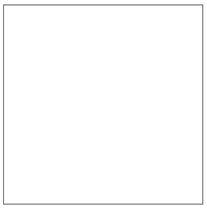
GAHC010020782017



2026:GAU-AS:16486-DB

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

Case No. : WP(C)/2440/2017

HAITAN NESSA
D/O HAREZ MONDOL, W/O- AMZAD ALI R/O VILL- KATAJHAR PATHAR,
P.O. KATAJHAR, P.S. BARPETA ROAD, DIST. BARPETA, ASSAM

VERSUS

THE UNION OF INDIA and 3 ORS.
THROUGH - THE MINISTRY OF HOME AFFAIRS, GRIHA MANTRALAYA,
NEW DELHI.

2:THE STATE OF ASSAM
THROUGH- THE SECRETARY
TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI -6.

3:THE DEPUTY COMMISSIONER

BARPETA
DIST. BARPETA
ASSAM

4:THE SUPERINTENDENT OF POLICE BORDER
BARPETA
DIST. BARPETA
ASSA

Advocate for the Petitioner : MS.S HAZARIKA, MR.B HUSSAIN,MR.A K HUSSAIN,MR.T ROY

Advocate for the Respondent : ASSTT.S.G.I., GA, ASSAM,ADDL. AG, ASSAM,MR.D K SAIKIA

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR

ORDER

03.11.2026

(K. R. Surana,J)

Heard Mr. A. K. Hussain, learned counsel for the petitioner. Also heard Mr. S. K. Medhi, learned CGC, Mr. N. Kalita, learned counsel appearing on behalf of Mr. A. I. Ali, learned standing counsel for the ECI, Mr. J. Payeng, learned standing counsel for the FT matters, and Mr. P. Sarmah, learned Additional Senior Govt. Advocate for the State.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned opinion dated 10.03.2017, passed by the learned Member, Foreigner's Tribunal, 9th, Barpeta, Assam, in F.T. Case No. 320/2015, arising out of Ref. IM(D)T Case No. 2391/C/98, by which the petitioner was declared as an illegal migrant.

3. Assailing the impugned opinion, the learned counsel for the petitioner has submitted that on receipt of the notice the petitioner contested the proceeding by filing a written statement wherein apart from denial that she was a foreigner and not an Indian citizen. It also stated that the case was initiated against the petitioner without any proper investigation by the Local Verification Officer and the Border Police Personnel.

4. It is submitted that the petitioner claims to be born and brought up at village-Dumoni under Mouza- Gobardhana in the District of Barpeta. Her correct name is Haitan Nessa, the name of her father is Harej Mondal and the name of her mother is Bhanu Khatun. Isamuddin Mondal is the name of her grandfather and the name of her grandmother is Hazera Khatun. The name of her great grandmother was Jamiran Bewa.

5. It is submitted that the grandfather, grandmother and great grandmother appeared in the voters list of 1965 and the names of her grandparents appeared in the voters lists of 1970. The names of her father and mother namely, Harez Mondal and Bhanu Khatun appeared in the voters list of 1997, 2009 and 2015 at village- Dumoni, Mouza- Gobardhana in the district of Barpeta.

6. It is also submitted that the name of the grandfather of the petitioner was mentioned as Isamuddin instead of Issamuddin Mondal in the voters list of 1965 and 1970 against the name of her grandmother. Hence, it is submitted that Issamuddin Mondal and Issamuddin are one and the same person. It is submitted that the name of the petitioner's father and other relatives appeared in the *Jamabandi* in respect of land covered by Dag No. 690, Patta No. 33 of village- Dumoni under Mouza- Gobardhana in the District of Barpeta. After the death of her grandfather, the petitioner was married to Amzad Ali son of Afsar Ali, of village- Katajhar Pather.

7. It was stated that as per the certificate issued by the *Gaonburah*, the name of the village is mentioned as Khairabari, under Bornogar Revenue Circle of Barpeta District. As regards her marriage to Amzad Ali, for the purpose of showing linkage, the learned counsel for the petitioner has referred to the certificate issued by the Secretary, Gaon Panchayat.

8. It is submitted that the name of the petitioner's father and mother appeared in the voter's list of 1997 and thereafter her name appeared in the voters' list of 2016 of village- Dumoni in the District of Barpeta under No. 40 Sorbhog LAC.

9. The learned counsel for the petitioner has submitted that as per the instructions received by him, both the parents of the petitioner are alive and the petitioner has no documents to show that she is an Indian citizen and not a foreigner. However, the learned counsel for the petitioner did not bring on record the correct disclosure of facts and several documents were left out to be filed and exhibited. It is submitted that due to the incorrect advice by the learned counsel for the petitioner, the petitioner could not produce and examine the *Gaonburah* as well as the Secretary of the concerned Gaon Panchayat as supporting witnesses to prove the documents authored by them. Accordingly, it is submitted that as the issue of citizenship is involved, the matter be remanded back to the learned Tribunal so as to give one opportunity to the petitioner to present the correct facts and to prove the exhibits in accordance with law.

10. Per contra, the learned standing counsel for the Border and FT matters has submitted that there are no worthwhile disclosures in the written statement filed by the petitioner. It is submitted that in the voters list of 1997, the name of the voter is Harez Mandal, age 42 years and therefore, he would be born in the year 1952. Accordingly, it is submitted that the name of the father of the petitioner ought to have been in the voters list prepared after the year 1973 on attaining the age of 21 years. Accordingly, it is submitted that there is no document to link the petitioner with her projected father and to link her projected father with her projected grandfather. It is submitted that the only link document between the petitioner and her projected father was the certificate

issued by the *Gaonburah* (Ext.F) as well as by the Secretary of the Gaon Panchayat (Ext.G) was not proved and therefore, the link between the petitioner and her projected grandfather was not established. It is also submitted that the *jamabandi* on which reliance has been placed, is a post 1971 document and that unless the petitioner can be linked to her projected father, the *jamabandi* (Ext.D) would not be a document to prove the citizenship of the petitioner as her name has not been entered therein as a legal representative of the heir of their projected grandfather. Accordingly, it is submitted that in view of the limited jurisdiction that can be exercised under the writ petition in invoking the certiorari jurisdiction, no interference with the impugned opinion is called for.

11. In support of the submissions, the learned Standing Counsel for the Border and FT matters has placed reliance on paragraph 26 of the decision of the Hon'ble Supreme Court in *Sarbananda Sonowal Vs. The Union of India reported in (2005) 5 SCC 665.* The said paragraph- 26 is quoted below:-

> "*26. There is good and sound reason for placing the burden of proof upon the person concerned who asserts to be a citizen of a particular country. In order to establish one's citizenship, normally he may be required to give evidence of (i) his date of birth (ii) place of birth (iii) name of his parents (iv) their place of birth and citizenship. Sometimes the place of birth of his grandparents may also be relevant like under Section 6-A(1) (d) of the Citizenship Act. All these facts would necessarily be within the personal knowledge of the person concerned and not of the authorities of the State. After he has given evidence on these points, the State authorities can verify the facts and can then lead evidence in rebuttal, if necessary. If the State authorities dispute the claim of citizenship by a person and assert that he is a foreigner, it will not only be difficult but almost impossible for them to first lead evidence on the aforesaid points. This is in accordance with the underlying policy of Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.*"

12. Considered the submissions and the case cited and also perused the records which were called for from the learned Tribunal.

13. At the outset, it would be appropriate to refer to the contents of the exhibited voters list being voters list of 1965 (Ext.A); voters lists, of 1970 (Ext.B); voters lists, of 1997 (Ext.C), in form of a chart for ready reference:-

Name of voter and voter list year	Relation	Village	Ext. No.	Age
VL-1965		Dumoni	A	
Isamuddin Mondal	Baduli			35
Hazera Khatun	Isamuddin			32
Jamiran Bewa	Baduli			70
VL-1970			B	
Isamuddin Mondal	Baduli	Dumoni		40
Hazera Khatun	Isamuddin			37
VL-1997		Dumoni	C	
Harez Mondal	Isamuddin			42
Bhanu Khatun	Harez			37
Abdul Hamid Mondal	Isamuddin			40
Akima Begum	Abduul Hamid			32
Hobi Mondal	Issamuddin			35

14. On a perusal of the written statement, it is seen that the petitioner has referred to the names of her grandparents and her great grandmother while referring to the voters list of 1965 (Exhibit-A); the names of her grandparents while referring to the voters list of 1970 (Exhibit -B); and the names of her parents appearing in the voters list of 1997 (Exhibit-C). A reference was made to the name of her grandfather appearing in the copy of the *jamabandi* (Exhibit-D), and it was stated that after his death, the land was mutated in the name of the father and the uncles of the petitioner. However, the names of the uncles were not disclosed in the written statement. The petitioner has stated that she

was married to Amzad Ali, son of Afsar Ali, of Village-Kathajhar. Thus, in the written statement, the petitioner has not disclosed the names of the persons who are stated to be the uncles of the petitioner. The petitioner has not disclosed her relationship with all the persons whose names have been entered in the *jamabandi* pursuant to the order of mutation dated 29.01.1992 and the consequential correction of the *jamabandi* on 07.11.1992.

15. On a perusal of the records of the learned Tribunal, it appears that there was no attempt on the part of the petitioner to prove the approximate date and year when the name of Issmaudiin Mondal, the projected grandfather of the petitioner appeared in the *jamabandi*. No attempt was made to show why the approximate date or year when the name of Issamudin Mondal appeared for the first time in the *jamabandi* (Ext.D) which discloses that on the death of Issamudin Mondal, the names of five persons were mutated in the *jamabandi*. In the absence of such evidence and pleadings, the relationship of the petitioner with the names of the persons under serial nos. 2 to 6 whose names entered in the *jamabandi* (Ext.D) is also not established. As indicated above, the Gaonburah and the Secretary of the Gaon Panchayat who issued the Identity letter (Ext.E), and Gaonburah certificate (Ext.F), and Gaon Panchayat certificate (Ext.G) were not examined to prove the death certificate and its contents.

16. The learned standing counsel for the Border and FT matters has not been able to make a point that the name of Harez Mondal, son of Issamuddin aged 42 years, appeared in the voters list of 1997 and therefore, the projected father of the petitioner was born in the year 1952 and after attaining the age of 21 years, his name should have appeared in the exhibited voters list after 1993.

17. Therefore, in the absence of pleadings, and in the absence of proving

the Identity letter (Ext.E), the Gaonburah certificate (Ext.F) and the Gaon Panchayat certificate (Ext.G), there is no link between the petitioner and her projected father and that there is no link between the projected father of the petitioner and projected grandfather as the names of these two persons do not appear as voters in the same voters list.

18. There is no pleading as to what happened to the grandparents of the petitioner after their names appeared in the voters list of 1970.

19. Resultantly, in view of the discussions above, the Court is constrained to hold that the petitioner has not been able to establish a link with her projected father and similarly the link between the father and the projected grandfather was not established.

20. In respect of the prayer made by the learned counsel for the petitioner, that as it was due to professional incompetence of the learned counsel for the petitioner, who was appearing before the learned Tribunal, the matter be remanded back to the learned Tribunal to give one opportunity to the petitioner to prove her pleadings with admissible evidence, the Court is constrained to hold that while exercising certiorari jurisdiction, the scope of the writ court is very limited, which is only to examine as to whether the decision by the learned Tribunal was sustainable on facts and in law and as to whether the learned Tribunal has misdirected itself in an incorrect appreciation of the pleadings and evidence or failed to consider any pleadings or evidence which were available on record. The jurisdiction of the Court is neither an appellate nor a revisional jurisdiction, thereby, during the Court the inherent power to examine and appreciate the evidence and pleadings afresh.

21. Therefore, under the facts and circumstances of this case, the Court has not find any infirmity with the impugned opinion declaring the petitioner to

be a foreigner of Post 25.03.1971 stream.

22. Before parting with the records, it would be appropriate to mention that in the written statement filed by the petitioner, she has stated in paragraph-15 thereof that she was married to one, Amzad Ali, son of Afsar Ali, of Village-Kathajhar Pathar of Mouza- Gobardhana.

23. However, though a certificate dated 27.06.2015, was issued by the Secretary, 94 No. Khairabari Gaon Panchayat. It is not proved by examining the author as to the admissibility of the said evidence and proof of its contents, but as per the contents of the said certificate, the petitioner has stated that she had married on 05.04.1995 to Amjat Ali, son of Afsar Ali, a resident of Khairabari under Bornogar Revenue Circle of Barpeta District. Therefore, there is again a discrepancy in the name of the village where the petitioner was married to.

24. In view of the discussions above, the challenge to the impugned opinion dated 10.03.2017 passed by the learned Member, Foreigner's Tribunal, 9th, Barpeta, Assam, in F.T. Case No. 320/2015, arising out of Ref. IM(D)T Case No. 2391/C/98) fails and the writ petition is dismissed.

25. The consequences of the impugned opinion dated 10.03.2017, passed by the learned Member, Foreigner's Tribunal, 9th, Barpeta, Assam, in F.T. Case No. 320/2015, arising out of Ref. IM(D)T Case No. 2391/C/98 shall follow.

26. The records of the Tribunal be returned expeditiously by the Registry along with a copy of the order to be made a part of this record by the said learned Tribunal for future reference.

27. Interim bail granted to the petitioner by order dated 04.05.2017, stand recall.

28. The learned Standing Counsel for the FT and Border matters shall transmit a copy of this order to the concerned authorities.

29. Accordingly, this writ petition is dismissed.

JUDGE **JUDGE**

Comparing Assistant