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Jugraj Singh & anr. Vs. UOI & ors.

Present : Mr. Paramjit Singh Jammu, Advocate for the petitioners.

Case has been taken up on Video Conferencing in view of COVID-19 Pandemic.

Petitioners have preferred this writ petition stating that they are the residents of village Ilmewala, Tehsil Zira, District Ferozepur. Petitioner No. 1 contacted a travel agent in the year 2001 with the intention to go to USA. Instead, he was duped and sent to Kenya. In the year 2007, he got married to Kamaljit Kaur (petitioner no. 2 herein). As petitioner no. 1 was forced to reside in Kenya in compelling circumstances, he had to apply for Kenyan citizenship and passport. Accordingly, passport No. B065590 dated 22.12.2009 valid up to 21.12.2019 was issued to him. Thereafter, petitioner no. 1 visited India number of times as he wanted to retain his original Indian nationality. In the year 2014, he decided to permanently return to India and got Indian visa bearing no. VJ5598773 issued on 30.12.2014 valid up to 29.06.2015. He entered India on 15.02.2015 and since then he has been residing alongwith his family in India. As per counsel for the petitioners in view of grant of Kenyan citizenship to petitioner no. 1, his Indian citizenship stood automatically terminated as per section 9(1) of the Citizenship Act, 1955. In view of the fact that petitioner no. 1 was born in India and is permanent resident of village Ilmewala, Tehsil Zira, District Ferozepur, his Indian citizenship needs to be restored. He even approached the Foreigners Regional Registration Officer, Bureau of Immigration (MHA) Govt. Of India, 208 Basant Avenue, Amritsar (respondent no. 3 herein) for this purpose and filed a representation. However, he received no reply. All of a sudden on 18.01.2021, Police of District Ferozepur visited the house of petitioner no. 1 and served notice

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dated 18.01.2021, (Annexure P-2) asking him to leave India as he was considered to be a foreigner and was overstaying. He is, thus, likely to be deported in view of notice, Annexure P-2 issued by respondent no. 3. According to him, such an action would be violative of sections 14 and 21 of the Constitution of India as no opportunity of hearing was afforded to petitioner no. 1 before taking the decision. Section 9(2) of the Citizenship Act, 1955 also envisages an opportunity of hearing before a decision in this regard is taken. Relying upon judgment of the Constitution Bench of the Hon'ble Supreme court in *Md. Ayub Khan vs. Commissioner of Police, Madras and others* 1965 AIR (SC) 1623, he submits that in similar circumstances, Apex court held that decision of Government of India to deport a person without affording opportunity of hearing to him is erroneous. Operative part of the order reads as under :-

“13 We are, therefore, of the view that the High Court was in error in holding that the decision of the Government of India without giving an opportunity to the appellant to prove his case that he had been compelled by the police to obtain a passport from the High Commissioner for Pakistan will sustain the order of deportation against the appellant. It will of course be open to the Central Government to determine whether the appellant has lost the citizenship of India by voluntarily acquiring the citizenship of Pakistan by obtaining a passport from the High Commissioner for Pakistan or in any other manner. But the determination must be made in accordance with law.”

Notice of motion for 18.03.2021.

At this stage, Mr. Shireesh Gupta, Sr. DAG Punjab accepts notice on behalf of respondents no. 4 to 7.

Advance copy of the petition has been supplied to Ms. Shweta Nahata, counsel appearing for respondents no. 1 to 3. She submits that she shall

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seek instructions and file a short affidavit, if necessary. She will also find out the antecedents of petitioner no. 1. If there is anything adverse, it shall be brought to the notice of the court in sealed cover.

She shall be at liberty to seek instructions from the concerned Intelligence Agencies, if necessary.

Deportation of petitioner no. 1 to Kenya shall remain stayed till the next date of hearing.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

March 09, 2021
Ajay



सत्यमेव जयते

