

GAHC010154302020



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

WP(C) No. 4653 of 2020

Rejak Ali @ Md Abdul Rejak
Son of Late Hayat Ali,
Aged about 50 years
Permanent Resident of
Village – No. 2 Khopanikuchi,
Police Station - Hajo in the
Kamrup District of Assam.

.....Petitioner

-Versus-

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Home Affairs,
New Delhi. Pin – 110001.

2. The Election Commission of India,
Represented by the Chief Election Commissioner
New Delhi – 110001.

3. The State of Assam,
Represented by the Commissioner and Secretary
to the Government of Assam,
Home Department, Dispur,
Guwahati-781006.
4. The Deputy Commissioner,
Kamrup (R), 781031.
5. The Superintendent of Police (B),
Kamrup (R), 781031.
6. State Coordinator,
National Register of Citizens,
Bhangagarh, Guwahati – 781005.

.....Respondents.

Advocates for the petitioner: Mr. A.W. Aman.

Advocate for the respondents: Mr.A. Kalita, SC, FT,
Mr.R. Talukdar, Govt. Advocate, Assam,
Mr. A I Ali, SC, ECI.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of Hearing : 22.04.2024

Date of Judgment : 03.10.2024

JUDGMENT AND ORDER (CAV)

(Susmita Phukan Khaund, J.)

1. Heard Mr. A.W. Aman, learned counsel for the petitioner. Also heard Mr. A.I. Ali, learned Standing Counsel, Election Commission of India for the respondent No. 2, Mr. A. Kalita, learned Standing Counsel, Home Department, Assam for the respondent Nos. 3 & 5 and Mr. R. Talukdar, learned Government Advocate, Assam for the respondent No. 4.
2. The petitioner in this case is Rejak Ali @ Md. Abdul Rejak. The Union of India, the Election Commission of India, the Home Department, the Deputy Commissioner (DC for short), Kamrup (R), the Superintendent of Police (B) [SP (B), for short] – Kamrup (R) and NRC are arrayed as respondent Nos. 1, 2, 3, 4, 5 and 6 respectively.
3. The petitioner has filed this application challenging the order/opinion dated 22.11.2019 passed by the Member, Foreigners Tribunal No. 4, Kamrup (R) in connection with H.F.T. Case No. 1067/2015, declaring the petitioner an illegal migrant who had entered into India after 25.03.1971.
4. The genesis of the case was that the S.I.(B) of Hajo Police Station, was directed by the SP(B), of Kamrup, to enquire about the citizenship of the petitioner vide Memo No. KP(B)/IM(D)T/2002/2099 dated 30.05.2002. The enquiry report was submitted by the SI(B) and thereafter, a reference was made by the SP(B), Kamrup, Assam vide reference No. KP(B)/IMDT/27(A)/87-2001, for an opinion if the petitioner is an illegal migrant or not.
5. It is apt to mention that it was found on enquiry that he petitioner belonged to village -

Mirdari, Police Station – Baluka, District – Maimansingh of Bangladesh and he entered illegally into India after 25.03.1971.

6. On striking down the Illegal Migrants (Determination) Tribunal Act, 1983, by the Hon'ble Apex Court, the Foreigners Tribunals were constituted for disposal of cases, relating to illegal immigrants and this case came up for disposal before the Foreigners Tribunal.

7. The Tribunal was pleased to issue notice and thereafter, the petitioner filed his Written Statement (WS for short) on 11.01.2019 and contested the case. To substantiate his stance, the petitioner examined himself as a witness and adduced the evidence of 3 (Three) other witnesses and submitted some documents. The witnesses were cross-examined on behalf of the Union of India.

Submissions on behalf of the petitioner :

8. It is contended by the learned counsel for the petitioner that he is a citizen of India. He was born at village – Khopanikuchi, Police Station – Hajo under Kamrup district. It is contended that the learned Tribunal by the order dated 22.11.2019 erroneously declared the petitioner to be a foreigner, based on irrelevant materials and this tantamounts to an error apparent on the face of the record.

9. It is submitted that the petitioner's grandfather's name is recorded in the NRC of 1951 as Hutka Seikh, son of Bamer Mulla of village – No. 2 Larkuchi, Mouza – Pachim Barkhetri in the then district of Kamrup. However, his great grandfather's name is wrongly entered as Bamer Mulla instead of Samer Ali and Bamer Mulla and Samer Ali is one and the same person.

10. The petitioner's grandfather's name is recorded in the Voters' List of 1966 as Sutka Seikh, son of Samer at Sl. No. 54, House No. 16, village – No. 2 Larkuchi, Mouza – Pachim Barkhetri, Police Station – Nalbari under 54 No. Chenga LAC under Kamrup district. His grandmother's name is recorded as Saytan Bibi, wife of Sutka at Sl. No. 55 in the same Voters' List. It is further submitted that the petitioner's name along with his mother's name appears in the Voters' List of 1989. His mother's name appears as Rohima Khatun wife of Hayad Ali at Sl. No. 777, House No. 233 at village – Khopanikuchi, Mouza – Ramdia, Police Station – Hajo under No. 55 Hajo LAC under Kamrup district. His name is recorded as Abdul Rejjak, son of Hayad Ali at Sl. No. 778 in the same Voters' List. It is submitted on behalf of the petitioner that the petitioner's father's name is recorded in the said Voters List as "Hayad Ali" instead of "Hayat Ali" and thus, "Hayad Ali" and "Hayat Ali" are the same and one person. Moreover, the petitioner's name has also been wrongly mentioned in the Voters' List of 1989 as "Abdul Rejjak" instead of "Rejak Ali".

11. The petitioner has also referred to the Voters' Lists of 1997, 2005, 2016 and 2018 as well. Furthermore, the petitioner has submitted that he has ancestral land in the village – Khopanikuchi, Lat No. 2, Mouza – Ramdia, Circle – Hajo in the district of Kamrup, which he has inherited from his father Hayat Ali. The petitioner's name along with the names of his 3 (Three) other brothers namely Jakir Husain, Kutubuddin and Eusub Ali are recorded in the jamabandi copy relating to land covered by Patta No. 135 (New), Dag No. 211 and their names are recorded as pattadar Nos. 39, 40, 41 and 42 respectively. It is further submitted that the petitioner's grandfather's name was mutated vide order dated 29.11.1967 and later, the legal heirs' names have been mutated vide order dated 23.02.1981. This proves that the petitioner's grandfather was a citizen of India and not a foreign national but his grandfather's

name is recorded in the jamabandi as Sutka Seikh whereas his grandfather's name is recorded as Hutka Seikh in the Voters' List of 1966.

12. The petitioner has also mentioned about several documents like Elector Photo Identity Cards, Gaonburah certificates etc. to substantiate his stance that he is not a foreign national. The remaining part of the submissions on behalf of the petitioner will be discussed at the appropriate stage.

13. It has been contended by the learned counsel for the petitioner that the learned Tribunal has erroneously dismissed the petition on the ground that the petitioner has failed to mention his date of birth and his place of birth in his pleadings and evidence-in-chief.

14. It is averred that the DW-2 and DW-3 have affirmed that the petitioner was born and brought up at Village-Khopanikuchi, which was completely ignored by the learned Tribunal. The Gaonburah's certificate was also not considered by the learned Tribunal. It is submitted that the impugned finding of the learned Tribunal was erroneous as the petitioner has submitted through his written statement that he is a permanent resident of Village-Khopanikuchi, which implies that he has been staying in the aforementioned address since the date of his birth. The petitioner has also stated that he was born and brought up at Khopanikuchi Village and what further is required by the Tribunal to be convinced that the petitioner is not a foreign national. It is thus contended that despite the substantiating evidence of DW-2 and DW-3, the learned Tribunal has mechanically passed the impugned order. The learned Tribunal has also erred while dealing with the minor inconsistencies, such as failure of the petitioner to mention the death of Hutka Sheikh, i.e., the grandfather of the petitioner. It is averred that the learned Tribunal has discarded and rejected some

documents/evidence on the basis of some unacceptable reasons.

15. The Gaonburah's certificate, Exhibit-A was a valid piece of evidence, as the Gaonburah has given the certificate on the basis of his personal knowledge that the deceased father of the petitioner, Late Hayat Ali was son of Late Hutka Sheikh and was a resident of his village.

16. It is averred that the learned Tribunal without referring to any legal provisions, mechanically rejected the certificate stating that-"certificate to a dead person is not relevant and hence, liable to be discarded".

17. It is further contended that the Voters List of 1966-Exhibit-C was issued in the year 1993 and there was every possibility that some portion of the Voters List may not be easily legible, but at the same time, this document cannot be rejected because the document has not lost its evidentiary value. It is contended that at the time when the evidence was recorded, neither the Government Pleader nor the Tribunal questioned the authenticity of the Voters List, but suddenly at the stage of final order, the Tribunal has questioned the authenticity of the Voters List of 1966. If the Tribunal had any doubt about the authenticity of the exhibited Voters Lists, the contents thereof could have been proved by examining the issuing authority to cull out the truth of the documents, as conferred by Section 30 of the Code of Civil Procedure, 1908 (CPC, for short), but the Tribunal refrained from ascertaining the authenticity of the documents.

18. It is further submitted that the Jamabandi copy dated 09.01.2019, pertaining to the petitioner's inheritance of the land from his father, which was inherited by his father from his grandfather, is a computer generated copy with the bar code and was sufficient to prove the

authenticity of the documents. The Tribunal has erred by considering that the entire land under the Dag has been mutated in the name of the petitioner and his brothers, which is a wrong interpretation, because if the area mutated against some Pattadars in the Jamabandi copy is not mentioned, it does not mean that the entire land of the Dag number concerned is mutated in the Pattadar's name reflected in the copy. The Tribunal did not accept the Jamabandi copy, marked as Exhibit-D and the Tribunal has held that the land was mutated 37 years after the death of petitioner's father, which is indeed an illegal and arbitrary observation, and is liable to be set aside and quashed.

19. It is contended that another discrepancy has been erroneously observed by the learned Tribunal that the petitioner has failed to mention the name of his mother and grandmother in his pleadings, but has stated their names in his evidence as Rahima Khatun and Late Hayatun Nessa, respectively. It was also erroneously held by the Tribunal that DW-1/petitioner stated about his father's death in a bomb blast in the year 1983, but was silent about his mother, which implies that his mother was alive and failure on the part of the petitioner to adduce the evidence of his mother, who happens to be a material witness, casts a shadow of doubt over the veracity of his evidence. It was thus erroneously held by the Tribunal that an adverse presumption can be drawn under Section 114 (g) of the Indian Evidence Act, 1872 (Evidence Act, for short).

20. It is submitted on behalf of the petitioner that he has mentioned the names of his great grandfather, grandfather in the pleadings and has adduced documentary as well as oral evidence, which establishes his lineage to his father and grandfather. The petitioner has specifically stated that his mother's name appears in the Voters List of 1989, 1997, 2005,

2016, 2018 etc. and his name was enlisted along with his mother's name. As his mother was suffering from mental and physical conditions due to old age ailments, his mother could not be produced as a witness and this does not negate the petitioner's case. The learned Tribunal did not consider the Voters Lists of 1989, 1997, 2005, 2016 and 2018, exhibited by the petitioner as Exhibit-E to Exhibit-J, as DW-2 and DW-3 did not substantiate the petitioner's evidence in this respect, and also as these documents are of post-1971 period. It is submitted that it was also erroneously held by the Tribunal that the petitioner marked this elector identity card as Exhibit-E, without any evidence. So stating, it is submitted on behalf of the petitioner that the Voters Lists are public documents, which clearly establish the lineage of the petitioner with his father.

21. It is further contended that the learned Tribunal has erred by dismissing the post-1971 Voters List, as the petitioner had produced the Voters List of 1966 as well as the Jamabandi, Exhibit-D-(ii), which states that the petitioner's grandfather was Pattadar of the land since 21.11.1967.

22. It is contended that the age of DW-2 was erroneously typed as 56 years instead of 62 years, which cannot be a ground to discard the evidence of DW-2 in toto, as DW-2 is the petitioner's uncle and it has been erroneously held by the learned Tribunal that the identity of DW-2 is under cloud. Section 50 of the Indian Evidence Act reads :-

50. Opinion on relationship, when relevant. —When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion

shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869), or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860).

23. Similarly, DW-3 is also the petitioner's cousin and the relationship of DW-2 and DW-3 with the petitioner ought not to have been doubted by the learned Tribunal. Exhibit-D clearly reveals that the landed property under petitioner's grandfather Hutka Seikh's name was mutated on 19.04.1968, which clearly establishes that the petitioner is an Indian citizen. It is submitted that the petitioner's grandfather had domicile in the territory of India even prior to the commencement of the Constitution and the petitioner is thus an Indian citizen by birth. The petitioner has prayed to allow the petition as the operation of the impugned Judgment and Order/opinion will deprive the petitioner of his fundamental rights as guaranteed by Article 14 and 21 of the Constitution of India.

Submissions of the Respondents:

24. Per contra, it is submitted on behalf of the respondents that no Voters List of Khopanikuchi has been submitted. Earlier, the Voters List of Larkuchi was submitted showing the earlier residence of the petitioner's grandfather.

25. It is submitted by Mr A Kalita, learned Standing Counsel, Foreigners' Tribunal that the petitioner has to link himself to his father and thereafter to his grandfather. No documents have been submitted to establish the lineage of the petitioner's father with his grandfather. Thus, the linkage is missing. It is submitted that the 1966 Voters List depicts the name of the petitioner's grandfather, Sutka Sheikh, but his father's name is not shown in any of the documents prior to 1970. It is submitted that the petitioner tried to establish his lineage

through the land document, but no revenue receipts have been submitted. Further, the petitioner has stated that his grandfather, Hutka Sheikh died in the year 1975, but no document has been submitted that the petitioner's grandfather was in India up to the year 1975, i.e., after 1966. It is averred that the Gaonburah issued certificate to a dead person, i.e., to the petitioner's grandfather. The Gaonburah's certificate, Exhibit-A was issued in favour of a dead person and thus, is not acceptable as evidence.

26. It is submitted that the Jamabandi copy marked as Exhibit-D reveals that the names of the siblings have been mutated without the name of their mother being mutated in place of the petitioner's father. No sale deed has been exhibited in support of the Jamabandi. The mutation was relating to land appertaining to Patta No. 135 of Dag No. 211. It is further contended that the names of the siblings in Exhibit-D is not similar to the names of the siblings mentioned in the WS submitted by the petitioner. The petitioner has failed to clarify before the Tribunal as to why the names of the petitioner along with his siblings have been mutated without their mother's name being mutated. This document cannot be relied upon to establish the linkage of the petitioner with his father and thereafter, with his grandfather without corroborating documents.

27. It is further contended that the evidence-in-chief of DW-3 is contradictory to his cross-examination. He has categorically stated in his cross-examination that he did not know the father of Rejak Ali. It has been submitted that this case is against Abdul Rejak and DW-3 has given evidence in favour of Rejak Ali and it has surfaced in his cross-examination that he did not know his own uncle. It is further contended that the Voters List of Hayat Ali is relating to Village-Khopanikuchi.

28. In reply, the learned counsel for the petitioner has submitted that as there were no queries by the Investigating Officer about land, there is no report about any land in the ERO/LVO's report. This is the reason why the petitioner has not mentioned about any land in his WS.

29. Learned counsel for the petitioner has relied on the decision of the Court in ***Karim Ali –Vs- Union of India & Others***; reported in **MANU/GH/0672/2022**.

Decision of the Tribunal :-

30. The decision of the learned Tribunal was elaborately discussed while discussing the arguments submitted on behalf of the petitioner. For the sake of brevity, the decision of the Tribunal is not reiterated.

Discussions and decision :

31. It could be culled out from the arguments submitted by both the sides that the petitioner could submit documents only relating to the nationality of his grandfather, which could not be tracked to the nationality of his father, and due to the discrepancies in the evidence, the learned Tribunal did not accept the evidence adduced by the petitioner. It is true that the petitioner has submitted through his evidence and pleadings that his father's name was Hayat Ali and the deceased Hayat Ali Sheikh was the son of Late Hutka Sheikh. Now, the petitioner in his written statement has given two names to identify his father's name, i.e., Hayat Ali Sheikh @ Hayat Ali. On the contrary, in his evidence-in-affidavit, the petitioner has stated that Hayat Ali @ Sheikh was his father. Much later, in the Voters List of

1989, his name has appeared as son of Hayad Ali. This is a complete departure from the pleadings as the petitioner has not mentioned in his WS that his father's name is Hayad Ali as shown in the Voters List of 1989. Despite the fact that the petitioner has submitted the Voters List of 1989, yet the failure of the petitioner to mention in the WS that his father's name has been wrongly inserted as Hayad Ali, cannot be ignored. Thus, the submission of the petitioner that Hayat Ali and Hayad Ali are one and the same person cannot be accepted when the petitioner has failed to mention in his WS that Hayat Ali and Hayad Ali are one and the same person, who also goes by the name of Hayat Ali Sheikh.

32. It is submitted on behalf of the petitioner that the petitioner's grandfather was Late Hutka Sheikh, Son of Late Samer Ali, who was a permanent resident of Village No. 2, Larkuchi under the then Sub-Division-Guwahati, Mouza-Paschim Barkhetri, P.S.- Nalbari in the then district of Kamrup (presently Nalbari district). The petitioner's grandfather's name appears in the Voters List of 1966 of No. 54 Chenga Legislative Assembly Constituency, Assam. Hutka Sheikh's name also appears in the NRC of 1951, under the Sub-Division, Guwahati, Thana-Nalbari, Mouza-Paschim Barkhetri of Village-Larkuchi, House No. 22. The petitioner has produced only the Voters List of 1966, wherein Hutka Sheikh's name is shown as Sutka Sheikh at Serial No. 54. No document leading up to 1971 has been submitted by the petitioner in support of his father Hayat Ali's citizenship. While adducing his evidence, the petitioner has exhibited several documents, but there is no linking document to prove that the petitioner Rejak Ali/Abdul Rejak is the son of Hayat Ali or Hayad Ali or Hayad Ali or Hayad Ali Sheikh, who is the son of Hutka Sheikh or Sutka Sheikh, son of Bamer Ali or Samer Ali. All the Voters Lists submitted by the petitioner, except the Voters List of 1966 are the Voters Lists of the period after 1971. Through the written statement and pleadings, it has been submitted

by the petitioner that the name of Hutka Sheikh has been wrongly inserted as Sutka Sheikh, Son of Samer Ali, in the Voters List of 1966.

33. It has also been submitted through the pleadings and evidence that the name of Rejak Ali has been wrongly inserted as Abdul Rejak, son of Late Hayat Ali, instead of his correct name, Rejak Ali.

34. It is further submitted that Hayat Ali and Hayad Ali are the same person, whereas Abdul Rejak and Rejak Ali are one and the same person. It is also submitted that Samer Ali and Bomar Ali are one and the same person. It would be apt to reiterate that the petitioner has failed to mention in his WS that Hayad Ali, Hayat Ali and Hayad Ali Sheikh is the same person.

35. In view of the foregoing discussions, it can thus be held that there are too many contradictions in the names of the petitioner's grandfather, his father as well as the petitioner's name appearing at different periods. After 1966, not a single Voters List has been submitted to prove that Hayat Ali was an Indian citizen or a voter, who had exercised his franchise. Voters Lists dating to a much later date, starting from 1989 has been submitted by the petitioner. Thus, the petitioner has failed to establish the link to prove the lineage of his father with his grandfather. The petitioner's name appears from the Voters List of 1989, upto the Voters List of 2018, which have been produced in the Court and marked as Exhibits-F, G, H, I and J. Here, the petitioner's name appears as Abdul Rejak. The petitioner's mother's name, i.e., the name of Rahima Khatun also appears in the subsequent aforementioned Voters Lists, but these Voters List does not establish the lineage of the petitioner with his grandfather.

36. The petitioner has also relied on the Jamabandi copy marked as Exhibit-D. However, it has been correctly held by the Tribunal that the evidence reveals that the petitioner's father died in the year 1983 due to a mishap in bomb blast, whereas there is no evidence that his mother had passed away, but the petitioner's mother's name has not been inserted as a legal heir relating to property appertaining to Dag No. 211, PP No. 135 of Khopani Kuchi Village. Moreover, the petitioner's name and the names of his siblings were inserted vide Mutation Order dated 29.12.2018, i.e., after a gap of 37 years. It has to be borne in mind that a Jamabandi copy does not prove the rights over a plot of land without substantiating the evidence, moreso when the petitioner's name appears as Rejak Ali instead of Abdul Rejak. The village in the Jamabandi copy is mentioned as Khopanikuchi, whereas the village in Voter's List of 1966 is Larkuchi.

37. The petitioner has relied heavily on the certificate of the Gaonburah marked as Exhibit-A. DW-4 was examined in support of this certificate issued by him. The Gaonburah of Khopanikuchi village. Md Abdur Ali deposed as DW-4 that he had issued Exhibit-A and he has proved his signature as Exhibit-A-1, but in his cross-examination, he has admitted that he had issued a certificate to a dead person. He has also further admitted in his cross-examination that he was not aware of the legal provisions empowering him to issue such a certificate. He has denied that he had issued the certificate without any knowledge or without any authority. A close scrutiny of the certificate reveals that the certificate was issued to Late Hayat Ali, son of Late Hutka Sheikh, a resident of Village-Khopanikuchi, Lat No. 2, Mouza- Ramdia, P.S.- Hajo, District-Kamrup. According to his knowledge,

i) Rejak Ali,

- ii) Jaber Ali,
- iii) Kutub Uddin, and
- iv) Yusuf Ali,

are sons of Late Hayat Ali. It is clear from the evidence of DW-4 that the certificate was issued in a mechanical manner. The deceased Hayat Ali was addressed in the certificate in present tense.

38. It has been held by the Hon'ble Supreme Court in ***Rupajan Begum-vs-Union of India and others***; reported in **(2018) 1 SCC 579**, that:

“16. The certificate issued by the G.P. Secretary, by no means, is proof of citizenship. Such proof will come only if the link between the claimant and the legacy person (who has to be a citizen) is established. The certificate has to be verified at two stages. The first is the authenticity of the certificate itself; and the second is the authenticity of the contents thereof. The latter process of verification is bound to be exhaustive process in the course of which the source of information of the facts and all other details recorded in the certificate will be ascertained after giving an opportunity to the holder of the certificate. If the document and its contents are to be subjected to a thorough search and probe we do not see why the said certificate should have been interdicted by the High Court, particularly, in the context of the facts surrounding the enumeration and inclusion of the documents mentioned in the illustrative list of documents, as noticed above. In fact, the said list of illustrative documents was also laid before this Court in the course of the proceedings held from time to time and this Court was aware of the nature and effect of each of the documents mentioned in the list.”

39. Reverting back to this case, it is held that without any record, DW.4 has stated from his

personal knowledge that Hayat Ali was a resident of Khopanikuchi village. It is pertinent to notice that the petitioner has failed to prove the shifting of the family members of Hayat Ali from Larkuchi to Khopanikuchi. The certificate was issued in present tense, to a deceased.

40. It is trite law that the onus under Section 9 of the Act of 1946 has be discharged with cogent, reliable and admissible evidence. In this instant case, the evidence does not at all appear to be cogent and reliable.

41. Thus, it has been correctly held by the Tribunal that evidence reveals that Hutka Sheikh used to reside at Khopanikuchi since 1965, whereas, the Voters List of 1966 is of Village Larkuchi and not Khopanikuchi. The evidence of several witnesses have been rightly discarded by the learned Tribunal.

It appears that the petitioner tried to fill in the *lacunae* relating to the village mentioned in the pleadings. DW-2 and DW-3 have failed to convince that the petitioner's father and grandfather shifted base to Khopanikuchi from Larkuchi in the year 1965. The Gaonburah's certificate marked as Exhibit-A could not be stretched to that extent to establish the linkage of the petitioner with his father and grandfather. Moreover, the evidence of DW-2 and DW-3 is also a complete departure from the pleadings as it is mentioned in the pleadings that the petitioner is a permanent resident of Village-Khopanikuchi under Hajo Police Station and was residing in the village since his birth. It has been mentioned in the WS that the petitioner is a permanent resident of Village-Khopanikuchi and he has been residing in the village since his birth. The Gaonburah of Khopanikuchi village had issued a certificate to that effect.

42. It has been further mentioned that sons of Hutka Sheikh namely Hayat Ali, Majam Ali and Sorab Ali, during their lifetime used to reside at Village-Khopanikuchi and their legal heirs

have been residing in the locality without any disturbance from any quarter. If that be so, then, when did Hayat Ali shift from Larkuchi to Khopanikuchi? Sorab Ali, brother of Hayat Ali has stated as DW-2 that his father Hutka Sheikh used to reside in Khopanikuchi under Hajo Police Station in the district of Kamrup. In the instant case, it appears that since 1965, petitioner's grandfather owned and possessed land, which he had purchased in the village Khopanikuchi under - Ramdia Mouza in the district of Kamrup and his father was a recorded owner and pattadar of a plot of land covered by Dag No. 211 of KP Patta No. 135 situated at village - Khopanikuchi. Since 1967, the name of his grandfather Hutka Seikh was recorded as pattadar in the copy of the jamabandi of KP Patta No. 135 of revenue village – Khopanikuchi, Mouza - Ramdia under Hajo Revenue Circle. After his father's death, he along his brothers got their names mutated in the revenue record as legal heirs and successors in place of Late Hayat Ali.

43. It is further stated by DW-2 that all the legal heirs and the descendants of deceased Hayat Ali as well as Hutka Seikh have been peacefully residing within the territory of India without any proceeding of foreigners' case against them.

44. DW.2 further stated that the petitioner was born and brought up at village - Khopanikuchi under Hajo Police Station in the district of Kamrup within the territory of Assam and thus, he is a citizen of India by birth. Except this proceeding, there are no proceedings against any of the successors of Hayat Ali. This witness was cross-examined in *extenso*.

45. The learned Tribunal ruled out that his age is wrongly mentioned by this witness in his evidence-in-affidavit as 62 (Sixty Two) years and has held that the evidence of this witness is not reliable. It was observed by the learned Tribunal that in his cross-examination DW.2

stated that his age was 56 (Fifty Six) years whereas in the evidence-in-affidavit his age was typed as 62 (Sixty Two) years. Although this is a minor discrepancy, the veracity of the evidence can be assessed on the basis the testimonies of the witnesses. Minor discrepancies cannot be ignored in *toto* as insignificant discrepancies. Relating to the jamabandi copy relied upon by the petitioner to establish his lineage with his grandfather, it has been correctly held by the learned Tribunal that vide order marked as 'Ga' in the remark column that land ad-measuring 7 Bighas appear to have been mutated in the name of Hutka Seikh at Sl. No. 4, but this document could not substantiate the claim that the petitioner is an Indian citizen. It was correctly observed by the learned Tribunal that the names of the petitioner's siblings were inserted as legal heirs in the jamabandi, by right of inheritance but there is not a whisper in the evidence whether the petitioner's mother was alive at that point of time. It is true that the petitioner's father had passed away in the year 1983 but no reasons have been ascribed as to why the petitioner's mother has not inherited the land as a legal heir by right inheritance. Exhibit-D (ii) reveals that there are 42 (Forty Two) pattadars and the land covered by Dag No. 211 has been mutated in the name of Rejak Ali @ Abdul Rejak and his three brothers and the other pattadars, but the name of Rahima Khatoon does not appear.

46. It is true that the note related to mutation of the name of the petitioner's father and his brothers and the note related to the ownership through purchase of land by the petitioner's grandfather does not indicate the ownership of the entire land covered under Dag No. 211 Patta No. 135, yet, we find force in the argument of the learned counsel for the respondents that the written jamabandi and the computer generated copy of the jamabandi marked as Exhibit-D(i) and D(ii) cannot be accepted as evidence which were not substantiated by Sale Deed or original records, or revenue receipts. Moreover, it has been correctly held by the

learned Tribunal that the mutation order was passed on 29.12.2018 i.e. after a gap of about 37 (Thirty Seven) years. The petitioner has thus failed to prove his grandfather's ownership over the aforementioned land from the year 1965 through reliable records and evidence. It has to be borne in mind that the petitioner's name appears as Rejak Ali in the Jamabandi copy, and not as Abdul Rejak.

47. DW-3, Sahjahan Ali is the cousin of Rejak Ali @ Abdul Rejak. He has stated through his evidence that Rejak Ali is his cousin. The Government Lot Gaonburah Md. Abdul Ali is also known to him. The Gaonburah has issued a certificate in the name of the petitioner certifying that the petitioner's father and grandfather were residents of Kohpanikuchi village. He has further stated that his uncle Hayat Ali was born and brought up at village No. 2 Larkuchi under the Sub-Division – Guwahati, Mouza - Pachim Barkhetri, Police Station - Nalbari in the then district of Kamrup. His grandfather Hukta Seikh used to reside at village - Khopanikuchi under Police Station - Hajo. Since 1965, his grandfather was the owner of the land, which was purchased by his grandfather in the village - Khopanikuchi under Ramida Mouza and from the year 1967, his grandfather Hutka Seikh, son of Late Samer Ali became the landed pattadar and owner of land covered by Dag No. 211 of KP Patta No. 135 of village Khopanikuchi.

48. After assessing the evidence of DW-1, DW-2 and DW-3, it can be held that there is no whisper in the evidence and the pleadings as to how the predecessor and the descendants of Hutka Seikh @ Sukta Seikha have shifted base from Larkuchi to Khopanikuchi. It has to be borne in mind that the Voters List is relating to the year 1966. No evidence linking the Voters List of 1966 to establish the lineage of Hutka Seikh @ Sukta Seikh, son of Samer @ Bamer Ali with Hayat Ali has been adduced by the petitioner. It has already been held in the foregoing

discussions that jamabandi copy marked as Exhibit-D(i) and Exhibit-D(ii) cannot be accepted to be a linking evidence to establish the lineage of Hutka Seikh @ Sukta Seikh with Rejak Ali @ Abdul Rejak.

49. The petitioner's case appears to be doubtful. The decision of the Division Bench of this Court in ***Karim Ali (supra)*** is not similar to this case. The petitioner Karim Ali could produce the documents and certificates relating to his father's education. His grandfather also appeared in the intermediate examination in the year 1968, held in Dhubri, under Roll No. 18. Karim Ali's grandmother Maubhan Bewa's Middle School Leaving Certificate was also exhibited by the petitioner, dated, 1940, whereas in this instant case, the petitioner could not establish linkage of his father through any reliable documents linking the petitioner's father's presence with that of the documents supporting the NRC of his grandfather and the Voter's List of 1966, showing the name of the petitioner's grandfather.

50. It was also held in the foregoing discussions that the land documents were not found to be reliable, despite the fact that the petitioner tried to establish linkage through the land documents. The Gaonburah's certificate cannot be accepted as evidence. There are too many discrepancies in the names of the petitioner's grandfather, appearing in the Voter's List as well as the names of the petitioner's great grandfather appearing in the same Voter's List of 1966. There are too many discrepancies in the names of the petitioner appearing in the land document as well as the reference made against the petitioner, vis-à-vis, the names of the petitioner's father "Hayat Ali" or "Hayat Ali Sheikh" and "Hayad Ali". The discrepancies are incomprehensible. The writ petition is hereby dismissed as the writ petition is bereft of merits.

51. In the wake of the foregoing discussions, we record our concurrence to the decision of

the Foreigners' Tribunal No. 4, Kamrup (R), at Hajo, dated 22.11.2019, in connection with HFT Case No. 1067/2015, corresponding to FT Case No. 627/2002.

52. Registry is directed to send back the original record of HFT Case No. 1067/2015, corresponding to FT Case No. 627/2002, to Foreigners' Tribunal No. 4, Hajo, Kamrup (Rural), along with a copy of this order forthwith and shall also inform the concerned Superintendent of Police (Border), Kamrup (Rural) and the Deputy Commissioner, Kamrup (Rural), about this order for their needful.

JUDGE

JUDGE

Comparing Assistant