IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2021

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.4540 of 2018
and
W.M.P.No.5593 of 2018

Tmt.Rifana Ambadi Parambath ...Petitioner

Vs

1.Union Territory of Puducherry,
Rep.by its Secretary,
Revenue Department,
Chief Secretariat,
Puducherry.

2.The Deputy Collector,
Revenue Department,
Mahe, Puducherry.

3.The Deputy Tahsildar (Revenue),
Government of Puducherry,
Sub Taluk Offic,
Mahe, Puducherry. ... Respondents

Prayer Writ Petition filed under Section 226 of the Constitution of India, prayed for the issuance of Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent herein dated 12.10.2017 in No.29/STOM/T3/2016 and quash the same and further direct him to grant Nativity Certificate and the Residence Certificate to the petitioner.

For Petitioner	:	Mr.Krishna Prasad
For Respondents	:	Mr.V.Usha Additional Government Pleader (Pondy)

ORDER

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus to call for the records of the 3rd respondent herein dated 12.10.2017 in No.29/STOM/T3/2016 and quash the same and further direct him to grant Nativity Certificate and the Residence Certificate to the petitioner.

2.The case of the petitioner is that, she was born and brought up at Mahe. After completion of her Secondary Education, she has joined Teacher's Training Course in Kannur and the same was completed in the year 2013. After completion of the said course, she has enrolled with the Employment Exchange in Mahe and she obtained Nationality/residence certificate on 20.05.2009 from the 3rd respondent and the same was renewed periodically. She has also obtained Community/Residence certificate on 23.07.2013 for applying the Government jobs. While so, she got married on 14.03.2015 and for a very short period she went to her uncle's home at Chambad and thereafter, she returned to her home at Mahi. She further submits that as per customs of the Muslims in Malabar, the husband would shift to his wife's place and after some months, her husband left to Saudi Arabia in search of employment. Later, she applied for passport with an intent to join her husband and subsequently, she also got her passport on 19.05.2015. In the mean time, she got selected to the post of Primary School Teacher under the Directorate of School Education Puducherry, and directed to appear for certificate verification. As per the instructions, she applied for fresh Nativity cum Residence certificate along with all proofs. Even though, she submitted all the proofs, the 3rd respondent has rejected her application. Aggrieved by the same, she preferred an appeal before the 2nd respondent, which was also dismissed. Aggrieved by the same, she approached this Court by way of the writ petition in W.P.No.30075 of 2016 and this Court vide order dated 02.08.2017, while setting aside the orders passed by the 2nd and 3rd respondents therein, directed the 3rd respondent to consider her application afresh. Thereafter, the petitioner has filed detailed written submissions along with all documents to prove her continuous residence in Mahe. Despite the same, the 3rd respondent rejected her application, only on the sole ground that she went to Chambad for some days.

3.Challenging the said rejection orders, the present writ petition has been filed.

4.The learned counsel for the petitioner submitted that while passing the order of rejection the Respondents 2 and 3 have not considered the ration card, aadhar card, driving license and birth certificate issued to the petitioner, which would clearly prove that she has been continuously residing in Mahe. Since the petitioner got married on 14.03.2015 and for a short period she went to her uncle's house at Chambad and again returned to Mahe and got selected to the post Primary School Teacher. Therefore, the petitioner has proved that she has been continuously residing at Mahe only.

5.Per contra, the learned Additional Government Pleader appearing for the respondents submitted that for issuance of Nativity/Residence Certificate, the candidate or whose parent must be residing continuously in the Union Territory of

Puducherry for at least five years preceding the date of application. In the present case, the petitioner and her family were native of Kallayi Revenue Village and later, her parents constructed a new house at Chambad in Thalaserry Taluk of Kannur District, Kerala State and shifted her residence to Chambad and thereby she lost her status of residence in Mahe region. Therefore, she is not entitled for the Nativity/Residence certificate.

6.Heard the learned counsel for the petitioner as well as the Additional Government Pleader appearing for the respondents and perused the materials available on record.

7.A perusal of the typed set of papers filed by the petitioner would show that the petitioner was born and brought at Mahe and continuously residing there. During the year 2015, she got married and for a short period she left Mahe and thereafter, she returned back and residing for the past five continuous years in Mahe. In fact, the petitioner was issued Nationality/residence/Income Certificate by the 3rd respondent on 20.05.2009, which was also subsequently renewed periodically and based on the said certificate, she also applied for passport during the year 2015 and after due verification by the concerned Police, the petitioner was also issued with the Passport on 19.05.2015.

8. For the purpose of issuing Nativity/Residence Certificate, there are two aspects need to be considered, viz., i) Birth Certificate and ii) applicant should have resided for the past 5 years continuously in Puducherry region. In fact, taking into consideration that no comprehensive instructions have been issued for determination of the status of nativity in respect of any application whether by birth or by continuous residence, the Government of Puducherry has issued G.O.Ms.No.48, dated 12.12.2002, which reads as under:

Revenue Department

G.O.Ms.No.48 Pondicherry 12.12.2002

Ref: (i) Circular No.13(No.G-1417/9/70) dt 10.09.1970 of the Revenue Department

(ii) Circular No.16 dt 22.10.1970 of the Revenue Department, Pondicherry

The Revenue Department has been issuing certificates pertaining to "Nativity" through the Deputy Tahsildar/Tahsildars of Sub-Taluk/Taluk Office based on certain instructions issued for the determination of the nativity purely for educational purposes vide circular 2nd cited. However, no comprehensive instructions have been issued in this regard for determination of nativity by birth or continuous residence.

Whereas the Government has been considering issue of comprehensive instructions in this regard for compliance by the certificate issuing authorities of the Revenue Department, the following criteria is now prescribed for determining the status of nativity in respect of any applicant whether by borth ot by continous residence:

a) Nativity by birth : The applicant should have been in the Union Territory of Pondicherry and should have been ordinarily residing within the Union Territory prior to the date of application. In order to satisfy the criterion of “Ordinarily resident”, the person should have been staying either by himself or with his family within the Union Territory of Pondicherry continously with a clear intention of residing there permanently, but for temporary absence from such place of residence for reasons job or education etc., As long as the applicant is able to establish satisfactorily his intention to return to his place of residence on the conclusion of such temporary absence, he may be considered to be a person ordinarily residing in the Union Territory.

(b) Nativity by continuous residence: The applicant should have been residing continuously for five years in the Union Territory prior to the date of the application.

The above certificates pertaining to nativity may be issued in the prescribed format as enclosed. However, pre-printed formats as contained in the application forms issued by the educational or financial institutions/agencies etc can also be filled up and certified by the certificate issuing authorities in respect of nativity by following the criteria prescribed by such institutions/agencies or in the absence of any such prescribed criteria by following the criteria specified above by this Department.

The instructions as above should be adhered to strictly while issuing Nativity Certificate in future.

9.The above said G.O. clearly speaks about nativity by birth wherein, an applicant whoever is born in Union Territory of Pondicherry and ordinarily residing between the period prior to the date of application, is entitled for nativity certificate. The said G.O also states that the temporary absence of any person will not be a bar when the said person has got clear intention of residing there permanently, for the purpose of obtaining nativity certificate. In order to satisfy criteria of "ordinarily resident" so as to claim Nativity by birth, the applicant should have been staying either by himself or with his family within the Union Territory of Puducherry continuously with a clear intention of residing there permanently, but for temporary absences from such place of residence for reasons of job or education, etc. Therefore, as long as the petitioner is able to satisfy that her intention to return from her uncle's house and reside at her place, i.e. Mahe within the Union Territory of Puducherry, there is no impediment for the respondents to consider his claim.

10.It is not in dispute that the petitioner was born and brought up within the Union Territory of Puducherry. In order to prove her continuous residence at Mahe, the petitioner has produced various documents which were issued between 1993 and 2015, viz.,

i) Birth Certificate dated 04.03.1993.

ii) Nationality and residence Certificate issued to the petitioner dated 20.05.2009 issued by the 3rd respondent.

iii) Identity Card issued on 25.05.2009.

iv) Community/Residence Certificate dated 23.07.2013, issued by the 3rd respondent.

v) Aadhar card issued to the petitioner.

vi) Passport issued to the petitioner.

Vii) Driving license and Ration Card issued to the petitioner.

11.All the above documents would clearly prove that the petitioner and her family members have been ordinarily residing at Mahe within the Union Territory of Pondicherry. However, since the petitioner got married in the year 2015, she left Mahe for a short period to her uncle's house at Chambad and as per customs of Muslims at Malabar, after marriage the husband joins the wife and resides at her native place and as such, both the petitioner and her husband returned to Mahe and the petitioner started living continuously there and her husband went to abroad. Therefore, the petitioner has fulfilled the criteria of the Nativity by birth by way of documentary evidence, establishing that she has been residing at Mahe within the Union Territory of Pondicherry with an intention to permanently reside there only. While so, when the petitioner has established beyond doubt that she has been living at Mahe, continuously for more than five years prior to the date of her application, which was also substantiated by documents, the second and third respondents have passed the impugned orders, merely on presumptions and surmises, without considering the documents produced by the petitioner in proper perspective and therefore, the said orders are liable to be set aside.

12.In such circumstances, the petitioner having established beyond doubt that she is entitled for Nativity/Residential certificate as per G.O. Ms. No.48 dated 12.12.2002.

13.In the light of the above discussion, the Writ Petition is allowed and the order passed by the third respondent in No.29/STOM/T3/2016 dated 12.10.2017 is set aside and the third respondent is directed to issue Nativity Certificate to the petitioner, within a period of two weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Pns

To:

1.Secretary,
Union Territory of Puducherry,
Revenue Department,
Chief Secretariat,
Puducherry.

2.The Deputy Collector,
Revenue Department,
Mahe, Puducherry.

3.The Deputy Tahsildar (Revenue),
Government of Puducherry,
Sub Taluk Offic,
Mahe, Puducherry.

+1 cc to M/S.Sarvabhauman, Advocate Sr.NO. 59325

W.P.No.4540 of 2018
and
W.M.P.No.5593 of 2018

nrl(CO)
A.SK(07.12.2021)