

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 13566 of 2022**

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AKIL VALIBHAI PIPLODWALA (LOKHANDWALA)

Versus

DISTRICT SUPERINTENDENT OF POLICE, PANCHAMAHAL AT GODHRA

=====

Appearance:

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MR I. H. SYED, SENIOR ADVOCATE with
 MR M R MOLAVI, ADVOCATE for the Petitioner
 MR DEVANG VYAS, ADDITIONAL SOLICITOR GENERAL with
 MR JASH S. THAKKAR, ADVOCATE for the Respondent(s) No. 1,3
 MR SAHIL B. TRIVEDI, AGP for the Respondent(s) No. 2

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CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA

Date : 18/07/2022

ORAL ORDER

1. The present writ petition has been filed *inter alia* seeking the following prayers :-

"8. (A) That the Hon'ble Court be pleased to issue a writ of mandamus and/or a writ in the nature of mandamus and/or appropriate writ, order of direction to quash and set aside the order No.LIP/PAK/LEAVEINDIA/2679/2022 dated 14.07.2022 passed by the respondent No.2 - Superintendent of Police & FRO, Panchmahal, Godhra;

(B) That the Honourable Court be pleased to permit the petitioner to stay in India till the requisite formalities in respect of his citizenship are concluded according to law;

(C) Pending the hearing and final disposal of this petition, the Honourable Court be pleased to stay the operation, implementation and execution of the order No.LIP/PAK/LEAVEINDIA/2679/2022 dated 14.07.2022 passed by the respondent No.2 - Superintendent of Police & FRO, Panchmahal, Godhra and permit the petitioner to stay in India till he completes the requisite formalities."

2. The petitioner has assailed the order No.LIP/PAK/LEAVEINDIA/2679/2022 dated 14.07.2022 passed by the respondent No.1 - Superintendent of Police and the FRO, Panchmahals, Godhra, Gujarat State.

3. It is the case of the petitioner that he was born and brought up in India and is running his business in India, since he returned to India in the year 1991. It is submitted that the

impugned decision is in violation of the principles of natural justice.

4. Learned senior advocate Mr.Syed, appearing for the petitioner has submitted that the impugned order is required to be quashed and set aside, since the requisite procedure prescribed in Section 9(2) of the Citizenship Act, 1955 (hereinafter referred as "the Act", for short), has not been followed. He has placed reliance on the judgment of the Supreme Court of India, in support of his case, in the case of Akbar Khan Alam Khan and another Vs. Union of India and others, [(1962) 1 SCR 779]. Reliance is also placed on the decisions of Hasan Ali Raihany Vs. Union of India and others, [AIR 2006 SC 1714], in the case of Nand Lal Bajaj Vs. State of Punjab and another, [(1981) 4 SCC 327], and finally, on the decision of the Madras High Court, in the case of S. Nalini Sirkaran Vs. Union of India, rendered on 07.03.2007, in Writ Appeal No.1599 of 2006.

5. The matter was heard by this Court on the previous occasion on 15.07.2022 and accordingly, it was listed today i.e. on 18.07.2022. Today, when the matter is taken up for hearing, learned senior advocate has submitted that the petitioner has already filed an application on 16.07.2022 for claiming the citizenship of India.

6. Learned senior advocate Mr.Syed, has submitted that the petitioner has no other alternative remedy but to approach this Court. Thus, he has submitted that the impugned order may be quashed and set aside.

7. In response to the aforesaid submissions, learned ASG Mr.Devang Vyas, appearing for the respondent authority on advance copy of the writ petition, has submitted that the petition is not required to be entertained, since the writ petition under Articles 14 and 19 of the Constitution of India, is not maintainable. In support of his submissions, he has placed reliance on the judgments of the Supreme Court in the case of State of Arunachal Pradesh Vs. Khudiram Chakma, [1994 Supp. (1) SCC 615], in the case of Hans Muller of Nurenburg Vs. Superintendent, Presidency Jail, Calcutta and others, [AIR 1933 SC 367]. Learned ASG has further placed reliance on the judgment of the Supreme Court of India in the case of Louis De Raedt Vs. Union of India, [(1991) 3 SCC 554], in support of his submissions.

7.1 Learned ASG Mr.Vyas, has further submitted that the action of the respondent authorities is in consonance with the judgment and order passed by the Court of the Principal District Judge, Pachmahals at Godhara dated 12.07.2022 passed in Regular Civil Appeal No.20 of 2012. He has further submitted that the petitioner has not challenged the same and hence, no relief can be granted in his favour. Thus, he has submitted that this petition may not be entertained.

8. I have heard the learned advocates for respective parties to the *lis*. I have also perused the relevant documents.

9. It is an admitted fact that the petitioner is not the citizen of India and the petitioner has applied only on Saturday vide his application for claiming citizenship of India. The petitioner had filed Regular Civil Suit No.22 of 1992 before the Court of 3rd Civil Judge, (S.D.) Panchmahals at Godhra with the prayers

that he is entitled to stay in India as per Section 5(1)(C) of the Indian Citizenship Act, and the defendants i.e. the respondent authorities have no right to deport him from India.

10. It is the case of the petitioner that he was born and brought up in India and, hence, accordingly after he got married with an Indian citizen, he is entitled to live in India. It appears that in view of the notice / summon, which was issued by the respondent authorities, the petitioner had filed the aforesaid civil suit. By the judgment and order dated 01.01.1999, the suit of the petitioner was partly decreed and it was ordered that the defendants-respondent authorities were restrained from deporting the plaintiff i.e. the petitioner, till the decision of the Central Government under Section 9 of the Act. The Ministry of Home Affairs, Central Government and the respondent authorities challenged the said judgment and decree by filing Regular Civil Appeal No.20 of 2012 before the Court of the Principal Judge, Panchmahals at Godhra. By the judgment and order dated 12.07.2022, the judgment and decree delivered in Regular Civil Suit No.22 of 1992 dated 01.01.1992, was quashed and set aside. It is an established fact that the said judgment and order dated 12.07.2022 has not been challenged by the petitioner and nothing is produced on record showing that the same is challenged before any higher forum. The Court of the Principal District Judge, Panchmahals at Godhara, after examining the entire facts, which were produced before it, has held thus :-

"37. The impugned judgment and decree of the 1d. Trial Court being result of plaint advanced by the plaintiff is total abuse of the process of law. The vexations & frivolous plaint having been resulted into erroneous impugned judgment & decree being perturbed to judicial consciences has caused immerse loss to the public exchequer as one Pakistan citizen lives in India almost for 40 years without any legal permission & authority and therefore while allowing appeal and dismissing the suit, I find this a fit case to quantify compensatory costs."

11. The Court of the Principal District Judge, Panchmahals at Godhra, has recorded specific findings that the petitioner, who is a Pakistan citizen and is living in India for almost 40 years without legal permission and authority. The said findings are not interfered, as on today by any of the higher forum. The respondent authority thereafter, passed the following order.

*"No.LIB/PAK/LEAVEINDIA
/2679/2022 Office of the
Superintendent of Police &
FRO Panchmahal, Godhra
Dated: 14/07/2022*

ORDER

In exercise of the powers conferred by clause (C) of sub section (2) of section 3 of the "Foreigners Act" read with the Government of India, Ministry of Home Affairs notification number 1/5/64 F-III, Dtd. 05/02/1964, entrusting to the Superintendent of Police, Panchmahal, the functions of the central Govt. in making orders of the nature specified in clause (G) of sub section (2) of section 3 of the said Act. I, The Superintendent of Police, Panchmahal, Godhra here by direct that the foreigner known as Mr. Akil Valibhai Piplodwala Nationality Pakistan holding Passport No. D269997 issuing authority Pakistan on Dt. 31/08/1988, who had asked to remain in India through Regular Civil Suit No. 22/1992, dated 07/01/1992. In the regular Civil Appeal No. 20/2012 against Regular Civil Suit No. 22/1992 Principal District Judge, Panchmahal, Godhra quashed and set aside Regular Civil Suit No. 22/1992 and consequently dismissed the civil suit.

So you shall not remain in the India after 24 hours as this notice is served and shall leave India immediately accordingly by the first available mode of transportation.

*Place: Godhra
Date: 14/07/2022*

*(Himanshu Solanki)
Superintendent of police &
Panchmahal, Godhra
(Gujarat State)*

To,

Mr. Akil Valibhai Piplodwala R/o Saifi Chal Room No. 4 Voharwad Godhra, Dist. Panchmahal (communicate exact date of departure to this office)

Copy to: (for information)

1. The Deputy Secretary (Foreigners), Govt. of India, Ministry of Home Affairs, New Delhi.

2. *The Under Secretary (Foreigners), Govt. of Gujarat, Home Department, Sachivalaya, Gandhinagar.*

3. *The Senior Immigration Officer, International Rail Check Post, Attari Wagha Border Amritsar, Punjab. (Request to communicate exact date of departure of Pak National to this office)*

4. *The Senior Immigration Officer, International Air Check Post, Mumbai (request to communicate exact date of departure of Pak National to this office)"*

12. The respondent authority has specifically passed the aforesaid order, in view of the order passed in Regular Civil Suit No.22 of 1992 and has asked the petitioner not to remain in India, after 24 hours' notice. It appears that thereafter, the petitioner did not leave India and has been detained and the petitioner has filed a Habeas Corpus being Special Criminal Application No.7501 of 2022 i.e. after filing of this petition on 16.07.2022 and the same is registered on 18.07.2022.

13. The present writ petition has been filed under Articles 14, 19, 21 and 26 of the Constitution of India. Since, the petitioner has not challenged the order dated 12.07.2022 passed by the Principal District Judge, Panchmahals at Godhra passed in Regular Civil Appeal No.20 of 2012, the present writ petition challenging the impugned order dated 14.07.2022 passed by the respondent authorities itself is misconceived since the impugned order is premised on the order passed in Regular Civil Appeal No.20 of 2012, which has been allowed by the order dated 12.07.2022.

14. At this stage, it would be apposite to refer to the observations made by the Supreme Court of India in the case of **Louis De Raedt (supra)**. The relevant paragraph reads thus :-

"13. The next point taken on behalf of the petitioners, that the foreigners also enjoy some fundamental right under the Constitution of this country, is also of not much help to them. The fundamental right of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19(1)(e), which is applicable only to the citizens of this country. It was held by the Constitution Bench in Hans Muller of Nurenburg v. Superintendent, Presidency Jail, Calcutta and Ors, [1955] 1 SCR 1284 that the power of the Government in India to expel foreigners is absolute and unlimited and there is no provision in the Constitution lettering this discretion. It was pointed out that the legal position on this aspect is not uniform in all the countries but so far the law which operates in India is concerned, the Executive Government has unrestricted right to expel a foreigner. So far the right to be heard is concerned, there cannot be any hard and fast rule about the manner in which a person concerned has to be given an opportunity to place his case and it is not claimed that if the authority concerned had served a notice before passing the impugned order, the petitioners could have produced some relevant material in support of their claim of acquisition of citizenship, which they failed to do in the absence of a notice."

15. The Apex Court has enunciated that the fundamental right of the foreigner is confined to Article 21 of the Constitution of India for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19(1)(e), which is applicable only to the citizens of this country.

16. In the case of **Hans Muller of Nurenburg (supra)**, the Apex Court has observed that the power of Government in India to expel foreigner is absolute and unlimited and there is no provision in the Constitution, fettering this discretion. It is further observed that so far as the right to be heard is concerned, there cannot be any hard and fast rule about the manner in which a person concerned, has to be given an opportunity of place his case. In the present case, unquestionably, the petitioner has not challenged the aforesaid order by filing an appeal and since the impugned order dated 14.07.2022 is premised on the said order dated 12.07.2022 passed in the Regular Civil Appeal, the petitioner cannot contend that he has right to be heard before passing the order since such right would get diluted in view of the order passed by the Court of Principal District Judge, Panchmahals at Godhara.

17. At this stage, it would be apposite to refer to the decision of the Supreme Court in the case of Anwar Vs. The State of Jammu and Kashmir, [1971 (3) SCC 104]. The Apex Court has held that a foreigner, who is not a citizen of India as defined in the Foreigners Acts, is not entitled to any fundamental right guaranteed by Article 19 of the Constitution of India and he has no right to remain within the territories of India since his entry into this country was also without any right and indeed, he himself does not claim to have entered into India in accordance with the provisions of the Foreigners Act.

18. In the case **Khudiram Chakma (supra)**, the Apex Court has held thus :-

"33. It is true that this Court in Louis De Raedt (supra) took the view that even foreigner has a fundamental right, but that fundamental right is confined only to Article 21 and does not include the right to move freely throughout and to reside and stay in any part of the territory of India, as conferred under Article 19(1) (d) and (e). Such a right is available only to the citizens. The appellants being foreigners, cannot invoke Article 14 of the Constitution to get the same right denied to them under Article 19 since Article 14 cannot operate in regard to a right specifically withheld from non-citizens. In support of this submission, reliance is placed on Indo-China Steam Navigation Co v. Jasjit Singh [1964] 6 SCR 5 94 at 621 to 622 and Louis De Raedt (supra)."

19. In the present case, indubitably, the petitioner is a Pakistan citizen and as per the law enunciated by the Apex Court, he cannot invoke Articles 14 and 19 of the Constitution of India, hence, he has no right to enter and remain within the territories of India. He is bound to the act, as per the order dated 14.07.2022 passed by the respondent authorities. Reliance placed by the learned senior advocate in the aforementioned judgments cannot come to rescue, since the same do

not, in any manner, apply to the facts of this case. In wake of the fact that the petitioner has not challenged the order passed in Regular Civil Appeal No.22 of 2012 and the observation made therein have become final as on today. No compassion can be shown in favour of the petitioner by interfering in any manner with the action taken by the respondent authorities. Hence, the writ petition fails and the same is rejected, summarily.

(A. S. SUPEHIA, J)

MAHESH BHATI/03

