

GAHC010060902017



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

Case No. : WP(C)/8165/2017

MUSSTT. SAHARA KHATUN
W/O. MD. IMAN ALI, VILL. KASIMPUR, P.S. NALBARI, P.O. KENDUKUCHI,
DIST. NALBARI ASSAM.

VERSUS

THE UNION OF INDIA and 3 ORS.
REPRESENTED BY THE SECRETARY OF HOME AFFAIRS, NEW DELHI-
110001.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER and SECRETARY TO THE
GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE SUPERINTENDENT OF POLICE B
NALBARI

ASSAM
PIN-781337.

4:THE DEPUTY COMMISSIONER
NALBARI

ASSAM
PIN-781335

Advocate for the Petitioner : MR.S C PANDIT

Advocate for the Respondent : GA, ASSAMR. 2, 3, and 4.

BEFORE

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

O R D E R

21.06.2023

(A.M. Bujor Barua, J)

Heard Mr. SC Pandit, 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, Mr. G Sarma, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the Election Commission of India and Ms. K Phukan, learned counsel for the Deputy Commissioner, Nalbari.

2. The petitioner Musstt. Sahara Khatun had been referred to the Foreigners Tribunal No. 1, Nalbari for rendering an opinion as to whether she is a foreigner within the meaning of foreigner under the Foreigners Act, 1946, resulting in registration of FT (Nal) Case No(N). 230/2016, wherein an opinion dated 20.11.2017 was rendered declaring the petitioner to be a foreigner. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters list of 1965 of village Kashimpur, Mouza natun Dehar in the present Nalbari district, which contains the name of Kasimuddin Sekh son of Syed Ali at serial No. 249 and Aimal Bibi wife of Kasimuddin at serial No. 250 and both of them are shown to be residing in the same house No. 83. Further reference is made to the Jamabandi of a plot of land at village Kashimpur, which contains the information that as per the order of the Circle Officer dated 20.05.1999, the name of Md. Sikandar Ali was mutatd in place of Kachimuddin and accordingly at serial No.

13 of the Jamabandi, the name of Md. Sikandar Ali son of Kachimuddin had been entered and the name of Kachimuddin son of late Syed Ali had been deleted. Accordingly, the petitioner seeks to establish that Sikandar Ali is the son of Kasimuddin. Sikandar Ali rendered evidence as DW-2 stating that the petitioner Sahara Khatun is his sister.

4. In view of the above, we remand the matter back to the Tribunal to examine the voters list of 1965 of village Kashimpur, the Jamabandi of the plot of land at village Kashimpur as well as the evidence of DW-2 Sikandar Ali. The petitioner shall produce the complete order of the Circle Officer dated 20.05.1999 before the Tribunal for its examination. The State through the Home Department may cross-examine the DW-2 Sikandar Ali as may be advised. The respondents in the Home Department may also make a verification and submit a report before the Tribunal. Upon doing the needful, the Tribunal shall pass a reasoned order thereon.

5. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 20.11.2017 and if it goes against the petitioner, consequence as per law shall follow.

6. The petitioners shall appear before the concerned Foreigners Tribunal on 25.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

7. The writ petition is allowed as indicated above.

8. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant