

GAHC010099922018



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

Case No. : WP(C)/3220/2018

MD. SIRAJ UDDIN @ SIRAJ UDDIN
S/O- LT ABDUL SATTAR @ A. SATTAR, VILL- DHUPAGURI PATHAR, P.S.
DHING, DIST- NAGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, TILOK MARG, NEW DELHI-1

2:ELECTION COMMISSION OF INDIA
NEW DELHI-1

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
MINISTRY OF HOME DEPTT.
DISPUR
GHY-6

4:THE STATE COORDINATOR
NRC
ASSAM
BHANGAGARH
GHY-5

5:THE DY. COMMISSIONER
NAGAON

6:THE SUPERINTENDENT OF POLICE (B)
NAGAON
ASSA

Advocate for the Petitioner : MR. A R SIKDAR

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

29.05.2023

[Achintya Malla Bujor Barua, J.]

Heard Mr. A.R. Sikdar, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K.D. Choudhury, learned Dy.S.G.I. for the respondent No.1 and also appearing as standing counsel, NRC, for respondent No.4; Mr. G. Sarma, learned special counsel, FT, appearing for respondent Nos.3 and 6; Mr. T. Pegu, learned standing counsel, ECI, for respondent No.2 and Ms. U. Das, learned Additional Senior Government Advocate, Assam, appearing for respondent No.5.

2. The petitioner Siraj Uddin had been referred to the Foreigners' Tribunal 5th, Nagaon, for rendering an opinion as to whether he is a person who entered the State of Assam from the specified territory on or after 25.03.1971, which resulted in registration of F.T. Case No.4437/2018. The Tribunal rendered an opinion dated 06.04.2018 declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding before the Court, the petitioner relies on the voters list of 1965 of village Dhupguri Pathar, P.S.-Dhing, Mouza-Batadrava in the Nagaon district which contain the names of A. Sattar S/o A. Wahab at Sl.No.468 and that of Rahimuddin S/o A. Sattar at Sl.No.470, where both are shown to be residing in the same house No.106. The petitioner relies upon the Jamabandi of village Dhupguri which contains the order of the Circle Officer dated 29.03.1989 by which the names

of, amongst others, Siraj Uddin S/o A. Sattar has been mutated in place of A. Sattar. As the petitioner through mutation had inherited the land of A. Sattar, it is claimed that he has discharged the burden of proof that he is the son of A. Sattar of village Dhupguri whereas the voters list of 1965 of village Dhupguri Pathar contains the name of A. Sattar S/o A. Wahab at Sl.No.468 which shows that A. Sattar would be a citizen.

4. In view of above, the matter is remanded back to the Tribunal to examine the Jamabandi of village Dhupguri Pathar. The petitioner shall produce the complete order of the Circle Officer dated 29.03.1989 for examination of the Tribunal and thereupon the Tribunal shall pass a reasoned order. The petitioner also to explain before the Tribunal as to why Rahim Uddin S/o A. Sattar whose name appears in the voters list of 1965 did not inherit the land of A. Sattar through mutation to be incorporated in the order of the Circle Officer dated 29.03.1989. The respondent Home Department may make their own verification and submit a report to the Tribunal. In the event, the reasoned order is passed in favour of the petitioner, the same shall prevail over the earlier opinion dated 06.04.2018 and if it is against the petitioner, consequential action shall follow.

5. The petitioner shall accordingly appear before the Tribunal on 01.07.2023. Till the reasoned order is passed, no coercive action shall be taken against the petitioner.

6. Send back the LCR immediately.

7. Writ petition stands disposed of in the above terms.

Sd/- Robin Phukan
JUDGE

Sd/- Achintya Malla Bujor Barua
JUDGE

Comparing Assistant