

(2019) 08 GAU CK 0042

In the Gauhati High Court

Case No : Writ Petition (C) No. 4287 Of 2019

Jahanara Begum

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 16-08-2019

Acts Referred:

Foreigners Act, 1946 — Section 9
Constitution Of India, 1950 — Article 226

Citation : (2019) 08 GAU CK 0042

Hon'ble Judges : Manojit Bhuyan, J;Kalyan Rai Surana, J

Bench : Division Bench

Advocate : A. Hussain, A.S. Choudhury, G. Hazarika, A. Borgohain, A. Kalita, U. Das

Final Decision : Dismissed

Judgement

1. Heard Mr. A. Hussain, learned counsel for the petitioner. Also heard Ms. G. Hazarika, learned counsel for respondent No.1, Ms. A. Borgohain, learned counsel for respondent No.2, Ms. U. Das, learned counsel for respondent No.4 and Mr. A. Kalita, learned counsel for respondent No.4, 5 and 6.

2. By this writ petition filed under Article 226 of the Constitution of India, the petitioner has challenged the opinion dated 26.04.2019 passed by the learned Member, Foreigners Tribunal 4th, Nagaon at Juria in F.T. Case No. 23/2017 arising out of Police Reference 'B' Case No. 191/98.

3. The learned counsel for the petitioner has referred to the written statement filed by the petitioner and he has submitted that the petitioner was born in Village Kawaimari, Mouza and P.S. Juria, District Nagaon, Assam and that her projected father's name is Husen Ali and her projected mother's name is Jahuran Nessa. It is further submitted that the petitioner has married Shafiquel Islam, son of Late Samsuddin, resident of Village- Bagariguri, Mouza and P.S. Juria, District Nagaon, Assam. It is submitted that the name of the petitioner's father is enrolled in the voters list of 1965, 1970, 1997 and 2011 of Village- Kawaimari in

respect of 87 No. Rupahi-Hat LAC. It is also submitted that there is landed property in the name of the father of the petitioner and grand-father. However, it appears that beyond pleadings made in the written statement, in the evidence-on- affidavit filed by the petitioner as OPW-1, it has been stated that Tahur Ali is the grand-father and Jamiran Nessa is the grand-mother of the petitioner, and that her father had six brothers including himself and three sisters, viz., (i), Hussen Ali (father), (ii) Abdul Hashim, (iii) Abdur Rahim, (iv) Surhab Ali, (v) Abdul Jabbar, (vi) Idris Ali, (vii) Mangal Jan, (viii) Maharjan, and (ix) Fuljan, and that the petitioner had also stated that she has two brothers and four sisters including herself, viz., (i) Rofique Ali, (ii) Rezak Ali, (iii) Jahanara Begum (petitioner), (iv) Mofida Khatun, (v) Muksida Khatun, and (vi) Khaleda Khatun. It was also stated that she has two sons and three daughters, namely, (i) Shahida Khatun, (ii) Aliza Khatun, (iii) Lailia Begum, (iv) Jahid Ali, and (v) Ahed Ali.

4. To prove her defence, the petitioner has examined herself as OPW-1, her projected father as OPW-2, and one Sayed Baharul Islam, Extra Writer in the Sub-Registry, Nagaon as OPW-3, and she has relied on the following exhibits, viz., Certificate by Sarkari Gaoubura regarding petitioner's identity and marriage (Ext.1), certified copy of voters list of 1965 containing the name of Hussen Ali, father-Jahuran Ali (Ext.2), certified copy of voters list of 1970 of Hussen Ali, father- Tahur Ali (Ext.3), certified copy of voters list of 1997 of Hussen Ali, father- Tahur and Rafiqul Islam, father- Hussen (Ext.4), certified copy of voters list of 2011 of (i) Hussen Ali, father- Late Tahur Ali, (ii) Rafiqul Islam, father- Hussen Ali, (iii) Afia Khatun, husband- Rafiqul Islam, and (iv) Abdul Rezak Ali, father- Hussen Ali (Ext.5), copy of jamabandi in the name of father of the petitioner for land covered by Dag No. 78/79, Patta No.25 (new) of Kissam Kawaimar, Mouza- Juria, District Nagaon (Ext.6). Both the OPW-1 and OPW-2 have stated that the father of Hussen Ali is Tahur Ali, but his name is recorded as Jahurali in the voters' list of 1965 and that Tahur Ali and Jahurali are the names of same and one person.

5. It is seen that in the written statement filed by the petitioner there is no reference to any will executed by her projected father in her favour. Similarly, in the evidence-on- affidavit filed by OPW-1 and OPW-2, there is no reference to any will by which Hussen Ali had bequeathed any land to the petitioner. However, it is seen that the OPW-1, OPW-2 and OPW-3 have all been cross-examined in respect of the will of OPW-2. However, on the perusal of the oral deposition of OPW-3, it appears that he had stated regarding execution of a will by Jahanara Begum, daughter of Hussen Ali and it is specifically stated that the other party is Hussen Ali, son of Tahur Ali, of PS & Mouza- Juria, entered as Will No.19, Book No.'3'III dated 2018, issue date 28.08.2000 and he had stated that the land described in the will is 1 katha, covered by Dag No.80, Miyadi Patta No.11 and that as per the will, Jahanara Khatun is the daughter of Hussen Ali. He has also stated that the date of will is 10.08.2018. However, it is seen that in the deposition of the OPW-3, neither the will nor the original volume book has been marked as an exhibit.

6. It is seen that it has not been stated in the written statement or in the evidence- on - affidavit of OPW-1 and OPW-2 that by a purported will, the father of the petitioner (i.e. OPW-2) had bequeathed any land to the petitioner and moreover, none of the documents exhibited before the learned Tribunal, show that the projected father of the petitioner was the owner of land bequeathed to the petitioner by the purported will. The will appears to be unrelated to the land covered by the record of rights, i.e. jamabandi (Ext.6). Thus, an un-probated will has no persuasive value to prove that the petitioner is the daughter of the Hussen Ali. Moreover, in his cross-examination, OPW-2 has stated that he had executed the will on demand by the petitioner. Moreover, it is seen that the proceeding before the learned Tribunal had been initiated on the basis of Police Reference 'D' Case No. 191/1998, and as per the finding recorded by the learned Tribunal, the notice thereon was issued to the petitioner on 17.03.2017. Thus, the prima facie impression of the Court is that the will is a document specifically manufactured for the purpose of creating evidence before the learned Tribunal.

7. It is seen that except for the Certificate by Sarkari Gaonbura (Ext.1) and the purported Will (Ext.7), none of the remaining 5 (five) exhibited document is found to be a sufficient proof of existing relationship between the petitioner and her projected father. The Certificate by Sarkari Gaonbura (Ext.1) is inadmissible in evidence because the State Emblem of "Lion Mast of Ashoka at Sarnath with words Government of Assam" has been printed on the said certificate. This Court in the case of Diluwara Khatun Vs. Union of India, 2019 (1) GLT 382, after discussing the various provisions of the applicable Acts and Rules in respect of use of "State Emblem", has categorically held that any document or certificate issued by an authority using the State Emblem, who are otherwise not authorized to use the State Emblem under the Act and the Rules are inadmissible piece of evidence and therefore, no reliance can be placed on such document. We are bound to follow the said ratio in this case as the said Gaonbura's Certificate (Ext.1) contains State Emblem printed on the document and there is nothing to show that the OPW-3 is authorized to use State Emblem. Thus, the evidence tendered by the OPW-3 is of no help to the petitioner. The lack of evidentiary value of Will has already been discussed in the foregoing paragraph, as such, the said will (Ext.7), being a manufactured document, is not found to be sufficient to prove any relationship between the petitioner and her projected father. Thus, the rejection of such evidence by the learned Tribunal cannot be faulted with.

8. The documents marked as Ext.2 to Ext.6 does not contain the name of the petitioner with her projected parents or grand-parents. Thus, with the failure on part of the petitioner to prove her linkage to her projected parents and grand-parents, the petitioner is found to have been unable to discharge her burden under Section 9 of the Foreigners Act, 1946 to prove that she is not a foreigner, as such, the finding recorded by the learned Tribunal is not liable to be set aside or quashed.

9. Therefore, in light of discussions above, this Court does not find that the

impugned opinion rendered by the learned Tribunal is vitiated by any jurisdictional error or that there was any failure of giving opportunity of hearing to the petitioner. Therefore, as the Court is exercising supervisory jurisdiction and not appellate jurisdiction, no case is made out for substituting the opinion rendered by the learned tribunal with the view of the Court. This is not a case where the learned Tribunal had refused to admit admissible evidence or that its finding is de hors the evidence on record.

10. Hence, this writ petition fails and the same is dismissed, leaving the parties to bear their own cost.

11. A copy of this order may be made a part of the records of the learned Tribunal for future reference.