

GAHC010260732018



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

Case No. : WP(C)/8165/2018

SILA RANI ACHARYA
W/O MONMOHAN ACHARYA
R/O WARD NO. 9, BARPETA ROAD,
P.S. BARPETA ROAD,
DIST. BARPETA, 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

MINISTRY OF HOME DEPARTMENT

DISPUR
GUWAHATI -06.

3:THE DEPUTY COMMISSIONER

BARPETA
P.O. AND P.S. BARPETA
ASSAM

PN - 781301.

4:THE SUPERINTENDENT OF POLICE (B)

BARPETA
P.O. AND DIST. BARPETA
ASSAM
PIN - 781301.

5:THE ELECTION COMMISSIONER OF INDIA

NEW DELHI-1.

6:THE STATE CO-ORDINATOR

NRC
ASSAM
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 : 04.05.2023

(A.M. Bujor Barua, J)

Heard Mr. A.R. Sikdar, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 6, being the Union of India and the State Coordinator of NRC, respectively. Also heard Mr. G. Sarma, learned counsel for the respondents No. 2 and 4, being the authorities in the Home Department; Ms. K. Phukan, learned counsel for the respondent No. 3, being the Deputy Commissioner, Barpeta and Mr. A.I. Ali, learned counsel for the respondent No. 5, being the Election Commission of India.

2. The petitioner Sila Rani Acharya was referred to the Foreigners' Tribunal

No. 2, Barpeta for rendering an opinion as to whether she is a person who had entered the State of Assam from the specified territory on or after 25.03.1971 and accordingly F.T.(2nd) Case No. 663/2016 was registered. The Tribunal rendered its opinion dated 05.09.2018 arriving at its conclusion that the petitioner is a foreigner who had entered the State of Assam on or after 25.03.1971. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon a registered deed No. 3325 dated 22.07.1965 by which a plot of land measuring 1 acre 78 decimal covered by Dag No. 338, Touzi No. KL-779867, Khatian No. 235 situated at village Naurapara, P.S. Durgapur of Moimonsingh district in the present Bangladesh was exchanged with a plot of land measuring 1 bigha 2 kathas 1 lecha covered by Dag No. 355(old)/767(new) of K.P. Patta No. CP 32/60-61 and 3 kathas 1 lecha of Dag No. 120(old)/769(new), total 2 bighas 2 kathas of village Narayangaon, Mouza Banbhag, P.S. Baksa of Kamrup district. The exchange was made in a circumstance that Chittaranjan Acharya and others migrated to India from Moimonsingh district of present Bangladesh leaving behind their land whereas the other person of the deed namely Hashmat Ali was a person who had undertaken the reverse migration from India to present Bangladesh and accordingly, both the parties had exchanged their lands in their respective countries.

4. Be that as it may, the deed No. 3325 dated 22.07.1965 had established that Chittaranjan Acharya son of late Jagabandhu Acharya did exist in the State of Assam as on the date when the deed was signed i.e. in the year 1965. To establish that the petitioner Sita Rani Acharya is the daughter of Chittranjan Acharya, reliance is placed on a certificate issued by the Headmaster of Paschim Banbhag Anchalik High School which contains the information that Sila Rani

Acharjee is the daughter of late Chittaranjan Acharjee of village Narayangaon.

5. It is taken note that the exchange of land had taken place in respect of village Narayangaon. It has been brought to our notice that the Tribunal had rejected the school certificate on the ground that only a photocopy was produced. In any view of the matter, as per the judgment rendered by this Court in the case of *Rupa Das Vs. Union of India & Ors.*, reported in *2019 SCC OnLine Gau 5663*, the evidentiary value of a school certificate has to be authenticated by the oral evidence of the Headmaster of the said school by producing the original of the school records and it is immaterial as to whether a photocopy is produced or the original is produced. It appears that the Tribunal had not followed the due procedure of law in rejecting the school certificate as well as the land document.

6. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 2, Barpeta to enable to the petitioner to produce the certified copy of the land document which she intends to rely upon as well as the school certificate by having the evidence of the Headmaster of the school along with the original school admission register to authenticate the contents of the school certificate. Upon doing the needful, if the aforesaid materials do indicate that the petitioner has discharged the burden under Section 9 of the Foreigners Act, 1946, appropriate reasoned order may be passed by the Tribunal. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 05.09.2018 in F.T.(2nd) Case No. 663/2016 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 16.06.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

JUDGE

JUDGE

Comparing Assistant