

GAHC010186402022



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

Case No. : WP(C)/6010/2022

SOBAJUDDIN
S/O- LATE AMIR ALI @ AMIR ALI SHEIKH,
R/O-VILLAGE KHARUABANDHA,
P.O- FEKAMARI,
P.S- SOUTH SALMARA ,
DIST- SOUTH SALMARA MANKACHAR, ASSAM, PIN-783135

VERSUS

THE UNION OF INDIA AND 9 ORS.
REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, SASTRI BHAWAN, NEW DELHI- 110001.

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001

4:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S ROAD.
BHANGAGARH

GUWAHATI-05
DIST- KAMRUP (M)

5:THE DEPUTY COMMISSIONER
DIST- SOUTH SALMARA MANKACHAR
ASSAM
PIN-783135

6:THE DEPUTY COMMISSIONER
DHUBRI
ASSAM
PIN-783301

7:THE FOREIGNERS TRIBUNAL
KAMRUP (M)
NO-3 AT GUWAHATI
HEDAYATPUR
GUWAHATI-03

DIST- KAMRUP (M)
ASSAM

8:THE DEPUTY COMMISSIONER OF POLICE (B)
GUWAHATI CITY

DIST- KAMRUP (M)
ASSAM

PIN781001

9:THE OFFICER IN CHARGE
OF SOUTH SALMARA POLICE STATION

P.O- SOUTH SALMARA

DIST- SOUTH SALMARA MANKACHAR
ASSAM
PIN-783127

10:THE OFFICER IN CHARGE
OF BASISTHA POLICE STATION

P.O- BASISTHA
GUWAHATI
ASSAM
PIN-78102

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

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

ORDER

Date : 22.06.2023
(AM Bujor Barua, J)

Heard Ms. D Ghosh, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 4 being the authorities under the Union of India and NRC respectively, Mr. G Sarma, learned counsel for the respondents no. 2, 7, 8, 9 and 10 being the authorities under the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the respondent no. 3 being the authorities under the Election Commission of India and Ms. K Phukan, learned counsel for the respondents no. 5 and 6 being the Deputy Commissioner, South Salmara Mankachar and Deputy Commissioner, Dhubri respectively.

2. The petitioner Md. Sobajuddin S/O Late Amir Ali @ Amir Ali Sheikh of village Kharuabandha had been referred to the Foreigners' Tribunal No. 3, Kamrup (M) for rendering an opinion as to whether he is a foreigner within the meaning of Foreigners Act, 1946, resulting in registration of F.T. Case No. 500 of 2017. The Tribunal rendered an opinion dated 20.08.2022 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding the petitioner relies upon the voters' list of 1970 of village Kharuwabandha P.S. South Salmara in the South Salmara Mankachar district which contains the names of Amir Ali Seikh, S/O Samir Ali at Sl. No. 209. Further reliance is placed on the voters' list of 1977 of the same village Kharuwabandha which contains the names of Amir Ali S/O Samar at Sl. No. 31 and that of Korimon Bibi W/O Amir at Sl. No. 32 where both are shown to be residing in the same house no. 6. The voters' list of 1989 of village Kharuwabandha contains the names of Amir Ali S/O Samir Ali, Korimon Nessa W/O Amir Ali, A. Karim S/O Amir Ali and Bakra Ali S/O Amir Ali respectively at Sl. Nos. 41, 42, 43 and 44 and all are shown to be residing in the same house no. 20. The voters' list of 1997 of village Kharuwabandha containing the names of Karimon Bewa W/O Amir Ali, Sobaj Uddin S/O Amir Ali and Tosia Khatun W/O Sobaj Uddin at Sl. Nos. 88, 89 and 90 respectively and all are shown to be residing in the same house no. 38.

5. It is also stated that Abdul Karim S/O Amir Ali whose name appears in the voters' list of 1989 of village Kharuwabandha has also rendered evidence as DW.4 before the Tribunal stating that Sobajuddin is also a son of Amir Ali of the voters' list of 1970.

6. Prima facie it appears that Sobaj Uddin S/O Amir Ali of the 1997 voters' list of village Kharuwabandha would be a citizen inasmuch as his name appears along with Korimon Bewa W/O Amir Ali where the name of Korimon Nessa W/O Amir Ali appears along with Amir Ali in the voters' lists of 1989 and 1977 of village Kharuwabandha.

7. Accordingly, in order to verify as to whether the petitioner Md. Sobajuddin S/O Late Amir Ali @ Amir Ali Sheikh of village Kharuwabandha and Sobaj Uddin at Sl. No. 89 of the voters' list of 1997 of village Kharuwabandha are one and the

same person, a report was called for from the Superintendent of Police (Border), South Salmara Mankachar district and in response thereof, a report dated 07.06.2023 of the Superintendent of Police (Border), South Salmara Mankachar has been produced before the Court. In the report it is specifically stated that Sobaj Uddin of the 1997 voters' list of village Kharuwabandha and Sobajuddin writ petitioner proceedee are one and the same person.

8. In view of the report of the Superintendent of Police(Border), South Salmara Mankachar dated 07.06.2023 it has to be understood that Sobaj Uddin of the 1997 voters' list of village Kharuwabandha and Md. Sobajuddin writ petitioner proceedee are one and same person.

9. As it could be established that Sobaj Uddin S/O Amir Ali of the 1997 voters' list of village Kharuwabandha is a citizen and as the writ petitioner proceedee Md. Sobajuddin and Sobaj Uddin of the 1997 voters' list of village Kharuwabandha are one and the same person, it also has to be accepted that the petitioner has discharged the burden under Section 9 of the Foreigners Act, 1946 that the presence of his family in the State of Assam could be traced out upto the voters' list of 1970 of village Kharuwabandha.

10. Further as the name of Amir Ali can also be traced out in the voters' list of 1966 of village Kharuwabandha, the petitioner Md. Sobajuddin S/O Late Amir Ali @ Amir Ali Sheikh of village Kharuabandha is accordingly declared to be not a foreigner who is deemed to be an Indian citizen under Section 6 A(2) of the Citizen Act, 1955 and he shall be entitled to all such rights and liberties as may be entitled under the law.

11. A copy of the report of the Superintendent of Police (Border), South Salmara Mankachar is kept on record.

Writ petition stands allowed in the above terms.

JUDGE

JUDGE

Comparing Assistant