

GAHC010096302022



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

Case No. : WP(C)/3514/2022

IATAN NESSA @ IYATUN NESSA
D/O- TARA MIYA @ TATA MIYA, W/O- LATE HUSSAIN ALI, R/O- VILL.-
CHAMPUPARA, P.S. CHHAYGAON, DIST. KAMRUP, ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS,
GOVERNMENT OF INDIA, SHASTRI BHAWAN, NEW DELHI-110001.

2:THE STATE OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-781006.

3:THE ELECTION COMMISSION OF INDIA
REPRESENTED 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
GUWAHATI
ASSAM
PIN- 781005.

5:THE FOREIGNERS TRIBUNAL
KAMRUP (RURAL) NO. 1
ULUBARI
GUWAHATI
DIST.- KAMRUP(M)
ASSAM
PIN- 781007.

6:THE DEPUTY COMMISSIONER
KAMRUP
AMINGAON
P.O. AND P.S. AMINGAON
DIST. KAMRUP
ASSAM
PIN- 781031.

7:THE SUPERINTENDENT OF POLICE (BORDER)
KAMRUP
P.O. AND P.S. AMINGAIN
DIST. KAMRUP
ASSAM
PIN- 781031.

8:THE OFFICER-IN-CHARGE OF CHHAYGAON POLICE STATION
P.O. CHHAYGAON
DIST. KAMRUP
ASSAM
PIN- 781124

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**

O R D E R

23.06.2023

(A.M. Bujor Barua, J)

Heard Ms. D Ghosh, 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. T Pegu, learned counsel for the Election Commission of India and Ms. U Das, learned counsel for the Deputy Commissioner, Kamrup.

2. The petitioner Iatan Nessa @ Iyatun Nessa had been referred to the Foreigners Tribunal No. 1, Kamrup(R) 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 GFR(R) Case No.863/2017, wherein an opinion dated 17.03.2022 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 1966 of village Laruajan, Mouza Pub Samaria, police station- Chaygaon in the Kamrup district, which contains the name of Riyaz Uddin son of Gusheer at serial No. 129, Tashiron Nessa wife of Riyaz at serial No. 232 and Tata Miya son of Riyaz at serial No. 232. It is claimed that Riyaz Uddin is the grandfather, Tashiron Nessa is the grandmother and Tata Miya is the father of the petitioner. It is also clarified that the namely actually is Tara Miya and not Tata Miya. A correction can be noticed in the voters list of 1977 of village Laruajan, wherein at serial No. 263 the name of Tara Miya son of Riyaz appears. Further reliance is placed on a Jamabandi of a plot of land of village Laruajan, wherein the information contained is that the land in the name of Tara Miya had also been mutated in favour of Iatan Nesa, daughter of Tara Miya through a gift deed and there is an order of circle officer dated 29.03.2019 in mutation case No. KAM/GAR/2018-19/701/FMUT, by which in respect of 10 Lecha of land of Dag No. 285, there is a mutation in favour of Iatan Nessa, daughter of Tara Miya in place of Tara Miya.

Accordingly, it is claimed that the burden under section 9 of the Foreigners Act, 1946 had been discharged by the petitioner to show that she is a citizen of India inasmuch as, the land of Tara Miya had been mutated in her name, whereas the name of Tara Miya also appears in the voters list of 1966 and 1970 of village Larujan.

4. Tara Miya had also deposed before the Tribunal as DW-2, wherein he specifically stated that Iatan Nessa is his daughter. DW-2 had been cross-examined by the State authorities, but could not be confronted in any manner to rebut the evidence rendered that Iatan Nessa is his daughter.

5. Mr. G Sarma, learned counsel for the respondents in the Home Department, Government of Assam states that the matter may be remanded back to the Tribunal and upon that submission, we have raised a query as to what further would be achieved by the Tribunal upon the matter being remanded back. No acceptable answer is available as to what further the Tribunal would do on the matter being remanded back.

6. As the materials available on record are itself clear and explicit enough, where Tara Miya has established that he is a person, who cannot be said to be a foreigner and his oral evidence upon being cross examined also could not be rebutted in any manner and secondly, it being corroborated by further evidence through the contents of the Jamabandi, which also contains an extract of the order of the Circle Officer dated 29.03.2019, we are of the view that the petitioner cannot be declared to be a foreigner in the aforesaid facts and circumstance.

7. Accordingly, the petitioner Iatan Nessa @ Iyatun Nessa is declared to be an Indian Citizen and the opinion of the Tribunal dated 17.03.2022 rendered in

GFT(R) Case No. 863/2017 [Ref Police Case No. 833/1998] is set aside.

8. In view of the above declaration, the petitioner would now be entitled to all the rights and privileges guaranteed under the Constitution of India.

9. The writ petition is allowed as indicated above.

Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant