

GAHC010099062023



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

Case No. : WP(C)/2667/2023

LALCHAND ALI @ MD. LALCHAN ALI
S/O LATE JASHIM UDDIN @ JACHIMUDDIN
VILL- KOKJHAR @ KEKJHAR (CHOUDHURY PARA)
P.O. MIRZA
P.S.PALASHBARI
DIST. KAMRUP, ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS.
REP. BY SECRETARY TO THE GOVT. OF INDIA, THE MINISTRY OF HOME
AFFAIRS, NEW DELHI.

2:THE STATE OF ASSAM
REP. BY COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE DIRECTOR GENERAL OF POLICE (ADMN.)

ASSAM
ULUBARI
GUWAHATI-7.

4:THE SUPERINTENDENT OF POLICE (B)

KAMRUP
P.O. AMINGAON

DIST. KAMRUP (R)
ASSAM

5:THE DEPUTY COMMISSIONER

KAMRUP (R)

P.O.AMINGAON

DIST. KAMRUP
ASSAM

6:THE ELECTION COMMISSIONER OF INDIA

NEW DELHI-1.

7:THE DISTRICT ELECTION OFFICER

KAMRUP
P.O. AMINGAON

DIST. KAMRUP (R)
ASSAM

8:THE STATE CO-ORDINATOR

NRC ASSAM

ACHYUT PLAZA
BHANGAGARH
GUWAHATI-5

Advocate for the Petitioner : MD B ISLAM

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

17.07.2023

(A.M. Bujor Barua, J)

Heard Mr. B Islam, learned counsel for the petitioner. Also heard Mr. AK

Dutta, 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. T Pegu, learned counsel for the Election Commission of India and Ms. U Das, learned counsel for the Deputy Commissioner, Kamrup(R).

2. The petitioner Lalchand Ali @ Md. Lalchan Ali had been referred to the Foreigners Tribunal No. 3, Kamrup(R) 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. AFT(R) 2023/2018, wherein an opinion dated 28.04.2023 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 the voters list of 1966 of village Gorola Pam in the Barpeta district, which contains the name of Jochimuddin son of Mazom at serial No. 12 and that of Rupbhanu Nessa wife of Jochim at serial No. 13 where both are residing in the same house No. 5 and it is claimed that Jochimuddin is the father of the petitioner. To substantiate the same, a copy of Jamabandi of a plot of land at village Gorolapam is relied upon. The Jamabandi contains the reference to an order of the circle officer dated 26.11.2010 in respect of a plot of land covered by Patta No. 116 in which the name of Lal Miya son of Jochimuddin had been mutated in place of Jochimuddin and accordingly the Jamabandi had been corrected. The petitioner claims that as the name of Lal Miya had been mutated in place of Jochimuddin in respect of a plot of land at village Gorolapam, the petitioner had discharged the burden under section 9 of the Foreigners Act, 1946 to prove that he is not a foreigner.

4. Mr. G Sarma, learned counsel for the respondents in the Home Department, Government of Assam on the other hand submits that the

petitioner proceedee is Lalchan Ali of village Kokjhar, whereas the Jamabandi as well as the voters list referred is of village Gorolapam.

5. In view of the above, we remand the matter back to the Tribunal to examine the voters list of 1966, the Jamabandi in respect of a plot of land at village Gorolapam and thereafter pass a reasoned order thereon. The respondents in the Home Department may make their own verification and submit a report before the Tribunal as to whether Lalchan Ali of village Kokjhar and Lal Miya referred in the Jamabandi of the plot of land at village Gorolapam are one and the same person. If the Tribunal arrives at a conclusion that Lalchan Ali of Kokjhar who is the writ petitioner proceedee and Lal Miya of the Jamabandi of the plot of land of village Gorolapam are one and the same person, appropriate order may be passed.

6. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 28.04.2023 and if it goes against the petitioner, consequence as per law shall follow.

7. The petitioners shall appear before the concerned Foreigners Tribunal on 10.08.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

8. The writ petition is allowed as indicated above.

9. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant