
(2019) 01 GAU CK 0035
In the Gauhati High Court
Case No : Writ Petition (C) No. 7320 Of 2017

Dulal Chandra Paul

APPELLANT

Vs

Union Of India And 3 Ors

RESPONDENT

Date of Decision : 18-01-2019

Acts Referred:

Citation : (2019) 01 GAU CK 0035

Hon'ble Judges : Achintya Malla Bujor Barua, J;Prasanta Kumar Deka, J

Bench : Division Bench

Advocate : R.H Saikia

Final Decision : Dismissed

Judgement

Prasanta Kumar Deka, J

1. Heard Mr. P Sundi, learned counsel for the petitioner as well as Ms. G Sarma, learned counsel representing respondent no. 1 and Mr. A Kalita, learned counsel representing respondent nos. 2 to 4.

2. Order/opinion dated 11.08.2017 passed in F.T.(9) Case No. 223/2017 by the learned Member, Foreigners' Tribunal No. 9, Sonitpur at Dhekiajuli is put under challenge in this writ petition. Upon reference made by the Superintendent of Police (Border), Sonitpur expressing doubt about the nationality of the present petitioner Dulal Ch. Paul, the F.T.(9) Case No. 223/2017 was registered. On receipt of the notice, the petitioner entered appearance and filed his written statement taking the stand that Late Rajendra Ch. Paul, S/o Ramtanu Paul came along with his family members to India (Assam) from the district of Mymensingh of East Pakistan in the year 1965. Father of the petitioner along with his two brothers purchased the plot of land at village Alisinga under P.S. Dhekiajuli in the district of Sonitpur in the year 1965. The petitioner was brought up at village Alisinga and names of late Harendra Chandra Paul and Late Monindra Chandra Paul appeared in the Electoral Roll for the year 1993 under No. 72, Borsola LAC. The name of the petitioner was also recorded in the said voters' list of 1993

under No. 72, Borsola LAC. In the subsequent voters' lists of 1997, 2005, 2009 and 2016, the name of the petitioner was recorded but with the remark 'D-Voter'. The petitioner adduced his evidence and exhibited the registered sale deed of the year 1965 as Ext. 1, Identity Card of a Cooperative Society as Ext. 2, family Identity Card as Ext. 3, land revenue paying receipt by Rajendra Chandra Paul and Harendra Chandra Paul etc. dated 21.09.1990 on behalf of Muniruddin of land covered by patta no. 164 as Ext. 4. Similarly, Ext. 5 is the land revenue paying receipt dated 01.08.2005 paid by Dulal Chandra Paul, Gauranga Paul on behalf of Muniruddin of land covered by patta No. 100. Panchayat certificate issued by the Secretary as Ext. 6, Gaonburah's certificate dated 17.05.2017 as Ext. 7 and the voters' list of the year 1993 showing the name of the present petitioner. The tribunal finally opined against present petitioner and while opining so, the tribunal observed as follows:-

"7) Heard argument both the side. I have also seen the verification officer report. After careful perusal of the WS, Evidence as well as documents exhibited and relied upon by OP it is found that OP projected Rajendra Chandra Paul is his father. Due to insurgency in Bangladesh family of OP shifted to India and father of OP along with his two brothers purchased a plot of land in the year 1965 at village- Alisinga, P/S- Dhekiajuli, Dist.-Darrang (Assam). Father of OP died about 20 years ago and his mother died about 18 years ago. OP admitted that during his life time his father not casted his vote. OP produced a copy of voter list for the year 1993 containing the name of Sri Dulal Paul S/o- Rajendra aged about 40 years and one Jyanada W/o- Rajendra aged about 60 years whom OP projected as his mother. In his evidence OP stated that he entered India along with his father at the age of his 18 years. If that is so then his name along with the name of his mother should appeared in the voter list prior to 1993. But OP unable to produce any public record in India including voter list containing the name of his father, mother and also his name except only sale deed executed in the year 1965. OP stated that Rajendra Chandra Paul died about 20 years ago. Till date of his death his name not appeared any of the voter lists. Considering entire materials on record and also discussion made above it is appeared that OP unable to produced any documents in this case to prove that either father of OP or OP ordinarily resided in Assam since 1965 to till 1993. Even though OP stated that he resided in the land purchased by his father but I have not seen any landed document produced by OP in this case relation to the land purchased by the father of OP. As per law to be a citizen of India he has to be ordinarily resided in India since date of his entry in India. But OP totally failed to discharge his burden to prove that he is ordinarily resided in India since 1965 to 1993."

3. Mr. Sundi strenuously submits that the land document is the only linked document of the present petitioner with his father Late Rajendra Chandra Paul. In support of the said link there are other documents which show the name of the present petitioner as the son of Rajendra Chandra Paul. Countering the findings of the tribunal, Mr. Sundi further submits that it is the registered sale deed executed in the year 1965 gives a direct link of the petitioner to his father

whose name is recorded in the said sale deed to establish the fact that the entry of the father of the petitioner was in the year 1965 and since then he had resided at village Alisinga till his death. The land revenue paying receipts ought to have been taken into consideration by the tribunal in order to hold the continuity of the possession of the said land purchased in the year 1965 by the father of the petitioner and subsequent to death of his father by the petitioner. In addition to that, the name of the petitioner finds place in the voters' list of 1993 showing the continuity of the presence of the petitioner at village Alisinga. Accordingly, Mr. Sundi sought for setting aside of the impugned opinion.

4. Mr. Kalita, on the other hand, submits that the period from 1965 onwards till 1993 the petitioner failed to show any record in order to derive the benefit of the presence of both the father of the petitioner and the petitioner himself which naturally creates a doubt with regard to the presence of the petitioner in the Indian soil during that period from 1965 to 1993. The tribunal rightly decided the opinion which requires no interference by this court.

5. Considered the submission of the learned counsel. Perused the case records and the findings of the tribunal. It is the burden of the petitioner to show that he remained in possession of the said land since the year 1965. More so, the petitioner deposed that while coming to India from the specified territory along with his father he was 18 years old. If the said fact is taken into consideration, the petitioner ought to have produced any valid certificate from the competent authority with regard to their registration as immigrants. Absence of said particulars creates a doubt with respect to the entry of the petitioner from the specified territory in the year 1965. There is no voters' list in between the period 1965 and 1993 in order to show that the name of the petitioner was recorded in the voters' list during that period. The sale deed is a registered one wherein the name of the projected father of the petitioner is found to be recorded. But it is surprising to that since the year 1965 there was no mutation of the name of the petitioner with respect to the land so purchased. On scrutiny of the land revenue paying receipt, it is very much clear and specific that the land revenue was paid in the name of Muniruddin, the vendor of the projected father of the petitioner but with respect to Patta numbers other than the one recorded in the said sale deed. Without showing its continuity with respect to the original dag and patta numbers of the land purchased in the year 1965, it is difficult to hold the flow of title of the present petitioner over the said land purportedly purchased in the year 1965. The land revenue paying receipts are of the year 1990 and 2005. The name of the petitioner is found to be recorded in the voters' list of 1993. This accordingly raises the preponderance of probability of entry of the petitioner from a specified territory to India (Assam) only in the year 1990 and not in the year 1965. The appreciation of the evidence by the tribunal is proper and accordingly we do not find any merit in the submission of Mr. Sundi, learned counsel for the petitioner and we accordingly dismiss this writ petition. No costs.

6. Send back the LCRs.