

GAHC010167712022



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

Case No. : WP(C)/5500/2022

JARIMAN NESSA @ JARINA KHATUN
W/O. LT. ABDUL SIDDIQUE @ SIDDIQUE ALI, D/O. LT. ESAB ALI @ EDU
MIYA, VILL. ATAGAON, P.S. GOBARDHANA, P.O. BILASIPARA BAZAR,
DIST. BAKSA (BTAD), PIN-781315.

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, DEPTT. OF HOME, NEW
DELHI-01.

2:THE STATE OF ASSAM

REP. BY SECRETARY TO THE GOVT. OF ASSAM
DEPTT. OF HOME
DISPUR
GUWAHATI-06.

3:THE DEPUTY COMMISSIONER

BAKSA
PIN-781343.

4:THE SUPDT. OF POLICE (B)

BAKSA
PIN-781343.

5:THE ELECTION COMMISSION

GOVT. OF INDIA
NEW DELHI-01.

6:THE STATE CO-ORDINATOR NF NATIONAL REGISTRATION (NRC)

ASSAM
GUWAHATI-781032.

7:FOREIGNERS TRIBUNAL NO.10

BARPETA
REP. BY THE STANDING COUNSEL
FOREIGNERS TRIBUNAL
PIN-781301

Advocate for the Petitioner : MR. A ROSHID

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

18.07.2023

[Achintya Malla Bujor Barua, J.]

Heard Ms. T. Begum, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel appearing for the respondent Nos.1 and 6; Ms. A. Verma, learned special counsel, FT, appearing for respondent Nos.2, 4 and 7; Mr. A.I. Ali, learned standing counsel, ECI, for respondent No.5 and Ms. U. Das, learned Additional Senior Government Advocate, Assam, appearing for respondent No.3.

2. The petitioner Jamiran Nessa had been referred to the Foreigners' Tribunal (10th), Barpeta, for rendering an opinion as to whether she is a foreigner under the Foreigners Act, 1946 resulting in registration of F.T. Case No.1848/2018. The Tribunal rendered an opinion dated 30.06.2022 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 1965 of village Borghopa Bilor Pathar, P.S.-Sarbhog in the present Barpeta district, which contains the names of Esab Ali S/o Rafet Ulla at Sl.No.46 and that of Jabeda Khatun W/o Esab at Sl.No.47. It is claimed that Esab Ali is the father of the petitioner and Jabeda Khatun is the mother. We also take note that the voters list of 1965 also contains the name of Abdul Jalil S/o Rafet Ulla where Abdul Jalil and Esab Ali both are residing in the same house No.10. Reliance is placed on a Jamabandi of a plot of land at village Borghopa Bilor Pathar, which contains the information that in respect of the plot of land, in place of Abdul Jalil S/o Rafet Ulla and Idu Miya S/o Rafet Ulla, mutation had been made in favour of their legal heirs. The Jamabandi also refers to an order of the Circle Officer dated 06.08.2018 by which the name of Jamiran Nessa D/o Idu Miya had been mutated in place of Jabeda Khatun. It is noticed that Jabeda Khatun is the wife of Esab Ali as per the voters list of 1965 and as the name of Jamiran Nessa had been mutated in place of Jabeda Khatun by the order of the Circle Officer, it is claimed that the petitioner has discharged the burden under Section 9 of the Foreigners Act, 1946 to establish that she is not a foreigner under the said Act.

4. The Jamabandi also refers to the name of Abdul Jalil S/o Rafet Ulla. In the circumstance, a question would remain as to whether Esab Ali of the 1965 voters list and Idu Miya of the Jamabandi in respect of the same village Borghopa Bilor Pathar are one and the same person. If a conclusion can be arrived that they are one and the same person, the petitioner may have discharged the burden under Section 9 to prove that she is not a foreigner and on the other hand, if Idu Miya of the Jamabandi and Esab Ali of the 1965 voters list are not one and the same person, such burden may not have been discharged.

5. In view of above, the matter is remanded back to the Tribunal to consider the voters list of 1965 of village Borghopa Bilor Pathar as well as the Jamabandi and

the contents thereof in respect of the plot of land of village Borghopa Bilor Pathar and pass a reasoned order and more particularly, a conclusion be arrived as to whether Esab Ali of the 1965 voters list and Idu Miya of the Jamabandi are one and the same person. The petitioner may produce any further material, if so advised to prove that they are one and the same person, whereas the respondents in the Home Department may also make their own verification and submit a report before the Tribunal on the aforesaid question as to whether Esab Ali and Idu Miya are one and the same person. On doing the needful, a reasoned order be passed. In the event, the reasoned order is passed in favour of the petitioner, the same shall prevail over the earlier opinion dated 30.06.2022 and if it is against the petitioner, consequential action shall follow.

6. The petitioner shall accordingly appear before the Tribunal on 11.08.2023. Till the reasoned order is passed, no coercive action shall be taken against the petitioner.

7. Send back the LCR immediately.

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

Sd/- Robin Phukan
JUDGE

Sd/- Achintya Malla Bujor Barua
JUDGE

Comparing Assistant