

GAHC010237812018



2024:GAU-AS:12843

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

Case No. : WP(C)/7510/2018

AYSHA BEGUM @ AYASA BEGUM
W/O- LATE NANU MIAH, D/O- LATE ABDUL JALIL, P.O AND VILL-
SIDDESWARPUR, P.S- DOBOKA, DIST- HOJAI, ASSAM, PIN- 782435

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY TO MIN OF HOME AFFAIRS, GOVT OF INDIA,
NEW DELHI- 01

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE HOME DEPTT
DISPUR GUWAHATI- 6

3:THE DEPUTY COMMISSIONER
HOJAI
DIST- HOJAI ASSAM
PIN- 782435

4:THE SUPERINTENDENT OF POLICE(B)
HOJAI
P.O HOJAI
P.S AND DIST- HOJAI
ASSAM PIN- 782435

5:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI- 01

6:THE STATE COORDINATOR
NRC
ASSAM
GHY- 0

Advocate for the Petitioner : MR. A R SIKDAR, MR A ALI

Advocate for the Respondent : ASSTT.S.G.I., MR J PAYENG,SC, ELECTION COMMISSION.,MR. D BARUAH,SC, F.T,SC, NRC,MS. A VERMA

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

10.12.2024

(S. P. Khaund, J.)

Heard Mr. A.R. Sikdar, learned counsel for the petitioner. Also heard Ms. R. Devi, learned CGC, appearing for respondent No. 1, Mr A Kalita, learned Standing Counsel for the Home Department and FT matters, representing respondent Nos. 2, 4 and 6, Mr P Sarma, learned Additional Senior Government Advocate, appearing for respondent No. 3, and Mr. H. Kuli, learned counsel appearing on behalf of Mr. A. I. Ali, Standing Counsel for the respondent No. 5.

2. The petitioner, Aysha Begum @ Ayasa Begum has filed this writ petition under Article 226 of the Constitution of India, with prayer for issuance of a writ of certiorari or any other writ of like nature to set aside and quash the final opinion dated 22.05.2018, passed by the learned Member, Foreigners' Tribunal Nagaon Court No. 10th, in connection with FT(D) Case No. 15599/2016, arising out of SP FT Case No. 118/2015, declaring the petitioner/proceedee, to be a foreigner, who illegally entered into the territory of India, post 25.03.1971.

3. A reference was made by the Superintendent of Police (Border), Hojai, and on receipt of the reference, this FT(D) Case No. 15599/2016 was registered and notice was issued to the petitioner/opposite party/proceedee. The petitioner contested the proceeding and filed written statement, adduced the evidence of two witnesses and exhibited several documents to substantiate her stance that she is a citizen of India. The following documents were exhibited by the petitioner:-

- a) Transfer Certificate issued by the Headmaster of Pub Jaroni M E School, for the OP in the year 2016 (Ext.1),
- b) Certified copy of Voters List (computer print-out) for the year-1966, obtained in the year-2014 (Ext.2),
- c) Certified copy of Voters List (computer print-out) for the year 1970, obtained in the year-2014 (Ext.3),
- d) Certified copy of Voters List (computer print-out) for the year 1997, obtained in the year-2014 (Ext.4)
- e) Certified copy of Voters List (computer print-out) for the year 2005, obtained in the year-2014 (Ext.5)
- f) Certified copy of Voters List (computer print-out) for the year-2010, obtained in the year-2014 (Ext.10), as marked by the O.P.,
- g) Certified copy of Voters List (computer print-out) for the year 2014, obtained in the year-2014 (Ext.7),
- h) NRC Document (photo-copy/computer print-out) (Ext.8),
- i) Certified copy of the Jamabandi vide Periodic Patta (in short P.P.) No. 32 for the revenue village : Udmari (computer print-out) obtained in the year-2016

(Ext.9),

- j) Gaonburah's Certificate for the village: Rouyar Par (Ext.10),
- k) Gaonburah's Certificate for the village: Siddeswarpur (Ext.11),
- l) Original laminated copy of a Deed executed and registered before the Sub-Registrar, Nagaon, in the year-1944 (Ext.12) marked on paper slip attached,
- m) Annual Khiraj Patta vide P.P. No. 18 for the revenue village: Rouyar Par for the year -1937 in the name of Pattadar-Sanuhar Ali [Ext.12(1)], marked on paper slip attached, and
- n) Notarised Affidavit (not marked as exhibit).

4. The learned Tribunal did not accept Exhibit-12 and Exhibit-12 (1), as evidence, to the prejudice of the petitioner. The learned Tribunal did not affix his signature on Exhibit-12 series, observing that-

“Apparently, in this case, none of the Exhibits are properly marked by the O.P. for identification. Some of the exhibits are marked using paper slips stapled on; due to their laminated condition e.g. Ext.12 and 12(1).”

5. It was also observed by the learned Tribunal that-

“Exts. 9, 12 and 12(1) are the documents related to the immovable property for the establishment of claim in respect of long stay and citizenship by the O.P.. These Exhibits are not proved on the basis of primary evidence with the testimony of lawful custodian. In this connection, reference can be drawn of the Judgment and order by the Honourable Gauhati High Court in WP(C) 3910/2016 between Malida Bibi –Vs- Union of India.”

6. We have scrutinized the Trial Court Record.

7. Exhibit-12 and Exhibit-12(1) are the land documents. Exhibit-12 is a registered sale deed dated 04.10.1944 and Exhibit-12 (1) is the Annual Khiraj Patta dated 16.09.1937.

8. It could not be deciphered as to why the learned Tribunal did not accept the registered sale deed and the Annual Khiraj Patta, as evidence. There appears to be no bar in accepting a laminated document, or for that matter, any type of document, including digital records as evidence, in accordance with law. The petitioner's case rests squarely on documentary evidence and no sound reasonings were spelt out by the learned Tribunal while not accepting the laminated document as evidence. It appears that this has prejudiced the petitioner.

9. Learned counsel for the petitioner has relied on the decision of Hon'ble the Supreme Court in *Madamanchi Ramappa and Another –Vs- Muthaluru Bojjappa*; reported in **AIR 1963 SC 1633**, wherein it has been observed that-

“Aggrieved by the decree passed in his appeal by the District Court, the respondent moved the High Court under section 100 C. P. C., and his appeal was heard by Sanjeeva Rao Nayudu J. The learned judge emphasised the fact that no sale deed had been produced by the appellants to prove their title, and then examined the documentary evidence on which they relied. He was inclined to hold that Ext. A-8 had not been proved at all and could not, therefore, be receive[] in evidence. It has been fairly conceded by Mr. Sastri for the respondent before us that this was plainly erroneous in law. The document in question being a certified copy of a public document need not have been proved by calling a witness. Besides, no objection had been raised about the mode of proof either in the trial Court or in the District Court. The learned judge then examined the question as to whether the said document was genuine, and he thought that it was a doubtful document and no weight could be attached to it. A similar comment was made by him in respect of the cist receipts on which both the courts of fact had acted.....”

10. It is emphasized by the learned counsel for the petitioner that this appeal was allowed by setting aside the Judgment and Order of the High Court of Judicature at

Andhra Pradesh.

11. In our opinion, the case of *Madamanchi Ramappa (supra)* is relating to Section 100 of the Code of Civil Procedure, and the ratio is not applicable to this case.
12. Learned counsel for the petitioner has also relied on the decision of this court in WP(C) No. 871/2019 (*Mazibar Miah –Vs- Union of India & 3 Others*), wherein vide order dated 13.02.2019, it was held that-

“4. Although we are not in agreement for the reasons stated in the said order, but on principle, we are of the view that neither the Deputy Commissioner nor the Circle Officer or the Lat Mandal is required to be summoned in a proceeding in the Foreigners (Tribunal) Order 1964 for the purpose of giving evidence as regards the draft Chitah, Jamabandi or the voter lists of 1966, 1970, 2013 and 2016. In our view, all the aforesaid documents are public documents of which certified copy can be obtained by the proceedee . Section 77 of the Evidence Act clearly provides that a certified copy need not be proved if given in evidence.”

13. It has been observed by the High Court of Judicature at Orissa in *Ganesh Swain & Others –Vs- Nakadi Swain and Others*; reported in AIR 1983 ORISSA 279, that-

“5-A. The evidence of the above witnesses clearly establishes that Sankar was the son of Dinabandhu and Pata and Sori were his daughters. The entry in the Voters' List (Ext. 3) showing the name of Sankar as the son of Dinabandhu corroborates the oral evidence led by the plaintiffs. The trial Court did not place any reliance on the Voters' List merely on the ground that two of its pages do not bear any seal of the Panchayat office or Election Office and that though there is a seal of the Sadar' Police Station there was no signature: over it. The Voters' List prepared under the Representation of the People Act is a public

record within the meaning of Section 35 of the Evidence Act and a public document within the meaning of Section 74(1)(iii) of the Evidence Act and is admissible in evidence as such. It is not necessary to call in evidence the author thereof or the person supplying the information to prove its genuineness. Vide AIR 1972 Qri 158 (FB) : Kirtan Sahu v. Thakur Sahu. We hold in disagreement with the trial Court that the Voters' List (Ext. 3) is admissible in evidence.....”

14. In the wake of the foregoing discussions, our considered view is that the laminated documents, i.e., Ext-12 and Ext-12(1), which are original sale deed and Patta, may be examined and considered by the Tribunal and an order may be passed after considering the case in its entirety and the opinion dated 22.05.2018, passed by the learned Member, Foreigners' Tribunal Nagaon Court No. 10th, in connection with FT(D) Case No. 15599/2016, is hereby set aside and this case is remanded back to the learned Tribunal to pass an appropriate order in accordance with law. The petitioner is directed to appear before the learned Tribunal, within one month from today. Till then, petitioner shall not be arrested and deported from the territory of India.

15. With the above observations and directions, this writ petition stands disposed of.

16. Send back the Trial Court Record.

JUDGE

JUDGE

Comparing Assistant