

GAHC010312442019



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

Case No. : WP(C)/9545/2019

BASATAN NESSA
D/O LATE BASER UDDIN, W/O REFAZ UDDIN, R/O VILL-BANGLIPARA, P.S.
AND DIST-BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF INDIA, MINISTRY OF HOME AFFAIRS, SHASTRI BHAWAN, TILOK
MARG, NEW DELHI-1

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

3:THE SUPERINTENDENT OF POLICE (BORDER)
BARPETA
P.O. AND DIST-BARPETA
ASSAM
PIN-791301

4:THE DEPUTY COMMISSIONER
BARPETA
P.O. AND DIST-BARPETA
ASSAM
PIN-791301

5:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-1

6:THE STATE COORDINATOR
NRC
ASSAM
BHANGAGARH
GUWAHATI-

Advocate for the Petitioner : MR N AHMED

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

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

ORDER

Date : 30.05.2023
(AM Bujor Barua, J)

Heard Mr. N Ahmed, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 6 being the authorities under the Union of India and NRC respectively, Ms. A Verma, learned counsel for the respondents no. 2 and 3 being the authorities under the Home Department of Government of Assam, Ms. K Phukan, learned counsel for the respondent no. 4 being the Deputy Commissioner, Barpeta and Mr. T Pegu, learned counsel for the respondent no. 5 being the authorities under the Election Commission of India.

2. The petitioner Basatan Nessa had been referred to the Foreigner's Tribunal No. 1, Barpeta 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 F.T. Case No. 26/2017. The Tribunal rendered an opinion dated 27.06.2019 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.
4. In the writ petition the petitioner relies upon the voters' list of 1966 of village Baniarpara Mouza Ghilazari in the Barpeta district which contains the names of Baseruddin, S/O Moksed Ali at Sl. No. 395 and that of Samiran Nessa, W/O Baseruddin at Sl. No. 396. It is claimed that Baseruddin of the 1966 voters' list of village Baniarpara is the father of the petitioner. To substantiate the same, reliance is placed upon the jamabandi of a plot of land in village Baniarpara wherein it is contained that as per order dated 06.04.2010 of the Circle Officer by which, amongst others, the land had been mutated in favour of Basatan Nessa daughter of Baser Uddin in place of Baser Uddin. Accordingly, a claim is made that as the petitioner has inherited the land of Baser Uddin being her daughter through the order of mutation, therefore, it is established that she is the daughter of Baseruddin and as the name of Baseruddin appears on the voters' list of 1966 of village Baniarpara she has discharged the burden under Section 9 of the Foreigners Act, 1946.
5. In view of the above, the matter stands remanded back to the Tribunal to examine the voters' list of 1966 of village Baniarpara as well as the jamabandi containing the order of the Circle Officer as to whether the same discharges the burden under Section 9 of the Foreigners Act, 1946.
6. The petitioner to also produce the complete order of the Circle Officer. The respondents in the Home Department may also make their own enquiry as to whether the writ petitioner proceed Basatan Nessa and Basatan Nessa of the mutation order of the Circle Officer dated 06.04.2010 are one and the same person and thereafter, submit a report. Upon doing the needful, a reasoned order be passed by the Tribunal.

7. The petitioner to appear before the Tribunal on 01.07.2023.
8. If the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 27.06.2019 passed in F.T. Case No. 26/2017 and if against, consequence under the law is applicable to the petitioner.
9. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant