

GAHC010267452019



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

Case No. : WP(C)/8117/2019

MOIRAN NESSA @ MORIUM NESSA
D/O LATE MOFIZ UDDIN, W/O KASHEM ALI, R/O PASCHIM
DEOLDI/JAHNAR PATHAR, P.S.-KALGACHIA, DIST-BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, HOME
DEPARTMENT, NEW DELHI-1

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-06

3:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOK ROAD
NEW DELHI-110001

4:THE DPEUTY COMMISSIONER
BARPETA
DIST-BARPETA
ASSAM
PIN-781301

5:THE SUPERINTENDENT OF POLICE (BORDER)
BARPETA
DIST-BARPETA
ASSAM

PIN-781301

6:THE STATE COORDINATOR
NATIONAL REGISTRATION OF CITIZEN
ASSAM
BHANGAGARH
GUWAHATI-0

Advocate for the Petitioner : MR H R A CHOUDHURY

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

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

ORDER

Date : 29.03.2023
(A.M. Bujor Barua, J)

Heard Mr. S. Hoque, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 6, being the Union of India and being the State Co-ordinator of NRC, respectively. Also heard Mr. G. Sarma, learned counsel for the respondents No. 2 and 5, being the authorities in the Home Department; Mr. A. Ali, learned counsel for the respondent No. 3, being authorities in the Election Commission of India and Ms. U. Das, learned counsel for the respondent No. 4, being the Deputy Commissioner, Barpeta.

2. The petitioner Moiran Nessa @ Morium Nessa was referred to the Foreigners' Tribunal No. 4, 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. Case No. 144/2015 was registered. The Tribunal rendered its opinion dated 31.05.2019 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 the voters' list of 1966 of village Sonabari, Mouza Baghbar, P.S. Baghbar in the Kamrup district wherein at Sl. No. 21 the name of Mofizuddin Fakir son of Kaser appears. The petitioner also relies upon a Jamabandi of a plot of land of village Sonabari Gaon wherein as per the order of the Circle Officer dated 04.02.2003, it is provided that the land had been mutated, amongst others, in the name of Moriom Nessa in place of Mofiz. By referring to the order of the Circle Officer dated 04.02.2003, a claim is made that the petitioner Moiran Nessa @ Morium Nessa had inherited the land of Mofizuddin Fakir whose name appears in the voters' list of 1966 of village Sonabari and therefore she had discharged the burden to prove that she is a citizen of India.

4. In the circumstance, we remand the matter back to the Foreigners' Tribunal No. 4, Barpeta to examine the authenticity of the voters' list of 1966 of village Sonabari and also that Mofizuddin Fakir of the voters' list of 1966 and Mofiz whose land had been mutated in the name of Moriom Nessa as per the order of the Circle Officer dated 04.02.2003 are one and the same person. The State authorities in the Home Department through the Superintendent of Police(B), Barpeta shall also make their own verification on the authenticity of the aforesaid information. Upon such examination, Tribunal to pass a reasoned order. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 31.05.2019 in F.T. Case No. 144/2015 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 06.05.2023. 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.

J U D G E

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Comparing Assistant