

GAHC010164202019



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

Case No. : WP(C)/5036/2019

UZALA KHATOON
W/O. MIRJAN KHAN, D/O. LT. KUJRAT ALI @ KURJAT ALI, VILL. AND P.O.
JAHUR PAM, P.S. AND DIST. BARPETA, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO MINISTRY OF HOME AFFAIRS, THE GOVT. OF
INDIA, NEW DELHI-01.

2:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE HOME DEPTT.
DISPUR
GUWAHATI-06.

3:THE DY. COMMISSIONER BARPETA

DIST. BARPETA
ASSAM
PIN-781301.

4:THE SUPDT. OF POLICE (B)

BARPETA
P.O.
P.S. AND DIST. BARPETA
ASSAM
PIN-781301.

5:THE ELECTION COMMISSIONER OF INDIA

NEW DELHI-01.

6:THE STATE CO-ORDINATE OF NATIONAL REGISTRATION OF CITIZEN
(NRC)

ASSAM
GUWAHATI-05

Advocate for the Petitioner : MR. A R SIKDAR

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

22.05.2023

[Achintya Malla Bujur Barua, J.]

Heard Mr. A.R. Sikdar, learned counsel for the petitioner. Also heard Mr. K.K. Para, learned CGC, appearing for respondent No.1 as well as appearing for respondent No.6; Mr. G. Sarma, learned special counsel, FT, appearing for respondent Nos.2 and 4; Mr. A.I. Ali, learned standing counsel, ECI, appearing for respondent No.5 and Ms. U. Das, learned Addl. Senior Government Advocate, Assam, appearing for respondent No.3.

2. The petitioner Uzala Khatoon had been referred to the Foreigners' Tribunal-III, Barpeta, for rendering an opinion as to whether she is a person who entered the State of Assam from the specified territory on or after 25.03.1971, which resulted in registration of F.T. Case No.17(III)/2017. The Tribunal rendered an opinion dated 09.01.2019 declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding before the Court, the petitioner relies upon the voters list of 1966 of village Bhera, Mouza-Jania in the present Barpeta district, which contains the name of Sabiran Nessa, W/O Durjan at Sl. No.165. The petitioner also relies on the voters list of 1970 of village Bhera, Mouza-Jania in the present Barpeta district, which contain the

names of Sabiran Nessa, W/O Durjan at Sl. No.223 and that of Kujrat Ali, S/O Durjan at Sl. No.224 and both are shown to be residing in the same house No.68. Similar informations are also available in the voters list of 1989 of village Bhera Gaon containing the names of Kurjat Ali S/O Durjan and Sabiran Nessa W/O or D/O Durjan, but the age is shown as 35 years. The petitioner relies upon the Jamabandi in respect of a plot of land at village Bhograndha which refers to the order of Circle Officer dated 01.03.2019 in Mutation Case No.BAR/BAG/2018-19/2748/FMUT by which, amongst others, the land was mutated in favour of Uzala Khatoon, D/O Kujrat Ali in place of Kujrat Ali. It is explained that the village Bhograndha pertaining to which the Jamabandi has been referred and the village Bhera of the voters list of 1966 and 1970 are in fact adjacent villages. If it is so, the petitioner would also have to establish that Kujrat Ali of the mutation order and the Jamabandi of village Bhograndha and Kujrat Ali of the voters list of 1970 of village Bheragaon are one and the same person.

4. For the purpose, the matter is remanded back to the Foreigners' Tribunal-III, Barpeta to examine the same and the Tribunal upon consideration of the evidence and the materials on record shall pass a reasoned order. The respondents in the Home Department, may also make their own verification and submit report thereof. In the event, the reasoned order is passed in favour of the petitioner, the same shall prevail over the earlier opinion dated 09.01.2019 and if it is against the petitioner, consequential action shall follow.

5. The petitioner shall accordingly appear before the Tribunal on 06.07.2023. Till the reasoned order is passed, no coercive action shall be taken against the petitioner.

6. Send back the LCR immediately.

7. Writ petition stands disposed of in the above terms.

Sd/- Robin Phukan
JUDGE

Sd/- Achintya Malla Bujor Barua
JUDGE

Comparing Assistant