

GAHC010133462019



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

Case No. : WP(C)/4059/2019

KHUDEJA BEGUM
W/O- SULTAN MIYA, D/O- FAIZUDDIN, R/O- VILL CHASRA, P.S- BAGHBAR,
DIST- BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF HOME
AFFAIRS, SHASTRI BHAWAN, TILOK MARG, NEW DELHI- 01

2:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER
NEW DELHI- 01

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GUWAHATI- 06

4:THE SUPERINTENDENT OF POLICE (B)
BARPETA
P.O AND DIST- BARPETA
ASSAM
PIN- 781308

5:THE DEPUTY COMMISSIONER OF BARPETA
P.O AND DIST- BARPETA
ASSAM
PIN- 781308

6:THE STATE COORDINATOR

NRC
BHANGAGARH
GUWAHATI
ASSAM
PIN- 78100

Advocate for the Petitioner : MR. N UDDIN

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 23.08.2023
(A.M. Bujor Barua, J)

Heard Mr. N. Uddin, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 6, being the Union of India and the State Co-ordinator of NRC, respectively. Also heard Mr. T. Pegu, learned counsel for the respondent No. 2, being the authorities in the Election Commission of India; Mr. G. Sarma, learned counsel for the respondents No. 3 and 4, being the authorities in the Home Department and Mr. P. Sarma, learned counsel for the respondent No. 5, being the Deputy Commissioner, Barpeta.

2. The petitioner Khudeja Begum was referred to the Foreigners' Tribunal No. 4, Barpeta for rendering an opinion as to whether she is a foreigner under the Foreigners Act, 1946 and accordingly F.T. Case No. 549/16 was registered. The Tribunal had rendered its opinion dated 07.12.2018 by arriving at its conclusion that the petitioner is a foreigner under the Foreigners Act, 1946. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1966 of village Manikpur, Mouza Mandia in the Barpeta district which contains the names

of Abul Husen son of Meser at Sl. No. 296 and Bhanu Nessa wife of Abul at Sl. No. 297. The petitioner also relies upon the voters' list of 1970 of village Manikpur, Mouza Mandia in the Barpeta district which contains the names of Abdul Hussain son of Meser at Sl. No. 281, Bhanu Nessa wife of Abul at Sl. No. 282 and Faijuddin son of A. Husen at Sl. No. 283 and all of them are shown to be residing in the same house No. 83. It is claimed that Abul Hussen of the voters' list of 1966 of village Manikpur is the grandfather of the petitioner and that Faijuddin of the voters' list of 1970 of the same village is the father of the petitioner. To substantiate that the petitioner is the daughter of Faijuddin, reliance is placed upon a jamabandi in respect of a plot of land at village Manikpur which refers to the order of the Circle Officer dated 29.11.2011 by which land had been mutated in respect of Patta No. 297 Dag No. 2, amongst others, in the name of Khudeja in place of Faijuddin and accordingly, the jamabandi had been corrected by including the name of Khudeja Khatun daughter of Faijuddin.

4. As Khudeja Khatun had inherited the land of Faijuddin in respect of a plot of land at village Manikpur and the name of Faijuddin appears along with Abdul Hussain in voters' list of 1970 of village Manikpur and the name of Abul Hussen appears in the voters' list of 1966 of village Manikpur, it is claimed that the burden under Section 9 of the Foreigners Act, 1946 has been discharged.

5. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 4, Barpeta to examine the aforesaid voters' lists of 1966 and 1970 of village Manikpur as well as the jamabandi that has been relied upon. The petitioner to produce the complete and continuous voters' lists of village Manikpur for examination of the Tribunal. The petitioner to also produce the complete jamabandi of village Manikpur referred above including the order of

the Circle Officer dated 29.11.2011 for examination of the Tribunal. The State respondents in the Home Department may make their own verification, if so advised and thereafter submit a report before the Tribunal.

6. Upon doing the needful, the Tribunal to pass a reasoned order. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 07.12.2018 in F.T. Case No. 549/16 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 20.09.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

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