



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.4917 OF 2022

1. Rajinder Kaur Jaspal Singh Layal,
2. Kanwarpal Singh Jaspal singh Layal,
3. Susmeet Singh Jaspal Singh Layal,

ASHVINI
BAPPASAHEB
KAKDE

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... Petitioner

Versus

1. The Union of India
(Through the Ministry of External Affairs
Regional Passport Officer, Mumbai.)
2. Regional Passport Officer
Regional Passport Office, Mumbai
Videsh Bhavan, Bandra Kurla Complex,
Plot No.C-45 G Block, Bandra (East)
Mumbai 400051
3. Gurvinder Chanan Singh Layal

... Respondents

Ms. Bharti Sharma i/b. Mr. Rajesh D. Bindra for the Petitioners.
Mr. Y. R. Mishra a/w. Mr. D. A. Dube for Respondent Nos. 1 & 2-UOI.
Mr. Aniesh Jadhav a/w. Mr. Rushikesh Kekane for Respondent No.3.

**CORAM : A. S. CHANDURKAR &
FIRDOSH P. POONIWALLA, JJ.**
DATE : 15TH DECEMBER 2023

Judgment (As per Firdosh P. Pooniwalla J.):-

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.
2. The Petitioners have filed the present Petition seeking quashing and setting aside of two Orders dated 22nd December 2020 and one Order dated 23rd December 2020 issued by Respondent No.2 refusing to renew the passports of the Petitioners. The Petitioners have also sought a Writ of Mandamus ordering and directing Respondent No.2 to renew the passports of the Petitioners. Petitioner No.1 is the mother of Petitioner Nos.2 and 3. The Respondent No.3 is the brother-in-law of Petitioner No.1 and the uncle of Petitioner Nos. 2 and 3.
3. Since the Petitioners' respective passports had expired, they had applied for renewal of their passports. Respondent No.2, by two Orders dated 22nd December 2020 in the case of Petitioner No.1 and Petitioner No.3 respectively, and by one Order dated 23rd December 2020 in the case of Petitioner No.2, refused to renew the passports of the Petitioners. The reason

given in all the said three Orders was the same, namely, that the address given by the Petitioners in their Applications for renewal of passports was of a room standing in the name of Respondent No.3, and as there was a property dispute in respect of the said room, Respondent No.3 has raised an objection to the Petitioners getting a passport showing the said address.

4. The Petitioners have challenged the aforesaid Orders of Respondent No.2 on the ground that the right to issuance/renewal of a passport is a fundamental right guaranteed to the Petitioners under Article 21 of the Constitution of India, and by refusing to renew the passports of the Petitioners, Respondent No.2 had acted arbitrarily and beyond jurisdiction. The Petitioners have submitted that renewal of their passports cannot be refused on the said ground. The Petitioners have also submitted that Respondent No.2 ignored the fact that earlier passports have been issued to Petitioner Nos.2 and 3 at the very same address. In these circumstances, the Petitioners have filed the present Writ Petition.

5. Before we deal with the merits of the case, we will deal with the issue of maintainability of this Petition raised on behalf of Respondent No.3. It is the case of Respondent No.3 that Section 11 of the Passports Act, 1967 (“the Passports Act”) provides for an Appeal against such an order of refusal to renew a passport. In these circumstances, the Petitioners have an equally efficacious alternate remedy and therefore this Writ Petition ought not to be

entertained. In support of this submission, Respondent No.3 has relied upon the judgment of the Hon'ble Supreme Court in *M/s. Radha Krishan Industries v/ State of Himachal Pradesh & Ors.*¹ and in particular to paragraph 27 of the said judgment which reads as under:-

“27. The Principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

6. We are unable to accept the above mentioned submission of Respondent No.3. A reading of paragraph 27 of the said judgement, on

1 AIR 2021 SC 2114

which Respondent No.3 has placed reliance, clearly states that an alternate remedy, by itself, does not divest the High Court of its power under Article 226 of the Constitution of India in an appropriate case, though ordinarily a Writ Petition should not be entertained when an efficacious alternate remedy is provided by law. Further, paragraph 27 of the said judgement also lists certain exceptions to the rule of alternate remedy, one of which is that if a Writ Petition has been filed for the enforcement of fundamental right protected by Part-III of the Constitution of India. Another exception is that if the order challenged is without jurisdiction.

7. In the present case, the Petitioners have challenged the refusal by Respondent No.2 to renew their passports and have sought a Writ of Mandamus ordering and directing Respondent No.2 to renew their passports. Since the judgment of the Hon'ble Supreme Court in the case of *Maneka Gandhi Vs. Union of India*², it is well settled that the right to travel abroad is a fundamental guaranteed right under Article 21 of the Constitution of India and that the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14 of the Constitution of India. It is also well settled that such a procedure must not be arbitrary or fanciful or oppressive, as, otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied. Since the

² (1978) 1 SCC 248

Petitioners have filed the present Petition to enforce the fundamental right to travel abroad, which is guaranteed to them under Article 21 of the Constitution of India, and have challenged the said Orders refusing renewal of passport to them as being without jurisdiction, the present Petition clearly falls within the exceptions to the rule of alternate remedy as laid down by the Hon'ble Supreme Court in the very judgment referred to by Respondent No.3. For these reasons, in our view, this Petition is maintainable.

8. Coming to the merits of the present case, as held hereinabove, it is settled law that the right to travel abroad is a fundamental right guaranteed by Article 21 of the Constitution of India. Therefore, it is obvious that no person can be deprived of this right except according to the procedure established by law. The right to travel abroad is regulated by the procedure established by the Passports Act and the Passports Rules, 1980 ("the Passports Rules"). Section 6 of the Passports Act provides for the grounds on which the Passports Authorities can refuse to issue or renew a passport. Section 6 of the Passports Act reads as under:-

"6. Refusal of passports, travel documents. Etc.-

(1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any country under clause (b) or clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and no other ground, namely: -

(a) that the applicant may, or is likely to,

engage in such country in activities prejudicial to the sovereignty and integrity of India;

(b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;

(c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country;

(d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely: -

(a) that the applicant is not a citizen of India;

(b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;

(c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.”

9. A reading of the grounds given in Section 6 of the Passports Act clearly shows that the ground mentioned by Respondent No.3 in the impugned orders dated 22nd December 2020 and 23rd December 2020 is not found in Section 6 of the Passports Act. In these circumstances, in our view, by refusing to renew the passports of the Petitioners on the ground mentioned in the said Orders, Respondent No.2 has acted arbitrarily and without jurisdiction.

10. Even otherwise, in our view, a person cannot be deprived of his/her fundamental right to travel abroad on the ground that there is a dispute in respect of the property which is mentioned in the address given by the applicant for the purposes of including it in the passport. This is more so if, like in the case of the Petitioners, the person actually resides at the said

address, and, as in the case of Petitioner Nos.2 and 3, earlier passports have also been issued containing the same address. For this reason also, we are of the view that the ground mentioned by Respondent No.2 for refusing to renew the passports of the Petitioners is totally arbitrary and is liable to be quashed and set aside.

11. Further, Respondent No.2 will have to be directed to issue passports to the Petitioners in accordance with the provisions of the Passports Act and the Passports Rules without going into the merits of the objection as raised by Respondent No.3.

12. In our view, the rights of Respondent No.3 to the property mentioned in the said applications, i.e., Room No. 339, Building No.22, MNB Colony, Sardar Nagar 4, Sion, Koliwada, Mumbai-400 037 (“the said property”) can be protected by clarifying that the reference to the said property as the address of the Petitioners in the passports issued to the Petitioners would not, by itself, confer on them any right in respect of the said property and such inclusion would be without prejudice to the rights and contentions of Respondent No.3 in other pending proceedings.

13. In the aforesaid circumstances, and for all the reasons given hereinabove, we pass the following orders:-

A. Respondent No.2 is directed to issue passports to the Petitioners in accordance with the provisions of the Passports Act and the Passports Rules, without going into the merits of the objection as raised by Respondent No.3. The same be done within a period of four weeks from today.

B. Needless to state that indication of the Petitioners' address in the passport would not, by itself, confer on them any right in respect of the said property mentioned therein, and such inclusion would be without prejudice to the rights and contentions of Respondent No.3 in other pending proceedings.

C. Rule is disposed of with aforesaid directions, with no order as to costs.

(FIRDOSH P. POONIWALLA, J.)

(A. S. CHANDURKAR, J.)