

GAHC010114002019



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

Case No. : WP(C)/3715/2019

JAYNAB KHATUN
W/O- LUKMAN KHAN, D/O- RAHIM KHAN, VILL.- BURIKHAMAR PAM, P.S.-
SARTHEBARI, DIST- BARPETA, ASSAM. PIN- 781307.

VERSUS

THE UNION OF INDIA AND 6 ORS.
REPRESENTED BY THE SECRETARY OF THE MINISTRY OF HOME AFFAIRS,
GOVT. OF INDIA, NEW DELHI-1.

2:THE ELECTION COMMISSION OF INDIA
NEW DELHI-1.

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

4:THE COORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
BHANGAGARH
GUWAHATI-05.

5:THE DEPUTY COMMISSIONER
BARPETA DISTRICT
ASSAM. PIN- 781301.

6:THE SUPERINTENDENT OF POLICE (B) BARPETA
BARPETA DISTRICT
ASSAM. PIN- 781301.

7:THE OFFICER-IN-CHARGE
SARTHEBARI POLICE STATION
DISTRICT- BARPETA
ASSAM. PIN- 781307

Advocate for the Petitioner : MR. M U MAHMUD

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

10.02.2023

(A.M. Bujor Barua, J)

Heard Mr. MU Mahmud, learned counsel for the petitioner, Ms. L Devi, learned counsel for the respondents in the Union of India and NRC, Ms. A Verma, learned counsel for the respondents in the Home Department of Government of Assam and Mr. AI Ali, learned counsel for the respondents in the Election Commission of India.

2. The petitioner Jaynab Khatun was referred to the Foreigners Tribunal No. III, Barpeta for an opinion as to whether she is a person who entered the State of Assam subsequent to 25.03.1971 and as a result, FT Case No. 828(III)/2013 (Ref. IMDT Case No. 5710/1998) was registered. Vide order dated 14.02.2019, the Foreigners Tribunal No. III, Barpeta declared the petitioner to be a foreigner who entered the State of Assam subsequent to 25.03.1971.

3. Before the Tribunal, the petitioner exhibited a Sale Deed of the year 1964 which was a deed between Rahim Khan son of Lt. Mendu Khan of village Baisha Mauza Sarukhetri Police Station Barpeta and Sri Chandiram Bodo and Sri Ram Mal Bodo of village Ganakpata Mouza Chenga Police Station Tarabari of Barpeta

by which Rahim Khan had purchased certain land. The petitioner also exhibited the voters list of village Baisha, Mouza Sarukhetri of the year 1965, which has the name of Rahim Khan at serial No. 13 showing him to be son of Mendu Kha with Rahman Kha at serial No. 12 and Makim Kha at serial No. 14, both as son of Mendu Kha. The petitioner also exhibited the voters list of 1970 of village Baisha, Mouza Sarukhetri, where the name of Rahman Kha appears at Serial No. 20 showing him to be son of Mendu, Rahim Kha at serial No. 21, son of Mendu, Makim Kha at serial No. 22, son of Mendu, Hatem Kha at serial No. 23, son of Mendu, Biram Kha at serial No. 25, son of Mendu and Iyakub Kha at serial No. 26 son of Mendu as well as Aisa Khatun, wife of Rahim at serial No. 28. The petitioner also exhibited the voters list of 1985 of village Baisha Mouza Sarukhetri, where the name of Rahim Khan son of Mendu appears at serial No. 383, Aysha Khatun, wife of Rahim appears at serial No. 384 and Mahammad Khan, son of Rahim appears at serial No. 385.

4. Mahammad Khan deposed as DW-2 before the Tribunal, wherein at paragraph 4 he stated that after attaining majority, his sister Jaynab Khatun was given in marriage with Lokman Khan, son of Arman Khan of village Garartari, Mouza Sarukhetri, police Station Sarthebari and after the marriage, his sister's name appeared in the voters list of 1989 of village Garartari. In cross examination against the question put by the Tribunal, Mahammad Khan DW-2 stated that he is son of Rahim Khan and they were six brothers and one sister and out of them, only one brother was alive namely Iyakub Khan, where Kalyan Khan, Rahman Khan, rahim Khan, Biren Khan, Hatim Khan and Makim Khan have died in the meantime.

5. The information extracted from DW-2 in cross examination by the Tribunal corroborates the voters list of 1970 of village Baisha, which shows the name of

Rahim Khan, the father of the petitioner along with his other brothers. No question is put in cross examination making even a suggestion that the DW-2 was incorrect in deposing that Jaynab Khatun is his sister and that she was married to Lokman Khan. We have noticed that the aforesaid piece of information had not been appropriately appreciated by the Tribunal in the opinion rendered against the petitioner.

6. In view of the above, the matter is remanded back to the Tribunal for a fresh consideration on the aforesaid evidence. The petitioner may also render further evidence by means of marriage certificate etc to establish that she is the daughter of Rahim Khan and she was married to Lokman Khan. The petitioner shall appear before the Foreigners Tribunal No. III, Barpeta on 15.03.2023.

7. Accordingly the opinion rendered vide order dated 14.02.2019 in FT Case No. 828(III)/2013 (Ref. IMDT Case No. 5710/1998) is set aside.

8. Any order that may be passed by the Tribunal shall prevail over the earlier opinion and if the order is against the petitioner, the Tribunal would be at liberty to pass any reasoned order as may be advised.

9. Till the reasoned order is passed, no coercive action be taken against the petitioner.

10. The writ petition is allowed to the extent as indicated above. Send back the LCR forthwith.

JUDGE

JUDGE

Comparing Assistant