

GAHC010096732023



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

Case No. : WP(C)/2774/2023

ROBI ADAK @ ROBIN ADAK @ SHAMBHUNATH ADAK @ SAMBHU ADAK
S/O LATE MADAN MOHAN ADAK @ MADAN ADAK,
VILL.- AMGAON (KHARGULI NO. 1),
P.S.- CHANDRAPUR, DIST.- KAMRUP (M), ASSAM, PIN- 781150.

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
SHASTRI BHAWAN, NEW DELHI- 110001.

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI- 781006.

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
GUWAHATI
ASSAM

PIN-781036.

5:THE DEPUTY COMMISSIONER
KAMRUP (M)
P.O.- HENGRABARI
DIST.- KAMRUP (M)
ASSAM
PIN- 781036.

6:THE DEPUTY COMMISSIONER OF POLICE (BORDER)
GUWAHATI CITY
KAMRUP (M)
P.O.- PANBAZAR
DIST.- KAMRUP (M)
ASSAM
PIN- 781001.

7:THE OFFICER-IN-CHARGE OF CHANDRAPUR POLICE STATION
P.O.- PANIKHAITI
DIST.- KAMRUP (M)
ASSAM
PIN- 781150

Advocate for the Petitioner : MS. D GHOSH
Advocate for the Respondent : DY.S.G.I.

BEFORE

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

O R D E R

19.07.2023

(A.M. Bujor Barua, J)

Heard Ms. D Ghosh, learned counsel for the petitioner. Also heard Mr. B Sarma, learned CGC appearing on behalf of respondents in the Union of India, Ms. L Devi learned counsel 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 Mr. PK Medhi, learned counsel for the Deputy Commissioner, Kamrup(M).

2. The petitioner Robi Adak @ Robin Adak @ Shambhunath Adak @ Sambhu Adak had been referred to the Foreigners Tribunal No, Kamrup(Metro) for rendering an opinion as to whether he is a foreigner within the meaning of foreigner under the Foreigners Act, 1946, resulting in registration of FT Case No. 702/2018, wherein an opinion dated 24.02.2023 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 a registered sale deed dated 16.07.1949 in respect of a plot of land, where the purchaser is shown to be Madan Mohan Adak, resident of Gobindapur Pargana in the Howrah district of West Bengal. The petitioner claims that Madan Mohan Adak is the father of the petitioner. Reliance is also placed on a voters list of 1971 of Gobindapur Pargana of the State of West Bengal, wherein the name of Madan Mohan Adak son of Bhuban Chandra Adak appears at serial No. 4 and that of Parul Bala wife of Madan Mohan appears at serial No. 7. The petitioner further relies upon a voter identity card which contains the information that Robin Adak is the son of Parul Bala Adak. The petitioner also relies upon a land document pertaining to a plot of land of a village under Mouza Gobindapur in the State of West Bengal which contains the information that Sambhu Adak son of Madan Mohan Adak and Kashinath Adak son of Madan Mohan Adak had inherited land in place of Madan Mohan Adak. The petitioner also relies upon the evidence rendered by Kashinath Adak son of Madan Mohan Adak as DW-2 wherein he had deposed that Sambhu Adak of the land record is also known as Robi Adak, who is the writ petitioner and that Robi Adak, the writ petitioner is his brother being the son of Madan Mohan Adak. Accordingly, the petitioner claims that the burden under section 9 of the Foreigners Act, 1946 had been discharged.

4. In the above circumstance, we remand the matter back to the Tribunal to

examine the sale deed dated 16.07.1949, the land document produced which contains the information that Sambhu Adak is the son of Madan Mohan Adak and Kashinath Adak is also the brother of Sambhu Adak as well as the evidence rendered by DW-2 Kashinath Adak along with the voters list of 1971 of village Gobindapur containing the name of Madan Mohan Adak and Parul Bala Adak. As the petitioner is relying upon a voter identity card, which contains the information that Robin Adak is the son of Parul Bala Adak, the petitioner shall also produce the corresponding voters list which may contain the information that Robin Adak is the son of Parul Bala Adak. The respondents in the Home Department may make their own verification and submit a report before the Tribunal as to whether Sambhu Adak son of Madan Mohan Adak and Robi Adak the writ petitioner proceedee are one and the same person. The petitioner may also produce any relevant material to substantiate the same. After 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 24.02.2023 and if it goes against the petitioner, consequence as per law shall follow.

6. The petitioners shall appear before the concerned Foreigners Tribunal on 14.08.2023. 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