
(2023) 03 GAU CK 0045

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 1255 Of 2017

Khudeja Khatun

APPELLANT

Vs

Union Of India And 4 Ors

RESPONDENT

Date of Decision : 23-03-2023

Acts Referred:

Evidence Act, 1872 — Section 65, 76

Citation : (2023) 03 GAU CK 0045

Hon'ble Judges : Achintya Malla Bujor Barua, J; Robin Phukan, J

Bench : Division Bench

Advocate : F U Borbhuiya

Final Decision : Allowed

Judgement

AM Bujor Barua, J

1. Heard Mr. A. Matin, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel for the respondent No.1 being the Union of India, Mr. J. Payeng, learned counsel for the Home Department of Government of Assam being the respondent No.2, 4 and 5 and Ms. U. Das, learned Advocate for the respondent No.3 being the Deputy Commissioner, Goalpara.

2. The petitioner, namely, Khudeja Khatun was referred to the Foreigners' Tribunal No.4, Goalpara for rendering an opinion as to whether she is a person who had entered the State of Assam from the specified territory on or after 25.03.1971, resulting in registration of F.T. Case No.306/2015. The Tribunal rendered an opinion dated 30.01.2017, that the petitioner is a foreigner. Being aggrieved this Writ Petition being instituted.

3. The petitioner before the Writ Court relies on the Voters List of 1966 of Village (315) Deudhuturi, Police Station Lakhipur, Circle Balijana in Goalpara District, which contains the name of Fajal Hoque, son of Manir Uddin at Sl. No.45 and that of Sakina Khatun, wife of Fajal Hoque at Sl. No.51. The petitioner thereupon relies upon the Voters List of 1985 of Village (Ka) 315 Deudhuturi, Police Station

Goalpara, Circle Balijana in Goalpara District, which contains the name of Sakina Khatun Bewa, wife of Fajal Hoque at Sl. No.71 and that of Rajab Ali, son of Fajal Hoque at Sl. No.72. Both Sakina Khatun Bewa and Rajab Ali are shown to be residing in the same House No.16.

4. The petitioner relies upon the birth certificate bearing No.0708720, issued by the Registrar of Birth and Death, Kharmuza M.P.H.C., District Goalpara which contains the information that Khudeja Khatun is the daughter of Rajab Ali and Fatema Khatun, both residents of Village Deudhuturi and was born on 25.01.1990. The evidentiary value of a birth certificate had been decided by the Court in its judgment dated 29.01.2019 in Rupa Das vs. Union of India and others, reported in 2019 (8) GLR 402, wherein it has been held that a birth certificate is a document covered by Registrar of Birth and Death Act, 1969. It has also been held that a birth certificate issued without following the requirements of Section 76 of the Evidence Act, would not be admissible in evidence and if such document is sought to be relied upon for the purpose of its contents and there would be a further requirement of the person relying on the birth certificate to adduce secondary evidence under Section 65 of the Evidence Act. As prima facie the birth certificate produced by the petitioner, which is available at page-33 of the Writ Petition, shows that Khudeja Khatun is the daughter of Rajab Ali and Fatema Khatun of Village Deudhuturi, and as the petitioner is relying upon the birth certificate, the matter is remanded back to the Foreigners' Tribunal No.4, Goalpara to allow the petitioner to adduce further secondary evidence under Section 65 of the Evidence Act, as regards the contents of the birth certificate.

5. The petitioner also relies on the school certificate issued by the Head Teacher of Sarkar Para L.P. School which contains the information that she is the daughter of Rajab Ali of Village Deudhuturi.

6. Accordingly the matter is remanded back to the Tribunal. The petitioner may adduce evidence under Section 65 of the Evidence Act, as regards the birth certificate and further evidence by rendering the evidence of the Head Teacher of Sarkar Para L.P. School as regards the school certificate, by producing the original records as regard the contents of the school certificate and thereafter, if the information contained in the birth certificate or the school certificate is that she is the daughter of Rajab Ali of Village Deudhuturi and Rajab Ali can be understood to be a citizen through the Voters Lists of 1985 and 1966 of Village Deudhuturi, wherein in the Voters List of 1985 the name of Rajab Ali along with his mother Sakina Khatun Bewa appears and in the Voters List of 1966 the name of Sakina Khatun and his grandfather Fajal Hoque appears, the Tribunal may pass a reasoned order.

7. The petitioner to appear before the Tribunal on 28.04.2023. In the event, a reasoned order is passed in favour of the petitioner, the same would prevail over the order dated 30.01.2017, passed by the Foreigners Tribunal No.4, Goalpara in F.T. Case No.306/2015 and if it is against her, the implications under the law may

follow.

8. Till the reasoned order is passed no coercive action be taken against the petitioner.

9. The petition stands allowed as indicated above.

10. Send back the LCR.