

Mohd. Raza Dabstani vs State Of Bombay And Ors on 28 January, 1966

Equivalent citations: 1966 AIR 1436, 1966 SCR (3) 441

Author: A.K. Sarkar

Bench: A.K. Sarkar, J.R. Mudholkar

PETITIONER:
MOHD. RAZA DABSTANI

Vs.

RESPONDENT:
STATE OF BOMBAY AND ORS.

DATE OF JUDGMENT:
28/01/1966

BENCH:
SARKAR, A.K.
BENCH:
SARKAR, A.K.
MUDHOLKAR, J.R.

CITATION:
1966 AIR 1436 1966 SCR (3) 441

ACT:
Constitution of India Art. 5-Citizenship claimed by foreign national on basis of Indian domicile-Onus to prove domicile-Residence whether sufficient proof-Foreign national whether can be Indian citizen.

HEADNOTE:
The appellant, an Iranian national by birth, to India in 1938. In 1945 he obtained an Iranian passport and went to Iraq on pilgrimage. On return to India he was registered under the Registration of Foreigners 1939, as an Iranian national. On May 25, 1951 he obtained a retail permit under the Foreigners Order, '1938 permitting him to reside in India up to a certain date,. This permission was extended from time to time at his request. In his applications for this' purpose. he described himself as an Iranian national. On December 2, 1957- his last request was refused and he was asked under the Foreigners' Act, 1946 to leave India. He

then filed a suit in the City Civil Court Bombay, for a declaration that he was an Indian citizen and for an injunction restraining the authorities from taking action against him on the basis that he was a foreigner. The suit was dismissed by the City Civil Court and an appeal to the High Court failed. With special leave the appellant came to this Court, claiming citizenship of India under Art. 5 of the Constitution on the basis that he had acquired Indian domicile.

HELD : (i) Residence alone is insufficient evidence to establish acquisition of a new domicile; there also has to be proof that the residence in a country was with the intention of making it the person's home. [443 A]

(ii) An Indian citizen cannot be the national of another State. [443 G-H]

State Trading Corporation v. Commercial Tax Officer, [1964] 4 S.C.R. 99 : A.I.R. 1963 S.C. 161, relied on.

When in his applications the appellant described himself as an Iranian national he was saying that he was not an Indian citizen. If he was not an Indian citizen he did not have an Indian domicile; for if he had such a domicile, he would be an Indian citizen. [444 A-B]

(iii) The onus of proving his change of domicile from Iran to India was on the appellant. The evidence produced by him did not discharge the onus. [445 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 289 of 1964. Appeal by special leave from the judgment and order dated October 3, 1963 of the Bombay High Court in Appeal No. 295 of 1960 from Original Decree.

S. J. Sorbjee, G. L. Sanghi, B. R. Agarwala, M. S. Patel and H. K. Puri, for the appellant.

C. K. Daphtary, Attorney-General, B. A. L. Iyengar and B. R. G. K. Achar for R. H. Dhebar, for respondents. The Judgment of the Court was delivered by Sarkar J. The appellant, an Iranian national by birth, came to India from Yezd in Iran with his maternal uncle, an Iranian national, in 1938 when he was about thirteen years old. The record does not show on what passport he entered India. In January 1945 he obtained an Iranian passport and went to Iraq on pilgrimage. This passport showed that he held an identity card, of the Iranian Government. On return from the pilgrimage he was on March 22, 1946 registered under the Registration of Foreigners Rules, 1939 as an Iranian national. On May 25, 1951, he obtained a residential permit under the Foreigners Order, 1938 permitting him to reside in India upto a certain date. This permission was extended from time to time at his request. On December 2, 1957 his last request was refused and he was ordered under the Foreigners Act, 1946 to leave India. On December 14, 1957, he filed a suit in the City Civil Court at Bombay for a declaration that he was a citizen of India and for an injunction restraining the State of Bombay, the Police of Bombay and the Union of India from taking action against him on

the footing that he was a foreigner and not a citizen of India. This suit was dismissed by the City Civil Court and an appeal by the appellant 'to the High Court at Bombay also failed. He has now appealed to this Court with special leave.

The appellant bases his claim to citizenship of India on Art. 5 of the Constitution. Under that article every person who had his domicile in the territory of India and had been ordinarily resident there for not less than five years immediately preceding the commencement of the Constitution was declared to be a citizen of India. Article 5 of the Constitution came into force on November 21, 1949. It is not in dispute that the appellant had been ordinarily resident in the territory of India for over five years before November 21, 1949. The only question in this appeal is whether he had his domicile in the territory of India on- that date.

