

GAHC010131662021



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

Case No. : WP(C)/4297/2021

PURNA BHANU @ PURNA KHATUN @ PUNYA KHATUN
D/O LATE HUSEN ALI @ HUSSAIN ALI @ HUSSAIN, W/O MOHAN BHUYAN,
R/O VILL-CHAKIR BHITHA, P.S. AND DIST-BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF HOME
AFFAIRS, GOVT. OF INDIA, SHASTRI BHAWAN, TILOK MARG,
NEW DELHI-1

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

3:THE DEPUTY COMMISSIONER, GOALPARA
P.O. AND DIST-GOALPARA
ASSAM PIN-783101

4:THE SUPERINTENDENT OF POLICE (B), GOALPARA
P.O. AND DIST-GOALPARA
ASSAM, PIN-783101

5:THE ELECTION COMMISSIONER OF INDIA, NEW DELHI-1

6:THE STATE CO-ORDINATOR NRC
ASSAM
BHANGAGARH
GUWAHATI-

Advocate for the Petitioner : MR N AHMED

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

BEFORE
HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN

15.05.2023

(AM Bujor Barua, J)

Heard Mr. N. Ahmed ,learned counsel for the petitioner. Also heard Mr. K.K. Parasar, learned CGC for the respondents in the Union of India as well as the authorities under the NRC, Mr. A.I. Ali, learned counsel for the authorities under the Election Commission of India and Mr. G. Sarma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam and the Superintendent of Police (Border), Goalpara and Mr. N.K. Das, learned Government Advocate, Assam for Deputy Commissioner, Goalpara.

2. The petitioner, Purna Bhanu @ Purna Khatun @ Punya Khatun had been referred to the Foreigners Tribunal No.1st, Barpeta, Assam for rendering an opinion as to whether she is a person who had entered the State of Assam on or after 25.03.1971 resulting in registration of F.T. Case No.170/18 corresponding to IM(D)T Ref. Case No.1163/B/98.The learned Tribunal rendered an opinion dated 23.06.2021 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding, the petitioner relies on the voters list of 1965 of village Maricha, Mouza Betbari, the present Barpeta District which contains the name of Husen Ali, son of Bahar Ali at Serial No.47 and that of Chafatan Nessa, wife of Husen Ali at Serial No.48 and both are shown to be residing in the same House No.14. The names of Husen Ali and Chafatan Nessa also appear together

in the voters list of 1970. Petitioner also relies on the voters lists of 1985, 1989 and 1997 in respect of village Maricha which contains the names of Hussain Ali and Chafatan Nessa. Voters list of 2010 of village Maricha contains the name of Chapatan Nessa, wife of Hussain Ali at Serial No.131. It is stated that Husen Ali/Hussain Ali in the meantime died.

5. The petitioner relies upon the Jamabandi in respect of a plot of land at village Chakir Bhitha, Mouza Betbari in Barpeta district wherein it is stated that as per the order of the Circle Officer dated 16.03.2019 in Mutation Case No.BAR/BAR/2018-19/4132/FMUT, the land in respect of village Chakir Bhitha had been mutated, amongst others, in the name of Purna Bhanu, daughter of Late Hosen Ali where Hosen Ali is shown to be the son of Bahar Ali. The said information is consistent with the information contained in the voters lists that Husen Ali/Hussain Ali is the son of Bahar Ali. The only aspect is that the land referred in the Jamabandi is in village Chakir Bhitha whereas the voters list of 1965 onwards, it is in respect of village Maricha. But Chafatan Nessa, wife of Husen Ali @ Hussain Ali of village Maricha had also rendered evidence as DW2 stating that the petitioner Purna Bhanu is her daughter which again had been reiterated in the cross-examination by the State wherein also she stated that her husband is Late Hossain Ali and that Purna Bhanu is her own daughter. The evidence rendered through the order of the Circle Officer as contained in the Jamabandi that petitioner Purna Bhanu inherited the land of Husen Ali @ Hussain Ali in respect of the plot of land in Chakir Bhitha had also been corroborated by the evidence of DW2 wherein she specifically deposed that the petitioner Purna Bhanu is her daughter.

6. In view of above, the matter is remanded back to the Tribunal to examine the implications of the voters lists of 1965 onwards as indicated above in

respect of village Maricha as well as the oral evidence of DW2 Chafatan Nessa, wife of Late Hossain Ali of village Maricha wherein she had specifically deposed that Purna Bhanu is her own daughter as well as the indication that may be available from the order of the Circle Officer dated 16.03.2019 as contained in the Jamabandi that Purna Bhanu had inherited the land of Hosen Ali, son of Bahar Ali in respect of a plot of land in Chakir Bhitha which is stated to be adjacent village of village Maricha.

7. Respondents in the Home Department, Government of Assam may also make their own verification in this regard and submit a report before the Tribunal.

8. Upon doing the needful, a reasoned order be passed by the Tribunal.

9. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 23.06.2021 rendered in F.T. Case No. 170/18 corresponding to IM(D)T Case No.1163/B/98 and if it goes against the petitioner, consequence as per law shall follow.

10. The petitioner shall appear before the Foreigners Tribunal, 1st, Barpeta on 28.06.2023.

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

12. The writ petition is disposed of as indicated above.

13. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant