

GAHC010147492018



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

Case No. : WP(C)/4585/2018

SAJERA BEGUM

D/O- LT RAHIZUDDIN SHEIKH, W/O- DELOWAR HUSSAIN, R/O- VILL-
BANDARKHOWA, P.S. SARBHOG, DIST- BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.

REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, NEW DELHI-110001

2:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

3:THE DY. COMMISSIONER

BARPETA
P.O. AND DIST- BARPETA
ASSAM
PIN- 781301

4:THE SUPERINTENDENT OF POLICE (B)

BARPETA
P.O. AND DIST- BARPETA
ASSAM
PIN- 781301

5:THE ELECTION COMMISSION OF INDIA

NEW DELHI
TO BE REP. BY CHIEF ELECTION COMMISSIONER OF INDIA
NEW DELHI-1

6:THE STATE COORDINATOR OF NATIONAL REGISTRATION
ASSAM
BHANGAGARH
LACHIT NAGAR
GHY-

Advocate for the Petitioner : DR. B AHMED, MR M HUSSAIN,MR. N HAQUE,MR. S R BARBHUIYA

Advocate for the Respondent : ASSTT.S.G.I., SC, ELECTION COMMISSION.,SC, F.T,SC, NRC

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 19.11.2024

[K.R. Surana, J]

Heard Mr. M. Hussain, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned CGC appearing for the respondent no. 1; Mr. G. Sarma, learned standing counsel for the FT and Home Department for the respondent nos. 2 & 4; Mr. P. Sarmah, learned Senior Government Advocate, Assam for the respondent no. 3 and Mr. H. Kuli, learned counsel appearing on behalf of Mr. A. I. Ali, learned Standing Counsel for the ECI appearing for the respondent no. 5. None has appeared for the respondent no. 6.

2. The petitioner, namely Sajera Begum, had appeared and filed her written statement, projecting that she is the daughter of one Rahizuddin Sheikh and Mojiran Nessa and claimed to be born and brought up at Village – Bandarkhowa, Mouza – D.C. Baushi, Police Station – Sarbhog, earlier District – Kamrup and present District – Barpeta. He also projects that on attaining marriageable age, she was married to one Delowar Hussain in the same village and she has four brothers and four sisters, she had disclosed therein. The petitioner further projects that her father had purchased a plot of land, measuring 5 Bigha-2 Katha-11 Lessa in the year 1964 vide Sale Deed no. 414 dated 01.04.1964. It is also projected that in the Voter's List of 1989, her mother's name was incorrectly recorded and that her mother was declared as an Indian by the concerned Tribunal vide Opinion dated 18.01.2016 by the Foreigner's Tribunal No. 8th, Barpeta in F.T. Case no. 105/2015. In the written statement, the petitioner

has relied on the copy of the Voter's Lists of 1965, 1970, 1985, 1989, 1997, 2005, the Sale Deed referred above, Electoral Voter Identity Card, Gaonburah Certificate & copy of Chitha.

3. In order to prove her stand, the petitioner examined herself as D.W.1 and exhibited the following documents – (i) Certified copy of registered Sale Deed no. 414 dated 01.04.1964 (Exhibit-A) obtained on 25.11.1995; (ii) Certified copy of the Voter List of 1965 of her projected father and mother (Exhibit-B); certified copy of Voter's List of 1970 in the name of her projected father and step mother (Exhibit-C), Voter's List of 1989 purportedly containing the names of her parents, step mother, step brother, step sister-in-law and claims that her mother's name was mistakenly appearing as Marijan Nessa instead of Majiran Nessa (Exhibit-D) and Opinion dated 18.01.2016 in F.T.(VIII) 105/2015 (Exhibit-E). The Electoral Photo Identity Card (Exhibit-F) and certificate of Gaonburah of Bandarkhowa (Exhibit-G). In support of her stand, the petitioner has also examined one Delowar Hussain as D.W.2. However, on perusal of the record, it appears that D.W.2 has not exhibited any document, save and except certificate issued by the Gaonburah of Bandarkhowa claiming to contain linkage of the father of D.W.2 as well as his wife, that is, the petitioner. She has also examined one Basistha Talukdar as D.W.3, who is the Gaonburah of Village - Bandarkhowa under Charge no. 23. On scrutiny of the evidence and pleadings on record, the learned Tribunal had held that there was no document on record by which the petitioner had conclusively proved that her recorded father, Rahimuddin and projected father Rahimuddin Sheikh, son of Lukman is one and same person and was held that there was no document which links the petitioner as her recorded father or projected father and accordingly it was held that the earlier Opinion (Exhibit-E) by which the petitioner claims her step mother, Majiran Nessa and it was held that the said Opinion (Exhibit-E) was not relevant to decide the reference against the petitioner. In so far as the Exhibit-E is concerned, to take note of the statement made by the petitioner in her evidence on affidavit, filed as D.W.1 wherein in paragraph 1 she has stated that she is the daughter of Late Rahizuddin Sheikh and Majiran Nessa and in paragraph 5 thereof she has stated that Hazera Khatun is her step mother. Therefore, the summary of finding in respect of Exhibit-E by the learned tribunal that is to be incorrect as Majiran Nessa is not be step mother but the projected mother of the petitioner. However, there is no link document to connect the petitioner with her projected mother.

