

(2010) 08 OHC CK 0028

In the Orissa High Court

Case No : Writ Petition (C) No. 12427 of 2009

Chautara alias Chatura Suna alias Nag

APPELLANT

Vs

Sub-Collector

RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Miscellaneous Certificate Rules, 1984 — Rule 4, 6, 7, 8

Citation : (2010) 110 CLT 385 : (2010) 2 OLR 408

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Judgement

M.M. Das, J.—Heard Learned Counsel for the Petitioner and the Learned Counsel for the State.

2. In spite of valid service of notice at Opp. Party No. 3 summoning her to appear on 05.10.2009, she has not entered appearance in this case.

3. The Petitioner on making proper application for grant of residential certificate and caste certificate to the Tahasildar, Loisingha, after due enquiry, a residential certificate and a caste certificate as at Annexure - 2 were issued in her favour. She was an aspirant to work as anganwadi worker & made due application. The Opp. Party No. 3, who was another applicant raised objection with regard to the residential certificate granted to the Petitioner where upon the Additional Tahasildar initiated review of Misc. Certificate Case No. 960 of 2009. After due notice and upon hearing the parties, he passed the order on 05.06.2009 as at Annexure - 4 directing cancellation of the residential certificate granted in favour of the Petitioner. The Petitioner carried an appeal before the Sub-Collector, Bolangir and the Appellate authority has also confirmed the said Chautara alias Chatura Suna v. Sub-Collector, Bolangir order of the Tahasildar. From the impugned orders, it appears that both the Tahasildar as well as the Sub-Collector misdirected themselves in examining question of validity of the marriage of the Petitioner, which was not within the domain of their jurisdiction. While examining this, it appears that the Tahasildar came to a finding that the Petitioner cannot be

treated as a married lady & wife of Naresh Kumar Nag, thus she is not eligible to secure residential status of village Hirapur. The Additional Tahasildar has absolutely no jurisdiction to examine the validity of marriage of the Petitioner, while considering the question of residence of the Petitioner. The Appellate Court also committed an error in framing an issue as to whether the Appellant by virtue of marriage is entitled to be issued with a residential certificate of village Hirapur or not.

4. It further transpires that an application for grant of residential certificate under the Miscellaneous Certificate Rules, 1984 is made under Rule 4 of the said Rules. The Revenue Officer, on the basis of documents, records and the results of enquiry, if any can grant such a certificate. Cancellation of the certificate is provided under "Review of the orders" in Rule 7 thereof. Rule 8 is the provision for preferring an appeal which prescribes that any person aggrieved by an order passed by the Revenue Officer under Rule 6, may preferred an appeal before the concerned authority mentioned in the said Rule, i.e., Rule 8. No appeal is provided against an order of review/cancellation of certificate passed under Rule 7. Therefore, the appeal preferred by the Petitioner was misconceived and the Appellate authority, i.e., the Sub-Collector had no jurisdiction to deal with the appeal.

5. The Revenue Officer/Tahasildar as already observed above, has misdirected himself in examining the question of validity of marriage of the Petitioner, which he had no jurisdiction to do and could not have directed cancellation of the certificate on arriving at a finding that there was no valid marriage between the Petitioner and Naresh Kumar Nag of village Hirapur. Hence, the order of cancellation of the residential certificate passed in Misc. Certificate Case No. 960 of 2009.(granted to the Petitioner earlier, cannot be sustained in law and is accordingly quashed. The residential certificate granted to the Petitioner shall be treated to be a valid certificate and in the event, no appointment to the post of Anganwadi Worker in the place for which the Petitioner was an applicant, has yet been made, the case of the Petitioner shall be considered for such appointment.

6. The Writ Petition is accordingly disposed of. Urgent certified copy of this order be granted as per rules.