

GAHC010102402023



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

Case No. : WP(C)/2764/2023

ANOWARA BEGUM @ ANOWARA KHATUN
W/O ABDUL JALIL, D/O LATE ABDUL KAYEM @ A. KAYEM, VILL-
BARKURANI, P.S.-MAYONG, DIST-MORIGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF HOME AFFAIRS, NEW DELHI-110001

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

3:THE ELECTION COMMISSION OF INDIA
NEW DELHI-110001

4:THE STATE COORDINATOR
NRC ASSAM
ACHYUT PLAZA
BHANGAGARH
GUWAHATI-781005

5:THE DEPUTY COMMISSIONER
MORIGAON
ASSAM-782105

6:THE SUPERINTENDENT OF POLICE (B)
MORIGAON

ASSAM-782105

7:THE O/C
MAYONG POLICE STATION
MORIGAO

Advocate for the Petitioner : MR. P RAHMAN

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

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

ORDER

Date : 19.07.2023
(AM Bujor Barua, J)

Heard Mr. P Rahman, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 4 being the authorities under the Union of India and NRC respectively, Mr. G Sarma, learned counsel for the respondents no. 2, 6 and 8 being the authorities under the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the respondent no. 3 being the authorities under the Election Commission of India and Ms. K Phukan, learned counsel for the respondent no. 5 being the Deputy Commissioner, Morigaon.

2. The petitioner Anowara Begum @ Anowara Khatun had been referred to the Foreigners' Tribunal No. 4, Morigaon for rendering an opinion as to whether she is a foreigner under the Foreigners Act, 1946, resulting in registration of Case No. F.T. (D) 495/2016. The Tribunal rendered an opinion dated 30.01.2023 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.
4. In the writ proceeding the petitioner relies upon the voters' list of 1966 of village Borkurani Police Station Morigaon in the present Morigaon district which contains the name of A. Kayem S/O Ahed at Sl. No. 222. It is claimed that A. Kayem is the father of the petitioner. The name of A. Kayem also appears in the subsequent voters' lists of village Borkurani. The petitioner relies upon a jamabandi in respect of a plot of land at village Borkurani which contains the information that as per the order of the Circle Officer dated 09.12.2019 in Mutation Case No. MOR/MAY/2019-20/233/FMUT land had been mutated in favour of, amongst others, Anowara Khatun D/O A. Kayem in place A. Kayem in respect of a plot of land of Dag No. 212.
5. It is claimed that as land had been mutated in favour of Anowara Khatun in place of A. Kayem and the name of A. Kayem appears in the voters' list of village Borkurani where the mutation is also in respect of a plot of land at village Borkurani, the petitioner has discharged the burden under Section 9 of the Foreigners Act, 1946 that she is not a foreigner under the Foreigners Act, 1946.
6. In view of the above, the matter stands remanded back to the Tribunal to examine the voters' list of 1966 of village Borkurani along with other subsequent voters' lists of the same village as well as the jamabandi in respect of a plot of land at village Borkuarni and pass a reasoned order thereon. The respondents in the Home Department may make their own enquiry and verification as to whether writ petitioner proceedee Anowara Begum @ Anowara Khatun and Anowara Khatun referred in the jamabandi are one and the same person and thereafter, submit a report before the Tribunal. Upon doing the needful, a reasoned order be passed by the Tribunal.

7. The petitioner to appear before the Tribunal on 14.08.2023.
8. If the order of the Tribunal is in favour of the petitioner, the same shall prevail over the opinion dated 30.01.2023 passed in Case No. F.T. (D) 495/2016 and if against, consequence under the law is applicable to the petitioner.
9. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant