
(2014) 07 AHC CK 0306
In the Allahabad High Court
Case No : C.M.W.P. No. 24194 of 2012

Sarojlata Srivastava

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Citation : (2014) 7 ADJ 766 : (2014) 106 ALR 206 : (2014) 6 AWC 5848 :
(2014) 125 RD 429 : (2014) 3 UPLBEC 2310

Hon'ble Judges : Vineet Saran, J; Vijay Lakshmi, J

Bench : Division Bench

Advocate : Krishna Nand Yadav, Advocate for the Appellant; Chandra Prakash Singh, Advocate for the Respondent

Final Decision : Allowed

Judgement

Vineet Saran and Vijay Lakshmi, JJ.—The dispute in the present writ petition is with regard to the cancellation of domicile certificate issued by the competent authority in favour of the petitioner. The brief facts are that on 21.7.2009, a domicile certificate was issued by the Sub-Divisional Magistrate, Nichlaul, District Maharajganj, certifying that the petitioner is resident of Bisokhore, P.S. Kothibhar, District Maharajganj. Thereafter, by order dated 14.3.2012, the Sub-Divisional Magistrate, Nichlaul cancelled the domicile certificate issued on 21.7.2009. It is contended that as the said order was passed without giving opportunity of hearing to the petitioner, she filed her objection/representation on 19.3.2012, on which the Sub-Divisional Magistrate called for a report from Nayab Tehsildar, which was submitted on 3.4.2012. Based on the report of Nayab Tehsildar, the impugned order dated 21.4.2012 has been passed confirming the earlier order dated 14.3.2012, cancelling the domicile certificate issued on 21.7.2009. Challenging both the aforesaid orders dated 14.3.2012 and 21.4.2012, passed by the Sub-Divisional Magistrate, the present writ petition has been filed.

2. By an interim order dated 17.5.2012, the operation of the order cancelling the

domicile certificate of the petitioner was stayed.

3. We have heard Shri Krishna Nand Yadav, learned Counsel for petitioner, as well as learned Standing Counsel appearing for the State-respondent Nos. 1 to 3 and Shri Prabhakar Vardhan holding brief of Shri C.P. Singh, learned Counsel for the private respondent No. 4.

4. Pleadings have been exchanged between the parties and with the consent of learned Counsel for the parties, this writ petition is being disposed of at this stage.

5. The submission of learned Counsel for the petitioner is that the order dated 14.3.2012 was passed on the complaint of respondent No. 4, but no opportunity of hearing was given to the petitioner prior to passing of the said order dated 14.3.2012. It is contended that even the subsequent order passed on 21.4.2012 is also illegal and cannot be justified in law inasmuch as it is based on misinterpretation of the report submitted by Nayab Tehsildar.

6. The facts of this case are that the petitioner was married to Atal Bihari Lal Srivastava in the year 1995. She resided with her husband in district Gorakhpur till his death in the year 1998, after which according to the petitioner, she was living alongwith her parents in District Maharajganj with her child, who was ten months old at the time of death of her husband. After passing of the order on 14.3.2012, on an application/representation filed by the petitioner, a report was called for from Nayab Tehsildar, which was submitted on 3.4.2012, a copy of which has been filed as Annexure-12 to the writ petition. Based on that report, the order dated 21.4.2012 has been passed.

7. Submission of learned Counsel for the petitioner is that in the said report, a finding of fact has been recorded by Nayab Tehsildar that after the death of her husband in 1998, the petitioner resided with her parents in district Maharajganj, but in the order dated 21.4.2012, the Sub Divisional Magistrate has recorded that Nayab Tehsildar has reported that the petitioner resides in district Gorakhpur and sometimes visits her parent's house in district Maharajganj. It is thus contended that the said finding is contrary to the report submitted by Nayab Tehsildar.

8. Having perused the record as well as the report of Nayab Tehsildar, we find that while passing the order dated 21.4.2012 the Sub-Divisional Magistrate has clearly misinterpreted the report of Nayab Tehsildar. In the said report, Nayab Tehsildar has stated as under:

9. Thus the report is very clear that the petitioner resides in district Maharajganj with her parents. It is not understood as to how the said observation and report of Nayab Tehsildar can be interpreted to mean that the petitioner resides in Gorakhpur and occasionally visits her parents residing in Maharajganj.

10. Moreover, the Sub Divisional Magistrate had passed the order dated 14.3.2012 without giving any opportunity of hearing to the petitioner. In the said

order, the Sub-Divisional Magistrate has observed that the petitioner had been married 16 years ago and after the death of her husband, she had a right in the property of her deceased husband and thus she could not have been treated as domicile of the village of her parents.

11. Every citizen of India has a right to reside at the place of his/her choice. Only on the basis of the fact that a person has certain property or rights in certain properties at a particular place, it cannot be assumed that he or she resides at the place where such property is situated. The impugned orders cannot thus be held to be justified in law. As we have already held above, the Sub-Divisional Magistrate has misinterpreted the report of Nayab Tehsildar which clearly states that the petitioner is continuously residing with her parents in District Maharajganj, since after the death of her husband in the year 1998.

12. In the aforesaid facts and circumstances of the case, we are of the opinion that the orders dated 14.3.2012 and 21.4.2012 passed by respondent-Sub Divisional Magistrate, Nichlaul, District Maharajganj are liable to be quashed.

13. Accordingly, the writ petition stands allowed. The order dated 14.3.2012 and 21.4.2012 passed by respondent-Sub Divisional Magistrate, Nichlaul, District Maharajganj are hereby quashed