

(2011) 06 UK CK 0060
In the Uttarakhand High Court
Case No : Writ Petition (M/S) No. 51 of 2011

Sartaz Parveen

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 10-06-2011

Acts Referred:

Constitution of India, 1950 — Article 5
Succession Act, 1925 — Section 15, 16, 4

Citation : (2011) 06 UK CK 0060

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J.—Heard Mr. D.S. Patni, Advocate for the Petitioner and Mr. N. P. Sah, Standing Counsel for the Respondents.

2. The Petitioner by means of the present writ petition has challenged the order dated 10.12.2010 (Annexure No. 1 to the writ petition) passed by Sub Divisional Magistrate, Jaspur District Udham Singh Nagar Respondent No. 3 by which the application of the Petitioner for grant of permanent residence certificate has been rejected. Since the permanent residence certificate was earlier not given to the Petitioner, the Petitioner was constrained to file the writ petition being Writ Petition No. 2001/2010 (M/S) which was disposed of by a learned Single Judge of this Court vide order dated 25.11.2010 directing the concerned authorities to hear the representation of the Petitioner and pass an order therein. Subsequent to order dated 25.11.2010 the Petitioner moved a representation before the concerned authority. This representation of the Petitioner has been rejected on the ground that though the Petitioner was born at Jaspur, but in 2002 she was married to one Anees Ahmed who was a permanent resident of Moradabad which is in Uttar Pradesh. It is also admitted that on 15.4.2010 the marriage of the Petitioner with Anees Ahmad was also dissolved. Now the Petitioner has moved an application for getting the permanent residence certificate from the concerned

authorities in view of the order dated 25.11.2010 of this Court which has been rejected by the concerned authorities by assigning the reasons that in Uttarakhand the permanent residence certificate can only be granted to a person who has stayed for at least 15 years in the State of Uttarakhand by relying upon the Government Order dated 20.11.2001 (Annexure 8 to the writ petition) by which permanent residence certificate can only be granted to a person who stayed at least 15 years in Uttarakhand. Though this order is not under challenge. According to the Petitioner she was born 1.7.1980 at Jaspur which is admittedly in Uttarakhand. The Petitioner's marriage was solemnized in the year 2002, therefore at least in the year 2002 she has already stayed in Uttarakhand for more than 15 years. All the same, the concerned authorities state that in year 2002, she married to a person in Uttar Pradesh and she stayed in Uttar Pradesh till 2010 therefore after marriage she has not stayed in the State of Uttarakhand for at least 15 years, and therefore permanent residence certificate cannot be granted to her.

3. First of all, this condition of 15 years for a person to get a permanent residence certificate is absolutely unreasonable inasmuch as even the Constitution of India provides that a person will be a citizen of India, inter alia, if he has stayed in the territory of India for a period of 5 years. Article 5 of the Constitution of India reads as under:

5. Citizenship at the commencement of the Constitution.- At the commencement of this Constitution every person who has his domicile in the territory of India and-

(a) who was born in the territory of India; or

(b) either of whose parents was born in the territory of India; or

(c) who has been ordinarily resident in the territory of India for not less than five shall be a citizen of India.

4. Therefore when the Constitution of India puts a condition of 5 years for a person to be a citizen of India, it is highly unreasonable for the State to put a condition of 15 years to recognize anyone as a permanent resident of Uttarakhand, even assuming for the sake of argument that some thing like a permanent resident of Uttarakhand has any meaning in law.

5. This Court in *Neha Saini v. State of Uttarakhand and Anr.* reported in AIR 2010 UTR 36 as well as in *Smt. Madhu Arya v. State of Uttarkhand and Ors.* reported in 2011 (1) U.D. 292 has held the "provincial domicile" is an absolutely misconceived notion. The concept of provincial domicile is alien to the Indian Legal System. Each citizen of India carries with him or her one single domicile which is the "domicile of India". Therefore refusing to grant a privilege for certificate to a person on the ground that he is not a domicile of Uttarakhand would be illegal and in violation of Constitution of India. Moreover, even if the Sub Divisional Magistrate, who has rejected the claim of the Petitioner was

contemplating the Government Order dated 20.11.2001 which visualizes 15 years stay in Uttarakhand, the same requirement was already there inasmuch as she was born in the State of Uttarakhand in 1980 and she stayed in Uttarakhand till 2002 when she married to one Anees Ahmed. Merely by marriage one does not change domicile as Sections 15 and 16 of the Indian Succession Act on which some reliance has been placed by the authorities while refusing to grant permanent residence certificate to the Petitioner is not applicable to "Hindu, Muhammadan, Buddhist, Sikh or Jaina" in India. Section 15 of the Indian Succession Act, 1925 reads as under:

15. Domicile acquired by woman on marriage.- By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

Section 16 of the Indian Succession Act reads as under:

16. Wife's domicile during marriage.- A wife's domicile during her marriage follows the domicile of her husband.

Sections 15 & 16 of the Indian Succession Act, 1925 form a part of Part II of the said Act and Section 4 of the said Act specifically states that this Part (Part II) shall not apply, if a person is a "Hindu, Muhammadan, Buddhist, Sikh or Jaina". Section 4 of the Indian Succession Act, 1925 reads as under:

4. Application of Part.- This part shall not apply if the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina.

6. In other words, there is no change of domicile inter alia for a Hindu or a Muslim on her marriage. The order dated 10.12.2010 (Annexure No. 1 to the writ petition) being in violation of laws is hereby quashed. The concerned authority is hereby directed to issue a permanent residence certificate to the Petitioner forthwith. All the Petitioner has to do is to give an undertaking along with an affidavit before the concerned authority that she is a permanent resident of District Udham Singh Nagar and that she has not asked such a certificate nor received any such certificate from any place or any other State in India.

7. Writ petition stands allowed.

8. No order as to costs.