

GAHC010124172017



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

Case No. : WP(C)/1502/2017

MONIR UDDIN
S/O LT. TAHIR ALI, VILL- SADARGAON,
P.S. MURAJHAR, DIST. NAGAON, NOW HOJAI, ASSAM

VERSUS

1: THE UNION OF INDIA and 6 ORS. REP. BY THE SECRETARY TO THE
GOVT. OF INDIA, HOME DEPARTMENT, NORTH BLOCK, NEW DELHI.

2: THE STATE OF ASSAM TO BE REP. BY THE COMMISSIONER AND
SECRETARY TO THE GOVT. OF ASSAM HOME DEPARTMENT DISPUR
GUWAHATI-06.

3: ADDITIONAL DIRECTOR GENERAL OF POLICE
ASSAM BORDER BHANGAGARH GUWAHATI-05.

4: DEPUTY COMMISSIONER, NAGAON ASSAM

5: DEPUTY COMMISSIONER, HOJAI SANKARDEV NAGAR ASSAM

6: SUPERINTENDENT OF POLICE BORDER, NAGAON ASSAM

7: SUPERINTENDENT OF POLICE BORDER, HOJAI ASSAM

- B E F O R E -

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Petitioner : Ms. L. Wajeeda, Advocate.

For the Respondents : Mr. K.K. Parasar, Central Govt. Counsel for the respondent No. 1.

: Mr. J. Payeng, Standing Counsel, Home Department, Assam
for respondent Nos. 2, 3, 6 & 7.

: Mr. P. Sarmah, Additional Senior Government Advocate, Assam for respondent Nos. 4 & 5.

Date of Judgment & Order : 10.11.2023.

JUDGMENT & ORDER

[N. Unni Krishnan Nair, J.]

Heard Ms. L. Wajeeda, learned counsel for the petitioner and Mr. K.K. Parasar, learned Central Government Counsel for the respondent No. 1. Also heard Mr. J. Payeng, learned Standing Counsel, Home Department, Assam for respondent Nos. 2, 3, 6 & 7 and Mr. P. Sarmah, learned Additional Senior Government Advocate, Assam for respondent Nos. 4 & 5.

2. The petitioner, by instituting the present proceedings, has assailed the order/opinion dated 22.02.2017 passed by the learned Member, Foreigners' Tribunal No. 7 at Lanka, Nagaon in F.T./L Case No. 74/2015 declaring the petitioner to be a foreigner, who had illegally entered into the territory of India (Assam) after 25.03.1971 without valid authorization.

3. The basic facts requisite for adjudication of the issue(s) arising in the present proceedings are narrated herein below:

On a reference being made by the Superintendent of Police (Border), Nagaon suspecting the petitioner to be a foreigner, F.T./H Case No. 4591/2010 came to be registered. However, on creation of the Foreigners Tribunal No. 7, Nagaon at Lanka (Hojai), the said case was transferred and renumbered as F.T./L Case No. 74/2015.

4. The petitioner herein, on receipt of notice of the proceeding, entered appearance as a proceedee before the learned Tribunal and filed his written statement. In the written statement, the petitioner had referred to certain voter

lists of 1966 and 1971 stating that his father's name figured therein. It was the further contention of the petitioner that in year 1990, he had shifted to Village Sadargaon under 90 No. Jamunamukh LAC and continued to reside therein. Before the learned Tribunal, the petitioner has exhibited as many as 18 (eighteen) documents through himself and through the witnesses deposing on his behalf.

5. After closure of the evidence and considering the submissions advanced on behalf of the proceedee, the learned Tribunal rendered its order/opinion dated 22.02.2017.

6. Being aggrieved with the impugned order/ opinion dated 22.02.2022 passed by learned Member, Foreigners' Tribunal No. 7 at Lanka, Nagaon in F.T./L Case No. 74/2015, the petitioner has filed this writ petition on 09.03.2017.

7. The primary issue for determination in the present proceeding is as to whether the petitioner could establish his linkage with his projected father in order to establish his status of citizenship under the provisions of Section 6(A) of the Citizenship Act, 1955.

8. In the backdrop of the aforesaid factual position, the learned counsel appearing for the petitioner has submitted that there being documents establishing the presence of the father of the petitioner on Indian soil prior to the cut off date, i.e. 25.03.1971, the petitioner cannot be denoted as a foreigner and he is an Indian national for all intent and purpose. It was further contended that the documents exhibited by and on behalf of the petitioner establishes the citizenship status of the petitioner and the same is undisputable. The learned counsel for the petitioner, by referring to Exhibits-11

& 12, which are the copies of *Kessa Patta* dated 09.04.2013 and of the *Jamabandi*, has contended that the name of the father of the petitioner has been duly recorded therein as a Pattadar. Accordingly, learned counsel for the petitioner submits that the order/opinion rendered by the learned Tribunal, under challenge in the present proceeding, is required to be interfered with and the petitioner be declared to be an Indian national.

9. Per contra, Mr. J. Payeng, learned standing counsel, Home Department, by referring to the pleadings in the writ petition, has submitted that the petitioner has only made general and vague statements towards challenging the order/opinion of the learned Tribunal. It was the contention of Mr. Payeng that no specific averments have been made toward assailing the conclusion reached in the order/opinion by the learned Tribunal. Mr. Payeng, by referring to the written statement filed on behalf of the petitioner before the learned Tribunal, has contended that the petitioner therein also made only vague averments and even the names of his parents, siblings, etc., have not been disclosed. It is the contention of Mr. Payeng that the relevant particulars, within the knowledge of the petitioner, having not been disclosed in the written statement, the petitioner could not be said to have discharged the burden placed upon him. Mr. Payeng further contends that there is no material to establish the linkage between the petitioner a resident of Sadargaon under 90 No. Jamunamukh LAC and his projected father Tahir Ali a voter of No. 8 Badarpur LAC. Accordingly, it is submitted that the order/opinion, under challenge, does not warrant any interference from this Court in exercise of its certiorari jurisdiction.

10. Mr. K.K. Parasar, learned Central Government Counsel representing

the respondent No. 1 and Mr. P. Sarmah, learned Additional Senior Government Advocate, Assam for respondent Nos.4 & 5 submit that they adopt the submissions advanced by Mr. J. Payeng, learned standing counsel, Home Department.

11. The submissions advanced by the learned counsel for the petitioner as well as those advanced by the learned counsel for the respondents have been duly considered along with the materials available on record, including the original records of F.T./L. Case No. 74/2015.

12. At the outset, it is to be noticed that the manner and method in which a proceedee, whose citizenship status is questioned, is to establish his citizenship, has been laid down by the Hon'ble Supreme Court in the case of ***Sarbananda Sonowal -Vs- Union of India & Anr.***, reported in **(2005) 5 SCC 665**, wherein it was indicated that such proceedee has to adduce evidence of **(i)** his date of birth; **(ii)** place of birth; **(iii)** name of his parents; and **(iv)** their place of birth and citizenship. In a proceeding under the Foreigners Act, 1946 read with Foreigners (Tribunals) Order, 1964, the issue is whether the proceedee is a foreigner or not and Section 9 of the Foreigners Act, 1946 casts the burden of proof on the proceedee to prove that he/she is not a foreigner. The same is based on the legal principle that the facts which are within the personal knowledge of a person should be proved by him/her and not the party who avers the negative because those facts are within the personal knowledge of the person concerned and not of the authorities of the State. After such proceedee has given evidence on the above points, the State authorities can verify the facts and can, thereafter, lead evidence in rebuttal, if necessary.

13. Taking the aforesaid principle as laid down in the case of ***Sarbananda Sonowal*** (supra), the contentions raised by the petitioner are to be considered and evaluated.

14. The petitioner in his written statement filed before the learned Tribunal had not disclosed the place of his birth and/or the names of his parents, siblings, etc. The only contention concerning the petitioner is directly found in Paragraph 7 of the written statement, wherein he has contended that he came to Village Sadargaon under 90 No. Jamunamukh LAC in the year 1990 to earn his livelihood and that he was thereafter permanently residing in the said village. In Paragraph 8, the petitioner has made a categorical statement that he is casting votes regularly in 90 No. Jamunamukh LAC. The sketchy details as disclosed in the written statement in no way lays the foundation for the petitioner, as proceedee, to establish his citizenship status.

15. The petitioner has, in course of the proceedings before the learned Tribunal after filing of the written statement, contended that one Tahir Ali, a resident of Village Mohanpur Part-V to be his father and for the said purpose, the petitioner has exhibited the voter list of 8 No. Badarpur LAC of the year 1966. In the voter list of 1966, as exhibited as Exhibit-1, the name of one Tahir Ali is reflected. Likewise, Exhibit-2 is the Legacy Data of the year 1971 containing the name of Tahir Ali. Exhibits-3, 9 & 10 are the voter lists of the years 2014, 1997 and 2005, respectively, of 90 No. Jamunamukh LAC containing the names of the petitioner, his wife and his mother-in-law. It is relevant to note here that the age of the petitioner in the voter list of 1997 was reflected as 33 years.

16. It is astonishing to note that the petitioner could not exhibit any voter

list prior to 1997, wherein on attaining the age for voting his name was reflected. The said position when considered with the hereinabove referred statement of the petitioner that he had voted regularly in 90 No. Jamunamukh LAC after moving to Village Sadargaon in the year 1990 raises a clear doubt with regard to the presence of the petitioner on Indian soil prior to 1997. The said doubt was sought to be dispelled by the petitioner through DW-3, one Azmat Ali, who had projected himself to be the uncle of the petitioner. DW-3 had introduced the Exhibit-13 voter list of 1989 of Algapur LAC, wherein a name "Monir Uddin" figures along with "Tahir Ali". The contention or the evidence adduced by DW-3 cannot be given credence as the evidence adduced by him is not supported by the evidence adduced by the petitioner himself, wherein he has contended that he had voted only in 90 No. Jamunamukh LAC and had not made any averment that his name was included in the voter list of any other Constituency.

17. The learned counsel for the petitioner in course of her arguments had referred to the Exhibit-11 *Kessa Patta* and Exhibit-12 *Jamabandi* to contend that the same contains the name of the projected father of the petitioner and the same establishes her lineage. The said contention requires to be rejected at the threshold inasmuch as the said 2(two) exhibits in no manner advance the case of the petitioner as the name of the petitioner is not reflected therein as a heir of said Tahir Ali. Accordingly, the Exhibits-11 & 12 do not provide the linkage requisite for establishing the relationship between said Tahir Ali and the petitioner. The other exhibits as well as the statements of the witnesses deposing in favour of the petitioner are not gone into inasmuch as the same is of no consequence for the issue required to be decided in the present proceedings.

18. Law is well settled by the Hon'ble Apex Court that – *Mutation of a property in the Revenue Record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. [(1996) 6 SCC 223 :: Smti. Sawarni -Vs- Smti. Inder Kaur & Ors.].*

19. It is also well settled that an entry in Revenue Records does not confer title on a person whose name appears-of-rights. The entries in the Revenue Records or *Jamabandi* have only fiscal purpose, i.e. payment of revenue, and no ownership is conferred on the basis of such entries. **[(2007) 6 SCC 186 :: Suraj Bhan & Ors. -Vs- Financial Commissioner & Ors.]**

20. Co-ordinate Bench of this Court in **WP(C) No. 2634/2016** disposed of on 28.02.2017 (**Monowara Bewa @ Manora Bewa -Vs- Union of India & Ors.**) have held that – *under the law of evidence entries in the copy of the Jamabandi are prepared on fiscal entries and the entry in the copy of the Jamabandi has to be examined on the probative value on the contents of the documents which required corroboration with other documentary evidence. There is a requirement to produce the up to date land revenue receipts and other documents subsequent to such entries made on fiscal inquiries and without proving the same in accordance with law, without providing any explanation, failing to produce up to date land revenue receipt the entry in the copy of the Jamabandi is inadmissible in evidence in the absence of other substantial documentary evidence.*

21. On a perusal of the records and the documents exhibited before the learned Tribunal, reference is made to Exhibit-4 and Exhibit-5. Exhibit-4 is a certificate dated 01.10.2015 issued in favour of the petitioner by the Secretary,

Mohanpur Gaon Panchayat and Exhibit-5 is a residential certificate issued by the Secretary, Nilbagan Gaon Panchayat on 28.09.2015. Both the said certificates and the contentions made therein were rightly held to be not admissible on the ground that the authors of the said certificates were not examined. However, on a close examination of the said certificates dated 01.10.2015 (Exhibit-4) and 28.09.2015 (Exhibit-5), it appears that in the Exhibit-4 certificate, the issuing authority has issued the same basing on a voter list of 2010 of 8 No. Algapur Constituency, wherein the name of the petitioner purportedly figured. However, the said voter list was never exhibited. Similarly, Exhibit-5 certificate was issued basing on the voter list of 2014 of 90 No. Jamunamukh LAC. The petitioner had disclosed in his written statement, which was sworn on 06.10.2015, that he had been casting his votes regularly in 90 No. Jamunamukh LAC and there is no disclosure of he having cast his vote in any other Constituency. The above facts emanating from a perusal of the exhibits indicates that the petitioner had failed to discharge the burden casts on him to establish his citizenship status. The petitioner has failed to establish the requisite linkage with his projected father, Tahir Ali. The decision on conferment of citizenship on a proceedee cannot be decided in the affirmative unless the proceedee discharges the burden of proof that lies on him/her under the law.

22. A perusal of the impugned order/opinion dated 22.02.2017 passed by the Tribunal shows that the Tribunal had carefully appreciated whatever evidence was led by the petitioner before it and, thereafter, had rendered the finding that the petitioner had failed to establish his claim to be a citizen of India by reliable and cogent documentary evidence. Such a finding being a finding of fact, a writ Court exercising jurisdiction under Article 226 of the

Constitution of India does not, ordinarily, interfere with such finding of fact unless there is perversity because the jurisdiction so exercised is supervisory and not appellate.

23. In view of the point raised on behalf of the petitioner, the evidence led before the Tribunal by the petitioner was once again revisited only to reassure as to whether there was any perversity in the order/opinion of the Tribunal. There being none, this writ petition is, resultantly, found to be bereft of merit and the same stands accordingly dismissed. There shall be no order as to costs.

24. *Interim* order passed on 17.03.2017 stands recalled. Concerned State authorities to take action accordingly.

25. Registry shall send back the case records to the concerned Tribunal forthwith with a copy of this judgment & order.

JUDGE

JUDGE

Comparing Assistant