

GAHC010167972019



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

Case No. : WP(C)/5135/2019

MD. ABDUL NUR SAMAD @ ABDUL NUR SAMAD
S/O- LT. HAJI ABDUL SAMAD, PERMANENT R/O- VILL. BORPUKHURI, P.O.
AND P.S. MURAJHAR, DIST. HOJAI, ASSAM
PRESENTLY R/O- VILL. BAROGORIA, P.S. URIAMGHAT, SUB-DIVISION-
DHANSIRI, DIST. GOLAGHAT, ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS.
REPRESENTED 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
GUWAHATI-6

3:THE ELECTION COMMISSION OF INDIA
NEW DELHI

4:THE STATE COORDINATOR
NRC
ASSAM
ACHYUT PLAZA
BHANGAGARH
GUWAHATI-5

5:THE STANDING COUNCIL
SPECIAL FT AND BORDER

6:THE DEPUTY COMMISSIONER
HOJAI
ASSAM

7:THE SUPERINTENDENT OF POLICE (B)
HOJAI
ASSAM

8:THE O/C
MURAJHAR POLICE STATION
DIST. HOJAI
ASSA

Advocate for the Petitioner : J U AHMED

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

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

ORDER

Date : 16.05.2023
(A.M. Bujor Barua, J)

Heard Mr. J. Ahmed, 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 Coordinator of NRC, respectively. Also heard Mr. G. Sarma, learned counsel for the respondents No. 2, 5, 7 and 8, being the authorities in the Home Department; Mr. A.I. Ali, learned counsel for the respondent No. 3, being the authorities in the Election Commission of India and Mr. T.R. Gogoi, learned counsel for the respondent No. 6, being the Deputy Commissioner, Hojai.

2. The petitioner Md. Abdul Nur Samad @ Abdul Nur Samad was referred to the Foreigners' Tribunal No. 7, Nagaon at Lanka, Hojai for rendering an opinion as to whether he is a person who had entered the State of Assam from the specified territory on or after 25.03.1971 and F.T./L/Case No. 1494/2018 was

registered. The Tribunal rendered its opinion dated 29.11.2018 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 1954 of village Borpukhuri, Mouza Nomati in the Nagaon district which contains the name of A. Samad son of Khurman Munshi at Sl. No. 60 and that of Soida Bibi wife of A. Samad at Sl. No. 61 and both are shown to be residing in the same house No. 46. It is claimed that A. Samad son of Khurman Munshi is the father of the petitioner. The petitioner states that he was born sometime in the year 1977 and accordingly, his named appeared in the voters' list of 1997 of village Borpukhuri. The voters' list of 1997 of village Borpukhuri contains the name of A. Nur son of A. Samad at Sl. No. 358.

4. Mr. J. Ahmed, learned counsel for the petitioner states that all other siblings of the petitioner Abdul Nur Samad had died in the meantime and even his father A. Samad had died sometime in the year 1977 immediately after his birth.

5. To substantiate that A. Samad father of A. Nur of the voters' list of 1997 of village Borpukhuri and A. Samad son of Khurman Munshi of the voters' list of 1954 of village Borpukhuri are one and the same person, all the intervening voters' lists from the year 1954 up to 1997 of village Borpukhuri may be produced by the petitioner before the Tribunal for its examination.

6. The petitioner also relies upon a Jamabandi in respect of a plot of land at village Borpukhuri wherein the land in the name of A. Samad had been inherited by some people, but it is stated that the name of the petitioner had not been included in the said Jamabandi because of some civil dispute between the parties. From such point of view, till the name of A. Nur would appear in the

land documents, we do not see any relevance of such documents to establish that the petitioner Abdul Nur Samad is the son of A. Samad of the voters' list of 1954 of village Borpukhuri. However, the petitioner intends to produce some documents pertaining to the litigation in the civil suit. If so, the petitioner may do so provided that the Tribunal shall examine its admissibility in evidence.

7. Accordingly for the purpose, we remand the matter back to the Foreigners' Tribunal No. 7, Nagaon at Lanka, Hojai to examine the voters' lists to be produced by the petitioner as indicated above as well as any further material that the petitioner may produce. The State respondents in the Home Department of the Government of Assam through the Superintendent of Police(B), Hojai may also make their own verification as to whether the petitioner Abdul Nur Samad is the son of A. Samad of the voter's list of 1954 of village Borpukhuri and submit the report before the Tribunal.

8. Upon 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 29.11.2018 in F.T./L/Case No. 1494/2018 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 30.06.2023. 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