

(2008) 10 UK CK 0011

In the Uttarakhand High Court

Case No : Writ Petition No. 1833 of 2008 (M/S)

Ramesh Chandra Singh

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 20-10-2008

Acts Referred:

Citation : (2009) 1 AWC 117 : (2009) 1 UC 385 : (2008) 2 UD 562 : (2006) 2 UD 562

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Gopal Narain, for the Appellant; K.P. Upadhyay, Addl. C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—Heard learned Counsel for the parties.

2. By means of this writ petition, the Petitioner has sought writ in the nature of certiorari, quashing the order dated 31.7.2007, passed by Respondent No. 2, whereby the domicile certificate of the Petitioner has been cancelled.

3. Brief facts of the case, as narrated in the writ petition, are that the Petitioner is permanent resident of Village Dharoj, P.O. Devidhura, Tehsil Pati, District Champawat. It is stated in the writ petition that, though, the parents of the Petitioner are residents of Tehsil Dhari, District Nainital, but the Petitioner was brought up in his maternal uncle's house in Village Dharoj, District Champawat. It is further stated that in the district of Champawat he got education and obtained the domicile certificate for doing course of special B.T.C.

4. The impugned order shows that the cancellation of domicile certificate has been made on the ground that the Petitioner had purchased land in District Champawat in Village Dharoj in 2005, only to obtain the domicile certificate, and it has further been mentioned in the impugned order that since the ancestral house of the Petitioner is in Tehsil Dhari of District Nainital, as such, the

certificate issued by Sub Divisional Magistrate, Lohaghat (Respondent No. 2) is liable to be cancelled.

5. In the counter-affidavit, the stand taken by the Respondents is the same as mentioned in the impugned order.

6. It is settled principle of law that there is distinction between the expressions "domicile" (in Hindi ?) and "place to which a person originally belongs" (in Hindi). The word domicile means a place where a person intends to reside permanently. In other words, it is not necessary for a person having ancestral property in one district to have intention to permanently reside in that district, only. When a person settles at a different place to the place of his ancestors, he loses his domicile of the place of his ancestors and acquires the domicile of a place where he permanently settles. Ordinarily, to know as to which place a person permanently intends to reside, is gathered from the facts like where one usually resides for a long time and intends to stay there. Merely for the reason that a person's father or grandfather has a property at one place does not disentitle him to acquire domicile at a different place where he is permanently settled.

7. The Sub Divisional Magistrate, Lohaghat, appears to have passed the impugned order, without hearing the person affected by cancellation of the domicile certificate. Learned Counsel for the Petitioner submitted that the Petitioner has been brought up in his "NANIHAL" (maternal uncle's home) in District Champawat where he got educated and obtained domicile certificate.

8. After considering the submissions of learned Counsel for the parties and after going through the record, this Court finds that the Sub Divisional Magistrate, Lohaghat has erred in law by cancelling the domicile certificate of the Petitioner vide impugned order dated 31.7.2007, particularly, in view of the fact that the Petitioner has not been heard before passing such an order.

9. Therefore, this writ petition is allowed. The order of cancellation of the domicile certificate is quashed. However, it is left open for the Respondent No. 2 to pass fresh orders, after hearing the Petitioner. (Urgency Application No. 2541 of 2008 also stands disposed of).