

GAHC010063742021



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

Case No. : WP(C)/4003/2021

MUSSTT. MULKUSUM BEGUM @ MULKUSUM NESSA
D/O- LT. MOMIN MANDAL @ MANI MANDAL, W/O- MD. KUMURUDDIN,
R/O- VILL- PORAGAON, P.S. SORBHOG, DIST.- BARPETA, ASSAM, PIN-
781317

VERSUS

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

2:THE STATE OF ASSAM
REP. BY THE SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-06

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSION
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 110001

4:THE STATE COORDINATOR
NATIONAL REGISTRATION OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S.ROAD
BHANGAGARH
GHY
ASSAM
PIN- 781005

5:THE DY. COMMISSIONER
BARPETA
P.O. AND P.S. BARPETA
DIST.- BARPETA
ASSAM
PIN- 781301

6:THE FOREIGNERS TRIBUNAL NO-11TH
BARPETA
ASSAM
DIST.- BARPETA
ASSAM
PIN- 781301

7:THE SUPERINTENDENT OF POLICE (B)
BARPETA
P.O. AND P.S.- BARPETA
DIST.- BARPETA
ASSAM
PIN- 781301

8:THE OFFICER-IN-CHARGE OF SORBHOG P.S.
P.O.- SORBHOG
DIST.- BARPETA
ASSAM
PIN- 78131

Advocate for the Petitioner : MS. D GHOSH

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

21.06.2023.

(A.M. Bujor Barua, J)

Heard Ms. D. Ghosh, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel for the respondent No.1 being the Union of India, Mr. G. Sarma, learned Counsel

appearing for the Home Department of Government Assam for the respondent No.2, 6, 7 & 8, Mr. A.I. Ali, learned counsel for the respondent No.3 being the Election Commission of India and Mr. M. Dutta, learned Advocate for the respondent No.5 being the Deputy Commissioner, Barpeta.

2. The petitioner, namely, Musstt. Mulkusum Begum @ Mulkusum Nessa has been referred to the Foreigners' Tribunal No.11, Barpeta District for rendering an opinion as to whether she is a foreigner under the Foreigners Act, 1946, resulting in registration of F.T. Case No. (Bpt/11th) F.T. 611/2016 [Ref. IM(D)T No.6942(A) dt.12/8]. The Tribunal rendered its opinion dated 15.11.2018 declaring the petitioner to be a foreigner. Being aggrieved this Writ Petition is instituted.

3. In the writ proceeding, reliance is placed on the Voters' List of 1970 of Village Baguriguri Pathar, Mouza Kharija Bijni in the present Barpeta District, which contains the name of Moni Mandal son of Aata at Sl. No.304. Reliance is also placed on the Voters' List of 1985 of village Bagriguri Pathar which contains the name of M. Momin Mondal son of Atab at Sl. No.216 and that of M. Mokbul Hussain son of Momin at Sl. No.220. It is claimed that M. Momin Mondal of 1985 Voters List or Moni Mandal of the 1970 Voters List is the father of the petitioner and M. Mokbul Hussain of the 1985 Voters List is the brother and M. Mokbul Hussain had rendered evidence as DW.3 before the Tribunal stating that Musstt. Mulkusum Begum is his sister.

4. A zamabandi in respect of a plot of land at village Bagriguri Pathar is also relied upon which refers to an order of the Circle Officer dated 17.07.2018, in Mutation Case No.BAR/BARN/2018-19/179/FMUT, which contains the information that amongst others, the name of Mulkusum daughter of Momin Mondal had been mutated in place of Momin Mondal.

5. By relying upon the information contained in the zamabandi and also the evidence of the DW.3, where the name of the DW.3 claimed to be appearing along with M. Momin Mondal in the 1985 Voters List, where the name of Mani Mandal appears in the Voters List of 1965 of Village Baguriguri Pathar. Accordingly it is claimed that the burden under Section 9 of the Foreigners Act has been discharged by the petitioner.

6. In view of above, the matter is remanded back to the Tribunal to examine the Voters'

Lists of 1965, 1970 and 1985 of village Baguriguri Pathar as well as the zamabandi in respect of a plot of land at village Baguriguri Pathar and pass a reasoned order thereon.

7. The petitioner to produce the complete order of the Circle Officer dated 17.07.2018, in Mutation Case No.BAR/BARN/2018-19/179/FMUT. Petitioner to also produce relevant materials before the Tribunal which may show that Mani Mandal of the Voters List of 1965 of Village Baguriguri Pathar and M. Momin Mondal of the same village of 1985 Voters List are one and the same person and also that the father of Moni Mandal namely Aata and father of M. Momin Mondal namely Atab are also one and the same person.

8. The respondent in the Home Department may also verify the aforesaid claim and make their submission as well as submit a report before the Tribunal.

9. The petitioner to appear before the Tribunal on 28.07.2023. In the event, the reasoned order is in favour of the petitioner, the same would prevail over the order dated 15.11.2018, passed in F.T. Case No. (Bpt/11th) F.T. 611/2016 [Ref. IM(D)T No.6942(A) dt.12/8] and if it is against her, the consequence under the law may follow.

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

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

JUDGE

JUDGE

Comparing Assistant