

GAHC010215922019



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

Case No. : WP(C)/6828/2019

SAKINA BEGUM @ SAKINA AKTAR
D/O- LT. ABDUL BAREK, W/O- JAKIR HUSSAIN, R/O- NATUN BASTI
ANGARKATA, P.S.- TAMULPUR, DIST- BAKSA, BTC, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, TILOK MARG, NEW DELHI-1.

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

3:THE SUPERINTENDENT OF POLICE (B)
BAKSA
MUSHALPUR
P.O.- MUSHALPUR
DIST. BAKSA
BTC
ASSAM
PIN- 783380.

4:THE DEPUTY COMMISSIONER
BAKSA
MUSHALPUR
P.O. MUSHALPUR
DIST- BAKSA
ASSAM.

5:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-1.

6:THE STATE CO-ORDINATOR OF NATIONAL REGISTRATION OF CITIZEN
(NRC)
ASSAM
GHY.- 5

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 ROBIN PHUKAN

O R D E R

23.05.2023

(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 Ms. U Das, learned counsel for the Deputy Commissioner, Baksa.

2. The petitioner Sakina Begum @ Sakina Aktar had been referred to the Foreigners Tribunal, Baksa at Tamulpur 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 F.T. Case No. 2457/BAKSA/2016, wherein an opinion dated 30.01.2019 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 Hajipara, Mouza gilajhari in the present Barpeta district, which contains the name of Innas Ali son of Mir Box at serial No. 1 and that of Misiron Nessa wife of Innas at serial No. 2 and both of them are shown to be residing in the same house No. 1. It is claimed that Innas Ali is the grandfather of the petitioner and Misiron Nessa is the grandmother. Further reference is made to the voters list of 1970 of village Hajipara, which contains the name of Innas Ali son of Mir Box at serial No. 1 and Misiron Nessa wife of Innas at serial No. 2 as well as Abdul Barek son of Innas at serial No. 4 and all of them are shown to be residing in the same house No. 1. It is claimed that Abdul Barek son of Innas is the father of the petitioner.

4. To substantiate the same, reliance is placed upon a school certificate issued by the Headmaster-in-Charge of Hazipara High School, which contains the information that Sakina Aktara is the daughter of Abdur Bareque of village hazipara. But we have noticed that the Headmaster of the school had not been examined.

5. In view of the law laid down in WP(C) No. 3056/2018 (Anima Das –vs- Union of India and others), there is a requirement to examine the Headmaster with the original school records to establish the contents of the school certificate.

6. Petitioner also relies upon the Jamabandi in respect of a plot of land at village Hajipara, wherein it is provided that as per the order of the circle officer dated 20.05.2019 in mutation case No. BAR/2018-19/4646/FMUT, land had been mutated, amongst others, in the name of Sakina Aktar (Begum), daughter of Abdul Barek in place of Abdul Barek. The mutation order may also lead to a conclusion that the petitioner is the daughter of Abdul Barek.

7. We have noticed that the name of Abdul Barek appears in the voters list of 1970 of village Hajipara, which also contains the name of Innas Ali, his father, whose name again appears in the 1966 voters list also in village Hajipara.

8. In view of the above, the matter is remanded back to the Tribunal to examine the voters list of 1966 and 1970 of village Hajipara. The Tribunal shall also allow the petitioner to examine the Headmaster of Hazipara High School to be present along with the original admission register of the school as well as to take note of the order of the circle officer. The petitioner shall produce the complete mutation order of the circle officer dated 20.05.2019 for the perusal of the Tribunal. The respondents in the Home Department may make their own verification as required by the law. Upon doing the needful, the Tribunal may pass its reasoned order.

9. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 30.01.2019 and if it goes against the petitioner, consequence as per law shall follow.

10. The petitioner shall appear before the concerned Foreigners Tribunal on 07.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

11. The writ petition is allowed as indicated above.

12. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant