

GAHC010187212018



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

Case No. : WP(C)/6011/2018

JABEDA KHATUN
WIFE OF MAZIBAR, DAUGHTER OF HAMED KHAN, RESIDENT OF
VILLAGE- SATRA KANARA (G. RESERVE), POLICE STATION- 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-1.

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
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 COORDINATOR

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 POLICE (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 MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

26.06.2023

(AM Bujor Barua, J)

Heard Ms. D Ghosh, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as for the authorities under the NRC, Mr. AI Ali, learned counsel for the authorities under the Election Commission of India, Mr. G Sarma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam, the Superintendent of Police (B) Barpeta as well as the Officer-in-Charge, Baghbar Police Station and Ms. U Das, learned Government Advocate for the Deputy Commissioner, Barpeta.

2. The petitioner, namely, Jabeda Khatun was referred to the Foreigners' Tribunal No.6th Barpeta for an opinion as to whether she is a foreigner within the meaning of Foreigner Act, 1946 resulting in the registration of F.T.Case No.FT-95/16 corresponding to Reference Case No.1867/A/dtd.13/7) wherein 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. The petitioner relies upon the voters list of 1966 of village Baroli P.S. Baghbar in the present Barpeta district which contains the name of Saiod Kha son of Marat at Sl.No.32 and that of Jaymon Ness wife of Sayed Kha at Sl.No.33 and both are shown to be residing in the same House No.13. Further reference is made upon the voters list of 1970 of village Baroli containing the name of Saiod Kha son of Marat Kha at Sl.No.45, Jaygon Ness wife of Sayed Kha at

Sl.No.46 and that of Hamed Kha son of Sayed Kha at Sl.No.47 and it is claimed that Hamed Kha, son of Sayed Kha of the 1970 voters list of village Baroli is the father of the petitioner. Hamed Khan son of Sayed Ali Khan of village Baroligaon has also rendered evidence before the Tribunal as DW-3 stating that Jabeda Khatun is his daughter.

5. In view of the above, the matter stands remanded back to the Tribunal to examine the voters lists of 1960 and 1970 of village Baroli.

6. The respondents in the Home Department may also make their own verification on the aforesaid aspect and may also cross-examine the DW-3 Hamed Khan, son of Sayed Ali Khan of village Baroligaon and submit a report before the Tribunal.

7. Accordingly, the petitioner shall appear before the Tribunal on 01.08.2023.

8. The Tribunal upon doing the needful and after examining the evidences of DW-3 Hamed Khan as well as the materials available shall pass a reasoned order. In the event, the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 13.06.2018 of the Foreigners' Tribunal No.6th Barpeta in F.T.Case No.FT-95/16 corresponding to Reference Case No.1867/A/dtd.13/7) and if it is against the petitioner, consequential action under the law shall follow.

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

petitioner.

10. Writ petition stands disposed of in the above terms.

11. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant