

(2016) 09 GAU CK 0059
In the Gauhati High Court
Case No : Writ Petition (C) No. 5280 of 2016.

Mihir Biswas - Petitioner @HASH State of Assam and Others

Date of Decision : 22-09-2016

Acts Referred:

Immigrants (Expulsion from Assam) Act, 1950 — Section 2

Citation : (2017) CriLJ 800 : (2016) 6 GauLJ 77 : (2017) 2 GauLR 584 : (2016) 4 GauLT 861 : (2017) 1 NEJ 568

Hon'ble Judges : Ajit Singh, CJ. and Manojit Bhuyan, J.

Bench : Division Bench

Advocate : Mr. S.B. Rahman and Mr. A.W. Aman, Advocates, for the Petitioner; Mr. S.C. Keyal, Assistant Solicitor General, Mr. B.N. Sarma, Sr. G.A. and Mr. G. Sarma, AG, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. Ajit Singh, C.J. - Mr.SB Rahman and Mr.AW Aman, learned counsel for the petitioner. Mr.SC Keyal, learned Assistant Solicitor General of India for Respondent No.1, Mr. BN Sarma, learned Senior Government Advocate, Assam, assisted by Mr. G. Sarma, learned Government Advocate appearing for Respondent Nos.2 to 5.

By this application under Article 226 of the Constitution of India, the petitioner Sri Mihir Biswas has prayed for issuance of a Writ in the nature of Habeas Corpus directing the authorities to release him from illegal detention and also for a Writ in the nature of Mandamus directing the authorities to treat the petitioner as an Indian citizen by not deporting him from India.

2. According to the petitioner, his father-Mahindra Nath Biswas (since deceased)-entered into India via Banpur Check-post on 1.2.1966 (Annexure-1) from East Pakistan (now Bangladesh) at the time of civil distribution and then settled in Garaputa village under Nadia District of West Bengal. His father also bought a plot of land at Garaputa village by executing a deed of sale on 23.06.1967. The petitioner was born in that village in the year 1972 and later migrated to Malda District with his parents. In the year 2009, the Election Commission of India

issued a certificate in his name (Annexure-2).

3. The petitioner, however, shifted his place of stay to Guwahati in the year 1986-87 and started working in a garage. But the police authorities contemplated to deport him to Bangladesh. In one of such bids, he was even taken to the border of Bangladesh and was tried to be deported. But as the authorities of Bangladesh denied accepting him, he was abandoned in the border itself. In the year 2007, the police authorities again tried to deport him and then, being aggrieved, he preferred a writ petition being W.P(C) No. 6513/2007. The said petition was disposed of on 26.06.2007 (Annexure-3) with a direction to the authorities to take action in the matter strictly in accordance with the provisions of Immigrant (Expulsion from Assam) Act, 1950. It was also directed that while doing so, the authorities shall decide as to whether protection under proviso to Section 2 of that Act, may also be extended to the petitioner or not.

4. But, before that exercise could be completed, he was again arrested on 09.09.2014 and was put under detention in Goalpara Detention Camp without even his case being referred to the Foreigners' Tribunal for determining as to whether he is an illegal migrant or not. In the meanwhile, the Deputy Commissioner of Police (B), Guwahati, Assam vide letter dated 24.08.2015 (Annexure-4) was informed by the Additional District Magistrate(General), Nadia that the sale deed by which the father of the petitioner bought some lands at Nadia District was found to be correct, genuine and authentic after proper verification in the office of the District Registrar, Nadia. The then Advocate General of Assam also advised the Deputy Secretary to the Government of Assam, Home and Political Department, vide letter dated 23.12.2015 (Annexure-5) that the petitioner may be released from the Detention Camp and be allowed to stay in India. The Press Advisor to the Chief Minister vide communication dated 26.02.2016 (Annexure-6) also requested the Deputy Commissioner, Kamrup (Metro) to release the petitioner, but in vain.

5. Smti Jayanti Biswas-wife of the petitioner-also submitted an application on 29.02.2016 (Annexure-7) before the Deputy Commissioner,Kamrup (Metro) for releasing the petitioner. And the Additional Deputy Commissioner, Kamrup(Metro) upon enquiry by taking statements of the wife and brother of the petitioner as well as considering the documents submitted in support of the claim that the petitioner is not an illegal migrant, vide letter dated 26.04.2016 (Annexure-8) opined the Deputy Commissioner, Kamrup(Metro) that the petitioner is entitled to come within the purview of the protection provided under section 2 of the Immigrant (Expulsion from Assam) Act, 1950. But in spite of that, the petitioner has not yet been released from the detention camp and has been detained illegally.

6. Section 2 of the Immigrant (Expulsion from Assam) Act, 1950 reads as follows:-

"2. Power to order expulsion of certain immigrants:-

If the Central Government is of opinion that any person or class of persons, having been ordinarily resident in any place outside India, has or have whether before or after the commencement of this Act, come into Assam and that the stay of such person or class of persons in Assam is detrimental to the interests of the general public of India or of any section thereof or of any Scheduled Tribe in Assam, the Central Government may by order -

(a) direct such person or class of persons to remove himself or themselves from India or Assam within such time and by such route as may be specified in the order;

(b) give such further directions in regard to his or their removal from India or Assam as it may consider necessary or expedient; Provided that nothing in this section shall apply to any person who on account of civil disturbances or the fear of such disturbances in any area now forming part of Pakistan has been displaced from or has left his place of residence in such area and who has been subsequently residing in Assam."

7. In the instant case, the claim of the petitioner is established to be well founded. His father purchased some lands in West Bengal in the year 1967, the sale-deed of which has been reported to be genuine and authentic. He entered into India in the year 1966 at the time of civil distribution in Bangladesh and the competent authorities have not disputed that fact. On the contrary, the authorities have agreed to the aforesaid findings and are also of the view that the petitioner is entitled to the protections under the aforesaid proviso to Section 2 of the Act. The protection as contemplated under the aforesaid proviso clearly stipulates that the aforesaid provision for deportation from India shall not be applicable to those persons who entered into Assam on being displaced from the areas forming a part of Pakistan on account of civil distribution or fear of such disturbances and have been residing in Assam, meaning thereby that the persons under that category shall not be deported from India. It is apparent from the records that the petitioner falls within the ambit of Proviso to Section 2 of the Immigrant (Expulsion from Assam) Act, 1950. The authorities are also of the same view. Therefore, no doubt remains, that the detention of the petitioner is illegal and without authority. He has been languishing in the detention camp for more than two (2) years by now since his date of arrest on 09.09.2014 and there appears to be no justifiable ground to keep him under detention any further. Accordingly, the petitioner is directed to be released immediately from the Goalpara Detention Camp. The respondents shall also not deport him from India.

8. The petition is accordingly allowed and disposed of with cost of Rs.5000/- to be paid to the petitioner by the respondent Nos. 2 to 5 within three weeks.