

GAHC010046642021



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

Case No. : WP(C)/1686/2021

ASHIYA KHATUN
D/O- LT. AJIMUDDIN, W/O- KASHERUDDIN, R/O-VILL- HALDHIAGAON, P.S.
SORBHUG, DIST.- BARPETA, ASSAM, PIN- 781314

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NORTH BLOCK, NEW DELHI, PIN- 110001

2:THE STATE OF ASSAM
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPTT.
GOVT. OF ASSAM
ASSAM SECRETARIAT
DISPUR
GHY
ASSAM
PIN- 781006

3:THE SUPERINTENDENT OF POLICE (B)
DIST.- BARPETA
ASSAM

4:THE STATE COORDINATOR OF NRC
OFFICE OF THE STATE COORDINATOR
NRC ASSAM
1ST FLOOR
ACHYUT PLAZA
GS ROAD
BHANGAGARH
GHY

ASSAM
PIN- 781005

5:THE MEMBER
FOREIGNERS TRIBUNAL NO.11
BARPETA
SORBHOG
ASSAM
PIN- 781317

6:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
SANSAD MARG AREA
NEW DELHI
PIN- 110001

7:THE DY. COMMISSIONER
DIST.- BARPETA
ASSA

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 : 04.04.2023
(A.M. Bujor Barua, J)

Heard Ms. N. Deka, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 4, being the Union of India and the State Co-ordinator of NRC, respectively. Also heard Ms. A. Verma, learned counsel for the respondents No. 2, 3 and 5, being the authorities in the Home Department; Mr. T. Pegu, learned counsel for the respondent No. 6, being authorities in the Election Commission of India and Ms. U. Das, learned counsel for the respondent No. 7, being the Deputy Commissioner, Barpeta.

2. The petitioner Ashiya Khatun was referred to the Foreigners' Tribunal No. 11, Barpeta for rendering an opinion as to whether she is a person who had entered the State of Assam from the specified territory on or after 25.03.1971 and accordingly Case No. (Bpt/11th) F.T. 2074/2017 was registered. The Tribunal rendered its opinion dated 20.05.2020 arriving at its conclusion that the petitioner is a foreigner who had entered the State of Assam on or after 25.03.1971. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1966 of village Batabari, Mouza Shyamabari in the Darrang district which contains the names of Ajimaddin son of Chatku at Sl. No. 43, Jaiful Nessa wife of Ajimuddin at Sl. No. 44 and Naimuddin son of Chatku at Sl. No. 45. The petitioner also relies upon the voters' list of 1997 of village Batabari, Mouza Shyamabari in the Darrang district which contains the name of M. Naimuddin son of Chatchu at Sl. No. 29 and that of A. Jalil son of Naimuddin at Sl. No. 31. By referring to the voters' list of 1966 of village Batabari, the petitioner points out that Ajimaddin and Naimuddin are both sons of Chatku. The petitioner claims to be the daughter of Ajimaddin and to establish the same relies upon a Jamabandi of village Batabari which contains the order dated 21.03.2015 of Circle Officer by which certain land in the name of Md. Ajimuddin Bepari had been mutated, amongst others, in favour of Ashiya daughter of Ajimuddin. The petitioner claims that she is the Ashiya in whose favour the land had been mutated in place of Md. Ajimuddin Bepari and that Md. Ajimuddin Bepari is her father whose name also appears in the voters' list of 1966 of village Batabari.

4. Objections are raised on the order of the Circle Officer dated 21.03.2015 in the mutation case by submitting that the land in question over which the mutation had taken place is an unspecified area of land. The same view had

also been taken by the Tribunal in its opinion dated 20.05.2020.

5. Whether the area of a land is specified or unspecified would be a matter of Civil Court to decide as to whether any ownership of land had been created by virtue of the order of mutation and it is not for the Foreigners' Tribunal to go into such question. The order of the Circle Officer in the Jamabandi is referred in the Foreigners' Tribunal only for the limited purpose of the information contained therein that Ashiya is the daughter of Md. Ajimuddin Bepari and that the land of Md. Ajimuddin Bepari had been mutated in her favour through inheritance, meaning thereby that the relationship of father and daughter between Md. Ajimuddin Bepari and Ashiya is sought to be established.

6. The petitioner also relies upon the evidence of DW2 Abdul Jalil son of Noinuddin wherein evidence had been rendered that the petitioner Ashiya Khatun is the daughter of Ajimaddin of the voters' list of 1966 of village Batabari. We have noticed that DW2 had not been cross-examined to rebut the evidence rendered by him.

7. In the aforesaid circumstance, we remand the matter back to the Foreigners' Tribunal No. 11, Barpeta to examine the voters' lists of 1966 and 1997 of village Batabari which contain the names of Ajimaddin, Naimuddin and DW2 A. Jalil and also to take note that the names of Ajimaddin and Naimuddin both sons of Chatku appear in the voters' list of 1966. The Tribunal to also take note of the order of mutation for limited purpose of the information contained therein that the land of Md. Ajimuddin Bepari had been mutated, amongst others, in the name of Ashiya and not for the purpose as to whether the order of mutation indicates any title of the land being created. The respondents in the Home Department of the Government of Assam through the Superintendent of Police(B), Barpeta may verify firstly as to whether Ashiya of the mutation order

dated 21.03.2015 of the Circle Officer is the daughter of Ajimaddin son of Chatku of the voters' list of 1966 of village Batabari and also whether Ashiya who was referred in the mutation order and the proceedee Ashiya Khatun are one and the same person. Upon the doing the needful, the Tribunal to pass a reasoned order. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 20.05.2020 in Case No. (Bpt/11th) F.T. 2074/2017 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 12.05.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

J U D G E

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Comparing Assistant