

GAHC010241782019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 7426/2019

1:MUNINDRA BISWAS
SON OF LATE INDRA MOHAN BISWAS, R/O- MARGHERITA TOWN, WARD
NO. 3, P.O. AND P.S.- MARGHERITA, DIST.- TINSUKIA, ASSAM, PIN- 786181.

VERSUS

1:UNION OF INDIA AND 4 ORS.
THROUGH THE SECRETARY, MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, NEW DELHI- 110001.

2:THE STATE OF ASSAM
THROUGH THE SECRETARY
GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE DEPUTY COMMISSIONER
TINSUKIA DISTRICT
P.O. AND P.S. TINSUKIA (ASSAM)
PIN- 786125.

4:SUPERINTENDENT OF POLICE (B)
P.O. AND P.S. AND DIST. TINSUKIA (ASSAM)
PIN- 786125.

5:OFFICER-IN-CHARGE
MARGHERITA POLICE STATION
DIST. TINSUKIA (ASSAM)
PIN- 786125

Advocate for the Petitioner : MR G P BHOWMIK

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE MANOJIT BHUYAN
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA
ORDER

12.02.2020

(P.J. Saikia, J)

Challenge in this writ petition is to the opinion dated 30.07.2019, passed by the Foreigners Tribunal No. Tinsukia, Assam in F.T. Case No. 411 of 2007 P.E. No. 315/1998.

Heard Mr. G. P. Bhoumik, learned senior counsel for the petitioner. Also heard Ms. G. Hazarika, learned standing CGC representing respondent No. 1; and Mr. J. Payeng, learned standing counsel for the Foreigners Tribunal representing respondent Nos. 2 to 5.

On a reference made by the competent authority, notice was issued to the petitioner asking him to prove his Indian citizenship. He accordingly appeared before the Tribunal and filed a written statement. He claimed therein that he is an Indian by birth and is a permanent resident of Margherita Town, in the District of Tinsukia, Assam. He filed voter list of 1997 containing his name. The petitioner further claimed before the Tribunal that his grandfather Lt. Durga Charan Biswas hailed from the district of Nadia, West Bengal. The petitioner stated that his father Lt. Indra Mohan Biswas was born there and later migrated to Assam in the year 1965 and started to reside at Kolpara, Ledo in the district of Tinsukia, Assam. According to the petitioner, his father had purchased land in the year 1970. While filing the written statement before the Tribunal, the petitioner also filed a Registered Sale Deed. The petitioner also filed a copy of Electoral Photo Identity Card.

During the hearing, the petitioner examined himself only and he introduced some documents. The documents are;

1. Exhibit-1 is the voter lists of 1997 bearing the name of the petitioner;
2. Exhibit-2 is the Electoral Photo Identity Card (EPIC) of the petitioner;
3. Exhibit-3 is the Registered Sale Deed of 1964;
4. Exhibit-4 is the Sale Deed dated 23.04.1970;

5. Exhibit-5 is the Revenue Receipt of the year 1971.

The Tribunal has held that Exhibits 3 and 4 were not proved in the manner as required by law. Since no voter lists prior to 1997 could be furnished by the petitioner, the Tribunal held that the petitioner failed to prove that his parents entered into Assam prior to 01.01.1966. On the conclusion of hearing, the Tribunal declared the petitioner to be a foreigner of post 1971 stream.

We have carefully gone through the judgment of the Tribunal. Sale Deeds are private documents, therefore, they must be proved in accordance with law. In the case of *Narbada Devi Gupta Vs. Birendra Kumar Jaiswal* reported in (2003) 8 SSC 745, the Supreme Court has reiterated the legal position that marking of documents as exhibits and their proof are two different legal concepts. Mere production and marking of a document as exhibits cannot be held to be due proof of its contents. Its execution has to be proved by admissible evidence i.e., by the evidence of those persons who can vouch safe for the truth of the facts in issue.

Regarding Electoral Photo Identity Card this court in the case of *Md. Babul Islam Vs. State of Assam [WP(C) No. 3547 of 2016]* has held that Electoral Photo Identity Card is not a proof of citizenship.

The petitioner herein has failed to file voter lists prior to 1997, thereby the petitioner failed to prove that he has been staying in Assam prior to 25.03.1971.

We find that the Tribunal has correctly appreciated the evidence placed before it and arrived at a correct finding. There is no perversity in the decision of the Tribunal.

The power of the Writ Court exercising jurisdiction under Article 226 of the Constitution of India is supervisory only, not appellate/reviewing. The opinion of the Tribunal is based on facts. As a Writ Court we would not have gone into evidence. We just wanted reassure ourselves and we find that there is no perversity in the decision of the Tribunal. Hence, we find that this writ petition is devoid of merit. It stands dismissed and disposed of accordingly. No costs.

JUDGE

JUDGE

Comparing Assistant