

GAHC010123102019



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

Case No. : WP(C)/3686/2019

JAYGAN NESSA
D/O- LATE ABDUL SALAM, W/O- AKBAR ALI, R/O- VILLAGE-
KUTHURIJHAR, MOUZA- GOBARDHANA, P.S.- GOBARDHANA, DISTRICT-
BAKSA, BTAD, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE MINISTRY OF HOME AFFAIRS, GOVERNMENT OF
INDIA, NEW DELHI.

2:THE ELECTION COMMISSION OF INDIA
NEW DELHI.

3:THE STATE OF ASSAM
REPRESENTED BY THE GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-06.

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

5:THE DEPUTY COMMISSIONER

DISTRICT- BARPETA
ASSAM
PIN- 781319.

6:THE SUPERINTENDENT OF POLICE (B)
BARPETA

DISTRICT- BARPETA
ASSAM
PIN- 781319

Advocate for the Petitioner : MR. S A AHMED

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

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

ORDER

Date : 13.02.2023

(A.M. Bujor Barua, J)

Heard Mr. S.A. Ahmed, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 4, being the Union of India and the Assam State Co-ordinator of NRC. Also heard Mr. T. Pegu, learned counsel for the respondent No. 2, the Election Commission of India, Ms. A. Verma, learned counsel for the respondents No. 3 and 6, being the authorities in the Home Department and Ms. U. Das, learned counsel for the respondent No. 5, being the Deputy Commissioner, Barpeta.

2. The petitioner Jaygan Nessa was referred to the Foreigners' Tribunal No. 10 at Barpeta for an opinion as to whether she is a person who had entered the State of Assam subsequent to 25.03.1971 and consequently F.T. Case No. 364/2016 was registered. Before the Tribunal, the petitioner, amongst others, exhibited the voters' list of 1965 of village Pub Safakamar, Mouza Gobardhana wherein at Sl. No. 172 appears the name of Abdul Salam son of Anser. The voters' list of 1970 of village Pub Safakamar, Mouza Gobardhana was also exhibited wherein at Sl. No. 153 the name of Abdul Salam son of Anser appears. In the voters' list of 1989 of village Pub Safakamar, Mouza Gobardhana at Sl.

No. 922 the name of Abdul Salam son of Anser appears and at Sl. No. 923 the name of Farida Khatun wife of Abdul Salam appears. In the voters' list of 2010 of village Pub Safakamar at Sl. No. 244 the name of Farida Khatun wife of Abdul Samad appears, in the voters' list of 2016 of village Pub Safakamar at Sl. No. 311 the name of Farida Khatun wife of A. Samad and at Sl. No. 318, the name of Ajibar Rahman son of Abdul Salam appear.

3. The petitioner claims that Abdul Salam is her father. The petitioner also exhibited the jamabandi of village Pub Safakamar, Mouza Gobardhana which refers an order of the Circle Officer dated 22.11.2018 by which the land of Abdul Salam of village Pub Safakamar, Mouza Gobardhana was mutated in favour of Jaygan Nessa and Ajibar Rahman, amongst others. Ajibar Rahman has deposed before the Tribunal stating that the petitioner Jaygan Nessa is his elder sister.

4. In view of the existence of the aforesaid materials on record, we remand the matter back to the Foreigners' Tribunal No. 10 at Barpeta for an examination as to whether the order of the Circle Officer dated 22.11.2018 in respect of village Pub Safakamar, Mouza Gobardhana as contained in the jamabandi exhibited and produced before the Court as well as the voters' list which shows Ajibar Rahman to be the son of Abdul Salam of village Pub Safakamar, Mouza Gobardhana do establish that the petitioner is the daughter of Abdul Salam of village Pub Safakamar, Mouza Gobardhana whose name originally appeared in the voters' list of 1965 and 1970 of the same village. The petitioner to appear before the Foreigners' Tribunal No. 10 at Barpeta on 15.03.2023. The petitioner is also given the liberty to produce any further material, if so advised. In the event after the examination the Tribunal is of the view that the petitioner could establish that she is not a person who entered the State of Assam subsequent to 25.03.1971, appropriate order may be passed and such order shall prevail

over the earlier opinion dated 11.01.2019 in F.T. Case No. 364/2016. On the other hand, if the order of the Tribunal is against the petitioner, appropriate consequences may follow and the earlier opinion against the petitioner shall prevail.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

J U D G E

J U D G E

Comparing Assistant