

GAHC010046662021



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

Case No. : WP(C)/1669/2021

ABDUS SALAM @ ABUS SALAM
S/O LATE SABED MONDAL @ SABED ALI MONDAL @ SABED, R/O VILL.
PATHALIAPARA, P.S. KALGACHIA, DIST. BARPETA, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECY. TO THE GOVT. OF INDIA, HOME DEPTT.,
NEW DELHI 1

2:THE STATE OF ASSAM
RERESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM
HOME DEPTT.
DISPUR
GUWAHATI 06

3:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOK ROAD
NEW DELHI PIN 110001

4:THE DEPUTY COMMISSIONER
BARPETA
DIST. BARPETA
ASSAM
PIN 781301

5:THE SUPERINTENDENT OF POLICE (BORDER)
BARPETA
DIST. BARPETA
ASSAM
PIN 781301

6:THE STATE COORDINATOR
NATIONAL REGISTRATION OF CITIZEN
ASSAM
BHANGAGARH
GUWAHATI 0

Advocate for the Petitioner : MR H R A CHOUDHURY

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.
(A.M. Bujor Barua, J)

Heard Mr. S. Hoque, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel for the respondent No.1 & 6 being the Union of India, Mr. G. Sarma, learned Counsel appearing for the Home Department of Government Assam for the respondent No.2 & 5, Mr. A.I. Ali, learned counsel for the respondent No.3, being the Election Commission of India and Ms. U. Das, learned Advocate for the respondent No.4 being the Deputy Commissioner, Barpeta.

2. The petitioner, namely, Abdus Salam @ Abus Salam has been referred to the Foreigners' Tribunal No.5, Barpeta 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 case No. F.T. (5th) 216/2017. The Tribunal rendered an opinion dated 30.09.2020 declaring the petitioner to be a foreigner. Being aggrieved this Writ Petition is instituted.

3. The petitioner relies on the Voters List of 1966 pertaining to Village Pachim Deuldi Nonke in the Baghbor Mouza of Barpeta District, which contains the name of Sabed Mandal son of Sukur at Sl. No.1742. The petitioner also refers to the Zamabandi of village Pathaliapara wherein reference is made to an order of the Circle Officer dated 16.01.2017 in Mutation Case No.4185/2016-17/FMUT, providing that land in respect of Dag No.502, have

been mutated amongst others in favour of Abdus Salam, son of Sabed Ali Mandal.

4. As the mutation order is in respect of village Pathaliapara whereas Voters List of 1966 is in respect of Village Pachim Deuldi Nonke, Mr. S. Hoque, learned counsel for the petitioner has made an explanation that originally the Village was Pachim Deuldi Nonke but the same village was bifurcated into two villages and one of the bifurcates village is Pathaliapara. Accordingly it is sought to be explained that Pachim Deuldi Nonke and Pathaliapara are in fact one and the same village.

5. In view of the above the matter is remanded back to the Tribunal to examine the aforesaid aspect. The petitioner may also adduce further evidence that upon bifurcation of the Pachim Deuldi Nonke Village, two villages, one of being Pathaliapara was created. The respondents in the Home Department to also make necessary clarification on the aforesaid aspect. The petitioner to also produce the complete order of the Circle Officer dated 16.01.2017 in Mutation Case No.4185/2016-17/FMUT, in order to enable the Tribunal to examine the contents thereof. The petitioner may also adduce any further evidence as well as the State Authorities may also make further verification, as may be advised to controvert the materials put forth by the petitioner. Upon doing the needful, the reasoned order be passed.

6. The petitioner to appear before the Tribunal on 06.05.2023. In the event, the reasoned order is in favour of the petitioner, the same would prevail over the order dated 30.09.2020, passed in F.T. (5th)216/2017 and if it is against him, the consequence under the law may follow.

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

8. The petition stands allowed as indicated above. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant