

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION 508 OF 2014

Smt. Ramabai wd/o Vishnu Gaikwad
Age:48 Years, Occ.: Household
R/o: Bhimnagar, Andoor,
Tq. Tuljapur, Dist. Osmanabad.

..Petitioner

Versus

1]The State of Maharashtra,
Through the Secretary
Revenue Department,
Mantralaya, Mumbai-32

2]The Tahsildar,
Tuljapur, Tq. Tuljapur,
Dist. Osmanabad.

3]The Sub-Divisional Officer
Osmanabad, Dist. Osmanabad.

4]The Collector,
Osmanabad,
Tq. & Dist. Osmanabad.

5]Basappa s/o Channappa Hagalgude
Age:36 Years, Occ: Agriculture
R/o Andoor, Tq. Tuljapur,
Dist. Osmanabad.

6]Bharat Petroleum Corporation Ltd.
Through the Territory Manager,
At LPG Bottling plant,
Post- Kati Chincholi
Sawaleshwar, Tq. Mohal,
Dist. Solapur.

..Respondents

Mr.V.D. Salunke, Advocate for petitioner.
Mr. A.R. Kale, AGP for Respondent Nos. 1 to 4.
Mr.M.P. Tripathi, Advocate for respondent No.5.

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**

**RESERVED ON : 20/06/ 2017.
PRONOUNCED ON :04/07/2017.**

JUDGMENT (PER MANGESH S. PATIL,J.) :

1] Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2] By this Writ Petition under Articles 226 and 227 of the Constitution of India, the petitioner is impugning the order passed by Naib Tahsildar, Tuljapur, Dist. Osmanabad in File No. 228/2012 dated 31/12/2012 negating her claim for being declared as a resident of village Andoor ,Tq. Tuljapur, Dist. Osmanabad.

3] According to the petitioner she was born and brought up in village Andoor and also possesses share in the ancestral property being land Gut No. 173 of that village. After demise of her husband, she has been continuously residing in the village since 2004. Her children are taking education in the village and she has also acquired a house property being house no.1237 in that village.

4] The respondent no.6 published an advertisement on 26/12/2011 inviting offers for allotment of distributorship of LPG

connection. On 18/01/2012, she applied for the distributorship and was also selected in the process. However, the respondent no. 5 raised an objection with the respondent no.6 about her residence and the latter called upon her to produce a certificate of residence in the standard format.

5] Accordingly the petitioner requested the Tahsildar/Respondent no. 2 for supply of the certificate on 19/12/2012. Though she was initially issued a certificate of residence, on the application of the respondent no. 5 dated 11/12/2012 praying for declaring her not to be the resident of the village, by the impugned order the Naib Tahsildar held that she was not a resident of the village and accordingly the respondent no.2/Tahsildar refused to issue any certificate in her favour.

6] According to the petitioner assuming that the order was passed under the Maharashtra Land Revenue Code, 1966, she preferred an appeal to the respondent no.4 Collector under Section 247 of the Code but the Collector declined to interfere by holding that since there was no provision in the Code empowering the Revenue Authorities to issue certificate of residence, the Appeal was not maintainable. This is how she has no other option but to prefer this Writ Petition invoking the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

7] The present Naib Tahsildar of Tuljapur Mr. Ganpat Uddhavrao Waghe submitted the affidavit in reply and opposed the petition on the ground that the petitioner is not a permanent resident of village Andoor and could not establish her claim by documentary evidence.

On the contrary there was ample documentary evidence and the statements of the villagers showing otherwise.

8] At the out set it is necessary to mention that no dispute was raised across the bar as far as legal aspect is concerned as regards the power of the Revenue Authorities to issue certificate of residence. The learned AGP and even the learned Advocate for the respondent Nos. 5 fairly conceded that the Maharashtra Land Revenue Code does not contain any provision empowering the Revenue Authorities to issue such certificate and consequently even if it is so issued, no appeal can be maintained under Section 247 of the Code. Consequently no dispute has been raised by the respondents as regards the legal remedy available to the petitioner in the form of present Writ Petition to claim the reliefs.

9] The learned Advocate for the petitioner referring to various documents in the form of petitioner's caste certificate (Exhibit-B) her school leaving certificate, 7/12 extract (Exhibit-C) the school leaving certificates of her sons Prashant and Prasad, the assessment list in Form no.8 (Exhibit-E) in respect of house property, bank pass-book of the State Bank of India and the Ration Card, vehemently submitted that the documentary evidence made it amply clear and justified the petitioner's claim of being resident of village Andoor but the Naib Tahsildar has ignored such clinching material to hold otherwise.

10] As against this the learned Advocate for the respondent Nos. 5 adverted our attention to the very same documents and submitted that all these documents though apparently support the petitioner's version, have been got up, post the dispute. According to the learned

Advocate perhaps after realising that the dispute can be raised about her entitlement to apply for the distributorship, the petitioner has engineered these documents to suit the obvious purpose. He pointed out that all these documents clearly bear dates after the petitioner had applied for the distributorship.

11] The learned Advocate has not disputed that village Andoor can be petitioner's parental home. However, according to him what was expected was that she should have been a permanent resident of the village which she isn't. In support of his version, apart from the above circumstances, he also relied upon various documents in the form of Identity card issued by Election Commission of India of the petitioner as well as her husband, the Ration card dated 03/12/2012 the panchanama dated 14/12/2012 prepared by the Talathi and submitted that all these documents clinchingly demonstrate that when she applied for distributorship in the month of December 2012, she was permanent resident of Kumthanaka Tq. Uttar Solapur.

12] A careful consideration of the documentary evidence referred to by both the sides clearly support the version of the respondents and we have no slightest hesitation in upholding the conclusion drawn by Naib Tahsildar by the impugned order. It is just apparent that the petitioner's parental home must be at village Andoor but she was residing with her husband and the family at Kumthnaka Tq. Uttar Solapur and not Andoor , Tq. Tuljapur for which place the respondent no. 6 Corporation had invited applications for distributorship. All the documents produced by the petitioner apparently show that all have been created and obtained after the dispute was raised or at least after she made the application for distributorship. The 7/12 extract

(Exhibit-C) clearly shows that the mutation of the ancestral land in the name of the petitioner and her siblings was got certified by mutation entry no.6002, the house property is also apparently got mutated after demise of the father of the petitioner [Exhibit-E] but in the year 2013, the bank pass-book of the State Bank of India is also issued apparently on 26/11/2012 and the Ration card of village Andoor was also issued on 05/12/2012.

13] One can easily notice that the bank passbook of Majrewadi branch at Kumtha Naka Solapur does contain several consistent transactions/entries or debit as well as credit side. As against this the passbook of Andoor branch depicts that it has been opened objectively on 26/11/2012. But conveniently the petitioner has omitted to explain this circumstance.

14] True it is that the school leaving certificate of the petitioner and her son do prima facie show that they have studied at Andoor and Naldurg which is a nearby place. However, these documents do not lead us to a definite conclusion that they were residents of village Andoor for, admittedly Andoor is the place of parental home of the petitioner and it is not very uncommon to keep children with the grand parents for education purpose for varied reasons.

15] Under all these circumstances inference drawn by the Naib Tahsildar on the basis of the documents produced by the respondent no.5 while holding the impugned enquiry, can not be said to be baseless. By no stretch of imagination can it be said that the decision arrived at by him was perverse, arbitrary or capricious, without which the powers of this Court under Articles 226 and 227 of the

Constitution of India cannot be invoked.

16] Before we conclude it must be remarked that the whole conduct of the petitioner throughout has been tainted with malafides. Every attempt has been made to shield vital circumstances going against her and as discussed hereinbefore. Her such conduct further disentitles her from seeking the discretionary relief of a writ jurisdiction.

17] Suffice for the purpose to refer to the decision of the Supreme Court in the case of **Bhagwan Dass vs. Kamal Abrol [2005 (4) B.C.I. 311]** wherein, in the similar fact situation, it was concluded that the eligibility criterion for allotment of dealership/distributorship of LPG, requires the person to be merely resident only in the actual sense and not in any other sense. The person should be a defacto resident and not to have a mere connection with the place on account of personal or ancestral property and it is not permissible to have causal connection or temporary residence at the place. Drawing a parallel, the fact situation about the matter before hand is quite similar and we with respect draw a similar conclusion.

18] In the result the writ petition does not hold any merit and deserves to be dismissed and is accordingly dismissed. Rule is discharged.

(MANGESH S. PATIL,J.)

(S.C. DHARMADHIKARI ,J.)

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