

GAHC010084622021



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

Case No. : WP(C)/3424/2021

ROHIM BADSA @ MD. RAHIM BASHA
S/O- LT. BAKKAR ALI, R/O- VILL- MOYNABANDHA, P.O. FEKAMARI, P.S.
SOUTH SALMARA, DIST.- SOUTH SALMARA MANKACHAR, ASSAM

VERSUS

THE UNION OF INDIA AND 8 ORS.
REP. BY ITS SECY., GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, NEW
DELHI- 110001

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

3:THE DIRECTOR GENERAL OF POLICE (ADMINISTRATION)
ASSAM
ULUBARI
GHY-07

4:THE DISTRICT MAGISTRATE CUM DY. COMMISSIONER
KAMRUP (M)
AT GUWAHATI
DIST.- KAMRUP (M)
ASSAM
PIN- 781001

5:THE DY. COMMISSIONER OF POLICE (B)
KAMRUP (M)
AT GUWAHATI
DIST.- KAMRUP (M)

ASSAM
PIN- 781001

6:THE STATE COORDINATOR
NATIONAL REGISTRAR OF CITIZENS (NRC)
GUWAHATI
ASSAM
GHY-5

7:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 110001

8:THE DY. COMMISSIONER
SOUTH SALMARA MANKACHAR AT HATSINGIMARI
ASSAM
PIN- 783135

9:THE ELECTION OFFICER
SOUTH SALMARA MANKACHAR AT HATSINGIMARI
ASSAM
PIN- 78313

Advocate for the Petitioner : MR. M KHAN

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

19.07.2023

[A.M.Bujor Barua, J.]

Heard Mr. M. Khan, learned counsel for the petitioner. Also heard Mr. G. Sarma, learned counsel for the Home Department; Ms. L. Devi, learned counsel for the NRC; Mr. B. Sarma, learned counsel for the UoI; Ms. K. Phukan, learned counsel for the DC; and Mr. A.I. Ali, learned counsel for the ECI.

2. The petitioner Rohim Badsa @ Md. Rahim Basha had been referred

to the Foreigners' Tribunal, No. 2, Kamrup [M] at Guwahati for rendering an opinion as to whether she is a foreigner under the Foreigners' Act, 1946 resulting in registration of F.T. Case No. 404/2015, wherein an opinion dated 12.04.2021 had been 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 1960 of village Moynabandha Police Station South Salmara presently in the South Salmara Mankachar district, which contains the name of Arju Uddin Sk., son of Nur Box Sarkar at serial no. 155 and that of Khaton Bibi, wife of Arju Uddin at serial no. 156 and both are shown to be residing in the same house no. 46. It is claimed that Arju Uddin Sk. is the grandfather and Khanton Bibi is the grandmother of the petitioner. The petitioner also relies upon the Voters' List of 1966 and 1970 of village Moynabandha, which contains the name of Arju Sk., son of Nur Box at serial no. 166 and 195 respectively. The petitioner also relies upon the Voters' List of 1977 of village Moynabandha, which contains the name of Arju Sk., son of Nur Box at serial no. 365 and that of Abu Bakkar, son of Arju at serial no. 367 and both are shown to be residing in the same house no. 78. It is claimed that Abu Bakkar, son of Arju is the father of the petitioner. The petitioner also relies upon the Voters' List of 1985 of village Moynabandha, which contains the name of Abu Bakkar, son of Arju Sk. at serial no. 345 and that of Jorina Khatun, wife of Abu Bakkar at serial no. 346 and both are shown to be residing in the same house no. 68. But the later Voters' List of the years 1989 and 1997 contains the name of Bakkar Ali, son of Arju Sk. and that of Jomiran Bibi, wife of Bakkar Ali. It is claimed that although the name of the father was Abu Bakkar as per the Voters' List up to the year 1985 but the later Voters' Lists has recorded his name as Bakkar Ali.

4. It is submitted that the wife of Abu Bakkar or Bakkar Ali as the case may be remains the same in all the Voters' Lists namely Jorina Khatun or Jomiran Bibi who are claimed to be the one and the same person. The petitioner also relies upon the Voters' List of 2005 of village Moynabandha, which contains the name of Jorina Bewa, wife of Bakkar Ali at serial no. 241 and that of Rohim Badsa, son of Bakkar Ali at serial no. 242 and both are shown to be residing in the same house no. 327. It is claimed that as the name of the petitioner Rohim Badsa appears along with Jorina Bewa wife of Bakkar Ali and that the name of Jorina Khatun or Jorina Bewa, wife of Bakkar Ali appeared along with Bakkar Ali or Abu Bakkar as the case may be in the earlier Voters' Lists therefore the petitioner had discharged the burden under Section 9 of the Foreigners' Act 1946 to prove that he is not a foreigner. To substantiate that Abu Bakkar and Bakkar Ali are one and the same person reference is also made to a Jamabandi in respect of a plot of land at village Moynabandha which contains the information that Bakkar Ali is the son of Arju and the land in the name of Arju had also been mutated in the name of Bakkar Ali in respect of the same village. Accordingly, the claim is made that Abu Bakkar and Bakkar Ali are one and the same person. If Abu Bakkar and Bakkar Ali are one and the same person the petitioner may have discharged the burden under Section 9 of the Foreigners' Act 1946.

5. In the circumstance, the matter is remanded back to the Foreigners' Tribunal, No. 2, Kamrup [M] at Guwahati to examine the Voters' Lists of 1960, 1966, 1970, 1977, 1985, 1997 and 2005 of village Moynabandha and the Tribunal to also examine as to whether Abu Bakkar up to the Voters' List of 1985 and Bakkar Ali of the Voters' List subsequent to 1985 are one and the same person. The respondents in Home Department may also make their own

verification and submit the report before the Tribunal. Upon doing the needful the Tribunal may pass a reasoned order.

6. The petitioner to appear before the Tribunal on 14.08.2023.

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

Writ petition stands disposed of in the above terms.

Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant