

GAHC010041492020



2024:GAU-AS:10109

THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

WP(C) No. 1512 of 2020

Nur Islam, aged 56 years,
S/o Late Amir Uddin @ Amir Ali,
Permanent resident of Village-Mahammadpur,
Mouza- Jania, P.S.-Barpeta, in the
District of Barpeta, Assam.

.....Petitioner

-Versus-

1. The Union of India, Represented by the
Ministry of Home Affairs, New Delhi,
Pin-110001.
2. The Election Commission of India, Government of India, New Delhi-110001.
3. The State of Assam, Represented by the
Commissioner & Secretary to the Govt. of Assam,
Home Department, Dispur, Guwahati-781006.
4. The State Co-ordinator,
National Register of Citizens (NRC)

Bhangagarh, Guwahati-5.

5. The Deputy Commissioner, Barpeta,
Assam, PIN- 781301.

6. The Superintendent of Police (B),
Barpeta, Assam, PIN-781301.

7. The Superintendent of Police (B),
Barpeta, District-Barpeta,
Assam, PIN-781301.

.....Respondents.

Advocates for the petitioner: Mr A Chaliha

Advocate for the respondents: Mr J Payeng, SC, FT,
Mr H K Hazarika, GA, Assam,
Mr A I Ali, SC, ECI.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of Hearing : 14.03.2024

Date of Judgment : 03.10.2024

JUDGMENT AND ORDER (CAV)

(Susmita Phukan Khaund, J.)

1. Heard Mr A Chaliha, learned counsel for the petitioner. Also heard Mr J Payeng, learned Standing Counsel, appearing on behalf of the Foreigners' Tribunal, Mr H K Hazarika, learned

Government Advocate, Assam appearing on behalf of State respondents and Mr A I Ali, learned Standing Counsel, appearing on behalf of the Election Commission of India.

2. The petitioner in this case is Nur Islam, who has filed this writ petition under Article 226 of the Constitution of India, for issuance of a writ in the nature of mandamus, certiorari or any other appropriate order of like nature for quashing and setting aside the Judgment and Order dated 04.09.2019, passed by the Foreigners' Tribunal 1st at Barpeta in FT Case No. 116 of 2017, arising out of IM(D)T Reference Case No. 7244/B/98, declaring him as a foreigner, who entered into Assam, post 25.03.1971.

3. The genesis of the case was that the IM(D)T Reference Case No. 7244/B/98 was forwarded by the Superintendent of Police (Border), Barpeta (SP, for short), alleging *inter alia*, that the petitioner is a foreign national. Later, this case was re-numbered as FT Case No. 116/2017 and registered under the Foreigners' Act, 1946. Notice was duly served upon the petitioner, who appeared before the Tribunal and filed written reply/Written Statement (WS for short) claiming to be an Indian citizen by birth. To substantiate his WS, the petitioner adduced the evidence of five witnesses, including himself and exhibited some documents.

Decision of the Tribunal

4. It was held by the learned Tribunal that the names of the petitioner's parents have appeared along with the name of his uncle in the Voters' List of 1970. His mother's name has appeared as Basiran Nessa. It has been submitted by the petitioner through his reply that Basiran Nessa @ Shabjan Nessa is one and the same person. However, the learned Tribunal

did not accept the petitioner's submission that Basiran Nessa @ Shabjan Nessa is one and the same person, stating that mere statement without supporting evidence is not acceptable. Further, it was observed by the learned Tribunal that the petitioner submitted the Voters' Lists of 1985, 1989, 1994 and 1997, which reflects his name, along with the name of his mother, Shabjan Nessa, but in the Voters' List of 1966 and 1970, his mother's name is shown as Basiran Nessa instead of Shabjan Nessa. The learned Tribunal did not accept the petitioner's submission that Basiran Nessa and Shabjan Nessa is one and the same person, but it was observed by the learned Tribunal that the 1966 Voters' List and the 1997 Voters' List (Exhibit-10), reflects the name of the projected grandmother of the petitioner, who has failed to explain the enormous gap between the Voters' List of 1966 and 1997. It was held that the petitioner has failed to explain as to why he could not submit any Voters' Lists between 1966 and 1997. The learned Tribunal also did not accept the evidence adduced by the other witnesses, DW-2, DW-3, DW-4 and DW-5.

