

GAHC010139712017



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

Case No. : WP(C)/5379/2017

AMINA BEGUM @ AMELA KHATUN
D/O ABDULYA BEPARI @ ABDULYA SHEIKH BEPARI, R/O VILLAGE-
PUTHIMARI, PS-LAKHIPUR, DIST. GOALPARA, ASSAM

VERSUS

THE UNION OF INDIA and 3 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, HOME DEPTT.,
DISPUR GUWAHATI-6

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-6

3:THE SUPERINTENDENT OF POLICE B
GOALPARA
ASSAM

4:THE DEPUTY COMMISSIONER
GOALPARA
PS and DIST. GOALPARA
ASSAM

5:THE ELECTION COMMISSIONER OF INDIA
THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASOKA ROAD
NEW DELHI-110001

Advocate for the Petitioner : MR.A R SIKDAR

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

08.06.2023

(AM Bujor Barua, J)

Heard Mr. AR Sikdar, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as the authorities under the NRC, Mr. AI 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 as well as the Superintendent of Police (B) Goalpara and Ms. U Das, learned Government Advocate for the Deputy Commissioner, Goalpara.

2. The petitioner, namely, Amina Begum @ Amela Khatun was referred to the Foreigners Tribunal 4th Goalpara 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 the registration of F.T.Case No.FT(G-4)561/16 corresponding to ERO Case No.465⁶²/₃₈ wherein an opinion dated 29.07.2017 was rendered declaring the petitioner to be a person who had entered the State of Assam from the specified territory on or after 25.03.1971.

3. Being aggrieved this writ petition is instituted.

4. In the writ proceeding, the petitioner relies upon the voters list of 1966 of village Puthimari in the Goalpara district which contains the name of Anser Bekhari son of Late Aimuddin at Sl.No.891, Alamjan Bibi wife of Anser Bepari at Sl.No.892, Nurul Hoque son of Anser Bepari at Sl.No.893 and that of Rumaljan Bibi wife of Nurul Hoque at Sl.No.894 where all of them are shown to be residing in the same House No.207. It is stated that Anser Bekhari who is to be actually read as Anser Bepari is the great grandfather and Alamjan Bibi is the great grandmother of the petitioner and Nurul Hoque is the grandfather of the petitioner and Rumaljan Bibi is the grandmother of the petitioner. The voters list of 1970 of village Puthimari also contains the name of Anser Bepari son of Late Aimuddin at Sl.No.859 and that of Nurol Hoque, son of Late Aimuddin at Sl.No.860, along with Ramaljan Bibi wife of Nurul Hoque at Sl.No.861. The voters list of 1979 of village Puthimari also contains the name of Narul Hoque Bepari son of Ansar Ali at Sl.No.163, Rumaljan Bibi wife of Naral Hoque at Sl.No.164, Abdulya Sheikh Bepari son of Naral Hoque at Sl.No.165 along with Aiton Begum wife of Abdulya at Sl.No.166, where all of them are residing in the same House No.36. It is claimed that while Narul Hoque Bepari is the grandfather of the petitioner, Abdulya Sheikh Bepari is the father of the petitioner.

5. Abdulya Bepari @ Abdulya Sheikh Bepari son of Nurol Hoque @ Nurul Hoque has deposed before the Tribunal as DW-2 that the petitioner Amina Begum is his daughter and that she was born and brought up by him and his wife Aiton Begum @ Aiton Nessa @ Aiton Bewa at village Puthimari. DW-2

further stated that Amina Begum was given marriage to Bahar Ali son of Omar Ali of village Khudrapoitary under Lakhipur P.S. in the Goalpara district about 16 years back and she lived with her husband's family up to the year 2010. In the year 2010 she was divorced by her husband and thereafter was living with the DW-2. The voters list of 2011 of village Puthimari again contains the name of Abdulya Bepari son of Nurul Hoque at Sl.No.124 along with Aiton Nessa wife of Abdulya Bepari at Sl.No.125 and Amina Begum daughter of Abdulya Bepari at Sl.No.127, where all of them are shown to be residing in the same House No.36. As the name of Amina Begum appears again with Abdulya Bepari in the voters list of 2011 of village Puthimari in the background of the evidence rendered by Abdulya Bepari as DW-2 that after her divorce she again came back to live with him, the evidence rendered appears to be consistent with each other.

6. In view of the above, the matter stands remanded back to the Tribunal to enable the Tribunal to examine the voters list of 1966, 1970, 1979 of village Puthimari as well as the evidence rendered by DW-2 Abdulya Bepari and also to give due consideration to the voters list of 2011 of village Puthimari, where the name of Abdulya Bepari and Amina Begum appear together by showing her to be the daughter of Abdulya Bepari.

7. The respondents in the Home Department may also make their own verification on the aforesaid aspect and submit a report before the Tribunal, if so advised.

8. Accordingly, the petitioner shall appear before the Tribunal on 13.07.2023.

9. The Tribunal upon doing the needful and after examining the evidences and materials shall pass a reasoned order. In the event, the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 29.07.2017 of the Foreigners Tribunal 4th Goalpara in F.T.Case No.FT(G-4)561/16 corresponding to ERO Case No.465⁶²/₃₈ and if it is against the petitioner, consequential action under the law shall follow.
10. Till the reasoned order is passed, no coercive action be taken against the petitioner.
11. Writ petition stands disposed of in the above terms.
12. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant