

GAHC010164032022



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

Case No. : WP(C)/5386/2022

SOILA KHATUN
D/O LATE DAROG ALI @ DARAB ALI,
W/O SABER ALI,
VILL.- TOPGAON,
P.S.- MERERCHAR,
DIST.- BONGAIGAON, ASSAM, PIN- 783384.

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
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPARTMENT
DISPUR
GHY- 6.

3:THE DEPUTY COMMISSIONER
BONGAIGAON
PIN- 783380.

4:THE ELECTION COMMISSION OF INDIA
NEW DELHI- 110001.

5:THE STATE CO-ORDNATOR
NATIONAL REGISTER OF CITIZENS
ASSAM
GUWAHATI- 781005.

6:THE SUPERINTENDENT OF POLICE (B)
BONGAIGAON
DIST.- BONGAIGAON
PIN- 783385

Advocate for the Petitioner : MS S DAS

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

BEFORE

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

O R D E R

20.07.2023

(A.M. Bujor Barua, J)

Heard Ms. S Das, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of respondents in the Union of India as well as for the authorities in the NRC, Mr. J Payeng, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. T Pegu, learned counsel for the Election Commission of India and Ms. K Phukan, learned counsel for the Deputy Commissioner, Bongaigaon.

2. The petitioner Soila Khatun had been referred to the Foreigners Tribunal No. 2, Bongaigaon at Abhyapuri for rendering an opinion as to whether she is a foreigner within the meaning of foreigner under the Foreigners Act, 1946, resulting in registration of BNGN/FT-2/APR/Case No. 1249/2007, wherein an opinion dated 11.01.2022 was rendered declaring the petitioner to be a foreigner. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters list of 1961 of village Naravita in the Goalpara district which contains the name of Darog Ali

son of Kashem Ali at serial No. 843 and it is claimed that Darog Ali is the father of the petitioner. To substantiate that Darog Ali is the father of the petitioner, reliance is placed on a Jamabandi of a plot of land at village Naravita, which has a reference to an order of the circle officer dated 29.05.2017 in mutation case No. BON/SRI/2016-17/137/F-MuT, by which in respect of Dag No. 169, land had been mutated, amongst others, in the name of Soila Khatun, daughter of Darog Ali in place of Darog Ali. The Jamabandi also contains the name of Darog Ali at serial No. 1, whereas at serial No. 9, upon being mutated, the name of Soila Khatun had been added in place of Darog Ali.

4. In view of the above, we remand the matter back to the Tribunal to examine the voters list of 1961 of village Naravita as well as the Jamabandi. The respondents in the Home Department may verify on the authenticity and acceptability of the Jamabandi referred above and submit a report before the Tribunal. As the Jamabandi was not placed on record earlier, the respondents may make a thorough verification of the said document and submit a report before the Tribunal. The petitioner shall produce the complete voters list from the year 1961 onwards of village Naravita to substantiate their claim, more particularly, in respect of the other persons, whose names were also mutated in place of Darog Ali and whether the names of such persons are also available in the subsequent voters list of village Naravita. The respondents to also verify as to whether Soila Khatun the writ petitioner proceedee and Soila Khatun, whose name was mutated in the Jamabandi of village Naravita are one and same person. After doing the needful, the Tribunal shall pass a reasoned order thereon.

5. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 11.01.2022 and if it goes against the petitioner,

consequence as per law shall follow.

6. The petitioners shall appear before the concerned Foreigners Tribunal on 16.08.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

7. The writ petition is allowed as indicated above.

8. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant