

GAHC010134252019



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

Case No. : WP(C)/4032/2019

TARAPADA NAMADAS
S/O- LT BRAJABASI NAMADAS, R/O- VILL- NO.1 KANUPARA, P.O.
GURUFELA, UNDER P.S. KASHUGAON, DIST- KOKRAJHAR, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY SECY., MINISTRY OF HOME AFFAIRS, NORTH BLOCK, NEW
DELHI- 110001

2:THE STATE OF ASSAM
REP. BY THE PRINCIPAL SECY. TO GOVT. OF ASSAM
HOME AND POLITICAL DEPTT.
DISPUR
GHY-6

3:THE SUPERINTENDENT OF POLICE (B)
KOKRAJHAR
ASSAM

4:THE DY. COMMISSIONER (FRRO)
DIST- KOKRAJHAR
ASSAM

5:THE STATE COORDINATOR
NATIONAL REGISTRATION OF CITIZENSHIPS
ASSAM
1ST FLOOR
ACHYUT PLAZA
GS ROAD
BHANGAGARH
GHY-5

6:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELH

Advocate for the Petitioner : MR. D SAIKIA

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

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

JUDGMENT & ORDER (ORAL)

Date : 06-02-2023

(A.M. Bujor Barua, J)

Heard Mr. B. Chanda, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 5, respectively being the Union of India and the authority in the National Registration of Citizenships, Assam. Also heard Ms. A. Verma, learned counsel for the respondents No. 2 and 3, being the authorities in the Home Department, Ms. K. Phukan, learned counsel for the respondent No. 4, being the Deputy Commissioner (FRRO), Kokrajhar and Mr. A. Ali, learned counsel for the respondent No. 6, being the Election Commission of India.

2. The petitioner Tarapada Namadas is aggrieved by an ex-parte opinion dated 25.09.1997 of the Foreigners Tribunal, Dhubri, Kokrajhar and Goalpara in F.T. Case No. 476/K/86 by which the mother of the petitioner Sorojoni Sarkar was declared to be a foreigner who entered the State of Assam between 1966 and 1971. The petitioner also refers to a voters' list of 1966 of village Pam Mayanbori, Mouza Baghbor in the Barpeta district which contains the name of

Brajabasi Namadas, son of Biswanath at Sl. No. 383; the name of Sorojoni Namadas, wife of Brajabasi at Sl. No. 384 and the name of Tarapada Namadas, son of Brajabasi at Sl. No. 387. Brajabasi Namadas is the father of the petitioner, Sorojoni Namadas is the mother of the petitioner and the name of the petitioner himself appears in the voters' list of 1966 and therefore has to be accepted to be a citizen of India. The petitioner is aggrieved to the extent that as because of the ex-parte opinion by which his mother was declared to be a person who entered the State of Assam between 1966 and 1971, his legal rights otherwise as a citizen of India are being questioned by some of the authorities. Being aggrieved, this writ petition is instituted.

3. The petitioner also refers to an order dated 06.01.2016 of the Sub-Divisional Officer(Civil), Gossaigaon under Rule 3 of the Assam Registration of Birth/Death Rules, 1977 by which it had been ordered that the date of death of Sorojoni Namadas, wife of Brajabasi Namadas is 16.05.1991 and it has to be accepted that the mother of the petitioner Sorojoni Namadas died on 16.05.1991.

4. When we verify the records of service of notice on Sorojoni Namadas in connection with F.T. Case No. 476/K/86 of the Foreigners Tribunal at Dhubri, Kokrajhar and Goalpara, it is noticed that there is a report by the Process Server containing the signature as well as the left thumb impression of Sorojoni Das in the year 1997. If Sorojoni Das died in the year 1991, the report of the Process Server appears to be a frivolous report.

5. From the point of view that the notice was not appropriately served upon Sorojoni Sarkar and also from the point of view that when the opinion was rendered, Sorojoni Sarkar, wife of Brajabasi Sarkar was no more, we have to understand that the ex-parte opinion is unsustainable in law. Although there is a

question as to whether Sorojoni Sarkar, wife of Brajabasi Sarkar and Sorojoni Namadas, wife of Brajabasi Namadas are one and the same person remains, but still the materials as indicated above lead in favour of a declaration that there cannot be any ex-parte opinion rendered in a Foreigners Tribunal against the mother of the petitioner Sorojoni Namadas, wife of Brajabasi Namadas of village Pam Mayanbori, Mouza Baghbor in the Barpeta district. Accordingly, all legal rights of the petitioner as a citizen of India, without taking any recourse to an ex-parte opinion of a Foreigners Tribunal against his mother, would be available to the petitioner.

Writ petition stands allowed as indicated above.

J U D G E

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Comparing Assistant