5. DW-2 is the projected uncle of the petitioner, who has stated that Mafiz Uddin @ Mahiz Uddin @ Mahi Dewani is one and the same person, which was not accepted as valid evidence by the learned Tribunal due to the failure of the petitioner to explain why his grandfather is identified by three different names. Although DW-4, a Junior Assistant of R.K.G Branch, at DC's Office, Barpeta, exhibited Jamabandi copies as Exhibits-3 and 5, yet as the petitioner has failed to submit a copy of the Circle Officer's mutation order and the death certificate of his father to prove Exhibits-3 and 5, the Tribunal did not accept Exhibits-3 and 5 as valid evidence. Other reasons have been attributed to explain, why the Tribunal did not accept Exhibits-3 and 5 as bankable evidence. This will be discussed at the appropriate stage.

6. It has been held by the learned Tribunal that the petitioner has stated in his WS that his grandparents' names, parents' names, along with the names of two uncles have appeared in the Voters Lists of 1966 (Exhibit – 1) but in the said Voters List, his grandmother's age is shown as 40 (Forty) years and his projected uncle's age is shown as 30 (Thirty) years, which is biologically not possible as there cannot be an age difference of only 10 (Ten) years between the mother and son.

7. The Gaonburah's Certificate marked as Exhibit-13 was also not accepted as evidence as the State Emblem was embossed unauthorizedly at the top of the certificate. The name correction affidavit which was marked as Exhibit-14, was also not accepted as evidence, as it was a self-sworn affidavit, which has no evidentiary value. It has been held by the learned Tribunal that the petitioner has failed to discharge his onus as per provision of Section 9 of the Foreigners' Act, 1946 (Act of 1946, for short), to prove that he is a citizen of India and not a foreign national. He was, thus, declared a foreign national within the meaning of Section 2(a) of the Act of 1946, having illegally entered into India, on or after 25.03.1971.

Submissions for the petitioner:

8. It is submitted on behalf of the petitioner that he is a citizen of India by birth. His grandfather, father, uncles and brothers are also citizens of India by birth. The question of illegally entering into India from any specified territory does not arise at all. The Investigating Officer (IO, for short) has apathetically conducted the investigation. The actual name of the petitioner's father is Amir Uddin, but the IO has wrongly recorded his name as only Amir.

9. It is further submitted that the petitioner's mother, Shabjan @ Basiran expired and his

father remarried after her demise and his step mother's name is Sajan Nessa.

10. It is also submitted that Mafiz Uddin and Mahis Uddin is one and the same person. The petitioner's father Late Amir Uddin @ Amir Ali is the son of Mafiz uddin @ Mahis Uddin @ Mahi Dewani. It is further contended that the nationality in respect of the petitioner's father, uncle, brother who are similarly situated, was never questioned by the respondents, but to his utter dismay the petitioner was suspected to be a foreigner for reasons best known to the respondent authorities. The names of the petitioner's grandparents and parents, have been reflected in the NRC, which is marked as Annexure-1 of the petition.

11. It is further submitted that the names of the petitioner's grandfather, grandmother, parents and two uncles are reflected in the Voters List of 1966 of 51 No. Jania Legislative Assembly Constituency at village - Mahammadpur, Mouza – Jania, Police Station and district Barpeta at House No. 27, Part No. 46. It is further submitted that although the petitioner's father died in the year 1969, the names of his parents along with the name of one of his uncles has been reflected in the Voters Lists of 1970 of 44 No. Jania LAC at village Mahammadpur, House No. 27 Part No. 47 (Annexure-3).

12. It is further submitted that the petitioner's father was the owner and was in possession of a plot of land covered by K.P. Patta No. 118 (old)/112 (new) of village – Mahammadpur, Mouza - Jania, Police Station and District – Barpeta, Assam and this land was mutated in the name of the petitioner's mother. In the year 1969, the petitioner's grandfather was given a plot of land admeasuring 3 Bighas covered by Dag No. 45 of K.P. Patta No. 182 of Mahammadpur, Mouza- Jania, Police Station & District-Barpeta which has been mutated in the name of the petitioner in the year 1975 and at present, the petitioner is paying the land

revenue.

13. It is further submitted that in the Voters Lists of 1985, 1989, 1994 and 1997, the names of the petitioner's grandparents, parents, uncles, siblings and wife along with his own name has been reflected in 44 No. Jania LAC of village - Mahammadpur, Mouza – Jania, Police Station and District - Barpeta. However, in some of the Voters Lists, his grandfather's name has been wrongly reflected as Mahiz Uddin instead of his grandfather's actual name Mafiz Uddin. In the Voters List of 1989, his father's name has been wrongly inserted as Amir Ali instead of Amir Uddin and his mother's name has been wrongly inserted as Shabjan Nessa instead of Basiran Nessa.

14. It is stated by the petitioner that the learned Tribunal has erred by not considering the documentary evidence and a cryptic judgment and order was passed by holding the petitioner to be a foreigner of post 25.03.1971 stream. It is further contended that at the time of issuing notice, the Tribunal must apprise the main ground to the proceedee as per Clause 3 of the Foreigners (Tribunal), Order 1964 (The Order of 1964, for short) but such ground was not mentioned in the instant case. The petitioner was not given a reasonable opportunity of making a representation and producing evidence as the Tribunal has failed to serve notice along with the main grounds alleging the petitioner to be a foreigner in contravention of Clause 3 (i) of the Order of 1964. The learned Tribunal has erred by exceeding its jurisdiction by giving direction to the authority to take steps to delete the name of the petitioner and beneficiaries from the Voters List and thus the impugned order is unsustainable in law and is liable to be set aside and quashed.

15. As the petitioner's parents and grandparents were born in undivided India, the

petitioner is a citizen of India as has been provided in Section 6A(1)(d) of the Citizenship Act, 1955 (the Act of 1955 for short). As the petitioner's grandfather's name has appeared in the Electoral Roll of 1966, which has been used for the purpose of General Election to the House of People held in 1967 and as the petitioner's father is a resident of Assam, the petitioner is thus a citizen of India. It is further averred that the learned Tribunal has acted mechanically and has failed to appreciate the age of the petitioner's mother and the Tribunal passed the order by considering the age of the petitioner's steppmother.

16. It is submitted that this is a fit case where this Court may invoke its extraordinary jurisdiction under Article 226 of the Constitution of India, by intervening into the matter in an appropriate manner and allowing the prayer of the petitioner to set aside and quash the order impugned by the petitioner.

Submissions of the respondents:

17. *Per contra* the learned counsel for the respondents have laid stress through their arguments that the petitioner has failed to build any linkage through the Voters List of 1985. It is further submitted that the Voters Lists of 1966 and 1997 vis-à-vis the Voters List of 1985 are not similar, thus contradicting the petitioner's claim. Respondents stated that suddenly, the name of the petitioner's projected mother appears to be different in the Voters List of 1985 and subsequent Voters Lists. There is not an iota of evidence attributing any reasons why the petitioner's mother's name, which earlier appeared as Bachiran Nessa, later appeared as Shabjan Nessa in the subsequent Voters Lists. There are discrepancies and differences in the names reflected by the Voters Lists submitted by the petitioner as evidence. The name of the petitioner's father Amir Uddin has become Amir. The Voters' List of 1985 reflects that

Shabjan Nessa's age was 48 (Forty Eight) years which indicates that her date of birth would be in the year 1939, but when Bachiran @ Shabjan Nessa's age is 28 (Twenty Eight) years in 1970, then her date of birth would be in the year 1942.

18. It is further contended that the petitioner has stated that his father passed away in the year 1969, but his father's name appears in the Voters List of 1970. On the contrary, the Voters List of 1994 reflects the petitioner's mother's name as Shabjan Nessa whereas the Voters List of 1997 reflects the petitioner's mother's name as Sabjan Bidhaba. So, stating the learned Standing Counsel, Foreigners' Tribunal, Mr. J. Payeng has submitted that the Voters Lists of 1966 and 1970, vis-à-vis the Voters Lists of 1994 and 1997, are of different persons and the petitioner has tried to establish a lineage by using the Voters' Lists of different persons with similar names. It is further submitted that the jamabandi marked as Annexure-4 of the petition does not establish any lineage as the names are absolutely different. Here, the name of Smt. Sajan Nessa is shown as wife of Amir Sheikh and not as wife of Amir Uddin or Amir. The registered deed was not proved by official witnesses by producing the register before the Tribunal. The learned counsel for the respondents has relied on the decision of his Court in ***Musstt. Hazara Khatun –vs- Union of India and 6 others***, reported in **2019 (1) GLT 784.**

19. It is further contended by the learned counsel for the respondents, that the petitioner has failed to mention in his pleadings that his grandfather had two wives. The Gaonburah's certificate was rightly rejected by the Tribunal. The oral evidence of the Gaonburah cannot be accepted. The learned counsel for the respondent has relied on the decision of this Court in the case of ***Nur Begum Vs Union of India and Others***, in connection with

WP(C)/1900/2019, decided on 18.02.2020.

20. It is submitted by the learned counsel for the respondent that this petition is liable to be dismissed.

21. The remaining part of the arguments of both the sides will be discussed at the appropriate stage.

Discussions and Conclusion:-

22. The question that falls for consideration in this case is that whether the learned Tribunal has erred in declaring the petitioner to be a foreign national?

23. The instant petition, the WS and the evidence-in-chief of the present petitioner/DW-1 depicts that he has submitted that his father is Amir Uddin, but the IO had wrongly recorded his father's name as Amir instead of Amir Uddin. The petitioner was born in the year 1963 and was brought up at Village-Mahammadpur, Mouza, Jania, P.S.- Barpeta, District-Barpeta. Late Mafiz Uddin @ Mahiz Uddin @ Mahi Dewani, S/o Late Gumani, was his grandfather. Contrary to the instant petition, wherein, he has stated that his grandmother's name is Late Sukurjan, the petitioner has stated through his WS and evidence-in-chief that Shajan Nessa was his grandmother. Again contradicting his WS and evidence, he stated that Shajan Nessa is his step mother. He kept vacillating his submissions, relating to the identity of his grandmother.

24. Through this instant petition, the WS filed by the petitioner before the learned Tribunal and his evidence-in-chief, the petitioner has stated that-

- 1) Jahuruddin
- 2) Amiruddin @ Amir Ali (father of petitioner),
- 3) Abdul Barek,
- 4) Sattar Ali, and
- 5) Rahaman,

-are his brothers and are sons of Late Mafiz Uddin @ Mahij Uddin @ Mahi Dewani.

Further, the petitioner has also stated that his mother's name is Basiron Nessa @ Shabjan Nessa and his siblings are-

- 1) Amiran Begum, and
- 2) Jamiran Begum.

25. It is submitted that all are bonafide citizens of India by birth. The petitioner has claimed that his parents' and grandparents' names have been inserted in the NRC, but the learned Tribunal did not accept the NRC as valid evidence.

26. It is apt to mention at this juncture, that the NRC was not exhibited before the learned Tribunal and thus, the Tribunal was prevented from scrutinizing the NRC submitted by the petitioner. The NRC placed by the petitioner in this proceeding cannot be accepted as evidence by this Court, at this stage. The documents which could have established the linkage of the petitioner with his projected parents and grandparents are the Voters Lists of 1966 and 1970, marked as Exhibit-1 and Exhibit-2 respectively. The linking document placed

by the petitioner is the Voters List of 1985. The Voters List of 1966 is reproduced hereinbelow-

“Voters List of 1966

State: Assam

P.S.- Barpeta

Part No. 46

District- Kamrup

Mouza-Jania

Village-Mahammadpur

Sub-Division-Barpeta

Constituency-51 No. Jania Legislative Assembly Constituency.

1	2	3	4	5	6
85.	27	Mofijuddin	Gumani	M	60
86.		Sajon Nessa	Mafiz Uddin	F	40
87.		Johuruddin	Mafiz Uddin	M	30
88.		Amir Uddin	Mafiz Uddin	M	25
89.		A. Barek	Mafiz Uddin	M	22
90.		Basiron Nessa	Amir Uddin	F	29
91.		Suryabanu Nessa	Johuruddin	F	23

N.B.- The above nos. 1) Serial No. 2) House No., 3) Voters name, 4) Name of Father/Mother/Husband, 5) Male/Female, 6. Approximate age on 01.01.1966.

Sd/- Illegible

Electoral Registration Officer."

27. The Voters List of 1970 is reproduced hereinbelow-

"Voters List of 1970

State: Assam Mouza-Jania

District- Kamrup Village-Mahammadpur

Sub-Division-Barpeta Part No. 47

P.S.- Barpeta

Constituency-51 No. Jania Legislative Assembly Constituency.

1	2	3	4	5	6
105	27	Amir Uddin	Mafiz	M	30
106		A.Barek	Mafiz	M	27
107		Basiron Nessa	Amir	F	28

N.B.- The above nos. 1) Serial No. 2) House No., 3) Voters name, 4) Name of Father/Mother/Husband, 5) Male/Female, 6. Approximate age on 01.01.1970.

Sd/- Illegible

Electoral Registration Officer

51 No. Jonia Constituency”

28. The Voters List of 1985 is reproduced hereinbelow-

“Voters List of 1985

Name and Number of LAC : Jania, 44

Name and Number of Polling Station- 275 No. Tapajuli Primary School, 66

Part No. 66

House No. 168

Village/Town - Mahammadpur,

Mouza - Jania Sub-Division - Barpeta(Sadar)

Sl. No.	Voter's Name	Father/Mother/Husband	Sex	Age
675	Sabjan Nessa	Amir	FEMALE	48
676	Nur Islam	Amir	MALE	23

29. If the Voters Lists are carefully scrutinized, it is apparent that the petitioner's grandfather's name was Mafiz Uddin and his grandmother's name was Sajon Nessa, whereas his projected paternal uncles are Johuruddin and A. Barek.

30. The address as shown in the Voters Lists of 1966 and 1970, though are of 51 No. Jania

Legislative Constituency of Village-Mahammadpur, but Part Nos. are different, i.e., 46 and 47, respectively. Moreover, the name of only one brother of the petitioner's father is reflected in the Voters List of 1970, as has been exhibited by him. The petitioner, thereafter produced the Voters list of 1985, which was marked as Exhibit-6. Here, there is no discrepancy between the Village and Mouza of the Voters List of 1966, 1970, vis-à-vis the Voters List of 1985, but the House No., Part number are different. The petitioner's father's name is reflected as Amir Ali, instead of Amir Uddin and the petitioner's mother's name is reflected as Shabjan Nessa, instead of Basiron Nessa. The petitioner's name is reflected as the son of Amir Ali.

31. Several discrepancies have surfaced regarding the age reflected in the Voters Lists of 1966, 1970 and 1985 and overwriting could be detected in the Voters List of 1970, wherein Amir Uddin's age is shown as 30 years by overwriting on the figure '6', so that Amir Uddin's age appears as '30', instead of '60'. Be that as it may, in the voters List of 1966, Basiron Nessa's age is shown as 29 years, whereas in the Voters List of 1970, Basiron Nessa's age gets reduced to '28', instead of getting increased to '33 years'. The Voters List of 1970 was marked as Exhibit-2 and the Voters List of 1960 was marked as Exhibit-1, in the evidence of DW-1.

32. The cross-examination of DW-1 reveals that he has only two uncles whose names are Rahman Ali and Sattar Ali, whereas the WS and the evidence-in-chief of DW-1 depicts that he has stated that Johur Uddin and Abdul Barek are his uncles as well and the Voters List of 1966 depicts the names of Johur Uddin and Abdul Barek and not the names of Rahman Ali and Sattar Ali. It appears that the names of Sattar Ali and Rahman Ali have been added conveniently by the petitioner in the WS and evidence-in-chief to create a linkage with the

petitioner's grandfather, Mafiz Uddin.

33. Above fact shows that the veracity of evidence of DW-1 is not found to be reliable. Likewise, there are too many discrepancies regarding the names, age, etc., which need not be dealt with in this case, because the discrepancies which were earlier discussed in the foregoing discussions are sufficient to dismiss the petition without any hesitation.

34. The petitioner/DW-1 has also adduced the evidence of two of his uncles, Sattar Ali and Rahman Ali.

35. DW-1 was cross-examined on 06.06.2018 and much later, i.e., on 26.09.2018, the DW-2 tried to rectify the error committed by the DW-1 by stating three brothers have died and he himself, and Rahman Ali are alive. DW-2 is Sattar Ali, as referred to by DW-1 as one of his uncles. The petitioner tried to place his family picture as complete, but doubt creeps into one's mind since the Voters List of 1966 or the Voters List of 1970 does not include the names of Rahman Ali and Sattar Ali as sons of Mafiz Uddin or as brothers of Amir Uddin-Amir Ali or Amir.

36. The evidence of DW-3 Rahman Ali substantiates the evidence of DW-1 and DW-2. The other discrepancies in the Voters List of 1985, vis-à-vis the Voters List of 1966 and 1970 are that "Village-Mahammadpur, Part-46" has changed to Village-Mahammadpur, Part-66 and the house number has changed from "House No. 27" to "House No. 168". Thereafter, the Voters List of 1994 reflects the name of the village as Mahammadpur of Part-81 and house number has now changed to 21. The Voters List after 1985 could not at all establish the linkage of the petitioner with his parents and grandparents. The other discrepancy which emerges from the

Voters List of 1985 is that Nur Islam's age is reflected as 28 years, whereas the petitioner, Nur Islam has stated that he was born in the year 1963. If in the year 1985, the petitioner's age is shown as 28 years, then the date of birth of the petitioner would be 1957 and not 1963 and he was eligible to vote in the year 1978, whereas his name has appeared for the first time in the Voters List of 1985.

37. Thus, the discrepancies emerging from the Voters Lists of 1966, 1977 vis-à-vis 1985 is incomprehensible. How could Basiron Nessa's name appear as Shabjan Nessa and how could Amir Uddin's name appear as Amir Ali in the Voter's List of 1985. The petitioner's age is also shown as 26 years, i.e., much above the age to exercise the right to franchise. It was correctly held by the Tribunal that mere statement in the pleadings and the evidence that Basiron Nessa and Shabjan Nessa is one and the same person without substantiating the evidence, cannot be accepted to prove the identity of one person, who is identified with 2 (two) different names during different periods. Moreover, in another Voters List of 1997 of District-Barpeta, Mouza-Jania, Vill-Mahammadpur, Part-81, P.S.- Barpeta, 926 LAC, House No. 19, Shajon Nessa's name is shown as wife of Amir-Amir Ali or Amiruddin.

38. It has also been correctly held by the learned Tribunal that the petitioner's grandparents' names and uncles' names have appeared in the Voters List of 1966, marked as Exhibit-1, wherein his grandmother's age was shown as 40 years and his uncle Jahuruddin's age was shown as 30 years, reflecting a difference of only 10 years between mother and son, which is biologically impossible.

39. It is averred that the learned Tribunal has gravely erred by not taking into consideration that the petitioner's mother, Shabjan @ Basiron expired and his father remarried after her

demise and his stepmother's name is Shajon Nessa. Thus, it cannot be considered to be a false statement, if Shajon Nessa is 10 years older than the petitioner's brother Johuruddin. It is apt to mention at this juncture that the petitioner never mentioned in his WS and evidence that his father remarried after his mother's death.

40. It is contended by the learned Standing Counsel, Home Department, Assam, Mr J Payeng, that the petitioner has failed to substantiate with proper evidence that Basiron Nessa and Shabjan Nessa is one and the same person. The documents showing different names of one and the same person, cannot be relied upon, as the petitioner's mother's name appears as Shabjan Nessa in the Voters List of 1985, i.e. after 1971, whereas on the contrary, her name was earlier shown as Basiron Nessa in the Voters List of 1966 and 1970. In the wake of the foregoing discussions, it is held that the Voters List of 1985 could not establish the linkage of the petitioner's father with his grandparents, whose names also appear in the Voters Lists of 1966 and 1970.

41. Thus, we find sufficient force in the submission of the learned Standing Counsel, Home Department, Assam.

42. It is further submitted by the learned Standing Counsel that Amir Uddin's name became Amir after 1971, which has been reflected in the Voters List of 1985.

43. In addition to the Voters List, the petitioner also tried to establish his linkage with his projected parents and grandparents through the Jamabandi copies marked as Exhibit-3 and Exhibit-5, respectively and the registered sale deed marked as Exhibit-4. Exhibit-3 is related to mutation of the land under Jania Mouza, Mahammadpur Village, of a plot of land covered

by Patta No. 118 (old) and 122 (new), wherein the petitioner's grandfather's name Mahiz Uddin, Son of Late Gumani is reflected along with the petitioner's mother's name, Shabjan Nessa, whose name appears as wife of Amir Sheikh.

44. In support of the Exhibit-3, DW-4, a Junior Assistant of R.K. G-Branch of the DC Office, Barpeta was produced and he has deposed that the Jamabandi copy, Exhibit-3 was issued from his office. The Jamabandi copy was of 1958-65, Patta No. 118 (old) and 122 (new) of Village-Mahammadpur. He had produced the original Jamabandi record of Village-Mahammadpur and stated that Exhibit-3 is similar to the original record. He also brought along with him the volume of Patta No. 182 (Exhibit-5), but he did not bring along with him the volume of original record of Patta No. 18. He deposed that in Patta No. 182, the names of the Pattadars are similar, but their names are not similar in connection with Patta No. 18. He admitted that the Exhibit-5 was issued from his office.

45. It is argued on behalf of the respondents that the copy of Jamabandi copy marked as Exhibit-3 is neither related to the petitioner nor to his parents. The petitioner tried to project that the name Mahiz Uddin Sheikh reflected in Exhibit-3, is the name of his grandfather. The petitioner's mother's name appears as Shabjan Nessa at Serial No. 4, as wife of Amir Sheikh, which is a different name. Mahiz Uddin Sheikh is another person and not the petitioner's grandfather. There is one Sabjan Nessa shown as wife of Amir Sheikh and another Sajon Nessa shown as wife of Late Habezuddin Sheikh. The petitioner's name is not reflected anywhere as the petitioner has given his father's name as Amir Uddin or Amir Ali and not as Amir Sheikh.

46. The Junior Assistant of DC's Office, DW-4 has proved the Exhibit-3 with the original

record, but the Exhibit-5 was not proved. The Exhibit-5 relates to Patta No. 182, which was not proved with the original record. This document was not accepted as evidence. It was also aptly observed by the learned Tribunal that even the revenue receipts to prove the ownership of the plot of land described under Patta No. 182 (Exhibit-5) was not produced. Moreover, the Gift Deed marked as Exhibit-5 appears to have been executed by the grandfather Guman Haji in favour of his minor grandson Nur Islam Miya. It reveals that the grandfather was alive while the petitioner's father Amir Uddin passed away at the time the Gift Deed was executed on 23.10.1969.

47. It is averred by the learned Standing Counsel, Home Department, Assam, Mr Payeng that it appears that the Gift Deed was exhibited in favour of a minor. The land has been described as a plot of land measuring 8 Bighas 3 Kathas and 15 Lechas, covered by Patta No. 182 and Dag No. 45.

48. In sum and substance, it is thus apparent that the petitioner could not prove his citizenship through the land documents or through the Gaonburah's certificate. The petitioner has produced the Gaonburah's certificate marked as Exhibit-13 with the Emblem of India embossed on the top. This cannot be a genuine document. The learned Tribunal has correctly dismissed the certificate certifying that the petitioner is a resident of Mahammadpur Village. The evidence of the Gaonburah was not convincing as he stated that he never maintained any register. He issued the certificate as the petitioner's father was known to him.

49. The learned Standing Counsel, Home Department, has relied on the decision of this Court in ***Nur Begum –vs- Union of India & 5 Others***, rendered in connection with WP(C) No. 1900/2019, wherein it has been held and observed that-

“Oral testimony of DW-2 alone, sans any documentary support, cannot be treated as sufficient to prove linkage or help the cause of the petitioner. Surprisingly, the petitioner failed to produce a single voter list in her name even until the age of 50 years. We would reiterate that in a proceeding under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964 the evidentiary value of oral testimony, without support of documentary evidence, is wholly insignificant. Oral testimony alone is no proof of citizenship. The evidence of DW-2, thus, falls short of being considered as cogent, reliable and admissible evidence, so much so, to establish linkage of the petitioner to the projected grandfather, grandmother and father. The petitioner utterly failed to prove her linkage to Indian parents relatable to a period prior to the cut-off date of 25.03.1971 through cogent, reliable and admissible documents.”

50. Reverting back to this case, it is held that the oral evidence of the Gaonburah could not establish the linkage of the petitioner with his projected grandparents in support of his claim that he is an Indian citizen by birth.

51. The Gaonburah, Abdul Karim, DW-5 did not produce any register and he stated in his cross-examination that he never maintained any register. Thus, the oral testimony of DW-5 sans any documentary support cannot be treated as evidence to prove the lineage or help the cause of the petitioner.

52. The respondents have relied on the decision of this Court in ***Musstt. Hazara Khatun (supra)***, wherein it has been held and observed that-

“17. The law in this respect has been settled by the Supreme Court in its pronouncement rendered in Rupajan Begum –vs- Union of India and others, reported in (2018) 1 SCC 579, wherein in paragraph-16, it had been held as follows:-

“16. The certificate issued by the G.P Secretary, by no means, is proof of citizenship. Such proof will come only if the link between the claimant and the legacy person (who has to be a citizen) is established. The certificate has to be verified at two

stages. The first is the authenticity of the certificate itself; and the second is the authenticity of the contents thereof. The latter process of verification is bound to be an exhaustive process in the course of which the source of information of the facts and all other details recorded in the certificate will be ascertained after giving an opportunity to the holder of the certificate. If the document and its contents are to be subjected to a thorough search and probe we do not see why the said certificate should have been interdicted by the High Court, particularly, in the context of the facts surrounding the enumeration and inclusion of the documents mentioned in the illustrative list of documents, as noticed above. In fact, the said list of illustrative documents was also laid before this Court in the course of the proceedings held from time to time and this Court was aware of the nature and effect of each of the documents mentioned in the list.

18. Para-16 of the pronouncement in Rupajan Begum (Supra) clearly provides that the certificate issued by the Gaon Panchayat Secretary has to be verified at two stages i.e. firstly the authenticity of the certificate itself and secondly the authenticity of the contents thereof. The very requirement that the certificate has to be verified at two stages is itself an implication that the author of the certificate i.e. the Secretary of the Gaon Panchayat has to be examined in order to verify the certificate which had been relied upon.

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20. Accordingly, as the petitioner had failed to discharge the burden that she is the daughter of Abdul Sobhan, whose name appears in the voters list of 1966 pertaining to village Part-99 of Siporia Sapor PGR through any reliable and cogent evidence, which also includes the certificate of the Sarkari Gaonbura as well as his deposition and also the certificate of the Secretary of the Panibharal Gaon Panchayat dated 10.07.2016, we are of the view that the petitioner had failed to discharge the burden the onus of which is placed upon her under Section 9 of the Foreigners Act of 1946”

53. Reverting back to this case, it is thereby held that the oral testimony of the Gaonburah

validating his certificate cannot be given credence as the evidence of the Gaonburah is based only on his oral evidence without any documentary proof or without any relevant records.

54. In the wake of the foregoing discussions, it is thereby held that the petitioner has miserably failed to establish his linkage with his parents and his grandparents. It is apt to reiterate that the Voters List of 1985 is contrastively dissimilar to the Voters List of 1966 and 1970. Although the Voters Lists of 1985, 1989 and 1994 have been exhibited, these Voters Lists were not helpful to establish the lineage of the petitioner's projected father with his grandparents whose name, figures in the Voters List of 1966 and 1970. These Voters Lists marked as Exhibits-6, 7 and 8, reflect the name of Shabjan Nessa and Nur Islam only. The names of other siblings are not reflected in these Voters Lists. Moreover, different house numbers are reflected in the Voters Lists of 1985, 1989, 1994 and 1997. It is thereby held that the petitioner has failed to establish his linkage with his projected grandparents and parents through cogent reliable and acceptable evidence. No infirmity is noticed in the opinion/Judgment and Order dated 04.09.2019, passed by the Foreigners' Tribunal 1st at Barpeta in FT Case No. 116 of 2017, arising out of IM(D)T Reference Case No. 7244/B/98, warranting any interference in exercise of Certiorari jurisdiction under Article 226 of the Constitution of India.

55. This writ petition is dismissed as the same is devoid of merits.

56. Interim order passed earlier on 08.06.2020, in this writ petition is hereby vacated/recalled.

57. Registry is directed to send back the original record of FT Case No. 116 of 2017, to the

learned Foreigners' Tribunal No. 1st at Barpeta, along with a copy of this order forthwith and shall also inform the concerned Superintendent of Police (Border), Barpeta and the Deputy Commissioner, Barpeta, about this order for their needful.

JUDGE

JUDGE

Comparing Assistant