

GAHC010181262021



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

Case No. : WP(C)/6016/2021

HASNA KHATUN
W/O. KHANDAKAR NASIR UDDIN, D/O. LT. JALAL UDDIN, VILL. GALIA,
P.S. HOWLY, 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 DEPUTY COMMISSIONER BARPETA

P.O. AND 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 COORDINATE OF NATIONAL REGISTRATION OF CITIZEN
(NRC)

ASSAM
GUWAHATI-05

Advocate for the Petitioner : MR N AHMED

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

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

ORDER

Date : 26.05.2023
(A.M. Bujor Barua, J)

Heard Mr. N. Ahmed, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 6, being the Union of India and the State Coordinator of NRC, respectively. Also heard Mr. J. Payeng, learned counsel for the respondents No. 2 and 4, being the authorities in the Home Department; Ms. K. Phukan, learned counsel for the respondent No. 3, being the Deputy Commissioner, Barpeta and Mr. A.I. Ali, learned counsel for the respondent No. 5, being the authorities in the Election Commission of India.

2. The petitioner Hasna Khatun was referred to the Foreigners' Tribunal No. 10, Barpeta 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 F.T. Case No. 1873/2018 was registered. The Tribunal had rendered its opinion dated 24.09.2020 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 Garemari, P.S. Barpeta in the Barpeta district which contains the names of Majiron Nesssa wife of Dowat Ali at Sl. No. 5, Jalal Uddin son of Dowat at Sl. No. 8 and Kashiran Nessa wife of Jalal at Sl. No. 10. It is claimed that Jalal Uddin is the father of the petitioner. To substantiate the same, the petitioner relies upon a copy of a Jamabandi in respect of a plot of land at village Garemari which contains the order of the Circle Officer dated 21.09.2018 in Mutation Case No. BAR/BAR/2018-19/1681/FMUT by which the land of Jalal Uddin was mutated, amongst others, in the name of Hasna Khatun daughter of Jalal Uddin in place of Jalal Uddin. By relying on the order of mutation, a claim is made that the petitioner has discharged the burden under Section 9 of the Foreigners Act, 1946, inasmuch as, she had inherited the land of Jalal Uddin of village Garemari whose name appears in the voters' list of 1966 of village Garemari.

4. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 10, Barpeta to examine the aforesaid voters' list of 1966 of village Garemari as well as the order of the Circle Officer dated 21.09.2018. The petitioner to produce the complete order of the Circle Officer for examination of the Tribunal. The State respondents in the Home Department through the Superintendent of Police(B), Barpeta may make their own verification as to whether the petitioner proceedee and Hasna Khatun of the Jamabandi are one and the same person and submit a report before the Court.

5. 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 24.09.2020 in F.T. Case No. 1873/2018 and if it is against the petitioner, consequences under law shall follow. The petitioner to

appear before the Tribunal on 24.07.2023. 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