

GAHC010184762019



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

Case No. : WP(C)/5597/2019

KAMAL ALI
S/O- LATE ABDUL HUSEN, R/O- VILL- ABDUL HUSEN, R/O- VILL
CHENIMARA, P.O- BIHAPARA, P.S- TAMULPUR, DIST- BAKSA, ASSAM

VERSUS

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

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
NEW DELHI- 01

4:THE STATE COORDINATOR OF NRC
ASSAM
DISPUR
GHY- 06

5:THE DEPUTY COMMISSIONER
BAKSA
DIST- BAKSA
ASSAM
PIN- 781343

6:THE SUPERINTENDENT OF POLICE
BAKSA

DIST- BAKSA
ASSAM
PIN- 781343

7:THE OFFICER IN CHARGE
TAMULPUR POLICE STATION
DIST- BAKSA
ASSAM
PIN- 78136

Advocate for the Petitioner : MR. M I HUSSAIN

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 17.08.2023
(A.M. Bujor Barua, J)

Heard Mr. M.I. Hussain, 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, 6 and 7, 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. P. Sarma, learned counsel for the respondent No. 5, being the Deputy Commissioner, Baksa.

2. The petitioner Kamal Ali was referred to the Foreigners' Tribunal, Baksa for rendering an opinion as to whether he is a foreigner under the Foreigners Act, 1946 and accordingly F.T. Case No. 627/BAKSA/2016 was registered. The Tribunal had rendered its opinion dated 31.05.2019 by arriving at its conclusion that the petitioner is a foreigner under the Foreigners Act, 1946. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1965 of village Bilasipara Pathar, PS Sorbhog in the Kamrup district which contains the name of Abdul Hussain son of Solimuddin at Sl. No. 2. It is claimed that Abdul Hussain is the father of the petitioner. The petitioner also relies upon the voters' list of 1970 of village Bilasipara Pathar, PS Sorbhog in the Kamrup district which contains the names of Solim Uddin Dewani son of Posa at Sl. No. 55, Sovan Ali son of Solimuddin at Sl. No. 56, Abdul Hussain son of Solimuddin at Sl. No. 57 and Ajiron Nessa wife of Solimuddin at Sl. No. 58 and it is claimed that Abdul Hussain is the father of the petitioner whose name appears along with Solim Uddin Dewani and Sovan Ali. The voters' list of 1985 of village Bilasipara Pathar also contains the name of Abul Hussain son of Solim at Sl. No. 148. Further reliance is placed on a jamabandi for surveyed village of a plot of land at village Bilasipara Pathar in which land records had been corrected by mutating the names of the sons of Solimuddin Dewani in his place which also includes the name of Abdul Hussain.

4. It is noticed that the name of Abul Hussain had been mutated in respect of a particular dag of land by an order of the Circle Officer dated 08.01.1974. By a later order dated 11.03.2023 of the Circle Officer in Mutation Case No. BAJ/SARR/2022-23/41986/FMUT, the name of Kamal Ali son of late Abdul Hussain had been mutated in place of Abul Hussain and his name appears at Sl. No. 20 in the jamabandi.

5. As the jamabandi contains the names of the family members of Solim Uddin Dewani of the voters' list of 1970 of village Bilasipara Pathar, due credibility can be given to the entries in the jamabandi in respect of a plot of land at village Bilasipara Pathar. The information contained in the jamabandi indicates that Kamal Ali is the son of Abul Hussain who, on the other hand, is

the son of Solim Uddin Dewani where the names of Solim Uddin Dewani and Abdul Hussain also appear in the voters' list of 1970 of village Bilasipara Pathar.

6. In view of the above, we remand the matter back to the Foreigners' Tribunal, Baksa to examine the aforesaid voters' lists of 1965, 1970 and 1985 of village Bilasipara Pathar as well as the jamabandi that has been relied upon. The State respondents in the Home Department may make their own verification, if so advised and thereafter submit a report before the Tribunal.

7. Mr. G. Sarma, learned counsel for the respondents in the Home Department points out that the writ petitioner Kamal Ali son of Abul Hussain is of village Chenimara whereas to establish that he is the son of Abul Hussain of Bilasipara Pathar, reliance is placed upon a jamabandi in respect of plot of land at village Bilasipara Pathar.

8. Accordingly, the petitioner to also produce relevant materials before the Tribunal to establish that the petitioner Kamal Ali and Kamal Ali of the jamabandi of village Bilasipara Pathar are one and the same person.

9. 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 31.05.2019 in F.T. Case No. 627/BAKSA/2016 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 18.09.2023. 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