

GAHC010147352021



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

Case No. : Review.Pet./85/2021

HANUFA KHATUN
W/O- ABDUL HAKIM, D/O- LATE ABDUL JUBBAR SONAR, VILL.-
PUTHIMARI, P.S. SORBHOG, DIST. BARPETA, ASSAM, PIN- 781309.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI-110001.

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

3:THE DEPUTY COMMISSIONER
BARPETA
DIST. BARPETA
ASSAM
PIN- 781301.

4:THE SUPERINTENDENT OF POLICE (B)
BARPETA
DIST. BARPETA
ASSAM
PIN- 781301.

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

6:THE STATE COORDINATOR

NRC
ASSAM
BHANGAGARH
GUWAHATI-5

Advocate for the Petitioner : MR. A R SIKDAR

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

Linked Case : WP(C)/3091/2017

HANUFA KHATUN
W/O. ABDUL HAKIM
D/O. LT. ABDUL JUBBAR SONAR
VILL. PUTHIMARI
P.S. SORBHOG
DIST. BARPETA
ASSAM.

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MINISTRY OF HOME AFFAIRS
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10001.

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DIST. BARPETA
ASSAM.

4: THE SUPERINTENDENT OF POLICE

BARPETA
ASSAM.

Advocate for : MR.A M KHAN
Advocate for : GA
ASSAM appearing for THE UNION OF INDIA and 3 ORS.

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

JUDGMENT & ORDER (ORAL)

02.02.2023

(AM Bujor Barua, J)

Heard Mr. AR Sikdar, learned counsel for the petitioner. Also heard Mr. KK Parashar, learned counsel appearing on behalf of respondents in the Union of India as well as for the authorities under the NRC, Mr. J Payeng, learned Special Counsel Foreigners Tribunal for the authorities under the Home Department, Government of Assam as well as the Superintendent of Police (B) Barpeta, Ms. U Das learned Government Advocate for the Deputy Commissioner, Barpeta and Mr. T Pegu learned counsel for the Election Commission of India.

2. The petitioner Hanufa Khatun was referred to the IMD(T) Barpeta for an opinion as to whether she is a person who had entered the State of Assam subsequent to 25.03.1971 resulting in the registration of a reference as IM(D)T Case No.4606/B/1998. Subsequently when the proceeding was transferred to the Foreigners Tribunal No.11 Barpeta it was re-registered as F.T.Case No.204/2016 and opinion dated 29.04.2017 had been rendered by the Tribunal declaring the petitioner to be a foreigner. In the reference case before the Tribunal, the petitioner exhibited the voters list of 1965 in respect of village

Khudnabari P.S. Sorbhog wherein at Sl.No.106, the name of Abdur Jubbar Sonar S/o of Jahir Sonar appears as well as in the voters list of 1970 wherein at Sl.No.156, the name of Abdur Jubbar Sonar, S/o Jahir appears. The petitioner claims that Abdur Jubbar Sonar is her father. The Tribunal while examining the matter had referred to the certified copy of the voters list of 1965 relied upon by the petitioner and arrived at its conclusion that there were certain overwriting in the name of the father of the father of the petitioner as well the petitioner did not examine the authority who had issued the certified copy.

3. Being aggrieved, WP(C)No.3091/2017 was instituted which was given its final consideration by the order dated 08.08.2017. In the order dated 08.08.2017 in WP(C)No.3091/2017, this Court while examining the exhibits A and B i.e. the two voters list of the year 1965 and 1970 relied upon by the petitioner came to a conclusion that there were certain discrepancies in the age of the mother and father of the petitioner and accordingly the contents of the two certified copies were rejected. Although the petitioner approached the Hon'ble Supreme Court against the order dated 08.08.2017 in WP(C)No.3091/2017, the same was not pressed by seeking liberty to file a review. In the circumstance, this review petition is instituted.

4. In the review petition, the petitioner refers to a Jamabandi of village Baguriguri Pathar Gaon of Mouza Kharija Bijni of the year 1958-65 wherein in respect of the land covered by patta No.250, dag No.269 measuring 05 bighas, 3 kathas and 10 lechas and the names of the pattadar appears to be Jahiruddin Sonar S/o. Edu Sonar, the person who is claimed to be the grandfather of the petitioner as well as Hanufa Begum the petitioner showing her to be the

daughter of Lt. Jubbar Sonar. Accordingly the petitioner claims that there is a linkage of the petitioner with Lt. Jubbar Sonar being the father of the petitioner and Jahiruddin Sonar as grandfather of the petitioner whose names appear in the voters list of 1965 and 1970 in respect of village Khudnabari.

5. We have noticed that the land in respect of which the Jamabandi copy is relied upon is of village Baguriguri Pathar Gaon of Mouza Kharija Bijni whereas the village of the father of the petitioner is Khudnabari. It is explained that the two villages are nearby to each other and although the father of the petitioner Lt. Jubbar Sonar was a resident of village Khudnabari and whose name appears in the voters list of village Khudnabari but the land in question is their ancestral land which is located in the neighboring village. The aforesaid aspect requires a further examination as to whether Abdul Jubbar Sonar appearing in the voters list of 1965 and Jubbar Sonar of the Jamabandi relied upon by the petitioner are one and the same person, but, however, if it happens that they are one and the same person, *prima facie* a linkage of the petitioner would be established with Abdul Jubbar Sonar appearing in the voters list of 1965 and 1970.

6. We also take note that the Tribunal in its opinion dated 29.04.2017 had rejected the two voters list of 1965 and 1970 on the ground that the voters list of 1965 and 1970 contained over writing in the name of the grandfather of the petitioner i.e., whether it is Jasir or Jahir and secondly, that the authority who had issued the certified copy was not examined. In respect of the overwriting in the certified copy, the same can easily be rectified by requiring the petitioner to provide a fresh certified copy of the same voters list which may not contain any over writing.

7. As regards the other reason of the Tribunal that the authority issuing the certified copy was not examined, the certified copy under Section 63(1) of the Evidence Act is a secondary evidence and it being so under the law there is no requirement to examine the authority who issues a certified copy in order to enable such certified copy to be admissible in evidence.

8. For the reasons above, we are agreeable to recall the order dated 08.08.2017 in WP(C)No.3091/2017 and remand the matter back to the Tribunal for an examination by allowing the petitioner to rely upon the Jamabandi for Baguriguri Pathar Gaon of Mouza Kharija Bijni which contained the names Jahiruddin Sonar who is claimed to be the grandfather of the petitioner and Lt. Jubbar Sonar who is claimed to be the father of the petitioner and of the petitioner Hanufa Begum herself. In doing so, the Tribunal shall specifically examine as to whether Jahiruddin Sonar referred in the Jamabandi and Jahir Sonar appearing in the voters list of 1965 and 1970 of village Khudnabari are one and the same person and for the purpose the petitioner may be allowed to adduce any further evidence. If the Tribunal has doubt because of the overwriting as regards name of the grandfather of the petitioner, the petitioner may be allowed to file fresh certified copy of the same voters list which may not contain any overwriting. Upon arriving at its conclusion, the Tribunal may render its own opinion on the claim of the petitioner that her father is Lt. Jubbar Sonar whose name appears in the voters list of 1965 and 1970 of village Khudnabari.

9. Although we have remanded the matter back, we clarify that we have not expressed any view on the acceptability of the claim of the petitioner and it is

for the Tribunal to arrive at its own reason and conclusion.

10. Accordingly, the matter stands remanded back on the aforesaid specified issue as has been indicated above and not that the entire issue is reopened for the petitioner for other purpose.

11. Review petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant