

GAHC010057822019



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

Case No. : WP(C)/1837/2019

TOMSER ALI

S/O- LT MUKU DEWAN @ MUKUMUDIN @ MAKIMUDDIN, R/O- VILL-
JALKARA, P.O. NALIGAON, P.S. AND DIST- BARPETA (ASSAM)

VERSUS

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

2:THE ELECTION COMMISSION OF INDIA
NEW DELHI-110001

3:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

4:THE STATE CO-ORDINATOR
OF NRC
ASSAM BHANGAGARH
GHY- 5

5:THE DY. COMMISSIONER
BARPETA (ASSAM)

6:THE SUPERINTENDENT OF POLICE (B)
BARPETA (ASSAM)

7:THE FOREIGNERS TRIBUNAL NO. 1ST
BARPETA

ASSAM

8:THE OFFICER-IN-CHARGE (B)
BARPETA P.S.
DIST- BARPETA (ASSAM)

Advocate for the Petitioner : MR. B BANERJEE

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

15.03.2023

[Achintya Malla Bujor Barua, J.]

Heard Mr. J. Laskar, learned counsel for the petitioner. Also heard Ms. A. Verma, learned special counsel, FT, appearing for respondent Nos.3, 6, 7 and 8; Ms. S. Baruah, learned CGC, appearing for respondent No.1; Mr. A.I. Ali, learned standing counsel, ECI, appearing for respondent No.2; Ms. K. Phukan, learned Junior Government Advocate, Assam, appearing for respondent No.5 and Ms. L. Devi, learned standing counsel, NRC, appearing for respondent No.4.

2. The petitioner Tomser Ali was referred to the Foreigners' Tribunal No.1st, Barpeta, for rendering an opinion as to whether he is a person who entered the State of Assam on or after 25.03.1971 resulting registration of F.T. Case No.119/2017 and opinion dated 24.01.2019 was rendered declaring the petitioner to be not a citizen of India. Being aggrieved this writ petition is instituted.

3. The petitioner relies upon the voters list 1965 of village Kayakuchi Pathar, Mouza-Paka, Police Station-Barpeta, in the present Barpeta district, which contains the name of Muku Dewan, S/O Basir Dewan at Sl. No.267 and claims Muku Dewan to be his father. The petitioner also relies upon a Jamabandi of village Kayakuchi Pathar in which a reference is

available to an order dated 28.06.2016 of the Circle Officer in Mutation Case No.1015/2015-16/F by which the names of Munser Ali Dewan, S/O Late Muku Dewan, Tamser Ali Dewan, S/O Late Muku Dewan, Anser Ali Dewan, S/O Late Muku Dewan and Afser Ali Dewan, S/O Late Muku Dewan are mutated as buyers of a plot of land measuring 1 katha 17 lechas. The Jamabandi also refers to another order dated 23.01.1981 of the Circle Officer, where the name of Mukumuddin, amongst others, had been mutated as legal heirs of Basiruddin. If the aforesaid information is compared with the voters list of 1965 of village Kayakuchi Pathar containing the name of Muku Dewan, S/O Basir Dewan at Sl. No.267 and also taking note that the Jamabandi is also in respect of a land in village Kayakuchi Pathar, if the information contained therein are correct and acceptable in law, it is a possibility that the petitioner may have established that he is the son of Muku Dewan, S/O Basir Dewan of 1965 voters list in respect of village Kayakuchi Pathar.

4. For the limited purpose, the matter is remanded back to the Tribunal to examine as to whether through the two mutation orders contained in the Jamabandi produced before the Court the petitioner can establish that he is the son of Muku Dewan, S/O Basir Dewan, whose name appears at Sl. No.267 of the voters list of 1965 of village Kayakuchi Pathar, Mouza-Paka, P.S.-Barpeta. But it is noted that although certain land had been mutated in favour of Mukumuddin as legal heirs of Basiruddin as per the order of the Circle Officer dated 23.01.1981 and the mutation order of the Circle Officer of 28.06.2016 refers the petitioner Tamser Ali Dewan as son of late Muku Dewan meaning that in the meantime Mukumuddin or Muku Dewan had died. No mutation order is discernible whereby the petitioner Tamser Ali Dewan being the son of Muku Dewan had inherited the land of Mukumuddin or Muku Dewan after his demise. The petitioner also to explain the said situation before the Tribunal. Upon examining the matter as aforesaid, the Tribunal may pass any reasoned order and if the reasoned order is passed in favour of the petitioner, the same shall prevail over the earlier opinion dated 24.01.2019 and if it is against the petitioner, consequential action shall follow.

5. The petitioner shall accordingly appear before the Tribunal on 18.04.2023. Till the reasoned order is passed, no coercive action shall be taken against the petitioner.

6. The petitioner is required to produce the copies of the mutation orders in complete in order to establish his case and no merely rely upon the references of mutation

order as may be available in the Jamabandi produced.

7. Send back the LCR immediately.
8. Writ petition stands disposed of in the above terms.

Sd/- Robin Phukan
JUDGE

Sd/- Achintya Malla Bujor Barua
JUDGE

Comparing Assistant