
(2014) 12 OHC CK 0019
In the Orissa High Court
Case No : WA No. 374 of 2013

Anuradha Das

APPELLANT

Vs

Sub Collector Puri

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 8A

Citation : (2014) 12 OHC CK 0019

Hon'ble Judges : Amitava Roy, C.J.;Dr. Akshaya Kumar Rath, J

Bench : Division Bench

Judgement

1. The subject matter of challenge in the instant appeal is the judgment/order dated 12.07.2013 passed in W.P.(C) No. 7970 of 2011 dismissing the same.
2. We have heard Mr. S. Mishra, learned counsel for the appellant and Mr. Debasis Mohapatra, learned counsel for the respondents.
3. A brief outline of the pleaded facts would be necessary to better comprehend the issue involved.
4. In response to an advertisement published by the CDPO, Nimapara, in the year 2009 for appointment to the posts of Anganwadi Workers in Kanyakuda Anganwadi Centre, the appellant, respondent No. 3 and others did offer their candidature. The appellant has contended that in course of the process she having come to learn that there were anomalies in the issuance of residential certificates of the contending candidates, her husband on 20.8.2009 made an application to the Tahasildar, Nimapara, for an enquiry into the matter. Admittedly, the respondent No. 3 had applied for the post of Anganwadi Worker claiming herself to be a resident of the village under the jurisdiction of the Anganwadi area concerned and to substantiate that plea had placed reliance on her residential certificate dated 29.08.2009.
5. On the application of the husband of the appellant, Misc. Certificate Case No. 5714/2009 was registered and the Tahasildar, Nimapara, directed the concerned

Revenue Inspector to enquire and ascertain the place of residence of respondent No. 3, whereupon, a report was submitted to that effect that she (respondent No. 3) was a permanent inhabitant of village Kanyakuda, P.S. Balanga, Dist. Puri and that she had filed OLR Case No. 353/2008 filed by her under Section 8-A of the Orissa Land Reforms Act, 1960 (for short, "the OLR Act"), and that on Plot No. 73 under Khat No. 41/3 measuring an area Ac.0.04 decimals, she had constructed a tin asbestos house on 26.8.2009. The appellant through her husband having raised objection to the effect that the residential certificate in favour of respondent No. 3 had been wrongly issued, the Tahasildar, Nimapara, directed the concerned Revenue Supervisor to make an enquiry, who submitted a report that the appellant was actually a resident of Kanyakuda village and no other applicant including the respondent No. 3 was a resident of the same village. The Tahasildar, Nimapara, on the basis of the said report held that though respondent No. 3 had constructed a house over the land after conversion for homestead purpose under Section 8-A of the OLR Act, she was not eligible to get a certificate of resident. By order dated 9.9.2009, the Tahasildar, Nimapara, cancelled the certificate dated 29.8.2009 earlier issued in favour of respondent No. 3.

6. Being aggrieved, respondent No. 3 approached this Court with W.P.(C) No. 14458 of 2009, which was disposed of on 6.10.2009 with the following observation:

"Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner in this writ petition challenges the illegal action of the opp. party No. 3 Tahasildar, Nimapara in cancelling the resident certificate issued in four of the petitioner without following the due procedure of law and violating the principle of natural justice and similarly the illegal action of the opp. party No. 4 C.D.P.O., Nimapara in not selecting the petitioner as Anganwadi Worker for Kanyakuda Anganwadi Centre in the District of Puri.

As it appears, there is an alternative forum available to the petitioner by way of filing an appeal before the Sub-Collector, Puri, the petitioner may approach the said authority.

Without going into the merit of the case, I dispose of the writ petition with a direction that if the petitioner files an appeal ventilating her grievances along with a copy of this order within two weeks from today before the opp. party No. 2 Sub-Collector, Puri the same shall be disposed of by the said Sub-Collector within a period of six weeks from the date of filing of the appeal and by giving an opportunity of personal hearing to the petitioner and the affected parties, if any."

7. Pursuant to this liberty granted to respondent No. 3, she preferred an appeal before the Sub-Collector, Puri, impleading the appellant and her husband and the same was registered as Resident Misc. Appeal No. 30/2009. The Sub-Collector, Puri, after hearing the parties and on a consideration of the materials on record, by order dated 15.3.2011 interfered with the order dated 9.9.2009 passed by the

Tahasildar, Nimapara, and thus restored the residential certificate of respondent No. 3. The appellant having unsuccessfully assailed the order of the Sub-Collector, Puri, in W.P.(C) No. 7970 of 2013 is before this Court.

8. Mr. Mishra, learned counsel for the appellant, has emphatically argued that in absence of any provision permitting appeal against the order dated 9.9.2009 of the Tahasildar, Nimapara, the order dated 15.3.2011 of the Sub-Collector, Puri, is non est in law. Apart therefrom, he has urged that it is even otherwise apparent on the face of the record that respondent No. 3 at all relevant time was not ordinarily a resident of Kanyakuda village, and thus she was patently ineligible to apply for the post of Anganwadi Worker for Kanyakuda Anganwadi Centre and therefore the learned Single Judge fell in gross error in declining to interfere with the order dated 15.3.2011 of the Sub-Collector, Puri. On being queried by us, learned counsel, however, fairly submitted that a candidate to be eligible for the post of Anganwadi Worker has to be ordinarily a resident of the village within the jurisdictional limits of the Anganwadi area concerned.

9. Mr. Mohapatra, learned counsel for the respondents, as against this, has urged that this Court having permitted respondent No. 3 to file an appeal before the Sub-Collector, Puri against the order dated 9.9.2009 of the Tahasildar, Nimapara, the plea against maintainability thereof is wholly misplaced. The Sub-Collector, Puri, having held on a thread bare scrutiny of the materials on record that respondent No. 3 was ordinarily a resident of village Kanyakuda and that cancellation of her residential certificate was illegal, learned Single Judge was perfectly right in sustaining this finding of fact.

10. Upon hearing the learned counsel for the parties, we are inclined to sustain the impugned judgment/order. It is more than apparent that this Court had permitted the respondent No. 3 to prefer appeal against the order dated 9.9.2009 before the Sub-Collector, Puri, and that pursuant to the said liberty the appeal had been filed. In that view of the matter, the contention that the appeal is not sustainable in law and thus the order dated 15.3.2011 of the Sub-Collector, Puri has to be construed as non-existent does not commend for acceptance. Noticeably, the appellant had not questioned the correctness and/or validity of the order dated 6.10.2009 of this Court passed in W.P.(C) No. 14458 of 2009 permitting respondent No. 3 to prefer such appeal. In that view of the matter as well, the plea against maintainability of the appeal ought not to be sustained.

11. It cannot be gainsaid that the Tahasildar, Nimapara, following due scrutiny of all factual aspects had indeed issued the residential certificate in favour of respondent No. 3 on 29.8.2009 to the effect that she was resident of village Kanyakuda. A bare perusal of the order dated 15.3.2011 of the Sub-Collector, Puri, would demonstrate that the land in occupation of respondent No. 3 had been converted from agricultural to homestead purpose under Section- 8-A of the OLR Act in April, 2008 and that she had been residing thereon since then. It was recorded that by the time her certificate was cancelled, she had been residing thereon for last 17 months. The Sub-Collector, Puri noticed as well that a

person ordinarily residing in a place for more than six months was entitled to get residential certificate. It was held that having regard to the recorded facts there was no convincing ground to support the cancellation of the residential certificate of respondent No. 3. The learned Single Judge, as the impugned judgment/order would reveal, on a scrutiny of the materials on record affirmed the above findings recorded by the Sub-Collector, Puri.

12. On an assessment of the materials on record, we are of the unhesitant opinion that the view taken by the Sub-Collector, Puri, as well as the learned Single Judge is a plausible one and in absence of any overwhelming evidence to the contrary, we are not inclined to interfere with the same in exercise of this Court's power in appeal.

The appeal thus lacks in merit and is dismissed.