opinion, it had been provided that in view of the discussions made above, in the considered view of the Tribunal, the petitioner was able to discharge the burden of proof under section 9 of the Foreigners Act, 1946 and in paragraph 11, it was provided that accordingly in the opinion of the Tribunal, the petitioner Mustt. Tarabhanu Khatoon @ Tarabhanu Begum @ Tarabhanu Bibi is not a foreigner.

7. We have taken note of the expression '*in view of the discussions made above*' in paragraph 10 of the opinion dated 31.08.2016 in FT (Nal)-MMA-3 Case No. 39/2016. In other words, we have to understand that the projections made in paragraph 9 of the said opinion is the discussion based on which the opinion was formed. But a reading of paragraph 9 shows that rather it being a discussion, it is merely a depiction of the materials that the petitioner had produced and that the Tribunal had perused and that the evidence of the witnesses and the documents are trustworthy. No reasoning is forthcoming in the opinion of the Tribunal as to which document in what manner proves that the petitioner is a citizen. In the absence of any reasoning, we have to understand that the said opinion cannot be termed to be a decision under the law rather it is a conclusion or a declaration of the Tribunal de-hors of any decision.

8. As no decision is discernible in the opinion dated 31.08.2016 in the earlier proceeding i.e. FT (Nal)-MMA-3 Case No. 39/2016, we are of the view that the opinion dated 31.08.2016 in the earlier proceeding FT (Nal)-MMA-3 Case No. 39/2016 cannot be a basis for invocation of the principles of resjudicata so as to

declare that the subsequent proceeding being FT Case No. 730/2018 would be not maintainable in law.

9. But, however, on the merits of the discharge of the burden made by the petitioner before the writ proceeding, it is noticed that the petitioner relies upon the voters list of 1966 of village Larkuchi, which contains the name of Jaharuddin Sheikh at serial No. 426 and that of Kadbhanu Nessa wife of Jaharuddin at serial No. 427 and both of them are shown to be residing in the same house No. 112. The petitioner also relies upon a Jamabandi of a plot of land at village Larkuchi in respect of which by deleting the name of Jaharuddin son of Joinuddin, the name of the petitioner, amongst others, had been mutated by showing her to be the daughter of Jaharuddin. The mutation had been incorporated by the order dated 30.01.2019 of the Circle Officer in Mutation Case No. NLB/BAR/2018-19/1206/FMUT.

10. If the information contains in the Jamabandi and the order of the Circle Officer in the mutation case is to be taken note of, it shows that Tarabhanu is the daughter of Jahuruddin, who had a plot of land at village Larkuchi whereas the name of Jaharuddin Sheikh son of Jayan appears in the voters list of 1966 of village Larkuchi, which prima-facie shows that Jaharuddin Sheikh would be a citizen of India. Further, the Jamabandi also shows Jaharuddin to be son of Joinuddin, whereas the voters list of 1966 shows Jaharuddin Sheikh to be son of Jayan which also has sufficient consistency.

11. In view of the above, we direct the petitioner to appear before the Tribunal on 05.07.2023 and to produce all relevant materials, including the written statement as well as the voters list of 1966 of village Larkuchi and the Jamabandi of the plot of land at village Larkuchi including the complete order of the Circle officer dated 30.01.2019. Upon doing the needful, the Tribunal to

examine the same and pass a reasoned order thereon.

12. The petitioner shall appear before the concerned Foreigners Tribunal on 05.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

13. The writ petition is allowed as indicated above.

JUDGE

JUDGE

Comparing Assistant