

GAHC010291272019



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

Case No. : WP(C)/8827/2019

JYOTSNARA BEGUM @ JYOSNARA BEGUM
D/O- LT ABDUL KHALEQUE @ A. KHALEQUE, W/O- NURUL ISLAM, VILL-
KADAMONI PATHER, P.O. AND P.S. JURIA, DIST- NAGAON, ASSAM, PIN-
782124

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, NEW DELHI-
110001

2:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER
INDIA
NEW DELHI- 110001

3:THE STATE COORDINATOR
ASSAM
NATIONAL REGISTER OF CITIZENS
BHANGAGARH
GHY-5

4:THE STATE OF ASSAM
REP. BY THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

5:THE SUPERINTENDENT OF POLICE (B)
NAGAON
DIST- NAGAON
ASSAM

PIN- 782001

6:THE DY. COMMISSIONER
NAGAON
DIST- NAGAON
ASSAM
PIN- 78200

Advocate for the Petitioner : MD A HUSSAIN

Advocate for the Respondent : ASSTT.S.G.I. (R1)

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

ORDER

Date : 03.03.2023

(A.M. Bujor Barua, J)

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

2. The petitioner Jyotsnara Begum @ Jyosnara Begum was referred to the Foreigners' Tribunal No. 4, Nagaon for an opinion as to whether she is a person who had entered the State of Assam from the specified territory subsequent to 25.03.1971 and accordingly F.T. Case No. 173/2016 was registered. The petitioner relies upon a sale deed dated 20.01.1964 in respect of certain plot of land where Hamed Ali son of Basir Munshi and Abdul Khaleque son of Hamed Ali, residents of village Dowamari, P.S. Laharighat in the Nagaon district are

shown to be the purchasers. The petitioner also relies upon the voters' list of 1966 of village Dowamari, P.S. Laharighat in the Nagaon district wherein at Sl. No. 66 the name of A. Khaleque son of A. Hamed and at Sl. No. 71 the name of Safia Khatun wife of A. Khaleque appear. The petitioner also relies upon a transfer certificate issued by the Principal of Laharighat Higher Secondary School wherein it is provided that Jyotsnara Begum is the daughter of Md. Abdul Khaleque of village Dowamari. The said material if otherwise acceptable may lead to a prima facie case in favour of the petitioner that she is a citizen of India.

3. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 4, Nagaon to examine the acceptability of the sale deed dated 20.01.1964, the voters' list of 1966 of village Dowamari, P.S. Laharighat in the Nagaon district which contains the name of A. Khaleque son of A. Hamed. We also require the Tribunal to examine the Principal of Laharighat Higher Secondary School along with the original records of the school to be produced before the Tribunal which may establish that the petitioner is the daughter of Abdul Khaleque of village Dowamari.

4. Upon the requirement being done, the 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 01.10.2019 in F.T. Case No. 173/2016 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 06.04.2023.

5. Mr. A. Hussain, learned counsel for the petitioner also refers to an order dated 24.03.2017 in F.T. Case No. 173/2016 of the Member, Foreigners' Tribunal No. 4, Nagaon to show that there is already a decision that the petitioner is a citizen of India.

6. Firstly, we take note that the order dated 24.03.2017 in F.T. Case No. 173/2016 is an unreasoned order and it may perhaps be a personal view of the Foreigners' Tribunal No. 4, Nagaon without any reason which is unacceptable in law. Moreover, we have been informed that the said order had already been interfered and therefore further proceeding had been initiated after giving notice to the petitioner in F.T. Case No. 173/2016.

7. In view of the above, the order dated 24.03.2017 in F.T. Case No. 173/2016 is declared to be unacceptable in law to render any legal right in favour of the petitioner.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

J U D G E

J U D G E

Comparing Assistant