4. Be that as it may, on the ground that the petitioner has not proved her claimed birth at the Village-Bandarkhowa and the year of the birth, learned Tribunal has held that the petitioner has failed to discharge her burden of proof under Section 9 of the Foreigners Act, 1946 that she is not a foreigner and the reference was answered in the affirmative and in the favour of the State.

5. The learned counsel for the petitioner has submitted that the stand of the petitioner in her evidence on affidavit remain unquestioned about the veracity of her claim to be the daughter of Late Rahizuddin Sheikh and Majiran Nessa, who are claimed to be the projected father and mother of the petitioner. Accordingly, it is submitted that the said evidence was not challenged, the Opinion rendered by the learned Tribunal was contrary to the decision of this Court in the case of *Abdul Khalek vs. Union of India and others, 2013 (1) GLT 941*. Accordingly, it is submitted that the petitioner has been successfully able to link herself with her projected parents and therefore, it is submitted that the impugned opinion be set aside.

6. As to whether the petitioner has been able to discharge the burden of proving that she is not a foreigner but she is an Indian citizen and born out of the wedlock of parents who are citizen of India, the petitioner has exhibited 7 [seven] documents as referred above as Exhibit-A to Exhibit-G respectively. In so far as the certified copy of the Sale Deed is concerned which is Exhibit-A, it establishes that one Md. Rahizuddin Sheikh, son of Lukman Sheikh of Village - Bandarkhowa under Mouza - Damka had purchased the land measuring 5 Bigha 2 Katha 11 Lessa (05B-02K-11L), which is fully described in the schedule to the said sale deed from its vendor vide the Sale Deed, which is registered on 01.04.1964. In respect of a plot of land. However, contrary to the contents of the opinion, from the document which is marked as Exhibit-A and proved in original, which is available in records, it is seen that the said Exhibit-A is a certified copy and is not an original Sale Deed. Therefore, the mere proving of a certified copy of the Sale Deed by the petitioner does not establish that her father is the person who had purchased the land by the said Sale Deed. The Vendee of the said Sale Deed or his other legal representatives were not summoned to give evidence to link the petitioner with the Vendee of the said Sale Deed.

7. Although the learned counsel for the petitioner has laid stress on the point that as the evidence of the D.W.1 was not cross-examined or demolished that she is the daughter of one Rahizuddin Sheikh, but the Court is unable to accept the same on the ground that in order to prove a Sale Deed, the original Sale Deed should have been exhibited or the petitioner should have demonstrated the reason was a certified copy of Sale Deed was proved, which is not a primary evidence within the meaning of Section 62 of the Evidence Act.

8. A mere holding of a certified copy of a Voter List or a certified copy of Sale Deed could not be a sufficient discharge of burden of the proceedee in a case where the determination is as to whether or

not the proceedee is a foreigner by discharging her burden as per the requirement of Section 9 of the Foreigners' Act, 1946.

9. Therefore, Exhibit-B, Exhibit-C & Exhibit-D, which are the Voter Lists of 1965, 1970 & 1989 is not a sufficient link to establish that the petitioner is the daughter of her projected father i.e. Rahizuddin Sheikh.

10. In respect of Exhibit-E, the certified copy of the opinion of the Tribunal in the matter of the Morijan Nessa, who was declared as not to be a foreigner in FT Case no. 105/2015, there is no document to link the petitioner to her projected mother.

11. We also take note of the fact that although the petitioner has projected in her written statement about her own family and the projected father, but none of the members of the family of her projected father gave evidence to support the claim of the petitioner to be a member of their family and deriving her lineage through Rahizuddin Sheikh and Morijan Nessa.

12. Coming to the Exhibit-F, which is the Electoral Voter Identity Card, there are catena of judgments wherein it was held that the EPIC is not a sufficient proof of citizenship of its holder. If one requires an authority on the point, the judgment of this Court in the case of *Md. Babul Islam vs. Union of India*, *W.P.(C) No. 3547/2016* passed on 09.05.2018. The relevant paragraph is quoted below:-

‘20.2 In so far Exhibit-7 Elector Photo Identity Card is concerned, besides not being proved, it is a post 25.03.1971 document. Besides, merely producing such an identity card in the absence of supporting evidence would not be proof of citizenship.’

13. To prove her lineage the petitioner has relied on the certificate of the Gaonburah, which is marked as Exhibit-G. In this regard, we find from the cross-examination of the Gaonburah (DW-3), that he has stated that he is not aware as to when and where the parents of the proceedee were born and brought up and he had issued the certificate as per the requisition made by the petitioner. Therefore, although the projected father of the petitioner is from the Village - Bandarkhowa which is within the charge of the D.W.-3, his certificate is not based on personal knowledge about of the projected father of the petitioner but is issued at the calling of the petitioner. The said that certificate is in respect of the address of the petitioner, as such, the same cannot be accepted as proof that the name of her projected father stated therein i.e. Rahiz Uddin is the same person whose name appeared in the certified copy of the Voters List which are exhibited as Exhibit-B, Exhibit-C & Exhibit-D or that he could be linked in any manner

with the petitioner.

14. Accordingly, we find of no reason to interfere with the opinion impugned in the present writ petition. Accordingly, this writ petition fails and the same is dismissed. The consequences thereof shall follow.

15. The records of the Tribunal be returned back.

16. There shall no order as to cost.

JUDGE

JUDGE

Comparing Assistant