When the appellant arrived in India he was a minor. His domicile was, therefore, that of his father which was Iranian. This is not disputed. The appellant contends that he had changed his Iranian domicile into an Indian domicile prior to November 21, 1949. The onus of proving the change of domicile is, of course entirely on the appellant. Such change can be proved if it is established that the appellant had made up his mind to make India his home, that is to say, remain in India permanently. The facts established are that since 1938 excepting for a visit to Iraq lasting about a year he has all along been a resident of Bombay. It is well established that residence alone is insufficient evidence to establish acquisition of a new domicile; there has also to be. proof that the residence in a country was with the intention of making it the person's home. Now on the question of intention of the appellant to make India his home, there is very little evidence. The evidence shows that after his arrival in India the appellant was put in a school but before he attained majority he took up the job of a cashier in a restaurant in Bombay. He attained majority sometime in 1943. Prior to that he was not entitled under the law to change his domicile. He has to establish the change in domicile by proving that after 1943 and before November 21, 1949 he had formed the intention of making India his home. There is very little during this short period from which one can draw an inference that he had intended to change his domicile. He was then quite young. During, this period he left India on an Iranian passport declaring himself to be an Iranian national. On his return he was registered as an Iranian national on March 23, 1946. These facts do not support the appellant. It is said that he had done all these because under the law then obtaining he had no option. It has however to be pointed out that it was open to him then, if he wished to change his Nationality, to get himself naturalised as a British Indian subject under the Naturalisation Act of 1926. The only other fact which happened between 1943 and 1949 to which our attention was drawn was that in 1947 he took over a restaurant business on royalty basis for a period' of three years. From this fact alone it is impossible to hold that the appellant had decided to make India his home. We do not even know whether during this period he was economically independent or had his own residential establishment. The conduct of the appellant subsequent to 1949 does not help to establish that he had earlier formed the intention to live in India for good. As we have already stated, he obtained a residential permit and from time to time applied for its extension. In these applications he described himself as an Iranian national. It was contended that this description on does not militate against his claim to an Indian domicile. It was said that a person may be a national of one country and have his domicile in another, country. Here however the question of domicile arises because on the basis of it the appellant claims citizenship of India. We are not aware that it is possible to be a citizen

of India and a national of another country. The decision of this Court in *State Trading Corporation of India Ltd. v. Commercial tax Officer*(1) would indicate that that cannot be done. It was there said at p. 114, "All citizens are nationals of a particular State but all nationals may not be citizens of the State." It would follow from (1) [1964] 4 S.C.R. 99; A.I.R., 1963 S.C. 1811.

that that an Indian citizen cannot be a national of another State. Therefore, when the appellant described himself as an Iranian national in his applications for a residential permit and for extensions thereof after 1950, he was saying that he was not an Indian citizen. If he was not an Indian citizen, he did not have an Indian domicile, for if he had such a domicile, he would have been a citizen of India. These applications, therefore, furnish evidence that even after 1950 he was not of Indian domicile. We may also mention that after 1950 he obtained a duplicate of his registration certificate under the Foreigners' Rules as the original had been lost and in the application for it he described himself as an Iranian national. Then we find that in one of the applications for extension of residential permit he had stated that he was desirous of staying in India for business and so, not for making it his home. as late as March 30, 1957 he described himself as an Iranian national in the application that he made for naturalisation as an Indian citizen which was refused. He could have all along claimed Indian citizenship on the basis of Indian domicile if he had one. Instead of making such a claim or any effort in that regard he continued proceeding on the basis that he was an Iranian national.

It appears that in 1950 he first entered into a partnership to run a restaurant of which he became the sole proprietor in March 1953. This by itself is not enough to establish the necessary intention. In any case it cannot show that prior to November 1949 he had acquired Indian domicile. It has to be remembered that notwithstanding the commencement of a business of his own, the appellant went on describing himself as an Iranian national indicating thereby that he had not acquired an Indian domicile though he was carrying on a business in this country. We may also point out that his father had carried on a similar business in India for thirty years and had gone back with the money earned here and settled down in his village Yezd in Iran. Then we find that the appellant had on more than one occasion asked his father to come over to India to look after his business and that he was keeping contact with his mother and sisters in Iran and had taken steps to go over to meet them. Further, he made an application to a magistrate at Bombay for grant of a domicile certificate to him on October 13, 1954 which was refused. It appears from a letter that the appellant wrote to the police on September 24, 1955 in connection with a permit for extension of stay in India which he had omitted to obtain in due time that as he had applied for the certificate of domicile he was under the impression that extensions of permits were no longer necessary for him. This would indicate that the appellant's real object of applying for domicile was to avoid the botheration of having to apply constantly for extension of the residential permit and not that he had intended to make India his home.

In this State of the evidence it cannot be held that the appellant has been able to prove his intention to settle in India or make India his home. The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.