

GAHC010159182018



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

**Case No. : WP(C) 4950/2018**

1:HELAL UDDIN  
S/O LT. SONUHAR ALI  
R/O VILL- BANDARKUNA PART-II,  
P.O. ERALIGOOL  
DIST. KARIMGANJ, ASSAM  
PIN -788723.

VERSUS

1:THE UNION OF INDIA AND 5 ORS.  
REP. BY HOME SECRETARY, MINISTRY OF HOME AFFAIRS, NORTH  
BLOCK, NEW DELHI- 110001.

2:THE STATE OF ASSAM  
REP. BY COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

HOME AND POLITICAL DEPARTMENT

CM BLOCK (THIRD FLOOR)

ASSAM SECRETARIAT  
GUWAHATI  
DIST. KAMRUP (METRO)  
ASSAM PIN - 781006.

3:THE DEPTY COMMISSIONER  
KARIMGANJ  
SETTLEMENT ROAD  
KARIMGANJ TOWN  
DIST. KARIMGANJ  
ASSAM  
PIN - 788710.

4:THE SUPERINTENDENT OF POLICE (B)

KARIMGANJ  
KARIMGANJ TOWN  
P.O. KARIMGANJ  
DIST. KARIMGANJ  
ASSAM  
PIN - 788710.

5:THE ELECTRICAL REGISTRATION OFFICER  
SOUTH KARIMGANJ CONSTITUENCY  
P.O. NILAMBAZAR  
DIST. KARIMGANJ  
ASSAM  
PIN - 788722.

6:THE STATE COORDINATOR OF NATIONAL REGISTRATION (NRC)  
ASSAM 1ST FLOOR  
ACHYUT PLAZA  
GS ROAD  
BHANGAGARH  
GUWAHATI  
ASSAM  
PIN - 781005

**Advocate for the Petitioner** : MR. O LASKAR  
**Advocate for the Respondent** : ASSTT.S.G.I.

**-BEFORE-**

**HON'BLE MR. JUSTICE MANOJIT BHUYAN**  
**HON'BLE MR. JUSTICE PRASANTA KUMAR DEKA**

**06.09.2018**

*(Prasanta Kumar Deka, J)*

Heard Mr. O Laskar, learned counsel for the petitioner. Also heard Ms. G Sarma, learned counsel for the respondent No. 1; Mr. J Payeng, learned counsel for the respondent Nos. 2, 3 and 4; Ms. N Upadhyaya, learned counsel for the respondent No. 5 and Mr. D Baruah, learned counsel for the respondent No. 6.

(2) The present petitioner is the son of late Sunahar Ali and late Mojida Khatun *alias* Mojida Khanam. In the electoral roll of Bandarkuna Part-II names of his parents were marked as "D" voters without any enquiry. The Superintendent of Police (Border), Karimganj made references to the tribunal under the Illegal Migrants (Determination by Tribunal) Act, 1983 on

30.06.1998. There was no progress made in the said references. The father of the petitioner died on 03.11.2011. The case was revived on 12.01.2006 when the records were transferred from the Foreigners' Tribunal No. 1, Karimganj to Foreigners' Tribunal No. 2, Karimganj. The reference against the deceased father of the petitioner was re-numbered as F.T. Case No. 250/2015 before the learned Member, Foreigners' Tribunal No. 2, Karimganj. After the death of the father of the present petitioner though notices were issued in the name of the deceased father of the petitioner, the same were not served which was quite natural. However, notice was presumed to be served by way of substituted manner and subsequent thereto the said case proceeded ex-parte against the deceased father of the petitioner. Similarly, the case regarding the mother of the petitioner was revived on 29.09.2016 when the Foreigners' Tribunal No. 2, Karimganj received the records from the Foreigners' Tribunal No. 1, Karimganj and the case was re-numbered as F.T. Case No. 572/2016.

(3) After presumption that the notice was served on the father of the petitioner, vide an ex-parte order dated 18.03.2017, the learned Member, Foreigners' Tribunal No. 2, Karimganj held that the deceased father Sunahar Ali of the petitioner was a foreigner. On the other hand, the case against the mother of the present petitioner, as per the annexure in this writ petition, was fixed on 26.07.2018 for service report on the deceased mother who died on 12.08.2017 during the pendency of the said proceeding. The parents of the present petitioner died leaving behind 9 (nine) children including the present petitioner. By way of an additional affidavit the petitioner brought on record the names of the said legal heirs left behind by the parents of the present petitioner.

(4) The petitioner was unaware about the development and only on the basis of the records of the NRC authorities, it came to the knowledge of the petitioner that his deceased father was declared as a foreigner. Similarly, on inquiry, the pendency of the proceeding against the deceased mother of the petitioner also came to his knowledge. Immediately thereafter the petitioner filed an application for substitution of the deceased father in F.T. Case No. 250/2015 along with the prayer for setting aside the ex-parte order dated 18.03.2017 passed by the learned Member, Foreigners' Tribunal No. 2, Karimganj. Similarly, petition was filed in F.T. Case No. 572/2016 for substitution of the deceased mother by the present petitioner. However, it is submitted that the learned Tribunal refused to entertain the said applications following which the present petitioner is before this court.

(5) Mr. Laskar, learned counsel for the petitioner, submits that much prejudice would be caused to the petitioner in the event if chances are not given to rebut the findings against marking of both the parents as "D" voters and the subsequent order of declaring the parents as the foreigner. Mr. Payeng, on the other hand, fairly submits that the petitioner may approach the learned Tribunal keeping in view the consequent effect that may befall on the legal heirs of late Sunahar Ali and late Mojida Khatun *alias* Mojida Khanam.

(6) We peruse the case records of F.T. Case No. 250/2015.

(7) We have given our considered thought and decided that keeping in view the effect which would be prejudicial to the legal heirs of late Sunahar Ali and late Mojida Khatun *alias* Mojida Khanam in the event a chance is not given to the petitioner, his brothers and sisters to discharge the burden in order to prove the citizenship of their parents, accordingly we direct that the petitioner along with his brothers and sisters shall file an application to that effect whereupon the learned Member, Foreigners' Tribunal, will pass an appropriate order allowing them to be impleaded as the legal representatives of the deceased procedee in both the proceedings keeping in view the observation made by us. Further considering that an ex-parte order was passed on 18.03.2017 in F.T. Case No. 250/2015 the same stands set aside. The petitioner along with his brothers and sisters shall be allowed to participate in both the proceedings and file the written statements. Let the petitioner along with his brothers and sisters appear before the learned Tribunal on **28.09.2018** whereafter the learned Member of the Tribunal shall pass necessary order and complete the proceeding within a period of **60 days** from the date of appearance of the present petitioner along with his brothers and sisters. Accordingly, this writ petition stands disposed of.

(8) Registry to send back the LCRs at the earliest so as to reach the tribunal before **28.09.2018**.

**JUDGE**

**JUDGE**

**Comparing Assistant**