

GAHC010184822020



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

Case No. : WP(C)/5662/2020

GOPAL ALI
S/O. LT. HAZRAT ALI @ HAZRAT, VILL. MAHAMMADPUR, P.S. AND 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 DY. COMMISSIONER BARPETA

DIST. BARPETA
ASSAM
PIN-781301.

4:THE SUPDT. OF POLICE (B)

BARPETA
P.O. AND P.S. AND DIST. BARPETA
ASSAM
PIN-781301.

5:THE ELECTION COMMISSIONER OF INDIA

NEW DELHI-01.

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

ASSAM
GUWAHATI-05

Advocate for the Petitioner : MR. A R SIKDAR

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE NELSON SAILO

O R D E R

05.06.2023

(A.M. Bujor Barua, J)

Heard Mr. N Ahmed, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of respondents in the Union of India as well as for the authorities in the NRC, Mr. G Sarma, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the Election Commission of India and Mr. NK Das, learned counsel for the Deputy Commissioner, Barpeta.

2. The petitioner Amiran Nessa had been referred to the Foreigners Tribunal No. 1, Barpeta for rendering an opinion as to whether he is a person who entered the State of Assam from the specified territory on or after 25.03.1971 resulting in registration of F.T. Case No. 09/2017, wherein an opinion dated 03.12.2018 was given that the petitioner is a foreigner. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioner relies on the voters list of 1966 of

village Mahammadpur, Mouza- Jania, which contains the name of Mafez Uddin son of Gadu at serial No. 76 and that of Jahuran Nessa wife of Mafez Uddin at serial No. 77 and both of them are shown to be residing in the same house No. 22. The petitioner also relies upon the voters list of 1985 of village Mahammadpur, which contains the name of Hazrat Ali son of Mafezuddin at serial No. 226 and that of Jahuran Begum, wife of Mafez Uddin at serial No. 225 and both of them are shown to be residing in the same house No. 74.

4. It is claimed that Hazrat Ali is the father of the petitioner and Jahuran Begum is the grandmother and Mafezuddin is the grandfather of the petitioner and as the name of Hazrat Ali and Jahuran Begum appears together in the voters list of 1985 and that of Mafezuddin in the voters list of 1966 of village Mahammadpur, it is claimed that the citizenship of Hazrat Ali has been established.

5. The petitioner also relies upon the Jamabandi of a plot of land at village Mahammadpur, which contains the information that as per the order of the Circle Officer dated 12.03.1999, a land in respect of Dag No. 135, Patta No. 3 had been mutated in favour of, amongst others, Gopal Ali son of Hazrat Ali in place of Hazrat Ali son of Mafezuddin. By virtue of the mutation in his favour, the petitioner claims that he has discharged the burden under section 9 of the Foreigners Act, 1946.

6. In view of the above, we remand the matter back to the Tribunal to examine the voters list of 1966 and 1985 of village Mahammadpur as well as the information contained in the Jamabandi in respect of the plot of land at village Mahammadpur and thereafter pass a reasoned order. The petitioner shall produce the complete and continuous voters list from the year 1966 to 1985 of village Mahammadpur before the Tribunal for its examination as well as the

complete order of the Circle Officer dated 12.03.1999, by which the land had been mutated in favour of Gopal Ali in place of Hazrat Ali. Upon doing the needful, the Tribunal shall pass a reasoned order. The respondents in the Home Department shall make their verification on the authenticity of the aforesaid information and also as to whether Gopal Ali of the mutation order of the Circle Officer dated 12.03.1999 and the Gopal Ali the petitioner proceedee are one and the same person.

7. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 03.12.2018 and if it goes against the petitioner, consequence as per law shall follow.

8. The petitioner shall appear before the concerned Foreigners Tribunal on 11.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

9. The writ petition is allowed as indicated above.

10. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant