
(2015) 04 OHC CK 0003
In the Orissa High Court
Case No : W.P.(C) No. 15861 of 2007

Indumati Jena

APPELLANT

Vs

Sub-collector, Puri

RESPONDENT

Date of Decision : 03-04-2015

Acts Referred:

Citation : (2015) 119 CutLT 1051

Hon'ble Judges : Biswanath Rath, J.

Bench : Single Bench

Advocate : Sri. S.B. Mohanty, Learned Additional Standing Counsel, M/s. S. Nayak, K.B. Kar and A.K. Parida, Advocates, for the Opposite Parties; M/s. D. Mohapatra, D.K. Sahoo, M. Mohapatra, S. Nanda and G.R. Mohapatra, Advocates, for the Petitioner

Final Decision : Allowed

Judgement

Biswanath Rath, J. - This is a Writ Petition filed by the Petitioner assailing the order passed by the Sub-collector, Puri in Miscellaneous Certificate Appeal No.41 of 2007 thereby cancelling the, Residential Certificate issued by the Tahasildar, Brahmagiri in respect of the Petitioner. The Petitioner assailing the aforesaid order submitted that she is the daughter of one Suratha Jena, Village-Kathua Aredi, P.O. Bentapur, P.S. Brahmagiri in the district of Puri. She got into a love marriage with one Amulya Kumar Sahoo, a resident of village Barapada, such marriage was solemnized on 28.04.2007 in the Alaranath Temple, at Alarapur & since that time she is residing along with her husband in the village Barapada. Since she got into marriage in a temple, she has obtained Notary Public Marriage Affidavit & a Notary Marriage Certificate in her favour. Following an advertisement for selection of Anganwadi Worker for the Anganwadi Center at Barapada, she had applied for the post & as necessary she had also obtained Residential Certificate from the Tahasildar, Brahmagiri. The Tahasildar, Brahmagiri registered her application for Residential Certificate as Misc. Case No.2481 of 2007, conducted an enquiry through Revenue Inspector & being

satisfied granted a Residential Certificate in favour of the Petitioner as appearing at Annexure-2. Petitioner attached the said Residential Certificate along with her application for the post of Anganwadi Worker. The Petitioner further submitted that it is at this stage, the Opp. Party No.3 being the husband of another applicant challenged the grant of Residential Certificate in favour of the Petitioner by filing Miscellaneous Appeal No.41 of 2007. It is alleged by the Petitioner that in spite of her objection on the maintainability of the appeal at the instance of the third party & further on the ground of residential certificate being issued on sufficient materials available on record, the Appellate Authority did not consider her objection & by the impugned order (Annexure-3), the Appellate Authority allowed the appeal thereby holding that the order passed in the Residential Misc. Case No.2481 of 2007 in favour of the present Petitioner as bad. It is as a consequence of which the Tahasildar vide Annexure-4 communicated the Petitioner regarding the cancellation of the Residential Certificate, which was granted in her favour hence the Writ Petition.

2. Per contra, State Counsel by filing a counter affidavit attempted to justify the order passed by the Sub-collector, Puri in the Miscellaneous Certificate Appeal No.41 of 2007 & the consequential communication of the Tahasildar in cancellation of the Residential Certificate as appearing at Annexures-3 & 4 respectively. The State Counsel submitted that there is a great level of confusion with regard to the matter of the Petitioner in the Notarial affidavit & the marriage document though the Notarial affidavit are not acceptable in the eye of law. Exhibiting certain discrepancies in the Public Notarial affidavit submitted by the Petitioner, the State Opp. Party demonstrated the discrepancies & justified its claim in dismissing the Writ Petition for such discrepancies & further on the ground of fraudulent preparation of the affidavit. Referring to Judgment of the Hon'ble Apex Court in Civil Appeal No.3268-3270 of 2005 arising out of SLP (C) No.1920-1922 of 2003, the State Opp. Party submitted that the Hon'ble Supreme Court has in categoric terms deprecated acceptance of fraudulent documents. It is on these premises, the Opp. Party No.1 claimed for dismissal of the Writ Petition. The private Opp. Party even though has appeared in the matter but choose not filing any counter affidavit & orally submitted in the line of the submissions made by the State Opp. Parties.

3. Opp. Party No.1 in filing a written note of submission referring to Judgment reported in the case of Smt. Jeewanti Pandey v. Kishan Chandra Pandey, AIR 1982 S.C. 3 & in the case of Union of India & ors v. Dudh Nath Prasad, AIR 2000 S.C. 525 submitted that in view of the above ruling by the Hon'ble Apex Court, the Petitioner is not entitled to Residential Certificate for not having the residence in the locality for a considerable period. The State Opp. Party also referred to a circular issued by the State Government in the Department of Revenue & Disaster Management dated 08.03.2011 & submitted that in view of the guidelines contained therein the Petitioner is not entitled to Residential Certificate.

4. For proper appreciation of the issue involved in the Writ Petition, it is

necessary here to refer to certain provisions of the Orissa Miscellaneous Rules, 1984 & I find Rule 4 of the Rule, 1984 deals with application for Miscellaneous Certificate & under this provision a person desirous of obtaining a certificate will have to make an application in terms of the provisions contained therein. Rule-5 makes way for institution of the case & to have enquiry into the claim & under Rule-6 a competent officer is to pass appropriate order granting or refusing necessary Residential Certificate. As appears in the case at hand, this stage was already over by the time complaint at the instance of the private Opp. Party was raised. It is Rule-7 of the Rule, 1984 provides power on the authority for review of the order already passed under Rule-6. In the case at hand, there was no application for review of the order granting the Residential Certificate in favour of the Petitioner. Now Rule-8, which deals with appeal, has a great relevancy in the present matter. Rules 7 & 8 since relevant for the purposes are as quoted herein below:-

"7. Review of the orders- Notwithstanding anything contained in these rules, it is revealed on subsequent verification or otherwise that the certificate should not have been granted or the contents thereof require modification the Revenue Officer or any officer superior to him in the Revenue Administrative hierarchy shall be competent to review the orders granting the said certificate & after giving the person concerned an opportunity of making any representation which may wish to make, pass such orders as he deems just & proper in the circumstances of the case.

8. Appeal- (1) Any person aggrieved by an order passed by the Revenue Officer under Rule 6 may prefer an appeal before:-

(a) the Sub-divisional officer concerned if the order was passed by a Revenue Officer, below the rank of the Sub-divisional Officer.

(b) the Collector concerned if the order was passed by the Sub-divisional Officer or the Additional District Magistrate, &

(c) the Revenue Divisional Commissioner concerned if the order was passed by the Collector:

Provided that no appeal under these rules shall be entertained unless it is preferred within a period of three months from the date of the said order.

(2) The orders of the Appellate Authority shall be final."

5. Rule 8 of the 1984 Rules authorizes the person aggrieved by an order passed by the Revenue Officer under Rule-6 may prefer an appeal. In my considered opinion, term "any person" cannot be stressed to the extent of including a third party at the best it should be a party to the dispute already decided. It is necessary to mention here that Petitioner since resort to Rule-4 of Rules, 1984 & as a consequent of which the said proceeding terminated with an order under Rule-6, it is only the parties to the order under Rule-6 are authorised to raise an appeal under Rule-8 of the Rules, 1984 & nobody else. This was a subject matter

in a case before the Hon''ble Apex Court & the Hon''ble Apex Court considering the submissions of the parties in the decision in between Centre for Public Interest Litigation & anr v. Union of India & ors as reported in AIR 2001 S.C. 80 has come to hold that "any person" does not include a third party. This is also the view of this Court in a decision in the case of Santosh Kumar Tripathy v. State of Orissa & two ors in OJ.C. No.15068 of 1999 in a Judgment delivered on 16.12.2014.

6. In the case at hand, this Court finds that the Opp. Party No.3 is not a party to the proceeding under Rule-4 by virtue of which the Petitioner has been granted the Residential Certificate. It is, therefore, any person authorised to raise an appeal is undoubtedly the parties to the proceeding under Rule-4 so also to the order under Rule-6. This being an appeal at the instance of a non-party to the proceeding, the appeal at the instance of the Opp. Party No.3 is not maintainable, under the circumstances this Court holds Miscellaneous Appeal at the instance of the third party was not maintainable. Consequently, this Court declares in the impugned order under Annexure-3, the Judgment in the said Appeal as bad in law & since the order at Annexure-4 is an out come of such illegal & non-maintainable appeal, the Annexure-4 is also bad in law. Since this Court holds that the appeal itself is not maintainable & according quashed both the orders vide Annexures-3 & 4, it is not necessary to go to the other aspects involved in the matter.

7. The Writ Petition succeeds to the extent directed above. However, there shall be no order as to costs.