

GAHC010294162019



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

Case No. : WP(C)/8948/2019

RITA DEVI GUPTA
W/O SRI SUBHAS GUPTA
D/O LATE JATIN LAL SHAW @ JATINDRA NATH SAHW @ JATINDRA LAL
SHAW
R/O WARD NO. 11
SHIV LANE
NUNIAPATTI
P.O.
P.S. AND DIST-DHUBRI
ASSAM
PIN-783301

VERSUS

UNION OF INDIA AND 4 ORS.
THROUGH THE SECRETARY
MINISTRY OF HOME AFFAIRS
GOVT. OF INDIA
NEW DELHI-110001

2:THE STATE OF ASSAM
THROUGH THE SECRETARY
GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-781006
3:THE DEPUTY COMMISSIONER
DHUBRI DISTRICT
P.O. AND P.S.-DHUBRI (ASSAM)
PIN-783301
4:THE SUPERINTENDENT OF POLICE (B)
P.O. AND P.S. AND DIST-DHUBRI (ASSAM)
PIN-783301

5:OFFICER-IN-CHARGE
DHUBRI POLICE STATION
P.O. AND DIST-DHUBRI (ASSAM)
PIN-783301

Advocate for : MR G P BHOWMIK
Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND 4 ORS.

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

27.04.2023

(A.M. Bujor Barua, J)

Heard Ms. D Ghosh, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of respondents in the Union of India as well as for the authorities in the NRC, Mr. G Sarma, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the Election Commission of India and Ms. U Das, learned counsel for the Deputy Commissioner, Dhubri.

2. The petitioner Rita Devi Gupta had been referred to the Foreigners Tribunal No. 1, Dhubri for rendering an opinion as to whether she is a person who entered the State of Assam from the specified territory on or after 25.03.1971 resulting in registration of FT Case No. 2193/D/2010, wherein an opinion dated 21.08.2019 was given that the petitioner is a foreigner. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon a registered sale deed dated 05.06.1956 by which Jatindra Nath Shaw son of late Hemlal Shaw, a resident of Serampore, police station Serampore in the Hoogly district of West

Bengal had purchased a plot of land at Serampore town. The petitioner claims that Jatindra Nath Shaw is her father and he having purchased a plot of land in West Bengal in the year 1956 has established that he himself is a citizen of India.

4. To substantiate that the petitioner is the daughter of Jatindra Nath Shaw, who purchased the land at Serampore, reference is made to a school certificate issued by the Headmistress of Serampore Balika Vidyalaya (Junior High), wherein it is certified that the petitioner Rita Shaw is the daughter of Jatin Lal Shaw of Serampore. The petitioner also relies upon a certificate issued by the councillor of Serampore Municipality wherein it is certified that Rita Gupta, wife of Subash Gupta is personally known to him and that she is a permanent resident of 1 N.S. Avenue, Serampore, district Hoogly in West Bengal.

5. If the petitioner can establish that Jatindra Nath Shaw is her father, she can discharge the burden under section 9 of the Foreigners Act, 1946 that she is also a citizen of India and not a person who had entered the State of Assam from the specified territory. The school certificate under the law would be a good material to establish that the petitioner is the daughter of Jatindra Nath Shaw provided the school authorities depose before the Tribunal along with the original school records to ratify the information contained in the certificate. If the councillor of Serampore Municipality can also depose as regards the contents of the certificate he had issued inasmuch as, the certificate states that he personally knows the petitioner, the same may also be a relevant material for the purpose to establish that the petitioner is the daughter of Jatindra Nath Shaw of Serampore town in West Bengal.

6. In the circumstance, the matter is remanded back to the Tribunal to enable the petitioner to either bring in the evidence of the Headmistress of

Serampore Balika Vidyalaya (Junior High) or the Councillor of Serampore Municipality namely Rajesh Sha, who had certified that the petitioner is personally known to him and that she is the daughter of Jatindra Nath Shaw of Seramproe. Upon the relevant materials being produced, the Tribunal may pass a reasoned order thereon. If advised, the petitioner may also be allowed to adduce any further evidence. The State authorities through the Home Department may also make their verification as regards the evidence that may be produced and be at liberty to produce any other further material, if so advised.

7. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 21.08.2019 and if it goes against the petitioner, consequence as per law shall follow.

8. The petitioner shall appear before the Foreigners Tribunal No. 1, Dhubri on 09.06.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

9. The writ petition is allowed as indicated above.

Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant