

GAHC010167272018



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

Case No. : WP(C)/5184/2018

SAMELA BIBI
D/O. LATE KUTUB ALI SHEIKH, W/O. RASHID MULLAH, VILL.
KURSHAKATI, P.S. KAZIGAON, DIST. KOKRAJHAR, ASSAM.

VERSUS

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

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

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI.

4:THE STATE COORDINATOR OF NATIONAL REGISTER OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
GUWAHATI SHILLONG ROAD
BHANGAGARH
GUWAHATI
ASSAM
PIN 781005.

5:THE DEPUTY COMMISSIONER OF KOKRAJHAR DISTRICT

AT KOKRAJHAR
P.O.
P.S. AND DIST. KOKRAJHAR
B.T.A.D.
ASSAM.

6:THE SUPERINTENDENT OF POLICE (B)
KOKRAJHAR DISTRICT

AT KOKRAJHAR
P.O.
P.S. AND DIST. KOKRAJHAR
B.T.A.D.
ASSAM

Advocate for the Petitioner : MR. A T SARKAR

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

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

ORDER

Date : 10.04.2023
(A.M. Bujor Barua, J)

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

2. The petitioner Samela Bibi was referred to the Foreigners' Tribunal Kokrajhar for rendering an opinion as to whether she is a person who had

entered the State of Assam from the specified territory on or after 25.03.1971 and accordingly Case No. K/FT/D/2748/12 was registered. The Tribunal rendered its opinion dated 06.04.2018 arriving at its conclusion that the petitioner is a foreigner who had entered the State of Assam on or after 25.03.1971. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1966 of village 168 Baladmara, P.S. South Salmara in the present South Salmara district which contains the name of Kutub Ali Sk. son of Alabox at Sl. No. 199. The petitioner claims that Kutub Ali Sk. is her father and to substantiate the same, the petitioner refers to a jamabandi in respect of a plot of land in village Baladmara wherein as per the order of the Assistant Settlement Officer dated 22.03.2017, the land in the name of Kutub Ali Sk. had been mutated, amongst others, in the name of Samela Khatun. By referring to the order of mutation, a claim is made that Samela Bibi is the daughter of Kutub Ali Sk. of the voters' list of 1966 of village 168 Baladmara.

4. In view of the above, we remand the matter back to the Foreigners' Tribunal, Kokrajhar to examine as to whether Kutub Ali Sk. referred in the jamabandi of a plot of land in village Baladmara and Kutub Ali Sk. of the voters' list of 1966 of village 168 Baladmara are one and the same person. The Tribunal to also examine as to whether Samela Khatun who had inherited the land of Kutub Ali Sk. of village Baladmara as per the order of mutation are one and the same person. The Tribunal to also examine whether Samela Khatun of the mutation order and the proceedee Samela Bibi are one and the same person. For the purpose, the petitioner may render any further evidence, if so advised. The respondents in the Home Department through the Superintendent of Police(B), Kokrajhar may also make their own verification and thereafter submit

report to the Tribunal. Upon the 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 06.04.2018 in Case No. K/FT/D/2748/12 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 26.05.2023. 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