

GAHC010195092017



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

Case No. : WP(C)/2119/2017

JAHERA KHATUN @ JAHURA KHATUN
D/O KURPAN ALI @ KURBAN ALI W/O SAHA ALI R/O VILL- NARARVITHA
PART-IV, P.S. MERERCHAR DIST. BONGAIGAON

VERSUS

THE UNION OF INDIA and 3 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, TILOK MARG, NEW DELHI.

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

3:THE SUPERINTENDENT OF POLICE B
BONGAIGAON
P.O./P.S. DIST. BONGAIGAON
ASSAM

4:THE DEPUTY COMMISSIONER

BONGAIGOAN
P.O. and DIST. BONGAIGAON
ASSA

Advocate for the Petitioner : MR.A R SIKDAR

Advocate for the Respondent : GA, ASSAM R2-4

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

ORDER

04.05.2023

(AM Bujor Barua, J)

Heard Mr. AR Sikdar, 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. G Sharma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam as well as the Superintendent of Police (B) Bongaigaon and Ms. U Das, learned Government Advocate for the Deputy Commissioner, Bongaigaon.

2. The petitioner, Jahera Khatun @ Jahura Khatun, was referred to the Foreigners Tribunal Bongaigaon No.2 Abhayapuri, for rendering an opinion as to whether she is a person who had entered the State of Assam on or after 25.03.1971 resulting in the registration of BNGN/F.T/Case No.436/09 in REF: IM(D)T 1051/074 wherein an opinion dated 06.01.2017 was rendered declaring the petitioner to be a person who had entered the State of Assam from the specified territory on or after 25.03.1971.

3. Being aggrieved this writ petition is instituted.

4. The petitioner relies upon the voters list of 1966 of village Santoshpur Part-II which contains the name of Kurpan Ali, son of Rajab Ali at Sl.No.346 and

that of Imena Khatun wife of Kurpan at Sl.No.347 and also of Habel son of Kurpan at Sl. No.348. The petitioner claims that Kurpan Ali is her father and Habel is her brother.

5. The petitioner also relies upon the voters list of 1985 of village Santoshpur Part II, which contains, amongst others, the name of Korbanali, son of Rajarali at Sl.No.338 along with Habel Uddin, son of Korban at Sl.No.340, Akher Uddin son of Korban at Sl.No.344 and that of Nur Mahmmd, son of Korban at Sl.No.347 as well as Soleman, son of Korban at Sl. No.348.

6. The petitioner relies upon a chitha in respect of a plot of land at village Dholagasa which contains the information that as per the order of Circle Officer dated 03.05.2016, the land which was earlier in the name of Kurban Ali had been mutated in the name of Jahera Khatun daughter of Kurban Ali as his legal heir.

7. Reliance is also placed on the evidence of Habel @ Habel Uddin as DW-2 as well as that of Akher Uddin as DW-3. Both the DW-2 and DW-3 deposed that Jahera Khatun daughter of Kurpan Ali and their sister. But it is noticed that the State through the Home Department had not cross-examined the DW-2 and DW-3. If the evidence of DW-2 and DW-3 are acceptable, the petitioner may have discharged the burden that she is the daughter of Kurpan Ali @ Kurban Ali of Santoshpur Part II. Although the mutation order contained in the chitha may also be an indication, but it is taken note that the land referred in the chitha is of village Dholagasa and not Santoshpur Part II.

8. In the circumstance, the matter stands remanded back to the Tribunal to examine the voters list of 1966 and 1985 of village Santoshpur Part II as well as the evidence of DW-2 and 3. The respondents in the Home Department of the Government of Assam may cross examine the DW-2 and 3 as regards the veracity of the statement that the petitioner Jahera Khatun who is stated to be the daughter of Kurpan Ali of village Santoshpur Part II is also their sister.

9. Accordingly, the petitioner shall appear before the Tribunal on 16.06.2023.

10. The Tribunal upon doing the needful and after examining the evidences and materials 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 06.01.2017 of the Foreigners Tribunal Bongaigaon No.2 Abhayapuri in BNGN/F.T/Case No.436/09 in REF: IM(D)T 1051/074 and if it is against the petitioner, consequential action under the law shall follow.

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

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

13. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant