

GAHC010120882019



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

Case No. : WP(C)/3632/2019

MAMINA KHATUN @ MAMINA BEGUM
W/O- RAFIKUL ISLAM, D/O- LT MANIR UDDIN @ MANIR UDDIN SHEIKH,
R/O- VILL- NICHUKA, MOUZA- DAMKA CHAKA BAUSHI, P.S. BARPETA
ROAD, DIST- BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, NEW DELHI

2:THE ELECTION COMMISSION OF INDIA
NEW DELHI

3:THE STATE OF ASSAM
REP. BY THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-06

4:THE ASSAM STATE CO-ORDINATOR OF NRC
BHANGAGARH
GHY-05

5:THE DY. COMMISSIONER
BARPETA DISTRICT
BARPETA
ASSAM
PIN- 781319

6:THE SUPERINTENDENT OF POLICE (B)
BARPETA DISTRICT
BARPETA

ASSAM
PIN- 78131

Advocate for the Petitioner : MR. S A AHMED

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

22.02.2023

(A.M. Bujor Barua, J)

Heard Mr. SA Ahmed, learned counsel for the petitioner, Ms. L Devi, learned counsel for the respondents No. 1 and 4 being the authorities in the Union of India and NRC respectively, Ms. A Verma, learned counsel for the respondents No. 3 and 6 being the authorities in the Home Department of the Government of Assam, Mr. AI Ali, learned counsel for the respondent No. 2 being the Election Commission of India and Mr. TR Gogoi, learned counsel for the respondent No. 5 being the Deputy Commissioner, Barpeta.

2. The petitioner Mamina Khatun @ Mamina Begum had instituted this writ petition assailing the order dated 28.03.2019 of the Foreigners Tribunal No. 8, Barpeta in FT Case No. 120/2018 corresponding to IM(D)T Case No. 6292(A)/1997. By the said order of 28.03.2019 of the Foreigners Tribunal No. 8, Barpeta, an opinion was rendered that Mamina Khatun @ Mamina Begum is a foreigner/illegal migrant having entered the State of Assam on or after 25.03.1971. It is stated that during the pendency of this writ petition, the petitioner Mamina Khatun @ Mamina Begum is no more.

3. As the writ petition cannot be decided in the absence of the petitioner, a further legal implication may remain that the order which is assailed in this writ petition i.e. the opinion dated 28.03.2019 in FT Case No. 120/2018 would attain its finality. It is stated that if the said opinion attains its finality, it may have its adverse legal impact on the legal heirs of Mamina Khatun @ Mamina Begum.

3. In the circumstance, the writ petition is closed. But, however, if the legal heirs of the petitioner Mamina Khatun @ Mamina Begum are still aggrieved by the opinion dated 28.03.2019 in FT Case No. 120/2018, liberty would remain with the legal heirs to approach the Court again against the opinion dated 28.03.2019 in FT Case No. 120/2018.

4. However, we clarify that giving liberty to the legal heirs of the writ petitioner Mamina Khatun @ Mamina Begum would not preclude the authorities in any manner, if they are of the view that the legal heirs are also required to be referred to the Foreigners Tribunal for an opinion in respect of such legal heirs, to refer them as such.

5. As we have also provided that the legal heirs of the writ petitioner Mamina Khatun @ Mamina Begum, if so advised under the law and facts and circumstance to be proceeded under section 9 of the Foreigners Act, 1946, a copy of the order be also provided to Ms. A Verma, learned counsel for the Home Department for doing the needful.

6. As regards the closure of this writ petition and giving liberty to the legal heirs of the writ petitioner Mamina Khatun @ Mamina Begum to approach again against the opinion dated 28.03.2019 by the Foreigners Tribunal No. 8 Barpeta in FT Case No. 120/2018, Ms. A Verma, learned counsel for the Home Department has relied upon an earlier judgment of this Court dated 07.05.2018

in WP(C) No. 7618/2015, wherein in paragraph 7, it had been provided that following the law laid down in Bahej Ali –vs- Union of India [WP(C) No. 7526 of 2017 dated 11.12.2017], the question of abatement to a reference on the death of a proceedee does not arise and the reference may be returned back to the referring authority i.e the Superintendent of Police (Border) informing him that the proceedee had died.

7. We have taken a view which would be at a variance of the aforesaid view taking note of the aspect that if the opinion dated 28.03.2019 of the Foreigners Tribunal No. 8, Barpeta in FT Case No. 120/2018 in respect of Mamina Khatun @ Mamina Begum is understood to have attained its finality by having the reference returned back to the referring authority, the legal heirs of Mamina Khatun @ Mamina Begum may be adversely impacted, if in the event any proceeding of similar nature is also initiated against them. But, at the same time, under the law, if a reference is referred back to the referring authority, it would have to be understood that all orders that may have been passed in the reference, including the opinions therein would become otiose having no effect in law.

8. For the interest of justice of the proceedee as well as the State authorities, we are of the view that a window should also remain open to the legal heirs to assail the opinion dated 28.03.2019, if there is a possibility that in future their legal rights may be impacted because of such opinion.

9. Ms. A Verma, learned counsel for the Home Department has added that no death certificate of Mamina Khatun @ Mamina Begum has been produced before the Court other than a mere statement that Mamina Khatun @ Mamina Begum is no more.

10. If the statement that Mamina Khatun @ Mamina Begum is no more is factually incorrect, the legal implication would be that the opinion rendered by the Foreigners Tribunal No. 8, Barpeta in FT Case No. 120/2018 would remain against Mamina Khatun @ Mamina Begum and she would be subjected to the legal implications thereof.

JUDGE

JUDGE

Comparing Assistant