

GAHC010261582022



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

Case No. : WP(C)/8396/2022

NEELA KHATUN @ NILA KHATUN
W/O LT. MAJIBAR RAHMAN @ MOZIBOR,
D/O LT. MERAJ ALI @ MIRAJOL HOQUE,
VILL.- JORDANGA BARMANPARA,
P.S.- MANKACHAR,
DIST.- SOUTH SALMARA, MANKACHAR, ASSAM.

VERSUS

THE UNION OF INDIA AND 6 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 COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI- 06.

3:THE DEPUTY COMMISSIONER
SOUTH SALMARA MANKACHAR

P.S.- MANKACHAR

DIST.- SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783135.

4:THE SUPERINTENDENT OF POLICE (B)
HATSINGIMARI
P.S.- MANKACHAR

DIST.- SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783135.

5:THE ELECTION COMMISSION OF INDIA
THROUGH ITS SECRETARY
NIRBACHAN BHAWAN
NEW DELHI- 01.

6:THE ASSAM STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
BHANGAGARH
PIN- 05.

7:THE DISTRICT ELECTION OFFICERS
HATSINGIMARI
P.S.- MANKACHAR

DIST.- SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783135

Advocate for the Petitioner : MR. M MONDAL

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

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

ORDER

26.07.2023

(AM Bujor Barua, J)

Heard Mr. M Mondal, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as the authorities under the NRC, Mr. A Ali, learned counsel for the authorities under

the Election Commission of India, Mr. G Sarma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam as well as the Superintendent of Police (B) Hatsingimari and Ms. K Phukan, learned Government Advocate for the Deputy Commissioner, South Salmara Mankachar.

2. The petitioner, namely, Neela Khatun @ Nila Khatun was referred to the Foreigners Tribunal 3rd Dhubri at Hatsingimari for rendering an opinion as to whether she is a foreigner within the meaning of Foreigner Act, 1946 which resulted in the registration of F.T. Case No.86/2018 arising out of Reference F.T. Case No.459/MKCH/10 wherein an opinion dated 30.09.2021 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. In the writ proceeding, the petitioner relies upon the voters list of 1960 of village Mankachar (Beparipara) Union No.5 which contains the name of Merajol Hoque son of Ati Mulla at Sl.No.1760. The voters lists of 1970 and 1977 of the same village Mankachar (Beparipara) Union No.5 also contain the same information. The petitioner has placed reliance on a Chitha in respect of a plot of land at village Mankachar Town by referring to the contents thereof that the land has been mutated in the name of Nila Khatun daughter of Meraj Ali in place of Meraj Ali. Accordingly a claim is made that the burden under Section 9 of the Foreigners Act 1946 has been discharged by the petitioner *inasmuch as* the

Chitha shows that Nila Khatun is the daughter of Meraj Ali and that the voters list of 1960 to 1977 of village Mankachar (Beparipara) Union No.5 shows that Meraj Ali himself is a citizen of India.

5. Mr. G Sarma, learned counsel for the respondents in the Home Department, Government of Assam on the other hand has raised the objection that firstly the voters list of 1960 and 1970 contains the name of Merajol Hoque and not Meraj Ali so a question would remain as to whether Merajol Hoque and Meraj Ali are one and the same person. A further objection is raised that the voters list of 1960 to 1977 is in respect of village Mankachar Beparipara, whereas the Chitha of the plot of land relied upon by the petitioner is in respect of village Mankachar Town. So therefore a question for determination would remain as to whether the village Mankachar Beparipara referred in the voters list of 1960 to 1977 and the village Mankachar Town referred in the Chitha are the same place.

6. In view of the above, the matter stands remanded back to the Tribunal to enable the Tribunal to examine the voters lists of the years 1960, 1970, and 1977 in respect of village Mankachar Beparipara as well as the Chitha of the plot of land relied upon by the petitioner of village Mankachar Town.

7. The complete and continuous voters lists of village Mankachar Beparipara relied upon by the petitioner be produced for examination of the Tribunal. The petitioner shall also produce the complete order of the Circle Officer by which the mutation was effected for examination of the Tribunal.

8. The respondents in the Home Department may also make their own verification on the aforesaid aspect and shall arrive at their own satisfaction as to whether village Mankachar Beparipara referred in the voters list of 1960 to 1977 and village Mankachar Town pertaining to the Chitha are one and the same place and submit a report before the Tribunal, if so advised.

9. Accordingly, the petitioner shall appear before the Tribunal on 21.08.2023.

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 30.09.2021 of the Foreigners Tribunal 3rd Dhubri at Hatsingimari in F.T. Case No.86/2018 arising out of Reference F.T. Case No.459/MKCR/10 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