

GAHC010233272019



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

Case No. : WP(C)/7294/2019

DURLAV ROY @ DURLAV CH. ROY AND 6 ORS.
S/O. LT. UDAY ROY, VILL. BARAMARIPAM, P.S. MAYONG, DIST.
MORIGAON, ASSAM.

2: NANIBALA ROY

W/O. SRI DURLAV ROY @ DURLAV CH. ROY
VILL. BARAMARIPAM
P.S. MAYONG
DIST. MORIGAON
ASSAM.

3: PRAHLAD ROY
S/O. SRI DURLAV ROY @ DURLAV CH. ROY
VILL. BARAMARIPAM
P.S. MAYONG
DIST. MORIGAON
ASSAM.

4: PRASHADI ROY
D/O. SRI DURLAV ROY @ DURLAV CH. ROY
VILL. BARAMARIPAM
P.S. MAYONG
DIST. MORIGAON
ASSAM.

5: NIBAS ROY
S/O. SRI DURLAV ROY @ DURLAV CH. ROY
VILL. BARAMARIPAM
P.S. MAYONG
DIST. MORIGAON
ASSAM.

6: KALPANA ROY

D/O. SRI DURLAV ROY @ DURLAV CH. ROY
VILL. BARAMARIPAM
P.S. MAYONG
DIST. MORIGAON
ASSAM.

7: GOPAL ROY @ SAGAR ROY
S/O. SRI DURLAV ROY @ DURLAV CH. ROY
VILL. BARAMARIPAM
P.S. MAYONG
DIST. MORIGAON
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-01.

2:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-06.

3:THE SUPDT. OF POLICE (B)

MORIGAON
P.O. AND DIST. MORIGAON
ASSAM.

4:THE DY. COMMISSIONER

MORIGAON
P.O. AND DIST. MORIGAON
ASSAM

5:THE ELECTION COMMISSION OF INDIA

NEW DELHI-01.

6:THE ASSAM STATE COORDINATOR OF NRC

BHANGAGARH
GUWAHATI-05

Advocate for the Petitioner : MR. A R SIKDAR

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

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

ORDER

Date : 01.06.2023
(AM Bujor Barua, J)

Heard Mr. N Ahmed, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 6 being the authorities under the Union of India and NRC respectively, Mr. G Sarma, learned counsel for the respondents no. 2 and 3 being the authorities under the Home Department of Government of Assam, Ms. U Das, learned counsel for the respondent no. 4 being the Deputy Commissioner, Morigaon and Mr. T Pegu, learned counsel for the respondent no. 5 being the authorities under the Election Commission of India.

2. The petitioner no. 1 Durlav Roy@ Durlav Ch. Roy had been referred to the Foreigner's Tribunal No. 4, Morigaon for rendering an opinion as to whether he 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. (C) Case No. 276/2016. The Tribunal rendered an opinion dated 30.01.2019 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding the petitioner relies upon the voters' list of 1956 of village Baramari Non-K Mouza Mayong PS Morigaon in the present Morigaon

district which contains the name of Uday Chandra Roy, S/O Adhar at Sl. No. 28 and that of Surbala, W/O Uday at Sl. No. 30 where both of them are shown to be residing in the same house no. 15 and it is claimed that Uday Chandra Roy is the father of the petitioner no. 1. To substantiate that Uday Chandra Roy is the father, reliance is placed on a jamabandi in respect of a plot of land at village Baramari Pam wherein as per the order of the Circle Officer dated 17.02.1995 land had been mutated in place of the pattadars in favour, amongst others, Durlav.

5. From the information regarding the pattadars contained in the same jamabandi it is noticed that the name of Sri Uday Chandra Roy, S/O Adhar had been struck off and in his place, replaced by amongst others, Durlav S/O Uday. If the information contained in the voters' list of 1956 of village Baramari Non-K and the jamabandi of a plot of land at village Baramari Pam are correct and acceptable, the petitioner no. 1 may have discharged the burden under Section 9 of the Foreigners' Act, 1946 that he is a citizen.

6. In view of the above, the matter stands remanded back to the Tribunal to examine the voters' list of 1956 of village Baramari Non-K as well as the jambandi of a plot of land at village Baramari Pam. The respondents in the Home Department may also make their own enquiry and verification as to whether the petitioner proceedee Durlav Roy @ Durlav Ch. Roy and Durlav of the order of the Circle Officer dated 17.02.1995 are one and the same person.

7. In respect of the petitioners no. 2 to 7 the provisions of law laid down in the judgment of *Sudhir Roy v. Union of India reported in 2019 (1) GLT 353* will follow and accordingly, the opinion dated 30.01.2019 passed in F.T. (C) Case No. 276/2016 are set aside and the authorities are at liberty to proceed against them as per law.

8. The petitioner no. 1 to appear before the Tribunal on 07.07.2023.
9. If the reasoned order is in favour of the petitioner no. 1, the same shall prevail over the opinion dated 30.01.2019 passed in F.T. (C) Case No. 276/2016 and if against, consequence under the law is applicable to the petitioner no. 1.
10. Till the reasoned order is passed, no coercive action be taken against the petitioners.

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant