

GAHC010294162019



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

Case No. : WP(C)/9345/2019

SARADA DEVI GUPTA
W/O. SRI BIJOY KR. GUPTA, D/O. BEDESHI SHAH, 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 DEPTT.
DISPUR
GUWAHATI-781006.

3:THE DY. COMMISSIONER

DHUBRI DISTRICT P.O. AND P.S. DHUBRI
ASSAM
PIN-783301.

4:SUPDT. 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 the Petitioner : MR G P BHOWMIK

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

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

ORDER

11.08.2023

[A.M.Bujor Barua, J.]

Heard Ms. D. Ghosh, learned counsel for the petitioner. Also heard Mr. G. Sarma, learned counsel for the Home Department; Ms. L. Devi, learned counsel for the NRC and UoI; Mr. P. Sarma, learned counsel for the DC; and Mr. T. Pegu, learned counsel for the ECI.

2. The petitioner Sarada Devi Gupta had been referred to the **Foreigners' Tribunal, No. 1, at Dhubri** for rendering an opinion as to whether she is a foreigner under the Foreigners' Act, 1946 resulting in registration of **F.T. Case No. 2190/D/2010**, wherein an opinion dated 27.08.2019 had been rendered declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner refers to a Voters' List of 1971 of village Bishunpur PS No. 99/village Raipur Bindagawa PS No. 446 and the said Voters' List is of a given place in the State of Bihar. Accordingly, the petitioner claims that she is Sharada Kumari, daughter of Bideshi Sah whose name appears in the said Voters' List of 1971. Accordingly, it is sought to be established, firstly, that the petitioner existed in the State of Bihar in the year

1971 and thereafter came to Assam upon being married to Bijay Kumar Gupta and she residing in the Dhubri district of Assam. The petitioner accordingly seeks to establish that she is not a person who came to State of Assam from the specific territory but she is a person who is originally from the State of Bihar. To establish that the writ petitioner Sarada Devi Gupta is herself Sharada Kumari, daughter of Bideshi Sah of the 1971 Voters' List, the petitioner seeks to rely upon the evidence to be rendered by Devarati Devi, wife of Late Shyama Saha who aged about 82 years and is a resident of village Vishunpur Tola Bandhu Chapara under Barhara Police Station in the Bhojpur district of Bihar. Devarati Devi in her evidence on affidavit submitted before the Court states that the petitioner Sarada Devi Gupta is her sister in law and therefore she has the special means of knowledge as required under Section 50 of the Evidence Act to establish that Sarada Kumari, daughter of Bideshi Sah of the 1971 Voters' List is itself the writ petitioner proceedee Sarada Devi Gupta. The petitioner also seeks to rely upon the evidence to be rendered by Subas Gupta, son of Late Bharat Lal Gupta of Dhubri district who also claims to have special means of knowledge that Sarada Devi Gupta the petitioner proceedee is herself Sharada Kumari, daughter of Bideshi Sah of the 1971 Voters' List of a place in the State of Bihar.

4. In the circumstance, the matter is remanded back to the Foreigners' Tribunal, No. 1 at Dhubri to examine Devarati Devi as well as Subas Gupta, who claim to have the special means of knowledge as required under Section 50 of the Evidence Act to establish that the petitioner Sarada Devi Gupta is Sharada Kumari, daughter of Bideshi Sah of the 1971 Voters' List of the given place in the State of Bihar. The respondents in Home Department to make their own verification and submit the report before the Tribunal and the respondents in the Home Department may also cross-examine the two witnesses if so advised.

5. Upon doing the needful the Tribunal may 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 27.08.2019 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 01.09.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of in the above terms.

Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant