

GAHC010187092018



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

Case No. : WP(C)/6007/2018

KAMALA KHATUN
W/O HANIF ALI
D/O HAMED KHAN
R/O VILL- SATRA KANARA, P.S. BAGHBAR, DIST. BARPETA, ASSAM, PIN -
781308.

VERSUS

THE UNION OF INDIA AND 7 ORS.
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
SHASTRI BHAWAN, NEW DELHI.

2:THE STATE OF ASSAM

REP. BY THE SECRETARY TO THE GOVT. OF ASSAM

HOME DEPARTMENT
DISPUR
GUWAHATI - 781006.

3:THE ELECTION COMMISSION OF INDIA

REP. BY THE CHIEF ELECTION COMMISSION
NIRVACHAN SADAN

ASHOKA ROAD

NEW DELHI- 110001.

4:THE STATE CO-ORDINATOR

NATIONAL REGISTRATION OF CITIZENS

ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S. ROAD
BHANGAGARH
GUWAHATI
ASSAM
PIN - 781005.

5:THE FOREIGNERS TRIBUNAL NO. 6TH

BARPETA
ASSAM
DIST. BARPETA
ASSAM
PIN - 781301.

6:THE DEPUTY COMMISSIONER

BARPETA
P.O. AND P.S. BARPETA
DIST. BARPETA
ASSAM

PIN - 781301.

7:THE SUPERINTENDENT OF PLICE (BORDER)

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

8:THE OFFICER-IN-CHARGE OF BAGHBAR POLICE STATION

P.O. BAGHBAR
DIST. BARPETA
ASSAM
PIN - 781308

Advocate for the Petitioner : MS. D GHOSH

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

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

ORDER

Date : 08.05.2023
(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, 5, 7 and 8 being the authorities under the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the respondent no. 3 being the Election Commission of India and Ms. U Das, learned counsel for the respondent no. 6 being the Deputy Commissioner, Barpeta.

2. The petitioner Kamala Khatun had been referred to the Foreigners' Tribunal No. 6, Barpeta for rendering an opinion as to whether she is a person who entered the State of Assam from the specified territory on or after 25.03.1971, resulting in registration of Case No. FT -96/2016. The Tribunal rendered an opinion dated 13.06.2018 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding the petitioner relies on the voters' list of 1966 of village Baroli which contains the name of Saiod Kha, S/O Marat at Sl. No. 32 and that of Jaymon Ness, W/O Sayed Kha at Sl. No. 33. The petitioner also refers to the voters' list of 1970 of village Baroli containing the name of Saiod Kha, S/O Marat Kha at Sl. No. 45 and that of Hamed Kha, S/O Sayed Kha at Sl. No. 47 where both of them are shown to be residing in the same House No. 13. It is

stated that Hamed Kha, S/O of Sayed Kha of village Baroli had also rendered evidence as DW3 wherein he had deposed that Kamala Khatun is his own daughter.

5. In view of the above, the matter is remanded back to the Tribunal to examine the voters' lists of 1966 and 1970 of village Baroli which contains the name of Saiod Kha, S/O Marat and Hamed Kha, S/O Sayed Kha and also the evidence of Hamed Khan himself wherein he states that Kamala Khatun is his daughter.

6. The respondents in the Home Department may cross examine the DW3 Hamed Khan to extract the veracity of his evidence that Kamala Khatun is his daughter. For the purpose, the matter is remanded back to the Tribunal. The respondents in the Home Department may make their own verification on the authenticity of the evidence of Hamed Khan and submit a report. The petitioner to produce any further material if so advised. Upon doing the needful, the Tribunal to pass a reasoned order.

7. The petitioner to appear before the Tribunal on 16.06.2023.

8. If the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 13.06.2018 passed in Case No. FT-96/2016 and if against, consequence under the law is applicable to the petitioner.

9. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant