

GAHC010011192018



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

WP(C)/1/2018

SANTOSH PAUL
S/O- LATE AKHIL PAUL
VILL- ERA KPILI
P.O- JAMUNAMUKH
P.S- JAMUNAMUKH
DIST- HOJAI
ASSAM

2: GOPAL PAUL
S/O- LATE AKHIL PAUL
VILL- ERA KPILI
P.O- JAMUNAMUKH
P.S- JAMUNAMUKH
DIST- HOJAI
ASSAM
VERSUS

THE UNION OF INDIA AND 4 ORS
MIN OF HOME AFFAIRS
NORTH BLOCK
CENTRAL SECRETARIAT
NEW DELHI- 110001

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI- 781006
3:THE MEMBER
FOREIGNERS TRIBUNAL
10TH NAGAON AT SANKARDEV NAGAR
HOJAI
ASSAM

4:THE DEPUTY COMMISSIONER
HOJAI
DIST- HOJAI
5:THE SUPERINTENDENT OF POLICE
HOJAI DISTRICT
SANKARDEV NAGAR
HOJAI
ASSAM

Advocate for : MR. N K KALITA

Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 4 ORS

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

ORDER

23.05.2023

(AM Bujor Barua, J)

Heard Mr. NK Kalita, 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. AI Ali, learned standing counsel for the Election Commission of India and Ms. A Verma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam, as well as the Superintendent of Police (B) Hojai and Ms. K Phukan, learned counsel for the Deputy Commissioner, Hojai.

2. The petitioner, namely, Santosh Paul was referred to the Foreigners Tribunal Nagaon Court No.10th at Sankardev Nagar, Hojai for rendering an opinion as to whether he is a person who had entered the State of Assam on or after 25.03.1971 resulting in the registration of F.T(D) Case No.782/2015

corresponding to SP's F.T.Case No.732/2014 wherein an opinion dated 15.09.2017 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 1971 of village Erakapili PS Jamunamukh in the Nagaon district which contains the name of Akhil Paul son of Promod at Sl.No.765 and that of Jayanti Rani wife of Akhil at Sl.No.768 where both are shown to be residing in the same House No.10(2). The petitioner claims Akhil Paul of 1971 voters list of village Erakapili to be his father. The petitioner further relies upon the voters list of 2011 of village Era Kapili PS Jamunamukh which contains the name of Jayanti Paul wife of Late Akhil Paul at Sl.No.485 and that of Santosh Paul son of Late Akhil Paul at Sl.No.486 and both are shown to be residing in the same House No.113. As the name of Santosh Paul being the son of Late Akhil Paul and Jayanti Paul being the wife of Late Akhil Paul appear in the same voters list and that the name of Jayanti Paul and Akhil Paul appear in the voters list of 1971 in respect of the same village Era Kapili, the petitioner claims that the burden under Section 9 of the Foreigners Act 1946 has been discharged to prove that he is a citizen of India.

5. In view of the above, the matter stands remanded back to the Tribunal to allow the petitioner to exhibit the voters list of 1971 as well as 2011 in respect of village Era Kapili.

6. Accordingly, the petitioner shall appear before the Tribunal on 07.07.2023.
7. For the purpose, the petitioner to produce the complete voters list from the year 1971 to 2011 of village Era Kapili for examination of the Tribunal.
8. The respondents in the Home Department may also make their own verification as to whether the writ petitioner/proceedee Santosh Paul and the Santosh Paul of 2011 voters list of village Era Kapili are one and the same person and submit a report before the Tribunal, if so advised.
9. 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 15.09.2017 of the Foreigners Tribunal Nagaon Court No.10th at Sankardev Nagar, Hojai in F.T(D) Case No.782/2015 corresponding to SP's F.T.Case No.732/2014 and if it is against the petitioner, consequential action under the law shall follow.
10. Till the reasoned order is passed, no coercive action be taken against the petitioner.
11. The Tribunal is directed to pass individual opinion in respect of the petitioner/proceedee Santosh Paul and not to pass common opinion with any other person, although the other person may be claimed to be the brother.

12. Writ petition stands disposed of in the above terms.
13. Send back the LCR.
14. A copy of this order be furnished to Ms. A Verma, learned counsel for the Home Department Government of Assam for doing the needful.

JUDGE

JUDGE

Comparing Assistant