

GAHC010220432019



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

Case No. : WP(C)/6868/2019

FATEMA KHATUN
W/O- ABDUL KADER @ KADER ALI, D/O- LT MOHAMMAD ALI SARKAR,
VILL- ANANDAPUR, P.S. BARPETA, DIST- BARPETA, ASSAM

VERSUS

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

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF HOME DISPUR
GHY-6

3:THE ELECTION COMMISSIONER OF INDIA
THROUGH ITS SECY.
NIRBACHAN BHAWAN
NEW DELHI-1

4:THE STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
BHANGAGARH
GHY-5

5:THE DY. COMMISSIONER OF BARPETA
DIST- BAKSA
ASSAM

6:THE SUPERINTENDENT OF POLICE (B)
BARPETA

DIST- BARPETA
ASSA

Advocate for the Petitioner : MR. R ALI

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

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

ORDER

Date : 04.05.2023
(AM Bujor Barua, J)

Heard Mr. R Ali, 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 and 6 being the authorities under the Home Department of the Government of Assam, Mr. T Pegu, learned counsel for the respondent no. 3 being the authorities under the Election Commission of India and Ms. K Phukan, learned counsel for the respondent no. 5 being the Deputy Commissioner, Barpeta.

2. The petitioner Fatema Khatun had been referred to the Foreigners' Tribunal No. 1, 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 F.T. Case No. 123/2017 corresponding to IM(D)T Case No. 5259/1998. The Tribunal rendered an opinion dated 21.08.2018 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 1965 of village Sukmanah, PS Barpeta, Mouza Bhawanipur in the present Barpeta district of Assam which contains the name of Mohammad Ali Sarkar, S/O Abbas at Sl. No. 372 and that of Aymana Khatun, W/O Mohammadali at Sl. No. 373 and both are shown to be residing in the same house no. 125. The petitioner in the writ proceeding has relied upon a jamabandi in respect of a plot of land in village Sukmanah which contains the information that as per the order dated 19.01.1971 the name of Mohammad Ali, S/O Abbas had been mutated in respect of a plot of land measuring 6 Bighas 4 Kathas 13 Lecahs of Dag No. 1. It also refers to another order of 04.12.2018 of Circle Officer in mutation case No. BAR/SARP/2018-19/456/FMUT wherein the name of Fatema Khatun, D/O Mohammad Ali, amongst others had been mutated in place of Mohammad Ali in respect of the said plot of land. As the petitioner has inherited land of Mohammad Ali as per the order of the Circle Officer, the petitioner seeks to establish that she has discharged the burden under Section 9 of the Foreigners' Act, 1946 that she is a citizen of India. It is an admitted position of the petitioner that the jamabandi was not referred before the Tribunal and therefore, no infirmity can be noticed in the order of the Tribunal as because of the information relied upon in the Writ Court which is available in the jamabandi. But however, for the ends of justice the matter is remanded back to the Tribunal to examine the voters' list of 1965 of village Sukmanah which contains the name of Mohammad Ali Sarkar at Sl. No. 372 and also the jamabandi which contains the orders of the Circle Officer which indicates that the land had been mutated in the name of Fatema Khatun in place of Mohammad Ali of village Sukmanah. The petitioner to produce the complete order dated 19.01.1971 whereby the name of Mohammad Ali, S/O Abbas had

been mutated and also the order of Circle Office dated 04.12.2018 by which the name of Fatema Khatun had been mutated in place of Mohammad Ali. The respondents in the Home Department to make their own verification on the authenticity of the aforesaid documents as well as to whether Fatema Khatun writ petitioner proceedee and Fatema Khatun referred in the order of the Circle Officer dated 04.12.2018 are one and the same person.

5. The petitioner to appear before the Tribunal on 16.06.2023.
6. If the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 21.08.2018 passed in F.T. Case No. 123/2017 and if against, consequence under the law is applicable to the petitioner.
7. 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